

IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2022-SC-026729-XXXX-XX
HONORABLE KENNETH FRIEDLAND

KATHRYN FAVATA

Plaintiff,

v.

TENNIS VILLAGE HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

DEFENDANT'S MOTION TO DISMISS COMPLAINT

COMES NOW the Defendant, Tennis Village Homeowners Association, Inc. ("TVHA"), by and through undersigned counsel, and pursuant to the Florida Rules of Civil Procedure, and files this Motion to Dismiss and states as follows:

1. Plaintiff's Complaint purports to bring a claim for violation of §720.303(5), Fla. Stat. against TVHA regarding Plaintiff's request for audio recording of an October 2021 meeting. *See* Complaint.

2. It is TVHA's position that the audio recording is not an official record of the association pursuant to §720.303(4), Fla. Stat.

3. As a matter of law based on the four corners of the Complaint, the audio recording of the subject meeting is not: 1) minutes of a board meeting under §720.303(3), or §720.304(f), Fla. Stat.; 2) financial or accounting records of the association, or 3) other written records of the association not specifically included in the subsection which are

related to the operation of the association under §720.304(n), Fla. Stat., Because the audio recording of the meeting is not an official record, Plaintiff's Complaint must be dismissed with prejudice.

4. Further, Plaintiff's Complaint alleges a cause of action based on allegations of spoliation of evidence. Spoliation of evidence, however, can not be the basis for a cause of action. *See Martino v. Wal-Mart Stores, Inc.*, 908 So.2d 342 (Fla. 2005). Accordingly, Plaintiff's claims for spoliation of evidence must be dismissed.

WHEREFORE, Defendant, Tennis Village Homeowners Association, Inc. respectfully requests this Court dismiss Plaintiff's Complaint, with prejudice, and for any further relief this Court deems equitable and just.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via E-Service to Scott P. Kiernan, Esq. (SKiernan@BeckerLawyers.com, KSnyder@BeckerLawyers.com, OrlEfile@BeckerLawyers.com), Mailing Address: 111 N. Orange Avenue, Suite 1400, Orlando, FL, 32801; **George Gingo, Esq.** (gingo.george@gmail.com, jamesorthlaw@gmail.com), Mailing Address: 400 Orange Street, Titusville, FL, 32796 on October 10, 2022.

s/ Bryan D. McLaughlin, Esq.

Bryan D. McLaughlin, Esq.

Florida Bar No. 59306

Service to: eservice@wlclaw.com

Attorney for Defendant Tennis Village HOA

Williams, Leininger & Cosby, P.A.

301 SE Ocean Blvd, Suite 205

Stuart, Florida 34994

Telephone No. (772) 463-8402

Facsimile No. (772) 463-4820