

**IN THE GENERAL DISTRICT OF FAIRFAX COUNTY - VIRGINIA**

RIVER TOWERS CONDOMINIUM :  
UNIT OWNERS ASSOCIATION INC. :  
:  
Plaintiff/Counter-Defendant : Civil Action  
:  
                  versus, : No. GV22006309-00  
:  
JOSEPH M. HOFFMAN : Next Event:  
                                  : Trial January 23rd, 2023  
:  
Defendant/Counter-Plaintiff :

**DEFENDANT’S MOTION FOR A RULING  
WHETHER OR NOT (*Vel non*) THE ATTORNEY’S APPEARANCE  
FOR THE PLAINTIFF SHOULD BE STRICKEN FOR MULTIPLE  
MISCONDUCTS COMMITTED HEREIN**

COMES NOW the Defendant Joseph Hoffman, and hereby seeks a ruling as to whether or not the law firm of Whiteford, Taylor & Preston, L.L.P. appearance on behalf of the Plaintiff should be stricken for multiple misconducts committed herein.

For grounds therefore, Defendant asserts as follows:

**Violation of RPC Rule 3.3 - Candor Toward The Tribunal**

1. Attached to both the Warrant in Debt as well as the Bill of Particulars is a purported accounting tender by the Plaintiff’s law firm. N.B. This law firm has NEVER provided any accounting by the custodian of record, namely Plaintiff’s managing agent FirstSevices Residential. Accord, <https://rivertowerscondominium.connectresident.com/>.

2. That in ¶ 1 of the Affidavit in Support of the Warrant in Debt, a

Patterson asserts that she has "personal knowledge" of the facts.

Patently Linda Patterson cannot have said personal knowledge of any River Towers accounting because both she is NOT the Custodian of Records and that the accounting was furnished by the present law firm.

2. In paragraph 8 of Affidavit in Support of the Warrant in Debt, Linda Patterson further asserts [T]hat all payments have been credited to the Defendant . . .

As evidence by the EVIDENTIARY NOTICE filed herein by Defendant, there is a payment of \$3,925.80 paid to Plaintiff's managing agent FirstServices Residential which appears to have been defalcated by its agent. N.B. Under the doctrine of *respondeat superior*, the Plaintiff is responsible for its conduct as well as its misconduct.

3. Additionally the Plaintiff's agent refused to accept multiple Credit Union checks sent for payment of condo dues. (Defendant asserts that this constitutes a waiver by the Plaintiff.)

4. Defendant asserts that Plaintiff's law firm had said Linda Patterson execute said Affidavit in Support knowing that some of the averments were false.

5. By doing so, the Plaintiff's attorneys at least violated its duty to be candid with this Court.

### **Rule 3.4 - Fairness To Opposing Party And Counsel**

6. In his Defendant's Omnibus Motions, filed herein, Defendant moved in writing as follows:

"WHEREFORE, Defendant moves that the Plaintiff's pleadings be stricken now, or after Plaintiff's case in chief has been presented as well as to demand a Bill of Particulars providing an accounting and for repair services received and responded to since the beginning of January 2020." (Emphasis added)

7. That this Court granted Defendant's alternative relief sought.

8. That the Plaintiff has failed or refused to produce the repair documents as ordered by this Court.

9. That the Plaintiff is responsible for repairs for both the common elements as well as the limited common elements. (In other words inside the interior walls and balconies). See, Bylaws as attached to the Bill of Particulars, Deed Book 5268 at page 322 (Document Page 1B). section 5. Maintenance, Repair, Replacement and other Common Expenses.

10. Around May of 2021 Defendant's condo suffered from water damage to both the living room and bedroom.

11. The Plaintiff's agent First Services Residential ignored Defendant's repeated demands to address the water damage which was coupled with mildew and mold.

12. Finally in September of 2021 the Plaintiff's agent generated a repair order.

13. Later on Plaintiff repaired the wall damage without fixing the cause of the water damage.

14. In February of 2022 the Plaintiff's agent sent out a mass email acknowledging that it had an ". . . insulation repairs to the loop system HVAC pipes." Plaintiff's agent asserted that there were over FIFTY UNITS that required insulation repairs which includes Defendant's condo. See Exhibits to Defendant's Pre-trial Motion for Summary Judgment., filed herein.

15. To this day in January, 2023, Defendant's condo still has not been repaired by the Plaintiff,

16. Plaintiff has breached its duties to your Defendant by failure to fix the water damage repairs.

17. That your Defendant has neither been able to occupy his River Towers condo unit 211 nor in the alternative, able to rent out his condo, all due to the failure of the Plaintiff to make repairs since May of 2021.

18. Although the Plaintiff is in breach of its duty to make repairs, nevertheless it is making a "demand" from your Defendant for condo fees for an uninhabitable condo unit.

19. That the Plaintiff is NOT entitled to receive condo fees due to its failure/ or refusal, to make repairs as stated here! The Plaintiff is proceeding without clean hands.

20. To obstruct justice as well as Defendant's defense and counter-claim, the Plaintiff's attorneys have obstructed discovery by either failing or refusing to provide the repair documents.

21. Accordingly Plaintiff's law firm has intentionally obstructed discovery as well as justice.

22. Plaintiff's refusal to provide the repair documents is more than showing contempt for this Court's order to provide both an accounting as well as the repairs document. How so?

Plaintiff's attorneys know that Virginia has adopted the "first material breach" doctrine. See, *Remy Holdings International, LLC v. Fisher Auto Parts, Inc.*, Civil Action No. 5:19-cv-00021, WDVA, (Memorandum Opinion dated February 25, 2022).

"A material breach is a failure to do something that is so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract. If the initial breach is material, the other party to the contract is excused from performing his contractual obligations." *Horton v. Horton*, 487 S.E.2d 200, 204 (Va. 1997).

While this doctrine may sometimes result in seemingly harsh results, especially when parties continue to perform under the contract, Virginia law is clear in its application of the doctrine. Cf.;

<https://www.generalcounsellaw.com/who-breached-first-virginia-court-offers-guidance-on-breach-of-contract-claims/>.

23. Accordingly have breached its contract (Bylaws), the Plaintiff cannot demand payment from Defendant for condo fees! As such Plaintiff's action could be deemed sanctionable.

**RULE 3.5(e) Impartiality And Decorum Of The Tribunal**

24. On Wednesday, January 11<sup>th</sup>, 2023, Defendant attend a motion's hearing to argue both his Pleas for both Payment and Waiver.

25. Susan Friedlander Earman, J., announced the case, and stated that the only item before her was the Plaintiff's rejection of Defendant's personal checks, and *sua sponte* denied Defendant's second plea in bar for waiver.

26. In fact that the multiple checks tendered and not accepted by Plaintiff's agent were Navy Federal FCU billpayer checks.

27. Patently Plaintiff's law firm had *ex parte* communications with Judge Susan Friedlander Earman in violation of both the Rules of Professional Conduct and the Judicial Canons.

28. Based on the foregoing, Defendant asserts that Judge Susan Friedlander Earman refused to acknowledge Defendant's plea in bar for payment based on *ex parte* communications with Plaintiff's attorneys.

29. Note: Under the Judicial Canons all judges are required to treat litigates with respect.

30. Defendant did not receive any respect due to Plaintiff's attorney's *ex parte* communication with the bench.


31. Defendant will not receive a fair and impartial hearing solely due to

Plaintiff's attorney's misconduct, as aforesaid.

WHEREFORE, Defendant moves this Court for a ruling as to whether or not Whiteford, Taylor & Preston, L.L.P. appearance on behalf of the Plaintiff be stricken *vel non*, and for such further and necessary relief deemed just and necessary.

DATED: January 19, 2023

Respectfully submitted,

  
\_\_\_\_\_  
Joseph M. Hoffman  
Defendant in proper person

Joseph M. Hoffman  
Defendant in proper person  
6621 Wakefield Drive #211  
Alexandria, VA 22307  
Telephone (937) 582-5339

### **AFFIDAVIT OF SERVICE**

I HEREBY AFFIRM that a true copy of foregoing Defendant's Motion for a Ruling Whether or Not (*Vel non*) the Attorney's Appearance for the Plaintiff Should Be Stricken for Multiple Misconducts Committed Herein was sent via first class mail, postage prepaid, and FAXED on this 19th day of January, 2023, to as follows:

Kathryn G. Murphy - Attorney  
Whiteford, Taylor & Preston, L.L.P.  
3190 Fairview Park Drive - Suite 800  
Falls Church, VA 22042-4510

  
\_\_\_\_\_  
Joseph M. Hoffman