

4D2024-1446

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# In the Fourth District Court of Appeal

VANESSA LOUIS,

*Appellant(s)*

v.

SYMPHONY BUILDERS AT THE PARK, LLC,

*Appellee(s)*

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## Appeal Jurisdiction

Plenary Appeal from a Final Order of the  
County Court for the Seventeenth Judicial Circuit,  
in and for Broward County, Florida

{L.T. No. - COCE24022908}

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## Initial Brief

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## Authorities

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*Riverwalk at Sunrise Homeowners Ass'n, Inc. v. Biscayne Painting Corp.*, 199 So. 3d 348, 350 (Fla. 4th DCA 2016)

*Open MRI of Okeechobee, LLC v. Aldana*, 969 So. 2d 589, 590 (Fla. 4<sup>th</sup> DCA 2007)

*McAbee v. Edwards*, 340 So. 2d 1167, 1170 (Fla. 4th DCA 1976)

*Ambrose v. Catholic Soc. Servs., Inc.*, 736 So. 2d 146, 149 (Fla. 5th DCA 1999)

*Alexander Hamilton Corp. v. Leeson*, 508 So. 2d 513, 513 (Fla. 4th DCA 1987)

Florida Statute §83.60(2)(5)

*Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973)

Article I, Section 21, of the Florida Constitution

*Everglades Marina, Inc. v. Am. E. Dev. Corp.*, 374 So. 2d 517, 519 (Fla. 1979)

*J.J.K. Int'l, Inc. v. Shivbaran*, 985 So. 2d 66, 68 (Fla. 4th DCA 2008)

*Everett v. Everett*, 196 So. 3d 483, 484 (Fla. 1st DCA 2016)

Florida Rule of Appellate Procedure 9.310(f)

### **Jurisdiction**

The Lower Tribunal e-filed the final order of default on June 4, 2024, at 9:07pm, which was not recorded by the clerk of court for the lower tribunal until 4:19 pm on June 5, 2024. I timely filed my notice of appeal within thirty (30) days of that order on June 5, 2024. This Honorable Court has jurisdiction. *See* Art. V, § 4, Fla. Const. (1968 Revision); Rule 9.110(b), Fla. R. App. P. (Oct. 1, 2017).

### **Introduction**

The record could not be cited in the brief because Appellant could not afford to pay the fee for the record due to the financial restraints placed upon Appellant by the circumstances of this case. The Appellee is corporation that engaged in price gauging to raise Appellant's rent by more than \$500 during the pandemic while constantly charging additional, unjustifiable and fraudulent fees in retaliation to Appellant's reports made to Coral Spring's code enforcement and HUD. At a time when I was experiencing a medical crisis causing me to struggle to recover from Appellees price gauging and fraudulent actions, Appellee initiated a retaliatory defective eviction action against me in the lower tribunal to interfere with my work and to displace me and with my sick child from my place of living for no apparent reason other than malicious intent and retaliation.

Waiving my pleadings, without any overpowering public necessity, the court below misapplied Florida's eviction statute for possession, to bar my claims and dispose the case before it. The trial court did so despite my allegations of fraud by Appellee, which Appellee below remained silent on when it had a duty to respond to and or speak on at the hearing for my April 24, 2024, motion to determine the amount of rent to be paid into the registry. Appellant raises three grounds for review: (1) the court below misapplied Florida Statute §83.60 (2) & (5) by waiving all Appellants pleadings and by denying Appellant the right to be heard on fraud allegations that both continued into this action (L.T. No. COCE24022908) being appealed and first arose during Appellee's prior eviction action (L.T. No. COCE24015944) previously dismissed voluntarily by Appellee in the lower tribunal; (2) the trial court's June 4, 2024 default judgment for eviction being appealed, granting Appellee the writ of possession was premature because Appellant's pleadings waived during the pleading stage but ruled on after the appeal, could not support the fact that due process had run; and (3); Florida Statute §83.60 (2) & (5) as applied by the trial court, is unconstitutional under the Florida Constitution.

## **Statement of the Case and of the Facts**

Appellee, Symphony Builders at the Park LLC (“The Park”) conspired along with the trial court Judge, Jacqueline Joan-Marie Powell (“Powell”) and the Broward Sheriff Office (“Sheriff”) to execute a writ of possession they knew was premature and unlawfully obtained. I was the Appellee’s tenant and the target of the Appellee’s conspiracy with the Trial Judge and Broward Sheriff. The conspiracy proceeded from a previous fraudulent action (L.T. No. COCE24015944) voluntarily dismissed by Appellee in the lower tribunal on April 4, 2024, whereby the Appellee was seeking payments for rent that Appellee already made me pay in access before filing its complaint. The trial judge agreed to maintain and rule on a second eviction action (L.T. No. COCE24022908), disposed in favor of Appellee on June 5, 2024.

Appellee played at least four roles in the conspiracy. **First**, Appellee engaged in price gauging to raise my rent by \$500 from \$1,505, since June 1, 2021, to \$2,030 on December 1, 2022, and charged me multiple unjustifiable fees. **Second**, Appellee required that I pay \$3,096.75, in order for me to pay the rent for March 2024. **Third**, after making me overpay for March rent on March 14, 2024, Appellee filed a complaint (L.T. No. COCE24015944) on March 15, 2024, attempting to defraud the lower court by claiming that I owed \$2421.75 for February rent and full March rent when, in fact, I had previously paid Appellee in full \$2,322.74 for February rent on February 7, 2024, and \$3,096.75 for March rent. Appellee voluntarily dismissed that

complaint before hearing my motion to determine amount of rent to be paid alleging Appellee committed fraud. And **fourth**, Appellee again defrauded the lower court by filing another complaint for this case being appealed, falsely claiming that I owed Appellee \$2313.35 for failing to pay April rent when, in fact, I have previously paid Appellee and additional \$675 over for alleged attorney fees not awarded to Appellee by the lower court, which should have been refunded to me or discounted from April 2024 rent.

On June 5, 2024, clerk of court entered the trial court's Final June 4, 2024, Order for default judgment being appealed. I timely filed this Appeal on June 6, 2024.

### **Standard of Review**

Appellant Ask This Court to review the trial court's application of Florida Statute §83.60 Sections (2) & (5) *de novo* because it involves an issue of law. *Inmon v. Air Tractor, Inc.*, 74 So. 3d 534, 537 (Fla. 4th DCA 2011). Further, “[a]n appellate court must accept the facts alleged in the complaint as true when reviewing an order ... and all reasonable inferences must be drawn in favor of the pleader.” *Riverwalk at Sunrise Homeowners Ass’n, Inc. v. Biscayne Painting Corp.*, 199 So. 3d 348, 350 (Fla. 4th DCA 2016) (internal citations, modifications, and quotation marks omitted).

## Summary of the Argument

Appellee employed the lower tribunal to take advantage of Appellant's son diagnosis with Acute Lymphoblastic Leukemia ("ALL") on January 30, 2024, to fraudulently deprive Appellant of money and a place to stay to care for her sick child by defrauding the lower court to bring a follow-up defective retaliatory action and by conspiring with the trial judge and law enforcement to execute an unlawful premature writ of possession. The Lower Tribunal allowing Appellee to bring this unlawful retaliatory action (L.T. No. COCE24022908) before the court and waving proper pleadings filed and made by Appellant, while the trial judge files orders after hours to prematurely execute a writ of possession in favor of Appellee clearly shows the trial judge's bias against Appellant in violation Appellant's right to due process and access to the court. The court below ruled that, "A default is entered in this action against the Defendant(s), Vanessa Louis for failure to pay the sum of \$2030.00 (June rent) into the Registry of the Court as require by the law and the Court Order dated 05/08/2024." The said Court Order dated May 8, 2024, reads as follows:

That in accordance with Florida Statute 83.60 (2), The Defendant is hereby notified to pay into the registry of the Court the sum of \$2418.65, as accrued past due rent in the amount of \$2030.00 by 3:00pm Tuesday May 14, 2024, **AND \$2030.00 BY THE FIRST OF EACH MONTH AS THE RENT BECOMES DUE WHILE THIS CASE IS PENDING.** If Defendant(s) do not pay the rent into the Court Registry pursuant to this Order, all of the Defendant(s) defenses will be waived and Answer Stricken.

This reading of the statute, and its application at the pleadings stage, raises procedural, substantive, and constitutional errors. Section 83.60 (2) cannot provide unwarranted protection to landlords who commit fraud or act as a waiver to recovery for fraud victim tenants without violating the Florida Constitution. The Order reads Section 83.60 (2) in a manner that protects landlords who commit fraud and bars fraud victims from recovering. Because the said Order advances an unconstitutional reading of Section 83.60 (2), the Order should be reversed.

**1. The trial court below misapplied the Florida Statutes in its June 4, 2024, default judgment by ignoring fraud allegations that both continued into this eviction action being appealed and first arose during the previous eviction action by Appellee against Appellant.**

On June 7, 2024, this Honorable Court ordered that, “the trial court is directed to issue an order on appellant’s June 4, 2024, motion to stay within ten (10) days from the date of this order.” The fact that the lower tribunal complied with this Courts order to rule on my motion to stay, which it previously waived does not remove the fact that the lower tribunal violated my rights to due process of laws and access to the court during the proceedings in the lower tribunal. The lower tribunal ruled that, “the court is without discretion to stay the proceedings as defendant has failed to post the rents currently due into the court registry.”

**First**, when I filed the motion to stay on June 4, 2024, only one rent was in question and not multiple rents as implied. The lower tribunal ruling on my motion

to stay during the pleading stage would have required that the lower tribunal consider the appropriateness and conditions my motion at the time it was filed but her ruling on it after e-filing the final order on June 4, 2024, at 9:06pm (recorded by the Clerk of court 4:19 pm on June 5, 2024), granting the writ of execution on June 6, 2024, and being ordered to rule on my motion by this Court, changed the conditions and appropriateness of the urgency of my son's hospitalization with leukemia.

**Second**, the recovery that I was seeking by filing the motion to stay on June 4, 2024, which was enough time to recover and comply with the court order, had already been barred. Her denying the motion is not the issue here but simply waiving it along with all my other valid defenses made previously since May 8, 2024, is what I'm appealing here as abuse of discretion. This was a *prima facie* display of a violation my constitutional right due process of law and to be heard by a fair and impartial judge, requiring this Honorable Court to have to order her to rule on my motion to stay. Wherefore, I respectfully request that this Honorable Court not misconstrue my request for review of her denying my motion after the fact as abuse of discretion, but her waiving all of my defenses properly made and filed prior to and since May 8, 2024, as abuse of discretion.

This case was appealed to this Honorable Court not simply because the trial judge denied my motions but because she waived my common-law rights to be heard

on them without any public necessity to justify it. The trial judge's misapplication of the law here to justify her false claim that, "the court is without discretion" as a basis to inflict severe irreparable harm goes against the very foundation of the social contract of the United States and its citizens, providing that the laws of this Nation and this State are designed to protect its citizens from injustice and harm. This reading of the statute, and its application at the pleadings stage, raises procedural, substantive, and constitutional errors. The common law procedure is that "a stay of a final or non-final order is a discretionary decision of the trial court." *Open MRI of Okeechobee, LLC v. Aldana*, 969 So. 2d 589, 590 (Fla. 4<sup>th</sup> DCA 2007)

The trial judge certainly abused her discretion in choosing to waive all my defenses, when the law guarantees me a right to be heard. Without any overpowering public necessity, the court below nevertheless falsely claimed a lack of discretion justification, based on Florida Statute §83.60 Sections (2) & (5), to dispose the claims before it. It did so despite allegations that the Appellee below was unresponsive and silent when it had a duty to respond to the allegations of fraud and to speak up during the hearing to determine the amount of rent to be paid into the court registry. Where an attorney drafts an instrument with a view towards the client's future reliance on that instrument, the duty to speak continues until the event contemplated by the instrument. *McAbee v. Edwards*, 340 So. 2d 1167, 1170 (Fla. 4<sup>th</sup> DCA 1976); *Ambrose v. Catholic Soc. Servs., Inc.*, 736 So. 2d 146, 149 (Fla. 5<sup>th</sup>

DCA 1999). The court below erred by rejecting this body of Florida law and instead applying a hard deadline—the first of each month—when even the Appellee’s lease agreement with Appellant granted Appellant a 3-to-7-day grace period.

Judge Powell knew that hearing my motion to stay even if denied could have given me enough time to recover from the hospitalization of my son, so I could make a deposit into the court registry. So rather than considering the conditions and appropriateness my motion or even hearing it, she waived my pleading to deny me due process. In this case I was not refusing to pay or comply with the court order. I was simply asking due time to recover from my son’s medical condition to be able to continue to pay into the court registry as I did previously. No one would have been harmed by granting the stay. On the contrary, I had to take days off from work to care for my sick child at the hospital to compose pleadings for the court. My sick child’s wellbeing would have been secured while I continue to comply with the court order. By waiving my common-law rights without any public necessity to justify it, especially given the severe condition of my son under the circumstances, Judge Powell’s interpretation and application of the law was malicious and unconstitutional. For this reason alone, the Order should be reversed.

**2. A review of the actual date of filing of the conformed copy of the June 4, 2024, default judgment for eviction being appealed, filed by Appellant as Ordered by the Honorable Court will show that the lower tribunal's order was premature and therefore reversible.**

On June 10, 2024, the Honorable Court “ORDERED that appellant is directed to file, within fifteen (15) days from the date of this order, a conformed copy of the June 4, 2024, default judgment for eviction being appealed.” I have complied with the Court’s order and the record clearly shows that the trial judge went out of her way to enter the order after business hours at 9:06pm on June 4, 2024, which was not recorded by the Clerk of court until 4:19pm on June 5, 2024. Judge Powell was clearly working overtime to expedite orders in favor of Appellee to further violate my due process right to appeal her unlawful order before she granted Appellee the writ of possession. This clearly illustrated the extent of Judge Powell’s bias and antagonism against me in favor of the Appellee. A review of the actual date of filing of the conformed copy of the June 4, 2024, default judgment for eviction being appealed, filed by Appellant as Ordered by the Honorable Court will show that the lower tribunal order was premature and therefore reversible. *Alexander Hamilton Corp. v. Leeson*, 508 So. 2d 513, 513 (Fla. 4th DCA 1987). Judge Powell also denied the verbal motion for recusal I made in court despite her openly displaying a clear and apparent bias prejudice against me in favor of Appellee on May 7, 2024, at the hearing for my motion to determine the amount of rent to be paid. She denied it without even considering of her clear and apparent bias.

**3. Florida Statute § 83.60 Sections (2) & (5) are unconstitutional because they enable price gauging landlords, who commit fraud to use the courts and law enforcement to evict tenants targeted by such fraud and bars fraud victims from recovering.**

Sections § 83.60 (2) & (5), as interpreted by the lower tribunal's order violates the Florida Constitution both as applied and on its face. Article I, Section 21, of the Florida Constitution guarantees access to the courts: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Ordinarily, a statute abolishing a preexisting common-law right to recovery violates this guarantee "unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown." *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973). Providing unique timeliness conditions to protect entities, who commit fraud falls well short of "an overpowering public necessity." Fraud is so disfavored in Florida that "an insurer is not liable to indemnify the insured for losses directly incurred by the fraud or misconduct of that insured." *Everglades Marina, Inc. v. Am. E. Dev. Corp.*, 374 So. 2d 517, 519 (Fla. 1979). Sections §83.60 (2) & (5) cannot provide unwarranted protection to landlords, who commit fraud or act as a waiver to recovery for tenants from such fraud without violating the Florida Constitution. The order reads Sections §83.60 (2) & (5) in a manner that protects landlords who commit fraud and bars fraud victim tenants from recovering and should be reversed.

### **Conclusion**

The June 4, 2024, order is procedurally premature, rests on a misreading of Section 83.60 (2) and advances an unconstitutional reading of Sections §83.60 (2) & (5). For these reasons, the June 4, 2024, order of the lower tribunal should be reversed, and this cause remanded to the County Court, with directions to reinstate the stay, undue the writ of execution and to return possession of the unit in question to Appellant(s) and to grant other just relief necessary to preserve the *status quo* pending the resolution of this case, until further order of the Court.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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Coral Springs, Fl 33065

### Certificate of Service

I certify that, on this September 19, 2024, I served this document and any attachments or accompanying appendices by e-service on:

- For Appellants:  
Vanessa Louis, *pro per*  
3850 NW 115<sup>th</sup> Avenue  
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- For Appellee:  
Symphony Builders at the Park LLC dba The Park  
c/o Law Offices of Lowenhaupt Sawyers and Spinale  
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Email: [pleadings@fl-landlord.com](mailto:pleadings@fl-landlord.com)
- All other individuals listed on the Portal for service in this case, at their corresponding e-mail addresses.

\_\_\_\_\_/s/\_\_\_\_\_  
Vanessa Louis, *pro per*

### Certificate of Compliance

I certify that this document complies with Rule 9.210, Fla. R. App. P.

\_\_\_\_\_/s/\_\_\_\_\_  
Vanessa Louis, *pro per*