

FILED
01-27-2025
Clerk of Circuit Court
Manitowoc County, WI
2025CV000015

**STATE OF WISCONSIN
MANITOWOC COUNTY**

CIRCUIT COURT

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.

For Official Use:

**FOX HILLS OWNERS ASSOCIATION, INC.'S THIRD-PARTY SUMMONS
AGAINST FH RESORT LIMITED PARTNERSHIP**

TO: FH Resort Limited Partnership
1223 Appleton Road
Menasha, WI 54952

You are hereby notified that the defendant and third-party plaintiff, Fox Hills Owners Association, Inc. ("Defendants"), named above, have filed a lawsuit or other legal action against you. The third-party complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this third-party summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the third-party complaint. The Court may reject or disregard an answer that does not follow the requirements of

the statutes. The answer must be sent or delivered to the Court, whose address is Manitowoc County Circuit Court, 1010 S. 8th Street, 1st Floor, Room 105, Manitowoc, Wisconsin 54220, and to defendant/third-party plaintiff's attorney, whose address is Kaman & Cusimano, LLC, 111 E. Kilbourn Avenue, Suite 1700, Milwaukee, Wisconsin, 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the third-party complaint, and you may lose your right to object to anything that is or may be incorrect in the third-party complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 27th day of January, 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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Third-Party Defendant.

**FOX HILLS OWNERS ASSOCIATION, INC.'S THIRD-PARTY COMPLAINT
AGAINST FH RESORT LIMITED PARTNERSHIP**

Fox Hills Owners Association, Inc. (collectively, "Third-Party Plaintiff" or the "Association") as and for their Third-Party Complaint against FH Resort Limited Partnership ("Third-Party Defendant" or "FHR"), alleges and shows the court as follows:

1. The Association is a Wisconsin corporation having its principal place of business at 212 W. Church Street, Mishicot, WI 54228.
2. The Association is governed under Wisconsin Statutes Chapter 703.

3. The Third-Party Defendant, FH Resort Limited Partnership, is a Wisconsin limited partnership having its principal place of business at 1223 Appleton Road, Menasha, Wisconsin 54952.

4. Association, based on elections made by the developer, is a condominium association governed by Wis. Stat §703.

5. Association, based on elections made by the developer, is also a time-share subject to Wis. Stat. §707.

6. "**Exhibit 1**" is an accurate copy of the Fox Hills Vacation Ownership Plan Declaration ("declaration). The declaration was recorded on October 20, 1997, in Manitowoc County, Wisconsin, and was the result of a merger of the following entities: Fox Hills Golf Villas, A Condominium; Fox Hills Villas, A Condominium; and Fox Hills Condominium Vacation Ownership Plan.

7. This merger resulted in the deletion of the Time-Share Instrument of Fox Golf Villas, which was replaced by the Time-Share Instrument within the Fox Hills Condominium Vacation Ownership Plan, resulting in **Exhibit 1** functioning as both a Condominium Declaration and Time-Sharing Instrument.

8. FHR owns many units/timeshare weeks, with the current number being 400 built units/time-share weeks and 1,040 unbuilt units/timeshare weeks as of December 31, 2024.

9. In whole, there are more than 5,000 units/time-share weeks.

10. FHR has controlled the Association's Board of Directors most of the time since the Association was created in 1997.

11. "**Exhibit 2**" is an accurate depiction of the unbuilt condo units in buildings known as 16-19 and 21 and the related land.

12. FHR owns all units in buildings 16-19 and 21 of the Association.

13. FHR claims that all units in buildings 16-19 and 21 and the land underneath them are not part of the Association because they “reverted back” to the Developer.

14. The Consent to Merger recorded November 10, 1997, in Manitowoc County, WI, (“**Exhibit 3**”) provides that the merger includes “The Condominium Plat, as used in the declaration of the surviving condominium, shall mean the Condominium Plat of Fox Hills Golf Villas, a condominium, and Fox Hills Villas, a condominium, and Fox Hills Condominium Vacation Ownership Plan.”

15. The Declaration, **Exhibit 1**, “subject[s] the Real Property to the condominium form of ownership as provided in Chapter 703 of the Wisconsin statutes, as amended, and to the Time-Sharing form of ownership as provided in Chapter 707 of the Statutes, as amended...”

16. FHR is defined as the Developer in the Association Declaration. The first page of the Declaration, **Exhibit 1**, states:

In the event construction of a building on a Parcel is not completed within five (5) years from the date of recording of the Declaration/Time-Share Instrument pursuant to Wisconsin Statute 703.07(the ‘Recording Date’), title to the Real Property subjected to this Declaration/Time-Share Instrument less and except any Parcel upon which a building has been constructed shall, as of the day preceding the fifth annual anniversary of the Recording Date, revert to the Developer free and clear of this Declaration/Time-Share Instrument without:(i) any action by Developer (ii) consent from or action by any other person or entity or (iii) any conveyance by Developer or any other person or entity. Such Real Property shall thereupon be removed from and shall not be part of this Declaration/Time-Share Instrument.(Ex. 1)

17. Although the Declaration (as written by the Developer) gives FHR the right to remove unconstructed parcels, this language conflicts with Wis. Stat. §703.28 and is therefore void.

18. Under Wis. Stat. §703.28, to which there are no exceptions, affirmative consent of all unit owners is required for the removal of property from any condominium, including Fox Hills Owners Association, Inc.

19. There is nothing within Wis. Stat. §703.28 that allows for a Developer to write into a declaration a right for property to “revert” undeveloped parcels to itself, or anyone else for that matter.

20. FHR has never obtained the written consent of “all of the unit owners” to “remove all or any part of the property” from the Association as required by Wis. Stat. §703.28.

21. FHR was advised, prior to August of 2024, that the alleged removal of property from the Association violated the law and was void.

22. Despite knowing that the removal of the property from the Association violated the law, FHR recorded an Affidavit of Land Excision with the Manitowoc Register of Deeds on October 31, 2024. (**Exhibit 4**).

23. FHR claims an interest in the land as a result of its alleged purchase of the land referenced in **Exhibit 4**.

24. Prior to recording **Exhibit 4**, Joseph Jacobson, the vice president of the general partner of FHR recorded an affidavit on December 23, 2020, of FHR’s intent to withdraw certain other land (Golf Villa 7) from the Association. (**Exhibit 5**).

25. FHR claims that on December 23, 2020, it sold the land that it removed as referenced in **Exhibit 5** from the Association to FH Hospitality, LLC,

26. On information and belief the Golf Villa 7 land referenced in paragraphs 24 and 25 was sold by a receiver at a public auction on December 30, 2024 to an unrelated 3rd party or parties.

27. Section 5.3 of the Declaration provides that “The Association shall have two (2) classes of voting Owners.” The second class, Class B, provides that “Developer, its successors and assigns shall be entitled to one (1) vote per each Time-Share Estate, whether constructed or not, and one-half vote per Odd Year Time-Share Estate and Even year Time-Share Estate owned, whether constructed or not with respect to matters governed by both Chapter 703 and 707.”

28. FHR has claimed that it is exempt from paying assessments on the units that it owns because it is the developer.

29. Section 1(n) of the Declaration defines an owner as “a person, combination of persons, or any entity, including the 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.”

30. Nothing in the Declaration exempts FHR from having to pay assessments on all units that it owns.

31. As a unit owner at the Association, FHR is subject to the condominium governing documents, including sections 8.2 and 8.3 of the Declaration that outline the Association’s collection procedures.

CAUSES OF ACTION

I. BREACH OF CONTRACT

32. Third-Party Plaintiff, the Association, restates and incorporates each of the preceding paragraphs as if fully restated herein.

33. FHR has owned units within the Association for more than 10 years.

34. FHR, by being a unit owner, agreed to comply with the governing documents, including paying assessments.

35. FHR owns 400 built units/time-share weeks and 1,040 unbuilt units/timeshare weeks.

36. FHR, despite due demand, has refused to pay assessments for its units.

37. For years, while Manitowoc Timeshare Management, LLC (“MTM”) managed the Association, FHR was not billed assessments.

38. FHR has claimed for years that it was legally exempt from having to pay assessments to the Association.

39. FHR was advised that it owed assessments in 2024 by the Association, but it has refused to pay any assessments.

40. Because of the statute of limitations, FHR will have benefitted by millions of dollars of assessments that it will not be liable for because those assessments were due prior to 2019.

41. FHR units/timeshare weeks were rented out along with other unit owners units/timeshare weeks, and FHR was paid a portion of the rental income, despite not paying assessments.

42. FHR breached its contract with the Association by not paying assessments to it and by having its controlled management company, MTM, not bill or collect assessment from FHR.

43. FHR breach of the condominium documents has damaged the Association in the amount of \$6,049,595.55 as of January 16, 2025.

II. MONEY JUDGMENT

44. Third-Party Plaintiff, the Association, restates and incorporates each of the preceding paragraphs as if fully restated herein.

45. FHR is obligated to pay the Association assessments pursuant to the Declaration that governs the Association.

46. FHR is in default for failure to pay the assessments.

47. According to Wis. Stat. § 703.165(2) and § 707.37 (2), assessments include late fees and interest.

48. According to Wis. Stat. § 703.165(7) and § 707.37 (2), the Association is entitled to costs and actual attorney fees.

49. The amount of assessments owed by FH Resort through January 16, 2025, are \$6,049,595.55.

50. Assessments continue to accrue on an annual bases and interest of 10% is accruing on the unpaid balance.

III. TIMESHARE FORECLOSURE

51. Third-Party Plaintiff, the Association, restates and incorporates each of the preceding paragraphs as if fully restated herein.

52. The Association has filed a Lien against the Premises for association assessments in the amount of \$1,518,786.50. A copy of the Lien is attached as **Exhibit 6** (the “Lien”).

53. That the real property is located as set forth on Exhibit 6 for each of the units/timeshare weeks.

54. Upon information and belief, the Premises described herein is not the homestead of FHR.

55. That the Association hereby will proceed under a six-month period of redemption or as otherwise permitted by law, and requests that judgment shall be rendered for any deficiency against FHR.

56. That the Lien has been filed for more than ten (10) days and a letter has been sent to FHR notifying them that the foreclosure action will be commenced pursuant to Wis. Stat. § 707.37.

57. The Lien referred to above is prior to all other liens except the first mortgage recorded prior to the assessment and taxes, mechanics liens and other sums that fall under Wis. Stat. § 707.37.

IV. SLANDER OF TITLE

58. Third-Party Plaintiff, the Association, restates and incorporates each of the preceding paragraphs as if fully restated herein.

59. FHR knew or should have known that the only way to lawfully remove the land on which units in buildings 16-19 and 21 could or would have been built was with the affirmative consent of all unit owners as set forth in Wis. Stat. § 703.28.

60. By recording **Exhibits 4 & 5**, FHR failed to exercise ordinary care by unlawfully removing portions of the Association from the condominium.

61. FHR knew of or should have known that **Exhibits 4 & 5** were false and would impair the title of the unit owners of the Association to the land removed.

62. FHR's actions and recording of **Exhibit 4** constitutes a slander of title against the unit owners of the Association pursuant to Wis. Stat. § 706.13.

63. The Association and its unit owners have been damaged by the removal of the property from the Association.

V. DECLATORY JUDGMENT

64. Third-Party Plaintiff, the Association, restates and incorporates each of the preceding paragraphs as if fully restated herein.

65. FHR has claimed that the land associated with unbuilt units in buildings 16-19 and 21 has reverted back to FHR and is no longer owned by the unit owners of the Association.

66. FHR did not obtain the written consent of all unit owners before it allegedly “excised and removed” the land associated with units in building 16-19 and 21 as referenced on **Exhibit 4**, in direct violation of Wis. Stat. § 703.28.

67. Because FHR failed to properly follow the law to remove land from the Association, FHR has no valid claim to the land associated with buildings 16-19 and 21 of the Association.

68. Since the land and units in buildings 16-19 and 21 were not lawfully removed from the Association, they remain part of the Association.

WHEREFORE, the Association demands judgment as follows:

A. On the first cause of action, against FHR, in the amount of \$6,049,595.55 as of January 16, 2025, plus any additional accrued monthly dues, interest and/or late fees thereafter, plus all the Association’s costs of collection, including attorneys’ fees both before and after judgment;

B. On the second cause of action, against FHR for a money judgment in the amount of \$6,049,595.55, plus any additional accrued monthly dues, interest and/or late fees thereafter, plus all the Association’s costs of collection, including attorneys’ fees both before and after judgment;

C. On the third cause of action, Foreclosure, against FHR, and against all other persons who may claim an interest in and to the Premises subsequent to the filing of the Lis Pendens, for foreclosure of the Premises in form and in the manner with provisions prescribed by law in such cases that said FH Resort and all persons whose claims came into existence subsequent to the time

of filing of the Lis Pendens be barred and foreclosed of all right, claim, lien and equity of redemption in the Premises, except the right to redeem the same as provided by law; that the Premises be adjudged to be sold subsequent to all legal encumbrances, unless redeemed within the time and in the manner provided by law, and the Association be paid the amount due on the indebtedness evidenced by the Lien, together with interest from the time of such payment as allowed by law through and including the same and confirmation of sale, and together with court costs and disbursements, collection costs and actual attorney's fees as the court may order, out of the proceeds of the sale so far as the monies arising from the sale will pay the same; that the redemption period be limited to six months or as otherwise permitted by law; that the sale of the Premises, subject to the Lien of any first mortgage holder(s), be held upon the expiration of the redemption period as provided by law from the date when judgment is entered in this case, with notice of the time and place of sale as provided by law; that the judgment include all costs, disbursements, special assessments, expenses advanced, real estate taxes, and other sums of money, if any, advanced by the Association pertaining to the Premises through the date of sale and hearing on confirmation of sale held pursuant to the judgment or until such other time as the court may order and determine; that the liens and claims of Counter-Defendant, except the interest of the first mortgage holder, be determined and adjudged to be subordinate to the interests and claims of the Association in and to the Premises; and that the FHR and all persons claiming under them be enjoined from committing waste or doing any act that may impair the value of the Premises;

D. On the Fourth Cause of Action, against FHR, for slander of title, with damages in an amount as determined by the finder of fact, punitive damages of \$1,000 pursuant to Wis. Stat. § 706.13 and its costs, and disbursements and attorney fees to the full extent authorized by law;

E. On the Fifth Cause of Action, against FHR, for an order declaring that any removal of land associated with buildings 16-19 and 21 from the Association by FHR was contrary to the provisions of Wis. Stat. § 703.28 and therefore void and that the unit owners of the Association remain the owners of the land;

F. For such other and further order and relief as may be just and equitable, and for the costs and disbursements and actual attorney's fees of this action; and

G. Any other relief the Court deems just and proper.

Dated this 27th day of January, 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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