

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT COURT WEST PALM BEACH, FLORIDA

FENJY DUVAL, MAGDADENE DIEUVIL, & GUILFORT DIEUVIL

Appellants

Vs

WOODSTOCK PROPERTY OWNERS ASSOCIATION, INC, WALLACE
RODECKER, LAURA MUNIZ, RANDALL POWELL, KEMIA LOCKHART,
SARAH HUDSON, VINCENT K. FRIAR, JEREMY AUESTAD, WILLIAM L.
BOHRK, RAFAEL SOCA, ASIF SHAH, VESPASIAN, LLC., PALADIN
PROPERTY MANAGEMENT, LLC., WOODSTOCK FUNDING, LLC,
R & P EQUITIES, LLC., RRR EQUITIES, LLC C., AND PALM BEACH
BUILDERS, LLC, ET ALL

Appellees

CASE NO. - 4D2023-2024

L.T. CASE NO: 502020CA002007XXXXMB(AI)

APPELLANTS' INITIAL BRIEF

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Submitted by Appellants

Fenjoy Duval, Magdadene Dieuvil,
Guifort Dieuvil
1870 Spotted Owl Dr SW
Vero Beach, FL 32962

STATEMENTS OF THE FACTS AND CASE

1. Thorough this case, diverse material facts, declarations, legal arguments, various contradictory issues and claims have been legally interrelated and in substance involving the same transaction were standing before the lower trial court thru various pending pleadings such as: Pending Defendants' Affirmative Defenses, Pending Defendants' Counterclaims, Sworn Affidavits, and Motions; however, the lower trial court in this case has ignored, left, and forbidden all relevant issues, material facts, claims involving the same transaction as to payments which the Association / Appellees claimed were overdue and in default to be quietly and silently concealed and omitted during trial, with intend to be adjudicated in the future in separate trial, piecemeal trial and piecemeal appeal.

2. At all material times herein, above practice and principle adhered by the lower trial court in this case to grant this final judgment gave birth to an unfair trial with concealment, omission of material facts and fraud to be silently buried under the rug during trial, in which the lower trial court was defrauded, deceived and misled; unfortunately, such principle and practice constitute a disservice to the interest of justice and have been in conflict with various opinion of Appellate Courts on the same question of laws, and infringed Florida laws. - See. *Vital v. Summertree Village at California Club Condominium Association, Inc.* 343 So.3d 1260 (Fla. 3d DCA 2022)

3. At all material times, the substance involved Appellees' / Plaintiffs' claims about past dues assessment fees, payments dues and default have been phony, defective; also, are directly and legally interrelated with Plaintiffs' fraudulent organized schemes enterprises, including Plaintiffs's mischiefs, fraud, unjust

enrichment, kickback, embezzlements, breach of bylaws, infringement of Florida laws among others facts explicitly outlined in Defendants' Amended Counterclaims, pleadings and Affirmative Defenses that have been pending before the lower court; however, the trial court conducted only piecemeal trial and adhered to the principal of piecemeal appeals, while forbidding and precluding Defendants to raise any interrelated counterclaims and affirmative Defenses against Plaintiffs; despite, they have involved in substance and legally interrelated to the same transaction.

4. At all material times, under the direction, control, supervision and management of the Association, then Plaintiff and Plaintiff's Corporate Officers Directors (herein collectively called Plaintiffs/ Appellees) have collectively and individually engaged themselves into fraudulent organized scheme enterprises and alter egos, embezzlements, unclean hands, deceptive practice, bad faith, made up phony HOA's dues payments demands, and fraudulently intensified operational cost to unjustly enrich themselves while conducted and entangled themselves into phony businesses practice with the ASSOCIATION to deprive homeowners in the community of their rights and entitlements and have accepted kickback, solicited, accepted valuable goods, and such misconducts have infringed State and Federal Laws. - Florida Statute Section 718.111. - Florida Statute 718.501(1)(d), - Fl. St. 812.014 , - Fl. St. 812.014 (3)(b): & FL. St. 720.3033 (3), - Fl. St. 718.111.

“Florida Statute Section 718.111: The officers and directors of the association have a fiduciary relationship to the unit owners. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to Fl. s. 718.501(1)(d) and, if applicable, a criminal penalty as provided in paragraph (d).”

5. At all material times, the Association knew and/or should have known about its role, purpose, duties and obligations under Florida laws and its Bylaws, but Association has engaged itself into organized fraudulent scheme enterprises, and breached and failed to abide under its role, purpose, duties and obligations which include, but not limited to the followings:

- I. Take care diligently of community common areas and assets'*
- II. Protect, preserve, and increase property values,*
- III. Manage community resources and use the HOA's assets wisely for the benefit and best interest of the community members as a whole,*
- IV. Encourage a sense of community,*
- V. Upkeep a certain standard of living,*
- VI. Promote a clean and safe environment,*
- VII. Set a shared community vision,*
- VIII. Oversee and liable for all Finances And Plan For Contingencies,*
- IX. Stay Fully honest and transparent in all financial dealings, transactions, statements and budgets,*
- X. Responsibility of the HOA to prepare and maintain community and handle all financial records, transactions diligently and with care.*

6. At all material times, each Plaintiffs' corporate officers or directors knew and/or should have known about their role, purpose, duties and obligations under Florida laws and the HOA Bylaws, but Plaintiffs' corporate officers or directors have engaged themselves into organized fraudulent scheme enterprises, and

breached and failed to abide under their roles, purpose, duties and obligations which include, but not limited to the followings:

- I. Fiduciary duties relationship toward Appellants and all unit owners pursuant to Florida Statute Section 718.111,*
- II. Remain and act diligently for the benefit of all unit members with complete honesty and transparency in all financial dealings, transactions, statements and budgets,*
- III. Forbidding and outlawing unjust enrich themselves, depriving assets, embezzlement...,*
- IV. Prohibition to engage into deceptive and unfair trade practice,*
- V. Forbidding and outlawing engagement into organized fraudulent schemes enterprises,*
- VI. Forbidding and outlawing to solicit, offer to accept, or accept thing or service of value and kickback,*
- VII. To make rational, informed decisions, act in good faith at the best interest of all members of the association without any alter ego to unjustly enrich themselves personally or any private or affiliated company.*
- VIII. Required fair and free board election on annually basis, instead,*
- IX. To represent and act at the interest of all homeowners unit owners as a whole including Appellants.*
- X. Responsible to maintain the community and handle all financial, transactions diligently and acting in good faith for the benefit and interest of all unit owners as a whole including Appellants.*

7. To the contrary, after reinstatement of the Association by the current alleged Corporate Officers / Directors in 2017, then Plaintiff's corporate officers / directors took possession and control of the HOA, then Plaintiffs/Appellees have knowingly engaged and involved into organized fraudulent schemes enterprises, unfair and deceptive trade practice, breach of fiduciary duties, fraud, theft, unjust enrichment, and have solicited, engaged, received, kickback, thing or service of value, embezzled homeowners, accepted valuable properties, solicited fraudulent billings for fake services for their own personal profits and at the detriment of homeowners. Such organized fraudulent schemes enterprises involved about ten (10) phony newly incorporated entities by Plaintiffs to facilitate their schemes. Plaintiffs' conducts outlined before the trial court constitute as violations of Florida laws included, but not limited to violation of Florida Statute s812.014, - Florida Statutes 718.111. - Florida Statute Section 718.111, - FL. St. s. 718.501(1)(d)

- *“Florida Statute 812.014 (1): A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: (a) Deprive the other person of a right to the property or a benefit from the property.”*
-

8. Plaintiffs collectively employed and opened their own private for profit management company called Paladin Property Management, LLC that handled all HOA's management affairs at an exorbitant cost, embezzled funds, produced fake invoices for unperformed services, accepted kickback, made up phony assessment fees, fabricated fraudulent demand for payments notice, and unjustly enriched themselves, involved into phony billings practice, unjustly increased HOA's monthly dues, fraudulently increase operational cost at the detriment of homeowners / Appellants / Defendants, while leaving the community in deplorable

conditions. Plaintiffs have openly conducted their deceptive and unfair trade practice, unjust enrichment, fraudulent schemes enterprises and fraud , and Plaintiffs overtly breached their fiduciary duties to work at best interest of homeowners /Appellants in the community.

9. Under Plaintiffs' direction, supervision, control and management, Plaintiffs have initiated their fraudulent schemes and have defrauded and deprived Homeowners / Appellants of their rights, entitlements and benefits from their properties. Plaintiffs have forced homeowners to execute Deed in Lieu of Foreclosure, and put homeowners under duress thru made up phony assessments dues, fake billings, filing frivolous foreclosure actions to steal, deprive many homeowners from their rights and benefit of their properties.

10. At all material times, after the Association's Directors took possession of those properties either thru deed in lieu of foreclosure or foreclosure sale, then all profits, proceed, benefits and gains have never been used for the interest and goods of the HOA, which would have reduced the overall expenditures of the HOA on all homeowners including Appellants.

11. To the contrary, all fund related to phony billings for fake services, kickback, embezzlement funds, phony invoices funds have been allocated directly for the benefit of the HOA's corporate officers private entities; furthermore, all foreclosed properties or pre - foreclosure properties and deed in lieu properties in that community were fraudulently transferred in secrecy to the HOA's corporate officers private entities, without valuable consideration whatsoever, while under fiduciary duties toward homeowners / Defendants; in addition to that, those properties were transferred without obtaining any market value for those valuable

assets, without any MLS listing for open offers or average buyers open bid process, while the HOA did not get the benefit of using full proceed for the benefit of the HOA, which would have reduced the overall expenditures on all homeowners including Appellants.

12. At all material times, Plaintiffs initiated those foreclosure actions including this one, and engaged into their own organized fraudulent schemes enterprises of forming their own for profit shell companies such as: management company, roofing company, lending company, construction company and several others shell companies for sole and absolute purpose to:

I. Defraud Appellants / Homeowners,

II. To Overcharge Appellants / Homeowners For Fake Services, Non-Performing Services,

III. Violate Of Florida Deceptive And Unfair Trade Practice,

IV. To Facilitate Phony Billings Practice With Fraudulent Assessment Dues

V. To Breach Of Their Fiduciary Duties And Relationship To The Unit Owners / Appellants,

VI. Breach Of Contract, Hoa's Restrictive And Covenants (Hoa's Bylaws),

VII. Unclean Hands,

VIII. Unjustly Increase Hoa's Monthly Dues Against Appellants,

IX. Unjustly Enrichment Themselves At The Detriment Of Appellants /

Homeowners, Thru Fake Billings, Phony Services, Phony Lending Company, And Their Several Shell For Profit Corporations

X. Fraudulently Increase Operational Cost Arbitrary At The Detriment Of Appellants / Homeowners

XI. To Commit Thefts By Knowingly Obtains, Uses, Or To Use, The Property Of Another With Intent To, Either Temporarily Or Permanently, And Deprive Appellants / Homeowners Of Their Right To The Property Or A Benefit From The Property.

XII. To Commit Fraud By Having Plaintiffs / HOA As Non For Profit Entity Have Used Their Own Fake For Profit Lending Company Under Excuse Of Lending / Financing \$3 Millions For Roofing Contracts At Exorbitant High Interest Rate, And Have Used Their Own For Profit Newly Opened And Inexperience Roofing Company To Overcharge And Defraud Appellants / Homeowners Under Phony Services, Fake Roofing Billings And Fraudulent Special Assessment,

XIII. To commit Embezzlement, In Which Plaintiff And Its Corporate Officers Have embezzled several millions of from from Homeowners including Appellants,

XIV. To knowingly solicit, offer to accept, or accept thing or service of value or kickback

13. For instance, as direct result of Plaintiffs' deceptive practice, fraudulent scheme a foreclosure sale took place with respect to the subject property located at: 1873 North Congress Ave, West Palm Beach, FL 33401, the court issued a Certificate of Title to the HOA on June 11, 2019.

14. At no material time, above property was never listed for sale in MLS for open offers, open bid process, or best and highest sale price or even fair market value. The estimated market value for that property was \$249,100 at that time. Shortly after foreclosure sale, above property was fraudulently transferred without

any fair and valuable consideration from the HOA to HOA's corporate officers for profit private shell companies, and those fraudulent transfer and title was done without paying any adequate documentary tax.

15. In addition, the following property located at: 1921 North Congress Ave West Palm Beach, FL 33401. Plaintiffs forced and induced that homeowner under duress and intimidation to execute a Deed in Lieu of foreclosure in June 22, 2020; in the other hand, that same subject property worth and value more than \$240,000. Shortly after execution of the deed in lieu of foreclosure, that same subject property was transferred to Plaintiffs/HOA's President own private company without any valuable consideration and without paying any HOA' past dues.

16. Another Property located at: 1919 N Congress Ave West Palm Beach, FL 33401, Plaintiffs' put that homeowners under duress and intimidation of foreclosure actions, and forced homeowners to execute a Deed in Lieu of Foreclosure. As usual without fair and valuable consideration, without any listing in MLS for any open offer, open bid or best or highest offer, shortly after execution of the Deed in Lieu of Foreclosure for the property located at: 1919 N Congress Ave West Palm Beach, FL 33401, that same subject property was fraudulently transferred in secrecy from the HOA /Plaintiff to the HOA's corporate officers private phony entity, without any valuable consideration and without paying any HOA' past dues.

17. At no material times, none of those properties was never MLS listing, and there was no open bidding, no open offer for best and highest offers for those properties acquisition by Plaintiff's corporate officers /Directors, and there was no equitable interest that was never given or shared to the HOA / Association, and no

past dues HOA have not been paid in regards to those properties acquisitions by Plaintiffs' corporate directors and officers.

18. To the contrary, if those properties were sold at fair market value, MLS for open offers, then the proceed would have reduced the overall HOA's budget and reduced the monthly HOA's dues on Homeowners as a whole in the community. Those properties mentioned above, including much more were directly and fraudulently transferred to Plaintiffs' HOA's corporate officers private entities in secrecy without fair and valuable consideration. Plaintiffs have collectively organized their fraudulent scheme enterprises to create duress, threats, pressures, intimidations of foreclosure actions to deprive homeowners from their rights, ownerships and entitlement, while defrauding, misleading the court and engaging the court as a bridge to facilitate their fraudulent scheme enterprises with phony assessments dues, fake billings, double-dealings, phony budget, while soliciting, accepting considerable kickback, accepting things of value, embezzlements, and ignored their fiduciary duties to homeowners / Appellants. See - Florida Statute 718.501(1)(d), - Fl. St. 812.014 , - Fl. St. 812.014 (3)(b): & FL. St. 720.3033 (3), - Fl. St. 718.111.

19. Above are just few among countless properties that Plaintiffs' corporate officers / Directors have breached their fiduciary duties, and the Association and its officers collectively engaged, involved themselves into fraudulent schemes enterprises, and have knowingly solicited, offered to accept, or accepted things or service of value, deprived homeowners from their entitlement, accepted kickback under their fraudulent organized schemes to defraud homeowners / Appellants. Those assets were never used for the benefit of the HOA/Homeowners, nor

Plaintiff's corporate officers alter ego companies paid toward HOA's past due, assessments, nor did they go toward the HOA's overall budget.

20. In addition to above material facts, Plaintiffs employed their own private roofing company, phony lending company to continue their organized fraudulent schemes enterprises, and embezzled funds, deprived, defrauded homeowners/ Defendants. Plaintiffs collectively have accepted, demanded and imposed Homeowners including Appellants in the community to pay fraudulent special assessment fees to their new own private fake roofing company (Palm Beach Builders, Corp) and phony lending company called "Woodstock Funding, LLC" in the amount of \$3 million loan plus 8% interest return under fraudulent guise of roofing costs after accepting millions of dollars in kickback and things of value.

21. However, Plaintiffs have explicitly made formal material declaration before local government authority that the Repair Cost for each small roof unit in the community is \$4,500.00 per unit. The community has 108 units apartments, in which the total roof repairs' cost to be \$486,000 for the entire community.

22. Plaintiff / HOA has allowed its corporate officers knowingly solicited,, accepted kickbacks, embezzled about \$2.5 millions in just one transaction of roof repairs alone. Again, Plaintiffs / HOA's corporate officers ignored their duties and have fraudulently put homeowners under duress, and demanded homeowners / Appellants to pay higher HOA's payments dues for sole and absolute purpose to unjustly enrich Plaintiff's and HOA's corporate officers and Directors, private company in the amount of \$3 million plus high return interest, while the roof repairs only cost less than \$500,000.00, according to information given to government officials, by Plaintiffs' corporate officers / directors with their corporate business partners under declaration statements.

23. In addition to that, the roof repair would have cost homeowners less than (\$500,000.00) Five Hundred Thousands dollars by any independent reputable professional roofing company with expertise in subject matters, and all works and services would have been warranted, but HOA's corporate officers have used their own private related inexperience so called roofing company and fake lending company to defraud homeowners/Defendants in the community. Upon information obtained and belief this newly and inexperience roofing company, and newly so called lending company were only transacting business with the HOA, and were only creating for purpose of this organized fraudulent schemes enterprises to defraud Appellants and all homeowners as a whole in the community. Plaintiffs' schemes enterprises, unfair and deceptive practice, breach of fiduciary duties, fraud, theft, unjust enrichment, embezzlement, kickbacks and misconducted by constitute as violations of Florida laws - See. Florida Statute 718.501(1)(d), - Fl. St. 812.014, - Fl. St. 812.014 (3)(b): & FL. St. 720.3033 (3), - Fl. St. 718.111.

24. The trial court has the opportunity to set the record straight in this case to prove its zero tolerance on fraud, zero tolerance on crimes, and zero tolerance on violation of Florida laws, and its willingness to uphold the rule of laws by referring this case to the State Attorney for review and prosecution against Plaintiffs' fraud, thefts, crimes, and sanctions Plaintiffs' counsels for assisting, enabling, conducting, facilitating fraud on the court and for disciplinary action; otherwise this case can and may well be used as precedent for future fraud, thefts, crimes not to be prosecuted. Now there is real crime, fraud and real theft committed by Plaintiffs.

*Lower Trial Court Docket = (LTCD) - * - Lower Court Record Transfers= LCRT Florida Statute 812.014 (3): If the offender commits any grand theft and: Florida Statute 812.014 (3)(b): In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000, the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084*

25. At all material times, most Defendants' Affirmatives Defenses (See LTCD #: 47 * LCRT. Page # 735) have never been stricken after the court heard all legal arguments on Plaintiffs' motions to strike (See LTCD #: 88), and Appellants 2nd Amended Counterclaims (See LTCD #: 124 * LCRT. Page # 891), have been acknowledged by the trial court, and those contradictory issues and claims are still remaining pending before the trial court and are legally interrelated and involved the substance of same Plaintiffs' claims

26. of alleged outstanding payments and assessment dues and default. _

SUMMARY OF THE ARGUMENTS

A) - As a Matter Of Law, The Theory And Principal Of Piecemeal Trial And Piecemeal Appeals Involving Claims Interrelated To The Same Transaction Are Not Permitted In Florida Which Warrant The Entry Of Final Judgment To Be Reversed And Remanded.

27. Plaintiffs induced the trial court into error to conduct piecemeal trial in this case and adhered to the principal of piecemeal appeals which conflicted with Florida laws specially, Defendants' claims are legally interrelated and in substance involve the same transaction as to Plaintiffs' claim for payments dues. See. Ironshore Specialty, Ins. Co. v. Conrad & Scherer, LLP, 338 So. 3d 297, 300 (Fla. 4DCA 2022).

28. The association foreclosure action and count I and II (LTCD # 2) - and Defendants' Answers and Affirmative Defenses 2, - 3, - 4, - 5, - 6, - 7 - 8 (LTCD # 47 & 87) and Defendants's 2nd Amended Counterclaims with counts #: I, II, III, IV, V, VI, VII (LTCD # 124) have been directly interrelated and merely have

involved the same transaction as to payments which the Plaintiffs claimed in their complaint that were overdue and in default.

29. The lower trial court conducted piecemeal trial and adhered to the principal of piecemeal appeal and only addressed Plaintiffs alleged amount due and default, while simultaneously forbidding, precluding all contradictory issues of facts, evidences, declarations, claims, legal arguments, relevant material facts that are legally interrelated and in substance involving the same transaction to be presented during trial, which resulted into the entry of the final Judgment in this case; hence, such practice has infringed Florida laws and unquestionably in conflict with prior decision of the 4DCA on the same question of laws. - See. - Vital v. Summertree Village at California Club Condominium Association, Inc. 343 So.3d 1260 (Fla. 3d DCA 2022).

B) - Lack Of Pre Requisite Notice And Plaintiffs' Claim Of Lien And Notice Have Been Invalid, Void And Have Not Met Compliance With Fla. Stat. § 720.3085(1)(A); - Fla. Stat. § 718.121(5)(B); - Fla. Stat. § 720.3085; - Florida Sta. 720.3085(4)(A); - Florida Sta. 720.3085(4)(B)

30. Plaintiffs' complaint and liens have not met compliance with Florida laws, and were not properly filed, and pre-suit notices - Claim of Lien / Demand for Payment Notice were never served to Defendants, Magdadene Dieuvil and Guilfort Dieuvil, and during trial Plaintiffs presented a phony notice with forged signature, while Plaintiffs claimed such document contained Defendant, Guilfort Dieuvil's signature as evidence that Dieuvil Guilfort was served with pre-suit notice. To the

contrary, Defendants, Magdadene Dieuvil and Guilfort Dieuvil never resided at that address and never received any mail or notice at that alleged address.

31. At all material times, Demand Payment Notice of Intent to Foreclosure on the Lien and Notice Claim of Lien are required to be sent by registered or certified mail with a return receipt. See. Florida Statute 720.3085(4)(b). The notices should have been sent at the last address as reflected in the records of the association and such address has been reflected on the deed recorded in public record upon acquisition of the subject property, and recorded prior of filing this foreclosure action. See - Fla. Stat. 720.3085(4)(a); - Florida Sta. 720.3085(4)(b)

32. Fla. Stat. § 720.3085(1)(a) describes what a lien must *state* “**to be valid**”, and The statutes governing *condominium* associations has similar language. Fla. Stat. § 718.121(5)(b). Plaintiffs’ complaint must show certain particularity to meet compliance of the statutory requirement, otherwise it would be invalid. This kind of defect in Plaintiffs’ claim of lien and notice made them to be legally insufficient as outlined before the trial court. *See Robinson v. Sterling Door & Window Co.*, 698 So.2d 570 (Fla. 1st DCA 1997) (interpreting Fla. Stat. § 55.10(1) making certain requirement mandatory; *see also Hott Interiors, Inc. v. Fostock*, 721 So.2d 1236 (Fla. 4th DCA 1998).

33. As appearing on the face of the complaint, Plaintiffs’ lien is invalid, and it is deemed to be appropriate for the final judgment to be reversed and remanded. These are fundamental requirements in our judicial system, and requires reversal. See -Walker v. Edel, 727 So. 2d 359, 360–61 (Fla. 5th DCA 1999) (reversing on error that trial court failed to provide any evidentiary hearing to dispose all contradictory issues prior issuing final judgment) - Deutsche Bank Nat’l Trust Co. v. Patino, 192 So. 3d 637, 638 (Fla. 5th DCA 2016).

C) - Trial Court's Failure To Address Contradictory Issues And Forbidding Plaintiffs' Fraud And Plaintiffs' Organized Fraudulent Schemes Enterprises To Be Presented At Trial May Have Impaired The Court Inherent Power To Protect Judicial Functions And Integrity Of The Court.

34. The trial court had inherent authority and required under Rule 1.540(b) to hear and allow evidence when allegations of fraud are raised against a party prior the entry of final judgment, specially when the substance of facts are legally interrelated and have involved the same transaction. Also, upon proof of such fraud the court is required to take adverse action against the party committed such fraud, including dismissal of Plaintiffs' complaint in its entirety, and Plaintiffs as perpetrator of fraud shall not be rewarded with final judgment. See. *Robinson v. Weiland*, 988 So. 2d at 1113, quoting *Cox*, 706 So. 2d at 47.

35. During trial the court was required to allow Defendants to plead and outline all legally interrelated claims before the trial court, including Plaintiffs' fraud in substance involving the same transaction about Plaintiff's allegations of outstanding past dues payments. To the contrary, the court precluded Defendants to present any facts, claims and evidence related to Plaintiff's actions that led into the phony alleged outstanding balance due, and the court relied on phony document that Plaintiffs alleged that contained Defendant, Guilfort Dieuvil's signature as evidence of service pre-suit notice. Not only such document/evidence has been forged, misrepresentation, and it did not contain the actual physical address of either Defendants' Dieuvils in the record of the association, and such lack of notice, defect and irregularity warrant reversal of this judgment. - See *Bankers Sec.*

Life Ins. Society v. Kane, 885 F.2d 820 (11th Cir. 1989); — Prudential Ins. Co. v. Rhodriquez, 285 So. 2d 689, 690 (Fla. 3d D.C.A. 1973).

36. Here, such piecemeal trial and partial trial approach conducted by the trial court has concealed, omitted all material facts to be silently buried under the rug during trial, such as Plaintiffs' fraud, as well as various foreclosure irregularities and interrelated claims in substance involving to the same transaction; unfortunately, such approach could make the trial court to be accomplice by allowing itself to be defrauded, misled and impaired the court's ability to maintain, protect its integrity and to preclude perpetrator of fraud from being rewarded. The lower trial court has impaired its inherent power to uncover falsehoods, to protect judicial functions and its integrity, including the right and obligations to discover the truth, to deter fraud on the court.

- *“The integrity of the civil litigation process depends on the truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct fraudulent concealment of fact must be discouraged in the strongest possible way.”* Robinson v. Weiland, 988 So. 2d at 1113, quoting Cox, 706 So. 2d at 47; see also Channel Components, Inc. v. American II Electronics, Inc., 915 So. 2d 1278 (Fla. 2d DCA 2005).

37. Here, the lower court was induced into error and erred under its obligations to preclude itself from being defrauded, misled and to conduct fair trial on all legally interrelated claims in substance involving the same transaction, but has allowed material facts to be concealed and omitted during trial, while Plaintiffs' fraud, deceptive and unfair trade practice and organized fraudulent scheme enterprises to be buried quietly and silently under the rug. - Nat'l Union Fire Ins. Co. of Penn. v. Carib Aviation, Inc., 759 F.2d 873 (11th Cir. 1985).

38. As a direct result of Plaintiffs' fraudulent inducement requests, the lower court was erred to adhere to the principal of piecemeal appeal in this case, such inducement and error of law have rendered this final judgment to be a voidable order." *Bank of Am., N.A. v. Grec Homes IX, LLC, et al.*, 2014 WL 351962 (S.D. Fla. 2014); - *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours and Co.*, 761 So. 2d 306 (Fla. 2000).

ARGUMENTS

- The Trial Court's Decision Is Not Based On Sound Policy And Merits, And The Trial Court's Orders Have Conflicted With Various District Court Opinions On The Same Question Of Laws

I) — THE Trial Court Adhered To The Principal Of Piecemeal Appeal And Piecemeal Trial

39. In light of all material facts standing before the trial court, including Defendants' pleadings, sworn affidavits and Defendants' Affirmative Defenses (LCTD # 87) in which the court conducted hearings and entered an order on May 21st, 2021, and the court ruled on Plaintiffs' Motion to Strike the followings Defendants' Affirmative Defenses:

Affirmative Defenses

I. First Affirmative Defense 1 - Failure To State A Cause Of Action

II. Affirmative Defense II - Fraud Or Alternatively Bad Faith And Unfair Dealing

III. Affirmative Defense III - Defective Lien

IV. Affirmative Defense IV - Equitable Estoppel - Preclusion Due To Violations Of Fccpa

V. Affirmative Defense V - Failure To Mitigate Damages

VI. Affirmative Defense VI - Unclean Hands

VII. Affirmative Defense VI - Failure To Perform Conditions Precedent

VIII. Affirmative Defense VIII - Entitlement To Set-Off

IX. Affirmative Defense IX - Equitable Estoppel- Membership Due Process

X. Affirmative Defense X - Selective Enforcement

40. After reviewing all facts, motions, pleadings, and the trial court heard verbal arguments with respect to above Defendants' Affirmative Defenses, then the court ruled and stated the followings in its written Order:

- *“Ordered and adjudged that affirmative defenses 1, 9, and 10 are stricken. As to to the remainder, the motion to strike is Denied.”*
- (See. LCRT. Page 641)

41. At all material times, the remainder Defendants' Affirmative Defenses II, III, IV, V, VI, VII, VIII (LCTD # 87) have been legally interrelated and in substance have been involved the same transaction as to payments which Plaintiffs claimed were overdue and in default, and those claims have been legally interrelated that the court itself has acknowledged and ruled such affirmative defenses shall remain valid and stand against Plaintiffs' claims See. LTC D #; 88 * Filing#: 127298571); however, The trial conducted piecemeal trial / partial trial only on alleged past dues payments, while forbidding all relevant interrelated material facts, and all

evidence, claims, substance involving the same transaction to be silenced, concealed, omitted and buried under the rug during trial which warrant the final judgment to be reversed and remanded. - See *Del Castillo v. Ralor Pharmacy, Inc.* 512 So. 2d 315, 319 (Fla. 3d DCA 1987).

II - The Existence Of Unfair Trial In This Case Violates Defendants' Rights Of Due Process

42. Unfortunately, the Trial Court prematurely entered its final judgment and conducted an unjust and unfair trial as described herein, by allowing concealments, omissions of various material facts, affirmative defenses and legally interrelated claims against Plaintiffs to be quietly buried during trial. Defendants, as litigant are entitled to nothing less than the cold neutrality of an impartial court and fair trial. The existence of unfair trial and piecemeal trial in this case, while forbidding contradictory issues, Plaintiffs' fraud, Plaintiffs' unclean hands and various claims related to the same Plaintiffs' claims as to payments dues and defaults to be precluded during trial; ultimately, such practice suppressed the truth during trial, which led into unfair trial and constitute as a violation of Defendants' rights of due process, and conflicted with Florida laws. *State ex. rel. Mickle v. Rowe*, 100 Fla. 1382, 1385, 131 So. 331, 332 (Fla. 1930).

43. If an impropriety at trial rises to the level of a due process violation of a fundamental constitutional right, it may be considered fundamental error which can be raised on appeal in spite of a failure to object at trial." *Hargrave v. State*, 427

So. 2d 713 at 715 (Fla. 1983). The right to a fair trial is vital by a fair and impartial trier of fact is a fundamental constitutional right assured by the Due Process Clause of Fourteenth Amendment, and serves the interest of justice.

44. Under well-established Florida law, a trial court cannot grant relief during an unfair trial and proceeding, to do so is a violation of due process. - Deutsche Bank Nat'l Trust Co. v. Patino, 192 So. 3d 637, 638 (Fla. 5th DCA 2016) (reversing judgment granting relief outside the pleadings as void); - See also Bayview Loan Servicing, LLC v. Newell, 231 So. 3d 588, 590 (Fla. 1st DCA 2017) (same); Fed. Home Loan Mortg. Corp. v. Beekman, 174 So. 3d 472, 475–76 (Fla. 4th DCA 2015). Thus, Court's Order, Findings, And Ruling That Were Entered In Violation Of Due Process, And Are Void. Patino At 638; Nash At 135; Newell At 590; Beekman At 475–76.

III - The Trial Court Entry Of Final Judgment Is Improper While Leaving Contradictory Issues And Claims For Future Adjudication

48. The Lower Trial Court reviewed Plaintiffs' Motion to Strike Defendants' Affirmative Defenses and conducted hearing and heard arguments and ruled and admitted that Defendants' Affirmative Defenses are interrelated and valid against Plaintiffs' claims and shall remain, and the court largely denied Plaintiffs' Motion to Strike Defendants' Affirmative Defenses; in addition to that, various pleadings, Defendants' Sworn Affidavit and Counterclaims are legally interrelated and in substance to the same transaction of Plaintiff's claims for monetary damages and default; however, later on, the lower trial court was induced into error to conduct

partial trial and entered this money final judgment in favor of Plaintiffs while forbidding various contradictorily claims, Defendants' affirmative defenses, counterclaims and simultaneously leaving those issues for future adjudication; however such practice and principal have been deemed unjust and improper as a matter of laws and conflicted with prior decision of appellate court on the same question of laws. See. Pointer Oil Co. v. Butler Aviation of Miami, Inc., 293, So. 2d 389, 390-91 (Fla. 3d DCA 1974).

49. Regrettably, the lower trial court adhered in this case to the principal of piecemeal appeals while leaving claims involving the same transaction that are legally interrelated thru the same Plaintiffs' claim. Such practice has been in conflict with prior decision of appellate court including this 4DCA on the same question of law. See See. Ironshore Specialty, Ins. Co. v. Conrad & Scherer, LLP, 338 So. 3d 297, 300 (Fla. 4DCA 2022). - Vital v. Summertree Village at California Club Condominium Association, Inc. 343 So.3d 1260 (Fla. 3d DCA 2022).

- *“In this last instructive, the circuit court entered a partial final judgment for condominium maintenance fees and special assessments, without resolving the owners’s pending affirmative defenses of unclean hands and setoff. Such partial judgment affixed damages, awarded attorney’s fees, and set a foreclosure date. Id. The owners appealed, that judgment, and the Third District Court of Appeal concluded the judgment was not final and reversed and remanded the final judgment.”*

50. The 4DCA is being compelled to reverse and remand the final judgment entered by the trial court against Defendants, since this court has the authority to

review the challenged orders that purport to adjudicate with finality. See. Del Castillo v. Ralor Pharmacy, Inc., 512 So. 2d 315, 319 (Fla. 3d DCA1987. -

- “ It is ... improper to render an order in the form of an ordinary final money judgment, while contradictorily and simultaneously leaving an issue for future adjudication.” - See. Also Surijon v. Zaria, 278 SO. 3d 328, 329 (Fla. 3d DCA 2019); - Pointer Oil Co. v. Butler Aviation of Miami, Inc., 293, So. 2d 389, 390-91 (Fla. 3d DCA 1974).”

IV - The Lower Trial Court Decision Is Unsupported By Competent Substantial Evidence Prior The Entry Of Final Judgment, And Plaintiffs Alleged Evidence Was The Product Of Fraud And Forgery

Document Presented During Trial

51. Under well-established Florida laws, if a trial court’s decision is unsupported by substantial competent evidence, and the party should not present any forgery evidence to induce the court into error or for purpose to deceive and/or defraud the court; also in the absence of evidence, then the trial court is precluded to enter the final judgment. There is no valid evidence whatsoever that opposing party could present to support and warrant the final judgment in case of fair trial on valid evidence. - *Brennan v. Honsberger*, 101 So. 3d 415, 416–17 (Fla. 5th DA 2012); -*See also Hall v. Tungett*, 980 So. 2d 1289, 1293 (Fla. 2d DCA 2008) (reversing probate order lacking evidentiary basis).

52. Not only Plaintiffs’ claims constitute as fraud thru deliberate organized fraudulent scheme enterprises, unjust enrichment, embezzlements, breach of contract of contract, kickback, breach of fiduciary duties just to say the least as outlined in Defendants’s Affirmative Defenses, pleadings, sworn affidavits, and motions standing before the court; also, during trial the court relied on phony

evidence document that Plaintiffs presented before the court under misrepresentations such document contained Defendant, Guilfort Dieuvil's signature as evidence of service pre-suit notice. Not only such document was a forgery of Dieuvil's alleged signature, and such evidence did not contain and was never mailed to the actual physical address of both Defendants' Dieuvils in the record of the association. (See. LTCD #: 153). Rule of Civil Procedure 1.540(b) (3) provides relief from "a final Judgment, decree, order or proceeding" for:(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party, and the court has broad authority under Rule 1.540(b)(1) to vacate or set aside a default judgment based on mistake, inadvertence, surprise or excusable neglect.

53. Plaintiff itself presented recorded deed as evidence of Defendants' ownership during trial, and that deed was recorded in public record prior the filing of this action which also gave Plaintiff constructive notice of Defendant, Magdadene Dieuvil's address. The entire trial court record showed no prerequisite notice was never mailed to both Defendants's Magdadene Dieuvil and Guilfort Dieuvil's physical address on the record of the association.

54. The association and its corporate officers / directors (Appellees) have knowingly solicited, offered to accept valuable properties, accepted thing, service of value and kickbacks, and have embezzled about \$2.5 millions dollars funds from homeowners /Appellants in just one transaction. The lower court was erred by conducting an unfair trial for monetary damages while leaving and forbidding all contradictory claims and simultaneously issues to be concealed, omitted quietly

and silently buried under the rug for so called future adjudication or for future unfair trial. Now such practice has been openly done in below third world class judicial system, and now it was implemented into our court system, but here this practice and principle of piecemeal appeal and unfair trial has been improper under Florida laws, and conflicted with prior decision of the appellate district court on the same question of laws. *Baumann v. Intracostal Pac. Ltd. P'ship*, 619 So. 2 d 403, 404 Fla. 3 d DCA 1993). Reversing the lower court final judgment is proper since it has been proven on the record that the findings are not supported by valid evidence.

V - Plaintiffs' Complaint Has Lack Of Legal Standing And Cause Of Action To Support Plaintiffs' Claims And Trial By Ambush

55. At all material times, Plaintiffs' claims for past due payments and default were not supported by any cause of action and legal standing to bring this action and by Plaintiffs' alleged Declaration of Covenants, Conditions and Restriction of Woodstock / Association (Bylaws / Declaration). Plaintiffs' Complaint failed to include a copy of their Declaration / (Bylaws) (See. LTCD #: 2, 3 & 4). Plaintiffs failed to comply with discovery request for purpose of omitting and concealment all relevant material facts before the court, and intent to deceive and lead the court into error.

56. Despite of, Defendants' various requests for copy of Plaintiffs' Bylaws / Declaration, Plaintiffs failed to comply with discovery request and refused to provide copy of their Bylaws / Declaration to Defendants prior to trial; in addition to that, Plaintiffs' entire complaint failed to reference or outline as evidence where,

when, how and what rules, article, regulation, conditions, covenants, restrictions or clause that may have been breached, violated or defaulted by Defendants in the Bylaws that could have granted Plaintiffs' rights and standing to file this action against Defendants. Such lack of evidence and standing warrant reversal - See. *Desvigne* at 542; *In re K.C.* at 834–35; *Stewart* at 248.

57. The entire litigation was done with Plaintiffs' lack of standing, and without Plaintiffs providing or filing any copy of their Declaration / Bylaws to establish legal standing to file this action, and nearly 47 days later: a) after Final judgment's hearing and Trial by Ambush was done on July 13, 2023; - b) and after the entry of final judgment was done on July 19, 2023; - c) after the entry of order denying Defendants' motion for reconsideration to vacate final judgment was entered; - d) after the entry of Appeal of the final judgment was filed, - then copy of Plaintiff's alleged Declaration of Covenants, Conditions and Restriction of Woodstock (Bylaws) was filed and/or appeared in court docket for the first time on August 29, 2023, and such Bylaws/Declaration was never filed before trial court, and was never made available, received or aware by Defendants, and any submission of such legal document on the date of trial would be a trial by ambush and would take Defendants by surprise without giving Defendants any opportunity and right to review such document /evidence. See. *Randy Int'l* at 670 (Fla. 3d DCA 1987); *In re Perez' Estate* at 59.

58. Apparently, it is unclear when such Declaration / Bylaws was recorded, as it was never given to Defendants at the time of acquisition of the subject property. Even Defendants's counsel could not locate such bylaws prior of the entry of final

judgment - *Desvigne v. Downtown Towing Co.*, 865 So. 2d 541, 542 (Fla. 3d DCA 2003) (“where the court’s decision is manifestly against the weight of the evidence, or unsupported by competent substantial evidence and unfair trial, then it becomes the 4DCA’s duty to reverse and remand”) - *In re K.C.*, 87 So. 3d 827, 834– 35 (Fla. 2d DCA 2012); - *Stewart v. Stewart*, 581 So. 2d 246, 248 (Fla. 3d DCA 1991). Thus, there was no substantial competent evidence in the record to sustain the entry of the Final Judgment entered by the trial court. - See. *Brennan* at 416–17; *M.N.* at 448; *Hall* at 1293.

VI - Plaintiffs’ Fraud, Organized Fraudulent Schemes Enterprises, Piecemeal Appeals, Mischiefs And Various Foreclosure Irregularities Precluded The Entry Of Final Judgment

59. At all material times herein, Defendants’ claims have legally interrelated and in substance involving the same transaction were required to be addressed during trial; unfortunately, the trial court was induced into error and adhered to the principal of piecemeal appeals, and forbidden all relevant material facts and contradictory claims to be concealed, omitted and various foreclosure irregularities to take place in this legal proceeding.

60. The Court has inherent authority to protect and maintain its own integrity and moral standard, maintaining the rule of laws, as well as the court possess the inherent power to protect the function, dignity, and integrity of the judicial system by correcting its own mistakes thru appellate proceeding or higher court’s rulings

that comply with uniformity on the same question of laws, such as those followings legal issues and same question of laws;

- I. *Now in Florida, is it permitted for the Lower Trial Court to adhere to the principal of Piecemeal Appeal or Piecemeal Trial on legally interrelated and in substance involving the same transaction, as it is done in this case against Defendants/Appellants? — While such practice has been in conflict with prior Appellate Court’s decision on the same question of law. See. Vital v. Summertree Village at California Club Condominium Association, Inc. 343 So.3d 1260 (Fla. 3d DCA 2022)*

- II. *Now is it improper in Florida for the Trial Court to render an Order in the form of an ordinary final money judgment, while contradictorily and simultaneously leaving an issue and all pending Defendants’ claims for future adjudication, as it is done in this case? — While such practice has been in conflict with prior Appellate Court’s decision on the same question of law. See. Surijon v. Zaria, 278 SO. 3d 328, 329 (Fla. 3d DCA 2019).*

- III. *Now is it proper for the trial court in this case to allow concealment and omission of material facts related to the same transaction to be quietly and silently buried under the rug during trial? — While such practice has been in conflict with prior Appellate Court’s decision on the same question of laws. — Pointer Oil Co. v. Butler Aviation of Miami, Inc., 293, So. 2d 389, 390-91 (Fla. 3d DCA 1974).”*

- IV. *After the trial court had reviewed pleadings and heard verbal arguments from all parties about Defendants’ Affirmative Defenses of Fraud Or Alternatively Bad Faith And UnFair Dealing, And Unclean Hands,*

Hence, The Trial Court Ruled Such Affirmatives Defenses shall remain - and will not be stricken related to Plaintiffs' claims, then was it proper for the trial court to be induced into error to reward Plaintiffs as perpetrator of fraud and unclean hands with monetary judgment against Defendants? — While such practice has been in conflict with prior Appellate Court's decision on the same question of laws. See. It is a fundamental proposition that fraud renders any order or transaction to be voidable.” Lance Holding Co. v. Ashe, 533 So. 2d 929 (Fla. 5th DCA 1988); - void ab initio.

V. Now was it proper in this case for Plaintiffs to present forgery document that was never signed and/or received by Defendants, Dieuville during trial, which the trial court admitted and relied on such phony document with lack of notice and did not even comply under applicable laws was never Defendants' Dieuville proper address, and such document was admitted by the court under misrepresentation as evidence and proof of serving pre-suit notice to Defendant Guilfort Dieuville and/or Magdadene Dieuville? — While such practice has been conflicted with Fla. Stat. § 831.02, - Nat'l Union Fire Ins. Co. of Penn. v. Carib Aviation, Inc., 759 F.2d 873 (11th Cir. 1985). In Oceanic Villas, Inc. v. Godson,

VI. Why did Plaintiffs fail to serve Defendants, Magdadene Dieuville and Guilfort Dieuville presuit Notice of Claim of Lien — and Notice of Intent to Foreclose the Lien as required pursuant to Florida Law, and such claim was void, but still obtain final judgment? — While such practice has violated Florida laws Florida Sta. Florida Sta. 720.3085(4)(b); —Florida Sta. 720.3085(4)(a).

VII. Why failure to determine the controversy issues, contradictory claims and the entry of final judgment in this case have not been based on the merits. -

While such practice has been conflicted with Florida laws. See Coggin v. Barfield, 150 Fla. 551, 8 So.2d 9 (Fla. 1942); - Coggin v. Barfield, 150 Fla. 551, 8 So.2d 9 (Fla. 1942).

61. The controversies in this case were never addressed during trial, and the entry of the final judgment has not been based on the merits of the case; unfortunately, such practice is repugnant to the concepts of substantial justice and having the case heard on the merits is not prejudice to Appellees. See — Beach v. Sheridan, Inc., 403 So.2d 502 (Fla. 4th DCA 1981), - Cinkat Transp., Inc. v. Maryland Cas. Co., 596 So.2d 746 (Fla. 3d DCA 1992)

CONCLUSION:

62. Procedurally and substantively Appellants have met their burden to have the trial court's final judgment to be reversed and remanded by the 4DCA. The entry of this final judgment has infringed Florida laws, and conflicts with district courts of appeal's opinion on the same question of law. The trial court's decision to grant final judgment is inconsistent and expressly and directly in conflict with Florida laws. Appellants herein respectfully request from this Honorable Court to reverse and remand the trial court's decision based on above facts stated herein, and for any other reasons as deem just and appropriate by this Honorable Court.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed in compliance with appellate procedural rule 9.120, and Appellants Certify that Appellants electronically filed the foregoing with the Clerk of Court by using

Florida Courts E-Filing Portal system which automatically emails copy of this electronic filing motion to all counsels of record and parties including, but not limited to Appellee's counsel, Kenneth Edwin Zeilberger Esq. and Jennifer Schiavone from: Backer Aboud Poliakoff & Foelster, LLP, whose emails: kez@pbattorneys.com * lpasquarelli@pbattorneys.com, * jschiavone@pbattorneys.com - kbacker@bapflaw.com upon filing; in addition to that, a copy of the foregoing document has been mailed first class thru US postal services to Appellee's counsel, Kenneth Edwin Zeilberger Esq. and Jennifer Schiavone from: Backer Aboud Poliakoff & Foelster, LLP, 400 South Dixie Highway Suite 420 Boca Raton, FL 33432, and all parties of interest by US Postal Service thru first class mail.

Respectfully submitted this 29nd day of July, 2024

MS Magdadene Dieuvil

Magdadene Dieuvil,
Appellant / Defendant / Counter-Plaintiff
1870 Spotted Owl Dr SW
Vero Beach FL 32962
Email: mkcdieuvil@yahoo.com
Ph 561-506-2059

MS Magdadene Dieuvil

Guilfort Dieuvil,
Appellant / Defendant / Counter-Plaintiff
1870 Spotted Owl Dr SW
Vero Beach FL 32962
Email: guilf5@hotmail.com
Ph 786-344-5497

MS Fenjy Duval

Fenjy Duval,
Counter-Plaintiff / Appellant / Defendant
1870 Spotted Owl Dr SW
Vero Beach FL 32962
Fenjy.com@gmail.com