IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

LACEY EVANS & CHRISTOPHER EVANS,

Plaintiffs,

v. **CASE NO.: 2024CA002723CAAXES**

PARADISE LAKES CONDOMINIUM ASSOCIATION, INC.,

Defendant.
_____/

DEFENDANT'S REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PREVAILING PARTY ATTORNEYS' FEES

COMES NOW, the Defendant, PARADISE LAKES CONDOMINIUM ASSOCIATION, INC., (hereinafter "PARADISE LAKES"), by and through its undersigned Counsel and hereby files its Reply to Plaintiff's Response in Opposition to Defendant's Motion for Prevailing Party Attorneys' Fees. As grounds therefore, PARADISE LAKES states:

1. On or about October 21, 2024, Plaintiffs LACEY EVANS and CHRISTOPHER EVANS (hereinafter "PLAINTIFFS") filed a Complaint for Trial de Novo against Defendant PARADISE LAKES alleging that PARADISE LAKES failed to properly conduct its 2024 elections for its Board of Directors and that the DBPR had improperly declined to accept jurisdiction of the case. The Complaint, in addition to a count for *trial de novo*, sought injunctive relief against PARADISE LAKES and alleged violations of Section 718.303(1), Florida Statutes, by PARADISE LAKES.

2. On May 5, 2025, the Parties attended a hearing on the Amended Motion to Dismiss via telephone. At the hearing, the Court granted the Amended Motion to Dismiss and issued its order to that effect on May 20, 2025.

3. Subsequently, on June 11, 2025, less than thirty (30) days after the rendition of the Court's Order Granting Defendant's Amended Motion to Dismiss Plaintiff's Complaint with Prejudice on May 20, 2025, PARADISE LAKES timely filed its Motion for Prevailing Party Attorneys' Fees and Costs.

4. On June 26, 2025, PLAINTIFFS filed their Response in Opposition which attempts to argue that PARADISE LAKES is not entitled to recover its prevailing party attorneys' fees and costs. PLAINTIFFS make three primary arguments: (1) that entitlement to fees is lacking; (2) that PARADISE LAKES failed to plead entitlement to fees; and (3) that the fee amounts claimed are excessive and unreasonable. For the reasons set forth below, all three arguments put forth by PLAINTIFFS necessarily fail as a matter of law.

LEGAL ARGUMENT

5. PLAINTIFFS' first argument, that entitlement to fees is lacking, is plainly erroneous on its face. PLAINTIFFS first assert that no cause of action for breach of declaration was plead, and therefore, the provisions of the Declaration do not apply. However, as noted in PARADISE LAKES' Motion for Prevailing Party Fees, Article 21, Section 21.2 of the Restated Declaration of Condominium Ownership of Paradise Lakes Resort Condominium[1] ("Declaration"), governing Costs and Attorneys' Fees in connection with Compliance and Default, provides in pertinent part, that:

[1] The Restated Declaration was recorded on December 26, 2024 in Official Records Book 11132 at Page 1892 of the Public Records of Pasco County, Florida, and relates back to the Declaration of Condominium Ownership of Paradise Lakes Resort Condominium originally recorded in Official Records Book 1160 at Page 296 of the Public Records of Pasco County, Florida.

> **In any proceeding arising because of *an alleged failure of*** a unit owner or ***the Association to comply* with the terms of the Declaration, *or its exhibits,*** or the regulations adopted pursuant to them, and ***the documents*** and regulations ***as they may be amended from time to time***, ***the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the Court***. (Emphasis added)

Among the exhibits to the Declaration are the Bylaws, which discuss the composition of the Board, and the proper procedures for its election.[2] As such, PLAINTIFFS' assertion that their claims, which alleged: (1) a request for a trial de novo; (2) a claim for injunctive relief to comply with the election procedures found in the statutes and governing documents of PARADISE LAKES; and (3) a failure to comply with Section 718.303(1), Florida Statutes, (which PARADISE LAKES notes is itself ***a mandate to comply with the provisions of the Declaration and the Bylaws***), do not implicate this provision of the governing documents is absurd *prima facie*.

6. PLAINTIFFS next rely on the language of Sorrento v. River Run Condominium Association, 925 So.2d 1060 (Fla. 5th DCA 2006) (notably, a case cited by PARADISE LAKES in its Motion for Prevailing Party Fees) to suggest that PARADISE LAKES is not entitled to recover its prevailing party fees. However, PLAINTIFFS offer **no case law whatsoever** in support of their position and/or which would overcome the holdings out of the Fourth District Court of Appeals presented by PARADISE LAKES which suggest that a dismissal without prejudice is sufficient to trigger entitlement to prevailing party attorneys' fees. *See* Valcarcel v. Chase Bank

[2] The Restated By-Laws of Paradise Lakes Condominium Association, Inc. were recorded on December 2, 2024 in Official Records Book 11119 at Page 328 of the Public Records of Pasco County, Florida. The original By-Laws were attached to the Declaration of Condominium as an exhibit, and recorded in Official Records Book 1160 at Page 296 of the Public Records of Pasco County, Florida.

USA, NA, 54 So.3d 989, 990 (Fla. 4th DCA 2010)("**It is not necessary for there to be an adjudication on the merits in order to be entitled to fees as a prevailing party** . . . Although the dismissal order was not an adjudication on the merits, the Valcarcels can nonetheless be considered the prevailing party. **They are entitled to an award of attorney's fees because the action against them was dismissed.**" (Emphasis added)). *See also* Henn v. Ultrasmith Racing, LLC, 67 So.3d 444, 445-446 (Fla 4th DCA 2011)("A defendant may 'prevail' even where the case is not dismissed on the merits. **The fact that the trial court dismissed the case without prejudice was sufficient to trigger appellant's entitlement to attorney's fees as the prevailing party under the** rental **contract.**" (Emphasis added)). Indeed, both the Valcarcel and Henn cases were decided after the Sorrento case, and neither Valcarcel nor Henn has been disagreed with by any other District Court of Appeal.

7. Notably, the only other case cited by PLAINTIFFS in support of their argument, Richland Towers, Inc. v. Denton, 139 So.3d 318 (Fla. 2d DCA 2014), has absolutely nothing to do with prevailing party fees and does not stand for the proposition argued by PLAINTIFFS. Rather, the case involved the imposition of a temporary injunction to enforce certain restrictive covenants.

8. PLAINTIFFS' next argument is wholly baseless and a misstatement of law. PLAINTIFFS argue that PARADISE LAKES is misplaced in relying on Section 718.303(1), Florida Statutes, because it is purportedly "designed to protect unit owners in enforcement actions, not associations suing or defending against their own members". There is no support whatsoever for this allegation, and in direct contradiction to this argument, Section 718.303(1), Florida

Statutes, is expressly reciprocal *prima facie*, and may be used by either unit owners or associations.

Indeed, Section 718.303(1), Florida Statutes, specifically provides, that:

> Each unit owner, tenant and other invitee, and association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are expressly incorporated into any lease of a unit. **Actions at law or in equity, or both, for failure to comply with these provisions may be brought** by the association or **by a unit owner against:**
> **(a) The association.**
> (b) A unit owner.
> (c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.
> (d) Any director who willfully and knowingly fails to comply with these provisions.
> (e) Any tenant leasing a unit, and any other invitee occupying a unit.
>
> **The prevailing party in any such action** or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) **is entitled to recover reasonable attorney fees.** A unit owner prevailing in an action between the association and the unit owner under this subsection, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered actions for specific performance. (Emphasis added)

Despite the language that PLAINTIFFS use in their Response in Opposition concerning "the Association alternatively invok[ing] § 718.303(1), Florida Statutes," PLAINTIFFS themselves expressly note in their Response in Opposition that their allegations specifically included a breach

of such statute. *See* Response in Opposition, Section 1, Paragraph A ("PLAINTIFFS' Complaint . . . asserted: . . . (3) a statutory claim under § 718.303(1) for failure to comply with Chapter 718, Florida Statutes."). PLAINTIFFS are estopped from arguing otherwise.

9. PLAINTIFFS next attempt to argue that PARADISE LAKES failed to plead entitlement to prevailing party fees per the requirements of Stockman v. Downs, 573 So.2d 835 (Fla. 1991). In so doing, however, PLAINTIFFS wholly ignore the subsequent body of case law which clarifies the requirements of Stockman, and which was cited by PARADISE LAKES in its Motion. Instead, PLAINTIFFS again **offer no case law whatsoever** which would overrule or otherwise dispute the holdings of the case law presented by PARADISE LAKES. PLAINTIFFS offer nothing to contradict the rule established by the Supreme Court of Florida in Green v. Sun Harbor Homeowners' Association, 730 So.2d 1261 (Fla. 1998), wherein it clarified the requirements in Stockman v. Downs, 573 So.2d 835 (Fla. 1991) and held that:

> *Stockman* is to be read to hold that the failure to set forth a claim for attorney fees in a complaint, answer, or counterclaim, if filed, constitutes a waiver. However, the failure to set forth a claim for attorney fees in a motion does not constitute a waiver. ***Until a rule is approved for cases that are dismissed before the filing of an answer, we require that a defendant's claim for attorney fees is to be made* either in the defendant's motion to dismiss *or by a separate motion which must be filed within thirty days following a dismissal of the action.*** If the claim is not made within this time period, the claim is waived. (Emphasis added)

Green at 1263. Nor do PLAINTIFFS offer any case law more recent than French Village Condominium Association, Inc. v. Flynn, 403 So.3d 854 (Fla. 4th DCA 2025), wherein the Fourth District Court of Appeal relied on the Green case and determined that because a defendant in a

small claims case is not required to file a answer, the claim for attorneys' fees and costs is appropriately made in either a Motion to Dismiss or by a separate motion filed within thirty (30) days following the dismissal of the action. The Court specifically stated that:

> [W]hen a case is dismissed before the filing of an answer, "a defendant's claim for attorney fees is to be made either in the defendant's motion to dismiss or by a separate motion which must be filed within thirty days following a dismissal of the action."
>
> ***
>
> Here, French Village did not waive its claim for attorney's fees. French Village never filed a responsive pleading, as the Small Claims Rules did not require it to do so. Thus, French Village never filed a pleading in which it was required by Stockman to assert a claim for fees. ***Under Green's reasoning, because the case was adjudicated without the filing of an answer, French Village had the option of making its fees claim*** either (1) in a motion to dismiss or similar motion under rule 7.135 or (2) ***in a separate motion filed within thirty days following the disposition of the action.*** French Village did both in this case.
>
> **Because French Village was never required to file a responsive pleading, it properly advanced its claim for attorney's fees** both in its motion to dismiss the original statement of claim and again **in its motion for fees filed within thirty days of the final judgment.** (Emphasis added)

French Village Condominium Association, Inc. v. Flynn, 403 So.3d 854, 855-856 (Fla. 4th DCA 2025), *quoting* Green v. Sun Harbor Homeowners' Association, 730 So.2d 1261, 1263 (Fla. 1998). Although this was not a small claims case, PARADISE LAKES was never required to file a responsive pleading in this case. As such, it is undisputed that the rule espoused in Green and French Village applies, and the timely filed Motion for Prevailing Party Fees is sufficient to place PLAINTIFFS on notice of the intent of PARADISE LAKES to seek recovery of its prevailing party attorneys' fees.

10. PLAINTIFFS' final argument is that the fee amounts are excessive and unreasonable. PLAINTIFFS fail to support this argument with anything other than the opinion of counsel, which is *prima facie* insufficient. PARADISE LAKES has filed an Affidavit of Reasonableness from an independent fee expert in support of its position, as it promised to do in its Motion, rendering the argument made by PLAINTIFFS concerning a purported lack of foundation in their Response in Opposition moot.

WHEREFORE, pursuant to Article 21, Section 21.2 of the Declaration and Section 718.303(1), Florida Statutes, and given the foregoing, PARADISE LAKES CONDOMINIUM ASSOCIATION, INC., prays that its Motion for Prevailing Party Attorney Fees be GRANTED, that it be awarded the full amount of its attorneys' fees and costs incurred in defending this case and for any such other and further relief as the Court deems just, fair and equitable or appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served in conformity with the requirements of Fla. R. Jud. Admin. 2.516 on this 1st day of July, 2025, to: **Luis E. Martinez, Esq.**, PEREZ MAYORAL, P.A., 999 Ponce de Leon Blvd., Suite 705, Coral Gables, FL 33134; mmayoral@pmlawfla.com; lmartinez@pmlawfla.com; mcastillo@pmlawfla.com.

By: 

JAY S. LEVIN, ESQ.
Florida Bar No. 91805
Email: jlevin@kbrlegal.com
KAYE BENDER REMBAUM, P.L.
1200 Park Central Boulevard South
Pompano Beach, Florida 33064
Ph: (954) 928-0680 | Fax: (954) 772-0319