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Clerk of Circuit Court
Manitowoc County, WI
2025CV000015

STATE OF WISCONSIN
MANITOWOC COUNTY
CIRCUIT COURT

MANITOWOC TIMESHARE
MANAGEMENT, LLC

Plaintiff,

v.

FOX HILLS OWNERS
ASSOCIATION, INC.

Defendant and Third-Party Plaintiff,

v.

FH RESORT
LIMITED PARTNERSHIP

Third-Party Defendant.

Case No. 25 CV 15
Class Code: 30301

**REPLY BRIEF IN SUPPORT OF MOTION FOR INSPECTION OF MEMBERSHIP LIST
AND INJUNCTIVE RELIEF**

RECAP

In the instant Motion, FH Resort is asking the Court to (1) compel production of the membership ledger and award FH Resort's costs and attorney fees under Wis. Stat. § 181.1604; (2) issue a preliminary injunction prohibiting the current board from taking binding actions; (3) remove directors elected to FH Resort's appointed seats and install FH Resort's appointees; and (4) vacate the third board seat and order either a recount of valid ballots or a new election under court supervision, or appoint a temporary receiver to manage the Association until lawful governance is restored. FHOA's Brief in Opposition fails to provide a compelling basis to deny FH Resort's right to inspect the membership ledger, its contractual right to appoint directors under the Association's Bylaws and Declaration, or the need for injunctive relief to remedy the Association's oppressive conduct in disregarding valid ballots and barring FH Resort from meetings. FHOA's arguments misinterpret (or outright ignore) Wisconsin law, ignore the plain language

of the applicable governing documents, and fail to rebut FH Resort's showing of entitlement to immediate relief. For the reasons below, the Court should grant FH Resort's Motion in full.

ARGUMENT

A. FH RESORT'S REQUEST FOR MEMBERSHIP LEDGER

FHOA argues that § 703.20(5) bars FH Resort from invoking Wis. Stat. § 181.1601-1603 to obtain the membership records. Though at first pass, § 703.20(5) may seem to support this proposition, a closer examination of the language of § 181.0103(5) would seem to exclude non-stock corporations without capital stock, which includes FHOA. *Compare* Wis. Stat. § 181.0103(5) *with* Wis. Stat. § 181.0103(18). Irrespective, setting aside § 181.1601-1603, Wis. Stat. § 181.0720 separately entitles FH Resort the right to inspect the membership list prior to the annual meeting, and separately grants FH Resort the right to judicial relief in the event FHOA refuses to provide access to the member list. *See* § 181.0720(4). Therefore, contrary to FHOA's assertions, FH Resort is entitled to the relief it seeks under Ch. 181.

Nevertheless, the Court is understandably asking itself: *can't FH Resort just obtain the information via discovery?* FH Resort acknowledges that its request for membership ledger is now essentially moot because it has, since the making of its request and the filing of its Motion, separately requested this information in discovery, which responses should be had by the date of the hearing, or shortly thereafter. As such, the argument as to whether the records should or should not be produced under Ch. 181 can be dispensed with at the present time. Naturally, if FHOA were to subsequently evade the production of this information in discovery, the issue will need to be brought back before the Court in the form of a motion to compel, but no further time need be expended at this point in time, as FH Resort fully expects FHOA to comply with its request for this information.

B. THE ASSOCIATION'S REFUSAL TO HONOR FH RESORT'S DIRECTOR APPOINTMENTS VIOLATES THE BYLAWS, DECLARATION, AND WISCONSIN LAW

FHOA argues that Wis. Stat. § 703.15(2)(c) prohibits FH Resort, as the developer, from appointing directors, claiming it constitutes impermissible "declarant control." (Def.'s Brf. p. 4). This argument

misinterprets the interplay between Chapters 703 and 707 and ignores the Association's governing documents.

1. Wis. Stat. § 707.30 Governs Developer Rights in Timeshare Condominiums and Permits FH Resort's Appointments

The Association is without dispute a timeshare condominium governed by **both** Wis. Stat. Ch. 703 (Condominiums) and Ch. 707 (Time-Share Ownership). FHOA's exclusive reliance on Wis. Stat. § 703.15(2)(c), which limits declarant control in traditional condominiums, is misplaced. Wis. Stat. § 707.09 explicitly states that Chapter 707 prevails over Chapter 703 in the case of conflict between the provisions of the statutes:

707.09 Conflicts with other laws. If a conflict exists between this chapter and ch. 703, the provisions of this chapter prevail.
History: 1987 a. 399.

In this instance, Chapter 707 provides specific rules for timeshare properties, allowing developers to appoint board members as long as they are not appointing a majority. *See* Wis. Stat. § 707.30(4)(b)-(c). FH Resort seeks to appoint only two of five directors - a minority - which complies fully with § 707.30(4)'s requisites. Trying to sidestep this reality, FHOA instead asserts that no conflict exists between § 703.15(2)(c) and § 707.30(4) because the latter allows a developer to appoint "0 directors," which technically is "less than a majority;" and therefore, the statutes are in harmony. This interpretation of the statute is absurd and renders § 707.30(4)(b) meaningless, because it would nullify the developer's explicit statutory right to appoint more than "0 directors" but less than a majority of directors.

As this Court is aware, Wisconsin courts must reject interpretations that render statutory provisions superfluous. *See, e.g., State v. Martin*, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991) ("A statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect."). If the legislature intended to eliminate a developer's right to continue to appoint directors under Ch. 707, it could have dispensed with authoring Section 707.30(4) altogether, and just deferred to the language in Ch. 703 regarding board elections and appointments. That is not the case here, as the statute

makes clear that the “developer or persons designated by the developer may appoint or remove the members of the association’s board of directors” subject to the condition that “Time-share owners other than the developer may elect no less than a majority of the members of the board of directors” once the statutory benchmarks set forth in § 707.30(4)(2)(a-d) are met.

Moreover, the Bylaws (§ 4.3) and Declaration (§ 5.4) unequivocally grant FH Resort the right to appoint two directors, a right exercised without issue for over two decades, until 2024. FHOA’s refusal to honor FH Resort’s April 11, 2025, appointments violates these governing documents and violates § 707.30(4).

2. FHOA’s Delinquency Argument Is Irrelevant and Unsupported

Because it knows it cannot win on the law, FHOA argues that even if FH Resort could appoint directors, they would be removable under Article 6.5 of the Bylaws due to FH Resort’s alleged delinquency in assessment payments. This argument fails for multiple reasons. First, FHOA provides no evidence of FH Resort’s delinquency, relying solely on conclusory assertions in its brief. Nevertheless, the legal question of whether FH Resort is obligated to pay dues – and if so, **how much** -- is one of the central legal questions in this case, and is presently queued up in the FHOA’s declaratory judgment motion. Therefore, until that legal question gets resolved, there’s no valid basis to allege that FH Resort is somehow in arrears or delinquent because it is not yet even known whether FH Resort is obligated to pay dues, let alone, what amount.

Second, FHOA’s reliance on Article 6.5 of the Bylaws is misplaced, because it does not state that if the developer has failed to pay dues it cannot appoint directors. Instead, it states that “any member of the Board of Directors who is delinquent may be removed from office.” Even if FH Resort’s appointees were removable, this provision does not negate FH Resort’s initial right to appoint directors, which FHOA outright denied. More importantly, though FHOA may argue that FH Resort is delinquent in the payment of dues, no such argument has been (nor can be) raised by FHOA as to Jerry Johnson and Alan Feldkamp, the individuals appointed to the board by FH Resort. These individuals are both dues paying members of the Association and are otherwise in good standing.

Finally, and most tellingly, FHOA argues that the Court should not waste time allowing FH resort to appoint directors, because the other members of the Board would just vote to remove them anyway. In other words, it's a foregone conclusion these appointees will be kicked off the board, *so why bother enforcing FH Resort's rights, Judge?* This directly acknowledges that the current Association board is actively waging a bad faith campaign against FH Resort. Instead of allowing FH Resort to exercise its statutory and contractual rights, FHOA's position is that because it does not want FH Resort to have board appointees, it will just remove whoever is appointed. This is unlawful and further supports FH Resort's argument that FHOA is doing everything in its power to interfere with FH Resort's rights as a developer. The Court should reject this baseless argument and enforce FH Resort's appointment rights forthwith.

C. THE ASSOCIATION'S BALLOT DISQUALIFICATIONS WERE ARBITRARY AND UNLAWFUL

FHOA cavalierly defends its disqualification of 41 ballots – **nearly 40% of votes cast** -- claiming they were properly disregarded for over-voting or other irregularities. This position is contrary to Wisconsin law and the Association's governing documents.

1. GEVC's Ballot Was Valid and Should Have Been Counted

FHOA argues GEVC's ballot was disqualified because it cast 1,183.5 votes for three candidates, totaling 3,550.5 votes, exceeding its voting power. This mischaracterizes GEVC's submission. GEVC's proxy and ballot clearly stated that its 1,183.5 votes were cast for Nick Klaseus for one director seat, with write-in candidates Jerry Johnson and Alan Feldkamp being designated only if additional seats were open due to FH Resort's appointments being rejected. GEVC's belief that only one seat was open was reasonable, given FH Resort's entirely valid appointment of two directors as developer. Thus, GEVC intended to cast 1,183.5 votes for Klaseus alone, which complies with FHOA's "one week, one seat" rule, even if such a rule were valid.

FHOA's claim that the ballot was ambiguous is completely disingenuous, because the ballot submission made clear that GEVC only believed 1 seat was up for election:

Pursuant to the Proxy duly executed by GEVC on file with the Association, and on behalf of GEVC, the undersigned hereby casts the following votes for the Board of Directors of Fox Hills Owners Association, Inc., pursuant to the ballot issued by the Association:

Director: Nick Klaseus

Because the Developer of the Association has separately appointed two directors, the undersigned believes only 1 director is up for election. However, to the extent two additional directors are up for election, the undersigned votes for the following write-in candidates:

Thus, at a minimum, FHOA should have acknowledged GEVC's ballot with respect to the vote cast for Mr. Klaseus. However, because Mr. Klaseus was not the preferred candidate of those in control of the Association (i.e. Mr. Glomski and Ms. Gierczak), the ballot was discarded. Disqualifying GEVC's ballot was arbitrary and likely altered the election outcome, as GEVC's 1,183.5 votes dwarf other members' voting power.

2. Disqualifying Other Ballots Violated Members' Voting Rights

FHOA disqualified 36 ballots because owners "cast more votes than permitted," yet FHOA fails to cite the legal or contractual basis for their position that a timeshare owner of only 1 week can only vote to fill one board vacancy when there are three vacancies to fill. The "one week, one seat" rule lacks any basis in the Bylaws, Declaration, or Wisconsin law. Wis. Stat. § 181.0723, analogous to § 180.0721 for for-profit corporations, grants each member the right to vote on each matter presented, including each open director position, unless restricted by governing documents. The Association's Bylaws and Declaration are silent on limiting votes to the number of timeshare weeks for multiple director positions, so the statutory default applies, allowing one vote per week for each of the three open seats up for election. By discarding entire ballots rather than counting valid votes (e.g., allocating one vote per week owned for each seat open for election, up to the member's voting power), FHOA violated members' statutory voting rights by disenfranchising nearly 40% of those members who voted, thereby completely tainting the election's integrity.

D. FH RESORT SATISFIES ALL ELEMENTS FOR INJUNCTIVE RELIEF

FHOA argues that FH Resort fails to meet the elements for injunctive relief under Wisconsin law: (1) reasonable probability of success, (2) irreparable harm, (3) no adequate remedy at law, and (4) necessity to preserve the status quo. Upon review of the submissions, this Court should be satisfied that FH Resort satisfies each element.

1. FH Resort Has a Strong Probability of Success

FH Resort is likely to succeed on its claims that FHOA breached the Bylaws and Declaration by rejecting FH Resort's director appointments, and acted illegally and oppressively by disregarding valid ballots and barring FH Resort from meetings. Wis. Stat. § 707.30(4) clearly governs and permits FH Resort's director appointments. FHOA's spurious "one week, one seat" ballot disqualifications violate Wis. Stat. § 181.0721's requirement that "each member is entitled to one vote on each matter voted on by the members." These clear violations establish a strong likelihood of success on FH Resort's part.

2. FH Resort Faces Irreparable Harm

FHOA claims FH Resort suffers no harm because it is not entitled to appoint directors or have ballots counted. This is circular and incorrect. The denial of FH Resort's governance rights—appointing directors, accessing the member list, and participating in meetings—disenfranchises FH Resort and allows an illegitimate board to make binding decisions, including monetary decisions that could impact FH Resort both as an owner, but also as a creditor. Such harm is irreparable, as it cannot be undone by monetary damages: once the decisions are made, they cannot be "un-made." FHOA's assertion that it is FH Resort causing harm by "driving up costs" is irrelevant to the legal standard and unsupported by evidence. If FHOA wants to avoid litigation and the costs associated therewith, it can simply choose to follow the law and governance documents, and not violate FH Resort's (and other members') rights!

3. No Adequate Remedy at Law Exists

Monetary damages cannot restore FH Resort's governance rights, ensure fair elections, or undo decisions by an unlawful board. FHOA offers no alternative remedy, and its actions threaten FH Resort's

financial and legal interests. Injunctive relief is the only means to restore lawful governance over the Association.

4. Equity and the Status Quo Favor Injunctive Relief

FHOA argues equity favors the “hundreds of unit owners” and that FH Resort seeks to “ignore the law.” This misrepresents the dispute. FH Resort seeks to enforce its contractual and statutory rights, which protect its interests and those of other members harmed by the Association’s misconduct. The status quo is the governance structure mandated by the Bylaws and Declaration, including FH Resort’s right to appoint two directors, which it has done for over 2 decades, and members’ rights to fair elections. Allowing the current board to act entrenches an illegitimate governance structure, prejudicing FH Resort and other members. Equity favors injunctive relief to restore lawful governance and prevent further harm.

CONCLUSION

The Association’s misapplication of Wis. Stat. § 703.15(2)(c), arbitrary ballot disqualifications, and baseless denial of FH Resort’s governance and member rights necessitate immediate judicial intervention. FH Resort has demonstrated a clear probability of success, irreparable harm, no adequate remedy at law, and the need to preserve the status quo. The Court should grant FH Resort’s Motion in full, compel production of the ledger, restore FH Resort’s director appointments, rectify the tainted election, and award costs and fees.

Dated this 31st day of July, 2025.

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