

QUADRILLE HOMEOWNERS ASSOCIATION,
INC.,

Plaintiff,

v.

JAVIER ARRIETA AND CARMEN BRAVO,

Defendants.

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

The Defendants, JAVIER ARRIETA AND CARMEN BRAVO, by and through the undersigned Counsel files Answer and Affirmative Defenses and state:

1. The Defendants admit the allegations as set forth in paragraphs 3 and 4 of the Complaint.
2. The Defendants deny the allegations as set forth in paragraphs 1, 6, 8, 9, 10, 11, 13, 15 and 16 of Plaintiff's Complaint and demands strict proof thereof.
3. The Defendants are without knowledge as to the allegations as set forth in paragraphs 2, 5, 7, and 12 of the Complaint and therefore deny the allegations and demand strict proof thereof.
4. The Defendants re-aver and re-adopt their Answers to paragraph 14 as to the re-allegation of paragraphs 1 through 6 and 12 of the Complaint as if fully set forth herein.

5. Any allegation not expressly and specifically admitted herein shall be generally denied.

AFFIRMATIVE DEFENSES

Having answered the Complaint, the Defendants, JAVIER ARRIETA AND CARMEN BRAVO, assert the following enumerated Affirmative Defenses.

I. FIRST AFFIRMATIVE DEFENSE

As the First Affirmative Defense the Defendants assert a Failure to State a Cause of Action upon which relief can be granted, as the Plaintiff has failed to sufficiently plead a basis upon which relief can be granted. The Plaintiff fails to allege with specificity any factual allegations to establish the requisite elements. The Plaintiff fails to set forth ultimate facts to show that the Plaintiff is entitled to relief.

II. SECOND AFFIRMATIVE DEFENSE

As the Second Affirmative Defense, the Defendants, assert Unclean Hands. The actions of the Plaintiff should bar recovery in this action. The Plaintiff's wrongful conduct precludes it from seeking relief and the claim should be dismissed.

III. SELECTIVE ENFORCEMENT

As the Third Affirmative Defense the Defendants assert Selective Enforcement of the Covenants and Documents by the Plaintiff. The Plaintiff's selective enforcement of the Covenants and Documents within the community is a complete bar to the enforcement of the Covenants and Documents against the Defendants.

IV. FOURTH AFFIRMATIVE DEFENSE

As the Fourth Affirmative Defense, the Defendants asserts that Plaintiff's damages were caused, in whole or in part, as a result of Plaintiff's own negligence, therefore, Plaintiff's recovery, if any, should be proportionally diminished by the Doctrine of Comparative Negligence.

V. FIFTH AFFIRMATIVE DEFENSE

As the Fifth Affirmative Defense, the Defendants asserts that the Plaintiff failed to mitigate any damages allegedly sustained. As such, any damages actually sustained by the Plaintiff should be reduced proportionally for the failure to mitigate such losses.

VI. SIXTH AFFIRMATIVE DEFENSE

As the Sixth Affirmative Defense, the Defendants state that the alleged injuries to the Plaintiff were caused in whole or in part by the negligence of third parties over whom the Defendant had no control. The Plaintiff's claims against the Defendants must therefore be reduced in proportion to the negligence of third parties.

VII. SEVENTH AFFIRMATIVE DEFENSE

As the Seventh Affirmative Defense, the Defendants assert that while the Defendants deny that the Plaintiff is entitled to any recovery whatsoever, to the extent that the Plaintiff's alleged damages are caused in whole or in part by third parties who are not parties to this action, liability shall be apportioned according to fault, irrespective of whether such third parties become parties to this action

VIII. EIGHTH AFFIRMATIVE DEFENSE

As the Eighth Affirmative Defense, the Defendants assert that any damages alleged by the Plaintiff were the result of intervening or superseding events, factors, occurrences or conditions, which were in no way caused or contributed to by the Defendants, therefore, the Defendants are not liable hence defeating Plaintiff's claim.

IX NINTH AFFIRMATIVE DEFENSE

As the Ninth Affirmative Defense, the Defendants state that the alleged injuries to the Plaintiff were caused in whole or in part by the negligence of third parties over whom the Defendants had no control. The Plaintiff's claims against the Defendants must therefore be reduced in proportion to the negligence of third parties.

X TENTH AFFIRMATIVE DEFENSE

As the Tenth Affirmative Defense, the Defendants assert Estoppel and state that the Plaintiff is barred, in whole or in part, from recovery to the extent that it or its agents or real parties in interest have made statements or taken actions which estop them from asserting the claims

XI. ELEVENTH AFFIRMATIVE DEFENSE

As the Eleventh affirmative defense, the Defendants assert that the Plaintiff's claims are fraudulent, in that Plaintiff deliberately failed to fully and faithfully perform its duties, to the detriment of the Defendants, and is therefore not entitled to any of the relief or damages sought in its complaint.

XII. TWELFTH AFFIRMATIVE DEFENSE

As the twelfth affirmative defense, the Defendants assert illegality as the Plaintiff's claims

are barred, in whole or in part, by the doctrine of illegality in that the contract forming the basis of Plaintiff's causes of action violates the law of the State of Florida, as set forth in the Defendant's counterclaims. Plaintiff's claims are further barred by illegality arising from Plaintiff's failure to comply with rules and regulations promulgated by the State of Florida.

XIII. THIRTEENTH AFFIRMATIVE DEFENSE

As the thirteenth affirmative defense, the Defendants assert Payment. Before commencement of this action, Defendants discharged plaintiff's claim, and each item of it, by payment of the monthly assessments.

XIV FOURTEENTH AFFIRMATIVE DEFENSE

As the Fourteenth affirmative defense, the Defendants assert that the Plaintiff's claims must fail as the Plaintiff failed to comply with Rule 1.130(a) of the Florida Rules of Civil Procedure which states in pertinent part, "All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading."

XV. FIFTEENTH AFFIRMATIVE DEFENSE

As the Fifteenth affirmative defense, the Defendant asserts that Plaintiff's damages, if any, were caused, in whole or in part, as a result of Plaintiff's own negligence and/or actions, therefore, the Plaintiff's recovery, if any, should be proportionally diminished.

RESERVATION OF RIGHT TO SUPPLEMENT DEFENSES

The facts having not been fully developed, Defendants affirmatively plead any of the following defenses that may become applicable to this action: accord and satisfaction, arbitration

and award, assumption of risk, coercion, contract, contributory negligence, discharge in bankruptcy, duress, economic duress, election of remedies, estoppel, failure of consideration, illegality, injury by fellow servant, laches, license, payment, release, res judicata, satisfaction, statute of frauds, waiver, the failure of plaintiff to mitigate damages or take reasonable steps to avoid damages, the failure of plaintiff to exercise ordinary care, and any other matter constituting an avoidance or affirmative defense.

The Defendants, reserve the right to supplement this Answer with any additional Affirmative Defenses they may assert.

COUNTERCLAIM

Having Answered the Complaint and having set forth the Affirmative Defense, the Defendants, Javier Arrieta and Carmen Bravo, file a Counter-claim and sue the Plaintiff/Counter-Defendant Quadrille Homeowners Association, Inc., and allege:

GENERAL ALLEGATIONS

1. This is an action for Declaratory Relief, Injunctive Relief, Accounting and for damages that exceed Fifteen Thousand (\$15,000.00) Dollars.
2. Javier Arrieta (hereinafter "ARRIETA") is an individual, over the age of eighteen (18) and, at all times relevant hereto, a resident of Palm Beach County, Florida.
3. At all times relevant hereto, ARRIETA owned real property or resided in real property located within the community known as Quadrille Homeowners Association, Inc. (hereinafter "QUADRILLE").
4. Carmen Bravo (hereinafter "BRAVO") is an individual, over the age of eighteen (18) and, at all times relevant hereto, a resident of Palm Beach County, Florida.

5. ARRIETA and BRAVO are Husband and Wife.

6. At all times relevant hereto, BRAVO owned real property or resided in real property located within the community known as Quadrille Homeowners Association, Inc.

7. By virtue of their ownership of the real property as set forth above, ARRIETA and BRAVO automatically became a Member of the Quadrille Homeowners Association, Inc., as membership in the Associations is mandatory.

8. QUADRILLE is a Florida Corporation doing business in Palm Beach County, Florida and organized under Florida Statute §720 et. seq.

9. As a Homeowners Association, QUADRILLE is bound by the express provisions of Florida Statute §720 set. seq.

10. ARRIETA and BRAVO have standing to bring this Counterclaim pursuant to Florida Statute §720.305.

11. Florida Statute §720.305 provides in pertinent part, that:

Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- a. The association;
- b. A member;
- c. Any director or officer of an association who willfully and

knowingly fails to comply with said and

d. Any tenants, guests, or invitees occupying a parcel or using the common areas.

12. As members of the Quadrille Homeowners Association, Inc. , ARRIETA and BRAVO bring this action against QUADRILLE and the directors and officers of QUADRILLE, pursuant to Florida Statute §720.305.

13. Pursuant to Florida Statute §720.305, the prevailing party in any such litigation is entitled to recover reasonable attorneys' fees and costs.

14. During the period of May 2005 thorough the present, QUADRILLE, by and through its Board and agents engaged in a campaign targeting, certain residents, specifically ARRIETA, who questioned and challenged the actions of the Board of Directors..

15. Commencing in May 2005 and continuing thorough the present, QUADRILLE by and through its Board and its agents unilaterally and arbitrarily charged residents, including ARRIETA and BRAVO, for attorney fees for alleged violations of the documents.

16. QUADRILLE engaged in a concentrated campaign to harass ARRIETA and BRAVO that included threats of and the imposition of attorney fees as assessments

17. On November 6, 2006 the law firm of Hilley & Wyant -Cortez, P.A., sent ARRIETA a letter alleging violation of the documents and demanding immediate action and immediate payment of attorney fees. (Copy of letter attached hereto as exhibit "A").

18. No where in the November 6, 2006 letter was ARRIETA afforded any opportunity to challenge or to defend said violation.

19. The alleged violation in the November 6, 2006, letter related to a condition that had been in existence for approximately eight (8) years *prior* to the date that ARRIETA purchased property.

20. ARRIETA purchased the real property in 1999, thus at the time of the letter ARRIETA had resided in said property for seven (7) years.

21. The November 6, 2006, letter demanded immediate action without affording ARRIETA any ability to refute the allegations or the charges.

22. The November 6, 2006, letter not only denied ARRIETA any opportunity to respond to the alleged violation and to refute the imposition of fees, but sought to obstruct ARRIETA from contact legal counsel, expressly warning ARRIETA that “*should you or a representative contact this office to discuss this matter at any point in the future, all such time incurred by this office will be charged to you*” and made repeated threats as to imposition of liens and foreclosure. (Emphasis added).

23. Contrary to the attorney’s assertions set forth in the letter, to wit, that “due to your failure to respond to any prior communications from the Association.” prior to the involvement of legal counsel, ARRIETA attempted to address the issue with NOAM KOL, the president of QUADRILLE.

24. NOAM KOL in his capacity of President of QUADRILLE responded to ARRIETA in an abusive manner shouting various ethnic slurs and addressed ARRIETA using sinister slang and various vulgarities, including the following:

a. NOAM KOL referred to ARRIETA, a Hispanic male and his family as a “group of spics” and shouted “go back where you came from”;

b. NOAM KOL made the statement, “Madre de puta” which translates to

“your mother is a whore”; and

c. NOAM KOL referred to ARRIETA as “maricon” which translates to

“faggot.”

d. NOAM KOL, the president of QUADRILLE is known to carry a gun¹ to

Board Meeting and has frequently acted in an abusive, intimidating and threatening manner

toward the residents, particularly those who question or challenge an action of the Board.

25. The November 6, 2006, letter demanded compliance within ten (10) days and

payment of the attorney fees within ten (10) days.

26. The attorney fees set forth in the November 6, 2006 letter were assessed against

ARRIETA and BRAVO.

27. ARRIETA and BRAVO were never afforded any opportunity to rebut the

imposition of the above referenced fees.

28. Over the next four (4) months, the crusade against ARRIETA, championed by

KOL escalated, became personal and reached far beyond any violation or ostensible enforcement

of the documents.

29. On March 5, 2007, the law firm of Hilley & Wynat -Cortez, P.A. sent a “final

demand” letter related to ARRIETA wherein it alleged various violations and made various

¹. In a case involving another resident and QUADRILLE, Quadrille Homeowners Association, Inc. v. Gerald Keith Downs, Case No.: 502006CC01112XXXXNB Div RH, Kol brought a gun to a deposition which resulted in a court order that all depositions be held at the Courthouse. See attached “F.”

30. The March 5, 2007 “final demand” letter demanded the immediate payment of attorney fees and again threatened foreclosure if ARRIETA did not pay said fees.

31. The March 5, 2007 letter not only failed to provide an opportunity for ARRIETA to be heard to rebut the allegation but again warned ARRIETA, that if he or a representative contact the office by phone or on writing to discuss the matter all such time incurred would be charged to ARRIETA.

32. The March 5, 2007 letter was in response to a document ARRIETA printed that expressed his concerns related to the Board and the pending election. (Copy attached hereto exhibit “C”).

33. The March 5, 2007 letter accused ARRIETA of various allegations including, interfering with the Boards ability to function and alleged that ARRIETA had published “false and defamatory” statements and specifically stated. inter alia, that ARRIETA:

- a. did not have the right to “publish false and defamatory information;
- b. did not have the right to “solicit/approach members of the Association with any type of written material” and
- c. further warned that the “publication of false and defamatory information may be grounds for a civil lawsuit against you.”

34. Thereafter a second letter was sent purportedly clarifying the March 5, 2007 wherein the attorney backed down from the position set forth in the March 5, 2007 but did not absolve ARRIETA from paying the attorney fees. (Copy attached hereto exhibit “D”).

35. The second letter states that the March 5, 2007 letter was based upon information provided by the Association President, Noam Kol.

36. The attorney fees set forth in the November 6, 2006 letter were assessed against ARRIETA.

37. Commencing in May of 2005 and constituting through the filing of this action, QUADRILLE actively and selectively targeted ARRIETA and his family, selectively enforced its interpretation the document as to parking of vehicle, caused ARRIETA's family's vehicles to be towed on repeated occasions.

a. ARRIETA repeatedly attempted to abide by the documents as to obtaining the required parking stickers repeatedly NOAM KOL would refuse to discuss the request with ARRIETA and demand that the contact the property manger, Banyan Property Management, when ARRIETA contacted Banyan Property Management he would be referred back to the QUADRILLE's "on-site office."

b. QUADRILLE caused the towing of ARRIETA's families vehicles based upon the claim that the vehicle was not authorized and that there was not a parking sticker on the vehicle, as result, expenses were incurred and there was damage to the vehicle.

c. It is believe that attorney fees related to the parking sticker issue were likewise assessed.

38. The imposition of the attorney fees have been charged to residents, herein ARRIETA, without any adjudication as to any actual violation via a legitimate fining procedure.

39. Florida Statute §720.305(2) provides in pertinent part:

"If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a

continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.”

40. The attorney fees as charged to ARRIETA was assessed without any opportunity for ARRIETA to be heard and to present a defense or to otherwise dispute the alleged violations.

41. The assessment of the attorney fees as charged to ARRIETA was done without any adjudication as to the prevailing party.

42. Florida Statute §720.305(1) provides that the prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

43. QUADRILLE asserts that it has the right to impose attorney fees as an assessment thus permitting it to file a claim of lien and foreclose.

44. On or about July 9, 2007, QUADRILLE filed a Claim of Lien wherein it is alleged that ARRIETA was in arrears for assessments. (Copy attached hereto as exhibit “E”).

45. At all times relevant ARRIETA and BRAVO submitted payment for the monthly assessments.

46. The claim of lien also expressly states amounts outstanding for attorney fees, said fees purportedly incurred for alleged violations, contrary to the representations of

QUADRILLE's counsel, said fees equate to fine and thus QUADRILLE is precluded from filing claim of lien for fine.

47. All conditions precedent to filing this action have been met, excused, or waived.

COUNT I DECLARATORY RELIEF

48. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

49. This is an action for Declaratory Relief, under sections §§86.011 *et seq.*, Florida Statutes to determine a question in actual controversy between ARRIETA and BRAVO and QUADRILLE .

50. There is a bona fide present need for a declaration by this Court, as to the right of QUADRILLE to arbitrarily impose legal fees for alleged violations without any prior opportunity to be heard as to a determination as whether there has been any actual violation or any determination as to prevailing party.

51. There is a bona fide present need for a declaration by this Court as to the right of QUADRILLE to charge the arbitrarily imposed legal fees as assessments when said fees are not associated with collections of regular assessments .

52. There is a bona fide present need for a declaration by this Court as to the right of QUADRILLE to apply a resident's monthly assessments to pay for attorney fees not associated with collections.

53. There is a bona fide present need for a declaration by this Court as to the right of QUADRILLE to file a claim of lien for non-payment of legal fees that were not associated with collection or non payment of assessments.

54. There is a bona fide present need for a declaration by this Court as to the right of QUADRILLE to foreclosure on a real property based upon the claim for outstanding attorney fees that were not incurred as a result of collection or non payment of regular assessments.

55. Florida Statute §720.305(1) expressly provides fees for a prevailing party however, the statute contains no language that would expand QUADRILLE's right to further impose attorney fees.

56. Based upon clear and plain language of 720.305 and the actions of QUADRILLE as set forth herein, there is a bona fide present need for a declaration by this Court as to whether the provisions of the documents as relied upon by QUADRILLE authorize to act beyond the authority granted by Florida Statute §720.305(2).

57. Florida Statute §720.305(2) expressly provides a specifically procedure for imposing fines, however there is no language in the statute that would give QUADRILLE authority to institute other mechanism that equate to fining residents.

58. QUADRILLE is in effect imposing a fine against ARRIETA and BRAVO by imposing attorneys fees without affording ARRIETA and opportunity to be heard and without any finding as to prevailing party.

59. Based upon clear and plain language of Florida Statute 720 there is a bona fide present need for a declaration by this Court as to whether the provisions of the documents as

relied upon by the Plaintiff authorize QUADRILLE to circumvent the express provisions Florida Statute

60. QUADRILLE failed to following any of the requisite procedures as to the imposition of a fine and as such the imposition of the fine is in violation of Florida Statute.

61. The imposition of legal fees for alleged violation is the equivalent of a fine and pursuant to the clear and plain language of Florida Statute 720,305(2) and QUADRILLE is prohibited from filing a claim of lien based upon a fine.

62. Based upon clear and plan language of Chapter 720 there is a bona fide present need for a declaration by this Court as to whether the provisions of the documents as relied upon by QUADRILLE authorize QUADRILLE to circumvent the express provisions Florida Statute.

63. A bona fide dispute between exists between ARRIETA and BRAVO and QUADRILLE as described herein.

64. ARRIETA and BRAVO have a justiciable question as to the right of QUADRILLE to act in the manner as set forth herein for which ARRIETA and BRAVO have a bona fide actual and presented for declaratory relief.

65. ARRIETA and BRAVO have been forced to incur fees and costs for which QUADRILLE should be responsible.

WHEREFORE, ARRIETA and BRAVO respectfully request that this Court:

a. Declare that QUADRILLE does not have the right to arbitrarily impose attorney fees for alleged violation absent affording the opportunity to be heard respond and to defend as to the alleged violation and the imposition of fees;

b. Declare that QUADRILLE does not have the right to arbitrarily impose attorney fees for alleged violation absent a finding as to prevailing party;

c. Declare that QUADRILLE does not have the right to to charge the arbitrarily imposed legal fees as assessments when said fees are not associated with collections;

d. Declare that QUADRILLE does not have the right to apply a residents monthly assessments to pay for attorney fees not associated with collections which were arbitrarily imposed by QUADRILLE;

e. Declare that QUADRILLE does not have the right to to file a claim of lien for non-payment of arbitrarily imposed legal fees that were not associated with collection or non payment of assessments;

f. Declare that QUADRILLE does not have the right to foreclosure based upon the claim for outstanding attorney fees that were not incurred as a result of collection or non payment of assessments;

g. Declare that provisions of the documents do not override the provisions fo Florida Statute;

h. Declare that the imposition of attorney fees for alleged violation is an impermissible fine;

i. Declare that the imposition of legal fees for alleged violations is a fine and thus QUADRILLE is precluded from filing a claim of lien and form foreclosing for said fine;
and

c. Grant any other relief deemed fair and just.

COUNT II INJUNCTIVE RELIEF

66. ARRIETA and BRAVO re-alleges each and every allegation contained in paragraphs 1 through 47 of the of the General Allegations and further allege:

67. ARRIETA and BRAVO sue QUADRILLE for Injunctive Relief.

68. The actions of QUADRILLE are a clear attempt to circumvent the applicable State Law, specifically Florida Statute §720.3005(1).

69. QUADRILLE is imposing legal fees as assessment for alleged violations without any adjudication as to prevailing party.

70. Florida Statute §720.305(2) sets forth the procedure for fining for alleged violations of association documents.

71. QUADRILLE is imposing legal fees for alleged violation which is the equivalent of the imposition of a fine.

72. QUADRILLE is applying payment of the monthly assessments to cover the arbitrarily imposed legal fees.

73. By the act of arbitrarily imposing legal fees and thereafter applying payment of assessment to cover the legal fees QUADRILLE caused ARRIETA and BRAVO to incur arrears.

74. QUADRILLE filed a claim of lien based upon the imposition of attorney fees for alleged violations without any prior adjudication as to prevailing party or even any finding as to the actual violation.

75. The action of QUADRILLE in imposing legal fees, filing a Claim of Lien based upon unpaid attorney fees, and attempting to foreclose based upon said Claim of Lien is in violation of Florida Statute Chapter 720.

76. There is no adequate remedy at law and ARRIETA and BRAVO will be irreparably harmed by the actions of QUADRILLE if an injunction is not issued.

77. The entry of an injunction serves public interest in that public policy dictates that QUADRILLE should be enjoined from the actions as set forth herein.

78. The entry of an injunction will serve public interest in that the actions of QUADRILLE in charging legal fees as assessments, amount to a fine that is imposed without following the provisions of Florida Statute §720.305(2) and is an imposition of legal fees without an adjudication as to prevailing party, hence the filing a claim of lien for a fine which is impermissible and in violation public policy.

79. ARRIETA and BRAVO have been forced to incur fees and costs for which QUADRILLE should be responsible.

WHEREFORE ARRIETA and BRAVO requests that this Court:

- a. Enjoin QUADRILLE from arbitrarily imposing attorney fees without affording an opportunity to be heard;
- b. Enjoin QUADRILLE from arbitrarily imposing attorney fees without a finding as to prevailing party;
- c. Enjoin QUADRILLE from unilaterally deeming attorney fees unrelated to collections as an assessment;
- d. Enjoin QUADRILLE from applying payments for monthly assessments to cover attorney fees that are not incurred in collections and were there has been no determination as to prevailing party;

- e. Enjoin QUADRILLE from filing a claim of based upon attorney fees that are not incurred in collections;
- f. Award ARRIETA and BRAVO attorney fees and costs; and
- g. Grant any other relief deemed fair and just.

COUNT III ACCOUNTING

80. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

81. ARRIETA and BRAVO sue QUADRILLE for Accounting

82. On or about September 3, 1999, ARRIETA and QUADRILLE, entered into an agreement in writing under which ARRIETA agreed to pay monthly assessments QUADRILLE agreed to manage the day to day operations and to exercise reasonable care in th application and enforcement of the applicable status and the documents.

83. Between May 2005 and present, QUADRILLE collected assessments from ARRIETA and BRAVO which were paid for “monthly assessment but were applied the arbitrarily imposed attorney fees.

84. Between May 2005 and the present QUADRILLE, imposed various attorney fees against ARRIETA and charged said fees as regular assessments.

85. On an accounting by QUADRILLE there will be found due to ARRIETA and BRAVO credits from QUADRILLE for payments made by ARRIETA AND BRAVO.

86. Prior to the commencement of this action, ARRIETA and BRAVO, demanded of QUADRILLE that QUADRILLE account for it's acts as described herein and that QUADRILLE

credit to ARRIETA and BRAVO the amounts paid by ARRIETA and BRAVO under the agreement, but QUADRILLE failed and refused to do so and has never rendered any accounting for the monies received under the agreement, nor paid over to any of the monies.

87. ARRIETA and BRAVO have no adequate remedy at law.

Wherefore ARRIETA and BRAVO requests judgment as follows:

- a. QUADRILLE account to ARRIETA and BRAVO for all monies and property received by QUADRILLE under the agreement;
- b. A judgment against QUADRILLE for any sums found to be due to ARRIETA and BRAVO;
- c. Award ARRIETA fees and costs; and
- d. Grant any other relief deemed fair and just.

**COUNT IV BREACH OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

88. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

89. ARRIETA and BRAVO sue QUADRILLE for Breach of Implied Covenant of Good Faith & Fair Dealing.

90. ARRIETA and BRAVO and QUADRILLE are parties to a written contract, to wit, the ASSOCIATION documents.

91. QUADRILLE owes to ARRIETA and BRAVO a duty of good faith and fair dealing in the performance and enforcement of their duties arising out of the documents.

92. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by imposing attorney fees against ARRIETA and BRAVO for alleged violations that were not associated with the collections of past due assessments and where there has been no opportunity to be heard and no determination of a prevailing party or even any opportunity for ARRIETA to challenge said actions.

93. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by charging the arbitrarily imposed legal fees as assessments when said fees are not associated with collections.

94. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by applying the monthly payments for the monthly assessment to cover the charges for attorney fees that were not incurred in collections.

95. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by filing a claim of lien for non-payment of arbitrarily imposed legal fees that were not associated with collection or non payment of assessments.

96. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by filing an action of foreclosure based upon the claim for outstanding attorney fees that were not incurred as a result of collection or non payment of assessments.

97. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by imposing the equivalent of fine for alleged violation of the documents without following the requisite procedure.

98. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by filing a claim of lien for what is in effect a fine for alleged violation of the documents.

99. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by actively seeking to prevent ARRIETA and other residents from taking any action that would challenge and/or interfere with their intent to alter the voting rights or otherwise challenging the decisions and actions of QUADRILLE.

100. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by attacking ARRIETA for his attempt to speak out as to the authority, decisions and actions of the QUADRILLE BOARD.

101. As set forth more fully herein, QUADRILLE breached the implied covenant of good faith and fair dealing with ARRIETA and BRAVO by actively participating in the actions as complained of herein and/or permitting the actions as complained of herein to take place and taking no action to stop said wrongdoings.

102. QUADRILLE's breach as set forth herein, deprived ARRIETA and BRAVO of the benefit of the Agreement..

103. QUADRILLE, through conscious and deliberate actions and inactions, failed or refused to discharge its contractual responsibilities, and thereby unfairly frustrated the purpose of QUADRILLE documents and disappointed ARRIETA's and BRAVO's expectations.

104. QUADRILLE by its conscious and deliberate actions and inactions, failed or refused to discharge its contractual responsibilities, and thereby unfairly frustrated the purpose of the association documents and disappointed ARRIETA's and BRAVO's expectations.

105. The acts of QUADRILLE as alleged herein, were committed willfully and recklessly by QUADRILLE.

106. The retaliatory acts of QUADRILLE, as alleged herein, were committed willfully and recklessly by QUADRILLE and with the express design and intent to result in an unjust benefit to QUADRILLE and to the detriment and damage of ARRIETA and BRAVO.

107. The acts, both retaliatory and otherwise, were done knowingly, willfully, and with malicious intent, and thereby ARRIETA and BRAVO are entitled to damages in an amount to be determined by proof at trial.

108. As a direct and proximate result of QUADRILLE actions as set forth herein, ARRIETA and BRAVO suffered damages.

109. As a direct and proximate result of QUADRILLE's actions, ARRIETA and BRAVO have suffered, financial loss, humiliation, emotional distress, mental anguish, betrayal, loss of capacity for enjoyment of life, and the loss of capacity for the enjoyment of use of their property. The losses are either permanent or continuing, and ARRIETA and BRAVO will continue to suffer the losses in the future.

WHEREFORE, ARRIETA and BRAVO request:

- a. That ARRIETA and BRAVO be awarded damages;
- b. That ARRIETA and BRAVO be awarded costs in this action; and
- c. That the Court grant any other relief deemed fair and just.

COUNT V BREACH OF FIDUCIARY DUTY

110. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

111. ARRIETA and BRAVO sue the QUADRILLE BOARD for Breach of Fiduciary Duty.

112. Pursuant to Florida Statute §720.303(1), the *officers and directors* of QUADRILLE have a *fiduciary relationship* to the *members* who are served by the association, i.e., QUADRILLE. (Emphasis added).

113. By virtue of their ownership of real property within QUADRILLE and pursuant to the association documents, ARRIETA and BRAVO are members who are served by the Quadrille Homeowners Association.

114. The QUADRILLE BOARD owes ARRIETA and BRAVO a fiduciary duty.

115. As a result of ARRIETA and BRAVO in the association and pursuant to the provisions of Florida Statute §720.303(1), ARRIETA and BRAVO and the QUADRILLE BOARD, share a relationship whereby:

- a. ARRIETA and BRAVO placed their trust and confidence in the QUADRILLE BOARD to serve the residents and the community and to manage the day to day

affairs and the assets in a reasonable and competent manner and to adhere to the applicable Florida laws and the provisions of the documents.

b. The members of the QUADRILLE BOARD each undertook the responsibility to serve the residents and the community and to manage the day to day affairs and the assets in a reasonable and competent manner and to adhere to the applicable Florida laws and the provisions of the documents.

116. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by imposing attorney fees against ARRIETA and BRAVO for alleged violations that were not associated with the collections of past due assessments and where there has been no opportunity to be heard and without the determination a so prevailing party.

117. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by applying the monthly payments for assessment to cover the charges for attorney fees that were not incurred in collections.

118. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by filing the claim of lien for non-payment of arbitrarily imposed legal fees that were not associated with collection or non payment of actual assessments.

119. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by actively participating in the actions as complained of herein including, but not limited to imposing attorney fees against ARRIETA and BRAVO for alleged violations that were not associated with the collections of past due assessments and where there has been no determination a so prevailing party.

120. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by actively participating in the actions as complained of herein including, but not limited to charging the arbitrarily imposed legal fees as assessments when said fees are not associated with collections.

121. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by actively participating in the actions as complained of herein including, but not limited to actively seeking to prevent ARRIETA and other residents from taking any action that would challenge and/or interfere with their intent to alter the voting rights or otherwise challenging the decisions and actions of the QUADRILLE BOARD as evidenced by the March 5, 2007 letter.

122. The QUADRILLE BOARD breached the fiduciary duty to ARRIETA and BRAVO by actively participating in the actions as complained of herein including, but not limited to attacking the ARRIETA for their attempts to speak out as to the authority, decisions and actions of the QUADRILLE BOARD.

123. The QUADRILLE BOARD breached the fiduciary duty by permitting the actions as complained of herein to take place and taking no action to stop said wrongdoings as set forth herein.

124. The QUADRILLE BOARD breached their fiduciary duty by subjecting the entire community to potential legal actions and increased and unnecessary legal fees and costs.

125. As a direct and proximate result of the breach of Fiduciary Duty by the QUADRILLE BOARD, ARRIETA and BRAVO suffered damages.

126. As a direct and proximate result of the actions of the QUADRILLE BOARD, ARRIETA and BRAVO suffered financial loss, loss of rights, humiliation, emotional distress, mental anguish, betrayal, loss of capacity for enjoyment of life, and the loss of capacity for the enjoyment of use of their property. The losses are either permanent or continuing, and ARRIETA and BRAVO will continue to suffer the losses in the future.

WHEREFORE, ARRIETA and BRAVO, request:

- a. That ARRIETA and BRAVO be awarded damages;
- b. That ARRIETA and BRAVO be awarded costs in this action; and
- c. That the Court grant any other relief deemed fair and just.

COUNT VI NEGLIGENCE

127. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

128. ARRIETA and BRAVO sue QUADRILLE for Negligence

129. QUADRILLE owed a duty to ARRIETA and BRAVO to follow the applicable statutes.

130. QUADRILLE owed a duty to ARRIETA and BRAVO to use reasonable care manage the ASSOCIATION and to apply the documents.

131. QUADRILLE breached this duty by disregarding the provisions of the applicable Florida Statute, to wit, §720.305(1) and §720.305(2) and imposing attorney fees against ARRIETA and BRAVO for alleged violations that were not associated with the collections of

past due assessments and where there has been no opportunity to be heard or to dispute the alleged violations or a determination as to the prevailing party.

132. QUADRILLE breached this duty by disregarding the provisions of the applicable Florida Statute, to wit, §720.305(1) and §720.305(2) by charging the arbitrarily imposed legal fees as assessments when said fees are not associated with collections of actual assessments.

133. QUADRILLE breached this duty by disregarding the provisions of the applicable Florida Statute, to wit, §720.305(1) and §720.305(2) and by applying the monthly payments for assessment to cover the charges for attorney fees that were not incurred in collections of actual assessments.

134. QUADRILLE breached this duty by disregarding the provisions of the applicable Florida Statute, to wit, §720.305(1) and §720.305(2) and by filing claim of lien for non-payment of arbitrarily imposed legal fees.

135. QUADRILLE's breach was the proximate cause of injury or damage to ARRIETA and BRAVO and ARRIETA and BRAVO suffered damages caused by the breach.

WHEREFORE, ARRIETA and BRAVO, request:

- a. That ARRIETA and BRAVO be awarded damages; and
- b. That the Court grant any other relief deemed fair and just.

COUNT VIII SLANDER OF TITLE

136. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

137. ARRIETA and BRAVO sue QUADRILLE for Slander of Title.

138. On or about July 9, 2007, QUADRILLE maliciously and without cause, made statements concerning ARRIETA and BRAVO and their property, to wit, that assessments were owed to QUADRILLE and filed a claim of lien setting forth the same statements.

139. The above-described words were false.

140. ARRIETA and BRAVO were then and there negotiating for the financing of the property, and because of QUADRILLE's statement the lender was dissuaded from making the loan.

141. Because of QUADRILLE's statement, the lender refused to make to loan ARRIETA and BRAVO by reason of such refusal has been unable to refinance the property and has been greatly injured thereby, all to ARRIETA and BRAVO's detriment.

142. As a direct and proximate result of QUADRILLE's actions as set forth herein, ARRIETA and BRAVO suffered damages.

143. As a direct and proximate result of QUADRILLE's actions, ARRIETA and BRAVO suffered humiliation, emotional distress, mental anguish, betrayal, loss of capacity for enjoyment of life, and the loss of capacity for enjoyment of use of their property. The losses are either permanent or continuing, and ARRIETA and BRAVO will continue to suffer the losses in the future.

WHEREFORE, ARRIETA and BRAVO request:

- a. That ARRIETA and BRAVO be awarded damages;
- b. That ARRIETA and BRAVO be awarded damages as allowed pursuant to Florida Statute §720.304;
- c. That ARRIETA and BRAVO be awarded costs in this action; and

d. That the Court grant any other relief deemed fair and just.

COUNT VIII ATTORNEY FEES

144. ARRIETA and BRAVO reallege each and every allegation as set forth in paragraphs 1 through 47 above and would further allege:

145. This is an action pursuant to Florida Statute Chapter 720.

146. Florida Statute §720.305, provides that the prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

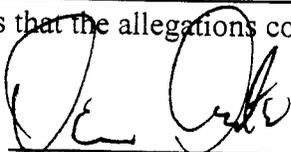
147. ARRIETA and BRAVO would request an award of fees and costs pursuant to §720.305

WHEREFORE, ARRIETA and BRAVO respectfully request:

- A. that QUADRILLE be required to pay fees and costs;
- B. Grant any other relief deemed fair and just.

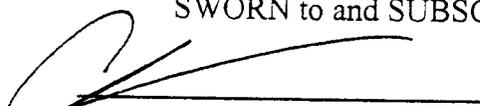
THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared, **JAVIER ARRIETA**, who has produced Florida Driver's License #A 620-44-54-444-0 as identification and after first being duly sworn deposes and says that the allegations contained in the foregoing Counterclaim are true and correct.



JAVIER ARRIETA

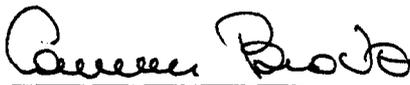
SWORN to and SUBSCRIBED before me this 2nd day of March, 2008.



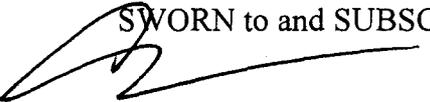
Notary Public, State of Florida at Large
My Commission Expires

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared, **CARMEN BRAVO**, who has produced Florida Driver's License # *B61-15-64-639-0* as identification and after first being duly sworn deposes and says that the allegations contained in the foregoing Counterclaim are true and correct.


CARMEN BRAVO

SWORN to and SUBSCRIBED before me this 7th day of March, 2008.


Notary Public, State of Florida at Large
My Commission Expires

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was provided to Ryan M. Aboud, Esq., Backer Law Firm, P.A., The Arbor, Ste. 420, 400 South Dixie Highway, Boca Raton, FL 33432 and by hand delivery on this 7th day of March 2008.

CATHY L. PURVIS LIVELY, ESQ., P.A.
6415 Lake Worth Road
#203
Lake Worth, FL 33463
Tel. (561) 649-2204
Fax (561) 649-8335



Cathy L. Purvis Lively, Esquire
Florida Bar No. 0055395