

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,  
IN AND FOR LAKE COUNTY, FLORIDA

LARRY BELL, AS CO-TRUSTEE OF THE BELL  
MANAGEMENT TRUST AND ON BEHALF OF  
HARBOR HILLS HOMEOWNERS ASSOCIATION,  
INC., AND ESTHER LINE, INDIVIDUALLY, AS  
TRUSTEE OF THE ESTHER J. LINE REVOCABLE  
TRUST, AND ON BEHALF OF HARBOR HILLS  
HOMEOWNERS ASSOCIATION, INC.,

PLAINTIFFS,

VS.

CASE No. 2010-CA-001095

HARBOR HILLS DEVELOPMENT,  
L.P., A DELAWARE LIMITED PARTNERSHIP,  
REGISTERED TO DO BUSINESS IN FLORIDA AS  
HARBOR HILLS DEVELOPMENT, LTD.,  
MICHAEL RICH, ADAM RICH, LU ANN  
MILLER, STEVE HENNE, VAN L'BANESE,  
ED FRAYER AND MICHELLE PINDER,

DEFENDANTS.

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ORDER AND FINAL JUDGMENT  
ON DEFENDANTS' MOTION FOR JUDGMENT IN ACCORDANCE WITH THE  
MOTION FOR DIRECTED VERDICT OR FOR JUDGMENT NOTWITHSTANDING  
THE VERDICT, OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL AND  
PLAINTIFFS' MOTION FOR ENTRY OF JUDGMENT AFTER JURY VERDICT

THIS CAUSE came on to be heard on the *Defendants' Motion for Judgment in Accordance with Motion for Directed Verdict, or for Judgment Notwithstanding the Verdict, or in the Alternative Motion for New Trial and Plaintiffs' Motion for Entry of Judgment After Jury Verdict*, and the Court having reviewed the Motions, the trial transcript, and other matters on file, and having considered the argument of counsel, and being otherwise fully advised in the premises, finds as follows:

Plaintiffs filed the instant action, both individually and as a derivative action on behalf of the Harbor Hills Homeowners Association, a Florida not-for-profit corporation, on or about February 24, 2010. Their Complaint asserted two causes of action for declaratory relief relating to the calculation of assessments for the Harbor Hills Community against Defendants, Harbor Hills Development, L.P., a Delaware limited partnership registered to do business in Florida as Harbor Hills Development, Ltd., the developer of Harbor Hills (“Harbor Hills Development”), and Michael Rich, Adam Rich, Lu Ann Miller, Steve Henne, Van Albanese, Ed Frayer and Michelle Pinder, the Directors of the Harbor Hills Homeowners Association, Inc., who hereafter shall be referred to as the “Director Defendants.”

On or about August 24, 2012, Plaintiffs filed their Verified Amended Complaint, retaining the two causes of action for declaratory relief relating to the calculation of assessments pursuant to the governing documents of Harbor Hills, while including for the first time a claim for breach of fiduciary duty against the Director Defendants.

Subsequently, on or about February 18, 2013, Plaintiffs filed their Verified Second Amended Complaint retaining the same causes of action.

From November 4 through November 8, 2013, a five-day jury trial was held in which the Plaintiffs presented their claims relating to the interpretation of the governing documents of Harbor Hills as they relate to the calculation of assessments, and their claims for breach of fiduciary duty against the Director Defendants solely as to the performance of certain maintenance tasks on property allegedly owned by Harbor Hills Development by a landscaping company paid pursuant to a contract with the Homeowners Association.

At the close of Plaintiffs’ case, the Defendants moved for directed verdict, which was granted as to Defendant Van Albanese, as the Plaintiffs failed to establish that Mr. Albanese was a Director of the Harbor Hills Homeowners Association during the period of time at issue.

Accordingly, judgment in accordance with that Motion for Directed Verdict shall be entered in favor of Mr. Albanese.

Additionally, Defendants moved for directed verdict on Plaintiffs' claim for breach of fiduciary duty as to all of the Director Defendants, arguing that the Plaintiffs failed to present adequate evidence to establish personal liability against these Director Defendants.

The Defendants also moved for directed verdict as to the Plaintiffs' claims for declaratory relief arguing that the parol evidence introduced to clarify ambiguities within the governing documents for Harbor Hills established that the Director Defendants, in consideration of the discretion afforded to them by the business judgment rule, had properly applied the provisions of the governing documents as to the assessment obligations of all parties. Additionally, the Defendants argued that Plaintiffs' claims for declaratory relief for the period of 2005 through 2007 were barred by the statute of limitations.

The Court reserved ruling on these issues, and the Defendants presented their case. At the close of all evidence, the Defendants renewed their Motion for Directed Verdict, and the Court again reserved and submitted the case to the jury.

After deliberation, the jury returned a verdict, a copy of which is attached to this Order as Exhibit "A," awarding the Plaintiffs damages of \$2,400.00 solely against Defendant, Michael Rich, as to Plaintiffs' claims of breach of fiduciary duty, while awarding damages of \$640,000.00 against Defendant, Harbor Hills Development, pursuant to Plaintiffs' claims for declaratory and supplemental relief relating to the calculation of assessments.

After the jury verdict was returned, Defendants renewed their Motion for Directed Verdict and moved for Judgment Notwithstanding the Verdict, which the Court directed the Defendants to present in written form.

On or about November 15, 2013, Defendants filed and served their *Motion for Judgment in Accordance with Motion for Directed Verdict or Judgment Notwithstanding the Verdict, or in the Alternative Motion for New Trial*. On or about November 12, 2013, Plaintiffs filed and served their *Motion for Entry of Judgment After Jury Verdict*.

#### I. NEW TRIAL ARGUMENTS

Defendants' Motion for New Trial makes three arguments. First, Defendants argue that the jury's verdict is against the manifest weight of the evidence. However, the aforementioned trial evidence indicates that Defendants have not met the high bar of demonstrating that the jury's verdict is against the manifest weight of the evidence.

Second, Defendants claim that Plaintiffs' counsel should not have referred to Defendants' Exhibit No. 8, a letter to Dick Line from Mary Huey (admitted into evidence by Defendants) which specifically mentions Florida Statute 720.308, and attached a copy. The Court notes that Defendants also repeatedly referenced the same letter and its attachments at trial. (Trial Trans, pp. 1022-23). The Court stands by its previous ruling at trial that the parties are able to make reference to documents which have been admitted into evidence.

Third, Defendants argue that Plaintiffs' counsel's closing argument "references to the deceased non-party [Dick Line] can be nothing but a calculated attempt to play on the sympathy of the jury." The Court notes that Defendants did not raise a single objection during Plaintiffs counsel's closing argument regarding these references and Defendant never moved for a mistrial at any time.

#### II. DIRECTED VERDICT & JNOV ARGUMENTS

Defendants' Motion for DV and JNOV alleges five errors. First, Defendants argue that based upon the evidence presented no reasonable jury could have found in favor of the Plaintiffs.

After evaluating the aforementioned trial evidence, the Court concludes that a reasonable jury could have found in favor of the Plaintiffs.

Second, Defendants argue that the jury instructions and verdict form are improper. Specifically, Defendants complain that the jury instructions were defective for not including instructions about the “business judgment rule” and the verdict form’s question number three supposedly should not have used the terms “unreasonably, bad faith, arbitrarily, or capriciously.” As a threshold matter, Defendants *waived* these matters by agreeing to the verdict form and stipulating to the jury instructions. (See Trial Trans., pp.1371-72). Further, the terms “unreasonably, bad faith, arbitrarily, or capriciously” are supported by case law. *Boca West Club, Inc. v. Levine*, 578 So.2d. 14, 16 (Fla. 4<sup>th</sup> DCA 1991).

Third, Defendants argue that the verdict against Michael Rich for \$2,400 should be set aside if there was no factual issue regarding any benefit to Rich from the HOA mowing the Developer’s Commercial Property. Upon review, Section 617.0834(2)(b)(2) mentions the impropriety of self-dealing by a Director benefiting “directly or indirectly,” and Michael Rich testified “I’ve been the developer at Harbor Hills since 2003.” (Trial Trans., p. 1001). The Court finds a factual issue was properly presented to the jury on this matter.

Fourth, Defendants seek a directed verdict based upon the statute of limitations. Specifically, Defendants’ Motion claims the statute of limitations began to run in “2002” when Ms. Line acquired title, or, in the alternative, began to run “at the end of 2004” when the budget was prepared for 2005.

The lawsuit in this matter was filed on February 24, 2010. Plaintiffs’ contended (at trial and in pleadings) that “from 2005 to 2010” the Developer did not properly pay its fair share of assessments owed for each year. (Verdict Form ¶7; ¶23, Second Amended Complaint).

The statute of limitations for a contract founded on a written instrument is 5 years. Fla. Stat. §95.11(2)(b). The statute of limitations for breach of fiduciary duty is 4 years. Fla. Stat. §95.11(3)(o); *Berg v. Wagner*, 935 So.2d. 100 (Fla. 4<sup>th</sup> DCA 2006).

In the instant case, the Plaintiffs clearly were not able to bring the action back in 2002 based on damage from assessments during 2005 to 2010. Similarly misplaced is Defendants' suggestion that perhaps the statute should begin to run "at the end of calendar year 2004" when the budget for 2005 was adopted. Plaintiffs submitted evidence from which the jury could find that the actual damage in the form of the Developer's underpayment for calendar year 2005 did not occur until January 2006 at the earliest, or September 2006 at the latest

Upon review, the Court concludes that the suit was filed on February 24, 2010 before the (5) year statute of limitations period expired. To the extent the Developer seeks the Court to reduce the \$640,000, the Court notes that the Developer did not file a timely motion for remittitur, nor did it suggest a figure to the Court.

The breach of fiduciary duty 4 year statute of limitations does not impact the amount of damages awarded against Michael Rich. It is undisputed that Shepherd's began mowing the Commercial Property in October 2009. (Trial Trans., pp. 679-681). Plaintiffs presented expert testimony which supports the jury's award of \$2,400, which is less than 20% of the expert's estimated cost of mowing the commercial property for only one year. Upon review, a reasonable inference from the evidence submitted by Plaintiffs is that damages could exceed the \$2,400 awarded.

Finally, as a fifth ground, Defendants contend that a judgment should be directed against the Developer-appointed Directors other than Michael Rich regarding the issues of breach of fiduciary duty. As demonstrated by the express language of the verdict, as to all of the Director Defendants other than Michael Rich, there was no finding that each of these Director

Defendants breached their fiduciary duties proximately causing damage to the members of the Harbor Hills HOA. Specifically, Paragraph 1 of the verdict asked, “Do you find that any (emphasis added) of the Director Defendants breached the fiduciary duty they owed...?” In Paragraph 2 of the verdict, the Jury assessed damages only against Michael Rich and \$0.00 damages against the remaining Director Defendants. The verdict did not make an “express finding of a breach of fiduciary duty” against the remaining Director Defendants. *Ault vs. Lohr*, 538 So.2d 454, 456.


While the Court recognizes that nominal damages are available in an action for breach of fiduciary duty, the verdict returned did not award nominal damages. Plaintiffs’ counsel requested nominal damages of \$1.00 against each of these Director Defendants, however, the Jury elected to return a verdict of \$0.00 as to each of these defendants. Accordingly, judgment shall be entered in favor of the remaining Director Defendants in accordance with the Jury verdict as to the claim for breach of fiduciary duty. Accordingly, it is hereby

**ORDERED AND ADJUDGED that:**

1. A judgment is entered in favor of the Defendants, Adam Rich, Lu Ann Miller, Steve Henne, Van Albanese, Ed Frayer, and Michelle Pinder as to the Plaintiffs’ claims for breach of fiduciary duty in accordance with the Jury’s verdict, and the previously granted directed verdict.
2. Defendants’ Motion for Directed Verdict is denied as to Plaintiffs’ claim for breach of fiduciary duty as to Defendant, Michael Rich, and as to Plaintiffs’ claims for declaratory and supplemental relief against all defendants.
3. Plaintiffs’ Motion for Entry of Judgment after Jury Verdict is granted to the extent indicated above.
4. Defendants’ Motion for New Trial is denied.

5. The Court retains jurisdiction to consider issues of attorney's fees and costs.
6. With the exception of the verdicts regarding breach of fiduciary duty of the Defendants' other than Michael Rich the Judgment Notwithstanding the Verdict is denied.

DONE AND ORDERED in Chambers at Tavares, Lake County, Florida this 13 day of June, 2014.

  
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Hon. G. Richard Singeltary  
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. Mail to Richard A. Keller, Esquire of Hill, Rugh, Keller & Main, P.L., 390 N. Orange Avenue, Suite 1610, Orlando, Florida 32801 (*counsel for Plaintiffs*), Phillip S. Smith, Esquire of McLin Burnsed, 1000 West Main Street, Leesburg, FL 34748, and Ralph A. Udick, Pro Se, 39245 Tacoma Drive, Lady Lake, FL 32159, on this 13 day of June, 2014

  
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Judicial Assistant/Clerk