

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

BETH SAFFER and ARTHUR ROBINS,
individually and on behalf of others similarly
situated,

Plaintiffs,

Case No.: 50-2023-CA-015733

v.

SANDRA KLIMAS, ROBERT THOM, aka
ROB THOM, ANTHONY DiGENNARO,
ROBERT STERN aka BOB STERN,
THOMAS ALDRIDGE, ROCHELLE
COHEN, YAHUDA ISRAEL, aka JANICE
SMITH aka TIRTZHAH ISRAEL,
CHARLES COHN, NUMBER 2
CONDOMINIUM ASSOCIATION - PALM
GREENS AT VILLA DEL RAY, INC.,
BECKER BALLOT, aka
BECKERBALLOT.COM, and BECKER &
POLIAKOFF, P.A.,

Defendants.

**TIRTZHAH ISRAEL AND CHARLES COHN'S MOTION TO DISMISS PLAINTIFFS'
VERIFIED FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR
JURY TRIAL**

Defendants, TIRTZAH ISRAEL¹ and CHARLES COHN (hereinafter "Defendants"), by
and through their undersigned counsel, hereby move to dismiss Plaintiffs' Verified First Amended
Class Action Complaint and Demand for Jury Trial (hereinafter "Amended Complaint"). Plaintiffs'
Amended Complaint consists of a convoluted and hopeless mess of baseless facts, vague
generalities, sweeping assertions, and incomprehensible legal jargon that expressly violates the

¹ Plaintiffs spelled Ms. Israel's name improperly. Her name is spelled Tirtzah Israel. Plaintiffs also assert that Ms. Israel is also known as Yahuda Israel and also known as Janice Smith. Defendants assume that Plaintiffs' use of the "aka" designation means that Plaintiffs intend to bring some cause of action against Ms. Israel but are somewhat confused as to her proper name and did not intend to bring separate causes of action against Mr. Israel and/or Ms. Smith.

Florida Rules of Civil Procedure. As has been pointed out in other motions to dismiss, Plaintiffs Amended Complaint is so poorly drafted that it can only be described as an obtuse recitation of ill-defined grievances without a clear recitation of what role, if any, Defendants played in those grievances. Indeed, Plaintiffs fail to even allege what role, if any, Defendants hold within the Association's community.

In the interest of brevity and judicial economy, Defendants adopt and incorporate the arguments previously raised by Defendants Sandra Klima, Robert Thom, Anthony Digennaro, and Robert Stern in their Motion to Dismiss, which was filed on February 5, 2024. In addition to the arguments raised in the February 5, 2024, Motion to Dismiss, Defendants state as follows:

PLAINTIFFS' AMENDED COMPLAINT IS LEGALLY AND FACTUALLY DEFICIENT, VAGUE, AND VOLATILE OF THE FLORIDA RULES OF CIVIL PROCEDURE

On the face of the Amended Complaint, it is unclear why Defendants have been sued by Plaintiffs. In reality, it is even less evident why Plaintiffs believe Defendants have committed any wrongs against Plaintiffs. Defendant CHARLES COHN served as Defendant NUMBER 2 CONDOMINIUM ASSOCIATION - PALM GREENS AT VILLA DEL RAY, INC.'s (the "Association") Treasurer from January 6, 2024 – January 23, 2024. During his short tenure, MR. COHN, never signed an invoice or attended an Association meeting. Yet, because MR. COHN had a meeting with Plaintiff ARTHUR ROBINS, MR. COHEN is named in this lawsuit but has been provided no clarity as to the grounds for his involvement.

MS. ISRAEL previously served on the Association's Board of Directors in 2020 and 2021. MS. ISRAEL also volunteered to read out questions at a candidate forum prior to an election to the Association's Board. MR. ROBINS happened to be one of the candidates running for election, but ultimately lost that election. As is the case with MR. COHEN, there are no specific and

individualized facts that would allow MS. ISAREL to understand why she has been named in this lawsuit.

Plaintiffs' ultimate theory of the case may be hidden somewhere within the eighty-seven (87) run-on paragraphs spanning the fifty-three (53) pages that make up the body of the Amended Complaint, but it cannot be surmised or summarized in any concise or cohesive manner because the entirety of Plaintiff's Amended Complaint is legally and factually deficient. Even more troublesome is Plaintiffs' inability to identify what role, if any, a former director that held the position for 17-days and a former director who has not held a position of leadership within the community since 2021, played in the whole dispute, which appears to be ongoing.

The only real conclusion that can be surmised from a review of Plaintiffs' Amended Complaint is the same conclusion that was surmised from a review of Plaintiffs' original Complaint, that Plaintiffs are displeased with the management of the Association, their condominium association which they have also sued, over which Defendants have no involvement in, and are attempting to assert some causes of action to express their displeasure. In doing so, Plaintiffs paint a confusing, disjointed, and altogether vague picture of theft, mismanagement, malfeasance, and fraud but fail to support those egregious claims with anything more than conclusory allegations and speculative fiction without any clear direction of who did what.²

While Plaintiffs appear gravely unhappy, it is entirely unclear what Plaintiffs allege Defendants did that caused them to be unhappy that would lead to a cognizable cause of action. While Plaintiffs generally allege Defendants were engaged in a conspiracy to defraud (Count I),

² While not relevant to this Motion to Dismiss, it is worth stating that the parties have started discovery concerning Defendants' alleged malfeasance. Plaintiffs have deposed four (4) persons before Israel and Cohn were served with the Amended Complaint. To date, they have obtained no meaningful testimony that would warrant any support to Plaintiffs' claim. Thus, it may be that Plaintiffs' Amended Complaint is intentionally confusing, disjointed, and vague to hide the fact that there are no facts to support the bombastic conclusions set forth in the Amended Complaint.

there is no underlying independent tort of fraud, which by itself is fatal to Plaintiffs' Amended Complaint and warrant dismissal.

Recognizing that Plaintiffs generally allege a conspiracy to commit fraud against Defendants, it is wholly unclear what wrongs Plaintiffs believe Defendants committed, and how those wrongs were committed. How are Defendants "mismanaging and misusing assets" of the Association? *See* Plaintiffs' Amend. Compl., ¶ 29. How is MR. COHN being appointed as the Association's Treasurer, even if we assume it was done improperly, an act of conspiracy? *See* Plaintiffs' Amend. Compl., ¶ 30. What specific acts or omissions of Defendants constituted fraud or the conspiracy to commit fraud? How is supporting "the fiduciaries" considered aiding and abetting a breach of fiduciary duty? *See* Plaintiffs' Amend. Compl., ¶ 80. Simply put, there is no clear and plain statement of the allegations against Defendants.

The answers to these questions are necessary not only to afford Plaintiffs the possibility of alleging a cognizable cause of action against Defendants for purported fraud, but they are required to be answered to allow Defendants the opportunity to properly defend themselves in this lawsuit. Indeed, some of these questions may result in this Court not having jurisdiction (i.e. whether the November 2023 Budget meeting was noticed properly and whether the Number 2 Association complied with its obligations pursuant to Fla. Stat. 718 to provide access to its Official Records upon a lawful request). And as to the November 2023 budget meeting, how are Defendants—who held no position on the Association Board at that time—implicated in that alleged wrong.

To plead allegations of fraud, Plaintiffs are required to plead with a much greater level of specificity than is currently pled in Plaintiffs' Amended Complaint. Indeed, Plaintiffs have the requisite tools to have the necessary information to survive this pleading standard. Both MR. ROBINS and MS. SAFFER are Members of the Association, giving them the ability to request

and inspect any and all Official Records of the Association. Moreover, MR. ROBINS was President of the Palm Greens at Villa Del Ray Recreation Condominium Association, Inc. Surely, as the President of that association, he had access to more fact specific information that would allow Plaintiffs to properly plead a cause of action for fraud.

Plaintiffs are also pursuing this action on a prospective class basis, but their proposed class does not meet the standards set forth in the Florida Rules of Civil Procedure.

In sum, Plaintiffs' Amended Complaint fails to meet the appropriate pleading standards and warrants dismissal. In support thereof, Defendants state as follows:

RELEVANT FACTUAL BACKGROUND

1. The Amended Complaint is replete with vague and general allegations of theft, conspiracy, fraud, mismanagement, malfeasance, and self-dealing without providing the requisite level of specificity or detail that would allow Defendants to even comprehend the basis of Plaintiffs' claims, much formulate an appropriate response thereto.

2. For example, Plaintiffs allege MS. ISRAEL worked closely "with the Defendants to cover up previous wrongful accounting or wrongful fiscal facts or practices...." Amend. Compl. ¶ 30. What accounting practices? Worked closely with who? Plaintiffs, as members of the Association, have access to the Association's yearly finances and should be able to plead these allegations with greater specificity.

3. Plaintiffs further allege that MS. ISRAEL has engaged in "acts and omissions," without providing any specificity of what MS. ISRAEL did or failed to do. Amend. Compl. ¶ 35.

4. Plaintiffs further allege that MS. ISRAEL was “rude” to Plaintiff MR. ROBINS and “cut him off” in order to prevent the dissemination of “truthful information.”³ Amend. Compl. ¶ 67.

5. Concerning MR. COHN, Plaintiffs allege MR. COHN is a “minion of Thom and Klimas” and improperly accepted the Treasurer position in violation of the Association’s Governing Documents. Amend. Compl. ¶ 30.

6. Adding further confusion, Plaintiffs regularly utilize the term “Defendants” without providing clarity who was involved in any specific acts or omissions. Thus, it is not evident what Defendants did, or did not do, that Plaintiffs allege constitute a legal wrong.

7. Even more confusing is the inclusion of Number 1 Condominium Association – Palm Greens at Villa Del Ray, Inc., which is listed as a proposed putative class member, as well as a potential victim of Defendants’ actions, when the named Plaintiffs and Defendants are all current and former members of the Number 2 Association. Amended Complaint ¶ 38, 75. There are no facts alleged that connect Defendants with Number 1 Condominium Association – Palm Greens at Villa Del Ray, Inc.

8. Plaintiffs’ class action allegations are especially egregious because while they are couched as “Questions of law and fact,” Plaintiffs’ allegations in Paragraph 42 of the Amended Complaint are simply a recitation of Plaintiffs’ outlandish theories pled without basis or support for why this Court should be concerned with these “questions.”

9. For example, Plaintiffs allege that they seek to answer the question of “Whether Defendants have assisted in implementing an ongoing policy, practice and current intention of

³ Defendants will also note that Plaintiffs have failed to set forth what specific “truthful information” MR. ROBINS was not able to provide the Association’s members at the meeting at issue. Furthermore, Plaintiffs and their counsel routinely send email blasts to residents of the Associations and any “truthful information” that was allegedly blocked from dissemination by MS. ISRAEL could have been shared in those email blasts.

secretly forcing votes and compliance from other Florida juridic entities they do not control, for the purpose of engaging in a scheme to wrestle control from Plaintiffs and the putative Class of the Palm Greens Real Estate.” Amended Complaint ¶ 35.

10. This allegation is pure fluff because Plaintiffs provide no factual basis for why they believe Defendants are allegedly “secretly forcing votes and compliance,” do not identify these “other Florida juridic entities,” or what specific assets Defendants are attempting to wrest control of.

11. Plaintiffs also allege that they seek to answer the question of “Whether the Defendants have assisted in implementing an ongoing policy, practice and current intention of threatening elderly homeowners or other members of the Class in order to further the Defendants schemes set forth in this First Amended Complaint.” Amended Complaint ¶ 42.

12. Not only do Plaintiffs fail to allege even a single incident of any of the Defendants “threatening elderly homeowners or other class members,” nowhere in Plaintiffs’ fifty-three (53) page Amended Complaint do Plaintiffs clearly and adequately explain what this alleged scheme is, or was, supposed to accomplish. Moreover, it is inherently unclear how any threat, even if true, would rise to the level of fraud, conspiracy to commit fraud, and/or a breach of Defendants’ fiduciary duty.

13. Plaintiffs conclude with a vague and unclear cause of action for a temporary, preliminary, and permanent injunction against all of the Defendants. Amended Complaint, Count IV. Here, in addition to the conclusory and fact-less allegations, Plaintiffs allege all of the Defendants engaged in “ongoing rigged elections,” which may somehow cause the Association to be thrown into bankruptcy. Amended Complaint ¶ 83.

14. Plaintiffs, kitchen-sink injunction count generally alleges issues with all of the Defendants “failing to provide equal voting mechanisms,” and other issues with Association elections, without articulating the wrongs each of the defendant allegedly committed, and what election Plaintiffs believe occurred improperly.⁴

15. Notwithstanding the factual infirmities that blanket Plaintiffs’ Amended Complaint, Plaintiff’s Amended Complaint fails to assert legal causes of action that can be maintained.

16. As such, Plaintiffs’ Amended Complaint must also be dismissed as more fully set forth below.

MEMORANDUM OF LAW

I. Standard for Granting a Motion to Dismiss

“The purpose of a complaint is to advise the Court and the defendant of the nature of a cause of action asserted by the Plaintiff.” *Connolly v. Sebeco, Inc.*, 89 So. 2d 482, 483 (Fla. 1956). The complaint must allege sufficient ultimate facts to show that Plaintiff is entitled to relief. *See Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 495 (Fla. 4th DCA 2001). The basic purpose of a motion to dismiss is to test the overall sufficiency of the complaint to state a claim upon which relief can be granted. *See Augustine v. Southern Bell Tel. & Tel. Co.*, 91 So. 2d 320, 323 (Fla. 1956). When the ultimate facts alleged, if proven, would not establish a cause of action for which relief may be granted, a plaintiff’s cause of action must be dismissed. *Newton v. Davis Transport & Rentals, Inc.*, 312 So. 2d 200, 201 (Fla. 1st DCA 1975).

In evaluating whether a motion to dismiss should be granted, the court’s review is limited to the four corners of the complaint. *See Hewett-Kier Const., Inc. v. Lemuel Ramos and Associates*,

⁴ When Plaintiffs filed their Amended Complaint, the Number 2 Association was in the process of conducting elections, which occurred over several weeks. As the election was ongoing, and thus not complete, it is unclear how Plaintiffs could meaningfully believe the election process, which was ongoing, would have issues.

Inc., 775 So.2d 373, 375 (Fla. 4th DCA 2000). The Court must also consider the documents attached to the Complaint as exhibits in ruling on a motion to dismiss for failure to state a cause of action. If an attached document, or a part of it, negates the pleader's cause of action, the claim should be dismissed for failure to state a cause of action. *Harry Pepper & Associates, Inc., v. Lasseter*, 247 So. 2d 736 (Fla. 3d DCA 1971); *see also Merkle v. Health Options, Inc.*, 940 So. 2d 1190, 1199 (Fla. 4th DCA 2006) ("If an exhibit facially negates the cause of action asserted, the document attached as an exhibit control and must be considered in determining a motion to dismiss.").

Additionally, "[w]hile there is no magical number of amendments which are allowed, [the Third District Court of Appeal has] previously observed that with amendments beyond the third attempt, dismissal with prejudice is generally not an abuse of discretion." *Kohn v. City of Miami Beach*, 611 So. 2d 538, 539 (Fla. 3d DCA 1992). The Amended Complaint represents Plaintiffs' second attempt to state a cognizable cause of action.

II. Plaintiffs' Amended Complaint Runs Afoul of Fla. R. Civ. P. 1.110(b)

Fla. R. Civ. P. 1.110(b) states in part that a complaint "shall contain ... (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief..." Flying in the face of the requirement to put forth "short and plain statements" in their operative pleading, the Amended Complaint contains numerous paragraphs that span multiple pages.

For example, Amended Complaint ¶ 11 spans 46 lines over 3 pages; ¶ 30 spans 58 lines over 3 pages; ¶ 34 spans 35 line over 2 pages; ¶ 36 spans 31 lines over 3 pages. In answering a pleading, Defendants are required to comply with Fla. R. Civ. P. 1.110(c) which states that in an "answer a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies." However, Defendants cannot respond to such a convoluted pleading and abide by the directives of Fla. R. Civ. P. 1.110(c).

As such, Plaintiffs' Amended Complaint be dismissed on this basis alone and Plaintiffs be required to set forth a pleading which complies with the requirements of Fla. R. Civ. P. 1.110. See *Harrison v. Stratos*, 326 So. 3d 702, 703 (Fla. 4th DCA 2021) ("The amended complaint in this case is 87 pages long and contains 470 numbered paragraphs. There is plenty of surplusage in it, which makes it difficult for both opposing counsel and the courts to discern the issues raised and the sufficiency of the pleading. Were appellants to file a motion to strike, the court could in its discretion require Stratos to eliminate the dross contained in her lengthy and in artfully drawn 87-page complaint, or to recast her initial complaint.") (Internal quotations omitted.)

The Authors' Comment – 1967 to Fla. R. Civ. P. 1.110(b) further states that "Under the Florida Rule, vague and loose pleading will not be permitted." Plaintiffs' Amended Complaint is the very definition of a "vague and loose pleading." As set forth above, Plaintiffs' Amended Complaint speaks at length but says very little, if anything. It is indeed a textbook example of a vague and loose pleading that is designed only to frustrate Defendants' ability to adequately assess and respond to the charges levied against them.

Furthermore, despite now naming eight (8) distinct individuals as defendants, Plaintiffs' Second Amended Complaint routinely treats them identically and/or interchangeably, and Plaintiffs are impermissibly comingling their allegations and claims against the individual defendants. "Commingling various claims against all defendants together may also warrant dismissal of a complaint." *Collado v. Baroukh*, 226 So. 3d 924, 927 (Fla. 4th DCA 2017). It is patently unclear what act or omissions Defendant is alleged to have committed. Plaintiffs Amended Complaint fails to artfully detail what wrong each defendant did, and how any of the other co-defendants conspired with Defendants.

Additionally, Plaintiffs are once again improperly comingling their causes of action. Count I, which is a purported claim for Conspiratorial Scheme to Defraud and Deceive Against all Defendants Except Becker and the Association, is included in Count II, which is a purported claim for Breach of Fiduciary Duty Against All Defendants Except Becker and the Association. *See* Amended Complaint ¶ 74. Both Counts I and II are included in Count III, Plaintiffs' purported claim for Aiding and Abetting Breaches of Fiduciary Duty Against the Becker Law Firm, Becker Ballot, Israel, Aldridge and Cohn. *See* Amended Complaint ¶ 78. Finally, Counts I, II, and III are included in Count IV, Plaintiffs' purported claim for Temporary, Preliminary and Permanent Injunctive Relief Against All Defendants. *See* Amended Complaint ¶ 82.

Florida Rule of Civil Procedure 1.110(f) states:

All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matters set forth.

Here, Plaintiff is plainly violating the pleading requirements as outlined by the Florida Rules of Civil Procedure by not averring his claims against each defendant separately and as limited as far as practicable. When a complaint alleges more than one cause of action in one count, an order compelling separate statements is the proper course of action. *See Sikes v. Seaboard Coast Line Railroad Co.*, 429 So. 2d 1216, 1218 (Fla. 1st DCA 1966) (construing predecessor to Fla. R. Civ. P. 1.110(f) with similar language); *Arcade Steam Laundry v. Bass*, 159 So.2d 915, 917 (Fla. 2nd DCA 1964 (same)).

As currently pled, not only are Defendants wholly unable to understand Plaintiffs' allegations because of vagueness, obtuseness, and the absence of ultimate facts, but each individual Defendant is unable to respond to Plaintiffs' allegations because it is not clear which actions

Plaintiffs allege each Defendant took against Plaintiffs. Plaintiffs should be required to amend their Amended Complaint and allege, in separate counts, which actions taken by each Defendant constitutes an alleged wrong against Plaintiffs. As such, Plaintiffs' Amended Complaint must be dismissed as currently pled.

III. Defendants are Statutorily Immune from Suit

Under Florida law, "condominium association directors are immune from liability in their individual capacity, absent fraud, criminal activity, or self-dealing/unjust enrichment. Florida condominium associations are just one classification of Florida corporations and are governed by several chapters of the Florida Statutes." *Perlow v. Goldberg*, 700 So. 2d 148, 149 (Fla. 3d DCA 1997).

The Condominium Act, the Florida Business Corporation Act, and the Florida Not For Profit Corporation Act all "control the actions and governance of condominium associations and address the liability of the associations' directors. Each of these three [Acts] requires more than simple negligence before personal liability for monetary damages attaches. See § 617.0834(1), Fla. Stat. (1995); 1 § 607.0831(1), Fla. Stat. (1995); 2 § 718.303(1)(d), Fla. Stat. (1995)." *Id.*

Indeed, "the statutory purpose of chapters 617 and 607, Florida Statutes (1995), [] is to shield condominium association directors from individual liability in instances of negligent management." *Id.* at 150 (Fla. 3d DCA 1997). It is well established in Florida that "[a]bsent fraud, self-dealing, criminal activity, or betrayal of trust, directors of associations are not personally liable for the decisions they make in their capacity as directors." *Share v. Broken Sound Club, Inc.*, 312 So.3d 962, 971 (Fla. 4th DCA 2021) (citing *Sonny Boy, L.L.C. v. Asnani*, 879 So. 2d 25, 27 (Fla. 5th DCA 2004). Even with this exemption in place, Florida law goes further. To encourage volunteers to serve on the board of directors of non-profit corporations without fear of debilitating legal fees, Florida law also requires non-profit corporations to indemnify directors in most

instances. *See* Fla. Stat. § 607.0852, *et seq.* This right to indemnification attaches even where a director is seeking indemnification from a corporation for an action brought against the director by the corporation itself. *See Wendt v. La Costa Beach Resort Condo. Ass’n*, 64 So. 3d 1228, 1230-31 (Fla. 2011).

Here, it is wholly unclear what wrongs Plaintiffs complaint about, and when those wrongs occurred. Meanwhile Defendants have both served on the Association’s Board at various times, but Plaintiffs fail to distinguish when they were acting as a Board Members or as non-Board Members. This distinction is critical because it would dictate the standard Plaintiffs need to establish to impose liability on Defendants. As more fully set forth above, Plaintiffs have not even adequately alleged a basis for liability for negligent management, much less a proper claim for fraud, criminal activity, or self-dealing/unjust enrichment. While Plaintiffs no doubt allege conclusory statements that state Defendants engaged in fraud, by failing to comply with the “short and plain statement” pleading requirement for alleging fraud, it cannot be meaningfully said that Plaintiffs have properly alleged an adequate basis to overcome this hurdle. Should Plaintiffs plead cognizable facts that would satisfy the pleading standards to assert a cause of action for fraud, then this case could proceed. Until such a time, however, and lacking specific factual allegations showing fraud, criminal activity, or self-dealing, Plaintiffs’ Amended Complaint must be dismissed as a matter of law.

IV. Proposed Class is Vague, Ill Defined, and Lacks Clarity, Warranting Dismissal.

Florida Rule of Civil Procedure 1.220(c)(2)(D) requires a Pleading that seeks to allege a class action to include a “definition of the alleged class.” Florida’s pleading requirements also require Plaintiffs to allege a “short and plain statement of the ultimate facts showing that the pleader is entitled to relief.” Fla. R. Civ. P. 1.110(b). “Generally, pleadings are sufficient if they

inform the defendant of the nature of the cause against him.” *Wells v. Brown*, 303 So.2d 395, 396 (Fla. 2nd DCA 1974). It is axiomatic that Defendants must have notice about what it is being sued for and who is suing it. Here, such basic information is not fully contained in Plaintiffs’ Amended Complaint.

In reviewing Plaintiffs’ Amended Complaint as it relates to Plaintiff’s various class action allegations, it is unclear whether Plaintiffs are seeking to certify a class of past and current unit owners just from May 20, 2021, through present, present unit owners, or individuals and entities that owned units in the Association during some other timeframe Plaintiffs may arbitrarily choose. For example, in one sub-part of Amended Complaint ¶ 38, Plaintiffs define the class as “current members of the Association” but in another subpart, Plaintiffs define the class as “[a]ll individuals (or their guardians or representatives) who were previously members of the Association or any other similar condominium association during a time when the acts and omissions set forth in this First Amended Complaint were hidden and concealed from them to their financial detriment.” (Emphasis added).

As such, because Plaintiffs’ Amended Complaint fails to comply with yet another basic pleading requirement, this Court should dismiss Plaintiffs’ Amended Complaint as currently pled.

V. Plaintiffs’ Individual Claims Also Fail as A Matter of Law

Notwithstanding the fact that Plaintiffs’ Amended Complaint must be dismissed in its entirety as it runs afoul of Fla. R. Civ. P. 1.110(b), Plaintiffs’ Amended Complaint cannot overcome Defendants’ statutory immunity, and Plaintiffs failure to even allege compliance with multiple conditions precedent, the individual counts of Plaintiffs’ Amended Complaint also fail as a matter of law. Defendants will address the specific failures of the individual counts in Plaintiffs’ Complaint in turn.

a. Count I – Conspiratorial Scheme to Defraud and Deceive Against all Defendants Except Becker and the Association

Plaintiffs’ first claim appears to be a claim for conspiracy to commit fraud, but Plaintiffs have not alleged any underlying count for fraud. “Under Florida law, there is no freestanding cause of action for a civil conspiracy. Thus, to state a claim for a civil conspiracy, the plaintiff must allege and underlying independent tort. The conspiracy is merely the vehicle by which the underlying tort was committed. Where the counts regarding the goals of the conspiracy fail, the conspiracy count must also fail. Here, the district court properly dismissed with prejudice these counts because, as explained above, his underlying constitutional and state law tort claims already fail.” *Holston v. Dawson*, 22-11198, 2023 WL 7485227, at *8 (11th Cir. Nov. 13, 2023) (Internal quotations and citations omitted). See also *Tejera v. Lincoln Lending Services, LLC*, 271 So. 3d 97, 103 (Fla. 3d DCA 2019) (“A final legal principle applies to our analysis: There is no freestanding cause of action in Florida for ‘civil conspiracy.’ In order to state a claim for civil conspiracy, a plaintiff must allege an underlying independent tort. The conspiracy is merely the vehicle by which the underlying tort was committed, and the allegations of conspiracy permit the plaintiff to hold each conspirator jointly liable for the actions of the coconspirators.”)

Plaintiffs’ failure to allege an independent cause of action for fraud is likely because Plaintiffs know they cannot comply with the requirements of Fla. R. Civ. P. 1.120(b). Per Fla. R. Civ. P. 1.120(b), “all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with such particularity as the circumstances may permit.” See *Cedars Healthcare Group, Ltd. v. Mehta*, 16 So. 3d 914, 917 (Fla. 3d DCA 2009) (“The factual basis for a claim of fraud must be pled with particularity and must specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made.”) *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 238 (Fla. 5th DCA 1991). (“The fraud claim in the amended

complaint does no more than identify the subject matter of the alleged false representations of fact. The trial court plainly erred in failing to require appellees' compliance with Florida Rule of Civil Procedure 1.120(b) by granting appellants' motion to dismiss.") (Affirmed on other grounds.)

Even if Plaintiffs take the position that there are enough facts alleged in the Amended Complaint to satisfy Fla. R. Civ. P. 1.120, there is no denying the fact that Plaintiffs simply do not allege an underlying claim for fraud. As such, Count I of Plaintiffs' Amended Complaint must be dismissed.

b. Count II and Count III – Breach of Fiduciary Duty Against all Defendants Except Becker and the Association and Aiding and Abetting Breaches of Fiduciary Duty

To properly state a claim for breach of fiduciary duty against individual board members, a complaint is required to allege specific facts showing that there was some "crime, fraud, or self-dealing committed by these directors, [or] were they unjustly enriched." *Perlow v. Goldberg*, 700 So. 2d 148, 150 (Fla. 3d DCA 1997). As set forth above, Plaintiffs' Amended Complaint has failed to allege any crime, fraud, or self-dealing on part of the Defendants with a level of specificity required by the Florida Rules of Civil Procedure. Moreover, Plaintiffs fail to allege why Defendants—current and former board members to the Number 2 Association—owe(d) any fiduciary duty to the Number 1 Association and/or the Recreational Association that would allow this case to proceed any further. There being insufficient allegations establishing a fiduciary relationship, a breach cannot be established. Dismissal is appropriate.

Not only do Plaintiffs assert that Defendants breached their fiduciary duty—without properly alleging a fiduciary duty even exists—but then Plaintiffs allege that Defendants aided and abetted the breach of that fiduciary duty. Furthermore, Plaintiffs' allegations supporting the same are largely premised upon Plaintiffs' "information and belief," which is not appropriate. *Ballinger v. Bay Gulf Credit Union*, 51 So.3d 528, 529 (Fla. 2nd DCA 2010) (holding that allegations based

“on information and belief” are qualified and would not be sufficient evidentiary support to entitle a party to relief.). Plaintiffs must be required to allege specific acts necessary for the underlying breach of fiduciary duty, as well as facts showing that Defendants were aware and actively participated in the purported breach. This does not exist in Plaintiffs’ Amended Complaint, necessitating dismissal.

c. Count IV – Temporary, Preliminary and Permanent Injunctive Relief Against All Defendants

Under Florida law, to obtain a temporary injunction, a plaintiff “must establish the following four elements: (1) irreparable harm will result if the temporary injunction is not entered; (2) an adequate remedy at law is unavailable; (3) there is a substantial likelihood of success on the merits; and (4) entry of the temporary injunction will serve the public interest. To obtain a permanent injunction, the plaintiff must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.” *Point Conversions, LLC v. WPB Hotel Partners, LLC*, 324 So. 3d 947, 956 (Fla. 4th DCA 2021) (Internal quotations and citations omitted.) Irreparable harm has been defined as “an injury of such a nature that it cannot be redressed in a court of law.” *Id.* “Irreparable injury will never be found where the injury complained of is doubtful, eventual or contingent.” *Donoho v. Allen-Rosner*, 254 So. 3d 472, 474 (Fla. 4th DCA 2018).

The damages alleged in Plaintiffs’ Amended Complaint, to the extent they are ever proven, are either wholly compensable through a monetary judgment or are eventual and contingent, and therefore, not irreparable. For example, Plaintiffs raise general allegations in their Amended Complaint that Defendants, at some point in the future, will commandeer some \$700,000 that are being held for the benefit of some ill-defined class of plaintiffs and are seeking injunctive relief to stop this diversion of monies. *See* Plaintiff’s Amended Complaint ¶ 11, 87. Not only is this alleged

injury wholly compensable through a monetary award if proven, by Plaintiffs' own allegation, this injury is wholly speculative and at best, eventual. Plaintiffs' other requests for injunctive relief are all election related and therefore fall under the purview of § 718.1255(1)(b)1, Fla. Stat., and must be denied for Plaintiffs' failure to comply with the pre-suit requirements of § 718.1255, Fla. Stat.

CONCLUSION

Plaintiffs have filed an Amended Complaint rife with baseless facts, vague generalities, sweeping assertions, and incomprehensible legal jargon in an ill-advised effort to assert legal claims against the duly elected members of the board governing their condominium association. While it is certainly voluminous, Plaintiffs' Amended Complaint is wholly lacking in substance and must be dismissed by this Court. The matters Plaintiffs complain of are better suited for the Association's ballot box⁵, as opposed to this Court.

WHEREFORE Defendants respectfully request that this Court grant this Motion to Dismiss, dismiss Plaintiffs' Amended Complaint, award Defendants their costs and attorney's fees, and grant such further and other relief that this Court deems just, equitable, and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2024, a copy of the foregoing document was filed via Florida Court's E-Portal Filing service, which will transmit electronic copies to all counsel of record.

Respectfully submitted,

/s/Kevin Yombor

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⁵ While not directly relevant to this Motion to Dismiss, Defendants will note that Plaintiff ARTHUR ROBINS recently lost an election to be on the board of the Association and lost an election to be the Association's representative on the Palm Greens at Villa Del Ray Recreation Condominium Association, Inc., the Association's recreational association. Despite losing this election, MR. ROBINS refuses to give up control of his position.

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