

**STATE OF WISCONSIN
MANITOWOC COUNTY**

CIRCUIT COURT

For Official Use:

Manitowoc Timeshare Management, LLC
1223 Appleton Road
Menasha, WI 54952,

Plaintiff,

v.

Fox Hills Owners Association, Inc.
212 W. Church Street
Mishicot, WI 54228,

Case No. 2025CV000015

Defendant and Third-Party Plaintiff,

v.

FH Resort Limited Partnership
1223 Appleton Road
Menasha, WI 54952

Third-Party Defendant.

**FOX HILLS OWNERS ASSOCIATION, INC.'S NOTICE OF MOTION AND
MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Defendant and Third-Party Plaintiff, Fox Hills Owners Association, Inc. ("FHOA"), by its attorneys, Kaman & Cusimano, LLC, will appear in Branch 3 of the Circuit Court of Manitowoc County, presided over the Honorable Robert Dewane, at a date to be determined by the Court, and will move the Court for an Order granting Summary Judgment to FHOA declaring that the real estate where buildings 16-19 and 21 were supposed to be developed remain part of FHOA and that Third-Party Defendant FH Resort Limited Partnership ("FHR") must pay assessments for those lots. The grounds for said motion are set forth in the accompanying Brief and the Declarations of Richard Glomski and Matthew Lowe, filed herewith.

Dated this 30th day of May, 2025.

KAMAN & CUSIMANO LLC
Attorneys for Defendant and
Third-Party Plaintiff

By: /s/ Daniel J. Miske
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**FOX HILLS OWNERS ASSOCIATION, INC.'S BRIEF IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY JUDGMENT**

INTRODUCTION

The purpose of the pending summary judgment motion is to obtain an order from the Court declaring that the property where buildings 16-19 and 21 were to be placed remains a part of FHOA. The second purpose of the pending summary judgment motion is to obtain an order from the Court declaring that FHR must pay assessments, just like all other owners, for both the built time-share units that it has been renting out and the unbuilt time-share units associated with buildings 16-19 and 21. This motion should not be necessary, but for reasons that FH Resort Limited Partnership ("FHR") can't seem to explain, FHR believes that it can remove property from

FHOA contrary to Wis. Stat. 703.28 and have a free ride on assessments despite the law and the time-share and condominium documents to the contrary.

FACTS

FHOA is a condominium association organized under Wis. Stat. 181 and subject to Chapter 703 of Wisconsin statutes. (Glomski Dec. ¶ 3-4). The condominium declaration (“Declaration”) recorded by the Manitowoc County Register of Deeds on October 20, 1997, is attached hereto as **Exhibit A**. (Id., ¶ 5). The original plat of FHOA was recorded on November 23, 1988, and is attached hereto as **Exhibit B**. (Id., ¶ 6). All amendments to the Declaration are attached as **Exhibit C**. (Id., ¶ 7). All amendments to the Plat are attached as **Exhibit D**. (Id., ¶ 8). The land where buildings 16-19 and 21 were supposed to be developed is a part of FHOA. (Ex. A-D, Glomski ¶ 9-11). Sometime in 2020 FHR apparently decided to remove the land where Golf Villa 7 that was unbuilt from FHOA and recorded an affidavit of Joseph Jacobson allegedly giving notice of the removal of the land. (Glomski Dec. ¶ 12, **Exhibit E**). FHOA was told about the alleged excision of the land in 2020 by FHR’s attorney, who assured it was legal. (Glomski Dec. ¶ 16). After later being notified by FHOA’s counsel that the removal did not comply with the law, Michael Jacobson, a representative of FHR, later recorded an “Affidavit of Land Excision” on October 31, 2024, claiming that the land where buildings 16-19 and 21 were to be built and all of “Lot 1” in Exhibit F that had been part of FHOA “shall no longer be subject to the terms, conditions, limitations, or restrictions of the Declaration of Condominium and Time-Share Instrument of Fox Hills Condominium Vacation Ownership Plan”. (Glomski Dec. ¶ 13, **Exhibit F**, **¶ 15**, **Ex. G**, **Request for Admissions No. 5**).

In addition to unlawfully removing buildings 16-19 & 21, FHR has also refused to pay assessments. (Glomski Dec. ¶ 14). “Owner” is defined in the Declaration as “a person, combination of persons, or any entity, including Developer, who individually or in conjunction with other

persons or entities, owns a Time-Share Estate or who has equitable ownership of a Time-Share Estate as a land contract vendee.” (Ex. A, p 4). The Declaration also lists the Developer as a “Class B Member” entitled to “one (1) vote per each Time-Share Estate owner, whether constructed or not and one-half (½) vote per Odd Year Time-Share Estate and Even Year Time-Share Estate owned whether constructed or not...” (*Id.*, p 8). Despite FHR owning the land where buildings 16-19 and 21 were to be built, FHR has never paid FHOA assessments on those weeks owned in time-share units. (Glomski ¶ 14). FHR has also never paid assessments on the 400 weeks it owns in time-share units that were built, despite renting them out. (Glomski ¶ 14). Plaintiff, Manitowoc Timeshare Management, LLC, has refused to assess FHR despite FHOA’s demands. (*Id.*).

ARGUMENT

I. The Land Where Buildings 16-19 and 21 Were to Be Built Are a Part of the Association

Wis. Stat. 703.28(1) controls how land may be removed from a condominium association.

It states:

All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property. (*emphasis added*).

All of the unit owners did not vote to remove the land from FHOA. Wis. Stat. 703.28(1) permits removing “all or any part of the property” “by a removal instrument, duly recorded.” However, removing any land from the Association also requires 100% vote of all unit owners. There are no exceptions listed in the statute. This means that **Exhibit 1**, which FHR relies on to say the land is theirs, is not a valid or proper transfer of land. (Dkt. 11). All real property of the Association is owned in common by all of the unit owners. (Glomski Dec. ¶ 17). FHR did not hold a vote before excising Buildings 16-19 and 21 from the Association. (Ex. G, Request for Admissions No. 1). FHR did not receive unanimous approval from all of the Association’s unit owners before excising

Buildings 16-19 and 21 from the Association. (Id., Request for Admissions No. 2). FHR violated Wis. Stat. 703.28 when it attempted to excise buildings 16-19 and 21 from the Association. (Id., Request for Admissions No. 3). Therefore, the land is still a part of the association and owned by FHOA.

II. FHR Owes Assessments for Unbuilt Buildings

Since the land where buildings 16-19 and 21 are a part of the Association, FHR owes assessments for these unbuilt units. Wis. Stat. 703.16(2). Wis. Stat. 707.37 controls Assessment liability for Time-Share Associations. “Except as provided in pars. (c) to (f), no time-share estate may be excused from payment of his or her share of time-share expenses unless all of the time-share owners are excused from payment.” Wis. Stat. 707.37(1)(b). The exceptions in paragraphs (c) to (f) do not apply. FHR has not paid assessments for the land where buildings 16-19 and 21 were to be built while other owners are paying assessments. (Ex. G, Request for Admissions No. 4, Glomski ¶ 14). Furthermore, FHR is attempting to alter their time-share liability without the unanimous consent of all time-share owners or through an initiative or referendum where at least eighty (80%) of the votes were cast, in violation of Wis. Stat. 707.22(3). Therefore, pursuant to Wis. Stat. 707.37 and 707.22(3), FHR cannot be excused from payment of their share of time-share expenses.

Even if the Court were to ignore the statutory requirements for removal, which it should not, it should still declare FHR liable for assessments because of the plain language of the Association’s governing documents. Section 8.1 of the condominium declaration states “[n]o Owner shall be exempt from a Time-Share Assessment by waiver of the use of enjoyment of a Time-Share Estate, the Common Elements or Limited Common Elements or by the abandonment of a Time-Share Estate...” (Ex. A). The same declaration defines “Owner” as “a person, combination of persons, or any entity, including Developer, who individually or in conjunction

with other persons or entities, owns a Time-Share Estate or who has equitable ownership of a Time-Share Estate as a land contract vendee.” *Id.* “Developer” means FHR, its successors and assigns. *Id.* The governing documents do not cite any exemption for the developer or any other owner not having to pay assessments on unbuilt units. (Glomski ¶ 15). In fact, the only place the governing documents differentiate between unbuilt vs built units is in Section 5.3 where the Declaration lists the Developer as a “Class B Member” entitled to “one (1) vote per each Time-Share Estate owner, whether constructed or not and one-half (½) vote per Odd Year Time-Share Estate and Even Year Time-Share Estate owned whether constructed or not...” (Ex A, p 8, Ex G, Request for Admissions No. 6). If the Developer is expressly entitled to votes whether constructed or not, then the Developer is subject to assessments.

III. FHR Owes Assessments for Built Time-Share Units

Despite demand, FHR has also refused to pay assessments on the 400 weeks in built units they own and rent out. (Glomski ¶ 14). This means that FHR is receiving benefits at the expense of all other owners. Wis. Stat. 707.37 controls Assessment liability for Time-Share Associations. “Except as provided in pars. (c) to (f), no time-share estate may be excused from payment of his or her share of time-share expenses unless all of the time-share owners are excused from payment.” Wis. Stat. 707.37(1)(b). The exceptions in paragraphs (c) to (f) do not apply. Furthermore, FHR is attempting to alter their time-share liability without the unanimous consent of all time-share owners or through an initiative or referendum where at least eighty (80%) of the votes were cast, in violation of Wis. Stat. 707.22(3). Therefore, pursuant to Wis. Stat. 707.37 and 707.22(3), FHR cannot be excused from payment of their share of time-share expenses.

CONCLUSION

Since FHR has not followed the laws regarding removing land from an Association, the undeveloped buildings and the land underneath them are still part of the Association. Since the

undeveloped buildings and the land underneath them are part of the Association, they are subject to assessments. FHR is also liable for assessments on their 400 weeks owned in the built units.

This case meets the criteria for granting a declaratory judgment. There is a justiciable controversy between parties whose interests are adverse. FHOA has a legally protectable interest. The issues are straightforward and ripe for judicial determination. FHOA requests the court determine that the Association owns the land where buildings 16-19 and 21 were supposed to be developed, FHR owes assessments for the unbuilt units, and their 400 weeks in the built units.

Dated this 30th day of May, 2025.

KAMAN & CUSIMANO LLC
Attorneys for Defendant and
Third-Party Plaintiff

By /s/ Daniel J. Miske
Daniel J. Miske
State Bar No. 1010608

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DECLARATION OF RICHARD GLOMSKI

1. I am a member of the Fox Hills Owners Association, Inc.'s ("FHOA") Board of Directors serving as President.
2. I am duly authorized to make this declaration.
3. FHOA is a condominium organized under Chapter 181 of the Wisconsin Statutes.
4. FHOA is also subject to Wisconsin's condominium statutes chapter 703.
5. Attached as **Exhibit A** is the original Declaration of FHOA, recorded on October 20, 1997.
6. Attached as **Exhibit B** is the Original Plat of FHOA, recorded on November 23, 1988.
7. Attached as **Exhibit C** are all amendments to the Declaration.
8. Attached as **Exhibit D** are all amendments to the plat.
9. The only way to remove property, including the land where buildings 16-19 and 21 were to be built, from an association is by 100% vote of the unit owners pursuant to Wis. Stat. 703.28(1).
10. All real property of the Association is owned in common by all of the unit owners.
11. No removal of property has been attempted or made with respect to any declared land, including the land where buildings 16-19 and 21 were to be built.
12. Attached as **Exhibit E** is an Affidavit of FHR Vice President Joseph Jacobson allegedly giving notice that FHR was removing the land where buildings 16-19 and 21 were to be built.

13. Attached as **Exhibit F** is an “Affidavit of Land Excision filed by Michael Jacobson on behalf of FHR.
14. Despite several requests, FHR has refused to pay assessments on their built and unbuilt units. Manitowoc Timeshare Management, LLC, has refused to assess FHR. FHR rents their built units.
15. Nowhere in the governing documents does it expressly state that unbuilt units are exempt from assessments.
16. The Association was told about the alleged 2020 excision from FHR and their attorney’s who issue a legal opinion assuring FHOA what they did was legal.
17. All real property of the Association is owned in common by all of the unit owners.
18. No legal removal of property has been attempted or made with respect to any declared land, including the land where buildings 16-19 and 21 were to be built.
19. I make this declaration in support of FHOA’s motion for a declaration on whether the property upon which buildings 16-19 and 21 from the original declaration has been removed or is still part of the Association and whether FHR owes assessments for those units as well as their built units.
20. The Association needs a determination that the land is part of the Association because it needs to construct bathrooms at its outdoor pool so that it has a pool as required by RCI to maintain its position.

I declare under penalty of false swearing under the
law of Wisconsin that the foregoing is true and
correct.

Signed on the 30th day of May, 2025, at Kiel, Wisconsin.

By: Electronically Signed by Richard Glomski

Richard Glomski

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DECLARATION OF MATTHEW LOWE

1. I am one of the attorneys representing Defendant and Third-Party Plaintiff, Fox Hills Owners Association, Inc. (“FHOA”).
2. On April 8, 2025, our office sent discovery to Third-Party Defendant FH Resort Limited Partnership (“FHR”) via electronic and U.S. Mail. A copy of that discovery is attached hereto as **Exhibit G**.
3. As of May 28, 2025, FHR has not responded to or requested any extensions regarding Exhibit G.
4. Pursuant to Wis. Stat. 804.11(b), all of the admissions in Exhibit G are deemed admitted due to FHR’s failure to respond otherwise.
5. I make this Declaration in support of FHOA's Motion for Partial Summary Judgment.

I declare under penalty of false swearing under the
law of Wisconsin that the foregoing is true and
correct.

Signed on the 30th day of May, 2025, at Milwaukee, Wisconsin.

By: Electronically Signed by Matthew Lowe

Matthew Lowe