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IN THE CIRCUIT COURT FOR THE  
15TH JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

BOCA LAKES CONDOMINIUM  
ASSOCIATION, INC.

Case No:

Plaintiff,

v.

Ann Potter

Defendants.

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**VERIFIED COMPLAINT**

COMES NOW the BOCA LAKES CONDOMINIUM ASSOCIATION, INC., (“Boca Lakes”) by and through its undersigned counsel and files this verified suit against ANNPOTTER (“Potter”) for Breach of Contract and in support thereof states as follows:

**JURISDICTION AND VENUE**

1. Association is a not-for-profit Condominium Association governed by Chapters 617 and 718 of the Florida Statutes, as well as its Declaration of Condominium. A copy of the Declaration of Condominium is attached hereto as Exhibit “A”.

2. Potter resides at of 8916 Warwick Drive, Unit 422, Boca Raton, Florida., (“Property”) which is located in and subject to the Association and are otherwise sui juris.

3. Venue is property since all events set forth herein occurred in Palm Beach County, Florida.

4. All conditions precedent to the filing of this action have been performed or waived. A copy of pre-suit correspondence in satisfaction of F.S. §720.311, dated February 14<sup>th</sup>, 2022, as sent by the Association to the Potters by the undersigned is attached hereto as Exhibit B. However, due

the reasons set forth herein, the Association is requesting temporary emergency relief to deal with Potter.

5. Section 720.311 provides for emergency relief prior to mediation. Specifically; Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section.

6. The Plaintiff has retained the services of the Shir Law Group, P.A. to represent it in this matter, and the Plaintiff demands an award of his attorney's fees and costs under any and all applicable statutory, Chapter 720 of the Florida Statutes and pursuant to the Restrictive Covenants as well as any other contractual authority.

#### **BACKGROUND**

7. Potter is a single woman living in her Property at the Association.

8. Upon knowledge and belief, she suffers from various psychological issues that affect her mental state.

9. On or about Friday, the 7<sup>th</sup> of January 2022 at 7:00 pm, Potter entered into a neighbor's residence and sat in her recliner chair in her family room.

10. When Potter was asked who she this person was, how did she get in and why she was there, she responded that it smells really good in here.

11. More troubling than these issues and generally Potter's behavior in the community, is that she is purposely running water in her Unit that leaks into and floods the adjoining units, as these units share common walls.

12. Once water is flooding the adjoining units, Potter refuses to shut off the water until she decides to; refuses to answer the door and otherwise respond to any inquires or requeststo have her stop running her water indiscriminately.

13. Aside from the damage to the adjoining unit owner's property, the Association is responsible for the unfinished drywall repairs and potentially also remediate and deal with mold that can fester in the walls and through the Unit.

14. The ongoing water damage is a health, welfare and safety issue to the Association in its obligation to protect its members.

15. Potter is violation Article XIII, Use and Occupancy, provides, in part, that a Unit Owner shall not permit or suffer anything to be done or kept in their Unit which will increase the rate of insurance on the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises or otherwise, nor shall the Unit Owners commit or permit at any nuisance, immoral or illegal acts in or about the Condominium Property.

16. Potter's actions meet or exceed all of the above-referenced criteria for a violation under Article XIII.

17. Potter's actions must be immediately stopped by court order and potentially removal from the premises / her Unit to ensure her mental acumen and that she will not be a danger to others, much less herself.

18. As of the date of the filing of this lawsuit, Potter has once again taken action that placed the Association and her neighbors in grave danger.

19. Specifically, over the February 12, 2022, the Palm Beach County fire and rescue

was sent to Potter's residence. This occurred at approximately 8:00 pm until 1:30 am in the morning. Although Ms. Potter is was not in residence at the time, it is the understanding based on personal at the scene, that she is the prime suspect and they are turning the case over to the state.

20. Although it appeared as if a fire was set, when the emergency crews arrived, there was just smoke. There were no flames anywhere. When they went in. They did convey that they could see where she tried to set a fire.

21. This continues to be an ongoing issue with Ms. Potter and one that if not addressed immediately, may lead to injury, if not worse of her neighbors and others in the community.

22. The Association has retained the services of the undersigned to prosecute this claim, and pursuant to, without limitation, the governing documents and Chapter 720, hereby supplies notice of its claim to attorney's fees and costs upon prevailing in this matter.

**COUNT I: INJUNCTIVE RELIEF PER F.S. CHAPTER 718**

23. Association re-alleges paragraphs 1 through 22 as if fully alleged herein.

24. Association moves this Honorable Court to order Potter to stop using her water or allowing water flow from her Unit that intrudes upon and enters into the adjoining units that share a common wall with her Unit.

25. Association requests that in addition to an order for Potter to cease and desist and comply with the Association's Declaration, that the Court order Potter to be baker acted or otherwise picked up for psychological evaluation to ensure her safety and that of her neighbors and community surrounding her.

26. Association furthermore requests that the Court, pursuant to Section 718.111, compel Potter to provide a key to her Unit as provided:

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit.

27. While the usual pleading requirements for injunctive relief are not required to address violations of Chapter 720 or Restrictive Covenants governing real property, nonetheless, they are present here.

28. Association is without an adequate remedy at law and is suffering irreparable harm because the enforceability of its Restrictive Covenants, which the Association has a duty to enforce on behalf of the Association and its membership, is being challenged by the Potters.

29. The Association has a substantial likelihood of success on its claim because Restrictive Covenants set forth in a Declaration are presumed valid, and Associations are afforded wide deference in the enforcement thereof.

30. Further, an injunction would serve the public interest because the Association is seeking to enforce and uphold the Restrictive Covenants specifically agreed to by each of the Association's members when they take title to their property within the Association.

WHEREFORE, the Association respectfully requests this Honorable Court issue an order finding that Potter is violating the Association's Declaration and compelling her to stop flooding her Unit and the adjoining Units, as well as having Potter Baker act and / or picked up for psychiatric evaluation to determine that she is neither a danger to herself or others, compel Potter to provide a key to her Unit and to award the Association damages, its costs and reasonable attorney's fees, and for any other relief this Court deems just and proper.

### **COUNT II: BREACH OF CONTRACT**

31. Association re-alleges paragraphs 1 through 22 as if fully alleged herein.

32. The Association's Declaration is a contract enforceable via injunctive relief.

33. By virtue of their ownership and/or occupancy of the subject property, Potter has agreed to be bound by and adhere to the Association's governing documents per, without limitation, Article XIII thereof.

34. Potter has clearly breached her obligations under the Association's governing documents by engaging in the conduct described herein and evidenced in the attached affidavit attached hereto and made a part hereof as **Composite Exhibit "C"**.

35. As a result of the Potter's breach of the Declaration, the Association has been and continues to be damaged.

WHEREFORE, the Association respectfully requests this Honorable Court issue an order finding that Potters have violated the Association's Declaration and compelling Potter to take the action demanded above, to award the Association its damages, costs and reasonable attorney's fees, and for any other relief this Court deems just and proper.

Respectfully submitted this 14<sup>th</sup> day of February 2022.

**SHIR LAW GROUP, P.A.**  
2295 N.W. Corporate Blvd., Suite 140  
Boca Raton, Florida 33431  
Phone: 561-999-5999  
Fax: 561-893-0999

By: 

Guy M. Shir, Esq., Fla Bar No. 114863  
Primary Email: [gshir@shirlawgroup.com](mailto:gshir@shirlawgroup.com)  
Service Email: [Office@shirlawgroup.com](mailto:Office@shirlawgroup.com)