

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

CASE NO.: 50 2013 CA 016075 XXXX MB
DIVISION: AE

**WELLINGTON EQUESTRIAN CLUB
MASTER ASSOCIATION, INC**

Plaintiff(s)

VS

**GUISEPPE PAOLO and
LISA PAOLO**

Defendant(s)

A

ORDER ON TRIAL

This cause came before the Court on January 25, 26 and 27, 2016 upon the Plaintiff, Wellington Equestrian Club Master Association's Complaint and the Defendant/Counter-Plaintiff's Counterclaim. The Court having heard the testimony and having observed the demeanor of the witnesses, having heard arguments of counsel, having reviewed the pleadings and court file, and being otherwise fully informed, the Court makes the following findings:

This case is a combination of miscommunication and recalcitrance that could have and should have been avoided.

The Plaintiff, Wellington Equestrian Club Master Association, Inc. (hereinafter "WEC") is a homeowners association operating pursuant to Florida Statute Chapter 720.

The Defendants, Guiseppe Paolo and Lisa Paolo (hereinafter "PAOLOS" own real property within the association and as such are members of the WEC.

On March 9, 2009, WEC filed a foreclosure complaint for two counts to Foreclose on Lien and Breach of Covenant/Breach of Contract.

WEC's count for foreclosure is based upon a Claim of Lien that was recorded on March 19, 2009 (Book 23134 PG 0323) seeking \$9,043.41 dated March 11, 2009.

The Claim of Lien, is a statutory lien pursuant to Florida Statute §720.3085 which must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. Florida Statute §720.3085 (1)(a).

The Claim of Lien was prepared by J. Henry Cartwright, Esq. (hereinafter "CARTWRIGHT") who served as counsel to WEC in 2007, 2008, and 2009.

The Claim of Lien was signed by Denise Lengel (hereinafter "LENDEL").

PAOLOS assert that Claim of Lien is not valid and that they did not owe the assessments as claimed.

On December 27, 2007, WEC filed a Foreclosure Action against PAOLOS (502007CC018062XXXXMB RF). The matter was settled in 2008. After PAOLOS paid \$11,496.00, WEC filed a Notice of Settlement and a Satisfaction and Release of Lien.

The allocation of the payments is the crux of the Defendants' defense and Counterclaims. The Notice of Settlement expressly states that "each party shall bear their own fees and costs."

PAOLOS submitted total payments of Eleven Thousand Four Hundred and ninety-six dollars (\$11,496.00). The payments were submitted as follows:

a. February 4, 2008 PAOLOS submitted payment (Check No. 00138) in the amount of \$1,188.00, said payment is reflected on the account ledger dated February 18, 2009 which was introduced as Plaintiff's Exhibit 20(a).

b. February 12, 2008, PAOLOS submitted payment in the amount of \$6,308.00, said payment is reflected on the accounting ledger introduced as Exhibit 20(a).

c. A payment in the amount of \$2,000.00 reflected on Exhibit 20(a) as (Check No. 818420669) in the amount of \$2,000.00 credited on March 25, 2008 on Exhibit 20(a).

d. A payment in the amount of \$2,000.00 on February 18, 2008 was paid to the trust account of Fox Wackeen.

PAOLOS asserted that after making payment of the \$11,496.00 in 2008, they were current and had a credit balance through the first Quarter of 2009.

WEC asserts that the \$11,496.00 paid by PAOLOS in 2008 was properly applied and PAOLOS did not have credit balance through 2008, that there were deductions for legal fees and costs, and that PAOLOS failed to pay their July 2008 and the October 2008 quarterly assessments.

On March 25, 2008, CARTWRIGHT filed a Notice of Settlement in Case No:502007CC018062XXXXMB RF. CARTWRIGHT prepared and filed the Notice of Settlement. The Notice of Settlement specifically includes the following language. "All claims, disputes and issues between the parties have been settled and **each party shall bear their own attorney fees and costs.**" CARTWRIGHT testified that the language, "that each party shall bear their own fees and costs" was placed in the Notice of Settlement to protect the parties so that neither party would make a subsequent claim as to prevailing party's fees and costs. However, he did not explain as to any deduction of the attorney fees on the ledger, other than that the association had a right to recover claim fees and costs.

Attorney/Legal fees were deducted from the payments submitted by PAOLOS as seen on Plaintiff's Exhibit 20(a) the February 18, 2009 account ledger. On February 12, 2008 legal costs attorney fees of \$2,282.11 and on the same date February 12, 2008 additional legal costs and attorney fees in the amount of \$225.00 were assessed against PAOLOS and hence deducted from the settlement payments.

Plaintiff's Exhibit No. 25, to wit: the Fox Wackeen Client/Matter Trust Ledger reflects attorney fees deducted from PAOLOS' February 18, 2008 payment of \$2,000.00 (No. 72401090). The fees were deducted as follows: (a) On February 18,

2008, Fox Wackeen deducted \$732.00 for "fees and costs" and (b) \$325.00 was held in trust and subsequently deducted and applied to Invoice No. 66102.

None of the witnesses were able to provide specifics as to what fees were deducted. Testimony was presented by and through board members as to the association's right to recover attorney fees. There was contradictory testimony as to whether the fees totaling \$3,564.11 [composed of February 12, 2008 entry and funds deducted by Fox as indicated in Paragraph above] were attributable to the 2007 homeowner's foreclosure case or the subsequent mortgage foreclosure action. No testimony or evidence as to the purported billing for either the 2007 or mortgage foreclosure settlement was offered, other than that the \$325.00 held in trust that was used to pay for the release of lien.

CARTWRIGHT testified that subsequent to the settlement, there was a mortgage foreclosure action filed wherein WEC was forced to defend itself. However, there was no evidence as to any specifics as to any billing or the amount expended. The fees of February 12, 2008 were deducted prior to the mortgage foreclosure case, to wit, 502008CA004398XXXXMBAW being filed. The mortgage foreclosure action was filed on February 13, 2008, and WEC was served on February 25, 2008. Legal fees were charged on February 12, 2008 per the ledger and fees were deducted by Fox Wackeen on February 18, 2008. There was no explanation as to how fees for defense of a mortgage foreclosure action would have been assessed and billed prior to the date of filing and/or the date of service. Furthermore, the association took no initial action, and did not appear in the mortgage foreclosure case until after the default was entered on May 14, 2008. The association appeared in the case on or about April 9, 2009.

Additionally, the February 6, 2008 letter (the Notice of Settlement) does not delineate that the monies paid were to be applied to some specific amount due. The contents may mean it was payments for all monies due until the quarterly payment due on July 1, 2008 including attorneys fees resulting in a zero balance or as Defendants claim, that there was no arrangement to pay attorneys fees resulting in credits. [A review of the Exhibits A and B attached to the 2007 case indicate \$6,308.30 was due as

the assessment on October 1, 2007 which does not account for assessments due January and April, 2008.]

PAOLOS deny having ever been advised that there would be any deduction of attorney fees from said payment of the \$11,496.00. No evidence was presented as to any notification to the PAOLOS that any attorney fees or legal costs would be deducted from the payment. PAOLOS were never provided with any notification as to the purported billing of attorneys fees associated with the mortgage foreclosure in 2008. In March 9, 2009, this homeowners association foreclosure lawsuit was filed. This action was prior to WEC taking any legal action in the mortgage foreclosure action in April 2009.

WEC claims that the terms as set forth in a letter dated February 6, 2008 letter "Confidential Settlement Agreement" are controlling as to the application of the fees paid by PAOLOS, (Plaintiff's Exhibit No. 7). The letter was sent by CARTWRIGHT. The letter is not signed by either party. CARTWRIGHT did not recall if there was an actual signed agreement. PAOLOS testified that they never signed any agreement. WEC asserted that the last paragraph of the letter, to wit, "that once you have complied fully, you will return to regular billing for the July 1, 2008 payment, the association will rescind the remaining acceleration, will stipulate to dismissal with prejudice of the lawsuit, and will record a release of lien." was the extent of the agreement. The letter has no reference to attorney fee payments. The payments as set forth, did not include all payments made by PAOLOS in February and March 2008. PAOLOS deny having received the letter and both testified that they saw the letter for the first time at their deposition on December 13, 2013. PAOLOS contend that there were ongoing negotiations until the final settlement and that at all times it was their understanding based upon the Notice of Settlement and negotiations, that each party would pay their own fees and costs.

CARTWRIGHT testified that based on attorney client privilege he could not testify about discussions with WEC but did state that hat he did not decide how the money was disbursed. This testimony was contradicted by the records custodian for the property

manager who testified that the attorney dictated how to apply a settlement especially if discounted.

The evidence presented by WEC, does not substantiate the claim for attorney fees for either the defense of the 2007 homeowner's association foreclosure or for the mortgage foreclosure.

The Notice of Settlement from the 2007 case, clearly states that each party was to bear their own fees and costs. Therefore the attorney fees should not have been deducted or charged, PAOLOS are entitled to full credit of \$11,496.00. As a result of the deduction of attorney fees, late fees were assessed for three quarterly late fees totaling \$75.00. These late fees should not have been assessed when a credit existed. Therefore PAOLOS are entitled to a credit for the attorney fees and costs that were charged and/or deducted in the amount of \$3,564.11 and \$75.00 for late fees assessed in 2008 or \$3,639.11.

On September 17, 2008 WEC sent a demand letter to PAOLOS. The letter alleged that the PAOLOS were delinquent in the amount of \$2,015.41. The letter expressly warned that "Also, please be aware that any attempt to contest the amounts due or dispute the matter will only serve to run up additional legal fees." also stated in paragraph 5, "If you notify the creditor's law firm in writing within thirty (30) days of receipt of this Notice that the debt or any portion thereof is disputed the creditors law firm will obtain a verification of the debt and a copy of the verification will be mailed to you by the creditor's law firm." However, the letter included the Fair Debt Collection Practice Notice and in accordance with said Notice, PAOLOS sent a dispute on October 17, 2008. The PAOLOS sent a letter to CARTWRIGHT advising that they disputed the validity of the debt. On October 20, 2008, CARTWRIGHT sent a response to PAOLO'S that acknowledged the receipt of PAOLOS October 17, 2008 letter. Notwithstanding the express terms of the Notice, the October 20, 2008 letter did not provide any verification or any information regarding the disputed debt but advised PAOLOS that "the deadline under the original demand letter was November 1, 2008. The association will record a lien and file suit to foreclose the lien should you fail to

comply by the due date." It is the issues as set forth in the September 17, 2008 letter and WEC's failure to provide any verification of the claimed amount owed that give rise to the Paolo's dispute as to the debt owed.

Based on the payments of \$11,467.00 as of September 17, 2008 and the agreements reached, PAOLOS had credit balance of \$2,476.11 applying \$1,163.00 to July 2008 assessments.

Notwithstanding written notification that PAOLOS disputed the debt, WEC and/or their agents failed to provide any information whatsoever including but not limited to an explanation as to the purported debt or that additional fees had been assessed from the mortgage foreclosure, and proceeded with filing the Complaint and recording the Claim of Lien.

CARTWRIGHT prepared the 2009 Claim of Lien based upon the information provided by the then property manager, GRS. He did not recall having performed an independent review of the information that was submitted.

LENGEL served on the Board of Directors of WEC for five (5) years, from 2007 - 2012 and served as secretary, treasurer, and vice-president. LENGEL signed the Claim of Lien. Although she recognized her signature, she did not recall the specifics as to the signing of the Claim of Lien. She did not recall any procedures in place for reviewing accounts at that time as to the signing of the Claim of Lien, or if she had reviewed any documents to support the claims as set forth in said claim. When presented with the February 19, 2009 PAOLOS account statement, and questioned about the application PAOLO'S payments and deduction of attorney fees she testified that the Board followed the law and that the attorney fees would be billed to the owner. She denied any memory or knowledge of settlement. When presented with Notice of Settlement she stated that she was not a lawyer and did not understand the language as to each party bearing their own fees and costs. The board could get the account ledgers from the property manager but she did not think a Homeowner could get a copy of the ledger from the property manager.

Lisa Paolo testified that there was a settlement in the 2007 case but that the February 6, 2008 letter did not reflect the settlement agreement, and she saw that letter for the first time at deposition on December 13 2013. In 2008, PAOLOS made payments in the amount of \$11,496.00. She was never advised that WEC was deducting or charging any fees or costs from the 2008 settlement in regards to the 2007 case or mortgage foreclosure. Since January 2009, payments totaling \$4,368.39 have been paid to WEC through attorney, Sean Koplow.

Guiseppe Paolo testified as to a telephone conversation with himself, Lisa, and CARTWRIGHT when they discussed settlement terms. He denies ever seeing the February 2008 settlement letter, He understood that as of a result of the 2008 payout there was a credit through the first quarter of 2009. He believed each party was paying their own fees and costs. Lisa was primarily responsible for handling the financial matters at that time. Since January 2009, payments totaling \$4,368.39 have been paid to WEC through attorney, Sean Koplow.

Matthew Shauer, Director of Finance for GRS appeared as record's custodian and testified that assessments and payments are posted to the homeowner's account. He did not review the information from GRS and was unable to testify on whether it was true and accurate. He was not employed at GRS at the time, and had no independent knowledge of what transpired in the relevant times.

Barbara Lawson, Comptroller and Records custodian for Campbell Property Management testified as to the process of accounting and assessments and payments. She had visually reviewed the ledgers. She is unaware of the terms of the 2007 settlement. She testified that once the attorney takes over a case, the property manager did what they were told to do by the attorney.

Kathy Karmazian of First Service Property Management, testified that the ledger is kept and updated by someone with knowledge. She acknowledged that if the initial balance shown when Bristol took over, was not correct, then the current balance would not be correct.

The testimony and evidence supports PAOLOS claim that the amount as claimed due and owing on September 17, 2008 was incorrect. As of September 17, 2008, PAOLOS actually had a credit balance per the ledger. As of February 4, 2008, PAOLOS owed \$7,621.30. On February 12, 2008 PAOLOS submitted a payment in the amount of \$1,188.00 thereby bringing the amount owed to \$6,333.30. Thereafter, PAOLOS submitted payments totaling \$10,308.00. Therefore, as of March 2008 PAOLOS had credit balance of \$3,974.70 not \$410.69 as claimed on the ledger.

With this credit, assessments for April, July, October, 2008 and a partial assessment of \$485.70 through January, 2009 would be paid. (This amount excludes GRS processing fee of \$50.00 of September 16, 2008)

There is contradictory testimony whether the amount paid was as set forth in the initial demand letter, to wit, the September 28, 2007 demand letter which was Exhibit B to the 2007 Complaint. Pursuant to said letter, the assessments were accelerated and the total amount demanded was \$11,024.00. PAOLOS assert that they paid the amount of the demand letter which included an acceleration. WEC asserts that the amount paid was not for an acceleration as the accelerations had been rescinded. However, notwithstanding either position, PAOLOS were paid in full through December 31, 2008 with partial credit units for the 1st quarter of 2009.

Accordingly, the amount of money as set forth in the March 19, 2009 Claim of Lien, to wit \$9,043.41 is invalid and the claim of lien was premature.

WEC offered the testimony of Robert Rosen, CPA, (hereinafter "ROSEN" who prepared a statement as to the amount owed by PAOLOS including interest. The beginning balance was: \$777.41, based upon information provided by WEC identified as attorneys fees to defend mortgage foreclosure in testimony and a late fee. In preparing the Independent Accountant's Report, ROSEN reviewed the following documents that were provided by WEC: (1) the PAOLO'S Ledger from the property manager, copies of checks, the WEC documents, and legal bills. ROSEN was not provided with the copy of Notice of Settlement from 2007, copies of any pleadings or documents filed in the cases or of any correspondence. ROSEN was unaware PAOLOS

disputed the amount of money owed based on their 2007 settlement. (This Court notes the job completed by Mr. Rosen's firm should have commenced with the 2007 information. This review should have identified the discrepancy and would have provided the Board and their attorney the information.)

Joseph Marotta (hereinafter "MAROTTA"), the current board member and treasurer and representative for the Plaintiff, testified that the association would not enter into any such agreement whereby the parties pay their own fees and costs. MAROTTA stated that there would not have been a settlement wherein each party paid their own fees and costs. However, he was not a board member in 2007.

MAROTTA signed the affidavit of indebtedness which was attached to the Proof of Claim in the pending bankruptcy proceeding. The affidavit of indebtedness dated June 18, 2015 stated the amount owed as \$113,997.54.

MAROTTA acknowledged that WEC maintains a web site wherein the member's accounting or ledgers were posted and that the information contained therein was true, accurate, and up to date. The ledger posted on the WEC website contained the attorney fees, late fees, and interest. MAROTTA was unable to explain the discrepancy between the amount stated on the January 6, 2016 balance owed in the amount of \$106,113.20 as compared to the previously filed affidavit of indebtedness of \$113,997.54 that was filed six (6) months earlier.

MAROTTA testified that PAOLOS are precluded from using the entry gate, transponder and clubhouse. The Board did not vote on this issue as per Florida Statute §720.305(6).

MAROTTA testified that if the payments due from the settlement are received, it is possible that there could be subsequent charges that would be added to the ledger at a later time.

There were various discrepancies as to the ledger and the account statements. None of the witnesses were aware of any policy and procedure as to the timeliness of the submission and the accounting. None of the witnesses were aware of policies and procedures in effect to assure that if a member, such as in the instant case, PAOLOS

entered into a settlement and agreed to a payoff that there would not be subsequent invoices, billings, or charges based on the settlement.

From the period of January 2009 through trial, PAOLOS made payments of \$4,368.39 through their bankruptcy attorney, Sean Koplow, which have been applied by WEC. Additionally, PAOLOS have made additional payments currently held by the bankruptcy trustee which was not reported in this proceeding and have not been credited.

There was significant testimony as to the representation as to amounts paid, however, PAOLOS acknowledge that \$4,368.39 has been paid since January 2009. There was testimony as to prior accounting issues and the inadvertent crediting of duplicate payments. Lisa Paolo testified that she had prepared the ledger based upon the information available to her at that time, that there was no intent to defraud, and acknowledged the payments.

Sean Koplow, Esq. (hereinafter "KOPLOW") appeared as a witness as subpoenaed by WEC. He also testified as to the \$4,368.39 paid by PAOLOS through his office. KOPLOW testified that during the pendency of the current pending bankruptcy, he had received payments from the PAOLOS that are being held by the Trustee.

Between January 1, 2009 through January 1, 2016, the assessments due is \$34,227.00 using the accounting reports (Exhibit 15). Payments made by PAOLO since January 1, 2009 total, \$4,368.39. As of December 31, 2008 PAOLOS had a credit balance of \$485.70 for the actual payments. Therefore, the amount owed by PAOLO for the outstanding assessments are \$29,372.91 as of January 2016.

WEC asserts that it is entitled to interest and late fees on said amount. Florida Statute and the association documents provide for the assessment of interest and late fees. However, the PAOLOS assert that based upon their counterclaims for Breach of Good Faith and Fair Dealing and Breach of Fiduciary Duty, they were damaged and that the interest and late fees should be waived.

PAOLOS filed a three-count complaint for counts of Accounting, Breach of Good Faith and Fair Dealing and Breach of Fiduciary Duty.

The Accounting claim is directly intertwined with WEC's claims. PAOLOS have at all times asserted that they are due and owing a credit specifically arising out of the payments made in the 2007 action and PAOLO'S payments in the amount of \$11,496.00. Based upon the facts as set forth herein, WEC failed to properly apply the payments and improperly deducted legal fees and costs from the payments. PAOLOS are entitled to credits. WEC failed to establish the amount of any claimed attorney fees and costs which were either deducted, withheld, and/or charged in 2008. The 2007 case was settled with the clear and expressed terms that each party bear their own fees and costs. There was no evidence whatsoever as to any amount of work done or any fees assessed for the subsequently filed mortgage foreclosure action.

PAOLOS assert that WEC Breached the Implied Covenant of Good Faith and Fair Dealing and Breach of Fiduciary Duty.

The witnesses who testified on behalf of WEC including, but not limited to, the property managers, the prior attorney, and the board members presented conflicting testimony as to who is responsible for providing information to homeowners, and who is responsible for the proper management and accounting. No witness was able to state with certainty whether a homeowner such as the PAOLOS would be able to obtain a full and complete and up-to-date account so to pay off the amount, there was conflicting testimony as to whether it would be obtained through the attorney, the property manager or any other source.

Both MAROTTA and LENGEL testified that there was no specific procedure for a homeowner contesting and/or disputing any amounts or as to obtaining information. Until recently, there was no procedure in place for WEC to send any actual billing to a homeowner.

There was consistent testimony, from WEC's witnesses that WEC maintained the right to recover attorney fees. Notwithstanding said clear and plain language within the Notice of Settlement that each party would pay their own fees and costs, WEC

deducted attorney fees from the settlement amount hence placing PAOLOS into a delinquent status.

Florida Statute clearly provides that the association by and through its board of directors owes to its members which include the PAOLOS a fiduciary duty. This fiduciary duty would include the accurate accounting.

The documents create a contract to which WEC and the PAOLOS are parties. Therefore, the WEC has an implied Covenant of Good Faith and Fair Dealing in interacting with the PAOLOS. This was breached when the PAOLOS entered in good faith to an agreement wherein they should have been credited and paid in full by WEC. In contrast, WEC without any prior notice to the PAOLOS, assessed attorney fees against the settlement amount. When the PAOLOS questioned, they received only a letter stating that WEC would proceed. WEC by and through its agent, at least discouraged and more likely warned a homeowner such as the PAOLOS from disputing the validity of the debt as set forth in the clear and plain language of the letter stating as follows. "Also, please be aware that any attempt to contest the amounts due or dispute the matter will only serve to run up additional legal fees."

These actions are disconcerting. A simple explanation and/or accounting would have identified the dispute and may have resulted in a clarification or agreement that should have avoided this dispute.

In this instance someone dropped the ball. The responsibility for this falls onto WEC by and through its Board of Directors. The Board of Directors acting on behalf of WEC, has the responsibility to review and oversee its vendors, including but not limited to, the property managers, the accountants, and attorneys. It was incumbent upon WEC, by and through its Board of Directors to assure the accuracy of the payments made. In this instance WEC failed to do so. Had WEC properly credited the fees, the settlement funds paid and followed the Notice of Settlement terms, to wit each party pay their own fees and costs this action would not have been filed in 2009.

WEC breached its covenant of good faith and fair dealing that is owed to PAOLOS.

PAOLOS were damaged by WEC's Covenant of Good Faith and Fair Dealing in that WEC Breached its Fiduciary Duty as owed to the PAOLOS and PAOLOS were damaged by WEC's Breach of Fiduciary Duty.

The Court notes there is a bill in the current legislative session 2016 HB 1357 that amends F.S. §720.308(2) to include the following: a written collect policy requiring the notice of delinquency to specify the amount due and an accounting of how the amount was determined, a vote by the Board on whether to bring a legal action and the requirement that no attorneys fees or costs incurred by the association are recoverable when an action is dismissed. These suggested changes, if approved, could have avoided the miscommunication in this case. This language is similar used by the Court in *Saar v. Wellesley at Lake Clark Shores* 68 So 3d 417 (Fla 4th DCA 2011).

However, the amount of the nonpayment is not solely caused by the WEC's conduct. Defendants' own conduct added to the amount of assessments now due. Therefore, this Court finds that this Court cannot completely excuse the interest and late fees due as damages. This Court will consider the monies paid [although paid in 2009 and 2010, except one payment, were not timely credited] and credits existing as of December, 2008. Therefore, this Court will excuse interest and late fees as of the date of the last payment in April 2011 (per Exhibit 15). (The parties are instructed to calculate this amount). Although this Court does not have knowledge of the amount paid through the bankruptcy, if those payments are consistent and substantial-forgiveness of the late fee may also be appropriate.

As to Plaintiff's claim of the application of the Wrongful Act Doctrine, this Court finds there were acts and omissions on both parties to resolve what would have been an inconsequential amount due in 2009. This litigation occurred because of miscommunication and recalcitrance on the part of both parties. Therefore the doctrine does not apply.

This Court also notes the letter of February 6, 2008 could have also resulted in a zero balance as of July, 2008. However, Defendants had paid an additional \$1,188.00

in February, 2008 which was not taken into account by Plaintiff's counsel; therefore monies, if any, would be due after October, 2008 with a small credit to be applied.

Having made the aforementioned findings, it is hereby, ORDERED:

A. As to Count I of the Plaintiff's claim for Foreclosure of the Claim of Lien, it is DENIED. The Claim of Lien upon which this was filed was invalid and premature in that it was inaccurate as to the amount set forth is inaccurate. As such, WEC's Claim of Lien does not comply with the mandates of Florida Statute ' 720.3085 that "To be valid, a Claim of Lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment due, and the date due."

B. As to Plaintiff's Count II, Beach of Covenant Breach and Breach of Contract, PAOLOS owe \$29,372.91 in unpaid assessments as of January 2016. Since there is currently a bankruptcy proceeding that is pending, therefore, the payment of the amount shall be determined by the bankruptcy court.

C. As to the Counterclaim, PAOLOS filed an account for a Claim for Cause of Action of Accounting. The Court finds that this is warranted, and that the PAOLOS are entitled to credits as set forth above in the amount of \$29,372.91 as of the date of trial.

D. PAOLOS established by competent substantial evidence that WEC Breached its Covenant of Good Faith and Fair Dealing to PAOLOS. WEC failed to properly account for payments made by PAOLOS, WEC improperly deducted attorney fees from the payment by PAOLOS, hence resulting in an arrearage after entering into an agreement that each party bear their own fees and costs, and failed to provide verification of alleged money owed.

E. PAOLOS established by competent substantial evidence that WEC Breached its Fiduciary Duty. The Fiduciary Duty is owed by and through its Board of Directors. It is not necessary to name the individual directors in that the directors were acting in their capacity as the Board of Directors.

F. As a result of the Breach of Good Faith and Fair Dealing and the Breach of Fiduciary Duty, PAOLOS were damaged.

G. As a result of the Breach of Good Faith and Fair Dealing and the Breach of Fiduciary Duty the PAOLOS should not be assessed fees and interest before April 2011 with the amount to be calculated by the parties. Parties are instructed to submit the calculation of interest and late charges after April 2011 within thirty (30) days.

H. WEC's claim for attorney fees and costs is denied in part as to the Claim of Lien and granted in part as to the Contract. The amount will be determined by hearing and or by agreement.

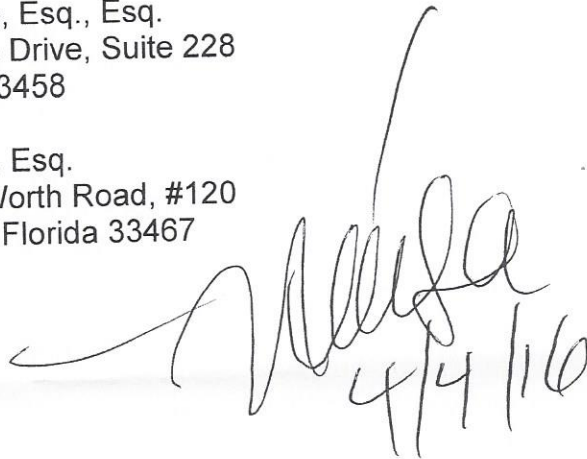
I. Court reserves on any other pending matters.

 4/4/2016
The Honorable Nancy Perez
Acting Circuit Judge

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4/4/16