

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SIXTH DISTRICT

CASE No.: 6D23-2753
L.T. No.: 2020-CA-009504-O

LYNN SANDFORD v.

NORTH SHORE AT LAKE
HART HOMEOWNERS'
ASSOCIATION, INC., DAVE
S. GORDON, JOHN DICK,
STEPHEN SMITH,
MICHAEL MCCAULEY, ROB
TAUB, ALBERT PEARSALL
ET AL., AND JENNIFER
ENGLERT, ESQ. AND THE
ORLANDO LAW GROUP,
PL.

Appellant / Petitioner

Appellee / Respondents(s)

OPPOSED MOTION TO STAY THIS MATTER FOR SIXTY DAYS

Comes now, Appellant Lynn Sandford, by counsel, and requests that this Court stay this matter for sixty days for the following reasons.

Background pertinent to this Motion for a Stay

1. On October 4, 2023, this matter was dismissed with prejudice by the trial court.
2. On April 4, 2024, this Court ordered that an Amended initial

brief be filed on or before June 1, 2024, said brief was to be consistent with the recently adopted administrative order of this Court titled 24-01.

3. On December 15, 2023, the Department of Business and Professional Regulation entered a Final Order in the matter styled Miriam L. Burtoff, v. North Shore at Lake Hart Homeowners Association, Inc., DBPR 2023-03-7673, (hereinafter the Association or Appellee Association). This twenty-seven-page Final Order can be found as the Amended Notice of [First] Related Case, filed 12/26/23 on this docket.

4. The DBPR Final Order required the Association, inter alia, to mail or email the order to all one thousand and forty-nine homeowners and to announce a full five-seat reset election within thirty days. This order applied to the board of directors of the Association. (who are all appellees in this matter) and the Association manager, Laurie Bihailo.¹

¹ Ms. Bihailo, as Association Manager is responsible for noticing and arranging all directors' meetings and the posting of agenda items upon recommendation of directors.

5. After thirty-one days without compliance, the Petitioner in the arbitration matter, filed a request for the arbitrator to issue a show cause order to explain why no notice of an election had been filed.

6. The arbitrator responded on January 19, 2024 stating that the directors were in “willful and unlawful” non-compliance of his order but that further action to compel the directors to enforce his order would require the matter be filed in Circuit Court for compliance. (Exhibit 1).

7. Thereupon, Petitioner Miriam L. Burtoff obtain legal counsel and filed a complaint for confirmation and compliance in Circuit Court and it was assigned to the Hon. Judge Eric J. Netcher. 2024-CA-1618-O.

8. Judge Netcher held a short matters hearing on or about March 17, 2024 where he advised Association attorney Jeffrey Smith, that he would confirm the order but wanted the Association to be served and have time to respond.

9. Service of the complaint was perfected on March 21 , 2024 upon the association attorney, Jennifer Englert.

10. Thereupon, the Association held a closed legal meeting

pursuant to 720.303(2)(a), and decided to oppose the Final Order of the Department of Business and Professional Regulation and thereupon, filed a Motion to Dismiss, amended the bylaws for the third time and added new rules to the CCR's. (4/19/2024)

11. A second hearing was held before Judge Netcher on April 17, 2024, in which the Association had notice and opportunity to raise issues about confirmation of the Final Order. Association attorney Englert argued this motion at that time.

12. Later that same day, Judge Netcher entered his order confirming the arbitration Final Order and stated that:

"2. Once an arbitration award is confirmed by a court, it then becomes the judgment of the court," Haskell v. Forest Land and Timeber Co., Inc., 426 So. 2d 1251, 1253 (Fla. 1st DCA 1983).

(Exhibit 2)

13. Within days of this confirmation, the Association, with its attorney, Englert plotted a course of defiance, including announcing a two-seat election and recording the new bylaws, all designed to undermine the Arbitration Final Order. (Exhibit 3)

14. These changed rules and bylaws were drafted by the

Association attorney and approved by the board of directors. In effect, the Florida licensed attorney was advising her clients to engage in, as the arbitrator put it, “willful and unlawful conduct.” (Exhibit 1)

15. Much to everyone’s surprise, homeowners turned out in mass to this hastily announced election and achieved a quorum and voted out the board president, Gordon, and an at-large board member, Pearsall.

16. But instead of immediately holding an organization meeting and announcing the two new directors, the Association manager took an unscheduled leave of absence and as of the day of this filing, (nine days later), has not come back to her duties.

17. It is, upon information and belief, that the management company, Access Residential Management LLC., has failed to respond to the new directors’ inquiries about proceeding with the organization meeting or a board of directors meeting or most importantly, a “legal meeting”, to provide guidance and authority for the myriad lawsuits that this Association has involved itself in, including this instant one which is primarily a breach of fiduciary duty complaint against the very same appellee directors. As more

fully explained in the Amended Notice of [First] Related Case, this Final Order laid out in expansive detail more than four years of fiduciary breach by all of the appellee directors and former directors as well as aiding and abetting this fiduciary breach by attorney Englert.

18. The Association is the lead appellee in this matter. The Bylaws require that legal decisions be made by the directors. Thus, the operation and governance of this Appellee Association without officers and without holding proper meetings with notice, is in limbo. But that status is entirely the result of intransigence by the appellee directors and the appellee Association attorney. The new directors are ready, willing and able to return to regular order.

19. The bylaws of the Association also require all financial decisions to be made by the officers in a properly noticed meeting and specifically, the president and treasurer are required to sign-off on all expenses. The management has limited authority to pay necessities such as utilities, taxes, payroll, insurance and possibly recurrent expenses such as landscaping but beyond that, Access Residential Management, LLC., does not, and could not, have actual or apparent authority to disburse funds. Nor does any single

director have such authority, nor could they delegate such authority.

20. It is even doubtful that the Association attorney now has authority to continue on behalf of the Association in this litigation though she can do so for herself as an appellee.

21. Upon information and belief, the two new directors have notified both Access Residential Management, LLC., and Ms. Englert that Access Residential Management may no longer pay invoices to the Association attorney until the directors authorize such payments. Unfortunately, it is even arguable that the appellee attorney, Englert, does not have the authority to continue to represent the Association when the Association is in limbo.

22. Of course, this could all be resolved if the Association would comply with Judge Netcher's order, on the other hand, why should any court in Florida allow the Association to seek relief when the Association itself, disobeys the Circuit Court's order?

23. And finally, this legal conundrum highlights the impermissible conflict that the Association attorney and appellee Englert finds herself in, one entirely of her own making. Appellant Sandford asked Ms. Englert to step aside for her impermissible

conflict no less than three times by motion. When this is added to attorney Englert's active and unlawful defiance of Judge Netcher's order and the DBPR Final Order, it would appear that we are dealing with rogue directors following unlawful instructions of the Association attorney.

24. There is now a motion before Judge Netcher to "enter an Order to Show Cause as to why North Shore at Lake Hart Homeowner's[sic] Association, Inc. should not be held in contempt and sanctioned for willfully refusing to abide by an Order of this Court, and to impose reasonable attorneys' fees and costs in filing this motion, and grant other relief the Court deems proper and just." (2024-CA-1618-O) Miriam Burtoff v. North Shore at Lake Hart Homeowners Association, Inc., filed 04/23/2024. This is not scheduled as yet.

25. It is for these three reasons that Appellant Lynn Sandford asks for a sixty day stay to run from May 31, 2024 to July 31, 2024. 1. To allow Judge Netcher to order and hear a response from the appellees as to why they are not obeying the arbitrator's Final Order and Judge Netcher's Order confirming said order. 2. To allow the board of directors to return to regular order, elect officers, who

are required to approve and disburse all funds of the Association, and make all decisions, including legal decision concerning the pending seven lawsuits that the Association has involved itself in,

3. To obtain unconflicted legal counsel for the Association and/or the new directors so that the Association can return to proper corporate governance and decision making, pay bills and return to regular order for the one thousand and forty-nine homeowners.

26. Additionally, this stay would be beneficial to all parties and especially judicially economical to this Court of Appeal.

27. This Motion is not interposed for any dilatory reason or matter that could prejudice the Appellees.

28. Appellant requests that this Court of Appeal award attorney fees and costs in this matter.

Wherefore, Appellant Sandford asks this Court of Appeal to stay this matter for sixty days or any other time period as it deems fit.

Respectfully submitted,

/s/ Bruce Burtoff, Esq.
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CERTIFICATE OF COMPLIANCE

I CERTIFY, that I contacted Appellee's attorneys on Sunday, May 5, 2024 and again on Friday, May 10, 2024, (both times by email), and have not received a response, therefore I am treating this as opposed.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was e-filed pursuant to Florida Rule of General Practice & Judicial Administration 2.525 and that the foregoing was served by email in compliance with Florida Rule of General Practice & Judicial Administration 2.516(b)(1)(A), on 10th day of May upon:

By: /s/ Bruce Burtoff
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Exhibits attached:

DBPR Order on Motion to Show Cause, January 19, 2024

Judge Netcher's Order of April 17, 2024

Record of Third Amd. Bylaw with Comptroller, April 19, 2024

