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

CASE NO.:

DAVID E. FALLIS,

Plaintiff,

v.

**THE VISTAS OF BOCA LAGO
CONDOMINIUM ASSOCIATION, INC.,**
a Florida not for profit corporation,

Defendant.

COMPLAINT

Plaintiff, DAVID E. FALLIS, through counsel, files this complaint against defendant, THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC., a condominium association located in Boca Raton, Florida, and as grounds therefor, states as follows:

JURISDICTION, PARTIES AND VENUE

1. This is an action for damages greater than \$30,000.00, exclusive of interest and attorneys' fees.
2. Plaintiff, DAVID E. FALLIS ("Plaintiff") is a Unit Owner and Member of the condominium association, THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC. ("BOCA LAGO," or the "Association"), and is *sui juris*.
3. Defendant, BOCA LAGO is a Florida not-for-profit corporation that serves as a condominium association formed and operating pursuant to Chapter 718, Florida Statutes. BOCA LAGO's principal place of business is located in Boca Raton, Palm Beach County, Florida.

4. This Court has jurisdiction over this matter as the amount in controversy exceeds \$30,000.00, excluding interest, attorney's fees and costs.

5. The Court has jurisdiction to hear the equitable claims brought in this matter.

6. Venue is proper in Palm Beach County, Florida because the parties are located in Palm Beach County, Florida, the subject property ("Property") is located in Palm Beach County, Florida, and the acts and events giving rise to the accrual of Plaintiff's claims took place in Palm Beach County, Florida.

GENERAL ALLEGATIONS

7. Plaintiff is the owner of a unit at BOCA LAGO located in Palm Beach County, Florida. Plaintiff is a Member of BOCA LAGO by virtue of his ownership of Unit 33C.

8. Pursuant to the Declaration of Condominium of THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC., as amended ("Declaration"), Articles of Incorporation ("Articles"), By-Laws of THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC. ("Bylaws") and Rules and Regulations (collectively, the "Governing Documents") and Florida's Condominium Act (Fla. Stat., Chapter 718) (the "Act"), BOCA LAGO is responsible for administering, governing and maintaining the common areas of the condominium association known as THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC. True and correct copies of the Governing Documents are attached hereto as Composite Exhibit "A," and are incorporated herein.

9. BOCA LAGO was created on January 7, 1976, by recording the original Declaration, which was recorded in Official Record Book 2495, at Page 1, *et seq.*, of the Public Records of Palm Beach County, Florida. The Declaration had the Articles and Bylaws attached thereto thus the Governing Documents are all contained in the public records.

10. The Governing Documents and the Act govern control of the use, maintenance, repair and operation BOCA LAGO, which includes the units, common areas, limited common areas, and all other property that is subject to the Declaration.

11. Furthermore, BOCA LAGO is responsible for the enforcement of the Governing Documents.

12. On or about October 30, 2018, the Declaration was amended to allow installation of hard-surface flooring with adequate soundproofing underlayment. A true and correct copy of the Amendment to the Declaration of Condominium of The Vistas of Boca Lago Condominium Association, Inc. (the "Amended Declaration") is attached hereto as Exhibit "B," and incorporated herein.

13. The Amended Declaration was recorded in Official Record Book 30263, at Pages 1355-1357, of the Public Records of Palm Beach County, Florida.

14. The Amended Declaration provides in pertinent part as follows:

N. Hard-surface flooring such as, for example, and without limitation, tile, vinyl, wood and engineered wood, may be installed within second-floor Units; provided, however, that adequate soundproofing underlayment shall be installed beneath the hard-surface flooring and the installation of hard-surface flooring does not compromise structure or improvements located upon any portion of the Condominium Property. Those Unit Owners who desire to install hard-surface flooring within their second-floor units shall submit an application to and obtain the approval of the Association prior to the installation of any hard-surface flooring. Such approval may be conditioned upon the installation of specific soundproofing underlayment which may include Privacy Ultimate Underlay or another similar product approved by the Association's Board of Directors, in its sole discretion, and inspection of the installed soundproofing prior to installation of any hard-surface flooring. The owners of second-floor Units who desire to install hard-surface flooring in their Units shall be required to execute a "Covenant to Run with the Land" agreement using a form approved by the Association's Board of Directors. Unit Owners shall bear responsibility for the cost, installation and any and all

necessary permitting and shall indemnify the Association for any and all claims, without limitation, that arise from the installation or existence of hard-surface flooring in their units.

15. Accordingly, and pursuant to the Amended Declaration, as a pre-requisite to a unit owner's installation of hard-surface flooring, the proposed installation must be approved by BOCA LAGO and the unit owner must indemnify BOCA LAGO by written agreement.

16. Notwithstanding same, following Plaintiff's occupancy of his dwelling unit ("Unit 33C") in or around November, 2020, it was determined that unauthorized flooring had been installed in Unit 33D, a dwelling unit located directly above Plaintiff's Unit 33C. The existence of the unauthorized flooring has resulted in loud noise emanating from Unit 33D which prevents and further frustrates Plaintiff's quiet use and enjoyment of his dwelling unit, Unit 33C.

17. Moreover, there is no record of Unit 33D seeking approval or indemnifying BOCA LAGO prior to installing the hard-surface flooring.

18. The flooring change was personally witnessed by the Plaintiff during this time and was further memorialized in online photographs which were provided in rental advertisements in December, 2020 and September, 2021.

19. Further, the property manager for BOCA LAGO has provided Plaintiff with documentation from 1995 which purportedly allowed limited installation of tile in the foyer of Unit 33D but denied installation of said tile in other areas of Unit 33D. The "other" areas are a nuisance to Plaintiff because of the loud noises associated with the occupants, *inter alia*, walking in Unit 33D.

20. Subsequently, Plaintiff sent correspondence regarding the unauthorized flooring and resulting noise to members of the Board of Directors for BOCA LAGO, or its agent or

agents, on February 16, 2021 and April 5, 2021. Copies of the February 16, 2021 letter and April 5, 2021 letter are attached hereto as Composite Exhibit "C."

21. Despite said notices and demands by Plaintiff upon BOCA LAGO with respect to all areas of unauthorized flooring existing in Unit 33D, BOCA LAGO has failed or refused to enforce the covenants and restrictions appearing in the Governing Documents which BOCA LAGO is obligated to enforce fairly and uniformly on behalf of all its unit owners.

22. As a result of BOCA LAGO's failure to enforce the covenants and restrictions appearing in the Governing Documents, Plaintiff continues to suffer damages.

23. All conditions precedent to Plaintiff bringing this action, if any, have occurred, have been performed, have been excused or have been waived.

24. Based on the foregoing, Plaintiff has retained the services of Lorium Law and has agreed and is obligated to pay Lorium Law's reasonable attorneys' fees in this matter. Plaintiff is entitled to recover such fees from BOCA LAGO pursuant to the terms of the Governing Documents and the Act.

25. Plaintiff hereby demands a trial by jury for all issues so triable.

COUNT I
BREACH OF GOVERNING DOCUMENTS

26. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 of this Complaint, as though fully set forth herein.

27. This is an action for damages in excess of \$30,000.00, exclusive of interest, attorney's fees and costs.

28. BOCA LAGO has breached, and continues to breach the Governing Documents by failing to enforce same including the unauthorized and unapproved installation of flooring

without adequate soundproofing in Unit 33D which occurred without the prior written approval of BOCA LAGO.

29. As a direct and proximate cause of BOCA LAGO's improper actions and its refusal and failure to properly enforce known violations of the Governing Documents, the Plaintiff has been damaged as he is prevented from the quiet use and enjoyment of his dwelling unit, Unit 33C.

30. Plaintiff has attempted, on numerous occasions, to address these issues with BOCA LAGO through its board of directors ("Board"). Correspondence was sent to members of the Board, or its agent or agents, on February 16, 2021 and April 5, 2021. However, subsequently, BOCA LAGO has refused to adequately address the issues that are alleged therein.

31. As of the date of this Complaint, BOCA LAGO continues to refuse to enforce the Governing Documents it is obligated to enforce.

WHEREFORE, Plaintiff, David E. Fallis, respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC., for damages, plus attorneys' fees, costs and any such other and further relief as this Court deems just and proper.

COUNT II
INJUNCTION

32. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 of this Complaint, as though fully set forth herein.

33. This is an action for injunctive relief and other equitable relief sought pursuant to Chapter 718 of the Florida Statutes (2021) and the Governing Documents, as recorded in the public records of Palm Beach County, Florida.

34. When Plaintiff purchased Unit 33C, he became entitled to the protections afforded by the Governing Documents of BOCA LAGO. As demonstrated above in the General Allegations and in Count I, BOCA LAGO has shown a willful disregard of Florida law and the Governing Documents by failing to enforce same.

35. Plaintiff is entitled to an injunction requiring BOCA LAGO to comply with the Governing Documents and bring the Property into compliance pursuant to Fla. Stat. § 718.303 (2021), which provides, in pertinent part:

(1) Each ... association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws ... **Actions for damages or for injunctive relief**, or both, for failure to comply with these provisions may be brought by the association or **by a unit owner against:**

(a) **The association ...**

36. To date, BOCA LAGO has not taken action to cure all violations regarding the unauthorized flooring in Unit 33D and said flooring remains in Unit 33D without adequate soundproofing, and BOCA LAGO has failed to rectify the resulting noise problems inuring to adjacent dwelling units.

37. Plaintiff and the members of BOCA LAGO (other condominium homeowners within the community) are suffering irreparable harm and have no adequate remedy at law. BOCA LAGO's flagrant failure to enforce the Governing Documents undermines the lawful operation of the community's covenants and restrictions to the detriment of all owners of dwelling units.

38. The injury and potential harm caused by BOCA LAGO's refusal to comply with the Governing Documents outweighs the harm, if any, that an injunction would have on BOCA LAGO.

39. Plaintiff is entitled to an injunction requiring BOCA LAGO to comply with the Governing Documents and that the subject property [Unit 33D] be brought into compliance

WHEREFORE, Plaintiff, David E. Fallis, respectfully requests that this Honorable Court enters an order, as follows:

(a) issuing an immediate and permanent injunction against the Defendant, THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC., compelling THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC. to comply with the Governing Documents by removing the unauthorized and unapproved flooring from Unit 33D, and to restore the applicable floor to its lawful and approved condition pursuant to the Governing Documents;

(b) directing THE VISTAS OF BOCA LAGO CONDOMINIUM ASSOCIATION, INC. to obey, comply with and observe the provisions of the Governing Documents in all respects from this date forward;

(c) awarding Plaintiff his attorneys' fees and costs for pursuing this action; and

(d) granting such other and further relief as this Court deems just and proper.

DATED this 11th day of May, 2022.

LORIUM LAW

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