IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

DR. USHA JAIN AND MANOHAR JAIN,
Appellants,
v. CASE NO. 5018-1215
DAVID BARKER, MARY BETH VALLEY, MICHAEL FURBUSH AND ROETZEL AND ANDRESS, P.A.,
Appellees.
_____/

DATE: February 27, 2019

BY ORDER OF THE COURT:

ORDERED that Appellant, Manohar Jain's Motion for Rehearing, Motion for Rehearing En Banc, and Request for Written Opinion, filed February 5, 2019, is denied. Further, it is ORDERED that Appellant, Dr. Usha Jain's Motion for Rehearing, Rehearing En Banc and Request for Written Opinion, filed February 5,2019, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

Panel: Judges Berger, Edwards, and Sasso (acting on panel-directed motion(s)) En Banc Court (acting on en banc motion)
Judge Eisnaugle recused from en banc consideration
cc:Thomas P. Wert Michael J. Furbush

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

DR. USHA JAIN AND MANOHAR JAIN,

Appellants,
v. CASE NO. 5D18-1215

DAVID BARKER, MARY BETH VALLEY,
MICHAEL FURBUSH AND ROETZEL
AND ANDRESS, P.A.,
Appellees.
_____/

DATE: January 22, 2019

BY ORDER OF THE COURT:

ORDERED that Appellees' Motion for Attorneys' Fees, filed October 29, 2018, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Florida Rule of Appellate Procedure 9.400(b), to determine and assess reasonable attorney's fees for this appeal. Further, it is

ORDERED that Appellant, Manohar Jain's Motion for Attorney's Fees, filed October 15, 2018, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

Panel: Judges Berger, Edwards, and Jacobus

Filing # 67683800 E-Filed 02/08/2018 10:46:06 AM

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

USHA JAIN, M.D. AND
MANOHAR JAIN,

CASE NO.: 2016-CA-7260-0
DIVISION: 33-2

Plaintiffs,

vs.

DAVID BARKER, MARY-BETH VALLEY, MICHAEL FURBUSH and ROETZEL & ANDRESS, L.P.A.,

Defendants.

ORDER GRANTING DEFENDANTS' "MOTION TO DISMISS PLAINTIFFS' '2ND AMENDED' COMPLAINT WITH PREJUDICE"

THIS CAUSE comes before the Court for hearing on January 26, 2018, on Defendants', David Barker ("Barker") and Mary-Beth Valley ("Valley"), "Motion to Dismiss Plaintiffs' '2nd Amended' Complaint with Prejudice," filed on October 13, 2017, and Plaintiff Usha Jain's Responses to Oppose Defendants' Motion to Dismiss, filed on January 22 and 23, 2018.

This Court, having reviewed the motions, the record, considered the arguments presented, and being otherwise fully advised in the premises hereby finds and decides as follows:

RELEVANT FACTS AND HISTORY

Dr. Usha Jain and Manohar Jain (,'Plaintiffs") filed their original pro se Complaint against Defendants, Barker, Valley, Michael Furbush ("Furbush"), and Roetzel & Andress L.P.S. ("Roetzel"), on August 16, 2016.[1]

The factual allegations of the various causes of action surround a dispute Plaintiffs,
,homeowners in the Isleworth community, had 'with their community homeowners' association ("Isleworth") regarding Plaintiffs alleged failure to keep their property in a condition as required by Isleworth's Declaration of Covenants. Defendants are the attorneys and law firm that represented Isleworth at that time. According to Plaintiffs, they reached an agreement with Isleworth prior to filing the present suit. Consequently, Isleworth is not a party to this action. While attempting to resolve this matter with Isleworth, Plaintiffs discovered a letter from Barker, an attorney employed by the Roetzel law firm, in their Isleworth tile. The letter advised that their property was not in compliance with the Declaration of Covenants and unless the violations were remedied, a maximum tine of $1,000.00 was forthcoming.' Plaintiffs maintain that although this letter states it was sent via certified mail, they never received it.

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1 The docket indicates that the Plaintiffs proceeded pro se until October 3, 2017, when attorney Erich Schuttauf appeared as counsel for "Defendants) MANOHAR JAIN." As Mr. Jain is a Plaintiff in this action, it appears the Notice of Appearance contained a scrivener's error.

Plaintiffs claim that due to Defendants' willful actions they have been harmed in numerous ways. Plaintiffs claim that having to fight the fraudulent allegations of Defendants resulted in loss of their reputation in the community, financial losses due to time away from their businesses, and mental anguish.

In Count I of the original Complaint, Plaintiffs claim that an alleged certified letter, found in their Isleworth file, was never sent to them by Defendants. Plaintiffs maintain that this letter was falsely placed in their lsleworth tiled by Defendants. In Count II, which is very similar to Count I, Plaintiffs claim that Defendants committed a fraudulent falsification of documents. In Count III, Plaintiffs allege that Defendants acted unethically and were negligent due to their misrepresentation of the status of Plaintiffs' Isleworth account. In Count IV, Plaintiffs claim that Defendants breached the implied covenant of good faith and fair dealing based upon Defendants' contractual agreement with Isleworth. In Count V, Plaintiffs maintain that Defendants violated section 720.303(5), Florida Statutes, when Defendants failed to provide a timely response to Plaintiffs' requests for Isleworth's records. Finally, in Count VI, Plaintiffs allege that Defendants were unjustly enriched by the attorneys' fees received from lsleworth.

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2 The Plaintiffs admitted that they were never fined by lsleworth.

On September 7, 2016, the Defendants tiled their first Motion to Dismiss. In this Motion, Defendants maintained that Counts I, II, III, IV, and VI should be dismissed for failure to state a cause of action for which relief can be granted. In particular, Defendants claimed that the Complaint failed to provide a short and plain statement of the ultimate facts showing that the pleader is entitled to relief. Fla. R. Civ. P. L 11 0. Defendants also contended that Plaintiffs cannot maintain a claim against them because section 720.303(5), Florida Statutes, applies to associations and not to the associations' agents or attorneys. Defendants further argued that Furbush, who at the time was the registered agent of Roetzel, had only limited communications with Plaintiffs in an attempt to resolve this issue with the other Defendants, and therefore had nothing to do with the pre-suit issues raised by Plaintiffs.

This Court conducted a hearing on October 27, 2016. On November 1, 2016, the Court entered an Order dismissing with prejudice Counts I and V and the claims against Furbush. The remaining counts were dismissed without prejudice.

On November 20, 2016, Plaintiffs filed their first Amended Complaint. On December 2, 2016, Defendants Roetzel, Barker, and Valley filed their second Motion to Dismiss.[1] Defendants alleged that

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[1] It should be noted that while this Motion was pending, Roeztel and Plaintiffs came to a resolution that all claims against Roetzel would be dismissed with prejudice. This Court approved the joint stipulation of Plaintiffs and RoetzeI and all claim against Roetzel were dismissed with prejudice on March 12, 2017.

the Amended Complaint, like the original, violated Rule 1.110, Florida Rules of Civil Procedure, and that Plaintiffs have again failed to state a cause of action for which relief can be granted. In Count I, Plaintiffs claimed that Defendants had a duty to produce true records on behalf of Isleworth and breached that duty by placing copies of an undelivered letter in the Plaintiffs' Isleworth file. In Count II, Plaintiffs contended that Defendants were unjustly enriched because they continued to collect money from Isleworth and wrongfully retained the benefits of those monies. In Count III, Plaintiffs claimed that Defendants engaged in unethical conduct and were guilty of negligence and misrepresentation. Lastly, in Count IV, Plaintiffs alleged a breach of the implied covenant of good faith and fair dealing.

A hearing was held on Defendants' Motion on June 5, 2017. On June 12, 2017, this Court dismissed the Amended Complaint without prejudice. The Court determined that Plaintiffs had again failed to state a cause of action upon which relief could be granted. [4]

On July 12, 2017, Plaintiffs filed their Second Amended Complaint (third Complaint). On July 24, 2017, Defendants moved to dismiss claiming that this Complaint contained virtually the same material factual allegations as the prior Complaints.

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4 At the hearing, there were other motions before the Court regarding Furbush, attorneys' fees pursuant to Rule 1.525(1) Rules of Civil Procedure, and sanctions pursuant to section 57.1 05(I), Florida Statutes. Those motions and holdings will not be addressed as they are not relevant to the present disposition.

On September 26, 2017, before a hearing had been held on the Defendant's Motion, Plaintiffs filed a fourth complaint, titled "2nd Amended Complaint and Demand for Jury Trial." On October 13, 2017, Defendants filed the present Motion to Dismiss. The Defendants stated:

> Defendants ... are moving to dismiss the Fourth Comp1aint with prejudice because Plaintiffs cannot possibly allege a cause of action based upon the facts alleged in four separate attempts. We have simply reached a point in this litigation when Barker and Valley [the Defendants] should be entitled to be relieved from the time .effort, energy, and expense of defending themselves against Plaintiffs' vexatious claims.

Motion to Dismiss, Pg. 1.
On January 26, 2018, a hearing was held on Defendants' Motion.? [5] This Order follows: [6]

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5 The hearing was held before Judge Kevin B. Weiss, assigned to Division 33 as of January 2018. This case was previously before Judges Higbee, Myers and White.

6 Also addressed at this hearing, was Plaintiffs' attempt to default Defendants by claiming Defendants had not filing a timely request for extension of time in which to respond. The Court denied Plaintiffs' Motion for Default and deemed Defendants' present Motion to Dismiss as timely filed.

STANDARD OF REVIEW

In considering a motion to dismiss, the Court is constrained to a consideration of the four comers of the pleading, including any exhibits attached thereto, and is required to take as true all of the Plaintiffs' well-pled factual allegations. See Cyn-co v. Lancto; 677 So. 2d 78, 79 (Fla. 2d DCA 1996). However, the Court need not accept internally inconsistent factual claims, unwarranted deductions, or mere legal conclusions of a plaintiff. See Shands Teaching Hasp. And Clinics, Inc. v. Estate of Lawson, 175 So. 3d 327, 331-32 (Fla. 1st DCA 2015) (citing WR Townsend Contracting Inc. v. Jensen Civil Const., Inc., 728 So. 2d 297,300 (Fla. 1st DCA 1999). Speculative allegations unsupported by ultimate facts or contradicted by other facts alleged in the complaint are insufficient to withstand a motion to dismiss. See McCall v. Scott, 199 So. 3d 359, 366 (Fla. lst DCA 2016).

ANALYSIS AND RULING

In the Motion to Dismiss currently before the Court, the Defendants contend that Plaintiffs, in their "2nd Amended" Complaint (actually their fourth complaint), have pleaded virtually the same underlying facts and alleged the same causes of action based upon those facts as in their three previous Complaints. Defendants request that the "2nd Amended" Complaint be dismissed with prejudice as Plaintiffs have failed to adequately allege any viable cause of action based upon these facts. Upon review of the present complaint, its predecessors, and the record, this Court agrees.

While the policy in Florida is to liberally allow amendments to pleadings where justice so requires, a trial judge in the exercise of sound discretion may deny further amendments where a case has progressed to a point the liberality ordinarily to be indulged has diminished. Alvarez v. DeAguirre, 395 So. 2d 213, 216 (Fla. 3d DCA 1981) (internal citations omitted). "Although it is highly desirable that amendments to pleadings be liberally allowed so that cases may be concluded on their merits, there is an equally compelling obligation on the court to see to it that the end of all litigation be finally reached." Brown v. Montgomery Ward & Co., 252 So. 2d 817, 819 (Fla. Lst DCA 1971). See also Noble v. Martin lyfem'[Hasp. Ass'n, Inc., 710 So. 2d 567,568-569 (Fla. 4th DCA 1997) ("There comes a point in litigation where each party is entitled to some finality. ").

Dismissal with prejudice, after three attempts to amend, is generally not an abuse of discretion. Dimick v. Ray, 774 So.2d 830, 833 (Fla. 4th DCA 2000); Myers v. Highway 46 Holdings, LLC., 65 So. 3d 58,61 (Fla. 5th DCA 2011) (affirming dismissal with prejudice after the third attempted pleading failed to assert or any new facts or arguments). The relevant inquiry is whether "allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile." Cedar Mountain Estates, LLC v. Loan One, LLC, 4 So. 3d 15, 16 (Fla. 5th DCA 2009) (quoting State Farm Fire & Cas. Co, v: Fleet Fin. Corp., 724 So. 2d 1218, 1219 (Fla. 5th DCA 1998). Proposed amendments are futile when they are not pled with sufficient particularity or are insufficient as a matter of law. Thompson v. Bank of NY, 862 So.

insufficient as a matter of law when they are conclusory and lack any real allegations of ultimate fact. Thompson, 862 So. 2d at 770.

The Court finds that Plaintiffs" allegations in this fourth complaint remain conclusory and fail to provide ultimate facts upon which any of their causes of action could possibly be sustained. After four attempts, the allegations remain the effectively the same. Plaintiffs have provided no additional facts that support any viable causes of action. It is readily apparent that further attempt to amend these claims would be futile. Moreover, "[tjhere is simply a point in litigation when defendants are entitled to be relieved from the time, effort, energy, and expense of defending themselves against seemingly vexatious claims." *Kohn v, City of Miami Beach*, 611 So. 2d 538, 539 (Fla. 3d 1992). While the Court recognizes that both Plaintiffs were pro se litigants when the original Complaint was filed, "a patty's self-representation does not relieve the party of the obligation to comply with any appropriate rules of civil procedure." Id.

In accordance with the foregoing, it is hereby ORDERED AND ADJUDGED that

1. Defendants' "Motion to Dismiss Plaintiffs' '2lld Amended' Complaint with Prejudice," filed on October 13, 2017, is GRANTED.
2. Plaintiffs shall take nothing by this action and Defendants shall go hence without day.
3. Plaintiff Usha Jain's request for leave to amend her complaint in "Plaintiff Dr, Usha Jain's Motion to Notify the Court that the Plaintiffs Were Not Provided with Binder with Index Tabs for the Hearing on the Motion to Dismiss on January 26. 2018 and Plaintiff Dr. Jain Also Notifies that Plaintiff's Amended Complaint Filed on January

12,2018 is Moot Now," filed on January 28,2018. is DENIED.

4. Plaintiff Manohar Jain's "Motion for With drawal of His Amended Complaint," filed by counsel on January 29. 2018, is GRANTED.
5. The Court reserves jurisdiction regarding enti tlement and amount of attorneys' fees and costs, if applicable, including but not limited to any sanctions related to Judge White's Order dated October 20, 2017.

DONE AND ORDERED in Chambers, at Orange County, Florida on this day of Feb., 2018

KEVIN B. WEISS
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 8th day of Feb. ,2018 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorneys/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

I HEREBY CERT£FY that a copy of the foregoing was furnished on this 8th day of Feb., 2018 by U.S. Mail to:

Usha Jain, *Pro Se*
4800 S. Apopka-Vineland Rd. Orlando, FL 32819

Michael J. Furbush, *Pro Se*
Dean, Mead, Egerton, Bloodworth, Capouano &
Bozarth, P.A.
420 S. Orange Avenue, Suite 700 Orlando, FL 32801

Manohar Jain, *Pro Se*
4800 S. Apopka-Vineland Rd. Orlando, PL 32819

Erich E. Schuttauf, Esq. Schuttauf Law Group, PA
3732 Silver Lake Drive Kissimmee, FI", 34744

Jill Gay, Judicial Assistant

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

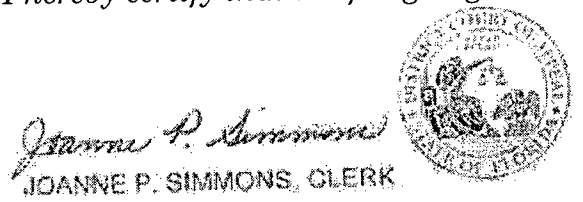
MANOHAR JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR SUCCESSOR TRUSTEES UNDER THE MANOHAR JAIN TRUST DATED JULY 1, 2000 AND USHA JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR, ET AL.
Appellants,

v. CASE NO. 5D18-2033
BAY HILL PROPERTY OWNERS ASSOCIATION, INC.,
Appellee.
_____/

DATE: April 03, 2019
BY ORDER OF THE COURT:

ORDERED that Appellants' Motion for Rehearing, Motion for Reconsideration En Banc, and Request for Written Opinion, filed March 12, 2019, is denied.

I hereby certify that the foregoing is



(a true copy of) the original Court order.
Panel: Judges Evander, Lambert, and Harris (acting on panel-directed motion(s)) En Banc Court
(acting on en banc motion)
Judge Eisnaugle recused from en banc consideration
cc:
Mya M. Hatchette C. Andrew Roy Erich Schuttauf

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA FIFTH DISTRICT

MANOHAR JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR SUCCESSOR TRUSTEES UNDER THE MANOHAR JAIN TRUST DATED JULY 1, 2000 AND USHA JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR, ET AL.
Appellants,
v. CASE NO. 5D18-2033
BAY HILL PROPERTY OWNERS ASSOCIATION, INC.,
Appellee.
_____/
DATE: February 26, 2019

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion for Attorneys' Fees and Costs, filed October 29, 2018, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Florida Rule of Appellate Procedure 9.400(b), to determine and assess reasonable attorney's fees for this appeal. Further, it is

ORDERED that Appellants' Motion for Attorney's Fees, filed October 29, 2018, is denied.

I hereby certify that the foregoing is (is a true copy of) the original Court order

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

BAY HILL PROPERTY OWNERS ASSOCIATION, INC.,
Plaintiff,

CASE NO.: 2015-CA-008175-0
DIVISION: 33-2

vs.

MANOHAR JAIN, as Trustee, and its Successors or successor trustees under the Manohar Jain Trust dated July 1, 2000 and USHA JAIN, as Trustee, and its successors or Successor trustees under the Usha Jain Trust dated July 1, 2000, Defendants.
_____ /

ORDER GRANTING IN PART "PLAINTIFF'S MOTION TO ENFORCE FINAL JUDGMENT AND FOR CONTEMPT" and DENYING "DEFENDANTS' VERIFIED 1.540(b) MOTION TO VACATE JUDGMENT OF 2/25/16," "MOTION FOR REHEARING TO VACATE AND INVALID DEFAULT JUDGMENT DUE TO UNAUTHORIZED COMMUNICATION AND EXISTENCE OF MERITORIOUS DEFENSE OF THE DEFENDANTS," "SUPPLEMENT TO MOTION FOR REHEARING TO VACATE AN INVALID DEFAULT JUDGMENT DUE TO UNAUTHORIZED COMMUNICATIONS AND EXISTENCE OF MERITORIOUS DEFENSE OF THE

DEFENDANTS," and "MOTION FOR LEAVE TO FILE COUNTERCLAIM"

THIS CAUSE came before the Court for hearing on May 18, 2018, on "Plaintiffs Motion to Enforce Final Judgment and for Contempt," filed on September 21, 2016 and "Defendant's Verified 1.540(b) Motion to Vacate Judgment of 2/25/16," filed on February 24, 2017. It should be noted, that prior to and following the hearing, Defendants filed multiple additional motions and supplemental exhibits. This Court, having reviewed the motions, the record, considered the arguments presented, and being otherwise fully advised in the premises hereby finds and decides as follows:

RELEVANT FACTS AND HISTORY

On September 1, 2015, Bay Hill Property Owners Association ("Plaintiff") filed the present action against Manohar Jain ("Defendant"), as Trustee under the Manohar Jain Trust, claiming that Defendant had violated Article 9 of the Covenants by failing to maintain and landscape the lawn, remove weeds, clean, repair, or paint the home at Defendant's property, located at 5559 Brookline Drive, Orlando, Florida 32819 ("Property"). Plaintiff claims that on or about July 21, 2015, a Statutory Offer to Participate in Pre-Suit Mediation had been served on Defendant but Defendant refused to provide any dates for mediation to take place. Accordingly, Plaintiff sought a mandatory injunction and final judgment requiring Defendant to maintain and landscape the Property, remove weeds and replace dead sod, remove weeds from landscaping beds, make repairs, paint, and clean the home.

On September 21, 2015, Plaintiff filed an Amended Complaint to include Mrs. Usha Jain as a party. On September 29, 2015, Defendant and Usha Jain (collectively "Defendants") filed their intent to appear pro se. Although counsel had filed Defendants' answer on October 29, 2015, Defendants and counsel later moved for counsel's withdrawal. In their motion, filed on November 4, 2015, Defendants stated that they decided to proceed pro se because it was too difficult to explain the history of the case to counsel. On November 2, 2015, Defendants moved for sanctions pursuant to Florida Rule of Civil Procedure 57.105.

On December 14, 2015, Plaintiff moved for Final Summary Judgment and filed a Notice of Hearing for February 25, 2016. On December 14, 2015, Defendants filed a Second Motion for Sanctions pursuant to Florida Rule of Civil Procedure 57.105. On December 18, 2015, Plaintiff filed an Amended Notice of Hearing for February 24, 2016. On December 21, 2015, Defendants filed their Motion to Dismiss the Complaint alleging that Plaintiff failed to coordinate mandatory presuit mediation. They also filed a motion asking the Court for help in scheduling hearings, claiming that the hearing set for Plaintiff's Motion for Summary Judgment had been set unilaterally by Plaintiff. On January 14, 2016, the Court entered an Order scheduling a hearing and directing Plaintiff to respond to Defendants' motion. Plaintiff filed its responses on January 28, 2016.

On February 24, 2016, the Court held a hearing on Plaintiff's Motion for Summary Judgment. The Defendants did not appear. The Court granted Plaintiffs Motion and further awarded

attorneys' fees and costs. Final judgment was entered on February 25, 2016.

On February 26, 2016, the Court denied the Defendants' Ex-Parte Motion for Rehearing. On February 29, 2016, Defendants filed a motion to request that the Court correct the aforementioned order. On March 2, 2016, Defendants filed a motion to get the Court to help them determine how to follow the final judgment order. On March 3, 2016, Defendants filed their Motion for Recusal. On March 4, 2016, Judge Kest granted the Defendants' Motion for Recusal.

On March 7, 2016, Plaintiff filed a Motion for Attorneys' Fees. That same day, Defendants filed a motion asking the Court to vacate all prior orders of the predecessor judge. A hearing on the motion was set for July 15, 2016. At the hearing, the Court advised Defendants to retain counsel because, pursuant to *EHQF Trust, v. S&A Partners, Inc.*, 947 So. 2d 606 (Fla. 4th DCA 2007), a trust is required to have a licensed attorney represent its interests in litigation. On July 22,2016, the Court entered its written Order advising the Defendants that they had thirty days to retain counselor provide an affidavit showing good cause if more time was needed.

On August 1, 2016, Defendants filed a motion requesting to be allowed to continue pro se, without an attorney. The Defendants stated that they had consulted with the attorney who created their trust and were advised that the trust did not require representation. Defendants subsequently claimed that the trust had been dissolved and asked again to represent themselves. They also sought a stay in the proceedings. On September 8, 2016, a hearing was held on Defendants' motions wherein the Court

denied them all. The Court's written Order was entered on September 16, 2016.

On September 13, 2016, Defendants filed an emergency motion to seek additional time to retain counsel. On September 14, 2016, Defendants filed another motion asking the Court for an extension.

On September 21, 2016, Plaintiff filed a motion to enforce the Final Judgment and for contempt. On September 22, 2016, counsel for Defendants filed a Notice of Appearance. On February 24, 2017, a hearing was held on Plaintiffs Motion to Enforce the Final Judgment and Defendants' Motions to Vacate all of the prior orders. On May 2, 2018, the Court entered its written order denying Defendants' motions without prejudice.

After the February 24, 2017 hearing, Defendants filed another motion, this time seeking to vacate the Final Judgment pursuant to Florida Rule of Civil Procedure 1.540(b). A hearing, wherein the Court reserved judgment, was held on May 18, 2018, on Plaintiffs Motion to Enforce the Final Judgment and Defendants' latest Motion to Vacate the Final Judgment. That same day, Defendants filed a Motion for Rehearing. On June 8, 2018, Defendants filed a Motion for Leave to file a Counterclaim. This Order follows.

ANAL YSIS AND RULING

On February 24, 2017, Defendants filed "Defendants' Verified 1.540(b) Motion to Vacate Judgment of 2/25/2016." Defendants maintain that because they were not represented by counsel, all of the actions taken, including the final judgment, are invalid. See *EHQF Trust v. S&A Capital Partners, Inc.*, 947 So. 2d 606 (Fla. 4th DCA 2007) (holding that "a trustee cannot appear pro se on behalf of the trust, because the trustee represents the interests of

others and would therefore be engaged in the unauthorized practice of law"). They claim that Plaintiff's counsel and the Court should have advised them at the beginning of the litigation that the Jain Trust needed representation. Defendants contend that pursuant to Florida Rule of Civil Procedure 1.540(b)(1), which provides in pertinent part that "the court may relieve a party ... from a final judgment ...for ... mistake, inadvertence, surprise or excusable neglect," the final judgment must be vacated. Defendants further claim that any neglect on their part in obtaining counsel was excusable because Usha Jain was recovering from injuries.

The Court finds these arguments unpersuasive. "[P]rior to final judgment, a successor judge has the power to vacate or modify a predecessor's interlocutory rulings ... " *Hull & Co., Inc. v. Thomas,* 834 So. 2d 904, 906 (Fla. 4th DCA 2003). However, "[tjhe general rule is that a successor judge cannot review, modify, or reverse on the merits and on the same set of facts the final orders of a predecessor, unless there exists some special circumstances such as mistake or fraud upon the court." Blitch v. Owens, 519 So. 2d 704, 706 (Fla. 2d DCA 1988). While Florida Rule of Civil Procedure 1.540(b)(1) does allow the court to vacate a final judgment on grounds of mistake, inadvertence, surprise or excusable neglect, "the rule does not contemplate relief under circumstances such as these where the moving party has merely suffered prejudice as a result of his own inaction." *Allstate Ins. Co. v. Glisano,* 722 So. 2d 216, 218 (Fla. 2d DCA 1998).

> The failure of a party to take the required steps necessary to protect its own interests, cannot, standing alone, be grounds to vacate judicially

> authorized acts to the detriment of other innocent parties. The law requires certain diligence of those subject to it, and this diligence cannot be lightly excused. The mere assertion by a party to a lawsuit that he does not comprehend the legal obligations attendant to [the pending legal action] does not create a sufficient showing of mistake, inadvertence, surprise or excusable neglect to warrant the vacating of a final judgment.

John Crescent, Inc. v. Schwartz, 382 So. 2d 383, 38586 (Fla. 4th DCA 1980). Moreover, errors of judgment or tactics are not the type of errors for which Rule 1.540(b)(1) may be used to provide relief. *See Cottrell v. Taylor, Bean, Whitaker Mortg. Corp.*, 198 So. 3d 688, 691 (Fla. 2d DCA 2016).

In the instant case, Defendants were initially represented by counsel. However, after counsel had filed Defendants' Answer, Defendants moved for the withdrawal of counsel. They chose to continue pro se because they felt their case was too difficult to explain to an attorney and that justice could only be achieved with their firsthand information. After Final Judgment had been entered, Defendants initially sought to have the Final Judgment vacated because it had not been properly noticed and Plaintiff had unilaterally set the hearing. On February 26, 2016, the Court denied the Motion finding that the hearing had in fact been properly noticed. Furthermore, the review of the record shows that Defendants were aware of the hearing as they had contacted the J.A. (Judicial Assistant) and opposing counsel multiple times regarding the scheduling and the subject matter of the hearing.

After the predecessor judge recused himself, Defendants moved to have all of his orders vacated, this time alleging that the judge had wrongfully

conducted the summary judgment hearing. At the hearing on Defendants' motion, the Court advised Defendants that they needed to retain counsel to represent the Jain Trust and had thirty days to do so. Instead, Defendants dissolved the Jain Trust and moved to continue pro se. The Court denied the Motion.

It was not until Plaintiff moved for enforcement of the Final Judgment did Defendants retain ounsel. Now Defendants are seeking to have the final judgment vacated under Rule 5 .140(b)(1) because they claim they did not understand that the trust needed to be represented by counsel and were never advised as such.

Defendants made the tactical decision to proceed pro se because they believed they could handle the litigation better than an attorney. They took active steps to continue pro se and asked the Court multiple times to continue to be allowed to do so. They cannot now use the fact that they were unrepresented by counsel as a reason to vacate the predecessor judge's Final Judgment. See Cottrell v. Taylor, Bean, Whitaker Mortg. Corp., 198 So. 3d at 691. Furthermore, Rule I.S40 "does not have as its purpose or intent the reopening of lawsuits to allow parties to state new claims or offer new evidence omitted by oversight or inadvertence." *Smiles v. Young*, 271 So. 2d 798, 802 (Fla. 3d DCA 1973). If the Defendants felt aggrieved by the Final Judgment, they should have timely appealed it after their Motion for Rehearing was denied. See *Webb v. Webb*, 729 So. 2d 430 (Fla. 5th DCA 1999).

In accordance with the foregoing, it is hereby ORDERED AND ADJUDGED that:

1. "Plaintiff's Motion to Enforce Final Judgment and for Contempt," filed on September 21, 2016, is GRANTED WITH PREJUDICE, to the extent that Defendants are ordered to comply with the February 2S, 201S Final Judgment.
2. "Defendants' Verified 1.540(b) Motion to Vacate Judgment of 2/25116," filed on February 24, 2017, "Motion for Rehearing to Vacate and Invalid Default Judgment Due to Unauthorized Communication and Existence of Meritorious Defense of the Defendants," filed on May 18, 2018, and "Supplement to Motion for Rehearing to Vacate an Invalid Default Judgement Due to Unauthorized Communication and Existence of Meritorious Defense of the Defendants," filed on May 2S, 2018, "Motion for Leave to File Counterclaim," filed on June 8, 2018, are DENIED WITH PREJUDICE.
3. Any additional *pending* pleadings filed by Defendants that have not been specifically addressed in this Order are DENIED WITH PREJUDICE.
4. This Court shall retain jurisdiction for the issuance of such further Orders and other relief as is necessary and proper, including but not limited to, Plaintiffs supplemental Motion for Attorneys' Fees and Costs.
5. The parties shall agree to a mutually convenient timeframe within which Defendants will comply with the provisions enumerated in the Final Judgment. If the parties reach an impasse and are unable to agree to a reasonable solution, the

Court may take appropriate post-judgment action to enforce the Final Judgment including but not limited to the appointment of a neutral third party (at the Defendants' expense) to facilitate Defendants' efforts to bring the Property into compliance, the award of additional attorney's fees and costs, or writs of bodily attachment with a purge provision.

DONE AND ORDERED in Chambers, at Orange

KEVIN B. WEISS
CIRCUIT JUDGE

County, Florida on this 15 day of June, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 15th day of June 2018 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the e-Portal Electronic Service List, via transmission of Notices of Electronic Filing generated by the e-Portal System.

Jill Gay, Judicial Assistant

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED AL.,
Appellants, Case No. 5D18-1215
V.
DAVID BARKER, MARY BETH VALLEY, MICHAEL FURBUSH AND ROETZEL AND ANDRESS, P.A.,
Appellees.

_____,

Decision filed January 22, 2019
Appeal from the Circuit Court
for Orange County,
Kevin B. Weiss, Judge.
Dr. Usha Jain, Orlando, pro se.
Erich E. Schuttauf, of Schuttauf Law Group, P.A., Kissimmee, for Appellant, Manohar Jain.
Thomas P. Wert, of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., Orlando, for Appellees, David Barker and Mary Beth Valley.
No Appearance for Other Appellees.

PER CURIAM.
AFFIRMED.
BERGER and EDWARDS, JJ., and JACOBUS, B.W., Senior Judge, concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

MANOHAR JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR SUCCESSOR TRUSTEES UNDER 'iHE MANOHAR JAIN TRUST DATED JULY 1, 2000 AND USHA JAIN, AS TRUSTEE, AND ITS SUCCESSORS OR, ET AL.,
Appellants, CASE NO. 5D18-2033
V.
BAY HILL PROPERTY OWNERS ASSOCIATION, INC.,
Appellees.

_____,

DATE: February 26, 2019
BY ORDER OF THE COURT:
ORDERED that Appellee's Motion for Attorneys' Fees and Costs, filed October 29, 2018, is granted and the above-styled cause is hereby remanded to the Circuit Court for Orange County, Florida, pursuant to Florida Rule of Appellate Procedure 9.400(b), to determine and assess reasonable attorney's fees for this appeal. Further, it is
ORDERED that Appellants' Motion for Attorney's Fees, filed October 29, 2018, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

JOANNE P. SIMMONS, CLERK

Panel: Judges Evander, Lambert, and Harris
cc: Mya M. Hatchette C. Andrew Roy Erich Schuttauf
Orange Cty Circuit Ct Clerk (2015-CA-8175-O)