IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

TRACY MILBURN a/k/a TRACY MOROWSKI, Appellant(s) v. GATELAND VILLAGE CONDOMINIUM, INC., Appellee(s).	**CASE NO. - 4D2023-2304** L.T. No. - CACE21-0037

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Appellant, Tracy Milburn a/k/a Tracy Morowski, was the Defendant in the trial court; this brief will refer to Appellant as such or by name as Ms. Milburn.

Appellee, Gateland Village Condominium, Inc., was the Plaintiff in the trial court; this brief will refer to Appellee as such or by name as "Gateland."

The record on appeal consists of one volume, which shall be referenced as the Appendix. Citations to the record will be to "Append." followed by page number, in parenthesis.

STATEMENT OF THE CASE AND FACTS

During all relevant times, Appellant was the owner of a condominium unit (the "Condominium") and Gateland the condominium association.

The subject of this appeal is the Trial Court's *Order Denying Defendant's Motion to Vacate and Dismiss Complaint* entered on August 30, 2023 (the "Order"). (Append. 1, p. 1-7). The Order was entered on Defendant's *Motion to Vacate Judgment and Dismiss Complaint* (the "Motion"). (Append. 2, pp. 1-48). Although the Trial Court held a hearing regarding the Motion on August 22, 2023 (the "Hearing"), no opportunity for live testimony or the proffer of evidence was provided. (Append. 3, pp. 1-23). Instead, the Trial Court directed counsel for the Parties to submit proposed orders, stating that "the motion and both orders, [I'll] take them under advisement, and I'll issue another ruling…." (Append. 3, p. 21:18-23).

The Motion sought to vacate summary judgment (the "Summary Judgment") entered by the Trial Court in favor of Gateland after hearing (the "Summary Judgment Hearing") on its claims for foreclosure of a lien against the Condominium (the "Lien") and breach of contract related to the same. (Append. 4, pp. 1-4). The Summary Judgment was amended and

entered as a final amended judgment on May 5, 2023 (the "Amended Final Judgment"). (Append. 5, p.1-5).

Appellant offered as evidence a sworn affidavit (the "Milburn Affidavit") filed with the Motion. (Append. 6, p. 1-6). In the Motion and Milburn Affidavit, Appellant alleged and provided testimony of Gateland's misrepresentations and errors regarding its accounting of the amounts paid and owed to Gateland in the form of assessments, fines, maintenance fees, interest, and attorneys' fees and costs related to the Condominium. (Append. 2 & 6). Appellant showed a notice of intent to file a claim of lien was provided on July 28, 2020 (the "Notice of Intent to Lien") but the lawsuit on the Claim of Lien was then not filed by Gateland until December 22, 2022, on which a Notice of Intent to Foreclose the Lien was filed. (Append. 7, p.1-24).

Appellant described how the amounts in the Claim of Lien were inconsistent with the amounts provided by Gateland in response to discovery requests. (Append. 6). Appellant also asserted that the ledger provided by Gateland (the "Ledger") in support of its Lien contained a large amount of monies for which proper notice was never provided to Appellant, as well as attorneys' fees related to a 2019 foreclosure that did not occur.

(Append. 6). Appellee's accounting failed to explain how payments to Gateland were applied where even the Notice of Intent to Lien itself credited Appellant more than the delinquent amounts owed. (Append. 7). Appellant identified three specific charges that should have not been included in the Lien amounts. (Append. 7).

Appellant additionally presented allegations and evidence in the Motion and Milburn Affidavit showing that Gateland had intentionally refused to provide her with an accurate accounting of the amounts that were owed to Gateland for the Condominium. (Append. 6). Specifically, she explained in the Milburn Affidavit that a woman named " Linda" in Gateland's office told her she did not owe anything, and that "Kelly" who worked in the office would not provide her with a ledger of amounts owed or let her in the association office thereafter. (Append. 6). As further evidence of misconduct, Appellant described how Gateland intentionally held an association meeting to determine whether to fine Appellant without notice, allegedly holding the meeting without the requisite Board Members while members and Appellant waited outside for the time at which the meeting was noticed. (Append. 6). Further, Appellant explained that Gateland, through its property manager, began rejecting payments from Appellant, which would have prevented

accruing fees. (Append. 6).

In the Motion and Milburn Affidavit, Appellant further described how her estranged husband recently returned to her life and informed her that he had been paying money to Gateland regarding the Condominium as a portion of his child support. (Append. 6). This newly-discovered evidence was known to Gateland, who did not disclose these payments or payment attempts throughout litigation or in response to discovery.

Appellant's attorney was granted withdrawal by the Trial Court in November 2022, leaving Appellant pro se when the Summary Judgment and Amended Final Judgment were entered and Summary Judgment Hearing held. (Append. 2 & 6). Appellant consequently did not present any argument or evidence in response to the Summary Judgment motion or at the Summary Judgment Hearing. Appellant was, however, as acknowledged by the Trial Court attempting to negotiate with Gateland separately in early 2023. (Append. 3, pp. 1-22).

Based on these allegations and evidence, Appellant argued vacatur and dismissal to the Trial Court. The Trial Court concluded in its Order that Appellant failed to provide any evidence in support of her Motion and disregarded all evidence described above as either speculative or hearsay.

(Append. 1 & 3). In the Order, the Trial Court further surmised based on no evidence in the record that Appellant could have obtained the newly discovered evidence about her estranged husband's payments to Gateland "upon a reasonable search of her records or a simple conversation with her former husband…." (Append. 1).

As a result, Appellant filed this appeal.

SUMMARY OF ARGUMENT

The Trial Court abused its discretion in denying the Motion because Appellant's Motion and the Milburn Affidavit established a colorable claim to relief under Florida Rule of Civil Procedure 1.540 that entitled her to an evidentiary hearing on request for vacatur of the Order. The Trial Court entered the Order based on Appellant's alleged failure to offer any evidence in support of the Motion, but this misapplied the colorable claim standard, improperly disregarded admissible evidence, and ignored the fact that Appellant was not provided the opportunity to offer evidence. The Trial Court's attempt to impliedly blame this on Appellant's counsel for scheduling a short hearing is disconcerting where the Hearing transcript shows that the Trial Court engaged in questioning counsel for both Parties as well as Appellant directly, although she was never sworn in under oath, and then informed the Parties that the Trial Court would take the Motion and proposed orders under advisement to rule.

Alternatively, and in addition, the Trial Court abused its discretion in denying the Motion because Appellant established sufficient bases for vacatur under Florida Rule of Civil Procedure 1.540(b)(1)-(3). Appellant's

allegations and evidence showed colorable claims for fraud, mis-representation, and misconduct by Gateland, including improper accounting and notice, Gateland's representatives' refusal to provide Appellant with an accounting or sufficient notice regarding delinquent amounts, concealment of payments made by Appellant's estranged husband to Gateland via child support payments, and refusal to apply payments by Appellant. This evidence that Appellant discovered from her estranged husband only recently after he entered into her life also established a basis for vacatur as newly-discovered evidence. The Trial Court, however, erroneously disregarded all evidence in the Milburn Affidavit as summarily speculation or hearsay, despite the fact that the statements were all admissions by party opponents, and without any findings regarding the same. Further, the Trial Court itself speculated and opined, without foundation, that Appellant could have discovered the new evidence of her estranged husband's payments by reviewing her records or with a conversation; both conclusions which were unsupported by any finding or evidence in the record.

ARGUMENT

ISSUE ONE

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO HOLD AN EVIDENTIARY HEARING ON APPELLANT'S MOTION TO VACATE JUDGMENT AND DISMISS COMPLAINT.

A. Standard of Review

A trial court abuses its discretion in denying a motion to vacate without an evidentiary hearing where the movant's assertions show a colorable claim. *Schleger v. Stebelsky*, 957 So. 2d 71, 73 (Fla. 4th DCA 2007). "A motion for relief from judgment should not be summarily dismissed without an evidentiary hearing unless its allegations and accompanying affidavits fail to allege 'colorable entitlement' to relief." *Smith v. Smith*, 903 So.2d 1044, 1045 (Fla. 5th DCA 2005).

B. The Trial Court Abused Its Discretion in Failing to Hold An Evidentiary Hearing because the Motion Presented A Colorable Claim to Relief.

Here, the Trial Court abused its discretion in that it failed to hold an evidentiary hearing on the Motion, which presented a colorable claim to relief. Instead of imposing the colorable claim standard, the Trial Court erroneously denied the Motion allegedly because "Appellant failed to present evidence supporting her Motion." (Append. 1 & 3). This standard was inappropriately applied, however, where the Trial Court did not afford

Appellant an evidentiary hearing on the Motion. The Trial Court implies in its Order that this was the fault of Appellant's counsel somehow for scheduling a hearing with insufficient time to offer evidence, but the Hearing transcript shows that the Trial Court did not afford the opportunity. (Append. 3). The majority of the Hearing involved the Trial Court asking clarifying questions of Appellant's counsel, including questions as to whether Appellant was seeking reconsideration or vacatur of the Judgment. (Append. 3). The Trial Court also engaged in direct exchanges with Appellant in which she responded with what would be considered testimony, had Appellant first been sworn in under oath. (Append. 3).

Further, the Trial Court contradicts its own conclusion that Appellant failed to produce any evidence in support of the Motion because it considered the Milburn Affidavit filed with the Motion and, without an evidentiary hearing, objection, and argument, improperly disregarded this evidence because it "would be inadmissible hearsay if offered at a hearing." (Append. 3). The procedural error of this advisory ruling that the Trial Court used to ignore Appellant's evidence is illustrated by its summarization of the Milburn's Affidavit as relying on "office staff and other owners." *Id.* Reason would conclude that office staff for Gateland, and

potentially other owners, were in fact agents of Gateland and therefore their statements would not be hearsay but statements by a party opponent, if not statements against interest. Fla. Stat. 90.803(18). Accordingly, the Trial Court abused its discretion in disregarding this evidence.

C. No Basis for Attorney Fee Award in Final Judgment

The Motion to Vacate should be reversed because the lower court inexplicably awarded an unreasonable and unfounded attorneys' fee amount in the Final Judgment. The lack of expert testimony as to reasonableness, the failure to bifurcate entitlement and fee amount, and the sheer amount of fees viewed show reversible error committed by the lower court. Appellees failed to produce any evidence that showed the amount of *member dues* due at the time of recording the Claim of Lien and filing the complaint, and the evidence that was presented had conflicting amounts.

This Court should reverse the attorneys' fees award, and remand with instructions to the lower court to review the amounts paid by Appellant to ensure it is reflected properly on the final judgment, and to reverse the windfall received Appellee due to overpayment by Appellant.

LEGAL ARGUMENT
THE LOWER COURT'S LACK OF FACTUAL FINDINGS CONCERNING ATTORNEYS' FEES IS REVERSIBLE ERROR.

A. Standard of Review

A lower court's factual findings are reviewed for competent, substantial evidence. *Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Prop. Owners Ass'n, Inc.*, 949 So. 2d 347, 349 (Fla. 4th DCA 2007). A lack of findings constitutes reversible error, even if there is competent, substantial evidence to support the award. *Hoffay v. Hoffay,* 555 So. 2d 1309, 1310 (Fla. 1st DCA 1990); *Hamlin v. Hamlin*, 722 So. 2d 851, 852 (Fla. 1st DCA 1998). Here, the lower court did not make any factual findings as to the amount of attorneys' fees; thus, this Court should be compelled to reverse and remand.

B. The Lower Court Failed to Consider the Required Factors for Determination of Reasonable Attorneys' Fees.

The lower court committed reversible error when it did not include any findings regarding how it determined the amount of attorneys' fees, whether the fees were reasonable, or whether the *Rowe* factors in determining reasonableness were met. This entire matter stemmed from a misapplication of Appellant's payments on an otherwise expired claim of

Lien. Appellant's affidavit should that Appellee received payment from her strange husband but was not credit to her account. The amount Appellees' attorneys alleged they expended in fees is grossly excessive—let alone the fact that the entirety of this issue could have been mitigated with better communication and HOA accepting Appellant payments. But the Order Following Non-Jury Trial of $49,225.10 of which inexplicably awards Appellee attorneys with $34,113.75 without an evidentiary hearing as to the reasonableness of said amount.

The numbers the lower court included in the Order Following Non-Jury Trial cannot be reconciled with the evidence presented. And, without showing its work, this Court cannot say it did not commit reversible error. Even presence of evidence in the record supporting a fee award does not obviate the need for specific findings on hourly rate, number of hours reasonably expended, and appropriateness of reduction or enhancement factors. *Hoffay,* 555 So. 2d at 1310. Here, it is neither present in the record, nor in the Order, and this Court should reverse.

The *Hamlin* Court, relying on the Florida Supreme Court's lodestar fee case *Florida Patient's Compensation Fund v. Rowe,* 472 So. 2d 1145, 1150 (Fla.1985), outlined the factors a lower court should consider when

determining reasonable attorneys' fees. There are as follows:

> (1) the time and labor required, the novelty and difficulty of the issues, and the legal skill required;
>
> (2) the likelihood that the representation will preclude other employment by the lawyer;
> (3) the customary fee;
> (4) the result obtained;
> (5) the time limitations imposed by the client or circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation and ability of the lawyers; and
> (8) whether the fee is fixed or contingent.

Hamlin, 722 So. 2d at 852. The lower court here, like in *Hamlin*, failed to make findings in regard to the above factors, and the Court was compelled to reverse and remand. This Court should do the same.

The Order Following Non-Jury Trial awards Appellees $49,225.10, but $34,113.75 of that are attorneys' fees and costs. The itemization of the award alone is enough to show that nearly all of the litigation was regarding attorneys' fees. This Court can look to *Southpointe Homeowners Ass'n, Inc. v. Segarra*, 763 So. 2d 1186, 1186–87 (Fla. 4th DCA 2000), which arises from a similar dispute between an HOA and a homeowner arising over a mere $294.00 arrearage. Although the attorneys in that matter asked for $5,334.89 in fees and costs, the trial court awarded just $918.50,

which was affirmed by the Fourth District. In *Segarra*, the Court found that:

1. The homeowner attempted to ascertain the exact amount owed so she could pay it but encountered difficulties obtaining it;
2. The law firm was quick to file suit over such a small disagreement;
3. The law firm expended nearly 30 hours when it should have only spent about 5 hours, and not all of it attorney time.

These facts are significantly similar to the way this case played out—there was an amount owed that was under a few hundred dollars, Appellant attempted to make it right by paying any amount Appellee asked of her, and the lawyers were quick to file suit over what should have been a simple communication fix. The *Segarra* Court also affirmed the trial court disallowing costs for a title search, filing the complaint, service of process, and mediation. *Id*. at 1186-87.

The Court relied on *Ziontz v. Ocean Trail Unit Owners Ass'n, Inc.,* 663 So. 2d 1334 (Fla. 4th DCA 1993), where the trial court had awarded $60,000.00 in attorneys' fees to foreclose a $100.00 assessment by a condo association against an owner. In that case, the owner had never attempted to pay, but was rather litigating the validity of the assessment as a matter of principle. The Fourth District noted that they reversed the

award, concluding that the amount was unreasonable, finding that "the award of more than $60,000 in attorney's fees to foreclose a $100 lien is simply against the 'manifest justice of the cause.' *Miller v. First American Bank & Trust,* 607 So.2d 483 (Fla. 4th DCA 1992)." *Id.* at 1337. Similarly, here, the lower court has assessed an unreasonable amount of attorneys' fees for such a small amount owed. As the *Segarra* Court so aptly pointed out, this case, like the one before them, was even weaker than *Ziontz* because here, Appellant is attempting to pay, not litigate.

The anticipated counter-argument is that Appellant, in actuality, owed upwards of $17,000.00 in assessments because of the statutory application of his payments and unpaid amount from 2017. However, the unrefuted evidence was that Appellee did not know how to apply the payments statutorily, that they provided Mr. Appellant with a ledger that showed she was actually owed. This is evidenced by the Claim of Lien, which claimed an amount due of $6,261.54 of which $228.54 for maintenance interest at the rate of 10%; $350.00 for Maintenance late fees at the charge of $10.00 per month; 6.95 Certified Mail, Return Mail; and $5,851.05 other costs, inclusive of attorneys' fee and costs. None of the Fees in the Claim of Lien were for Monthly maintenance dues. (Append. 7). An attorney fee award of

nearly three times the amount on the Claim of Lien—and nearly six times the amount the Claim of Lien which is itself 100% attorney fees and costs. This is not reasonable and this Court should reverse.

C. No Expert Witness Testimony at Trial

Neither Appellee nor Appellant had an expert testify at trial on the subjects of the reasonableness and the necessity of attorney fees. The lower court can, if it is familiar with the type of litigation involved, still determine itself that some of the work was unnecessary. *Wiederhold v. Wiederhold*, 696 So. 2d 923 (Fla. 4th DCA 1997). Furthermore, in *Kei Ho v. Fountain of Palm Beach*, 309 So. 3d 237 (Fla. 4th DCA 2020), this Court held that the Order Following Non-Jury Trial awarding attorney fees to the condominium association, in action for injunction and breach of contract against unit owners, was premature, requiring remand, where the judgment on attorney fees was entered.

In the present case, similar to *Kei Ho*, the lower court incorporated the condominium's attorney fees and costs into the Final Judgment. In *Coffey v. Evans Properties, Inc*., 585 So. 2d 960, 961 (Fla. 4th DCA 1991), the lower court's adjudication on the issue of attorney fees had to await the entry of the Order Following Non-Jury Trial disposing of all claims and defenses;

otherwise, it was premature and improper.

ISSUE TWO

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO: (I) GRANT APPELLANT'S VERIFIED MOTION TO VACATE ITS FINAL JUDGMENT GRANTING FORECLOSURE OF GATELAND'S LIEN AGAINST APPELLANT'S CONDOMINIUM; AND (II) DISMISS GATELAND'S COMPLAINT FOR LIEN FORECLOSURE AND BREACH OF CONTRACT, WHERE APPELLANT ESTABLISHED FRAUD, MISREPRESENTATION, OTHER MISCONDUCT AND NEWLY DISCOVERED EVIDENCE AS BASES FOR VACATUR AND DISMISSAL UNDER FLA. R. CIV. P. 1.510 AND 1.540.

A. STANDARD OF REVIEW.

A movant may establish grounds for vacatur of a judgment under Florida Rule of Civil Procedure 1.540 by establishing a colorable claim based on, amongst other grounds: (1) [m]istake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. Fla. R. Civ. P. 1.540(b)(1)-(3). "A trial court's denial of a motion to vacate is reviewed using an abuse of discretion standard." *Top Dollar Pawn Too, Inc. v. King*, 861 So.2d 1264, 1265 (Fla. 4th DCA 2003). Although it is the movant's burden to show this abuse of discretion, courts have routinely

favored liberality in vacating judgments. *Toler v. Bank of America, Nat'l Ass'n*, 78 So. 3d 699, 703 (Fla. 4th DCA 2012); *North Shore Hosp., Inc. v. Barber*, 143 So.2d 849, 852 (Fla. 1962).

B. RULE 1.540(B) "FRAUD, MISREPRESENTATION, AND MISCONDUCT"

The Trial Court abused its discretion in denying the Rule 1.540(b) Verified Motion because Appellant's allegations and evidence established a colorable claim for relief based on Gateland's fraud, misrepresentations, and misconduct. In *Schleger v. Stebelsky*, the Court overturned the trial court's denial of a motion to vacate, finding a colorable claim under Florida Rule of Civil Procedure 1.540 based on movant's allegations that respondent had "made numerous misrepresentations to the trial court in terms of the law and the facts of the case." *Schleger v. Stebelsky* , 957 So. 2d at 73.

Here, Appellant has alleged and provided evidence far superseding that offered in *Schleger v. Stebelsky*. Appellant alleged and provided testimony of Gateland's misrepresentations and errors regarding its accounting of the amounts paid and owed to Gateland in the form of assessments, fines, maintenance fees, interest, and attorneys' fees related to the Condominium. (Append. 6). Appellant showed a notice of intent to

file a claim of lien was provided on July 28, 2020 (the "Notice of Intent to Lien") but the Claim of Lien was then not filed by Gateland until the same date, December 22, 2022, on which a Notice of Intent to Foreclose the Lien was filed. (Append. pp. 36-50). Appellant described how the amounts in the Claim of Lien were inconsistent with the amounts provided by Gateland in response to discovery requests. (Append. p. 10). Appellant also asserted that the ledger provided by Gateland (the "Ledger") in support of its Lien contained a large amount of liens for which proper notice was never provided to Appellant, as well as attorneys' fees related to a 2019 foreclosure that did not occur. (Append. pp. 9-10, 16-17). The accounting failed to explain how payments to Gateland were applied where even the Notice of Intent to Lien itself credited Appellant more than the delinquent amounts owed. (Append. p. 16). Appellant further identified three specific charges that should have not been included in the Lien amounts. (Append. p. 19).

Appellant additionally established a colorable claim for misconduct by Gateland. In the Motion and the Appellant's Affidavit, Appellant showed that Gateland had intentionally refused to provide her with an accurate accounting of the amounts that were owed to Gateland for the

Condominium. (Append. 6). Specifically, she explained in the Milburn Affidavit that a woman named, Linda, in Gateland's office told her she did not owe anything, and that, Kelly, who worked in the office of Appellee would not provide her with a ledger of amounts owed or let her in the association office thereafter. (Append. 6). As further evidence of misconduct, Appellant described how Gateland intentionally held an association meeting to determine whether to fine Appellant without notice, allegedly holding the meeting without the requisite Board Members while members and Appellant waited outside for the time at which the meeting was noticed. (Append. 6). Further, Appellant explained that Gateland, through its property manager, began rejecting payments from Appellant, which would have prevented accruing fees. (Append. 6).

These allegations and evidence establish grounds for vacatur of the judgment under Florida Rule of Civil Procedure 1.540(b)(3). The Trial Court abused its discretion by disregarding these allegations and evidence summarily calling them "hearsay" and "speculation" without any necessary findings to make such a claim. Any and all of the statements that could be considered hearsay would reasonably be understood to be statements by a party opponent, as they were made by Appellee's agents. (Append. 3). The

allegations of misrepresentations regarding the amounts owed by Appellant were not addressed by the Trial Court and instead, the Trial Court erroneously dismissed them on the basis that Appellant had not raised the issue as an affirmative defense in her answer to the lawsuit. (Append. 3).

This conclusion is improper as Appellant had no duty to assert an affirmative defense regarding what should be an essential element of Gateland's claim under Florida's Condominium Act, and regardless, a number of those misrepresentations and misconduct had not occurred when Gateland filed its original complaint. *See Rajabi v. Pillas at Lakeside Condo. Ass'n,* 306 So. 3d 400 (Fla. 5th DCA 2020) (determining that a breach of the association's Declaration negated the association's right too attorneys' fees and costs); *see also Dworkv. Ex. Ests of Boynton Beach Homeowners Ass'n,* 218 So. 3d 858, 860 (Fla. 4th DCA 2017) (requiring strict compliance with the accounting and notice requirements of the Condominium Act in order to perfect authority to collect and impose fines).

A. NEWLY DISCOVERED EVIDENCE

The Trial Court abused its discretion in denying the Motion because Appellant established a colorable claim for vacatur based on newly-discovered evidence. Florida Rule of Civil Procedure 1.540(b)(2) permits a

court to “relieve a party ... from a final judgment” based on “newly discovered evidence which by diligence could not have been discovered in time to move for a new trial or rehearing.”

Here, Appellant alleged and offered evidence showing that she recently discovered from her previously-estranged husband, that he had paid monies to Gateland related to the Condominium directly in the form of child support. (Append. 6). No evidence supports the conclusion that the Trial Court erroneously reached without any findings that Appellant could have discovered this information through a conversation with her husband or review of her own records. (Append. 1). The Trial Court abused its discretion in this unfounded speculation and opinion resembling advocacy as opposed to adjudication. This occurrence is more disconcerting given the fact that Appellant was unrepresented by counsel at the time of the Summary Judgment Hearing and at all times surrounding entry of the Summary Judgment and Amended Final Judgment. (Append. 4, 5 & 6).

CONCLUSION

Based on the foregoing, Appellant respectfully requests this Honorable Court vacate the Judgment and dismiss the Complaint, or at a minimum, remand to the Trial Court for an evidentiary hearing on the Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was furnished via e-filing portal to: Christopher Anthony Sajdera: Service@saj-law.com; paralegal@saj-law.com; Nancy Levros, Esq., Levros & Associates, P.A., nlevrospa@gmail.com; nlevros@levroslaw.com; 7777 Davie Rd., Extension, Ste. 302-A-1, Davie, FL 33024; Beth G. Lindie @ Eservice@eslerandlindie.com; Jeremy@elerandlindie.com; blindie@elerandlindie.com; 400 SE 6th St, Fort Lauderdale, FL 33301; Camille Thelma Bailey; camilletbailey@gmail.com; Tracy Milburn @flipme2night@yahoo.com; Tyrone A. Latour, Esq., e-mail: tyronelatour@latouresquire.com; 7900 Harbor Island Dr Suite #A 818, Miami, FL 33141; Jeremy Zubkoff, Esq., Law Offices of Jeremy M. Zubkoff, P.A., 400 SE 6th St, Fort Lauderdale, FL 33301-3405; e-mail: jeremy@flcondolaw.com; Scott Edwards, Esq., Scott J. Edwards, P.A., 150 E Palmetto Park Rd, Ste 800, Boca Raton, FL 33432-4833; e-mail: scott@scottjedwards.com; on this January 8, 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing comports with the font and spacing requirements of Fla. R. App. P. 9.210.

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