

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-2015-017778 (03)

THE HOLLYWOOD BEACH RESORT
CONDOMINIUM ASSOCIATION, INC.,
HOLLYWOOD BEACH HOTEL OWNERS
ASSOCIATION, INC., and HHBR, LLC

Plaintiffs,

v.

MICHEL JEKIC, LAURA WELIVER,
OCEAN WALK MALL, LLC, and
COMMERCIAL UNIT 100, LLC.

Defendants.

**DEFENDANT, MICHEL JEKIC'S MOTION TO DISMISS AND/OR FOR MORE
DEFINITE STATEMENT REGARDING PLAINTIFFS' THIRD AMENDED COMPLAINT**

COMES NOW, Defendant, MICHEL JEKIC, ("Defendant" or "Jekic") by and through his undersigned counsel, hereby files his Motion to Dismiss and/or for More Definite Statement Regarding Plaintiffs' Third Amended Complaint and in support thereof states as follows:

PROCEDURAL BACKGROUND

On or about October 6, 2015, Plaintiffs THE HOLLYWOOD BEACH RESORT CONDOMINIUM ASSOCIATION, INC., HOLLYWOOD BEACH HOTEL OWNERS ASSOCIATION, INC., and HHBR, LLC (collectively "Plaintiffs") filed their Complaint. Thereafter, on or about March 15, 2016, prior to serving their original Complaint, Plaintiffs filed their Amended Complaint. Plaintiffs' Amended Complaint included a claim against

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Jekic and Defendant LAURA WELLIVER (“Welliver”) for breach of fiduciary duty and a claim against Defendant OCEAN WALK MALL, LLC (“Ocean Walk”) and Defendant COMMERCIAL UNIT 100, LLC (“CU 100”) for declaratory relief. In response, each of the parties filed a Motion to Dismiss Plaintiffs’ Amended Complaint. On or about November 22, 2016, the Court denied Jekic’s Motion to Dismiss Plaintiffs’ Amended Complaint and gave Jekic twenty (20) days to file an answer. On or about December 12, 2016, Jekic filed his Answer and Affirmative Defenses to Plaintiffs’ Amended Complaint. Thereafter, on or about February 24, 2017, the Court granted Ocean Walk and CU 100’s Motion to Dismiss Plaintiffs’ Amended Complaint without prejudice and gave Plaintiffs twenty (20) days to file their Second Amended Complaint.

On or about March 20, 2017, Plaintiffs filed their Second Amended Complaint. Plaintiffs’ Second Amended Complaint again included a claim against Jekic and Welliver for breach of fiduciary duty and a claim against Ocean Walk and CU 100 for declaratory relief. In response, on or about March 30, 2017, Jekic filed his Answer and Affirmative to Plaintiffs’ Second Amended Complaint, and on or about April 7, 2017, Ocean Walk and CU 100’s filed their Motion to Dismiss Plaintiffs’ Second Amended Complaint. Thereafter, on or about November 27, 2017, the Court granted Ocean Walk and CU 100’s Motion to Dismiss Plaintiffs’ Second Amended Complaint without prejudice and gave Plaintiffs twenty (20) days to file their Third Amended Complaint.

On or about December 18, 2017, Plaintiffs filed their Third Amended Complaint. Plaintiffs’ Third Amended Complaint included a claims against Jekic and Welliver for breach of fiduciary duty, fraud, and constructive fraud and claims against Ocean Walk and CU 100 for declaratory relief, fraud-vicarious liability, breach of fiduciary duty-

vicarious liability, breach of fiduciary duty by self-dealing-vicarious liability, avoidance of July Lease and October Lease due to fraud by undisclosed dual agency, breach of fiduciary duty-aiding and abetting, unconscionability and unfairness of leases and amendments, constructive fraud-vicarious liability.

INTRODUCTION AND RELEVANT FACTUAL BACKGROUND

The instant action arises from Defendant's alleged conduct, while serving as President of the Hollywood Beach Resort Condominium Association, Inc. ("Condominium Association") and Hollywood Beach Hotel Owners Association, Inc. ("Master Association"), (collectively, the "Associations"). See generally Third Am. Compl. Plaintiffs allege that the Hollywood Beach Resort is a property consisting of 360 condominium units, 1,976 time shares units, and two commercial condominium units ("Subject Property"). See *id.* ¶¶ 5-8. The two commercial condominium units, purportedly known as Commercial Unit 100 and Commercial Unit 200, were owned by Ocean Walk from October 1997 to September 26, 2011. *Id.* ¶¶ 9, 19. Plaintiffs allege that Ocean Walk also owns a bar and pool area ("Bar/Pool Property") that abuts the Hollywood Beach Resort. *Id.* ¶ 20. The Bar/Pool Property is supposedly not a part of the Subject Property, but owners of units at the Hollywood Beach Resort are given rights to use the Bar/Pool Property, pursuant to an easement. *Id.* ¶ 21.

Plaintiffs allege that, on September 26, 2011, Ocean Walk allegedly transferred ownership of Commercial Unit 100 to CU 100 and Commercial Unit 200 to Commercial Unit 200 LLC ("CU 200"); however, Plaintiffs also assert that said transfers were without adequate consideration and were to insiders and affiliates of Ocean Walk. *Id.* ¶¶ 23-24. Plaintiffs allege that Ocean Walk then used its monopolistic voting control over the Boards

of the Associations to elect Richard King (“King”) to the Board of Directors of the Associations as a Director and Treasurer. *Id.* ¶¶ 28-30. Plaintiffs claim that during the time period King was a Director and Treasurer of the Associations, he was also the manager of the Bar/Pool Property on behalf of the Ocean Walk and CU 100 and received financial remuneration for same. *Id.* ¶ 31. In this regard, Plaintiffs allege that Ocean Walk, CU 100, Jekic, and Welliver never disclosed King’s agency relationship with Ocean Walk and CU 100 to the Board of Directors of the Associations and unit owners as required by Fla. Stat. § 718.3026(3), Fla. Stat. § 617.0832, and the common law. *Id.* ¶¶ 33-35, 119, 122.

On August 15, 2012, according to the Associations’ Board meeting minutes, Jekic, Welliver, and other board members allegedly voted to approve a lease with Ocean Walk and CU 100 to operate a new hotel rental program, restaurant, and bar on the Subject Property and Bar/Pool Property (“Lease”); however, allegedly there was no Lease document presented at said meeting and no discussion of the details of the hotel rental program, including any business plan, budget, pro formas presented at said meeting.¹ *Id.* ¶¶ 66-67, 76, 81. Jekic, Welliver, and other board members also purportedly created HHBR, LLC to operate the new hotel rental program, which Plaintiffs assert was formed to avoid the application of Florida condominium laws. *Id.* ¶¶ 70, 93.

On October 5, 2012, according to the Associations’ Board meeting minutes, Jekic, Welliver and other board members allegedly executed a fifteen-year Lease, on behalf of HHBR, LLC, with Ocean Walk and CU 100. *Id.* ¶ 71.² The Associations were purportedly

¹ Notably, Plaintiffs allegations as to the discussions, or lack thereof, at the August 15, 2012 Board meeting are based purely on the Board meeting minutes. See *id.* ¶¶ 76-81.

² Interestingly, Plaintiffs also allege that, on July 13, 2012, Jekic executed a fifteen-year lease on behalf of the Associations with Ocean Walk and CU 100 to operate a new hotel rental program, restaurant, and bar on the Subject Property and Bar/Pool Property (“July Lease”). *Id.* ¶¶ 36; 67. Said July Lease appears on its face to be the result of preliminary negotiations of the October Lease; however, Plaintiffs allege that the July Lease was “kept secret and never discussed or disclosed by Jekic, Welliver or King.” *Id.* ¶ 50.

guarantors of the lease. *Id.* On October 5, 2012, Jekic, Welliver, and other board members also allegedly voted to fund the initial startup costs of the hotel rental program from insurance rebate proceeds. *Id.* ¶ 75.

Ultimately, Plaintiffs' Complaint alleges that the hotel rental business was a financial disaster. *Id.* ¶ 97. Plaintiffs claim that in order to supplement the purported losses caused by the failing bar/restaurant business and the hotel rental business, Jekic, Welliver and King allegedly "plundered the Associations', and thus the Unit Owners', reserve [and operating] funds in violation of §718.111(14), Fla. Stat., and §718.112, Fla. Stat., and without the required vote of the Unit Owners." *Id.* ¶¶ 98-99. Plaintiffs also claim that "Jekic, Welliver and certain other Board members forced all of the Unit Owners to pay the expenses of the hotel rental program, even though they were not in the hotel rental program and did not share in the profits of that program," "Jekic, Welliver and King repeatedly caused the monthly balance sheets of Both Associations to utilize deceptive and fraudulent bookkeeping entries to deceive the Unit Owners into believing that there were large amounts of reserve funds," and "Jekic, Welliver and King, began utilizing a set-off scheme, whereby the monthly lease payment of \$49,526.30 was set-off against the monthly maintenance and the monthly special assessment rebates granted to CU

Notwithstanding the clear preliminary nature of the purported July Lease, Plaintiffs allege that prior to the execution of the July Lease, Jekic, Welliver, King, Ocean Walk, CU 100, and other board members of the Associations conducted improper closed-door meetings, without notice of said meetings to the unit owners, to discuss the July Lease and keep the July Lease secret from board member Judy Buchan and unit owners. *Id.* ¶¶ 42-54. Plaintiffs also claim that the July Lease includes an Amendment to an Easement Agreement that provides CU 100 and CU 200 with an improper 41.09% rebate of all common charges, assessments, special assessments, fees or other monies enacted by the Associations, without granting other unit owners at the Hollywood Beach Resort with a proportionate reduction in common charges, assessments, special assessments, fees or other monies; however, it must be noted that said Amendment to Easement Agreement is unsigned. *Id.* ¶¶ 55-62; Ex. D at Ex. B. Further, Plaintiffs allege that the July Lease is unlawful because it involves the leasing of non-condominium property, to wit the Bar/Pool Property, without the proper vote of the Hollywood Beach Resort unit owners. *Id.* ¶¶ 63-65.

100, resulting in a deficit amount owed by the Master Association to CU 100 in the amount of \$20,071.75.” *Id.* ¶¶ 105, 108, 112.

As such, Plaintiffs now bring this Third Amended Complaint alleging breach of fiduciary duties against Jekic and Welliver in Count I, fraud against Jekic and Welliver in Count II, and constructive fraud against Jekic and Welliver in Count X. The duties allegedly breached and purported fraudulent behavior by Jekic include failing to obtain required vote and approval of owners prior to entering into the Lease, failing to provide a forum to discuss the Lease, failing to notice the meeting, failing to disclose the existence of King’s dual agency relationship, failing to disclose the existence of the July Lease, leasing non-condominium property without a proper vote of the unit owners, and misappropriating association funds to make Lease payments. *Id.* ¶¶ 122, 132-135. However, the general allegation here is that Defendant did not have the proper authority to enter into the Lease on behalf of the Associations. *See id.* As discussed greater detail below, Plaintiffs have not and cannot maintain a viable cause of action for fraud or constructive fraud against Jekic. If this Court finds that Plaintiffs have properly stated a viable cause of action for fraud or constructive fraud against Jekic, which Jekic urges this Court not to make such a finding, Plaintiffs, alternatively, should be required to provide a more definite statement as to their claims.

ARGUMENT AND MEMORANDUM OF LAW

I. Legal Standard for Dismissal and for More Definite Statement

A motion to dismiss may be granted when a complaint alleges no set of facts which, if proven, would entitle a plaintiff to relief. Fla. R. Civ. P. 1.140(b). “The function of a motion to dismiss [] is to raise as a question of law the sufficiency of the facts alleged to

state a cause of action.” *Connolly v. Sebeco, Inc.*, 89 So. 2d 482, 484 (Fla. 1956); *Chiang v. Wildcat Groves, Inc.*, 703 So. 2d 1083 (Fla. 2d DCA 1997).

To withstand a motion to dismiss, a complaint must allege a *prima facie* case. In making this determination, the trial court must confine its review to the four corners of the complaint, accept all well-pleaded allegations as true, and view all allegations in the light most favorable to the plaintiff. *Bell v. Indian River Memorial Hospital*, 778 So.2d 1030, 1032 (Fla. 4th DCA 2001); *Alvarez v. E & A Produce Corp.*, 708 So.2d 997, 999 (Fla. 3d DCA 1998). Additionally, any exhibit attached to a pleading shall be considered a part thereof for all purposes. See Fla. R. Civ. P. 1.130(b). Whether a *prima facie* case has been pled depends on the sufficiency of the plaintiff’s allegations of fact, excluding the bare conclusions of the plaintiff. *Frank v. Lurie*, 157 So. 2d 431, 433 (Fla. 2d DCA 1963).

Further, Florida Rule of Civil Procedure 1.110(b) mandates that a complaint must allege *ultimate* facts in support of the claim so as to clearly apprise the court and the defendant of the nature of the claim and the wrongs being asserted. *Garnac Grain Co., Inc. v. Mejia*, 962 So.2d 408, 410 (Fla. 4th DCA 2007); *Greiner v. General Electric Credit Corp.*, 215 So.2d 61, 63 (Fla. 4th DCA 1968) (emphasis added).

Additionally, Florida Rule of Civil Procedure 1.140(e) provides that “[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading. The motion must point out the defects complained of and the details desired.”

Taking the facts asserted in Plaintiffs’ Third Amended Complaint in the light most favorable to Plaintiffs, they have failed to state a cause of action for fraud and constructive

fraud, and as such, Plaintiffs' Third Complaint must be dismissed, or alternatively, Plaintiffs should be required to provide a more definite statement as to their claims.

A. Plaintiffs Failed to Assert a Viable Cause of Action for Fraud.

Fla. R. Civ. P. 1.120(b) provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with such particularity as the circumstances may permit." Fla. R. Civ. P. 1.120(b); *see also Schopler v. Smilovits*, 689 So. 2d 1189, 1189 (Fla. 4th DCA 1997) (holding that common law fraud must be pled with specificity). In this regard, fraud claims must be pled with precision and must clearly and concisely set out the essential facts constituting the fraud, not just legal conclusions. *Thompson v. Bank of N.Y.*, 862 So. 2d 768, 770 (Fla. 4th DCA 2003); *see also Cedars Healthcare Group, Ltd. v. Mehta*, 16 So. 3d 914, 917 (Fla. 3d DCA 2009) (holding that a fraud claim must identify the misrepresentations of fact and the time, place, and manner which the misrepresentations were made).

Due process requires that the defendant know what he is accused of having misrepresented. Indeed, the claimant is in the best position of knowing what he claims was represented, whether it later turned out to be false, and whether he reasonably relied on the representation. The claimant is not given the luxury of simply pleading 'I was defrauded' and then 'fleshing out' the claim at trial by proof as to precisely what the fraud was.

Schopler v. Smilovits, 689 So. 2d 1189, 1189-90 (Fla. 4th DCA 1997). In order to establish a *prima facie* case of fraud in Florida, the plaintiff must properly establish the following elements: (1) a false statement of fact; (2) known by the defendant to be false at the time it was made; (3) made for the purpose of inducing the plaintiff to act in reliance thereon; (4) action by the plaintiff in reliance on the correctness of the representation; and (5) resulting damage to the plaintiff. *Poliakoff v. National Emblem Ins. Co.*, 249 So. 2d 477, 478 (Fla. 3d DCA 1971). It is axiomatic that each of the five (5) elements for fraud be

properly pled in order to withstand a motion to dismiss. See, e.g., *Stow v. National Merchandise Co.*, 610 So. 2d 1378, 1382 (Fla. 1st DCA 1992) (holding that relief for fraudulent misrepresentation may be granted **only** when all of the elements appear); *Simon v. Celebration Co.*, 883 So. 2d 826, 832 (Fla. 5th DCA 2004) (holding that “a complaint for fraud must specifically allege sufficient ultimate facts on each element of the claim”). As discussed below, Plaintiffs have failed to establish the requisite elements of a fraud claim.

1. Plaintiffs Have Not Pled a False Statement of Fact.

“The first fraud element, false representations of fact, can only be satisfied when the pleading identifies specific facts and states how they were false.” *Simon*, 883 So. 2d at 833. Here, Plaintiffs have failed to allege a false statement of fact altogether. In this regard, Plaintiffs allege that: (1) Jekic, Welliver, and King failed to disclose the full nature King’s relationship with Ocean Walk and CU 100 to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King made a false statement of fact to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶ 132; (2) Jekic, Welliver, and King failed to disclose the terms and conditions of the July Lease and October Lease to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King made a false statement of fact to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶ 133; and (3) Jekic, Welliver, and King failed to disclose accurate finances of the Associations and HHBR, LLC to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King made a false statement of fact to the Board of

Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶ 134.³ Further, Plaintiffs have failed to identify the time, place, and manner in which any purported false statements of fact were made. *Cedars Healthcare Group, Ltd. v. Mehta*, 16 So. 3d 914, 917 (Fla. 3d DCA 2009) (holding that a fraud claim must identify the misrepresentations of fact and the time, place, and manner which the misrepresentations were made). Thus, Plaintiffs have failed altogether to assert any false statement of fact to satisfy the first element of fraud. See *Simon*, 883 So. 2d at 833; Compl. ¶¶ 132-34.

In a last-ditch effort to state a claim for fraud, Plaintiffs attempt to manufacture a “false statement of fact” based purely on inferences from plain language contained within the August 15, 2012 and October 5, 2012 Associations’ Board meeting minutes, and any lack of details contained within same. See Compl. ¶¶ 76-88, Ex. G, Ex. K. For example, Plaintiffs infer that because there are no specific details related any “material business terms” of the Lease contained within the August 15, 2012 and October 5, 2012 Associations’ Board meeting minutes, said “material business terms” of the Lease were never discussed or that Jekic, Welliver, and King made affirmative misrepresentations regarding same. See Compl. ¶¶ 76-88, 135, Ex. G, Ex. K. Because Plaintiffs fail to identify specific false statement(s) of fact and state how they were false, Plaintiffs’ fraud claim should be dismissed. See *Simon*, 883 So. 2d at 833.

³ It appears that Plaintiffs may be attempting to proceed under the theory that Jekic, Welliver, and King fraudulently concealed or omitted certain information to the Board of Directors of the Associations and Hollywood Beach Resort unit owners. If Plaintiffs are indeed attempting to proceed under the theory of fraudulently concealment or omission, Defendant requests a more definite statement regarding this theory of liability in Plaintiffs’ Complaint, including but not limited to a specific count for fraudulently concealment or omission and more specificity as to which individual, to wit Jekic, Welliver, and King, was tasked with omitting each purported false statement of fact. See *Simon* 883 So. 2d at 833 (finding that “the lack of specificity [in a fraud complaint] is particularly troublesome here where nine separate defendants are lumped together in each count in a complaint that often fails to particularize which of the nine defendants made which statements”).

2. Plaintiffs Have Not Pled That a False Statement of Fact Was Known by Jekic to Be False at The Time It Was Made.

Plaintiffs have also failed to plead that a false statement of fact was known by Jekic to be false at the time it was made. To be sure, Plaintiffs allege that: (1) Jekic, Welliver, and King “knew or should have known that it was extremely material” to disclose the full nature King’s relationship with Ocean Walk and CU 100 to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King knew that they were making false statement(s) of fact to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶¶ 132; (2) Jekic, Welliver, and King “knew or should have known that it was extremely material” to disclose the terms and conditions of the July Lease and October Lease to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King knew that they were making false statement(s) of fact to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶¶ 133; and (3) Jekic, Welliver, and King “knew or should have known that it was extremely material” to disclose accurate finances of the Associations and HHBR, LLC to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, **not** that Jekic, Welliver, and King knew that they were making false statement(s) of fact to the Board of Directors of the Associations and Hollywood Beach Resort unit owners, see Compl. ¶¶ 134. In this regard, the “known by the defendant to be false at the time it was made” element of fraud has not been alleged. Thus, Plaintiffs’ fraud claim should be dismissed. See, e.g., *Stow*, 610 So. 2d at 1382 (holding that relief for fraudulent misrepresentation may be granted **only** when all of the elements appear); *Simon*, 883 So. 2d at 832 (holding that “a

complaint for fraud must specifically allege sufficient ultimate facts on each element of the claim”).

3. Plaintiffs Have Not Sufficiently Pled Plaintiffs’ Detrimental Reliance.

In order to establish a *prima facie* fraud claim, a plaintiff must sufficiently demonstrate that “but for the alleged misrepresentation or nondisclosure, the [plaintiff] would not have entered the transaction” and that there is a causal connection between defendant’s conduct and the plaintiff’s misapprehension. *Humana, Inc. v. Castillo*, 728 So. 2d 261, 265 (Fla. 2d DCA 1999). In this regard, Plaintiffs’ barebones allegations that the Board of Directors of the Associations and Hollywood Beach Resort unit owners “rel[ie]d] and accept[ed] the hotel and bar/restaurant businesses and the October Lease” because of Jekic, Welliver, and King’s alleged failure to: (1) disclose the full nature King’s relationship with Ocean Walk and CU 100, (2) disclose the terms and conditions of the July Lease and October Lease, and (3) disclose accurate finances of the Associations and HHBR, LLC is insufficient to establish the causal connection between Jekic’s purported conduct and Plaintiffs’ reliance on same, through their Board of Directors, to enter into the Lease. See Compl. ¶¶ 132-34; *Castillo*, 728 So. 2d at 265. Thus, Plaintiffs’ fraud claim should be dismissed. See, e.g., *Stow*, 610 So. 2d at 1382 (holding that relief for fraudulent misrepresentation may be granted **only** when all of the elements appear); *Simon*, 883 So. 2d at 832 (holding that “a complaint for fraud must specifically allege sufficient ultimate facts on each element of the claim”).

4. Plaintiffs Have Not Sufficiently Pled Plaintiffs’ Actual Damages.

Further, “fraud cannot form the basis for recovery of damages unless the damages directly arise from the fraud and are causally connected to the fraud.” See *Simon*, 883

So. 2d at 833. In this regard, Plaintiffs' conclusory allegations that Plaintiffs "suffered damages as a direct and proximate result of" Jekic, Welliver, and King's alleged failure to: (1) disclose the full nature King's relationship with Ocean Walk and CU 100, (2) disclose the terms and conditions of the July Lease and October Lease, and (3) disclose accurate finances of the Associations and HHBR, LLC are insufficient to establish the causal connection between Jekic's purported conduct and Plaintiffs' purported damages. See Compl. ¶¶ 132-34; *Simon*, 883 So. 2d at 833. Thus, Plaintiffs' fraud claim should be dismissed. See, e.g., *Stow*, 610 So. 2d at 1382 (holding that relief for fraudulent misrepresentation may be granted **only** when all of the elements appear); *Simon*, 883 So. 2d at 832 (holding that "a complaint for fraud must specifically allege sufficient ultimate facts on each element of the claim").

B. Plaintiffs Failed to Assert a Viable Cause of Action for Constructive Fraud.

Plaintiffs have also failed to assert a viable cause of action for constructive fraud. As discussed above, Fla. R. Civ. P. 1.120(b) provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with such particularity as the circumstances may permit." Fla. R. Civ. P. 1.120(b); see also *Schopler*, 689 So. 2d at 1189 (holding that common law fraud must be pled with specificity). In this regard, fraud claims must be pled with precision and must clearly and concisely set out the essential facts constituting the fraud, not just legal conclusions. *Thompson*, 862 So. 2d at 770; see also *Mehta*, 16 So. 3d at 917 (holding that a fraud claim must identify the misrepresentations of fact and the time, place, and manner which the misrepresentations were made).

To be sure, constructive fraud is a wrongful transaction having similar attributes or effects as actual fraud and requires the existence and abuse of a confidential or fiduciary relationship. *Taylor v. Kenco Chem. & Mfg. Corp.*, 465 So. 2d 581, 589 (Fla. 1st DCA 1985). Constructive fraud can also be where an unconscionable advantage has been taken of the fiduciary relationship at the expense of the confiding party. *Beers v. Beers*, 724 So. 2d 109, 116-17 (Fla. 5th DCA 1998).

Here, Plaintiffs' barebones allegation that "Jekic, Welliver, and Richard King committed a constructive fraud against Plaintiffs, by abusing said fiduciary and confidential relationship, taking an unconscionable advantage over Plaintiffs, and/or taking an improper advantage of the fiduciary relationship at the expense of Plaintiffs," is a mere legal conclusion insufficient to rise to the heightened pleading standard for fraud. See *Thompson*, 862 So. 2d at 770; Fla. R. Civ. P. 1.120(b).⁴ Thus, Plaintiffs' constructive fraud claim should be dismissed, or alternatively, Plaintiffs should be required to plead their claim for constructive fraud more definitely.

WHEREFORE, Defendant, MICHEL JEKIC, requests that this Court enter an Order dismissing Plaintiffs' Third Amended Complaint with prejudice, or alternatively, requiring Plaintiffs to plead a more definite statement as to their claims in their Third Amended Complaint, and any further relief deemed just and proper.

CERTIFICATE OF SERVICE

⁴ As discussed above, Defendant requests a more definite statement regarding this count in Plaintiffs' Complaint, including but not limited to, more specificity as to which individual, to wit Jekic, Welliver, and King, was tasked with purportedly committing an unconscionable advantage over Plaintiffs. See *Simon* 883 So. 2d at 833 (finding that "the lack of specificity [in a fraud complaint] is particularly troublesome here where nine separate defendants are lumped together in each count in a complaint that often fails to particularize which of the nine defendants made which statements").

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed and served using the Florida Courts E-Filing Portal this 17th day of January, 2018 to: Counsel for Plaintiffs The Hollywood Beach Resort Condominium Association, Inc., Hollywood Beach Hotel Owners Association, Inc. and HHBR, LLC, Gregory R. Elder, Esq., Law Offices of Gregory R. Elder, LLC, 108 SE 8th Avenue, Suite 114, Fort Lauderdale, Florida 33301, at gelderlaw@gmail.com; Counsel for Plaintiff The Hollywood Beach Resort Condominium Association, Inc., Stephen H. Johnson Esq., Brian J. Perrault, Esq., and Sheryl S. Natelson, Esq., Lydecker Diaz, 1221 Brickell Avenue, 19th Floor, Miami, FL 33131, at: shj@lydeckerdiaz.com, bp@lydeckerdiaz.com, snatelson@lydeckerdiaz.com, marlene@lydeckerdiaz.com, and bn@lydeckerdiaz.com; Counsel for Defendants Ocean Walk Mall, LLC and Commercial Unit 100, LLC, David B. Haber, Esq. and Jonathan S. Goldstein, Esq., Haber Slade, P.A., 201 S. Biscayne Blvd., Ste. 1205, Miami, FL 33131, at: dhaber@dhaberlaw.com, jgoldstein@dhaberlaw.com, and lgoetz@dhaberlaw.com; and Counsel for Defendant Laura Welliver, Dale L. Friedman, Esq., Robert A. Bouvatte, Jr., Esq., and Wm. David Newman, Jr., Esq., Conroy, Simberg, Ganon, Krevans, Abel, 3440 Hollywood Blvd., 2nd Floor, Hollywood, FL 33021, at: eservicehwd@conroysimberg.com, dfriedman@conroysimberg.com, rbouvatte@conroysimberg.com, dnewman@conroysimberg.com, and dgailey@conroysimberg.com

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