

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

JOSEPH RAINIER,

Appellant,

CASE NO. - 4D2023-3099

vs.

L.T. No. - CACE 21-13927

LAURA FISH, et.al.,

Appellees,

On Appeal from a Final Order of the Circuit Court of the Seventeenth Judicial
Circuit, Broward County, Florida

ANSWER BRIEF

_____/s/_____
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SUMMARY OF ARGUMENT

The Trial Court did not err in granting the Appellees motion to dismiss the appellant's third amended complaint wherein the appellant alleged that he was a former owner of a unit in a condominium association and by appellant alleging as such created the existence of an affirmative defense of lack of standing and as a result the Trial Court was justify in considering the affirmative defense of lack of standing in granting the appellees motion to dismiss.

ARGUMENT

I. Whether or not the Trial Court erred when it considered the affirmative defense of lack of standing in a Motion to Dismiss.

"In determining whether to dismiss a complaint for lack of standing, [the court] must confine [its] review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pled allegations in the complaint as true." *Llano Fin. Grp., LLC v. Yespy*, 228 So.3d 108, 111 (Fla. 4th DCA 2017) (quoting *Gordon v. Kleinman*, 120 So.3d 120, 121 (Fla. 4th DCA 2013). "Generally, dismissals with prejudice based upon the affirmative defense of a lack of standing are not proper. *Lawson v. Frank*, 197 So.3d 1269, 1271 (Fla. 2d DCA 2016).

"However, '[i]f the face of the complaint contains allegations which demonstrate the existence of an affirmative defense, then such a defense may be considered on a motion to dismiss.' *Papa John's Int'l, Inc. v. Cosentino*, 916 So.2d 977, 983 (Fla. 4th DCA 2005).

Appellant in paragraph two of his Third Amended Complaint alleges that he was a former owner of unit 715 at the condominium known as Hillsboro Windsor. Appellant by alleging the forgoing created the existence of an affirmative defense of lack of standing. As result of the Appellant's allegation, it was proper for the trial court to consider the affirmative defense of lacking of standing in the Appellees Motion to Dismiss the Third Amended Complaint. (See A. 30).

II. Appellant, as a former owner of real property, does not have standing to bring suit against Appellees, his former neighbors.

Notwithstanding the fact that Appellant is no longer a unit owner at the condominium known as Hillsboro Windsor, Appellant in its third amended complaint cites to *Reaver v. Martin Theaters of Florida Inc.*, 52 So.2d 682 (Fla.1951) and *Roebuck v. Sills*, 306 So.3d 374 (Fla. App. 2020) to argue that the Appellant has standing to bring suit against the Appellees. However, as stated by the Appellees their Motion to Dismiss the Third Amended Complaint, in the above cited cases the Plaintiffs in both cases

were owners of the real property and as a result they had standing to bring suit. As Appellant correctly states in his brief the Trial Court was unable to find any case wherein a formal owner had standing to bring suit (See A. 56). In addition, the Appellees have also been unable to find any cases where a former owner had standing to bring suit.

CONCLUSION

The Appellant alleged in his Third Amended Complaint that he was a former owner of a unit at a condominium association known as Hillsboro Windsor. As result, the Appellant made evident the existence of the affirmative defense of lack of standing. As such it was proper for the Trial Court to consider the affirmative defense in the Appellees Motion to Dismiss the third Amended Complaint for lack of standing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing was electronically filed through the Florida Courts E-portal on May 1, 2024, to Thomas W. Walters, P.A. 499 E. Palmetto Park Road, Suite 209, Boca Raton, FL 33432 email: twwlaw1@gmail.com.

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CERTIFICATE OF COMPLIANCE

Counsel for Appellee, Mario D. German, Esq., certifies that this pleading has been prepared in Ariel, 14-point font, and has not exceed the word count limits in compliance with the requirements set forth in Florida Rule of Appellate Procedure 9.045(b) and 9.210 (a)(2)(B).

_____/s/_____

Mario D. German, Esq.
Attorney for Appellees