

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

BOCA VIEW CONDOMINIUM ASSOCIATION,
INC.,

CASE NO.: 502020CA000251
JUDGE: CAROLYN BELL

PLAINTIFF,

vs.

ELEANOR LEPSALTER, AN INDIVIDUAL,
AND EDWARD LEPSALTER, AN INDIVIDUAL,

DEFENDANTS.

**ORDER ON BOCA VIEW CONDOMINIUM ASSOCIATION, INC.'S MOTION TO
STAY PENDING APPEAL, AND ELEANOR LEPSALTER AND EDWARD
LEPSALTER'S MOTION FOR SANCTIONS AND ISSUANCE OF WRIT**

The parties having come before the Court on February 9, 2023 to address multiple pending Motions before the Court (specifically a) BOCA VIEW CONDOMINIUM ASSOCIATION, INC.'S Motion to Stay Pending Appeal filed February 1, 2023, and b) ELEANOR LEPSALTER and EDWARD LEPSALTER's Motion for Sanctions and Issuance of Writ filed February 2, 2023), and the Court having fully reviewed the Motions brought before the Court, having entertained the argument of counsel, having fully reviewed the case authority presented by counsel for the parties, and the Court being otherwise fully advised in the premises, it is hereby ORDERED as follows:

1. The Court first takes note of the detailed Order entered by Judge Kastrenakes on December 28, 2022, wherein Judge Kastrenakes held:

“ORDERED and ADJUDGED that Plaintiff, Boca View Condominium Association, Inc.'s Motion for New Trial is **DENIED**. In that regard, the Court notes first, that some grounds raised in the 83-page Motion were not argued or preserved at trial, or, if argued and preserved, the Court re-adopts and re-affirms its previous trial court rulings.

Secondly, the Court affirms that substantial, competent evidence amply supported the Court's verdict in this case and rejects any assertion that the verdict was against the manifest weight of evidence. See *Laskey v. Smith*, 239 So.2d 0. (Fla. 1970); *Brown v. Estate of Stuckey*, 749 So.2d 490, 497 (Fla. 1999); *Smith v. Brown*, 525 So.2d 868, 870 (Fla. 1988).

Third, the "Statement of Facts" presented as a header in Plaintiff's Motion, should in reality be labeled "Statement of Unproven Theories", as the grand conspiracy theme of Plaintiff's Motion was simply unproven rhetoric and largely irrelevant. It is further

ORDERED AND ADJUDGED that the Court **DIRECTS** that the Judgment entered on December 2, 2022 be executed forthwith. Given the holiday season, the Court gives the parties thirty (30) days from the entry of this Order for the record review by Eleanor Lepselter or her authorized representative. The Plaintiff will provide three (3) dates in the next ten (10) days for the record review to take place within thirty (30) days. The defendant shall select one of those dates. The Court will not entertain any Motion for Stay of the Judgment or its Execution on the non-monetary portion of the Judgment."

2. The Court was advised that on or about January 26, 2023, Plaintiff filed a Notice of Appeal seeking review of the Court's December 2, 2022 Final Judgment and its December 28, 2022 Order Denying the Plaintiff's Motion for Rehearing and/or Motion for New Trial. Thereafter, on February 1, 2023, Plaintiff filed a Motion seeking a stay of these proceedings pending the conclusion of the newly initiated appeal.
3. "A party seeking to stay the lower tribunal order pending appeal should demonstrate a likelihood of prevailing on appeal, irreparable harm to movant if the motion is not granted,

or a showing that a stay would be in the public interest. *See White Constr. Co. v. State, Dep't of Transp.*, 526 So. 2d 998 (Fla. 1st DCA 1988).” *See Lampert-Sacher v. Sacher*, 120 So.3d 667 (Fla. 1st DCA 2013).

4. Having fully entertained and considered Plaintiff’s Motion to Stay Pending Appeal, the Court does not find that the Plaintiff has met the standard justifying an exercise of this Court’s discretion to issue a stay of these proceedings during the pending appeal.
5. The Court finds that the Plaintiff has not submitted any evidence or information to this Court which demonstrates that it possesses a likelihood of success on the merits in its appeal. The Court finds that Judge Kastrenakes’ December 2, 2022 Final Judgment and his December 28, 2022 Order expressly detailed the Court’s factual findings and legal conclusions, and demonstrate how the Court’s findings and rulings were supported by ample evidence of record before the Court. While the Plaintiff’s argument during the February 9, 2023 hearings cited to a part of its Motion for Rehearing and/or Motion for New Trial as the basis for its belief that it will prevail on appeal, the Plaintiff has not presented anything to this Court which leads this Court to believe that Plaintiff will establish on appeal that Judge Kastrenakes committed error in either his December 2, 2022 Final Judgment or his December 28, 2022 Order.
6. The Court also finds that the Plaintiff has not presented anything to this Court to suggest, let alone establish, that the Plaintiff would sustain irreparable harm if this Court does not grant a stay of these proceedings during the pending appeal. To the contrary, it was acknowledged that the Plaintiff previously offered to make the records at issue available to Defendant ELEANOR LEPSALTER herself, as a unit owner, for her inspection and copying. As such, the Court finds that no irreparable harm could possibly occur if these same records, which Plaintiff was willing to make available to ELEANOR LEPSALTER

herself, are made available to ELEANOR LEPSALTER'S authorized representative in compliance with the Court's December 2, 2022 Final Judgment and December 28, 2022 Order.

7. Finally, the Plaintiff has not presented anything to this Court to suggest, let alone establish, that it would be in the public's interest to stay these proceedings while an appeal remains pending.
8. Given the foregoing, Plaintiff's Motion to Stay Pending Appeal is **DENIED**.
9. The Plaintiff's request that this Court grant Plaintiff at least thirty (30) days from the date of entry of this Order to make the records available to ELEANOR LEPSALTER'S authorized representative is also **DENIED**, as the Court finds that Judge Kastrenakes' December 28, 2022 Order already granted the Plaintiff thirty (30) days from December 28, 2022 to complete the records inspection, and despite this extended time for compliance the Plaintiff still did not provide dates of availability for an inspection or make the records available for inspection.
10. Having fully considered the Defendants' Motion for Sanctions and Issuance of Writ, the Court hereby **GRANTS** the Motion in part, and **DENIES** the Motion in part, as set forth below.
11. The Plaintiff is hereby **ORDERED** to provide, within the next five (5) days, its property manager (Eric Estebanez) with three (3) proposed dates falling within the next ten (10) days, for ELEANOR LEPSALTER's authorized representative, Jonathan Yellin, Esq., to inspect and copy the records identified in Mr. Yellin's February 6, 2019 correspondence.
12. The Court will concurrently issue a Writ of Sequestration directing Eric Estebanez to sequester the records identified in Mr. Yellin's February 6, 2019 correspondence and make

them available to Mr. Yellin for inspection and copying pursuant to the timeframe in paragraph eleven (11) above.

13. The Court will retain jurisdiction over the Plaintiff and Eric Estebanez to address any non-compliance with this Order or the Court's issued Writ of Sequestration.
14. The Court **DENIES** the Defendants' request for the imposition of monetary sanctions without prejudice to the right of the Defendants to bring the request before the Court again if either (or both of) the Plaintiff or Eric Estebanez fails to comply with this Order or the Writ of Sequestration referenced herein.
15. If the Plaintiff and Eric Estebanez comply with this Order and the Writ of Sequestration and the records identified in Jonathan Yellin, Esq.'s February 6, 2019 correspondence are made available to him for inspection and copying, then the Defendants shall file a Notice of Compliance with this Court so that the Court may issue an Order dissolving the Writ of Sequestration so that the records may be returned to the location at which they are normally maintained by the Plaintiff's property manager.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida.

 502020CA000251XXXXMB 02/16/2023
Carolyn Bell
Carolyn Bell, Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

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Carolyn Bell
Circuit Judge

Copies to all parties and counsel of
record via email: