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Clerk of Circuit Court
Manitowoc County, WI
2025CV000015

**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 BRIEF IN OPPOSITION TO FH
RESORT LIMITED PARTNERSHIP’S MOTION FOR INSPECTION OF
MEMBERSHIP LIST AND INJUNCTIVE RELIEF**

Fox Hills Owners Association, Inc. (“Association”) submits this Brief in Opposition to FH Resort Limited Partnership (“FHR”)’s Motion for Inspection of Membership List and Injunctive Relief.

INTRODUCTION

FHR filed a Motion for Inspection of Membership List and Injunctive Relief on June 23, 2025. (Dkt. 56). FHR’s motion and arguments are baseless. This is essentially a motion to compel

the production of the membership list and should be treated as such. Similarly, it appears FHR's real motive is to bankrupt the Association and thereby get away with improperly taking land from the Association and not paying assessments it owed to the Association by controlling the Association's board and therefore its decisions related to this case. FHR's motion is simply not supported by any law, which explains why it seeks recovery under a law that "does not apply to an association that is a corporation." Wis. Stat. § 703.20(5).

FACTS

The Association is an incorporated condominium association organized under Wis. Stat. 181 and subject to Chapters 703 and 707 of Wisconsin Statutes. (Gierczak Dec. ¶ 3). FHR is the Declarant of the Association and recorded a Declaration of Condominium in Manitowoc County on October 20, 1997. (Dkt. 38). For years FHR sold timeshare weeks to members of the Association that included the land at issue. In 2024, FHR filed an "Affidavit of Land Excision" removing significant portions of the Association's land, including common elements, contrary to Wisconsin Statutory Section 703.28. The Association has explained to FHR on multiple occasions why this land excision was invalid and in violation of Wisconsin law, yet inexplicably FHR continues to ignore the law. This motion, along with the lawsuit filed by Manitowoc Timeshare Management Company, LLC ("MTM"), attempts to further hamstring the Association's resources and finances. Fortunately for the Association, the law is so clear that even FHR and MTM can't avoid its consequences – a finding that the alleged "land excision" was void.

ARGUMENT

A. FHR is Not Entitled to Inspect the Association's Membership List Pursuant to Wis. Stat. § 703.20(5)

FHR asserts that they are entitled to the Association's Membership List pursuant to Wis. Stat. §§ 181.1601-1602. (Dkt. 57, p 1). Wis. Stat. § 703.20(5) states "Sections 181.1601 to 181.1603 do not apply to an association that is a corporation as defined in s. 181.0103(5)." The Association is a corporation. (Gierczak ¶ 4, Ex. F). FHR is well aware of the fact that the Association is a Wisconsin condominium and a corporation, since it was FHR that incorporated the Association and filed its condominium Declaration. (Dkt. 29, p 2) Thus, the statutes FHR relies on to assert it is entitled to these records are not applicable. Wis. Stat. § 703.20 also does not require Association's to turn over Membership lists to owners. There is simply no legal requirement for the Association to provide FHR with the membership list, nor is there any reason for FHR to want it other than to harass the opposing party.

B. There is no Mandate Requiring FHR to Appoint Directors

Section 5.4 of the declaration, *inter alia*, states "Developer, its successors and assigns, shall have the right at its option to appoint and remove the officers of the Association..." (Dkt. 64, p. 10). Section 4.3 of the Bylaws essentially has the same provision. (Dkt. 66, p. 10). Section 4.3 of the Association's Bylaws and Section 5.4 of the Declaration of Condominium and Time-Share Instrument violate Wisconsin law. It is clear that declarant control of an association is not permitted "for a period exceeding the earlier of: (a) Ten years in the case of an expandable condominium or (b) three years in the case of any other condominium." Wis. Stat. § 703.15(c). FHR correctly points out that "the Court is not presented with a traditional condominium" but rather a timeshare condominium. (Dkt. 57, p 8). The ONLY difference this distinction makes is that if there is a conflict in the two statutes, then chapter 707 controls. Wis. Stat. § 707.09. Otherwise, FHR must comply with chapter 703 as well, which it fails to do, pretending that some conflict exists which does not.

Wis. Stat. § 703.15(2)(c) and Wis. Stat. § 707.30(4) do not conflict with one another. Wis. Stat. § 707.30(4)(2) states “[t]ime-share owners other than the developer *may* elect no less than a majority of the members of the board of directors of an association...” Wis. Stat. § 703.15(2)(c) strictly prohibits “any” declarant control after a certain time frame. FHR appears to be arguing that these two statutes conflict with one another and that pursuant to Wis. Stat. § 707.09 Chapter 707 should prevail. However, there is no conflict. Wis. Stat. § 707.30 allows the developer to elect a minority of the directors. Accordingly, under the time-share statute a developer can elect 0 directors, which is “less than a majority.” Nothing in Wis. Stat. § 707.30 prohibits the developer from writing the declaration so that it has no right to elect directors after some point in time. In this case, that is exactly what happened. The developer decided to have its time share also be a condominium. Therefore, by operation of the law, it was prohibited from having “any” control after the applicable time frame had passed. Nothing in Ch. 707 Wis. Stat. mandates who can and cannot control the Association’s Board of Directors and thus it does not conflict with Wis. Stat. § 703.15(2)(c). Therefore, the attempt by FHR to appoint directors as the developer is in direct violation of Wis. Stat. § 703.15(2)(c) and those appointments are void.

Furthermore, even if Wis. Stat. § 703.15(2)(c) didn’t prohibit the director appointments by the developer, which it does, because FHR is delinquent in its assessment payments, any director appointed by FHR would be subject to Article 6.5 of the Bylaws which says that “any member of the Board of Directors who is delinquent may be removed from office by a vote of a majority of the non-delinquent member(s) of the Board.” (Dkt. 31, p. 14). Thus, even if FHR had an unlimited continuing right as the developer to appoint two directors to the board, the director(s) elected by the owners would then immediately call a meeting to have the developer directors removed pursuant to the documents drafted by FHR.

C. Ballots

i. Global's Proxy/Ballot

Global Exchange Vacation Club's ("Global") confusing ballot was properly disregarded. FHR's own Exhibit K demonstrates this. (Dkt. 72). Mr. Jacobson submitted a "Ballot for Board of Directors" that states "[f]or the avoidance of doubt, all 1183.5 weeks/unit held by GEVC are being cast in favor of *each* of the above candidates." (Id., p. 3). In the official ballot (Id.), Mr. Jacobson checked two boxes – one for "Nick Klaseus" and one for "Write In." (Id., p. 4). Additionally, next to the write-in box, there are two names with numbers next to the names. (Id.). It says "(1) Jerry Johnson; (2) Alan Feldkamp." (Id.). By comparing these two sheets, one could interpret Global's vote in multiple ways. The official ballot appears to be voting 1,183.5 votes for both Jerry Johnson and Alan Feldkamp, based on the numbers next to their names. This is further supported by the hand-written statement on the ballot: "1,183.5 votes each." (Id.). Therefore, Global is casting 3,550.5 (1,183.5 x 3) votes, but it only has 1,183.5 votes, disqualifying its ballot.

Even if the counter of the ballots had looked at the proxy (Id., p. 3), which would be completely out of the norm, it indicates that Nick Klaseus should be voted for, and that "for the avoidance of doubt all 1183.5 weeks/units held by GEVC are being cast in favor of *each* of the above candidates." (Id., p. 3). Therefore, even a review of the proxy would not clarify the ballot. Accordingly, the ballot was properly disqualified.

ii. Properly Disregarded Ballots

There were a total of 106 ballots submitted. (Gierczak Dec. ¶ 5). Sixty-Five (65) of those were filled out correctly and counted and forty-one (41) were disqualified. (Gierczak Dec. ¶ 6). Of the 41 disqualified ballots, thirty-six (36) were disqualified because the owner cast more votes than

they were entitled to. (Gierczak Dec. ¶ 7) One (1) ballot was received by mail the Monday after the meeting and not counted. (Id.). Two (2) ballots were disqualified because the name was left blank, and two (2) were disqualified because two owners of the same week each cast a ballot, and the ballots were not the same. (Id.).

D. Injunction Relief - Elements for an Injunction are Not Met

FHR does not satisfy the three elements required for an injunction to be granted under Wisconsin law. To prevail on their request for injunctive relief under Wis. Stat. § 813.02(1), FHR must demonstrate: (1) reasonable probability of success on the merits; (2) irreparable harm that cannot adequately be compensated by monetary damages; (3) on balance, equity favors issuance of the injunction. *Nettesheim v. S.G. New Age Prods.*, 2005 WI App ¶21, 254 Wis. 2d 633, 702 N.W.2d 449; *Bubolz v. Dane County*, 15 Wis. 2d 284. 296, 464 N.W.2d 67 (Ct. App. 1970); *Madison Gas & Elec. Co. V. Public Service Comm'n* 250 Wis. 59, 26 N.W.2d 285 (1947). Courts examine the facts and circumstances of every individual case when deciding whether to issue an injunction. *See City of Wis. Rapids v. Wis Rapids Ed. Ass'n*, 70 Wis. 2d 292, 309 (1975).

i. FHR has no Probability of Success on the Merits.

FHR has no probability of success on the merits. FHR misinterprets and misapplies the statutes to incorrectly assert that there are “clear statutory and contractual violations.” (Dkt. 57, p. 11). As stated above, FHR decided to become a condominium and thus became subject to Wisconsin Chapter 703 in addition to Wisconsin Chapter 707. (Gierczak ¶ 3). Wis. Stat. § 707.09 does not mandate control of the Association’s Board of Directors and thus does not conflict with Wis. Stat. § 703.15(2)(c). Thus, Wis. Stat. § 703.15(2)(c) that prohibits Declarant control after “a period exceeding the earlier of: (a) Ten years ... or (b) three years [depending on facts not relevant here]”

controls and FHR is prohibited from drafting language in the Bylaws and Declaration to get around the statute. Wis. Stat. § 703.15(2)(c).

Similarly, the allegations of ballot and meeting misconduct are misguided. Global submitted a confusing ballot that attempted to cast more votes than it owned, so it was disregarded. (Gierczak ¶ 8). Forty-one (41) ballots, other than Global's, were also properly disregarded for various reasons as set forth above. (Gierczak ¶ 7).

ii. FHR will not Suffer Irreparable Harm.

There is no harm to FHR. FHR as the developer is not entitled to directors "any" control and therefore is not entitled to "any" director on the board. Secondly, the ballots that were disregarded were properly disregarded. It is FHR that is causing harm by driving up the costs and fees to the Association so that FHR can continue to simply ignore the law. There is no case law supporting FHR's claim that it should be allowed to ignore the law that it chose to be governed by – the Wisconsin Condominium Ownership Act (Ch. 703). Accordingly, FHR has not suffered any irreparable harm.

iii. Equity Favors not Issuing the Injunction.

There is no equity in this case that favors FHR. FHR chose the law that would govern when it drafted the governing documents and chose to be subject to both Chapters 703 and 707. Then when FHR wanted to take some of the land back and vote contrary to the provisions of Ch. 703, it simply ignored that those provisions existed. Now it wants the court to do for it what it could not otherwise legally do, vote despite having liens against it for failing to pay assessments or appoint directors under the governing documents when the applicable law clearly prohibits "any" declarant control. Equity will not save FHR and in reality weighs heavily in favor of the hundreds of unit

owners who purchased time share condominium weeks from FHR only to have FHR then wrongfully take back their land and seek to then control the Association board to prevent these owners from having their day in court.

CONCLUSION

For the reasons set forth above, FHR's motions should be denied and attorney fees awarded to the Association.

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