

APPENDIX

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APPENDIX A
SUPREME COURT OF FLORIDA

FRIDAY, AUGUST 29, 2025

NO. _____

IN THE SUPREME COURT OF THE UNITED
STATES

GERALD SCOTT
Petitioner

SC2025-1081
Lower Tribunal No(s).
4D2024-2737
50-2023CC005101XXXXMB

V
BOCA LANDINGS HOMEOWNERS
ASSOCIATION

Respondent

Petitioner's "petition for
Certification of Questions of Law
to the Florida Supreme Court"
filed with this court on August 20,
2025, is hereby stricken as
unauthorized. **PLEASE BE
ADVISED THAT THE ABOVE**

**STYLED CASE IS FINAL IN
THIS COURTS AND NO
FURTHER PLEADINGS MAY
BE FILED. ANY FURTHER
FILINGS WILL NOT BE
CASE NO.:SC2025-1081**

**Page Two:
RESPONDED TO AND
PLACED IN A
MISCELLANEOUS FILE.**

A True Copy
Test
SC2025-1081 8/29/2025
John A Tomasino
Clerk Supreme Court

DL

Served:
4DCA CLERK
PALM BEACH CLERK
JOSEPH GERARD PADDI III
GERALD SCOTT
HON. SARAH LEVIEN SHULLMAN
EBRYONNA M. WIGGINS

APPENDIX B

SUPREME COURT OF FLORIDA

TUESDAY, AUGUST 5, 2025

NO. _____

IN THE SUPREME COURT OF THE UNITED
STATES

GERALD SCOTT
Petitioner(s)

SC2025-1081
Lower Tribunal No(s).
4D2024-2737
50-2023CC005101XXXXMB

V
BOCA LANDINGS HOMEOWNERS
ASSOCIATION
Respondent(s)

Petitioner's "Petition for review of
Clerk's Order Dismissing Petition
for Writ of Certiorari" has been

treated as a motion for
reinstatement, and pursuant to
this Court's order dated July 24,
2025, said motion is hereby
stricken as unauthorized.

CASE NO.:SC2025-1081

Page Two:

SC2025-1081 8/29/2025

John A Tomasino

Clerk Supreme Court

LC

Served:

4DCA CLERK

PALM BEACH CLERK

JOSEPH GERARD PADDI III

GERALD SCOTT

HON. SARAH LEVIEN SHULLMAN

EBRYONNA M. WIGGINS

APPENDIX C

SUPREME COURT OF FLORIDA

THURSDAY, JULY 24, 2025

NO. _____

**IN THE SUPREME COURT OF THE UNITED
STATES**

GERALD SCOTT
Petitioner(s)

SC2025-1081
Lower Tribunal No(s).
4D2024-2737
50-2023CC005101XXXXMB

V
**BOCA LANDINGS HOMEOWNERS
ASSOCIATION**
Respondent(s)

Petitioner's Notice to Invoke
Discretionary jurisdiction, seeking
review of the order or opinion
issued by the 4th District Court of

Appeal on May 14, 2025, is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by this court. *See Wheeler v. State*, 296 So. 3d 895 (Fla 2020), *Wells v. State*, 132 So 3d 1110(Fla. 2014); *Jackson v State*, 926 So 2d 1262 (Fla. 2006); *Stallworth v. Moore*, 827 So 2d 974 (Fl. 2002); *Harrison v. Hyster Co.*, 515 so 2d 1279(Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So 2d 1356(Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

SC2025-1081 8/29/2025

John A Tomasino
Clerk Supreme Court

A True Copy

Served:
4DCA CLERK
PALM BEACH CLERK

JOSEPH GERARD PADDI III
GERALD SCOTT
HON. SARAH LEVIEN SHULLMAN
EBRYONNA M. WIGGINS

**APPENDIX D
IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND
AVENUE, WEST PALM BEACH, FL 33401**

June 5, 2025

Case No.- 4D2024-2737

LT. NO.: 50-2023-CC-005101

GERALD SCOTT
Appellant(s)

v.

**BOCA LANDINGS HOMEOWNERS
ASSOCIATION**
Appellee(s)

BY ORDER OF THE COURT:

Ordered that Appellant's May 19,
2025 motion for issuance of a written
opinion. Rehearing, and for rehearing
en banc is denied

Served:

PALM BEACH CLERK

GRS Community management

Joseph Gerard Paggi III

Gerald Scott

Hon. Sarah Levien Shullman

Ebryonna M. Wiggins

I hereby certify that the foregoing is a
true copy of the court's order.

LONN WEISSBLUM

Fourth District Court of Appeal.

APPENDIX E

**DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA
FOURTH DISTRICT**

GERALD SCOTT
Appellant

v.

BOCA LANDINGS HOMEOWNERS
ASSOCIATION
Appellee

No.: 4D2024-2737

May 14, 2025

Appeal from the County Court for the Fifteenth
judicial circuit, Palm beach County; Sarah Levien
Shullman, Judge; L.T. Case No.: 50-2023-CC-
005101

Gerald Scott, Boca Raton, pro se.
Joseph Gerard Paggi III and
Ebryonna M. Wiggins, for appellee.

PER CURIUM.

*Affirmed. Applegate v Barnett
Bank, 377 So. 2d 1150 (Fla. 1979),*

GROSS, MAY AND CONNER, JJ.,
concur.

Not final until disposition of timely
filed motion for rehearing.

**APPENDIX F
IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND
AVENUE, WEST PALM BEACH, FL 33401**

DCA NO.: 4D2024-2737

LT. NO.: 50-2023-CC-005101

GERALD SCOTT
Appellant(s)

v.

BOCA LANDINGS HOMEOWNERS
ASSOCIATION
Appellee(s)

BY ORDER OF THE COURT:

ORDERED sua sponte
that Appellant's June 16, 2025 motion
for reconsideration is stricken as
Served:

PALM BEACH CLERK
GRS Community management
Joseph Gerard Paggi III
Gerald Scott
Hon. Sarah Levien Shullman
Ebryonna M. Wiggins

I HEREBY CERTIFY that the
foregoing is a true copy of the court's
order.

**LONN WEISSBLUM
Fourth District Court of Appeal.**

APPENDIX G
CONFLICTING APPELLATE
DECISIONS

Conflicts with Precedent on the Florida Statute of Limitation FL 95.11

Several cases from the 4th DCA, all other Florida District Courts of Appeal and the Florida Supreme Court illustrate that all Florida Courts interpret and apply the Statute of Limitations as stated in Fla §95.11, barring claims that were outside the statute of limitation. These cases include: *Broward County v Gladding Corp.*, 609 So. 2d (Fla. 4th DCA 1992); *Hialeah Hospital, Inc. v Gonzalez* 820 So. 2d 96 (Fla. 3DCA) 2023); *Chapman v State* 581 So 2d 995(Fla 2nd DCA 1991); *State v Mac*, 637 So 2d 18 (4th DCA 1994); *Wells v State* 571 So. 2d 563(Fla. 5th DCA 1989); *Ramsay v South Lake Hospital Inc.* (So 2d Fla. 5th DCA); *in Hampton v. Duda and Sons*, 223 So. 3d 981 (Fla. 2nd DCA 2017); *Nissan Motor Co v Pohl* 482 So 2d 218 (Fla. 1986); *Pait v Ford Motor Co.*, So. 2d. 549(Fla 3rd DCA 1991); *Major League Baseball v Morsani* 790 So. 2d. 1071 (Fla. 2001). Dismissal is required when claims are filed after the expiration of the applicable statute of limitation. *Beach v Great Western Bank*, 692 So. 2d.146 (Fla 1997) emphasized that the statute of limitation extinguishes the legal right to bring a claim after the expiration of the prescribed period.

As a procedural statute the statute of limitation prevents enforcement of a cause of action that

allegedly has accrued. It does not determine the underlying merits of the allegations in the claim but merely cuts off the right to file a suit or claim. The 4th DCA decision disregards

Conflict with Fla. R. P. 9.200 (b) (5).

There is also a significant conflict with the law established by the 4th DCA in *Kauffman v Baker* 378 So. 402 (Fla 4th DCA 1980), which clarifies that an unchallenged Narrative Statement of Proceedings (NSOP) is deemed acceptable and reliable for Appellate Proceedings. Also the 4th District Court's decision in *De Puy Orthopedic Inc. v Waxman* 83 So 3d 927 (Fla 4th DCA 2012) and *Kirsch v Fleet Bank N.A.*, 708 So 2d 1241 (Fla 3rd DCA 1988) established that the NSOP can be used in lieu of a trial Court's transcript as long as it is consistent with Fla. R. P. 9.200 (b) (5). See also *Casella v Casella* 569 So.2d 848 1990 (Fla 4th DCA); 9.200 (5) (b).

APPENDIX H

**IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA, FLORIDA
FOURTH DISTRICT COURT OF APPEAL**

DCA NO.: 4D2024-

2737

LT. NO.: 50-2023-CC-005101

Gerald Scott,
Appellant

v.

Boca Landings Homeowners Association
Appellee

**NARRATIVE STATEMENT OF
PROCEEDINGS**

I INTRODUCTION:

Case Style and Parties

DCA NO.: 4D2024-2737

LT: 50-2023-CC-005101

Gerald Scott

Appellant

v.

Boca Landings homeowner's Association
Appellee

Appeal context

This appeal arises from the second Amended final judgment entered by the County Court for Palm Beach on September 26, 2024, granting judgment award of \$27,531.88 for the Plaintiff on the Complaint for Breach of contract Count I, and Lien Foreclosure Count II. Plaintiff filed this action on May 5, 2024 alleging that Defendant failed to pay posted maintenance assessments, special assessments, late fees, and /or additional collection costs which were due through April 17, 2023 amounted to \$4974.73.

II CHRONOLOGY OF EVENTS:

Key Events

The non-jury Trial was held on May 22, 2024 during which Plaintiff presented several exhibit which were referenced in the second Amended Judgment. Defendant presented exhibits which were accepted as evidence but were never mentioned in any of the judgments i.e. initial judgment, the amended judgment and the second amended final judgment. The final Judgment of May 22, 2024 was a verbatim reproduction of Plaintiff's proposed Judgment and the Amended final judgment of July 16, 2024 and the second amended judgment of September 26 2024, were almost verbatim reproductions of Plaintiff's proposed amended judgment and the second amended Final Judgment. Defendant's proposed final Judgment was submitted on September 20th 2024 and the Clerk has been directed to submit it as part of the record.

Hearing Dates and Descriptions

- i. *May 19 2023*: Defendant received Plaintiff's complaint for Breach of Contract and Lien Foreclosure.
- ii. *June 20th 2023*: Defendant's Answer and Affirmative Defenses and Counter claim for defamation and negligence and malicious prosecution were filed on June 24 2023.
- iii. *September 26 2023*: Counter-Defendant motion to dismiss Defendant's Counterclaim for Defamation Negligence is granted.
- iv. *November 11 2023*: Counter-Defendant motion to Dismiss Defendant Counterclaim Count I (Counter claim for defamation) and Count II (for negligence) were dismissed without prejudice and Count III (for malicious prosecution) was dismissed with prejudice.
- v. *December 22, 2023*: Plaintiff motion to Dismiss Defendant's second amended Counterclaim is granted.
December 22, 2023: Defendant's Motion to Dismiss Plaintiff Complaint is denied.
- vi. *February 12 2024*. Defendant's Motion for Summary judgment denied. *February 12 2024*. Plaintiff affidavit of indebtedness of \$4037 through Nov 21, 2023 in accepted by the court.
- vii. *April 24 2024*: Non-Jury trial occurred.
- viii. *May 22 2024*: Final judgment of Foreclosure entered.
- ix. *June 5 2024*: Defendant's Motion for a rehearing was filed.
- x. *June 12 2024*: Defendant's Motions: For Rehearing (D.E. 107) Defendant's Motion

- Corrections of Mistakes (D.E. 112); Defendant's Motions to Vacate (D.E. 125).
- xi. *June 25 2014*: Hearing on Amended Final judgment. Plaintiff did not furnish the affidavit of services rendered and of cost Defendant prior to this hearing on June 14 2024, even after Plaintiff submitted a certificate of service under oath claiming that they did so. Defendants email on the notice of the hearing showed that Plaintiff violated Rule 2.51.
 - xii. *July 9 2024*: Order to cancel foreclosure sale scheduled for July 11, 2024.
 - xiii. *July 16*: Amended Final Judgment of foreclosure ordered \$3,879 due from defendant as per ledger as of March 25, 2024.
 - xiv. *July 31 2024*: Defendant's Motion the Vacate Amended Final judgment for Foreclosure with exhibits. Plaintiff's Affidavit of services rendered and costs was not furnished to Defendant prior to hearing on the motion for the Amended judgment.
 - xv. *August 15, 2024*: Defendant's filed motion for Reversal of Judgment and Dismissal of the Foreclosure Complaint.
 - xvi. *August 16, 2024*: Order denying Defendant's post judgment motions for rehearing (filed June 5 and amended June 12 (D.E.107), Defendant's Motion for Corrections of Mistakes (D.E. 112), Defendant's motion to Vacate Amended Final Judgment July 26 2026 (D.E. 125)
 - xvii. *August 19 2024*: Defendant's filed Motion for

Reconsideration and Motion for Findings of Fact and Conclusion of law.

- xviii. *September 4, 2024*: Hearing on Plaintiff's Motion for Reconsideration and motion for Findings of Fact and Conclusion of Law. Defendant requested an explanation of the reasons for the denial of Defendant's Motion for Correction, Motion to Vacate and Motion for Rehearing. When pressed by Defendant to address the fact of the expiration of the Statute of Limitation on the case, the Judge's response was that "they (*Plaintiff*) were not claiming the \$500 fine of 2016". This is contradicted by the record as every document submitted by Plaintiff in support of their claim shows that they were claiming the \$500 fine of 2016 from the Late Assessment notice to the Complaint to the final judgment, the amended final judgment and the second amended final judgment.
- xix. *September 20 2024* Defendant's proposed final Judgment order submitted.
- xx. *September 26 2024*: Order on second amended final judgment.

Sept 26 2024: Order denying Defendant's motion for Reconsideration, Defendant's motion for Findings of Fact and Conclusion of law, and Defendant's motion for Reversal of Judgment and Dismissal of the Foreclosure Complaint.

III ARGUMENTS PRESENTED:

Appellant's arguments:

Appellant made the following arguments:

A. That the case was filed after the expiration of the Statute of Limitation on the

collection of a Homeowner's Association fine in Florida (See FL 95.11). Since the complaint was filed more than two years past the statute of limitation, all documents in which the \$500 fine of 01/04/2016 appeared, were invalid, void and failed to meet the conditions precedent for foreclosure according to FL 720.3085. The documents in which the fine of 2016 appeared include the Notice of Late Assessment (plaintiff trial Exhibit 4), the Intent to record a claim of Lien, (Plaintiff Trial Exhibit 5), the Claim of Lien, (Plaintiff's trial Exhibit 6), the notice of intent to foreclose on a lien, the notice to foreclose on a lien, and the Complaint for lien foreclosure and for breach of contract. The case should be dismissed with prejudice.

The standard of review for an order granting a motion to dismiss with prejudice is de novo. *Burgess v. N. Broward Hosp. dist.*, 126 So.3d 430, 43 (Fla. 4th DCA 2013). Dismissal based on expiration of the Statute of limitation should be granted where the facts constituting the defenses affirmatively appear on the face of the complaint and its attachments so as to conclusively establish that the action is time-barred. *Banks v Alachua Cnty. Sch. Bd.*, 275 so. 3d 214, 214 (Fla. 1st DCA 2019). *Goodwin v Sphatt* So.3d 1092, 1094 Fla. 2d DCA 2013).

B. That there were errors and mistakes of Law in the second amended Final

Judgment.

C. That there were errors in the findings of facts in the second amended Final

Judgment.

D. That there were errors and omissions in the conclusions of Law in the second

Amended Final judgment.

E. That there were other defects in the judgment even if (as was not the case) it was filed within the period of the Statute of Limitation. For example the Judgment incorrectly argues that Fla.R.Civ.P 1.115(e) excludes Homeowners association from verification requirements of a foreclosure and that conditions precedent for foreclosure do not apply Homeowners association. Also Plaintiff produced no valid certified mail return receipt for notices of the fines of 1/4/2016 and 09/30/2020 during which periods there was no one residing at Defendant's house.

Appellee arguments:

Appellee made the following arguments:

Appellee argued that Defendant was delinquent on "posted maintenance assessments, special assessments, late fees, and /or additional collection costs were due through April 17 2023" plus interest and all costs and expenses of collection, including attorney's fees, as alleged in the complaint. Appellee's argument was based on Plaintiff's Late Assessment Notice of April 29 2023(See Plaintiff trial exhibit 4), used as the basis for Breach of Contract according to Count I Paragraph 14 and Lien Foreclosure Count II Paragraph 20 of the Complaint for Foreclosure, claiming \$4974.73. The notice of late assessment (plaintiff trial exhibit 4) was used as the basis for the notice of intent to record a lien, (Plaintiff trial exhibit 5), the claim of lien (plaintiff trial exhibit 6) and the complaint for breach of contract and lien foreclosure in May 5, 2023. The Late Assessment notice which claimed \$1,569 contained a fine of \$500 that was filed more than 2 years passed the Statute of limitation and in addition was not properly

imposed according to the statutory requirement for Homeowners' Association imposition of fines. This Complaint was filed on the basis of an alleged fine by Boca Landings Homeowners Association (BLHOA) that occurred on January 4, 2016.

Appellee argued that Homeowners associations are exempt from the verification requirement for foreclosure as specified in Fla.R.Civ.P 1.115(e) and numerous case law.

Appellee never presented any argument to refute the argument that the action was time-barred.

IV COURT RULINGS AND DECISIONS

Significant Orders and Judgments,

- i. *September 26 2023*: Counter-Defendant motion to dismiss Defendant's Counterclaim for Defamation Negligence is granted
- ii. *November 11 2023*: Counter-Defendant motion to Dismiss Defendant Counterclaim Count I (Counter claim for defamation) and Count II (for negligence) were dismisses without prejudice and Count III (for malicious prosecution) was dismissed with prejudice.
- iii. *December 15 2023*: Plaintiff motion to Dismiss Defendant's second amended Counterclaim is granted and

December 15 2023: Defendant's Motion to dismiss plaintiff Complaint is denied

- iv. *February 12 2024*. Defendant's Motion for Summary judgment is denied.

February 12 2024. Plaintiff affidavit of indebtedness of \$4,037 through November 21, 2023 in accepted by the court.

- v. *April 24 2024*: Non-Jury trial occurred
- vi. *May 22, 2024* : Order for Final judgment of

- foreclosure is rendered
- vii. *June 27 2024*: Motion For Correction of Mistakes in the Judgment amount.
 - viii. *July 16* amended final Judgment of foreclosure \$\$25,886.66 with \$3879 as due per ledger as of March 25 2024 is granted
 - xxi. *Aug 16 2024*: Order denying Defendant's post judgment motions for rehearing (filed June 5 and amended June 12 (D.E.107), Defendant's Motion for Corrections of Mistakes (D.E. 112), Defendant's motion to Vacate Amended Final Judgment July 26 2026 (D.E. 125)
 - ix. *September 20 2024*: Defendant's proposed final Judgment order rejected by the judge.
 - x. *September 26 2024*: Order on second amended final Judgment.

September 26 2024: Order denying Defendant's motion for reconsideration, Defendant's motion for findings of fact and conclusion of law, and Defendant's motion for reversal of judgment and dismissal of foreclosure Complaint.

V CONCLUSIONS

1. The complaint was filed more than two years past the statute of limitation for a Homeowner's Association collecting a fine. Therefore, all documents in which the 2016 \$500 fine it appeared were invalid, void and failed to meet the conditions precedent for foreclosure according to FL 720.3085. A foreclosure judgment based on an invalid \$500 fine in 01/04/2016, which did not meet with the requirements of statute cannot be used as a basis for a foreclosure judgment in 2024. The fine was imposed when as the evidence shows

Defendant was out of the US from November 15, 2015 to February 13, 2016.

2. The was no valid service of notice of the late assessment , the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint. Consequently the notice of the late assessment, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint are all void.
3. Apart from the invalidity of the service of late assessment notice, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint, their contents are void because they are all inaccurate and they all fail the verification test required by FL.R.Civ.P 1.115(e).
7. There are numerous inconsistencies, contradictions and inaccuracies in the late assessment notice (Plaintiff's exhibit 4) the notice of intent to record a Lien (Plaintiff's exhibit 5, the Claim of Lien and notice of intent to foreclose on a lien ((Plaintiff's exhibit 6. and the complaint. For example the claims listed in between Plaintiff's exhibits 7A, 7B, 7C, and 7D are in contradiction with Plaintiff's Exhibits 5 and 6. These contradictions cannot be reconciled and this makes void the notice of the late assessment, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint. See also Defendant's Motion to Vacate, Defendant's Motion for Correction and Defendant's Motion for a Rehearing. *Dwork v Executive Estates of*

Boynton Beach Homeowners Association Inc 42 Fla L weekly D 1158 (Fla 4th DCA 2017 requires strict compliance with the statutory requirements for foreclosure.

8. As shown in Defendant's Motion to Vacate, Defendant's Motion for Correction and Defendant's Motion for Rehearing even though Plaintiff received payments, Plaintiff under penalty of perjury stated that those payments were not received. See Exhibits 1A to 1K in Defendant's Motion to vacate which shows inter alia checks cashed by plaintiff, checks sent to plaintiff and other contradictions and inconsistencies between plaintiff's exhibits 4, 5, 6, 7A, 7B, 7C, and 7D.
9. If the \$500 2015 time-barred invalid fine had been paid as the Judge claimed that "they (*Plaintiff*) were not claiming the \$500 fine of 2016", and Defendant's monthly assessment which was paid by standing order from PNC bank, were applied to this invalid fine, (as claimed in paragraph 6d of the judgment) then it should not be used as the basis of the late assessment notice in 2022, the notice of intent to record a Lien (2022) the Claim of Lien (2022) and notice of intent to foreclose on a lien and the complaint for breach of contract and foreclosure lien (2023). The inclusion of this \$500 in all these different claims amounts to claiming twice for an amount already said to have been paid according the judgment, and will result in unlimited liability for a claim that is not even valid. Consequently the claim of \$1,569 (plaintiff's

exhibit 5) due as of April 29, 2022 is incorrect even in the unlikely eventuality that the fines were valid according to the requirements of statute.

10. The claim that \$1,976 was due in September 2022 is totally false and its use as the late assessment notice, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint invalidates all of those documents mentioned.
11. Arguing in the judgment that Fla.R.Civ.P.1.115(e) does not apply to Homeowners association foreclosure on a lien is not only incorrect but is also in itself an acknowledgment and admission of the invalidity of the notice of the late assessment, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint. It is in effect suggesting that even though it is agreed that the notice of the late assessment, the notice of intent to record a Lien, the Claim of Lien and notice of intent to foreclose on a lien and the complaint are inaccurate, that is of no legal consequence as the Homeowners association is not subject to Fla.R.Civ.P.1.115(e) when foreclosing. This means that the homeowners Association need not verify the amounts claimed in the of notice of the late assessment, the notice of intent to record a Lien, the Claim of Lien, and notice of intent to foreclose on a lien and the complaint, even if Fla 720.3085 (1) (c) and FL 720.3085 (5), specifically makes it clear that the Homeowners association

is accorded all the rights, duties, benefits, and responsibilities with respect to foreclosure in the same manner as it is applied to a foreclosure on a mortgage for residential real property, and a homeowners association can act like a mortgage company for this purpose. If Fla.R.Civ.P 1.115(e) excludes Homeowners association from verification requirements or conditions precedent for foreclosure do not apply, this means that requirements for foreclosure such as proper notices, foreclose within a specific time period, statute of limitation, timeliness requirements, FL 713.22 requirement, proper claim of lien, proper service of lien, proper filing in county records court, valid liens, properly recorded lien, legal basis of lien, and accurate claims before initiating a foreclosure would not be required of Homeowners association.

VI NARRATIVE STATEMENT OF PROCEEDINGS

1. Plaintiff presented a case based on their trial Exhibit 4, the notice of late assessment. This exhibit shows that 95 per cent of the \$1569 claimed in the Notice of late Assessment of April 29 2022, were fines of \$1,000 on 1/4/2016 (reduced to \$500) and another fine of \$1000 on 10/08/2020. These fines of \$1,500 were listed in the Complaint as delinquent assessments, special assessment inter alia. The fines were carried over into the Notice of intent to record a claim of lien, the Claim of Lien, the Notice of Intent to Foreclose on a Lien and the Complaint for Breach of Contract and Foreclosure Lien, claiming that \$4973.74 was delinquent.

2. Defendant testified that plaintiff did not respond to Defendant's letter of April 29, 2022 (See Defendant trial Exhibit 1) with requests for inter alia: i) Proof that BLHOA sent notices of alleged violations to Defendant; ii) Documentation that each notice of violation was sent and received according to Florida Statutes; iii) that for each alleged late payment, a list of the date of receipt of payment from PNC Bank; iv) that for each alleged late payment the dates BLHOA submitted the check from PNC bank for collection; v) Evidence that BLHOA sent payment coupons to 18768 Caspian circle; vi) The dollar amount of late payment in 2022; vii) Evidence that BLHOA sent out immediate notices, as is the customarily done by institutions, that payment was late. (See also Defendant's Answer and Affirmative Defenses and Counterclaim). The failure of Plaintiff to respond to Defendant's requests was a violation of Fl. 720.3085(1) (a) which requires that Plaintiff state the amount owed and the due dates for payments of the amount owed. Otherwise the claim of lien is invalid according to Fl. 720.3085(1) (a).
3. Defendant's testified that his request on May 19, 2022, (See attached Exhibit 2 of Defendant's Answer and Affirmative Defenses and Counterclaim) that BLHOA explain how Defendant allegedly owed \$1,569 as claimed in the April 29 2022 notice of Late assessment, did not receive a response.
4. Defendant testified that on May 24, 2022 BLHOA's explanation of alleged delinquent payments was that "there was a fine imposed in 2020," without any specific details, including the

date, the reason, or amount of this fine. (See Exhibit 3 of Defendant's Answer and Affirmative Defenses and Counterclaim).

5. Defendant testified that on June 2, 2022 Defendant again requested an explanation of the amount allegedly owed plus a meeting with the board, if the management could not provide the explanation requested. (See Exhibit 5, Defendant's Answer and Affirmative Defenses and Counterclaim).
6. Defendant testified that On June 2, 2022 BLHOA resident manager Sidney Scott responded to Defendant request of June 1, 2022 for a detailed explanation of their demand letter and notice of late assessment by stating that the "the ledger is quite clear", and "Ledger shows what you owe." (See attached Exhibit 6, Defendant's Answer and Affirmative Defenses and Counterclaim).
7. Defendant testified that On June 2, 2022 that Sidney Scott, resident manager of BLHOA also informed Defendant that "the board does not review owner's ledgers" and "that is what they pay management to do." (See Exhibit 6, Defendant's Answer and Affirmative Defenses and Counterclaim); Suggesting that the request for a meeting with the board would not be granted
8. Defendant testified that On June 2, 2022 BLHOA resident manager, demanded that Defendant provide proof that the ledger they prepared and sent to him is incorrect rather than BLHOA providing proof that the ledger they created is correct. (See Exhibit 6, Defendant's Answer and Affirmative Defenses and Counterclaim)
9. Defendant testified that on June 3, 2022

Defendant again requested an explanation of the amount allegedly owed by Defendant. (See attached EXH 7, Defendant's Answer and Affirmative Defenses and Counterclaim).

10. Defendant testified that on June 7, 2022 BLHOA resident manager Sidney Scott stated: "I am not paid to review the ledger" contradicting her earlier statement in Defendant's Exhibit 6 when the same Sidney Scott stated that BLHOA management are paid to review member's ledgers. (BLHOA See Exhibit 8, Defendant's Answer and Affirmative Defenses and Counterclaim).
11. Defendant testified that BLHOA failed to arrange for Defendant to meet with the Board after Defendant made several requests for such a meeting to discuss Plaintiff's late Notice Assessment (See Exhibits 1, 2, 4, and 7, Defendant's Answer and Affirmative Defenses and Counterclaim).
12. The witnesses of Plaintiff Lauren Chieffo and Shawntell Delice testified that they were not able to identify on Plaintiff's trial Exhibit 4, the date and amount of each alleged delinquent assessment and special Assessment owed by Defendant as of April 29, 2022 as Defendant had requested on several occasions. This violates FL 720.3085(1)(a). Defendant also testified that Plaintiff has not produced any evidence of any late payment made by Defendant.
13. Defendant testified and offered his driver's license and passport to show his signature was not on the certified mail return receipt he purportedly signed according to Plaintiff Trial Exhibits 5 and 6. See

exhibits attached to MFR attached hereto showing various true signature of Defendant.

14. Defendant testified that BLHOA has failed to identify anyone in Defendant's Household who signed for any notices purportedly sent by BLHOA. Defendant testified that there have been only 2 people residing in 18768 Caspian Circle since 2009; Defendant and a minor. Only 2 people have resided at Defendant's residence since 2009: Defendant and a minor. Defendant was stranded out of outside the US for almost the entire 2020. Defendant was out of the US from November 15, 2015 to February 14, 2016 and from December 4, 2019 to October 5, 2020. In the year 2020 Air travel was at a standstill around the world during the covid epidemic. Defendant was not able to return to the US during 2020. (See Defendant's Exhibits 9, and 10 in Defendant's Answer and Affirmative Defenses and Counterclaim). Consequently, no notice of alleged violation (even if valid) was communicated to the defendant. Insufficient service process cannot be used as evidence of notice to seize the house of any individual. Even if it is difficult administratively to give notice and hearing to a person, this cannot provide any justification for depriving the person of the opportunity of being heard. Defendant also produced his passport and travel itinerary as proof of absence at 18768 Caspian Circle Boca Raton US during most of 2020 as stated above. Nobody resided at Defendant's residence in September 2020 when notice of a fine was allegedly sent. No one could have received or signed for any certified mail. This was also the period of the pandemic

when the whole world was shut down. Defendant testified that he was out of the country during the period notices from BLHOA were purportedly received and a signed return receipt obtained from Defendant. Defendant testified that his passport and airline ticket information confirms his absence from his residence at the time he purportedly signed for notice of Plaintiff's Claim of Lien.

15. Witnesses for Plaintiff did not explain how posted maintenance for September 2022 was \$1976 as claimed in Plaintiff's trial Exhibits 5 and 6 when other members were charged \$91.00. (See Plaintiff trial exhibit 7A -7D).
16. Defendant testified that BLHOA failed to arrange for meeting with Board as requested by Defendant to discuss Plaintiff's Late Assessment Notice.
17. Plaintiff's witnesses Shawntell Delice, Lauren Chieffo and Gerald Scott testified that no special assessment has ever been levied on members by BLHOA.
18. At trial BLHOA did not present a correct accounting balance for Defendant and failed to disaggregate the claim on the notice of late assessment which is at the beginning of this complaint. BLHOA did not verify the pleading and also failed to disaggregate the alleged delinquent \$4974.73 claimed in the Complaint into:
 - i) Posted maintenance Assessment.
 - ii) Special assessment.
 - iii) Late fees.
 - iv) Additional Collection Costs.
 - v) Additional Late Charges.
 - vi) Title Search.

vii) Attorney's Fees.

viii) Fines.

ix) Interest.

19. Plaintiff failed to meet the burden of showing how \$4974.73 used as the basis for Breach of Contract according to Count I Paragraph 14 and Lien Foreclosure Count II Paragraph 20 of the Complaint for Foreclosure, is calculated. The allegation that assessments are delinquent is contradicted by Plaintiff's Exhibit 4, 7A, 7B, 7C, and 7D. Plaintiff's trial Exhibit 4 provides proof of receipts of payments made by Defendant to BLHOA. According to Plaintiff's Exhibit 4, for 88 months Defendant has produced receipts of 91 separate payments made to BLHOA.
20. BLHOA produced no evidence of a record of any meeting or hearing before any independent grievance committee in which Defendant was present as required by Fla statute 720.305 (2) (b). The evidence shows that BLHOA failed to comply with FL 720.305(2) (b) that "a fine may not be imposed unless the board first provides an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees," nor family members of the board. BLHOA has never held a hearing of any type with the Defendant being present. There was no evidence of a meeting with the grievance committee required for the imposition of fines even if the fine was valid. DCA has ruled that there must be strict compliance with Fla. 720.3085(2) (b).
21. Defendant argued that the purpose of Fla 720.305(2) (b) is to provide defendant with an

opportunity to be heard before a penalty is imposed and that Plaintiff failed to meet with Fla. 720.3085(2) (b) as there was no proper notice and no correct service process. Therefore, no proceedings shall be taken against any defendant not duly served. *M.L Builders Inc v Reserve developers, LLP*, 769 So 2d 1079 (Fla 4th DCA 2000)

22. The record shows that the word "fine(s)" does neither appear in the Notice of Intent to record a claim of Lien, Plaintiff Trial Exhibit 5, nor in the Claim of Lien, Plaintiff's trial Exhibit 6, nor in the notice of intent to foreclose on a lien, nor in the notice to foreclose on a lien nor in the Complaint for lien foreclosure and for breach of contract.
23. Plaintiff's trial exhibits 5 and 6 shows that BLHOA does not have a valid return receipt from a demand notice sent by certified mail to Defendant and signed by Defendant prior to filing the lien on Defendant's property.
24. Plaintiff failed to meet the burden of showing how \$4974.73 used as the basis for Breach of Contract according to Count I Paragraph 14 and Lien Foreclosure Count II Paragraph 20 of the Complaint for Foreclosure, is calculated. The allegation that assessments are delinquent is contradicted by Plaintiff's trial exhibit 4, 7A, 7B, 7C, and 7D. Plaintiff's Trial Exhibit 4 provides proof of receipts of payments made by Defendant to BLHOA. According to Plaintiff's trial Exhibit 4, for 88 months Defendant has produced receipts of 91 separate payments made to BLHOA.
25. The basis for the foreclosure is Breach of Contract according to Count I Paragraph 14 and Lien

Foreclosure Count II Paragraph 20 of the Complaint for Foreclosure. According to the Plaintiff's Exhibit 4 there has been no breach of contract as stated under the Count I Paragraph 14, and Lien Foreclosure Count II paragraph 20 of the Complaint for Lien Foreclosure. The Plaintiff's claim of \$4974.73 for "posted maintenance assessments, special assessments, late fees, and /or additional collection costs were due through April 17 2023" was based on the ledger entries prepared by Plaintiffs themselves. However, Plaintiff's Exhibit 4 with the ledger depicting Defendant's accounts prepared by Plaintiff show no delinquent posted maintenance assessments and special assessments.

26. Based on the allegations in Count I Paragraph 13 of Plaintiff Lien Foreclosure Complaint Defendant "has refused or failed to make payments under the Declaration despite demand, causing Plaintiff to suffer damages". The ledger entries prepared by BLHOA (Plaintiff's Exhibit 4) show that there are no delinquent posted maintenance assessments, special assessments, late fees, and /or additional collection costs due through April 17 2023.
27. Based on Plaintiff's Trial Exhibit 4, Table I below, shows the number of maintenance payments made by Defendant from 2015 to 2022 (Jan – April).

TABLE I

<u>YEAR</u>	<u>NUMBER</u>	<u>OF</u>
<u>PAYMRNTS</u>		
2022 Jan- April	5	
2021	12	
2020	13	
019	12	

2018	12
2017	12
2016	12
2015 March to Dec	10

Source: BLHOA ledger entries attached as plaintiff's trial Exhibit '4'

28. Further evidence from P Exhibit 4 shows that Defendant did not breach the contract as alleged in Count 1 of Plaintiff Complaint is that fees and collection costs were reversed. Yet fines that are improper and illegal were used as the basis for Notice of Intent to record a claim of Lien, Plaintiff's Exhibit 5, the Claim of Lien, Plaintiff's Exhibit 6, and on the notice of Intent to foreclose on a Lien, and on the Complaint for foreclosure action. Table II below was compiled from the Plaintiff's trial Exhibit 4 and shows the dates and amount of late fees and collection costs (later reversed) charged by BLHOA.

TABLE II

<u>DATES</u>	<u>LATE FEES POSTED</u>
9/18/2015	\$25.00
3/18/2016	\$25.00
4/20/2016	\$25.00
5/17/2016	\$25.00
6/17/2016	\$25.00
<u>DATES</u>	<u>COLLECTION COSTS</u>
2/22/2016	\$50.00
3/30/2020	\$50.00
1/28/2021	\$50.00

29. Table III below extracted from P exh4 show the fees and collection costs reversed by BLHOA after BLHOA detected the errors they had made in Defendant's record as outlined in item 7 above.

<u>DATES</u>	<u>TABLE III</u>
7/72016	<u>LATE FEE CREDIT</u>
7/72016	\$175.00
<u>DATES</u>	\$50.00
<u>CREDIT</u>	<u>COLLECTION</u> <u>COST</u>
4/7/2020	\$50.00
1/31/2020	\$50.00

30. According to Plaintiff's Trial **Exhibit '5'**, notice of Intent to record a Claim of Lien maintenance due from Defendant for September 2022 amounted to \$1976. This is incorrect. According to Plaintiff's (trial **Exhibit '4'** maintenance due for September 2022 was \$91.00. (Strict compliance is required for filing a lien foreclosure. *Dwork v Executive Estates of Boynton Beach Homeowners Association Inc* 42 Fla L weekly D 1158 (Fla 4th DCA 2017
31. The Claim of Lien Plaintiff's Trial Exhibit 6 is invalid because it fails to meet the conditions of FL. 3085(a) i.e. it fails to state the amounts owed and the due dates of payment.
32. According to Count II Paragraph 20 posted maintenance assessments, special assessments, late fees, and /or additional collection costs which were due through April 17, 2023 amounted to \$4974.73. Plaintiff's Trial Exhibit 4 shows that this is a misrepresentation of the facts.
33. Plaintiff trial exhibits shows that no special assessment has ever been levied by BLHOA as claimed in Count I paragraph 14 and Count II paragraph 20 of the Lien Foreclosure Complaint.
34. The notice of intent to record a Lien states that maintenance due in September 2022 was \$1976

and that \$3669.54 was due on Defendant's account as on September 8 2022 (See Plaintiff's trial Exhibit 5 and 6). That is wrong and is inconsistent with the ledger account of BLHOA (plaintiff's trial exhibit 4). This violates the strict compliance requirement of the statutory provisions for filing a Lien. *Dwork v Executive Estates of Boynton Beach Homeowners Association Inc* 42 Fla L weekly D 1158 (Fla 4th DCA 2017). The law requires strict compliance with *Dwork*.

35. Defendant testified that Fla.R.Civ.P. 1.115(e) requires that all residential complaints for foreclosure be verified under penalty of the law and cited the case of *Pino v Bank of New York Re Amendments to Fl R.C.P 44 So 3d 555, 556 Fl2012*, where it was held that "Allowing a residential foreclosure case to proceed to judgment when the complaint is not properly verified would eviscerate the Florida Supreme Court twice-stated intent to ensure that trial Courts have the means to sanction Plaintiffs who make false allegations and would otherwise destroy the incentive for proper pleading of foreclosure claims the Supreme Court intended to create." Defendant then moved for a dismissal based on the absence of Verification of the foreclosure complaint following *Fl. Malpractice joint Underwriting Assn v Indem. Ins Co of North America. Fl. R.C.P.1.140 expressly* and *Schopler v Smilovits, 689 So. 2d 1189 (Fla. 4th DCA 1997) citing Fl.R.C.P.1, 140(h) (2)*, that such defects in the pleadings can be raised at any time, permitting the opponent of a claim to move for dismissal on the grounds that the claim has been defectively pleaded. Defendant argued that the

allegations of a complaint are not well-pleaded they fail to meet the basic requirement of Rule 1.110 (b) and that the failure to comply with such a procedural rule is sufficient to dismiss a complaint. Rule 1.420(b). *Barton v Circuit Court of Nineteenth judicial Circuit*, 659, so 2d 1262, 1263 (Fla 4th DCA) holding that the complaint must be dismissed if verification is absent. In *Jimenez v WUSA Broadcasting Corporation.*, 870 So 2d 873 (Fla 3rd DCA

36. Plaintiff's claim of \$4974.73 for "posted maintenance assessments, special assessments, late fees, and /or additional collection costs due through April 17 2023" was based on the ledger entries compiled by Plaintiff. This ledger depicting Defendant's accounts was not attached as an exhibit to the Plaintiff's Complaint, as required by rule 1.130(a) and the evidence shows that there was no delinquent posted maintenance assessments, special assessments, late fees, and /or additional collection costs which were due through April 17 2023, as claimed in the Complaint. See Plaintiff's trial Exhibit '4'.
37. Fla. 720.3085 requires that before an HOA foreclosure can be filed the HOA must provide the homeowner with proper notice. The notice must meet the requirements of Statute. First, FL 720.3085 (4) requires that the written demand must be sent by registered mail with a written return receipt. The record shows that BLHOA's filing of a lien on the property of Defendant was made in violation of Fla 720.3085 (4) (b) i.e., without an acknowledgment of receipt from

certified mail. BLHOA failed to provide proper notice with details of the “VERIFIED” amount owed before filing the foreclosure action as is required by FL 720.3085. BLHOA did not present a valid return receipt for its demand for alleged delinquent assessment payment by Defendant before or after the Association filed a claim of lien on the property of Defendant on November 7, 2022, as required by Fl. 720.3085. Plaintiff trial exhibit 4 shows that Defendant paid all assessment due.

38. The testimony and record shows that Defendant was out of the US from November 15, 2015 to February 14, 2016 and from December 4, 2019 to October 4 2020. In the year 2020 Air travel was at a standstill around the world. Defendant was not able to return to the US until October 2020. See Defendant’s Exhibits 9 and 10 of Defendant’s answer and Affirmative defenses. Consequently, no notice of alleged violation was communicated to the Defendant. It is unconscionable to use impose a penalty. Defendant argued that there was insufficient service process and that even if it is difficult administratively to give notice and hearing to a person, this cannot provide any justification for depriving the person of the opportunity of being heard.
39. BLHOA submitted no payment history of the Defendant with the complaint for foreclosure. Fla 90.956 requires strict compliance with the requirement to make available the underlying data from which the summary of amount allegedly due was made. BLHOA failed to meet the burden of showing how \$4974.73 used as the basis for

Breach of Contract according to Count I Paragraph 14 and Lien Foreclosure Count II Paragraph 20 of the Complaint for Foreclosure, is calculated. The receipts of payments from defendant as outlined in the plaintiff's trial exhibit 4, shows that assessments payments were never delinquent. The evidence provided by Plaintiff's trial exhibit 4 shows that for 88 months from 3/10/2015 to 4/29/2022 Defendant has receipts of 91 separate payments acknowledged to have been received by BLHOA. The absence of any delinquent assessment means that the two counts of the Plaintiff's, Breach of Contract and Foreclosure Lien have no basis.

40. Defendant's testimony combined with the testimony of plaintiff's witnesses show clearly and precisely that Plaintiff failed to verify the foreclosure as required by Fla, R.Civ.P 1.115(3). The Defendant outlined the fatal consequences of the failure to verify the foreclosure together with Florida Supreme Court decision on dismissal of unverified foreclosures. Defendant argued that failure to comply with Rule 1.110(b) results in the dismissal of a foreclosure complaint.
41. Proceedings ended on 26th September 2024 with the order granting second amended judgment to plaintiff, and order Denying Defendant's motion for reconsideration and motion for findings of fact and conclusion of law (Filed 19th August 2024) and order denying Defendants motion for reversal of judgment and dismissal the complaint (filed 15th August 2024).
43. The Judgment amount of \$27,351.88 was collected by Plaintiff on October 14,

2024.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to Stevens&Goldwyn at ewiggins@steven&goldwyn.com this 12th day of November 2024 to: Boca Landings Homeowners Association,

C/o Steven&Goldwyn PA

2 South University

Drive Suite 329

Plantation, Florida 33324

Telephone: 954-458-9393

Fax: 954-458-9892

By: Gerald Scott g/s

Gerald Scott.

Primary E-Mail: gescott926@gmail.com

Secondary E-Mail:

APPENDIX I

**IN THE COUNTY COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA**

Case No: 50-2023-CC-005101-XXXX-MB

BOCA LANDINGS HOMEOWNERS
ASSOCIATION, INC., a Florida
Not-for profit corporation,
Plaintiff,

v.

GERALD E. SCOTT,

Defendant (s).

_____/

FINAL DISPOSITION FORM
(Fla.R.Civ.P. Form 1.998)

THE CLERK IS DIRECTED TO CLOSE THIS
FILE MEANS OF FINAL DISPOSITION

Disposed by Judge

**SECOND AMENDED FINAL JUDGMENT OF
FORECLOSURE**

THIS CAUSE came before the Court on September
9, 2024, upon Plaintiff, BOCA

LANDINGS HOMEOWNERS ASSOCIATION,
INC.'s, Motion to Amend Amended Final

Judgment to Tax Additional Costs (the "Motion"),
and the Court having reviewed the Motion and

record, heard arguments of the parties, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion is **GRANTED**.
2. At the prior June 25, 2024 hearing on Plaintiff's Motion to Amend Final Judgment to Include Attorney's Fees, Costs, and Advances Pursuant to Fla. R. Civ. P. 1.530(g), Plaintiff introduced the testimony of Billi Pollack, Esq., an attorney licensed in the State of Florida with 34 years of experience, including in the areas of: 1) residential mortgage foreclosure litigation in Palm Beach County; and 2) attorney's fees and costs review in foreclosure actions.
3. Plaintiff introduced further supporting evidence, including its May 30, 2024 Affidavit of Services Rendered and Costs Incurred, and an updated Affidavit of Attorney's Fees and Costs, supporting the requested fees of \$1,226.78 for pre-litigation work, 92.8 hours of time at \$200.00 per hour (77.7 hours) for the Associate Attorney, \$250.00 per hour (14.6 hours) for the Senior Litigation Attorney and \$95.00 per hour (0.5 hours) for paralegal services, amounting to \$19,237.50 in attorney's fees and \$665.60 in costs. Ms. Pollack credibly testified that the hourly rates and hours spent were reasonable in a contested foreclosure action of this nature, based upon Ms. Pollack's review of the pleadings, affidavits and documents, and experience. The Court found Ms. Pollack's testimony to be credible and convincing.

4. No expert testimony or evidence was introduced by Defendant, Gerald E. Scott, at the hearing, nor did Mr. Scott specify (through an expert or otherwise) any specific rates or time entries that were unreasonable.

5. In *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), the Florida Supreme Court directed the trial courts to follow a lodestar approach in computing a reasonable attorney's fee. Thus, courts are required to consider a reasonable hourly rate, based upon experience, skill, and market demands, and the criteria set forth in the Rules Regulating the Florida Bar, section 4-1.5(b). See also *Standard Guaranty Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-36 (Fla. 1990) (reaffirming and modifying the *Rowe* factors).

6. Counsel is expected to claim only those hours they can properly bill to their client. *Rowe*, 472 So. 2d at 1150 (citations omitted). Notwithstanding, the fee opponent has "the burden of pointing out with specificity which hours should be deducted." *Centex-Rooney Const. Co., Inc.*

v. Martin County, 725 So.2d 1255, 1259 (Fla. 4th DCA 1999). "Accordingly, a fee opponent's failure to explain exactly which hours [the opponent] views as unnecessary or duplicative is generally viewed as fatal." *22nd Century Properties, LLC v. FPH Properties, LLC*, 160 So.3d

135, 143 (Fla. 4th DCA 2015) (quoting *Scelta v. Delicatessen Support Servs. Inc.*, 203 F.Supp.2d 1328, 1333 (M.D.Fla. 2002)).

7. With regard to the hourly rate and number of hours expended on this matter, the

Court carefully considered and applied each of the factors delineated in *Rowe* and *Quanstrom*. Plaintiff met its burden of production and persuasion through the production of detailed time records, maintained contemporaneously as services were performed, and evidence that Plaintiff's counsel actually expended such hours in furtherance of prosecution and that the work performed moved the case toward fruition. See *Haines v. Sophia*, 711 So.2d 209 (Fla. 4th DCA 1998). Plaintiff further met its burden through the presentation of competent expert testimony, which the Court found to be persuasive and supported by the evidence.

8. The Court found that the number of hours expended and the hourly rates requested by Plaintiff's counsel were more than reasonable under the *Rowe* factors and in light of the protracted nature of this litigation. Accordingly, the Court determined that Plaintiff was entitled to the entry of an Amended Final Judgment of Foreclosure to include reasonable attorney's fees and costs, which was entered on July 16, 2024.

9. On July 30, 2024, Plaintiff filed the subject Motion, seeking to tax additional costs.

10. At the September 9, 2024 hearing on the Motion, Plaintiff elicited the testimony of Billi Pollack, Esq. as to the amount of time Ms. Pollack spent to prepare for and attend the June 25, 2024 hearing as an expert fee witness.

11. Ms. Pollack testified to preparing the invoice that was attached to Plaintiff's Motion, to spending more than two (2) hours to review the case docket and all filings, to spending two (2) hours to attend the

hearing, and to charging an hourly rate of \$250.00 per hour. Based upon the extensive filings in this case, the Court finds these amounts to be reasonable and awards Plaintiff the expert witness fee of \$1,000.00 as a taxable cost.

12. Plaintiff also presented a U.S. Legal Support court reporter invoice for \$150.00 incurred as a result of the June 25, 2024 hearing. The Court awards Plaintiff the court reporter fee as a taxable cost.

13. Final Judgment as to Count I of the Complaint for Breach of Contract and Count II of the Complaint for Foreclosure of Lien is entered in favor of Plaintiff, BOCA LANDINGS HOMEOWNERS ASSOCIATION, INC., a Florida Not-for-profit corporation ("Plaintiff", "Association", "Boca Landings"), and against Defendant, GERALD E. SCOTT.

14. This Court has jurisdiction of the parties and the subject matter of this case.

15. The equities of this case are with Plaintiff and against Defendant in accordance with the further provisions of this Final Judgment.

I. Findings of Fact (Non-Jury Trial)

16. At trial, Plaintiff introduced the following exhibits that were admitted into evidence via stipulation of the parties, as self-authenticating documents, or under the business records exception to the rule against hearsay:

Pl.Ex.No.	Description

1(a) – 1(e)	<p><i>Composite Exhibit</i></p> <p>1a. Certified copies of Amended and Restated Declaration of Covenants and Restrictions for Boca Landings, Articles of Incorporation, Bylaws</p> <p>1b. Certified copy of Notice of Preservation</p> <p>1c. Certified copy of Certificate of Amendment to Rules and Regulations – Feb. 21, 1994,</p> <p>1d. Certified copy of Certificate of Amendment to By-Laws – Bk. 8166, Pg. 799</p> <p>1e. Certified copy of Certificate of Amendment to By-Laws – Bk. 8166, Pg. 801</p>
2.	Certified Warranty Deed
3.	Certified Claim of Lien
4.	Notice of Late Assessment and Affidavit of Mailing
5.	Notice of Intent to Record Claim of Lien, Certified Mail Receipt, Certified Mailing Tracking, Certified Mailing Signature

6.	Delinquent Assessment notice, Certified Mail Receipt, Certified Mailing Tracking, Certified Mailing Signature
7(a)-7(d)	Payment History and Ledgers <i>Composite Exhibit 7(a)-(d)</i> 7a. Property Ledger – Sept. 1, 2022 7b. Property Ledger – Nov. 1, 2022 7c. Property Ledger – Nov. 21, 2022 7d. Property Ledger – Mar. 25, 2024
8.	Approved Annual Budgets 2017-2024
9.	Annual Board Meeting Minutes 2018, 2019, 2022
10.	Budget Meeting Minutes 2017, 2020, 2022
11.	2020 Violation Notices – Fine Letter, Final Notice of Violation, Courtesy Notice
12.	Grievance Meeting Minutes – Sept. 30, 2020
13.	2015 Violation Notices – Notice of Violation, Notice to Appear, Fine Letter
14.	Violation Detail and Collection Status Report

15.	2016 Fine Reduction Emails
16.	Email Response to Gerald Scott re Collections Notices – Oct. 21, 2022

17. Additionally, Plaintiff elicited the live testimony of three (3) witnesses:

a. **Shawntell Delice**, Collections Manager, Stevens & Goldwyn, P.A., the law firm for Boca Landings;

b. **Lauren Chieffo**, Property Manager and Regional Director, GRS Community Management, the current property management company for Boca Landings and Records Custodian;

c. **Gerald E. Scott**, party Defendant and owner of the subject property located at 18768 CASPIAN CIRCLE, BOCA RATON, FL 33496 (the “Property”).

18. Plaintiff’s admitted exhibits and elicited sworn witness testimony constitute substantial competent evidence establishing the following:

a. The existence of underlying governing documents of the Association, namely, the Declaration of Restrictions and Covenants, Articles of Incorporation, Rules and Regulations, and Bylaws, all as amended

("Governing Documents"), to which Defendant agreed to be bound by virtue of accepting title to the Property. Such Governing Documents permit the Association to charge and collect periodic annual assessments and special assessments, a late fee for untimely paid assessments, and to approve fines against an owner as a result of the owner violating the Governing Documents. The Governing Documents specify the remedies to which the Association may resort if an owner fails to timely pay imposed fines and approved assessments, including filing a legal claim for damages and an equitable claim for foreclosure of a lien; provide for the right of the Association to collect any and all attorneys' fees and costs incurred by the Association in connection with the collection of unpaid assessments; and provide for the imposition of a lien on an owner's property to secure payment of unpaid assessments, late fees, and collections attorneys' fees and costs.

b. Defendant has failed to pay in full all assessments, late fees, fines, and collection costs that were charged to the Property ledger through March 25.

c. Plaintiff mailed to Defendant at the mailing address of the Property via first-class U.S. Mail a Notice of Late Assessment dated April 29, 2022 (mailed on August 30, 2022), with a supporting

Affidavit of Mailing; via USPS regular and certified mail, return receipt requested, a Notice of Intent to Record Claim of Lien dated September 8, 2022; and via USPS regular and certified mail, return receipt requested, a Delinquent Assessment notice dated November 7, 2022, all mailed prior to the commencement of this action. The Association's evidence shows that a person at the Property signed the certified mail return receipts for the Notice of Intent to Record Claim of Lien and Delinquent Assessment notice. Further, Defendant admitted to receiving the April 29, 2022 Notice of Late Assessment as he responded to this notice via letter to the Association dated April 29, 2022.

d. Plaintiff mailed to Defendant at the mailing address of the Property a Notice of Violation dated May 12, 2015; via USPS regular and certified mail a Notice to Appear dated December 1, 2015, advising Defendant of a December 16, 2015 fine hearing; and a Fine Letter dated January 4, 2016, regarding the levying and imposition of the \$1,000 fine that was charged to the Property ledger on January 4, 2016. The Association reduced such fine to \$500 after corresponding with Defendant about curing the violation and once Defendant provided proof of compliance. Given the payments that Defendant has made per the Property

ledger since the imposition and reduction of the fine, such fine is paid in full.

e. Plaintiff mailed to Defendant at the mailing address of the Property a Courtesy Notice dated July 22, 2020; via USPS regular and certified mail a Final Notice of Violation dated August 26, 2020, advising Defendant of a September 30, 2020 hearing to impose a fine; and a Fine Letter dated September 30, 2020, regarding the levying and imposition of the \$1,000 fine that was charged to the Property ledger on October 8, 2020. Payments that Defendant has made were credited in part toward this fine. Plaintiff also held a Grievance Committee Meeting on September 30, 2020, to approve the imposition of the \$1,000 fine.

f. Prior to the filing of this action, Defendant was aware of the imposition of the 2016 and 2020 violation fines, but chose not to pay said fines because Defendant did not agree with the fines being imposed.

g. The Association, via its counsel, advised Defendant on October 21, 2022, of its position as to the delinquency of the Property account and the basis thereof, but Defendant did not bring the account current thereafter.

19. Defendant testified that he was out of the country in 2020 when the Association mailed the 2020 violation notices, and that he voluntarily chose to hold his mail during this time period. He also testified to having been out of the country when the 2016 violation notices were mailed. His testimony was vague as to the dates he left and returned to the U.S., and, therefore, not credible. Defendant ultimately admitted on cross-examination that he “did not remember” if he received the violation notices, but regardless, he believed the fines were not valid. Defendant did not offer competing evidence to demonstrate the Property was in compliance with the maintenance requirements of the Governing Documents, and he admitted that if a fine is imposed by the grievance committee, it is owed.

20. Defendant also testified that he did not sign the certified mail return receipts for the Notice of Intent to Record Claim of Lien and Delinquent Assessment notice, but he provided no expert or other testimony to dispute the propriety of the signature on each receipt. The Court did not find Defendant’s testimony to be credible on these matters. Defendant also submitted no evidence as to any payments made that were not credited to the ledgers the Association submitted into evidence.

II. Conclusions of Law

21. Defendant is bound by the Governing Documents of the Association by acceptance of the deed to the Property. *See Luani Plaza, Inc. v. Burton*, 149 So.3d 712, 715 (Fla. 3d DCA 2014) (“The Declaration and all properly adopted amendments thereto form a binding contract among the owners of the ‘units’ in Luani Plaza.”) (citing *Cohn v. Grand Condo. Ass’n*, 62 So. 3d 1120, 1121 (Fla. 2011)); *see also* Art. VI, Sect. 6.1 of Amended and Restated Declaration.

22. Per section 720.301(1), Florida Statutes, an “Assessment” means “a sum or sums of money payable to the association, . . . by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.”

23. Section 720.305(2), Florida Statutes, provides, “A fine of less than \$1,000 may not become a lien against a parcel.”

24. As such, each of the \$1,000 fines assessed against the Property were deemed to be assessments against the Property, as they were capable of becoming liens against the Property, and could be collected in the same manner as an assessment.

25. Plaintiff complied with the violation notice of hearing requirements under sections 720.305(2)(b), Fla. Stat. (2016) and 720.305(2)(b), Fla. Stat. (2020), by providing Defendant with at least 14 days’ notice of “an opportunity for a hearing

before a committee” prior to imposing the violation fines. The records of the Association, authenticated by its witness, also show that such violation notices were mailed to the Property address, which was the designated mailing address in the Association’s records. *See* § 720.305(2)(b), Fla. Stat. (“A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days’ notice to the parcel owner at his or her designated mailing or e-mail address in the association’s official records.”).

26. The Court finds that Defendant choosing to hold his mail while out of the country, even if true, does not invalidate the Association’s compliance with the statutory notice requirements, which was undisputed. Further, there was no evidence presented to show that the Association knew, or should have known, of Defendant’s absence or temporary address at the time of the hearing. *Cf. Se. & Assocs., Inc. v. Fox Run Homeowners Ass’n, Inc.*, 704 So.2d 694, 697 (Fla. 4th DCA 1997) (reversing trial court’s order vacating foreclosure sale based upon insufficient service of process, where the property owners were “delinquent in their payments, and could easily have provided the association with their New York address, especially considering that they were gone from the home for at least nine

months. Furthermore, someone on their behalf kept signing for the certified letters, sending in a partial payment.”).

27. Likewise, the Association complied with the conditions precedent of section 720.3085, Florida Statutes, as to mailing to Defendant at the Property mailing address the Notice of Late Assessment to the Property via First-Class U.S. Mail, and the Notice of Intent to Record Claim of Lien and Delinquent Assessment notice via certified mail, return receipt requested, providing the statutorily required timeframes for each notice within which Defendant was to pay in full the amounts claimed to be owed, thereby permitting the Association to foreclose upon the recorded Claim of Lien.

28. Defendant breached the Declaration of Plaintiff by failing to pay in full the amounts charged to the Property ledger through March 25, 2024, and by failing to pay in full the assessments that came due during the pendency of this action.

29. Being an action to foreclose a claim of lien pursuant to section 720.3085, as a matter of law, this case is not subject to the verification requirements of Florida Rule of Civil Procedure 1.115 (e), which provides, “[w]hen filing an action for foreclosure on a mortgage for residential real property the claim for relief shall be verified by the claimant seeking to foreclose the mortgage.”

30. Pursuant to the findings stated herein, Plaintiff is the prevailing party and is entitled to prevailing party attorneys' fees and costs. *See* Article VI, Section 6.9 ("Attorneys' fees and costs of preparing and filing the claim of lien and the complaint in such action shall be added to the amount of such assessments, interest and late charges, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and a reasonable attorneys' fees to be fixed by the court, together with the costs of the action. . ."); *see also* § 720.3085 (3)(a), Fla. Stat. ("The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process."); § 720.305 (1), Fla. Stat. ("Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association . . . The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. . .").

31. There is due to Plaintiff from Defendant, GERALD E. SCOTT, on account of the lien sought to be foreclosed herein, the following sums of money:
- A. Amounts due per ledger thru Mar. 25, 2024
(less \$650 Legal Fee) \$3,879.00

B. Assessments due per Approved 2024 Budget thru May 6, 2024	\$198
C. Late Fees due Apr. 1, 2024 – May 6, 2024	\$50
D. Pre-Collections Attorney's Fees	\$1,226.78
E. Litigation Attorney's Fees	\$19,237.50
F. Costs	\$1815.60
G. Notice of Sale Publication Fee (\$175 ea. x 3)	\$525.00
H. Clerk Electronic Auction Cost (\$70 ea. x 3)	
I. Clerk Sale Fee (\$70 ea. x 3)	\$210
	\$210.00
Total	\$27,351.88

together with interest at the legal rate of interest per annum from the date hereof, and such further costs as may be incurred by the Plaintiff in this action, including, but not limited to, the sale fee and publication of the Notice of Sale, and any advances made by the Plaintiff subsequent to the date specified in this paragraph which are proper.

32. Plaintiff holds a lien for the total sum specified herein that is superior to any claim or estate of Defendant, on the Property located in Palm Beach County, Florida described as follows:

**LOT 4, BLOCK 5, WEITZER
SUBDIVISION P.U.D. PLAT NO. TWO,
ACCORDING TO THE PLAT THEREOF
ON FILE IN THE OFFICE OF**

**THE CLERK OF THE CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA, RECORDED
IN PLAT BOOK 60, PAGE 180; SAID
LAND SITUATE, LYING AND
BEING IN PALM BEACH COUNTY,
FLORIDA, A/K/A, 18768 CASPIAN
CIRCLE, BOCA RATON, FL 33496.**

33. If the total sum with interest at the rate prescribed by law and all costs of this action and proper advances accruing subsequent to this Judgment are not paid forthwith, the Clerk of Court shall sell the property at public sale to the highest bidder for cash, except as set forth hereinafter, on **October 30, 2024, at 10:00 a.m.** at <https://palmbeach.realforeclose.com>, the Clerk's website for on-line auctions, in accordance with Chapter 45.031, Florida Statutes; provided, however, that such sale shall not be held in the absence of Plaintiff's attorney or other representative.

34. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property at the sale. If prior to the sale, Plaintiff shall be required to advance any monies pursuant to the provisions hereof, then Plaintiff or its attorney shall so certify to the Clerk of this Court within 10 days of the issuance of the Certificate of Sale. The amount due to Plaintiff as set forth herein shall be

increased by the amount of such advances without further order of the Court. The Plaintiff may be the bidder for and the purchaser of the property at the sale. If Plaintiff shall be the purchaser at the sale, the Clerk shall credit on the bid of the Plaintiff the total sum found to be due herein to the Plaintiff, or such portion thereof as may be necessary to pay fully the bid on the Plaintiff. If Plaintiff is the successful bidder at the sale, Plaintiff's rights as such may be assigned to a third party and, in that event, the Clerk of this Court is hereby ordered and directed to issue the Certificate of Title to Plaintiff's assignee upon application of Plaintiff and without further Order of this Court.

35. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the Certificate unless Plaintiff is not successful bidder in which event the successful bidder shall pay the costs of said documentary stamps in addition to the amount of the bid; third, Plaintiff's attorney's fees; fourth, the total sum due to Plaintiff, less the items paid, plus interest at the rate set forth herein from this date to the date of the sale, said sum to be paid to the attorney of record for Plaintiff; and by retaining any remaining amount pending the further order of this Court.

36. If the purchaser at said sale is someone other than the Plaintiff, said purchaser shall pay to the Clerk of Court immediately following the sale a deposit equal to 5% of the final bid.

The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the Clerk of this Court's prescribed time period, the Clerk shall readvertise the sale and pay all costs of said sale from the deposit in the Court Registry. Any remaining funds shall be applied toward the Final Judgment amount. If the purchaser at said sale is someone other than the Plaintiff, said purchaser shall also pay any registry fee charged by the Clerk and the requisite documentary stamps before the Clerk is required to issue the Certificate of Title.

37. On filing the Certificate of Sale, Defendant and all persons claiming under or against them since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser at the sale shall be let into possession of the property. The Clerk of this Court is hereby directed to issue a Writ of Possession upon application of same by Plaintiff. If the United States of America is a Defendant herein, it shall have the right of redemption provided by 28 U.S.C. Sec. 2410(c) for the period provided therein, running from the date of Certificate of Title.

38. If the Plaintiff is the purchaser at the sale, upon confirmation of the sale, whether by the Clerk filing the Certificate of Title herein or by order of the Court ruling upon objections to the sale, the Plaintiff may permanently withdraw from the court file the original mortgage, the original promissory note and the original assignments of mortgage, and the photocopies of same attached to the complaint shall hereafter be and stand in lieu thereof.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE A PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, BROWARD COUNTY, 201 S.E. 6TH STREET, ROOM 230, FORT LAUDERDALE, FLORIDA 33301, WITHIN TEN (10) DAYS AFTER THE SALE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT

AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT LEGAL AID SOCIETY OF PALM BEACH COUNTY, INC., 423 FERN ST, SUITE 200, WEST PALM BEACH, FL 33401, TELEPHONE NUMBER, 561-655-8944, TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE PALM BEACH COUNTY BAR ASSOCIATION REFERRAL SERVICE AT (561) 687-3266 FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

39. The Court reserves jurisdiction to enter further orders and/or judgments that are proper including, without limitation, writs of possession, additional determinations as to the amount of Plaintiff's reasonable attorneys' fees and costs, and any deficiency judgment.

DONE AND ORDERED, in Chambers in Palm Beach County, Florida.

502023CC005101XXXXMB 09/26/2024
10TH DISTRICT CIRCUIT
Sarah L. Shullman Judge
ADMINISTRATIVE OFFICE OF THE COURT

502023CC005101XXXXMB 09/26/2024
Sarah L. Shullman
Judge