

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA

CASE NO.: 2015-CA-004499

PETER JOLLY, an individual, VICTOR DESTREMPS,
an individual and ANNETTE BROWN, an individual.

Plaintiffs,

v.

ASSOCIATION OF POINCIANA VILLAGES, INC., a
Florida not-for-profit corporation, AVATAR PROPERTIES
INC, a Florida corporation, and
POINCIANA VILLAGE ONE ASSOCIATION, INC., a Florida
not-for-profit corporation.

Defendants.

_____ /

FOURTH AMENDED COMPLAINT

COMES NOW, Plaintiffs, PETER JOLLY, an individual, VICTOR DESTREMPS an individual and ANNETTE BROWN, an individual, by and through the undersigned attorney, and files this Fourth Amended Complaint against Defendants, ASSOCIATION OF POINCIANA VILLAGES, INC., (hereinafter “APV”), AVATAR PROPERTIES INC., (hereinafter “AVATAR”), and POINCIANA VILLAGE ONE ASSOCIATION, INC., (hereinafter “VILLAGE ONE), and in support thereof states such:

1. This is an action for breach of contract and breach of fiduciary duty, and preliminary injunction with damages exceeding \$75,000 exclusive of interest, costs, and attorney’s fees.

The Parties

2. Plaintiff, Peter Jolly, is the owner of the property located at 440 Acacia Tree Way, Kissimmee, Florida 34758. Peter Jolly is a member of APV and Village One and resident of Osceola County, Florida.

3. Plaintiff, Victor Destremps, is the owner of Lot 12, Block 2141, Poinciana Neighborhood 1, Village 5, with a parcel ID of R25-26-28-6138-2141-0120, and also a member of APV and resident of Osceola County, Florida.

4. Plaintiff, Annette Brown, is the owner of Lot 11, Block 2091, Poinciana Neighborhood 1, Village 5, with a parcel ID of R25-26-28-6138-2091-0110, and also a member of APV and resident of Osceola County, Florida.

5. Defendant, APV, is the Association of Poinciana Villages, Inc., the master homeowner's association, with its principle place of business located at 401 Walnut St., Kissimmee, Polk County, Florida 34759.

6. Defendant, AVATAR, is the developer of the Poinciana Villages properties (Polk and Osceola) with its principle place of business at 201 Alhambra Circle, 12th Floor, Coral Gables, Florida 33134.

7. Defendant, VILLAGE ONE, is Poinciana Village One Association, Inc., with a principle place of business located at 401 Walnut St., Kissimmee, Polk County, Florida 34759.

Venue and Jurisdiction

8. Venue and jurisdiction is proper in Polk County, Florida.

9. Defendants are the current master homeowner's association, (APV), sub-homeowner's association, (Village One) and developer, (AVATAR), of the properties subject to this Complaint that are located in Polk and Osceola County, Florida.

10. The actions giving rise to this Complaint occurred in Polk County, Florida.

General Allegations

Conditions Precedent

11. Plaintiff has complied with all conditions precedent pursuant to this matter.

12. Plaintiff served upon Defendants, APV and Village One, Inc., the statutory offer to mediate in accordance with 720.311 on April 20, 2016. Mediation subsequently occurred with Plaintiffs, APV and Village One, resulting in an impasse.

Avatar and the 1985 Agreement

13. Defendant, AVATAR PROPERTIES INC., the developer, has refused to turn over control to the Association per the terms of the 1985 Agreement Section 4. (**Attached Exhibit A- 1985 Agreement**)

14. Paragraph 7 of the 1985 Agreement “binds” all present and future owners of property in Poinciana to the 1985 Agreement as such; the Plaintiffs are party to the contract, not just third party beneficiaries.

15. In the alternative, Plaintiffs have standing to bring claims against all parties of the 1985 Agreement as Plaintiffs are expressly named as third party beneficiaries in paragraph 6 and the third party beneficiary designation is applied to all present and future owners per the terms of paragraph 7 of the 1985 Agreement.

Wrongful Removal of Village 4 Property from the APV

16. In November of 2011, the APV Executive committee held a meeting to discuss the partial removal of Village 4 from the APV, also known as Solivita. Present at this meeting was Tony Iorio, Mary Emerson, Mr. Bowen, then APV manager Jeanette Coughenour and Dennis Getman.

17. Solivita was originally created as Village 10 by way of carving out parcels that were defined as being part of Village 4.

18. The meeting minutes show that the discussion encompassed the complete removal of Village 4 and Village 10 from the APV. (**Exhibit B- Meeting minutes from November 2011 Executive Committee Meeting.**)

19. In order to achieve this outcome a Mr. Bowen verbally waives the 1985 Agreement, completely disregarding and in violation of paragraph 9, Amendments, to the 1985 Agreement.

20. Not only does the Executive Committee wrongfully attempt to verbally waive the 1985 Agreement, the minutes actually show they are concerned with objectors to their violation of the 1985 Agreement.

21. Paragraph 9 of the 1985 Agreement states: “Amendments: This Agreement may not be modified or terminated except by written amendment duly executed by all parties hereto, *with the consent of three fourths (3/4) of the directors or trustee-directors of each Association.*”[Emphasis Added]

22. In contradiction to the meeting minutes in November of 2011, Village 4 partially remained within the APV as a 40 acre lot, as is evidenced by the recording of an improper amendment to the 1985 Agreement and Poinciana Article of incorporation in Osceola and Polk county in January of 2012. (**Exhibit C- Meeting Minutes from Dec 2011, Exhibit D & Exhibit E**)

23. No amendments to the 1985 Agreement were consented to in compliance with paragraph 9 of the 1985 Agreement, between November 2011 and January 2012 approving the removal of parcels or property from Village 4 in January of 2012.

24. No votes were recorded by the various Villages Directors approving any amendments to the 1985 Agreement between November 2011 and January 2012 for the partial or full removal of Village 4.

25. No meeting minutes exist evidencing the decision to change the prior, November 2011 meeting decision from full removal of Village 10 and Village 4 to only a partial removal of Village 4.

26. The APV and Avatar wrongfully removed parcels from Village 4 in violation of the 1985 Agreement by failing to achieve the approval of 3/4 of the Directors of the various Villages Boards.

27. Rather than removing Village 4 in its entirety, Village 4 was only partially removed specifically for Avatar to maintain its seat on the Board of Directors of the APV as a representative of Village 4.

28. The APV failed to provide notice to its members for the November 2011 Executive committee meeting as is required when a final decision is to be made. As such, the APV intentionally prevented objections (as is mentioned in the minutes) and silenced the voices of its members.

Defendants Failure to Notice Meetings

29. On December 16, 2015 the Village One Board held a Special Meeting that was not properly noticed, nor approved by quorum of the Directors per the by-laws of the APV or Chapter 720.306(d)(5) Florida Statutes. **(Exhibit F – APV By-Laws and Articles of Incorporation)**

30. A majority of the Board Members, who are Anthony Iorio, unofficial Director Felix Gratopp and Jerry Ayala of Poinciana Village One Association called for a Special

Meeting of the Board of Directors at The Administration Office, 401 Walnut Street Poinciana, Florida 34759, on December 16, 2015, in an attempt to remove Mr. Jolly (President) and Ms. Welsh-Cousins (Vice-President) from their position as Village One board officers.

31. The Village One Board member's procedure for calling for this special meeting failed to provide any notice to the President of Village One, Mr. Jolly and the Vice President of Village One Mrs. Welsh.

Defendants Breach of By-Laws ¹

32. For purposes of clarification, allegations 35 through 41 are not alleged for their "election conduct" but rather are distinguished because the allegations 35 through 41 are set forth to establish a breach of by-laws. It is not the conduct in the allegations pertaining to elections that are challenged but rather the methods and modes by which those modifications were made and how the methods and modes of modifications of the by-laws were breaches in and of themselves, regardless of their textual content. Defendants are not challenging the election(s) connected with the allegations 35 through 41, but appropriately challenging the procedure by which those changes were made as is detailed in footnote one (1).

33. Prior to 2010, APV Board Elections were to be every year with one, two or three year terms. In 2010 this changed to two and four year terms and then later to all four year terms in 2014.

34. At an APV Board meeting on October 13, 2015 the Board voted to extend voting hours from 7am to 7pm, out of compliance with how the governing documents require elections to be administered.

¹ Plaintiffs are aware that challenges to election conduct are subject to arbitration before the Department of Business and Professional Regulation. All allegations herein involving election conduct are NOT for purposes of challenging the election conduct, but rather facts in support of the breach of contract and breach of fiduciary duty claims, but nonetheless, impossible to allege without reference to the election conduct.

35. APV does not have the authority to conduct or modify election procedures on behalf of the other Villages without the consent of the Village's Board.

36. According to Article IX of the Villages Articles of Incorporation, the Directors of each Village will serve 3 year terms with 1/3 of the Directors being up for re-election each year with a 3 year rotation beginning in the year 2000. This was not done.

37. The Village By-Laws state that "Election Day is the second Tuesday in January." The following year Election Day for the Villages was held on January 12, 2016. APV changed the date of the Elections for the Villages to February 9, 2016 without the Villages consent.

38. Previously, there was an election of all the individual Village Boards on February 11, 2014 at which time Avatar and Felix Gratopp gave themselves four year terms extending into 2018 without the knowledge of the Board resident members. Their terms were not up until the end of 2014 and there should have been an election for 2015, but there were no Village Board elections in 2015.

39. The Minutes for the Master Board Officer Meeting of February 12, 2015 are also missing, evidence of another violation of the Village One and APV By-laws.

Financial and Fiduciary Duties Breached

40. On August 16, 2015 Executive Committee members Peter Jolly and Victor Destremps called for an Emergency Meeting since the Avatar representatives of the APV Board did not attend the August 11, 2015 meeting to discuss the budget, the possibility of filing for bankruptcy and firing First Service Residential (hereinafter FSR) for failing to attend to their fiduciary responsibilities.

41. Financial records were requested by Mr. Jolly (President of APV Master Board and President of Village One) on multiple occasions from FSR prior to the August 16, 2015 meeting and met with no response from FSR.

42. Section 5 – Powers, of the By-Laws provides that the “business and affairs of the APV shall be managed by the APV Board. The APV Board shall keep full and fair accounts of all its business.”

43. Mr. Jolly was obligated to take action where the APV Board failed to investigate or to “keep full and fair accounts of all its business.”

44. Compounding the lack of response from FSR to the APV Board’s request for financial documents, Mr. Jolly’s concerns also went ignored by the three Avatar Board members. The three resident Board members, influenced by Avatar and FSR, intentionally did not show up to the Regular Board Meeting held on August 11, 2015 with an agenda of discussing the fiduciary breaches and financial discrepancies of FSR and Avatar.

Injunctive Relief Claim

45. On May 5, 2016, APV mailed all of its members a bill allegedly for “2016 Cypress Woods Annual Maintenance Cost” in the amount of \$232.34 Dollars. (**Exhibit G**)

46. APV and Village One have failed to comply with Marketable Record Title Act (MRTA) by not renewing or reviving their covenants, conditions and restrictions (CC&R’s) as is required by Fla. Stat. 720 and 712.

47. Fla. Stat. 712.05(1) states in part that a “person claiming an interest in land or a homeowners’ association desiring to preserve a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year

period immediately following the effective date of the root of title, a written notice in accordance with this chapter.” [Emphasis Added]

48. APV and Village One’s failure to revitalize or renew their CC&R’S as required under and per the procedures set forth in Fla. Stat. 712 under MRTA has statutorily extinguished the deed restrictions on the properties within Poinciana under the APV, as well as APV’s authority to collect and assess fees and assessments from its members.

49. APV and VILLAGE ONE no longer have the authority to collect fees, make assessments or to enforce any covenants, conditions or restrictions against their members because APV and VILLAGE ONE have not renewed or rejuvenated their CC&R’S per the procedures set forth in Fla. Chapter 712.

50. APV and Village One continue to attempt to not only to collect fees and assessments from its members, but is also continuing on with enforcement actions to compel its members to pay the fees and assessments or face foreclosure.

51. APV and Village One have in the past and continue in the present to sell off illegitimate debt wrongfully imposed on its members to law firm collection agencies that eventually foreclose on the member’s homes by further exacerbating and greatly inflating the wrongfully assessed and unlawfully compelled fees and assessments imposed on the members of the APV and Village One.

COUNT I – BREACH OF CONTRACT BY DEFENDANT APV

52. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

53. Plaintiffs and Defendants entered into valid, binding and enforceable contract. **(Attached Exhibit A – 1985 Agreement); (Attached Exhibit F- APV By-laws and Articles of Incorporation)**

54. Defendant, APV materially breached the 1985 Agreement when APV wrongfully removed from the APV, parcels of Village 4 in January of 2012 without properly achieving the votes necessary from the various Village Directors consenting to such amendment to the 1985 Agreement.

55. APV materially breached its By-laws, Articles of Incorporation and Fla. Stat. 720 by failing to provide notice to its members of the Executive Committee meeting held in November of 2011 during which final action was taken to remove a portion of Village 4 from the APV.

56. APV materially breached its By-laws and Articles of Incorporation by its continuous and repetitive failure to provide proper and timely notice to its members of multiple Board meetings over the years.

57. Plaintiffs have been damaged by Defendants' wrongful removal of the Village 4 parcels, failure of the APV to provide proper notice to various multiple Board and committee meetings resulting in an amount of monetary damage to Plaintiffs to be determined at trial.

58. In addition the APV Board sold the accounts receivable debts owed by more than 4,000 Poinciana Homeowners to a Nevada debt collection company for more than 2.5 million dollars that in turn, was never licensed to collect debts in Florida. That act resulted in the more than 4,000 Poinciana homeowners having their debts illegally raised by the unlicensed debt collection companies to more than \$5 million dollars.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant APV liable for breach of contract, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT II - BREACH OF FIDUCIARY DUTY BY DEFENDANT APV

59. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

60. Defendant, APV, owed Plaintiffs a fiduciary duty of care as expressly stated in pertinent part in Fla. Stat. 720.303(1): "The officers and directors of an association have a fiduciary relationship to the members who are served by the association."

61. Defendant APV, (the master homeowner's association), and Plaintiffs, (all of the owners of parcels under the APV), share a relationship whereby Plaintiffs repose trust and confidence in Defendant, APV, and APV has undertaken such trust and assumed the duty to advise, counsel and protect Plaintiffs.

62. Defendant's breached their fiduciary duty of care owed to Plaintiffs when APV willfully and intentionally excluded the members from their right to provide meaningful input and exercise their collective control over decisions to be made by the APV.

63. Defendant, APV in conjunction with Avatar and the Board of Village One, purposefully manipulated the placement of Directors on the Board of the APV, as well as the other individual Village Boards and wrongfully influenced their respective votes to maintain control of the APV and all of the various individual Village Boards, thus intentionally silencing its member's voices.

64. In addition the APV Board sold the accounts receivable debts owed by more than 4,000 Poinciana Homeowners to a Nevada debt collection company for more than 2.5 million dollars that in turn, was never licensed to collect debts in Florida. That act resulted in the more than 4,000 Poinciana homeowners having their debts illegally raised by the unlicensed debt collection companies to more than \$5 million dollars.

65. Plaintiffs were damaged by Defendant's breach of fiduciary duty of care owed to Plaintiffs in an unknown sum of money lost due to be determined at trial.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant APV liable for breach of fiduciary duty, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT III – BREACH OF THIRD-PARTY BENEFICIARY CONTRACT BY
DEFENDANT APV

66. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

67. In the alternative, if Plaintiffs are found not to be parties to the 1985 Agreement, Plaintiffs plead as third-party beneficiaries of the 1985 Agreement.

68. Defendants and a third party entered a valid, binding and enforceable contract.
(Exhibit A- 1985 Agreement)

69. Plaintiffs are not parties to the contract.

70. The parties to the contract (APV, Avatar and all of the individual Poinciana Villages, to include Village One) intended that the contract primarily or directly benefit plaintiffs

or a class of parties of which plaintiffs are a member, more specifically, “all present and future owners of property within Poinciana.” ¶ 6 and ¶ 7 of the 1985 Agreement.

71. Defendant APV materially breached the contract when APV wrongfully removed parcels of Village 4 from the APV in January of 2012 without properly achieving the votes necessary from the various Village Directors consenting to such amendment to the 1985 Agreement.

72. Plaintiffs were damaged by Defendant’s breach of third party beneficiary contract in the removal of parcels from Village Four in that by virtue of this action Defendants manipulated votes, the voting pool, diminished the fee base from which the membership fees are premised in and in acquiescence of the aforementioned actions, allowed and assisted AVATAR to maintain wrongful control of the APV. As such, Plaintiffs are damaged in an unknown sum of money due to be determined at trial.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant APV liable for breach of third-party contract, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney’s fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT IV – BREACH OF CONTRACT BY DEFENDANT AVATAR

73. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

74. Plaintiffs and Defendants entered into valid, binding and enforceable contract.
(Attached Exhibit A- 1985 Agreement)

75. Defendant, Avatar, materially breached the contract by failing to turn over control of the APV to its members as required in paragraph 4 of the 1985 Agreement, by failing to

comply with paragraph 3 of the 1985 Agreement which prohibits Avatar's participation in the dissolution of Village 10 and the partial dissolution of Village 4, removing land from the effects of the APV restrictions, and failing to properly amend the 1985 Agreement when Avatar took part in wrongfully removing parcels/acreage/land from Village 4 in 2011-2012.

76. Plaintiffs were damaged by AVATAR'S refusal to turn over control of the APV to its members because by refusing to turn over control, AVATAR effectively continued its dictatorship over the decisions governing and guiding the APV on all matters concerning the APV that in turn, personally affect each and every member of the APV.

77. AVATAR, with the cooperation and assistance of the other Defendants, effectively silenced and controlled the voice of the thousands of members to the detriment of the membership subject to AVATAR'S absolute rule over assessments, elections, contracts, manipulated votes and any and all other business conducted by the APV.

78. AVATAR'S refusal to turn over control of the APV to the membership has caused thousands of dollars in damages and losses to the membership of both the APV and the various individual Villages.

79. Plaintiffs were damaged by the removal of parcels of Village Four and the dissolution of Village Ten because not only was the input of the membership silenced and the purpose of the APV frustrated by the absolute control wrongfully maintained by AVATAR, but Plaintiffs incurred thousands of dollars in damages and losses by the removal and dissolution of properties, that effect on property values, lowed assessment fee bases, contributed to the manipulation of the voting procedures by Defendants as to the number of votes apportioned to AVATAR.

80. Plaintiffs have been damaged by Defendants breach of contract in an unknown sum of money to be determined at trial.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant AVATAR liable for breach of contract, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

**COUNT V – BREACH OF THIRD PARTY BENEFICIARY CONTRACT BY
DEFENDANT AVATAR**

81. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

82. In the alternative, if Plaintiffs are found not to be parties to the 1985 Agreement, Plaintiffs plead as third-party beneficiaries of the 1985 Agreement.

83. Defendants and a third party entered a valid, binding and enforceable contract.
(Exhibit A- 1985 Agreement)

84. Plaintiffs are not parties to the contract.

85. The parties to the contract (APV, Avatar and all of the individual Poinciana Villages, to include Village One) intended that the contract primarily or directly benefit plaintiffs or a class of parties of which plaintiffs are a member, more specifically, "all present and future owners of property within Poinciana." ¶ 6 and ¶ 7 of the 1985 Agreement.

86. Defendant, Avatar, materially breached the contract by failing to turn over control of the APV to its members as required in paragraph 4 of the 1985 Agreement, by failing to comply with paragraph 3 of the 1985 Agreement which prohibits Avatar's participation in the dissolution of Village 10 and the partial dissolution of Village 4, removing land from the effects

of the APV restrictions, and failing to properly amend the 1985 Agreement when Avatar took part in wrongfully removing parcels/acreage/land from Village 4 in 2011-2012.

87. Plaintiffs have been damaged by Defendants breach of the contract and partial dissolution and removal of parcels from Village Four and complete dissolution of Village 10 in an unknown sum of money to be determined at trial; by a lower assessment fee base due to the removal of the parcels thereby increasing fees on all the membership without the members vote or in compliance with the procedures set forth in the 1985 Agreement; by the continuous and frequent manipulation of the votes, voting procedure and number of votes apportioned to AVATAR which in turn permit AVATAR to silence the thousands of members of the APV membership by overriding their votes and maintaining exclusive control over the APV.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant AVATAR liable for breach of third-party contract, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT VI – BREACH OF CONTRACT BY DEFENDANT VILLAGE ONE

88. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

89. Plaintiffs and Defendants entered into valid, binding and enforceable contracts.
(Exhibit I- Village One By-laws and Articles of Incorporation.)

90. Defendants materially breached the contracts when Defendant Village One failed to provide proper and timely notice for the special Board meeting on December 16, 2015 for which Mr. Jolly was removed as Village One President and Ms. Welsh-Cousins was removed from her position as Vice-President.

91. Plaintiffs have been damaged by Defendants breach of the By-laws and Articles of Incorporation in an unknown monetary to be determined at trial.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant VILLAGE ONE liable for breach of contract, award Plaintiffs damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT VII - BREACH OF FIDUCIARY DUTY BY DEFENDANT VILLAGE ONE

92. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1, 2, 7, 8, 11, 13 through 33, 41 through 45 and 47 through 52 as though fully set forth in this cause of action.

93. This Count is as to Defendant Peter Jolly only, as the only Defendant that is a member of Village One.

94. Defendant Village One owed Plaintiff, Peter Jolly, and all of the membership of Village One as a whole, a fiduciary duty of care as expressly stated in pertinent part in Fla. Stat. 720.303(1): "The officers and directors of an association have a fiduciary relationship to the members who are served by the association."

95. Peter Jolly is an owner of a parcel under the Village One homeowner's association. Peter Jolly shares a relationship whereby Peter Jolly reposed trust and confidence in Defendant, Village One, and Village One has undertaken such trust and assumed the duty to advise, counsel and protect Defendant, Jolly.

96. VILLAGE ONE breached its fiduciary duty of care owed to Peter Jolly and its membership as a whole when Village One willfully and intentionally excluded the members

from their right to provide meaningful input and exercise their collective control over decisions to be made by the Village One.

97. VILLAGE ONE breached its fiduciary duty of care owed to Peter Jolly and its membership when VILLAGE ONE participated and approved the removal of part of Village Four and all of Village 10 without complying with the procedure of the 1985 Agreement to correctly remove and manipulate various Village and APV parcels. This effectively lowered the fee base from which assessment fees are calculated and conveniently assisted Defendant AVATAR in maintaining the majority control over VILLAGE ONE and the APV.

98. Defendant, Village One in conjunction with Avatar and APV, purposefully manipulated the placement of Directors on the Board of Village One and wrongfully influenced their respective votes to maintain control of the Village One Board thus intentionally silencing its member's voices.

99. Peter Jolly and the Village One membership as a whole were damaged by Village One's breach of fiduciary duty of care in an unknown monetary amount to be determined at trial.

WHEREFORE, Plaintiffs request that this Honorable Court find Defendant VILLAGE ONE liable for breach of fiduciary duty, award Peter Jolly damages in excess of \$75,000 dollars, exclusive of attorney's fees, costs and interest and for any other and such relief as this Court may deem just proper or equitable.

COUNT VIII – PRELIMINARY INJUNCTION AGAINST DEFENDANT APV

AND DEFENDANT VILLAGE ONE

100. Plaintiffs hereby re-allege and incorporate by reference the allegations in paragraphs 1- 52 as though fully set forth in this cause of action.

101. The effective date of the root of title is June 30, 1971.

102. There is a substantial likelihood of success on the merits of Plaintiff's claim in Count VIII as Defendant APV and VILLAGE ONE no longer have the authority to collect fees and assessments from its members or to enforce its covenants, conditions and restrictions because they have failed to renew or revive their CC&R's under MRTA under Fla. Stat. 712.

103. In addition, the APV Board sold the accounts receivable debts owed by more than 4,000 Poinciana Homeowners to a Nevada debt collection company for more than 2.5 million dollars that in turn, was never licensed to collect debts in Florida. That act resulted in the more than 4,000 Poinciana homeowners having their debts illegally raised by the unlicensed debt collection companies to more than \$5 million dollars.

104. APV continues to sell account receivable debts owed by its membership thus resulting in the loss of thousands of homes of the membership.

105. Plaintiffs lack any adequate remedy at law because the properties wrongfully sold and foreclose upon are unique and the wrongfully collected fees and assessments greatly contribute to the compounding effect of the amount owed by the members in arrears and hastens the foreclosure process and thus the property loss.

106. Plaintiffs will incur irreparable harm absent the entry of an injunction if APV and VILLAGE ONE continue to attempt to collect unlawful fees and assessments as APV and VILLAGE ONE will, as they have done in the past, attempt to wrongfully initiate collection actions and eventually will foreclose on its members' homes for failure to pay unlawful fees and assessments.

107. Injunctive relief will serve the public interest as a great public harm will be done to the thousands of members of the APV and VILLAGE ONE if APV and VILLAGE ONE continue to unlawfully collect assessments and fees and further attempts of collection eventually

leading to foreclosure on the homes of those members that have not paid are permitted to continue.

108. Injunctive relief will serve the public interest as a great public harm will be done to the thousands of members of APV and VILLAGE ONE if APV and VILLAGE ONE continue to enforce their covenants conditions and restrictions that have since expired under MRTA and have not been renewed or rejuvenated, thus resulting in wrongful additional fees and penalties against each of their respective members.

WHEREFORE, Plaintiffs request that this Honorable Court Order a preliminary injunction against Defendant APV and VILLAGE ONE from collecting any fees and/or enforcing any covenants, conditions and restrictions against their respective members until APV and VILLAGE ONE have rejuvenated their CC&R's under MRTA per Chpt. 712 Fla. Stat., and for any other and such relief as this Court may deem just proper or equitable.

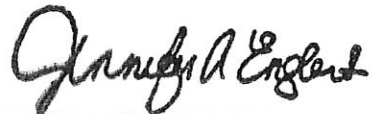
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2017, a true and correct copy of the foregoing was furnished via Florida Eportal electronic transmission and/or Email Transmission to the following:

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