IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIRST DISTRICT
CASE NO: 1D21-0312
Lower Tribunal Case No.: 21-000169-CA

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REMYFORD RESTORATION SERVICES, LLC
dba APEX DISASTER SPECIALISTS,
a Florida Limited Liability Company,

Appellant,

vs.

FIRSTSERVICE RESIDENTIAL FLORIDA, INC.,
a Florida Corporation; SCOTT WHITTERMORE,
an individual; GORDON BREEN, an individual; et. al.

Appellees.

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# SECOND AMENDED INITIAL BRIEF OF REMYFORD RESTORATION SERVICES, LLC

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ON APPEAL FROM A FINAL ORDER ENTERED IN THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, FLORIDA, CASE NO. 19-CA-000005

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## PRELIMINARY STATEMENT

The Appellant in this appeal is REMYFORD RESTORATION SERVICES, LLC, dba APEX DISASTER SPECIALISTS and will be referred to throughout this Initial Brief as “APEX” or “APPELLANT”. The Appellees in this appeal are FIRSTSERVICE RESIDENTIAL FLORIDA, INC., SCOTT WHITTERMORE, GORDON BREEN, WILL MIXON, TAMMY KIMBLE, CONTRACTOR CONNECTION GROUP, LLC, dba RESTORE-ONE, COASTAL ELITE, LLC, dba RESTORE-ONE, PJ JOHNSTON, BROWN INSURANCE SERVICES, ROBBY TALLENT, JOHN W. HANCOCK, LONG BEACH RESORT COMMUNITY ASSOCIATION, INC., REFLECTIONS OWNERS ASSOCIATION, INC., and BAY POINT RESIDENCES ASSOCIATION, INC., and will be referred to throughout this Initial Brief as “FIRSTSERVICE,” “WHITTERMORE,” “BREEN,” “MIXON,” “KIMBLE,” “RESTORE-ONE,” “RESTORE-ONE,” “JOHNSTON,” “BROWN INSURANCE,” “TALLENT,” “HANCOCK,” “LONG BEACH,” “REFLECTIONS,” and “BAY POINT,” respectively and collectively as “APPELLEES”. The Judgment from which Appellant appeals is the Circuit Court’s December 30, 2021, Final Order on Pending Motions to Dismiss and Final Judgment granting Reflections, Bay Point, and FirstService’s Motions to Dismiss Appellant’s Complaint and will be referred to throughout this Initial

Brief as the "FINAL ORDER". Citations to the Record shall be by the designation "R" followed by the page number(s), e.g. "R. 1." Citations to hearing transcripts shall denote the designated page number from the Record followed by the line number(s), e.g. "R. 1:1."

## STATEMENT OF THE FACTS AND CASE

### I. The Nature of The Case

The instant appeal arises from a Final Order granting Reflections, Bay Point, and FirstService's Motion to Dismiss Apex's Complaint. Apex brought the underlying civil suit against the Appellees alleging three (3) counts of breach of contract, three (3) counts of tortious interference with a business relationship, and three (3) counts of tortious interference with a contract. R. 37-57. Apex's breach of contract counts arose from three (3) Emergency Response Program Agreements (ERP) entered by and between Apex and Reflections, on or about May 16, 2017, Bay Point, on or about May 16, 2017, and Long Beach on or about September 8, 2017. R. 23; 27; 32; 538-39; 542-43; and 786-87. At the time the ERPs were entered into, FirstService served as the property management company for Reflections, Bay Point, and Long Beach, and entered into the ERPs with Apex on behalf of the three (3)

Appellees pursuant to authority granted under each Appellee's respective Condominium Declarations and Bylaws. R. 17-18; 20; 22-23; 27; 30-32.

The ERPs provided that, in the event of a disaster of some sort, said Appellees would receive precedence in receipt of any necessary emergency mitigation services over Apex's clients that were not a part of Apex's ERP in exchange for said Appellees appointing Apex as their exclusive emergency restoration contractor for a period of one year, with continual one year renewal periods. R. 538-39; 542-43; and 786-87.

Within two (2) days before Hurricane Michael made landfall in the Florida panhandle on October 10, 2018, a representative of Apex sent emails to Kimble, Mixon, and Whittermore as the Community Association Managers of Reflections, Long Beach, and Bay Point, respectively, informing said Appellees that Apex was ready to provide Reflections, Long Beach, and Bay Point with any necessary mitigation services following the passing of Hurricane Michael. R. 33-34. Following the passage of Hurricane Michael, Apex learned that Reflections, Bay Point, and Long Beach had hired Restore-One to perform mitigation services at their respective properties despite the "exclusive emergency restoration contractor" provision of the ERPs. R. 36. At no point prior to Apex learning that Restore-One had been hired by Reflections, Bay Point, and Long Beach to perform mitigation

services did any of the three (2) Appellees notify Apex that it wished to terminate the ERPs. R. 34. Apex then filed suit against the Appellees since Apex believed Reflections, Bay Point, and Long Beach had violated the provision of the ERPs which called for the three (3) Appellees using Apex as their "exclusive emergency restoration contractor." R. 37-43.

**II. Course of Proceedings**

On or about May 3, 2021, Apex filed its nine (9) count Complaint against the Appellees alleging three (3) counts of breach of contract, three (3) counts of tortious interference with a business relationship, and three (3) counts of tortious interference with a contract. R. 11; 37-57. In response to Apex's Complaint, all the Appellees filed a Motion to Dismiss Apex's Complaint as follows: Reflections on July 14, 2021; Bay Point on July 26, 2021; Brown Insurance, Tallent, and Hancock on August 13, 2021; Restore-One and Johnston on August 16, 2021; FirstService, Kimble, Mixon, and Whittermore on August 16, 2021; Long Beach on September 29, 2021. R. 13. All the Motions to Dismiss Apex's Complaint filed by Appellees made substantially the same arguments. R. 814-34; 837-58; 861-86; 887-90; 891-905; 914-26.

The Arguments made by Appellees in their respective Motions to Dismiss which are relevant to the instant Appeal assert:

> [1] Apex lacked standing to bring its lawsuit since Remyford Restoration Services, LLC, dba Apex Disaster Specialists did not exist as a legal entity at the time the ERPs were entered into by the parties; R. 816-18; 839-41; 864-67; 888-89; 896-97;
>
> [2] Apex's Complaint fails to state a cause of action since Apex was not licensed as of the date the ERPs were executed, and as such, the ERPs were unenforceable; R. 822; 845; 871-72; 888-89; 901-02;
>
> [3] Apex's Complaint fails to state a cause of action since the ERPs did not require Reflections, Bay Point, or Long Beach to use Apex as their exclusive contractor; R. 820; 843-44; 888-89; 899-900; and
>
> [4] Apex's Complaint fails to state a cause of action since the ERPs did not contain a termination provision, and as such, indefinite in duration and terminable at will. R. 821; 844-45; 868-70; 888-89.

A hearing was held before the Circuit Court on November 2, 2021, in which the lower tribunal heard argument on Reflections, Bay Point, and FirstService's Motions to Dismiss. R. 13; 941. During the hearing on the Motions to Dismiss the parties stipulated to the following:

> [1] The Breach of Contract Counts (to include Counts I-III) against FSR and the FSR employees are dismissed, with prejudice, as these Defendants were not parties to the purported contracts;
>
> [2] The Breach of Contract Counts against Reflections and Bay Point (to include Counts I-II) are dismissed, without prejudice, based on the failure to attach sufficient terms to the purported contracts for Reflections or Bay Point;

> [3] The Tortious Interference Counts against Reflections and Bay Point (to include Counts IV-IX) are dismissed, with prejudice, by stipulation of counsel;
>
> [4] The Tortious Interference Counts against FSR and the FSR employees (to include Counts IV-IX) are dismissed, without prejudice, by stipulation of counsel.

R. 941-42.

Following the hearing, the Circuit Court entered its Final Order on Pending Motions to Dismiss and Final Judgment on December 30, 2021, for the four (4) reasons outlined above. R. 942-44. In coming to its ruling on the Motions to Dismiss the Court considered the applicable motions, legal briefs, exhibits attached to Apex's Complaint and the applicable motions, and oral arguments by counsel for the parties. R. 942. Apex then timely filed its Notice of Appeal in the lower tribunal on January 31, 2022. R. 13.

**III. Disposition in Lower Tribunal**

Based on Appellees' Reflections, Bay Point, and FirstServices's Motions to Dismiss, legal briefs, exhibits attached to Apex's Complaint and the applicable Motions to Dismiss, and oral argument of the parties, the lower tribunal entered a Final Order on Pending Motions to Dismiss and Final Judgment on December 30, 2021. The lower tribunal held that: [1] Apex lacked standing to bring its lawsuit since Remyford Restoration Services, LLC, dba Apex Disaster Specialists did not exist as a legal entity at the time

the ERPs were entered into by the parties; [2] Apex's Complaint fails to state a cause of action since Apex was not licensed as of the date the ERPs were executed, and as such, the ERPs were unenforceable; [3] Apex's Complaint fails to state a cause of action since the ERPs did not require Reflections, Bay Point, or Long Beach to use Apex as their exclusive contractor; and [4] Apex's Complaint fails to state a cause of action since the ERPs did not contain a termination provision, and as such, indefinite in duration and terminable at will. The lower tribunal further held that:

> [the] findings by the Court cannot be cured by amendment and therefore, result in the Court holding that the Complaint and all claims and causes of action asserted by Plaintiff Remyford against all Defendants are hereby DISMISSED, with prejudice. This order shall be a final order in this matter and the Court hereby enters final judgment in favor of all Defendants and against Plaintiff as to all Counts.

R. 944.

## SUMMARY OF THE ARGUMENT

The lower tribunal's Final Order dismissing Apex's Complaint with prejudice and entering final judgment in favor of all Appellees should be reversed because the trial court erred in determining that Apex lacked

standing to maintain its lawsuit and Apex's Complaint failed to state a claim since Apex's ERPs [1] were unenforceable because Apex was unlicensed at the time the ERPs were executed, [2] did not require Reflections, Bay Point, or Long Beach to use Apex as its exclusive contractor, and [3] were terminable at will.

The lower tribunal erred in holding that Apex lacked standing since it was not a legal entity at the time of contracting since the corporate filings of Apex attached io its Complaint establish its existence at the time of contracting. Additionally, the lower tribunal erred in holding Apex's Complaint failed to state a cause of action upon which relief could be granted because [1] Fla. Stat. § 489.128 cannot render the ERPs unenforceable since Apex is not a contractor within the meaning of the statute, and as such, was not required to be licensed, [2] when "Terms" one (1) and (2) of the ERPs are read in conjunction with the paragraph directly above the "Terms" section of the ERPs it is clear that Reflections, Bay Point, and Long Beach were required to use Apex as its exclusive contractor, and [3] the ERPs were not terminable at will as it contains a termination provision requiring Reflections, Bay Point, and Long Beach provide reasonable notice of termination of the ERP.

## ARGUMENT

### I. STANDARD OF REVIEW

The standard of review for the dismissal of a complaint is de novo. *Green v. Cottrell*, 204 So. 3d 22, n. 2 (Fla. 2016).

### II. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT APEX LACKED STANDING TO MAINTAIN ITS LAWSUIT BECAUSE IT WAS NOT A LEGAL ENTITY AT THE TIME THE ERPs WERE ENTERED INTO.

The lower tribunal erred in dismissing Apex's Complaint for lack of standing considering the standard the lower tribunal was required to apply in ruling on the Motions to Dismiss.

"The function of a motion to dismiss a complaint is to raise a question of law as to the sufficiency of the facts alleged to state a cause of action. The motion admits as true all well pleaded facts as well as all reasonable inferences arising from those facts. The allegations must be construed in the light most favorable to plaintiffs and the trial court must not speculate what the true facts may be or what will be proved ultimately in trial of the cause. Further, the trial court's gaze is limited to the four corners of the complaint. Finally, the motion must be decided on questions of law, only, and ***matters not shown on the face of the complaint cannot properly be raised on a motion to dismiss***." *Hitt v. North Broward Hospital District*, 387 So. 2d 482,

483 (Fla. 4th DCA 1980) (*quoting Poulos v. Vordermeier*, 327 So. 2d 245, 246 (Fla. 4th DCA 1976)) (emphasis added). "Generally, the issue of standing is not properly raised in a motion to dismiss unless the allegations of the complaint or its attachments negate a plaintiff's standing." *Wilmington Savings Fund Society, FSB v. Contreras*, 278 So. 3d 744, 748 (Fla. 5th DCA 2019) (citing *Jaffer v. Chase Home Fin., LLC*, 155 So. 3d 1199, 1202 (Fla. 4th DCA 2015)). "The requirement of standing ensures that a claimant seeking a judgment from a court has a 'sufficient interest in the outcome of litigation which will warrant the court's entertaining it.'" *Green Emerald Homes, LLC v. 21st Mortgage Corp.*, 300 So. 3d 698, 703 (Fla. 2d DCA 2019) (quoting *Gen. Dev. Corp. v. Kirk*, 251 So. 2d 284, 286 (Fla. 2d DCA 1971)).

When viewing the facts plead in Apex's Complaint, along with exhibits A, B, G, M, N, O, and P in a light most favorable to Apex, the lower tribunal should have concluded that Apex had standing to bring and maintain its suit against the Appellees. Apex pleads in its Complaint the following pertinent facts:

> 19. On or about May 30, 2014, Insurance Restoration Contractors, LLC, filed its "Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida." A copy of the "Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida" is attached hereto as ***Exhibit A***.

20. Then on June 25, 2014, Insurance Restoration Contractors, LLC, filed an application to register the fictitious name Apex Disaster Specialists. A copy of the "Application for Registration of Fictitious Name" is attached hereto as ***Exhibit B***.

***

34. On or about July 26, 2017, Plaintiff submitted an LLC change of address request to the Florida Department of State. Said address is the same that appears on the bottom of the second page of the ERPs for BAY POINT and REFLECTIONS. A copy of the Address Change Request is attached hereto as ***Exhibit G***.

***

49. In December 2017 owner of Insurance Restoration Services dba Apex Disaster Services, Jeremy Neel, formed Leendorf Major Holding Company, LLC, with Kris Retherford (hereinafter "RETHERFORD") as a parent holding company for multiple LLCs. A copy of the Articles of Organization for Leendorf Major Holding Company is attached hereto as ***Exhibit M***.

50. In order to obtain domestic status and bring Insurance Restoration Services under Leendorf Major Holding Company, Plaintiff filed Articles of Organization for Remyford Restoration Services, LLC in December 2017, changing the official name of the Plaintiff company, however, the nature of the company remained the same. A copy of the Articles of Organization for Remyford Restoration Services is attached hereto as ***Exhibit N***.

51. After the filing of the Articles of Organization for Remyford Restoration Services, also in December of 2017, Jeremy Neel executed an Application for Cancellation of Fictitious Name of Apex Disaster Services associated with Insurance Restoration Services which was then filed in July of 2018 with the Florida Department of State. A copy of the Application for Cancellation of Fictitious Name is attached hereto as ***Exhibit O***.

52. Also, In July of 2018 an Application for Registration of Fictitious Name of Apex Disaster Services was filed on behalf of

> Remyford Restoration Services. A copy of the Application for Registration of Fictitious Name is attached hereto as ***Exhibit P***.

R. 17; 27; and 33. When viewing the above facts plead by Apex in its Complaint, along with the exhibits referenced therein, in a light most favorable to Apex the lower tribunal should have concluded that Apex was a legal entity at the time the ERPs were executed, and that Apex has a sufficient interest in the outcome of the litigation it brought against the Appellees.

The facts plead in Apex's Complaint and the exhibits attached thereto show that Apex first registered with the State of Florida in 2014 as a foreign LLC organized and incorporated in Arkansas with the legal name of Insurance Restoration Contractors, LLC, and fictitious name of Apex Disaster Specialists and provided emergency mitigation, remediation, and restoration services. R. 17; 59-65. Jeremy Neel and Kris Retherford then partnered and formed a holding corporation, Leendorf Major Holding Company, LLC, to serve as the parent corporation for a number of their businesses. R. 33; 793-95. After the formation of Leendorf, Jeremy Neel and Kris Retherford filed documents with the State of Florida to domesticate Insurance Restoration Contractors, bring it under their Leendorf holding corporation, and change the name of the company to Remyford Restoration Services, LLC, but keep the fictitious name Apex Disaster Specialists since

that was the name the company was recognized as by its clients and the area of Florida it served at large. R. 33; 796-802. The ERPs attached to the Complaint as exhibits E, F, and K, further supports Insurance Restoration Contractors and Remyford Restoration Services being the same legal entity. As evidenced by the ERPs, when Insurance Restoration Contractors became Remyford Restoration Services it still provided the exact same services, did business under the exact same fictitious name, Apex Disaster Specialists, maintained the exact same website, www.apexisthere.com, and was located at the exact same physical address. R. 539-40; 542-43; and 785-87.

The Appellees Motions to Dismiss asserted that although Apex argued that it was the same entity and just changed its name, since Apex had failed to comply with the requirements of Fla. Stat. § 605.0202, which governs name changes of Florida LLCs, its filings did not change the company's name but instead served to create an entirely new legal entity, which was not formed until after the ERPs were executed. Appellees' argument was misguided, however, because Fla. Stat. § 605.0202 is inapplicable since Insurance Restoration Contractors was a foreign LLC, not a Florida LLC. As such, the lower tribunal should not have relied on this argument in determining whether Apex lacked standing to bring its suit. Since the facts

plead in Apex's Complaint and the exhibits attached thereto, when viewed in a light most favorable to Apex, establish that Apex was the same legal entity both at the time it entered into the ERPs with Reflections, Bay Point, and Long Beach, and when it brought its suit against the Appellees, and that Apex has a sufficient interest in the outcome of the litigation it brought against the Appellees, the lower tribunal erred by dismissing Apex's Complaint for lack of standing.

**III. THE TRIAL COURT ERRED WHEN IT DISMISSED APEX'S COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION.**

The lower tribunal erred by dismissing Apex's Complaint for failure to state a cause of action by holding that: [1] Apex did not possess a propoer license at the time the ERPs were executed; [2] the ERPs did not require Reflections, Bay Point, and Long Beach to use Apex as its exclusive contractor; and [3] the ERPs were terminable at will.

"Generally speaking, unless it clearly appears as a matter of law that a contract cannot support the action alleged, a complaint should not be dismissed on motion to dismiss for failure to state a cause of action." *Vienneau v. Metropolitan Life Ins. Co.*, 548 So. 2d 856, 860 (Fla. 4th DCA 1989). "[A] motion to dismiss a complaint for failure to state a cause of action does not reach the defects of vague and ambiguous pleading. Rather, the

trial court [is] required to view the recitals in the complaint, together with exhibits attached, in the light most favorable to [Plaintiff] and draw all reasonable inferences from their contents in [Plaintiff]'s favor." *Id*. (internal citations omitted).

Had the lower tribunal viewed "the recitals in the complaint, together with exhibits attached, in the light most favorable to [Apex] and draw[n] all reasonable inferences from their contents in [Apex]'s favor[,]" it would not have dismissed Apex's Complaint for failure to state a cause of action since: [1] Apex was not required to have a license in order to perform the scope of services outlined in the ERPs; [2] the ERPs required Reflections, Bay Point, and Long Beach to use Apex as its exclusive contractor; and [3] the ERPs were not terminable at will, but even if they were, Reflections, Bay Point, and Long Beach failed to provide Apex with reasonable notice of their termination of the ERPs.

**A. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT APEX'S ERPs WERE UNENFORCEABLE SINCE APEX WAS NOT A LICENSED CONTRACTOR AT THE TIME THE ERPs WERE ENTERED INTO.**

The lower tribunal granted Appellees' Motions to Dismiss for failure to state a cause of action because Apex's ERPs with Reflections, Bay Point,

and Long Beach are unenforceable under Fla. Stat. § 489.128 since Apex was not licensed as of the date the ERPs were executed. What the lower tribunal failed to recognize, however, is that the services Apex was to provide under its ERP do not put Apex within the definition of a "contractor," and as such, Apex was not required to be licensed to perform the services outlined in its ERP. Accordingly, Fla. Stat. § 489.128 cannot render Apex's ERP unenforceable.

Fla. Stat. § 489.128 provides in pertinent part:

> (1) As a matter of public policy, contracts entered into on or after October 1, 1990, by an unlicensed contractor shall be unenforceable in law or in equity by the unlicensed contractor.
>
> (a) For purposes of this section, an individual is unlicensed if the individual does not have a license required by this part concerning the scope of the work to be performed under the contract. A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract. For purposes of this section, if a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed.
>
> ***
>
> (c) For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor

was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.

For purposes of Fla. Stat. § 489.128, an individual or entity is a "Contractor" as defined by Fla. Stat. § 489.105(3), which provides:

> (3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):
>
> (a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.
>
> (b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) “Residential contractor” means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) “Sheet metal contractor” means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) “Roofing contractor” means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) “Class A air-conditioning contractor” means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as

necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) “Class B air-conditioning contractor” means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace,

disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) “Class C air-conditioning contractor” means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) “Mechanical contractor” means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all

appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) “Commercial pool/spa contractor” means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines.

The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(k) “Residential pool/spa contractor” means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(l) “Swimming pool/spa servicing contractor” means a contractor whose scope of work involves, but is not limited to, the repair and

servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(m) “Plumbing contractor” means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection

therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) “Underground utility and excavation contractor” means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection

systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.102 beginning at the point where the piping is used exclusively for such system.

(o) “Solar contractor” means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) “Pollutant storage systems contractor” means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of,

> pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.
>
> (q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

The services Apex was to provide to Reflections, Bay Point, and Long Beach under its ERPs with them is listed on the first page of the ERPs under the heading "Partial List of Scope of Service" and includes "water extraction from building/s, removal of wet unsalvageable materials, clean up as needed[;] [s]et up and monitor of drying equipment as needed[;] [a]ir duct cleaning, clean, deodorize and sanitize as needed[;] [and] [p]rovide dehumidifiers, air movers, air scrubbers, generators, power distribution, etc. as needed." None of the services to be provided by Apex under the ERPs fall within the definition of a "contractor" under Fla. Stat. § 489.105(3)(a)-(q). Since subsection (1)(a) of Fla. Stat. § 489.128 explicitly states that "an individual is unlicensed if the individual does not have a license required by this part concerning the scope of work to be performed under the contract[,]" Fla. Stat. § 489.128 is inapplicable and cannot render Apex's ERPs unenforceable.

**B. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT APEX'S ERPs DID NOT REQUIRE REFLECTIONS, BAY POINT, OR LONG BEACH TO USE APEX AS THEIR EXCLUSIVE CONTRACTOR.**

The lower tribunal granted Appellees' Motions to Dismiss for failure to state a cause of action because it concluded that the ERPs did not actually require Reflections, Bay Point, or Long Beach to use Apex as its exclusive contractor; rather, the ERPs merely permitted them to obtain "precedence over any non-ERP calls" if they chose to utilize Apex exclusively." R. 943. However, when the applicable "Terms" are read in conjunction with the paragraph directly above the "Terms" section, it makes it clear that the ERPs do require Reflections, Bay Point, or Long Beach to use Apex as its exclusive contractor for any emergency mitigation services needed at their properties.

The top of the ERPs, just below the area which requests information regarding the party entering into the ERP with Apex and their property, contains the following provision:

> I/we the Client/Client's representative (hereinafter referred to as Client/Owner) representing all parties, hereby authorize Apex Disaster Specialists, a Florida Corporation, (hereinafter referred to as APEX) (for

> hurricane/large loss situations) and Apex Disaster Specialists (for daily or standard loss situations) to provide or cause to provide complete Emergency Mitigation Services as needed to properties listed on this contract or on the attached list.

R. 539; 542; and 786. When the above provision is taken into account it becomes clear that the ERPs required Reflections, Bay Point, and Long Beach to exclusively use Apex as their mitigation contractor. Said provision is intentionally placed as the very first sentence of the ERP and serves to establish the essential purpose and intent of the parties to have Apex, and only Apex, provide ***any and all*** emergency mitigation services needed at the property that is the subject of the ERP.

The plain language of the provision unequivocally evidences such intent of the parties. The provision begins with unequivocal phrasing which grants Apex all authority to carry out the conditions contained in the remainder of the sentence. *Id*. Such unequivocal phrasing is then followed by specification of the types of losses for which Apex would provide services. That sentence could have easily excluded any mention of the type of loss Apex was to provide services for, however, the type of loss Apex would provide emergency mitigation services for, “hurricane/large loss situations”

and “for daily or standard loss situations[,]” under the ERPs is specified and encompasses every type of loss a mitigation contractor could potentially render services for. *Id*. By making sure this essential provision of the ERPs lists all possible scenarios under which Apex would provide services helps to establish the intention of the parties that Apex serve as the exclusive mitigation contractor for the property that is the subject of the ERP.

Finally, the provision states that Apex would be authorized to provide “complete Emergency Mitigation Services as needed to properties[.]” *Id*. That portion of the sentence could have just stated that Apex would be authorized to provide “Emergency Mitigation Services as needed to properties[,]” but instead the word “complete” is intentionally included in the sentence to ensure that Apex would be the only contractor providing any kind of emergency mitigation services whatsoever that may be needed at the property that is the subject of the ERP.

The entirety of this very first provision of the ERP clearly and unequivocally expresses the purpose and intent of the ERP that Apex serve as the exclusive emergency mitigation contractor for the property that is the subject of the ERP. All the other provisions contained within the ERP outline in more specificity the terms, conditions, and procedures which govern, define, or further the purpose and intent of the ERP set forth in that very first

sentence of the ERP, including the provisions specifically addressing the exclusivity intent of the ERP contained in numbered paragraphs one (1), two (2), and three (3) under the "Terms" section of the ERP. Those three provisions are intended to elaborate on the exclusivity intent of the ERP by expressing the specific benefits to be conferred upon the property owner as a party to Apex's ERP, the procedure required to obtain said benefits, and the remedies available to the property owner in the event that Apex does not confer said benefits on the property owner in accordance with the terms.

The lower tribunal, however, arrived at the opposite conclusion determining that those provisions do not require Reflections, Bay Point, or Long Beach to exclusively use Apex as its emergency mitigation contractor in any and all instances it may need such services, but instead, requires Reflections, Bay Point, or Long Beach to use Apex as its exclusive emergency mitigation contractor only in those circumstances in which it wishes to receive precedence over non-ERP calls that Apex receives. Where the lower tribunal erred in reaching this conclusion is that it read those provisions in isolation rather than reading the ERP as a whole and considering the effect other provisions may have on those terms, in contravention of basic contract interpretation principles. "The intention of the parties must be determined from an examination of the whole contract and

not from the separate phrases or paragraphs." *Lalow v. Codomo*, 101 So.2d 390, 393 (Fla.1958) (citing *U.S. Rubber Products, Inc. v. Clark*, 145 Fla. 631, 200 So. 385 (Fla.1941)); Jones v. Warmack, 967 So. 2d 400, 402 (Fla 1st DCA 2007). Had the lower tribunal examined and considered the ERPs in their entirety, it would have determined that it was the intent of the parties and a requirement of the ERPs that Apex serve as the exclusive emergency mitigation contractor for the properties that were the subject of the ERPs.

The lower tribunal further erred in concluding that the ERPs did not require Reflections, Bay Point, and Long Beach to exclusively use Apex as its emergency mitigation contractor considering Apex plead sufficient facts in its Complaint to establish the exclusive intent of the ERPs based on actions taken by Apex subsequent to the parties entering into the ERPs. "[T]he actions of the parties may be considered as a means of determining the interpretation that they themselves have placed upon the contract." *Lalow*, 101 So.2d at 393. Apex pleads in its Complaint that within the two (2) days prior to Hurricane Michael making landfall it informed Reflections, Bay Point, and Long Beach that it was prepared to render any emergency mitigation services needed at the properties. R. 34. This action was taken by Apex solely because of the ERPs and likely served the purpose of both reassuring Reflections, Bay Point, and Long Beach that it would be able to

accommodate any services they may need following a potentially devastating natural disaster and reminding them that under the ERPs they were required to use Apex for any such services. Apex would not have taken the actions plead in numbered paragraph fifty-nine (59) of the Complaint had it not been the purpose and intent of the ERPs to require Reflections, Bay Point, and Long Beach to use Apex as their exclusive emergency mitigation contractor.

In viewing the facts plead in Apex's Complaint along with all the provisions of the ERPs attached thereto in a light most favorable to Apex, the lower tribunal should have determined that Apex's Complaint plausibly states a cause of action for breach of contract since said facts and ERP provisions establish that the ERPs required Reflections, Bay Point, and Long Beach to exclusively use Apex as their emergency mitigation contractor.

### C. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT APEX'S ERPs LACKED A TERMINATION PROVISION, AND AS SUCH, WERE TERMINABLE AT WILL.

The lower tribunal granted Appellees' Motions to Dismiss for failure to state a cause of action because it concluded that Apex's ERPs did not contain a termination provision, thus Reflections, Bay Point, and Long Beach could terminate their respective ERPs at will. The ERPs, however, specify a

duration, as well as, three (3) different provisions under which the ERPs may be terminated by the parties. As such, the trial court erred by concluding that Apex's Complaint did not plausibly state a cause of action when viewing the facts contained in the Complaint and the ERPs attached thereto in a light most favorable to Apex.

Additionally, even if the ERPs were terminable at will, Reflections, Bay Point, and Long Beach would still have been required to provide Apex with reasonable notice of termination of the ERPs. Had the lower tribunal viewed the facts plead in Apex's Complaint in the light most favorable to Apex, as required when ruling on a Motion to Dismiss, it would have determined that, Reflections, Bay Point, and Long Beach plausibly breached the ERPs by failing to provide Apex with reasonable notice of termination of the ERPs.

First, the plain language of the ERPs attached to the Complaint establishes that the ERPs are for a duration of a year followed by continuous consecutive renewal periods of a year until or unless the ERPs are terminated pursuant to the ERPs terms. R. 539; 542; and 786. The duration provision of the ERPs is contained in numbered paragraph two (2) under the "Terms" of the ERP and states "Apex is willing to provide such guarantees, but only on the understanding that Apex be appointed Client's exclusive contractor for fire, mold and water damage emergency restoration for a

period of one year, with continual one year consecutive renewal period from the date of this agreement (until agreement is terminated according to said agreement)." *Id*. The express provisions of the ERPs then provide for termination under three (3) different scenarios, two (2) scenarios under which Reflections, Bay Point, and Long Beach may terminate their respective ERP, and one (1) scenario under which Apex may terminate the ERP. R. 539-40; 542-43; 786-87.

The two scenarios under which Reflections, Bay Point, and Long Beach would be entitled to terminate the ERP are outlined in numbered paragraphs three (3) and four (4) of the "Terms" section of the ERPs. R. 539; 542; 786. Numbered paragraph three (3) allows for Reflections, Bay Point, and Long Beach to terminate their ERP if Apex fails to initiate mitigation services at the properties within twenty-four (24) hours of the respective Appellee notifying Apex of its need for mitigation services at its property. *Id*. Reflections, Bay Point, and Long Beach may also terminate the ERP, pursuant to numbered paragraph four (4) under the "Terms" section, if any updates or revisions to the pricing list attached to the ERPs are submitted to the respective Appellee prior to the automatic renewal period which that Appellee does not approve. *Id*.

Section 1.5 of Article one (1) on the second page of the ERPs then

provides the scenario under which Apex would be entitled to terminate the ERPs. R. 540; 543; 787. Pursuant to said section, if at any point Reflections, Bay Point, or Long Beach were to have a problem with the services provided by Apex under the ERPs, Apex would have fifteen (15) days following written notice of such problem(s) to remedy the problem(s) or Reflections, Bay Point, or Long Beach would be allowed to suspend any work being performed by Apex with notice in writing. *Id*. Upon suspension by Reflections, Bay Point, or Long Beach of any work Apex is performing, Apex would be entitled to either remedy the problem(s) or terminate the ERP. *Id*. Since both the duration, one year period with automatic consecutive one year renewal periods, and the methods of termination are specified in the ERPs, the lower tribunal erred in determining that the ERPs were so ambiguous as to render them terminable at will by Reflections, Bay Point, and Long Beach.

Even if the ERPs were so ambiguous as to duration and termination to render them terminable at will, pursuant to the case law cited by Reflections, Bay Point, and Long Beach, reasonable notice to Apex of termination of the ERPs was still required. Viewing the facts contained in Apex's Complaint in a light most favorable to Apex, the lower tribunal should have concluded that Reflections, Bay Point, and Long Beach plausibly failed to provide Apex with the reasonable notice required to terminate an at-will contract.

Apex pleads facts supporting the allegation that Reflections, Bay Point, and Long Beach failed to provide Apex with the reasonable notice required to terminate an at-will contract in numbered paragraphs fifty-six (56) through sixty-nine (69) of its Complaint. R. 34-6. As outlined in said paragraphs, since Reflections, Bay Point, and Long Beach did not cancel their ERPs prior to the automatic renewal date, the ERPs were in effect on the date that hurricane Michael hit Florida's panhandle. R. 34. Less than two (2) days prior to the hurricane hitting the panhandle, in anticipation of the storm, Apex reached out to Reflections, Bay Point, and Long Beach reminding said Appellees of the ERPs they had with Apex and informing them of Apex's willingness and intent on providing them with any emergency mitigations services they may need following the storm. *Id*.

If at that point Reflections, Bay Point, and Long Beach would have informed Apex of any intention to terminate the ERPs and use another contractor to perform any emergency mitigation serves they may need following the hurricane, it could be argued that Reflections, Bay Point, and Long Beach provided reasonable notice of termination, that was not the case though. As plead in the Complaint, Reflections, Bay Point, and Long Beach did not provide Apex any notice, let alone reasonable notice of termination of the ERPs. R. 34-5. Instead, Reflections, Bay Point, and Long Beach hired

another contractor to perform emergency mitigation services at their respective properties and Apex only learned of Reflections, Bay Point, and Long Beach's use of another mitigation contractor because Apex's representatives visited the properties following the hurricane and saw that RestoreOne already had their equipment set up and were rendering mitigation services at the properties. *Id*. In viewing the facts plead in Apex's Complaint in a light most favorable to Apex, the lower tribunal should have plausibly found the Complaint alleged a failure by Reflections, Bay Point, and Long Beach to provide Apex with reasonable notice of termination of the ERPs. Accordingly, Apex's Complaint should not have been dismissed for failure to state a cause of action upon which relief could be granted.

## CONCLUSION

The lower tribunal dismissed Apex's Complaint because it concluded that Apex lacked standing to maintain its suit since Remyford Restoration Services, LLC, dba Apex Disaster Specialists was not a legal entity at the time the ERPs were entered into by the parties and that Apex's Complaint failed to states a cause of action upon which relief could be granted because: [1] the ERPs are unenforceable since Apex was not licensed at the time the ERPs were entered into; [2] Reflections, Bay Point, and Long Beach were not required to use Apex as their exclusive contractor under the ERPs; and

[3] the ERPs were terminable at will. The lower tribunal, however, erred when coming to these conclusions. When viewing the facts plead in Apex's Complaint, along with any exhibits attached thereto, in a light most favorable to Apex, as required when ruling on a motion to dismiss, Apex sufficiently alleged it was a legal entity at the time the ERPs were entered into by the parties, and as such, had standing to bring and maintain its suit against the Appellees.

Additionally, Apex's Complaint plausibly states a cause of action upon which relief could be granted since the facts plead in Apex's Complaint and exhibits attached thereto, demonstrate that the ERPs are not unenforceable since based upon the scope of services outlined in the ERPs, Apex was not required to be licensed when the ERPs were entered into, the ERPs required Reflections, Bay Point, and Long Beach to use Apex as their exclusive mitigation contractor, and the ERPs were not terminable at will, but even if they were, Reflections, Bay Point, and Long Beach failed to provide Apex with reasonable notice of termination of the ERPs as required by Florida law. Accordingly, for the reasons set forth above, the lower tribunal erred by dismissing Apex's Complaint with prejudice and entering final judgment in favor of the Appellees.

**WHEREFORE**, Appellant, REMYFORD RESTORATION SERVICES,

LLC dba APEX DISASTER SPECIALISTS, respectfully requests this Honorable Court reverse the lower tribunal's Final Order on Pending Motions to Dismiss and Final Judgment granting Reflections, Bay Point, and FirstService's Motions to Dismiss Appellant's Complaint.

Dated July 7, 2022.

Respectfully submitted,

***/s/ Ciera L. Lipps***
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*[Certificate of Service on following page]*

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to Counsel for all Appellees at the service addresses on the following page, via the Florida E-Filing Portal on July 7, 2022.

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*[Certificate of Compliance on following page]*

## CERTIFICATE OF TYPE AND FONT COMPLIANCE

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Dated July 7, 2022.

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