

**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,

Defendant(s).

Case No. 2025CV000015

Case Code: 30301

**DEFENDANT FOX HILLS OWNERS ASSOCIATION, INC.'S ANSWER,
AFFIRMATIVE DEFENSES and COUNTERCLAIM**

Defendant, Fox Hills Owners Association, Inc. (“Defendant” or the “Association”), by their attorneys, Kaman & Cusimano, LLC, hereby responds to Plaintiff, Manitowoc Timeshare Management, LLC (“Plaintiff” or “MTM”) Complaint filed January 7, 2025 (“Complaint”) as follows:

1. The Plaintiff, Manitowoc Timeshare Management, LLC (“MTM”), is a Wisconsin limited liability company with its principal place of business at 1223 Appleton Road, Menasha, WI

ANSWER: Admits.

2. MTM is engaged in the business of providing management services for timeshare associations, such as the Defendant.

ANSWER: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

3. The Defendant, Fox Hills Owners Association, Inc. ("FHOA") is a non-stock corporation organized under the laws of the State of Wisconsin.

ANSWER: Admits.

4. FHOA's registered agent is Cyndi Gierczak, and its principal office is located at 212 W. Church Street, Mishicot, WI 54228.

ANSWER: Admits

5. FHOA's principal purpose is to govern the timeshare properties collectively owned by the timeshare owners of the Fox Hills Condominium Vacation Ownership Plan, a Wisconsin condominium located in the Village of Mishicot, adjacent to the golf course resort generally known as the Par 5 Resort.

ANSWER: Deny.

6. Since 1997, MTM has been providing management services to the FHOA.

ANSWER: Admit.

7. Those services included, but were not limited to managing the FHOA's accounting, payroll, tax, accounts payable, facilities, and other related items that the FHOA could not handle on its own.

ANSWER: Admit that Plaintiff provided various services to FHOA but deny the remainder of the paragraph.

8. Pursuant to the FHOA's longstanding written agreement(s) with MTM, MTM was entitled to an annual management fee of \$150,000.00, plus reimbursement for expenses and costs.

ANSWER: Defendant admits that MTM was entitled to \$150,000 provided it properly performed the services for which it was contracted. MTM did not properly perform those services.

9. Though the written management contracts envisioned payment of the management fee in equal monthly installments over the course of the year, frequently MTM would defer payment until December, at which time the FHOA would make a lump-sum payment.

ANSWER: Admit for years 2021 – 2023 only, and put MTM to its proof for any other years.

10. This was done to assist the FHOA with cash flow throughout the year.

ANSWER: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

11. Over the years, from time-to-time, the FHOA would have insufficient funds to pay the entirety of the annual management fee. When this occurred, the balance owed to MTM would be carried forward into the following year.

ANSWER: Deny.

12. Interest was assessed at “blended annual percentage rate” (BAR) promulgated by the IRS *plus* 2%, with minimum interest at all times being 4% regardless of the current BAR.

ANSWER: Deny.

13. Starting in January of 2017, the FHOA started accruing management fees, with no payments being made in 2017 or 2018 due to significant cash shortages.

ANSWER: Deny

14. Then, in 2019, the FHOA resumed making annual payments, with the arrearage continuing to accumulate interest.

ANSWER: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

15. Because the ongoing arrearage was \$250,000.00, and because interest rates were rising rapidly, starting in 2023, MTM began charging interest at the rate of 8%, which was communicated to the FHOA's board of directors, without objection.

ANSWER: Admit MTM began charging an interest rate of 8 percent to the Defendant but deny remainder of paragraph.

16. In January of 2024, MTM provided written notice to the FHOA that interest on outstanding amounts due would be increased to 18% APR. MTM further demanded that monthly payments of \$12,500.00 resume and that all past due sums be immediately paid.

ANSWER: Admit that this was the position taken by MTM.

17. Presently, the FHOA owes MTM the sum of \$250,000.00 in past due management fees.

ANSWER: Deny.

18. Presently, the FHOA owes MTM interest on the unpaid management fees in the amount of \$77,170.34.

ANSWER: Deny.

19. Despite demands for payment of the past due amounts, no payment has been made.

ANSWER: Admit that Plaintiff has made demands, but deny the remainder of the paragraph.

20. Attached hereto as Exhibit "A" are true and correct copies of the management contracts followed by the parties, along with excerpts from board minutes ratifying the agreements.

ANSWER: Admit that the management contracts and excerpts of board minutes are attached. Deny the remainder of the paragraph.

21. Attached hereto as Exhibit "B" is a copy of the notice and demand issued by MTM in January of 2024.

ANSWER: Admit.

22. Attached hereto as Exhibit “C” is an accounting of management fees incurred, payments made, and interest accumulated.

ANSWER: Defendant lacks knowledge or information sufficient to admit or deny and therefore denies.

23. The parties had a contract in which the FHOA agreed to pay MTM \$150,000.00 per year for management services.

ANSWER: Admit.

24. MTM has fulfilled its obligations under the parties contract and has rendered all management services professionally and in full compliance with the agreement.

ANSWER: Deny.

25. Despite making repeated demands for payment, the FHOA has failed to pay all sums due to MTM, which amount to \$250,000.00 in past due management fees, and \$77,170.34 in accumulated interest.

ANSWER: Defendant admits the January 3, 2024, letter was a demand for payment. Defendant denies the remainder of the paragraph.

26. The FHOA does not dispute that it owes MTM \$250,000.00 in past due management fees.

ANSWER: Defendant disputes that it owes any money to MTM because any management fees owed would be offset by the damages caused by the breaches of the management contracts by MTM.

27. Accordingly, the FHOA breached its contract with MTM, and MTM has been damaged as a result.

ANSWER: Denies.

AFFIRMATIVE DEFENSES

As for their affirmative defenses, Fox Hills Owners Association, Inc. states:

1. The Complaint fails to state a claim for which relief can be granted.
2. The Complaint fails to state facts sufficient to support a claim of special or compensatory damages.
3. Plaintiff relies on an unenforceable, illegal, unconscionable, or invalid contract.
4. Some or all of plaintiff's claims may be barred by legal and equitable estoppel.
5. Any recovery on plaintiff's complaint is barred, in whole or in part, due to lack of any cognizable injury or damages legally compensable under law.
6. Some or all of plaintiff's claims may be barred by the doctrine of unclean hands.
7. Defendant alleges all affirmative defenses required to be pled under Wis. Stat. § 802.02(3) for the purpose of avoiding waiver of any such defenses as they may later apply.
8. Plaintiff may have failed to mitigate its damages, if any.
9. The damages sustained by the plaintiff, if any, were caused in whole or in part by the acts or omissions of the plaintiff.
10. The proximate cause of the plaintiff's alleged damages, if any, may be due to the acts or failure to act of third parties over whom this answering defendant maintains no control or right to control.
11. Defendant asserts these affirmative defenses on the basis of knowledge and information presently available and reserves the right to amend, delete, add, or alter the affirmative defenses during the course of discovery and trial of this matter.

COUNTERCLAIM

Counter-Claimant, Fox Hills Owners Association, Inc. (“Counter-claimant” or the “Association”), alleges the following counterclaims against Counter-Defendant, Manitowoc Timeshare Management, LLC (“MTM”):

1. The Association is acting on behalf of itself, and on behalf of all members (“unit owners”) based upon power granted to the Association to sue on the unit owners’ behalf, pursuant to Wis. Stat. § 703.15(3)(a)(3) and the Condominium’s Declaration.

BACKGROUND

2. The Association was developed, planned, designed and constructed as a condominium association under Wisconsin Chapter 703.

3. The developer of the Association, FH Resort Limited Partnership (“FHR”), owned and controlled MTM.

4. FHR was the successor in interest to the initial developer of the property.

FIRST CAUSE OF ACTION - BREACH OF MANAGEMENT AGREEMENT

5. Association restates and incorporates each of the preceding paragraphs as if fully restated herein.

6. The operative management contract between MTM and Association during the last 6 years required MTM to properly perform various services as set forth in Article III, including:

- a. Properly operate the Association;
- b. Determine the annual budget;
- c. Assess the owners and
- d. Collect the assessments from the owners.

7. During the entire last 6 years that MTM managed the Association, FHR was an owner of units or time-share weeks.

8. Despite FHR being an owner of weeks, MTM did not assess or collect assessments from FHR.

9. MTM also breached the operative management contract by charging interest contrary to the terms of the management contracts, apparently at rates of 4%, 8% and 18% based on the language in paragraphs 12, 15 and 18 of the Complaint in this case.

10. The breach of MTM in carrying out its responsibilities under the operating management agreement damaged the Association in excess of \$1,000,000.

11. Upon information and belief, MTM made an unauthorized interest payment of \$60,000 from the Association's bank account to MTM's bank account on or around December 28, 2023.

WHEREFORE, Association/Defendant demands judgment against MTM as follows:

A. On the First Cause of Action, a money judgment in an amount of at least \$1,000,000 for the various breaches of the contract.

B. Dismissal of MTM/Plaintiff's Complaint against Association with prejudice, and

C. For such further other and further relief as the Court deems just and equitable.

Dated on January 22, 2025.

KAMAN & CUSIMANO LLC
Attorneys for Plaintiff

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

P.O. Address:
111 E. Kilbourn Avenue, Suite 1700
Milwaukee, WI 53202
414-209-3799
DMiske@kamancus.com