

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	:	
	:	
Defendant/Counter-Plaintiff	:	

TO: The Honorable Michael Joshua Lindner

DEFENDANT’S MOTION TO EITHER SET ASIDE OR VACATE PLAINTIFF’S JUDGMENT DUE TO THIS COURT’S VIOLATING DEFENDANT’S DUE PROCESS OF LAW, VIOLATING VARIOUS EVIDENTIARY RULES, ETC.

COMES NOW the Defendant Joseph Hoffman, and in accordance with § 8.01-680 **Code of Virginia**, hereby demands that this Court, Linder, J., vacate and/or set aside the Plaintiff’s Judgment entered against him on January 23rd, 2023 because it is contrary to the evidence, etc.

For multiple grounds there, Defendant asserts as follows:

Violation of Defendant’s Procedure Due Process to Cover Up Plaintiff’s attorney Incompetence

1. The Plaintiff is maintaining its wrongful against against Defendant for unpaid condo dues. For multiple reasons stated herein, said dues are not owing Plaintiff.

2. Around the end of August, 2022, Defendant filed a Motion in Limine. One of the authorities in support of said Motion is Title § 8.01-390.3 **Code of**

Virginia.

2. Therefore the Plaintiff and its attorneys had actual (verus constructive) notice of the existence of said statute.

3. Said statute mandates in pertinent part as follows:

§ 8.01-390.3. Business records as evidence (Subdivision (6) of Supreme Court Rule 2:902 derived in part from this section).

B. The proponent of a business record shall (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. **The notice and copy of the record and certification shall be provided no later than 15 days in advance of the trial or hearing**, unless an order of the court specifies a different time. Objections shall be made within five days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia shall be made by witness testimony unless the objection is withdrawn. (Emphasis added)

4. Defendant did not receive said notice due to the incompetency of Plaintiff's attorney(s).

5. Although Canon I mandates that judges must uphold the law, nevertheless Judge Lindner permitted the trial to proceed with Defendant lacking any business record(s) in clear violation of the law, as aforesaid. Judge Linder, lacking any authority to do so, nullified the Plaintiff needing to comply as aforesaid.

Why had Judge Linder done so? Defendant asserts that if Judge Linder had done so, then under the Judicial Canons he would be mandated to report the Plaintiff's misconduct to the Virginia State Bar's bar counsel. Attorneys have a duty to represent their client's with competency, and by the Plaintiff's attorney having failed, or refused, to furnish the business records is a patent failure to act competently on the Plaintiff's behalf. (The foregoing also evinces judicial bias by Judge Linder.)

Therefore this Court erred in letting the trial proceed without Defendant having been accorded his procedural due process, as aforesaid, as well as to deprive Defendant the ability to challenge the accounting, including a payment previously made in May of 2021. See EVIDENTIARY NOTICE, filled herein around July, 2022.

This Court committed a gross error in admitting perjured testimony by a FirstServices Residential Employee who is NOT a custodian of record!

6. Although it has been removed from the River Tower's website, condo fee payments are sent to FirstServices Residential office in Florida. Previously condo due payments were sent to their New Jersey office.

Therefore logic suggests that any custodian of records would be from Florida.

7. The Plaintiff's attorney had a "Cindy" from FirstServices Residential Fairfax County office attempt to provide testimony as a custodian of record.

8. While under oath said Cindy asserted that Defendant had tendered

NSF checks to FirstServices Residential. When questioned by the Defendant and this Court, about furnishing proof of the purported NSF checks, Cindy recanted her testimony thereby impeaching her testimony as well as having committed unadjudicated perjury.

The foregoing also invokes the *doctrine of falsus in uno falsus in omnibus*.

N.B. - Said Cindy could not explain her company's defalcation of Defendant's payment of \$3,925.80 tendered and acknowledged via receipt as exhibited in Defendant's EVIDENTIARY NOTICE, filled herein around July, 2022.

9. Considering the foregoing, the attorney for the Plaintiff presenting this witness Cindy as a proper custodian of record is at least being disingenuous if not having committed outright fraud upon this Court.

10. That this Court committed gross error in admitting said perjured testimony as a basis of granting any judgment against Defendant, and also evincing judicial bias against Defendant.

**This Court Violated the Evidentiary Doctrine of
*Falsus in Uno Falsus in Omnibus***

11. As set forth in Defendant's EVIDENTIARY NOTICE, filled herein around July, 2022, an acknowledged payment of \$3,925.80 was made in May, 2021.

Also as set forth in Defendant's Omnibus Motions, filed herein, your

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)

Ab initio Defendant has protested that the Plaintiff's accounting excluded his payment, as aforesaid.

This Court committed error by both ignoring the accepted doctrine of *Falsus in Uno Falsus in Omnibus* as well as failing to grant Defendant credit *pro tanto* for the payment made, as aforesaid.

Defendant asserts that the foregoing occurred due to judicial bias by this Court.

This Court has intentionally violated the Ends of Justice Doctrine

12. How may the Plaintiff maintain its action for collection of condo fees when it has refused to repair Defendant's continuing water infiltration situation since May of 2021 thereby rendering Defendant's condo uninhabitable?

Under the doctrine of First Material Breach the Plaintiff is barred from doing so.

13. Defendant has been hounding Plaintiff's managing agent FirstServices Residential since May of 2021 to repair the water infiltration

issue. Finally in the Fall of 2021, the Plaintiff's managing agent generated a

Work Order Third instance of flooding water damage, September 2021.
From: noreply.dcmetro@firstservice.com <noreply.dcmetro@firstservice.com>
Sent: Tuesday, September 28, 2021 8:30 AM
To: josephqm@hotmail.com <josephqm@hotmail.com>
Subject: Notification from your community software - Work order status update

FirstService Residential

9/28/2021

WORK ORDER

The following work order has been created:

Workorder No: 1120

Property / Department: River Towers Condominium UOA

Unit / Area: 8621 Wakefield Dr Apt 211
Alexandria VA 22307

Requested By: JOSEPH HOFFMAN
(703) 765-7324
9375625139
josephqm@hotmail.com

Progress Code: Received

Description: I noticed that the third instance of flooding occurred in my condo bedroom and living room in the same spot it occurred last time. Do Not Lock the Main Door handle lock on the Unit 211 main door because there are no keys for this door handle lock.

Forwarded By: Lauren Herbert

Question
Answer

Professionally Managed by FirstService Residential

repair order as follows:

N.B. - The foregoing was exhibited at "trial".

14. As asserted by Defendant, the water infiltration was neither addressed nor repaired. In the Spring of 2022 the Plaintiff's managing agent included Defendant's condo among 50+ condos that had water issues which needed to be repaired. See, exhibits to Defendant's Pre-trial Motion for Summary Judgment, filed herein.

As of this date Defendant's condo remains uninhabitable because of the mold and mildew.

N.B. - Defendant is a 90% disabled war veteran having suffered lung damage from the Afghanistan burn pits. Accordingly Defendant is very sensitive to mold and mildew.

15. Because of Plaintiff's misconduct, as aforesaid, Defendant has been

forced to maintain another place of residence at great costs to him.

16. Defendant provides the obligations of the parties *inter se* as follows:

A). The River Towers bylaws imposes duties on both the condo association and the owners residing therein.

B). That the condo owner 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.

C. That the Plaintiff's managing agent FirstServices Residential has either refused or failed to make repairs. In fact the last communications that Defendant had with the River Tower's front office was that they wanted to resolve the situation by installing a "drip pan" to collect the water.

D. Additionally the River Towers bylaws require that the owners make monthly condo fee payments based on the square footage of the unit. See Seventh Amendment to the Declaration for the formula.

E. Under the First Material Breach Doctrine the Plaintiff cannot maintain its action since it caused the first material breach of the bylaws.

17. This Court furthermore violated the doctrine of *stare decisis* by wrongfully ruling that because Defendant continued to make condo fee payments (in good faith believing that the Plaintiff and/or its agent would

eventually make repairs), that the foregoing created a waiver¹.

In *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*, 254 Va. 111, 487 S.E.2d 200, 204 (Va. 1997). [emphasis addred].

The holding in *Horton*, supra, the Supreme Court noted, as follows:

A party claiming waiver must show a "knowledge of the facts basic to the exercise of the right [waived] and the intent to relinquish that right." *Stuarts Draft Shopping Ctr. v. S-D Associates*, 251 Va. 483, 489-90, 468 S.E.2d 885, 889 (1996) (citation omitted); *Stanley's Cafeteria v. Abramson*, 226 Va. 68, 74, 306 S.E.2d 870, 873 (1983). Acceptance of defective performance, without more, does not prove intent to relinquish the right to full performance. *Id.* at 74, 306 S.E.2d at 873; see 5 Samuel Williston Walter H.E. Jaeger, *A Treatise on the Law of Contracts* § 700 (3d ed. 1961).

As per *Horton* and its progenies, Defendant neither waived nor relinquish his right to insist on full performance of the the River Towers bylaws.

¹. But the Court refuses that Defendant's payments to Plaintiff's agent that were not negotiated does not constituent waiver. Why so?

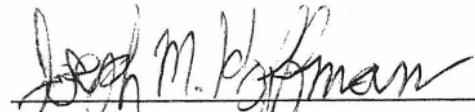
Accordingly this Court patently erred in ruling that any waiver was created by Defendant.

Therefore because the Plaintiff is in first material breach it is barred from asserting any purported obligations by Defendant, including paying condo dues. The foregoing flies in the face of the ends of justice doctrine.

WHEREFORE, Defendant demands that this Court vacate, set aside the judgment wrongfully entered against him, that his counterclaim be reinstated, and for such other relief deemed just and necessary.

DATED: January 26, 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 to Either Set Aside or Vacate Plaintiff's Judgment Due to this Court's Violating Defendant's Due Process of Law, Violating Various Evidentiary Rules, Etc., was sent via FAX, on this 26th 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