

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

CASE NO.: 2015-CA-004499

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

Plaintiffs,

v.

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

Defendants.

DEFENDANT, VILLAGE ONE'S, MOTION TO DISMISS
FOURTH AMENDED COMPLAINT

Defendant, POINCIANA VILLAGE ONE ASSOCIATION, INC. ("Village One"), moves the Court for the entry of an order dismissing the claims in the Fourth Amended Complaint against Village One filed by Plaintiffs, Peter Jolly ("Jolly"), Victor Destremps ("Destremps"), and Annette Brown ("Brown"), with prejudice. The particular grounds for this motion and the substantial matters of law upon which it is based are as follows:

I. Procedural History and Summary of Arguments.

The previous renditions of the complaint were brought on behalf a corporation, Friends of Poinciana Village, Inc. ("FPV"), and by Plaintiffs as its members and as individuals. Plaintiffs now attempt to take yet another crack at bringing virtually the same claims solely in their individual capacity. This is the plaintiffs' *fifth bite at the apple*. Most recently, the Court entered an order granting Village One's motion to dismiss the Third Amended Complaint on March 23, 2017 again warning Plaintiffs that failure to sufficiently state causes of action and cure pleading defects subjects the complaint to dismissal with prejudice with no leave to amend. Notwithstanding the renewed warning by the Court, the Fourth Amended Complaint continues to be deficient under Florida law and subject to dismissal.

Like the Third Amended Complaint, the only plaintiff identified as owning property or being a member of Village One is Jolly. *Fourth Amended Complaint*, ¶ 2. Destremps and Brown are not owners in Village One. Instead, they expressly identify themselves as owners in another sub-homeowners' association, outside of Village One. *See Fourth Amended Complaint*, ¶¶ 3-4. It is axiomatic that a party bringing a case against Village One must be an owner within Village One. Like the first four attempts, the plaintiffs improperly continue to lump themselves together as 'Plaintiffs' and direct allegations and assert claims against Village One on behalf of

all "*Plaintiffs*" despite Destremps and Brown owning no property in Village One. Destremps and Brown do not have any stake in this action against Village One. This was specifically addressed in reference to the breach of fiduciary duty claim in the Court's March 23, 2017 Order.¹ Yet, the allegations in Count VI (breach of contract) clearly provide that all 3 "Plaintiffs" attempt to assert a breach of contract claim against Village One.

Without regard to the Court's Order, the Fourth Amended Complaint continues to attempt to circumvent the mandatory statutory arbitration requirement on election claims set forth in Sections 720.306(9)(c) and 720.311(1), *Florida Statutes*, by attempting to disguise election claims in a claim for breach of contract (Count VI).

In Count VII, Jolly again attempts to assert a claim for breach of fiduciary duty against Village One, expressly quoting Section 720.303(1), *Fla. Stat.*, as the basis for the alleged fiduciary relationship. However, despite quoting the language of the Statute in the Fourth Amended Complaint, Jolly overlooks the plain language of the statute relied upon which addresses only "officers and directors'" fiduciary duties to members. Village One is a sub-homeowners' association-not an officer or director. *Fourth Amended Complaint*, ¶ 7. Furthermore, the allegations, outside of the election

¹ Plaintiffs filed a voluntary dismissal of Count VI (breach of contract) against Village One in the hours prior to the hearing on the motions to dismiss the Third Amended Complaint.

claims allegations, asserted in support of Count VII are alleged to have occurred in 2011 and January 2012 – beyond the applicable Statute of Limitations to bring a claim for alleged breach of fiduciary duty.

Finally, Jolly (and “Plaintiffs”) continues to fail to allege sufficient allegations to state a cause of action for temporary (preliminary) injunctive relief against Village One in Count VIII. The allegations do not provide there has been any harm to any of the Plaintiffs, and the newly added allegations to Count VIII are directed exclusively at Co-Defendant, APV, and not Village One. The Fourth Amended Complaint continues to be riddled with several of the same defects as the previous four attempts. All counts against Village One are subject to dismissal with prejudice.

II. Argument.

A. Defects in the Form of the Complaint.

In Florida, a complaint must state a legally recognized cause of action. *Nguyen v. Roth Realty, Inc.*, 550 So. 2d 490, 491 (Fla. 5th DCA 1989); Rule 1.110(b), *Fla. R.Civ.Pro.* As the Court in *Nguyen*, stated:

While federal courts are inclined to ignore proper pleading requirements, that is not so in Florida practice. Craftsmanship in pleadings frame issues between the parties so that they can 'know what they've got to meet and get ready to meet it.'

Id. at 491. (citations omitted). The Florida Rules of Civil Procedure also favor brevity and clarity in pleadings. Pursuant to Rule 1.110(b)(2), *Fla.R.Civ.P.*, a pleading which sets forth a claim for relief must state a cause of action and "shall contain a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." (emphasis supplied). "It is a cardinal rule of pleading that a complaint be stated simply, in short plain language." *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (a complaint that overly editorialized and was "manuscript in size" was properly dismissed with prejudice). "[T]he assertions in the complaint are to be stated simply and succinctly." *Barrett*, 743 So. 2d at 1163. (citing *Seaboard Air Line Ry. v. Rentz*, 60 Fla. 429, 54 So. 13 (1910) (pleadings should present precise points that are certain, clear and concise). The Fourth Amended Complaint again falls short of meeting these basic pleading requirements and it seems apparent that each leave opportunity the Plaintiffs are afforded results in the complaint becoming more prolix, convoluted and additional grounds for dismissal established.

Each round of amendments has resulted in some rendition of multiple allegations directed towards co-defendants to be incorporated by reference into the claims against Village One. This pleading defect was previously raised in each of Village One's motions to dismiss. It continues to be addressed in an unsatisfactory

manner. For instance, paragraphs 1-52 are reincorporated into the breach of contract claim (Count VI) and the preliminary injunction claim (Count VIII). Therefore, the Plaintiffs are claiming they are entitled to monetary damages for the alleged conduct and at the same time alleging there is no adequate remedy at law. Each count of the complaint therefore remains fatally defective and subject to dismissal. *Gerentine v. Coastal Security Systems*, 529 So. 2d 1191, 1194 (Fla. 5th DCA 1988); *Nguyen*, 550 So. 2d at 491. Jolly, Destremps and Brown continue to use the words '*Plaintiffs*' in Counts VI and VIII against Village One despite expressly conceding that Destremps and Brown are not parcel owners in Village One or even reside in Village One or that they have ever been the subject of the alleged improper collection efforts by Village One. *Fourth Amended Complaint*, ¶¶ 2-4 and Counts VI and VIII. This repeated practice of plaintiffs continues to run afoul of the pleading requirements in Florida. *K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889 (Fla. 3rd DCA 2010) (where a complaint interspersed the factual allegations and legal conclusions against one defendant among the allegations against other defendants, complaint frequently failed to differentiate among the various defendants' actions and statements, and complaint contained rambling allegations stating general dissatisfaction and frustration with defendants and their performance, complaint failed to comply with basic rules of pleading, thereby warranting dismissal).

The Plaintiffs rely on several documents attached to the Fourth Amended Complaint. Documents attached to a complaint are part of the complaint for all purposes. Rule 1.130, *Fla.R.Civ.P.* If a document attached to a complaint negates the pleader's cause of action, the complaint should be dismissed. *Franz Tractor Company v. J.I. Case Company*, 566 So. 2d 524 (Fla. 2d DCA 1990) (action properly dismissed because the agreement attached to the complaint contradicted allegations in the complaint). Since any exhibit incorporated in, or attached to, a pleading is a part of the pleading for all purposes, if the incorporated document conflicts with the allegations of the pleading then it negates a pleader's cause of action, the document controls, and the pleading is subject to dismissal. See *Fladell v. Palm Beach County Canvassing Board*, 772 So. 2d 1240, 1242 (Fla. 2000) ("If an exhibit facially negates the cause of action asserted, the document attached as an exhibit controls and must be considered in determining a motion to dismiss"); *Hillcrest Pacific Corp. v. Yamamura*, 727 So. 2d 1053, 1055-1056 (Fla. 4th DCA 1999) (affirming dismissal of a complaint where pleadings conflicted with contract attached to the complaint); *Southeast Medical Products, Inc. v. Williams*, 718 So. 2d 306, 307 (Fla. 2d DCA 1998).

In paragraphs 29 through 31 (all of which are incorporated into all claims against Village One and remain unchanged from the previous attempted complaint)

and paragraph 89 (within Count VI - breach of contract), "*Plaintiffs*" allege Village One failed to provide proper notice for a special board meeting. Count VI appears to provide that Exhibit "I" is the operative document sued upon; however, the allegations in paragraphs 29 through 31 cite to Exhibit "F," a separate alleged contract with "Plaintiffs," which by incorporation may be assumed as also being sued upon in the same count. However, a review of Exhibit "I" provides that it is wholly devoid of any notice requirements whatsoever. See Article IX, "Directors." Similarly, to the extent Plaintiffs are trying to rely on Exhibit "F," Article IX of Exhibit "F," titled "Special Meetings," provides that "*special meetings of the Board of Directors may be called at any time* by the Chairman of the Board or by majority of the Board of Directors by vote at a meeting, or in writing with or without a meeting" with no reference to any notice requirements. In fact, *Article X of Exhibit "F," titled "Notice of Meetings,"* unequivocally provides "[u]nless required by a resolution of the Board of Directors, *no formal notice of any meeting shall be required.*" (emphasis added). The allegations related to meeting notice requirements are expressly and directly contradicted by the documents attached as Exhibits "I" and "F." To no surprise, these allegations supporting the alleged breach of contract are also incorporated into Count VII (breach of fiduciary duty) and Count VIII (temporary

injunction). As a result of this conflict, all counts against Village One should be dismissed.

B. Substantive Deficiencies in Complaint.

1. Destremps and Brown lack standing to assert claims against Village One and their claims are subject to dismissal.

Destremps and Brown lack standing to assert any claims against Village One.² Section 720.301(9), *Fla. Stat.*, defines a homeowners' association subject to the requirements of Chapter 720 as "a Florida corporation responsible for the operation of a community . . . in which the voting membership is made up of parcel owners or their agents . . ." (emphasis added). Similar to the previous complaints, where FPV and then Brown and Destremps as individuals failed to allege that they were an Owner or Member of Village One, Destremps and Brown again fail to allege they are owners in Village One. *Fourth Amended Complaint*, ¶¶ 2-4. The plain allegations provide that Destremps and Brown are not owners in Village One. *Id.* They expressly allege they are owners of parcels in Village 5. *Id.* The fact that they do not own parcels in Village One is incurable.

² Co-defendant APV filed a motion to dismiss the original complaint on February 24, 2016, a motion to dismiss the amended complaint on May 6, 2016, and a motion to dismiss the Second Amended Complaint on June 8, 2016 that contain a detailed analysis of the standing issue. The Court entered an Order on October 14, 2016 which also addressed standing. Rather than repeat those arguments here, Village One expressly adopts them for the purposes of this motion.

The allegations that '*Plaintiffs*' "have standing to bring claims against all parties [including Village One] of the 1985 Agreement" because '*Plaintiffs*' "are party [sic] to the contract" and in the alternative '*Plaintiffs*' "are expressly named as third party beneficiaries" is directly contradicted by the allegations and Exhibit "A" of the Fourth Amended Complaint. *Fourth Amended Complaint*, ¶¶ 14-15 and Ex. "A." Paragraph 7 of the 1985 Agreement provides in relevant part that it binds and inures to "all present and future owners." *Fourth Amended Complaint*, Ex. "A." As applied to Village One, Destremps and Brown concede they are not owners within Village One. *Fourth Amended Complaint*, ¶¶ 3-4.³ Further, the allegation that '*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" is equally fatal. See *Fourth Amended Complaint*, ¶ 15. An examination of paragraphs 6 and 7 of the "1985 Agreement" reveals that Destremps and Brown are not third party beneficiaries to any agreement with Village One whatsoever. Their own allegations do not support such claims as they fail to allege they are owners within Village One. Destremps and Brown are precluded from asserting claims against Village One in Count VI and VIII. Where complaint

³ Although they may have sufficiently alleged that they are owners or third party beneficiaries to bring claims against the master homeowners' association, they are clearly not owners or third party beneficiaries to any documents pertaining to Village One.

allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss. *Hunt Ridge at Tall Pines, Inc. v. Hall*, 766 So. 2d 399, 401 (Fla. 2nd DCA 2000) (dismissing complaint finding that despite allegation in complaint that homeowners' association was a third party beneficiary by way of the declaration, the declaration attached to the complaint expressly indicated that its it was for the benefit of owners-not the homeowners' association). The particular dubious nature of these claims is highlighted by the fact that Plaintiffs voluntarily dismissed Count VI (breach of contract) in the hours leading up to the hearing on the motions to dismiss the Third Amended Complaint.

Accordingly, for the foregoing reasons Destremps and Brown fail to establish standing to assert any claims against Village and all of their claims are subject to dismissal with prejudice.

2. *Jolly's claim for breach of fiduciary duty is subject to dismissal because Village One does not owe any individual owner a fiduciary duty and several of the supporting allegations are time barred.*

Jolly attempts to assert a claim for breach of fiduciary duty against Village One in Count VII of the Fourth Amended Complaint. He claims he is owed a fiduciary duty by way of his individual membership in Village One and appears to revert back

the previously renounced draftsmanship practice of attempting to bring claims against Village One for himself “and its membership as a whole.” *Fourth Amended Complaint*, ¶¶ 94-95. No other members of Village One are parties to this action. The “membership as a whole” is not a party to this action. Rather, just a single owner in Village One, Jolly. It is well-settled that homeowners' associations owe a fiduciary duty to *all members* of the association as a whole, but not to each member individually. *Harvick v. Oak Hammock Pres. Cmty. Owners Ass'n Inc.*, No. 6:14-CV-937-ORL-40, 2015 WL 667984, at *1 (M.D. Fla. 2015); *Lumbermens Mut. Cas. Co. v. Dadeland Cove Section One Homeowners' Ass'n, Inc.*, No. 06-22222-CIV, 2007 WL 2979828, at *2 (S.D.Fla. 2007); *Chambless v. Officers & Directors of Snapper Creek*, 743 So.2d 129, 130 (Fla. 3rd DCA1999); review denied 767 So.2d 454 (Fla.2000) (there is a general obligation to protect the property of all the members of the association, and not the property of one member in particular, to the exclusion of the others). An individual homeowner cannot impose liability against a homeowners' association or its directors for breach of a fiduciary duty solely due to his status as a member of the association. *Harvick*, 2015 WL 667984, at 6.

Despite the fifth attempt at pleading, it remains unclear as to which allegations support Jolly's breach of fiduciary duty claim against Village One. In the March 23rd Order the Court found that the Third Amended Complaint failed to distinguish which

of the paragraphs 41 through 45 applied to Village One. This is clearly because none of the allegations reference any alleged wrong by Village One, but rather exclusively alleged wrongs of APV. Again, not a single allegation is directed to Village One. Compare *Third Amended Complaint*, ¶¶ 41-45 and *Fourth Amended Complaint*, ¶¶ 41-45. It seems Jolly decided to attempt to cure this defect by identifying in the incorporation by reference paragraph in Count VII that he was incorporating all of paragraphs 41-45. These allegations supporting the alleged breach of fiduciary duty are exclusively directed to co-defendant APV. *Id.* As such, these allegations still do not support a cause of action for breach of fiduciary duty against Village One.

Within the body of Count VII (fiduciary duty) Section 720.303(1), *Fla. Stat.*, is quoted. The Statute and quotation in Paragraph 94 provide "[t]he *officers and directors* of an association have a fiduciary relationship to the members who are served by the association." 720.303(1), *Fla. Stat.* (emphasis added). The plain language of the Statute and text in Paragraph 94 relied upon clearly provides that the officers and directors-not the association-have the fiduciary duty. Jolly is not suing any officers or directors. Based upon Jolly's allegations, as a matter of law, Village One did not have a fiduciary duty to him.⁴

⁴To the extent Jolly would attempt to claim Village One had a separate fiduciary duty to him, his allegations fail in this regard.

Count VII also expressly references by incorporation paragraphs 13 through 28. *Fourth Amended Complaint*, ¶ 92. These allegations supporting the breach of fiduciary claim are alleged to have occurred in November and December 2011 and January 2012. *Fourth Amended Complaint*, ¶¶ 16-28. In further support of these allegations, Plaintiffs reference and attach Exhibit “B,” Meeting Minutes from November 2011 Executive Committee Meeting, Exhibit “C,” Meeting Minutes from Dec. 2011 and Exhibits “D” and “E,” Amendments recorded January 26, 2012. *Fourth Amended Complaint*, ¶¶ 18 and 22. The statute of limitations for breach of fiduciary duty is prescribed in Section 95.11, *Florida Statutes*. Breach of fiduciary duty is an intentional tort subject to a four-year statute of limitations. § 95.11(3)(o).⁵ The Plaintiffs did not file their individual claims until November 3, 2016. This is more than four years after all of the alleged conduct occurring in 2011 and January 2012 in paragraphs 16 - 28, paragraph 97 and Exhibits “B,” “C,” “D” and “E.” Where the statute of limitations appears on the face of the complaint, it is permissible to assert the defense by motion to dismiss. Fla.R.Civ.P. 1.110(d); *Gen. Motors Acceptance Corp. v. Thornberry*, 629 So. 2d 292, 293 (Fla. 3rd DCA 1993); *Williams v. Potamkin Motor Cars, Inc.*, 835 So. 2d 310, 311 (Fla. 3rd DCA 2002). A cause of

⁵ The Court’s October 14 Order provides that individual homeowners, including but not limited to Jolly, Destremps and Brown were only before the Court as “members” of FPV, not as individual claims of individual homeowners.

action accrues when the last element constituting the cause of action occurs. § 95.031(1), *Fla. Stat.* As evidenced by Exhibits “B” - “E,” these allegations comprising the cause of action for breach of fiduciary duty accrued at the latest on January 26, 2012, more than four years from the date the Plaintiffs’ complaint was filed. Fla. R. Civ. P. 1.130(b) (a complaint incorporates the exhibits attached and exhibits are considered part of the pleadings). Accordingly, these allegations supporting the breach of fiduciary duty claim are barred by the statute of limitations.

3. *The Court has previously confirmed that it lacks jurisdiction over Plaintiffs’ election claims because they are subject to mandatory, statutory arbitration.*

Despite referencing Exhibit “I” in the body of the breach of contract claim in Count VI, Plaintiffs incorporate paragraphs 32 through 38 into Count VI. These allegations are election claims which are subject to mandatory binding arbitration pursuant to Sections 720.306(9)(c) and 720.311(1), *Fla. Stat.* See *Fourth Amended Complaint*, ¶¶ 32-38.⁶ Statutory arbitration is “binding” and “mandatory” and therefore jurisdiction lies solely in the arbitration forum. 720.311(1), *Fla.Stat.* The

⁶ Assuming arguendo that Plaintiffs’ claims in Counts VI were not elections claims subject to mandatory statutory arbitration, Plaintiffs’ failed to comply with the statutory condition precedents of pre-suit mediation prior to initiation of the lawsuit. This alone subjects Counts VI and VII to dismissal. *Conrad v. Hidden Lakes Homeowners Association, Inc.*, Circuit Court, 15th Judicial Circuit, Case No. 502004CC013458XXXXSB, 2007. A more detailed analysis of the statutory conditions precedent under Section 720.311(2)(a), *Fla. Stat.*, is contained in Village One’s previous motions to dismiss and is incorporated herein.

Court previously confirmed to former defendant FPV that it does not have jurisdiction to hear election claims at the hearing on Defendants' motions to dismiss the original Complaint on April 7, 2016.

These election claims have been recycled through all five versions of the complaint. Surprisingly, these allegations remain significantly unchanged from the original complaint which was dismissed by the Court. *The Court's March 23rd Order specifically found that the allegations in paragraphs 35 and 37 through 39 of the Third Amended Complaint were "reasonably understood to constitute an 'election dispute'" under Section 720.306(9)(c). All of those allegations remain fully unchanged in the Fourth Amended Complaint. See Fourth Amended Complaint, ¶¶ 34, 36, 37 and 38.* While the Court analyzed these allegations in ruling on the dismissal of the breach of fiduciary duty claim against Village One, the same analysis and findings should be applied to the breach of contract claim in Count VI. Village One submits that the only reason it was not recently applied in the context of the breach of contract claim as well is because Plaintiffs' counsel voluntarily dismissed the breach of contract on the morning of the hearing on the motion to dismiss the Third Amended Complaint. The March 23rd Order was more than sufficient notice and opportunity for Plaintiffs to abandon the elections claims with finality through any cause of action in this Court.

Plaintiffs and their counsel's attempt to circumvent the mandatory binding arbitration requirement prescribed in Sections 720.306(9)(c) and 720.311(1), *Fla. Stat.*, is a conscious disregard for the law. Plaintiffs are clearly aware that these claims are elections claims. Jolly previously filed a petition for arbitration arising out of these same alleged facts with the DBPR in his capacity as president of former defendant FPV. His counsel previously did so as well. A sixth opportunity to plead the election claims subject to mandatory arbitration would be futile. It is apparent Counts VI cannot be amended to state a cause of action based on these allegations.

4. *The claim for a temporary injunction fails to state a cause of action under Florida law and is subject to dismissal.*

In Count VIII, "Plaintiffs" purport to seek temporary injunctive relief against APV and Village One.⁷ A complaint for injunctive relief is legally *insufficient if it is alleged in a conclusory fashion* that irreparable injury will result or that plaintiff lacks an adequate remedy at law. *Orlando Sports Stadium, Inc. v. State ex rel. Powell*, 262 So. 2d 881 (Fla. 1972); *Williams v. Dormany*, 99 Fla. 496, 126 So. 117 (1930). In testing a complaint to see if it can withstand a motion to dismiss for failure to state

⁷ A "preliminary injunction" is synonymous with a temporary injunction. *Hu v Hu*, 942 So.2d 992 (Fla. 5th DCA 2006); *Yardley v Albu*, 826 So.2d 467 (Fla. 5th DCA 2002).

a cause of action for injunctive relief, the well-pleaded facts are admitted, *but not conclusions of law or the opinions of the pleader*. *First Nat. Bank in St. Petersburg v. Ferris*, 156 So. 2d 421, 424 (Fla. 2d DCA 1963). Furthermore, if the injury complained of is doubtful, eventual, or *contingent*, injunctive relief will not be afforded.). *Id.* In previously dismissing this claim, the Court's March 23rd Order expressly found that the allegations of "no adequate remedy at law" and "irreparable harm" in the Third Amended Complaint were "conclusory and contingent."

In an unsuccessful effort to cure the prior defects in pleading "no adequate remedy at law," Plaintiffs allege that the properties wrongfully sold and foreclosed upon "are unique." Ironically, this allegation has zero relation to the actual party Plaintiffs in this action nor is it alleged to have any relation. *Fourth Amended Complaint*, ¶ 105.

In addition, the allegations under the heading "Injunctive Relief Claim" in paragraphs 45 through 51 are all incorporated into the claims for breach of contract and breach of fiduciary duty, and therefore continue to be clearly capable of redress by a court (arbitrator as it relates to election claims) and there exists remedies at law. The alleged foreclosures that *may* occur are in fact court proceedings in which "members" could assert defenses and challenge any future foreclosure. Chapter 720 grants to each and every one of Village One's members the right to challenge any

foreclosure, including through a Section 720.3085(1)(b) notice contesting any assessment lien as well as judicial determination of amounts owed and recovery of prevailing party attorneys' fees and costs per Section 720.305(1) if assessments and fees are wrongfully sought. Section 720.3085, *Fla. Stat.* As all of the claims are quantifiable for purposes of a money damage award, i.e. assessments and fees, there is an adequate remedy at law barring a preliminary injunction. *Hu v Hu*, 942 So.2d at 995 (Fla. 5th DCA 2006).

The allegations related to irreparable harm remain conclusory, merely speculative and do not even mention Plaintiffs' homes but rather "members' homes." Count VIII once again fails to allege that the Plaintiffs will personally suffer any irreparable harm.

The newly added paragraphs 103 and 104 are completely irrelevant as to Village One and do not even aid in remedying Plaintiffs' cause of action as to APV. *Fourth Amended Complaint*, ¶¶ 103-104. These allegations are only directed to APV. *Id.* These allegations relate to "4,000 Poinciana Homeowners" and "members in arrears." *Id.* Plaintiffs do not even allege they are a part of either of these purported groups of allegedly affected homeowners or members.⁸ This is yet another example

⁸ All of the allegations regarding "public interest" and "great public harm" are irrelevant and moot as the public interest factor is not applicable in the present action.

of the complaint becoming more prolix, convoluted and reverting back to previously dismissed claims of multiple unidentified non-parties never named in any of the 4 versions of the complaint. Count VIII should be dismissed with prejudice.

III. Dismissal with Prejudice.

Plaintiffs' claims against Village One, both individually and collectively as "Plaintiffs," should be dismissed with prejudice. Each amended pleading filed in this action has repeated virtually identical allegations and claims against Village One. Plaintiffs clearly have not demonstrated what further amendments they could make if given a *sixth* opportunity at pleading. *Walters v. Ocean Gate Phase I Condo.*, 925 So. 2d 440, 443 (Fla. 5th DCA 2006) (generally three ineffective attempts to state a cause of action are enough); *Myers v. Highway 46 Holdings, L.L.C.*, 65 So. 3d 58, 61 (Fla. 5th DCA 2011). There is simply a point in litigation when defendants are entitled to be relieved from the time, effort, energy, and expense of defending themselves against seemingly vexatious claims. *Id.* (quoting *Dimick v. Ray*, 774 So.2d 830, 833 (Fla. 4th DCA 2000)).⁹ Co-Defendant, APV, has set forth a detailed analysis and application of the facts and history of this case that fully reflects the number of failed amendments, prior warnings of the Court and the futility in affording any

⁹ Dismissal of all claims under a *Kozel v. Ostendorf*, 629 So.2d 817 (Fla.1993) analysis is also likely appropriate.

further leave—all of which fully support dismissal with prejudice of all claims against Village One. Village One adopts all of these arguments as if fully stated herein.

IV. Conclusion.

For the foregoing reasons, the Fourth Amended Complaint fails to meet the requirements of Florida law and Counts VI, VII and VIII should be dismissed with prejudice.

WHEREFORE, Village One moves the Court for the entry of an order dismissing the Fourth Amended Complaint with prejudice and awarding Village One its attorneys' fees and costs incurred in defending this action and granting such other relief as this Court finds just and equitable.

Dated this 4th day of May, 2017.

/s/ Christopher R. Parkinson
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2017, I electronically filed the foregoing with the Clerk of the Courts by using the ECF system which will send a notice of electronic filing to the following: Jennifer A. Englert, The Orlando Law Group, P.L., 12301 Lake Underhill Road, Suite 213, Orlando, FL 32828 (jenglert@theorlandolawgroup.com) (cneedham@theorlandolawgroup.com) (cflemingtogun@theorlandolawgroup.com), Thomas Slaten, Larsen & Associates, P.L., 300 S. Orange Avenue, Suite 1575, Orlando, FL 32801 (tslaten@larsenandassociates.com) (pleadings@larsenandassociates.com) (paitken@larsenandassociates.com) and Daniel F. Dill, The Dill Law Group, 350 East Pine Street, Orlando, FL 32801 (ddill@dilllawgroup.com) (cferris@dilllawgroup.com) (pleadings@dilllawgroup.com).

/s/ Christopher R. Parkinson
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