

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

Florida Beach Investment, Corp.,
Spartan Lending, LLC, and Capital
Building, LLC,

Plaintiff,

v.

Fortune Ocean, LLLP, Fortune
Development Sales, Corp., Ocean
Residences GP, LLC, Edgardo
DeFortuna, and HLB Gravier, LLP,

Defendants.

GENERAL JURISDICTION DIVISION

CASE NO.: 12-42957-CA-30

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Florida Beach Investment, Corp., (“Florida Beach”), Spartan Lending, LLC (“Spartan”) and Capital Building, LLC (“Capital”), (collectively “Plaintiffs”), by and through their undersigned attorneys, sue Fortune Ocean, LLLP, Fortune Development Sales, Corp., Ocean Residences GP, LLC, Edgardo DeFortuna, (collectively “Fortune”) and HLB Gravier, LLP and as grounds for their Complaint, the Plaintiffs state as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of this Court’s minimum jurisdictional amount of \$15,000.00, exclusive of costs and attorney’s fees.
2. Venue is appropriate in Miami-Dade County as the property at issue is located therein and the contract was executed therein.

PARTIES

3. Plaintiff, Florida Beach, is a Florida Corporation and is otherwise *sui juris*.
4. Plaintiff, Spartan, is a Florida Limited Liability Company and is otherwise *sui juris*.



5. Plaintiff, Capital, is a Florida Limited Liability Company and is otherwise *sui juris*.
6. Defendant, Fortune Ocean, LLLP, (“Fortune Ocean”) is a limited liability limited partnership formed under Florida law and is otherwise *sui juris*. Its principal place of business is in Miami-Dade County.
7. Defendant, Fortune Development Sales, Corp. (“Fortune Sales”) is a corporation formed under Florida law and is otherwise *sui juris*.
8. Defendant, Ocean Residences GP, LLC (“Ocean Residences”) is a limited liability company formed under Florida law and is otherwise *sui juris*.
9. Edgardo DeFortuna (“DeFortuna”) is an individual with his principal residence in Miami-Dade County and is otherwise *sui juris*.
10. Defendant HLB Gravier, LLP, (“HLB”) is a limited liability company formed under Florida law and is otherwise *sui juris*.

FACTS COMMON TO ALL COUNTS

A. SUMMARY

11. The case at bar involves a large-scale real estate fraud wherein the Plaintiffs were invited to invest through debt or equity in a partnership. That partnership developed a high-rise condominium project. However, the funds that should have repaid the investors’ and lenders’ principal and profit were stolen by DeFortuna and his co-conspirators through a network of affiliated entities.
12. These affiliated entities would siphon off money from the project in comparatively small amounts over the life of the project from 2004 to 2012.



13. Additionally, in an effort to make the project appear as if it was losing money, the Defendants produced fraudulent financial statements in the form of yearly Member Status Reports.
14. Finally, to legitimize the loss and prevent investors from asking questions, HLB prepared an “Independent Audit” that confirmed that the project had lost \$62,836,744.
15. The Plaintiffs have conducted a forensic analysis of the project and determined that the project actually made nearly \$100,000,000.
16. DeFortuna and his affiliates took well over \$75,000,000 while the investors, like the Plaintiff, lost every dollar of principal they invested.

B. THE JADE BEACH PROJECT

17. This case deals primarily with the Jade Ocean Condominium located at 17121 Collins Avenue 33160, legally described as:

The North 400 feet of Lot of Tract 1, lying east of State Highway A1A (Collins Avenue) shown in the plat entitled “Subdivision of Government Lot 6” in Section 2, Township 52 South, Range 42 East, and Government Lots 1, 2, 3 and portions of Lots 5 & 6, Section 11, Township 52 South Range 42 East made by Tatmu’s Ocean Park, Co., according to the map or plat thereof, as recorded in the Plat Book 10, at page 64 of the public records of Miami-Dade County, Florida. Less the south 300 feet of the north 400 feet of said Lot or Tract 1.

(“Jade Ocean”).

18. Jade Ocean is a luxury Condominium located in Sunny Isles Beach.
19. The project was begun in 2004.
20. The project closed in 2013.

C. THE REAL ESTATE CRASH

21. In the intervening time, a real estate bubble developed, crashed and the market recovered.



22. Prices of luxury condos in that area never dropped below 2003 prices and, only at the worst part of the crash, dropped below the 2004 prices which formed the projections for the Jade Ocean project.
23. This is significant because the Defendants never adjusted their books to reflect the increased value of the property caused by the rising prices from 2004 through 2007.
24. However, when the market crashed in 2008, they made adjusting journal entries to decrease the value of the business by \$53,390,841.
25. In total, over the course of the project, the Defendants made nearly \$164,000,000 in adjusting journal entries.
26. This explains why a project that actually made nearly \$100,000,000 could be made to appear as if it lost \$63,000,000.
27. These adjustments allowed DeFortuna and his co-conspirators to steal their investors' and lenders' money.

D. DEBT AND EQUITY VICTIMS

28. DeFortuna and his co-conspirators invited investors and lenders to contribute debt and equity to the project.
29. They convinced multiple equity investors to contribute a total of \$26,278,754 to Jade Ocean.
30. The Limited Partners, like Florida Beach, signed a Partnership Agreement. Exhibit 1, Due Diligence documents.¹
31. Specifically, Florida Beach invested \$500,400 on or about June 16, 2005.
32. Additionally, DeFortuna convinced multiple debt investors to contribute to the project.

¹ All exhibits are incorporated by reference into the body of the complaint.



33. These contributions included an initial construction loan, as well as \$17,692,220 in portfolio loans.
34. Specifically, Spartan executed a Loan Agreement (“Spartan Loan Agreement”) and a Balloon Note (“Spartan Note”). Exhibit 2.
35. Spartan invested \$250,000 on or about October 2, 2006.
36. Additionally, Capital executed a Loan Agreement (“Capital Loan Agreement”) and a Balloon Note (“Capital Note”). Exhibit 3.
37. Capital invested \$250,000 on or about October 2, 2006.

E. AUDIT

38. Fortune Ocean submitted an audit to investors, which was described as the work of independent auditors, HLB.
39. The audit reported a cumulative loss to the project of \$61,905,378. Exhibit 2, pages 3 & 4.
40. In the last paragraph of the last note to audit, HLB informed the Limited Partners that they had lost all of their money. Exhibit 4.
41. The same paragraph indicated that holders of unsecured notes payable would recover a portion of their investment.
42. However, Spartan and Capital received nothing at all in principal or interest repayments.
43. Similarly, Florida Beach received nothing at all in principal or interest.
44. The Plaintiffs conducted a forensic investigation of the financials provided by Fortune Ocean pursuant to a statutory records request.
45. A preliminary forensic investigation showed that Jade Ocean made an estimated profit of approximately \$100,000,000.



46. As such, the investors should have made back all of their principal plus their pro rata share of the \$100,000,000 profit.
47. Similarly, lenders such as Spartan and Capital should have recovered their principal and some portion of interest.
48. A preliminary forensic investigation of the books of Fortune Ocean, LLLP indicate that millions of dollars were unaccounted for by Fortune at the expense of the Limited Partners and unsecured lenders.
49. These millions of dollars were stolen by companies owned and controlled by DeFortuna and his co-conspirators.
50. It is further evident that HLB actively conspired with the benefactors to hide these thefts through a series of bogus journal entries. See Audited Financial Statements attached hereto as Exhibit 4.

F. THE ENTERPRISE

51. The enterprise in the case at bar consists of individuals and corporations which are displayed graphically in Exhibit 5.
52. The individual members of the enterprise and who control the corporate members are DeFortuna himself, Carlos Carballo (“Carballo”), Eduardo Imery (“Imery”) and Milagros Sanchez (“Sanchez”).
53. These individuals are owners, directors, officers and/or members of the entities involved in the overall scheme.
54. DeFortuna conducted or managed the enterprise’s affairs.
 - a. DeFortuna holds an active voting seat on every board or group of managing members for every participating corporate entity described below.



- b. DeFortuna owns a majority or controlling interest in the entities involved in the scheme.
 - c. DeFortuna conceived of and implemented the overall scheme described in more detail below.
55. Carballo conducted or managed the enterprise's affairs.
- a. Carballo is primarily responsible for managing the accounting of the participating corporate entities described below.
 - b. Carballo serves as an active voting member of each board or group of managers of the participating corporate entities, as described in more detail below.
56. Imery conducted or managed the enterprise's affairs.
- a. Imery is directly or indirectly in charge of finance for the participating corporate entities described below.
 - b. Imery serves as an active voting member of each board or group of managers of the participating corporate entities described below.
57. Sanchez was an active voting director at Fortune Sales.
58. DeFortuna, Carballo, Imery and Sanchez each acted in concert with each other to lure investors to invest money, to steal that money from the project and to hide that theft through false accountings.
59. DeFortuna, Carballo, Imery and Sanchez created and employed a series of corporate entities to execute their plan to steal investors' money.
60. The entities involved in this enterprise are Ocean Residences, GP, LLP, Fortune Ocean, LLLP, Fortune International Management, Inc., Fortune International Equity Corp. and Fortune Development Sales, Corp.



61. Each defendant entity had its own set of employees, different from every other entity.

1) Fortune Ocean, LLLP

62. Fortune Ocean owns the Property upon which the Jade Ocean project was built.

63. The Plaintiff, Florida Beach is a Limited Partner in Fortune Ocean.

64. Fortune Ocean's role in this scheme was:

- a. to receive money from debt and equity investors;
- b. to own the land upon which the property was built; and
- c. to facilitate the theft of money by the other members of the enterprise by transferring the investors' money to those entities.

2) Ocean Residences, GP

65. Ocean Residences is the General Partner of Fortune Ocean.

66. As such, Ocean Residences exercised managerial control over Fortune Ocean and, therefore, the project.

67. Ocean Residences' role in this scheme was to control Fortune Ocean and, therefore, the investors' money and also to direct where those monies were diverted.

68. Edgardo DeFortuna was the designated representative of Ocean Residences. Exhibit 1, P. 6 of the Agreement of Limited Liability Partnership of Fortune Ocean, LLLP.

3) Fortune International Management, Inc.

69. Fortune International Management, Inc. is the sole Managing Member of Ocean Residences.

70. As such, Fortune International Management, Inc. had managerial control over Ocean Residences.

71. Fortune International Management, Inc.'s role in this scheme was:



- a. to receive a large portion of the proceeds of the theft from Ocean residences in the form of administrative and other fees;
- b. to direct and control the actions of Ocean Residences as its sole managing member and so to direct and control Fortune Ocean.

72. Fortune International Management, Inc. is a corporation that had three directors at the time of the Plaintiff's investment: DeFortuna, Sanchez and Imery.

73. In 2008, Sanchez was removed and Carballo was added as a director of Fortune Development Corp. As such, management decisions made by Fortune International Management, Inc., which controls the acts done by Ocean Residences, are attributable to DeFortuna, Imery, and Carballo or Sanchez.

4) Fortune Development Sales, Corp.

74. The purpose of Fortune Sales in this scheme was to receive large portions of the proceeds of the theft through inflated sales commissions.

75. Fortune Sales, a corporation, was controlled by DeFortuna and Imery.

5) Fortune International Equity, Corp.

76. The purpose of Fortune International Equity, Corp. in this scheme was to receive large portions of the proceeds of the theft in the form of loan payments.

77. Fortune International Equity, Corp. was controlled by DeFortuna, Imery and Sanchez.

78. However, during the perpetration of this fraud in 2008, Sanchez was removed as a director of Fortune International Equity, Corp and Carballo was added.

79. Fortune International Equity, Corp. was not disclosed to the investors amongst the affiliated entities that Fortune Ocean would be dealing with. Exhibit 1, § 8.4.



6) Fortune Development Corp.

80. The purpose of Fortune Development Corp. in this scheme was to receive large portions of the proceeds of the theft in the form of payments from Fortune Ocean.
81. Fortune Development Corp. is a corporation that had three directors at the time of the Plaintiff's investment: DeFortuna, Sanchez and Imery.
82. In 2008, Sanchez was removed and Carballo was added as a director of Fortune Development Corp.
83. Fortune Development Corp. was not disclosed to the investors amongst the affiliated entities that Fortune Ocean would be dealing with. Exhibit 1, § 8.4.

7) HLB Gravier, LLLP

84. The purpose of HLB in this scheme was to cover up the theft and prevent investors from learning that their money had been stolen.
85. HLB is a corporate entity.
86. However, HLB was not created by DeFortuna and his coconspirators.
87. Instead, HLB was paid to participate in the fraud.
88. HLB was told to investors to be an "Independent" auditor.
89. As such, they cannot have an agency relationship for the enterprise described above.

G. PATTERN

90. Beginning on or about May of 2004, and continuing through 2012, Fortune conducted a pattern of criminal activity in violation of Florida Statutes §§ 812.014 & 817.034, which consisted of fraud, theft, and communications fraud.
91. The pattern consisted of multiple schemes and multiple acts within each scheme.



1) *Relatedness*

92. Each act, including frauds, thefts, and lies to hide the theft, is related to the overall plan.
93. The overall plan was to steal \$26,278,754 from multiple equity investors and an unknown amount in excess of \$500,000 from debt investors.

2) *Multiple Acts Over A Long Period of Time*

94. The enterprise, led by DeFortuna, stole investors' money in excess of of \$26,278,754.
95. DeFortuna and his co-conspirators siphoned money off through a series of thefts such as:
- a. inflated administrative fees by Fortune International Management;
 - b. inflated sales commissions by Fortune Sales;
 - c. preferential interest and principal payments to loans made by Fortune-owned or Fortune-controlled entities; and
 - d. payments to other Fortune-affiliated entities, such as Fortune Development Corp., the purpose of which has not yet been revealed, but which were not disclosed to investors.
96. Each theft consisted of multiple acts of individual thefts occurring over the life of the project from 2004 though 2012.
97. Additionally, these thefts were covered up by multiple communication frauds to investors in the form of Member Status Reports and an Audited financial statement.

3) *Multiple Schemes*

98. Each of these methods for stealing money from the investors in Jade Ocean represents its own scheme.



99. Each act contributing to the theft is represented by its own general ledger entry wherein Fortune International Management, Fortune Sales, Fortune International Equity, and Fortune Development Corp. took individual amounts of money over the course of several years.

4) Multiple Transactions

100. The scheme in the case at bar consists of multiple transactions.

101. Each time Fortune Ocean accepted an investment from one of its multiple Limited Partners, it constitutes its own transaction.

102. Each time Fortune Ocean accepted a loan from a lender, such as Spartan or Capital, it constitutes its own transaction.

103. Each time Fortune Sales took an inflated commission to steal monies from investors, it represents its own transaction.

104. Fortune sales sold 256 units. As such, that represents 256 transactions.

105. Each time Fortune International Management took fees, it represents its own transaction.

106. Each time Fortune International Equity took fees, it represents its own transaction.

107. Each time Fortune Development Corp. took fees, it represents its own transaction.

108. There are hundreds of different transactions that make up this scheme.

109. There are multiple victims as represented by each debt and equity investors that far exceed the three investors who are plaintiffs in this case.

110. There are multiple recipients of the ill-gotten gains as represented by DeFortuna and his coconspirators.

5) Continuity

111. The pattern in the case at bar establishes closed-ended continuity because we have alleged acts of theft measured in the 100's occurring over more than 6 years.



112. Additionally, DeFortuna continues to develop real estate in South Florida and so there is a substantial threat that this harm will continue into the future.
113. The acts of fraud perpetrated by the Defendants constitute their regular way of doing business in this project.
114. Additionally, upon information and belief, DeFortuna has engaged in a separate scheme to defraud another group of investors, which is a mirror image of the one described herein with the Artech Condominium Project (“Artech”).
115. The Artech is also a high-rise condominium.
116. The property is owned by Loft Marina LLLP, whose general Partner is Loft Style, GP MB, LLC, whose manager is Loft Style GP Holdings, LLC, whose manager is Loft Style GP, LLC, whose manager is Fortune International Management, Inc.
117. Fortune International Management, Inc. is controlled by DeFortuna, Imery and Carballo.
118. The Plaintiff, Florida Beach, has common ownership with Nemior Trading Corporation, an investor in Artech.
119. In that project, like the one in the case at bar, all the equity investors lost every penny of their investment.
120. Upon information and belief, DeFortuna made a very large profit.
121. Presently, this is the subject of inquiry. Counsel for the Plaintiff has been waiting for counsel for the Defendant to turn over documents responsive to its demand for product of records pursuant to Florida Statute § 604.4101 since October of 2013.
122. As such, this pattern meets the burden of open-ended continuity based on the threat of continued harm.



H. CONSPIRACY

123. The Plaintiffs allege that DeFortuna, Imery, Carballo and Sanchez acted in conspiracy with each other and the corporate entities they controlled, including Ocean Residences, Fortune Ocean, Fortune Sales, Fortune International Management, Fortune International Equity, and Fortune Development Group, to steal money from, *inter alia*, Fortune Ocean's Limited Partners, such as Florida Beach and lenders such as Spartan and Capital.
124. The Plaintiffs allege that HLB Gravier acted in conspiracy with the other Defendants to hide the evidence of their theft.

I. ACTS OF THEFT

125. DeFortuna and his co-conspirators caused their affiliated entities to steal millions of dollars from the project.
126. The money was given by the Plaintiffs and others to Fortune Ocean.
127. Then, the money was siphoned off from Fortune Ocean to Fortune International Management, Fortune Sales, Fortune Development Corp. and Fortune International Equity.
128. Eventually, these thefts paid DeFortuna and his co-conspirators individually.

1) Theft through Administrative Fees.

129. Fortune International Management stole in excess of \$8,000,000 of investors' money without their consent and with felonious intent by taking fees well in excess of what it was entitled to or what was commercially reasonable.
130. Fortune International Management was entitled to administrative fees in the total amount of \$4,100,000. Exhibit 1, § 8.4.
131. However, Fortune International Management took much more than triple that amount.



2) Theft Through Sales Commissions

132. Fortune Sales stole \$19,805,729 of the investors' money without their consent and with felonious intent by taking commissions well in excess of what it was entitled to or what was commercially reasonable.
133. Sales commissions, originally calculated at \$39,739,483, were 8.75% of sales.
134. The commissions actually paid by Fortune Ocean, as of December 31, 2010, were approximately 15.7% of sales.
135. Commissions reported as of December 31, 2011 were at an amount of \$52,834,947.
136. This actual amount does not include the sales of the units remaining unsold at that time.
137. Yet it already exceeds the original 8.7% benchmark by \$19,805,729.
138. This is an impossible result, given the fact that sales were alleged to have declined by at least 10% in the exact same financial records.

3) Theft Through Preferential Debt Payments

139. Fortune International Equity stole investors' money without their consent and with felonious intent by taking preferential debt payments to the detriment of all other investors.
140. As of December 31, 2010, Fortune Ocean reported unsecured loans of approximately \$18,215,000. Exhibit 2, Note 6.
141. Of this, \$6,990,000 was loaned by Fortune International Equity.
142. Specifically, Fortune International Equity was paid back all of its principal plus substantial interest.
143. However, lenders like Spartan and Capital were paid none of their principal and none of their interest.



144. Spartan and Capital were told that they had equal priority with every other portfolio lender. Exhibits 2 & 3, ¶ 12.
145. Additionally, at the end of the project, what small amount of interest was not paid to Fortune International Equity was reclassified as a capital contribution, further increasing Fortune's equity position.
146. Meanwhile, all equity investors received nothing at all- not even their principal.
147. Upon information and belief, the Plaintiff asserts that this represents a preferential payment to an insider meant to defraud the equity investors and lenders, like Spartan and Capital, in favor of the insider debt investors.

4) Theft Through Undisclosed Payments to Affiliates

148. Fortune-affiliated entities, such as Fortune Development Corp. and Fortune International Realty, stole investors' money without their consent and with felonious intent by taking fees in excess of what they were entitled to or what was commercially reasonable.
149. Fortune Ocean disclosed that it was working with some affiliated entities, such as Fortune Sales.
150. However, Fortune never disclosed that they were working with Fortune Development Corp. or Fortune International Realty, or what either of those companies did for the project.
151. It is difficult to calculate exactly how much Fortune Development Corp., and other affiliates, received until an un-redacted general ledger is provided in discovery, within a spreadsheet format, from which calculations can be done.
152. However, there are multiple entries in Fortune Ocean's general ledger showing monies being siphoned off to Fortune Development Sales, Fortune International Realty and other



companies affiliated with DeFortuna and his coconspirators, some of which have abbreviations or parts of their names obscured.

153. The Plaintiff reserves the right to include these amounts as thefts as they are revealed in discovery.

J. FRAUDULENT PROSPECTUS

154. The Prospectus was a lie designed to lure investors in.

155. At the project's inception, DeFortuna and his co-conspirators created a prospectus in order to represent to investors that the Jade Ocean Project would yield a profit of \$105,651,514. Exhibit 13, Prospectus § VI.²

156. DeFortuna and his co-conspirators knew at that time that this was a lie, because they always intended to steal the investors' money.

157. DeFortuna and his co-conspirators told this lie with the intention that it be relied upon by investors.

158. Thus, the fraud is not premised on a dispute as to the promised amount of profit, but the Defendants' clear intent to never repay anything at all.

159. The Plaintiffs did in fact reasonably rely upon this lie to their detriment.

K. ACTS DESIGNED TO HIDE THE THEFT

160. The following represents the different methods in which DeFortuna and his co-conspirators used communications fraud to delay or prevent the detection of their theft.

² Presently, the Plaintiff only has a copy of the prospectus in Spanish. We have requested an English copy in discovery and will supplement the record with the English version as soon as the Defense makes it available.

161. In comparing and contrasting the schedules provided by Fortune Ocean, the member status reports, the audit financial statement, tax returns and general ledgers, it becomes increasingly clear that the various documents do not match.

162. Depending on Fortune Ocean's audience, they provided very different numbers that were often contradictory.

5) Fraudulent Adjusting Journal Entries

163. Fortune Ocean reported using adjusting journal entries in their taxes and reports to investors to hide their theft of investors' funds.

164. Adjusting journal entries are accounting notations that are not triggered by a transaction, such as a check or wire transfer. However, these notations may adjust the value of a company.

165. In this case, there are \$163,897,499.83 in adjusting journal entries.

166. These adjusting journal entries decreased the value of the project by over \$60,000,000.

167. There are legitimate reasons for journal entries, but they must be supported by documentation and explanations.

168. In this case, there are multi-million dollar journal entries with virtually no explanation or supporting documents.

169. For instance: in 2009, the Partnership's Federal Income Tax Return showed a net loss per books of \$62,809,564, of which \$53,390,841 was based upon a purported anticipated decline in the real estate market.

170. In the financial statements, see Exhibit 2, audited by HLB for the year ending December 31, 2010, this amount was changed from \$53,390,841 to \$6,318,584. The remaining \$48,411,415.82 was scattered amongst a series of smaller adjusting journal entries accounts.



171. As a result, there were still \$53 million less dollars in the project available to pay investors. It was just less obvious than one huge \$53 million dollar journal adjustment in the books.
172. There was no adequate explanation for the entries themselves, or for the material change from \$53,000,000 to \$6,318,584. Only a cursory explanation was reported in Note 3 to the financial statements audited by HLB for the year ending December 31, 2010.
173. HLB acted with conscious knowing intent to defraud the Plaintiffs in the audit.
174. The fact is, although there was a decline in the market in 2007 and 2008, there was also a huge increase in the market from 2004 to 2006.
175. However, no adjusting journal entry documented the enormous increase in the market.
176. Therefore, from inception to closing, the project did not suffer a significant loss based on fluctuations in the real estate market.
177. Instead, these journal entries and others like them were deliberate attempts by Ocean Residences, acting through Edgardo DeFortuna, to mislead its investors so that they could avoid paying them back their principal, plus their respective share of the profit the project made.

6) *Fraudulent Status Reports*

178. In 2006-2008, Fortune Ocean, Ocean Residences, and Edgardo DeFortuna committed communications fraud in violation of Florida Statute § 817.034(4)(b) by mailing false Member Status Reports that contained statements designed to make investors believe that the cost of the project was higher than it was. Exhibits 6-8.
179. Specifically, these reports contained the false accounting entries designed to hide the thefts by Fortune Sales, Fortune Development and Fortune Equity.



180. Investors, such as the Plaintiff, relied on these reports in that they were effective in covering up the theft and delaying an action.

7) *Fraudulent Sales Center*

181. Upon information and belief, the contractor provided the use of Jade Ocean Sales center, for free, as part of an incentive for Fortune Ocean to hire them to do this project.

182. Fortune Ocean reported this sales center as a cost of \$4,291,403 as of December 31, 2011.

183. In this way, Fortune was able to justify that money leaving the project.

184. However, this amount was not paid to the developer for the sales center.

L. DEVIATIONS FROM GENERALLY ACCEPTED ACCOUNTING PRINCIPLES IN THE AUDITED FINANCIAL STATEMENTS

185. There are several other instances in the audited financial statements that are designed to hide insider activity and are a deviation from Generally Accepted Accounting Principals (“GAAP”).

186. Each of the following examples is in violation of GAAP.

187. While the audited financial statements indicate that three units were sold to equity members, they do not reveal any of the details of those transactions.

188. The audited financial statements fail to separately account for revenues and expenses for the twelve months ending on December 31, 2010.

189. The audited financial statements contain a total of approximately \$164,000,000 in adjusting journal entries without any significant explanation.

190. There are many other extremely questionable accounts that only the exercise of discovery will be able to prove whether they were fraudulent or not.



M. MISCELLANEOUS

191. None of these thefts or frauds were discovered until the completion of our forensic investigation in January 2012.
192. These thefts and frauds were not discovered until this late date because they were deliberately hidden by the Defendants and their co-conspirators.
193. The Plaintiffs have been forced to retain the undersigned counsel and must pay a reasonable rate for their services.
194. The Plaintiffs reserve the right to amend this complaint to seek punitive damages.
195. All conditions precedent have been satisfied.
196. Specifically, Spartan sent a notice of default on November 13, 2009. Exhibit 12.
197. Capital sent exactly the same notice of default letter from the same attorney on November 13, 2009. However, Capital has not been able to obtain a copy. Capital will seek a copy of that document in discovery.

COUNT I
FLORIDA CIVIL RICO ACT § 772.103

198. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
199. Fortune Ocean, Fortune Sales, Ocean Residences, DeFortuna and HLB participated in an enterprise where a pattern of racketeering activity stole:
- a. \$500,000 from Florida Beach directly and a total of \$26,278,754 from all the equity investors in the project,
 - b. \$250,000 from Spartan, and
 - c. \$250,000 from Capital.



200. That pattern of racketeering consisted of the predicate acts described in Counts II through VIII, which are adopted and incorporated here by reference.

201. The Plaintiffs have been damaged thereby.

Wherefore, the Plaintiffs demand judgment against all Defendants for treble damages, interest and attorneys' fees pursuant to Florida Statute §772.104, costs, and such other relief as the Court deems appropriate.

**THEFT FROM FLORIDA BEACH
COUNT II
PREDICATE ACT 1**

202. Florida Beach adopts and re-alleges the Facts Common to All Counts as if more fully set forth herein.

203. Fortune Ocean, Ocean Residences, Fortune Sales, DeFortuna, Imery, Carballo, Sanchez and HLB conspired to commit and cover up a theft in violation of Florida Statute § 812.014 to wit:

204. They took \$500,400 belonging to Florida Beach that they had not earned and had no legal right to, with the intent to permanently deprive the Plaintiff of its right therein.

205. HLB assisted in covering up the theft.

206. This was done with felonious intent.

207. Florida Beach has been damaged thereby.

208. Attached to this Complaint is a written demand for payment of three times the amount of money taken by Defendants. The amount demanded is \$1,500,000.00, which represents three times the dollar amount of the theft. Exhibit 9.



Wherefore, Florida Beach demands judgment against all Defendants, for treble damages, interest and attorneys' fees pursuant to Florida Statue § 772.11, costs, and such other relief as the Court deems appropriate.

**THEFT FROM SPARTAN
COUNT III
PREDICATE ACT 2**

209. Spartan adopts and re-alleges the Facts Common to All Counts as if more fully set forth herein.

210. Fortune Ocean, Ocean Residences, Fortune Sales, DeFortuna, Imery, Carballo, Sanchez and HLB conspired to commit and cover up a theft in violation of Florida Statues § 812.014 to wit:

211. They took \$500,400 belonging to Spartan that they had not earned and had no legal right to, with the intent to permanently deprive Spartan of its right therein.

212. HLB assisted in covering up the theft.

213. This was done with felonious intent.

214. Spartan has been damaged thereby.

215. Attached to this complaint is a written demand for payment of three times the amount of money taken by Defendants. The amount demanded is \$750,000.00, which represents three times the dollar amount of the theft. Exhibit 10.

Wherefore, Spartan demands judgment against all Defendants, for treble damages, interest, and attorneys' fees pursuant to Florida Statue § 772.11, costs, and such other relief as the Court deems appropriate.



**THEFT FROM CAPITAL
COUNT IV
PREDICATE ACT 3**

216. Capital adopts and re-alleges the Facts Common to All Counts as if more fully set forth herein.

217. Fortune Ocean, Ocean Residences, Fortune Sales, DeFortuna, Imery, Carballo, Sanchez and HLB conspired to commit and cover up a theft in violation of Florida Statue § 812.014 to wit:

218. They took \$250,000 belonging to Capital that they had not earned and had no legal right to, with the intent to permanently deprive Capital of its right therein.

219. HLB assisted in covering up the theft.

220. This was done with felonious intent.

221. Capital has been damaged thereby.

222. Attached to this complaint is a written demand for payment of three times the amount of money taken by Defendants. The amount demanded is \$750,000.00, which represents three times the dollar amount of the theft. Exhibit 11.

Wherefore, Capital demands judgment against all Defendants, for treble damages, interest, and attorneys' fees pursuant to Florida Statue § 772.11, costs, and such other relief as the Court deems appropriate.

**2006-2008 COMMUNICATIONS FRAUD
COUNTS V, VI, & VII
PREDICATE ACT 4, 5, & 6**

223. The Plaintiffs sue Fortune Ocean, Ocean Residences, and DeFortuna for Communications Fraud.



224. In 2006, 2007 & 2008, Fortune Ocean, Ocean Residences, and DeFortuna, Carballo, Imery and Sanchez committed communications fraud in violation of Florida Statute § 817.034(4)(b) by:
225. Mailing false Member Status Reports that contained statements designed to make investors believe that the cost of the project was higher than it was. Exhibits 6, 7, & 8.
226. Each member status report represents its own count and its own predicate act.
227. Specifically, these reports contained the aforementioned false \$53,390,841 adjustment, sales commissions inflated to approximately 16% of sales, and fraudulent administrative costs.
228. The Plaintiffs received and reasonably relied upon these statements, in that they believed their contents, and as a result did not take action against the Defendants until this action was filed.
229. The Plaintiffs have suffered damage as a result of this delay.

Wherefore, the Plaintiffs demand judgment against Fortune Ocean, Ocean Residences and Edgardo DeFortuna for damages, interest, attorneys' fees, costs, and such other relief as the Court deems appropriate.

**2010 COMMUNICATIONS FRAUD
COUNT VIII
PREDICATE ACT 7**

230. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
231. In 2010, Fortune Ocean, Ocean Residences, DeFortuna and HLB again committed communications fraud in violation of Florida Statute § 817.034(4)(b) by:



232. Producing and mailing a December 31, 2010 audit designed specifically to make investors believe that the entirety of their investment was lost. Exhibit 4.
233. As stated above, this financial audit reduced the \$53,390,841 write-down to \$6,318,584 as of December 31, 2010, but then scattered the remaining balance amongst a series of other journal entries, and subsequently increased it to \$7,232,363 as of December 31, 2011.
234. This action was done deliberately to make the resulting loss look less suspicious, while at the same time allowing Fortune to keep the proceeds that they had siphoned off from the project.
235. Furthermore, this audit told investors that their principal would not be returned due to the losses sustained by the company, when in fact the project made millions of dollars.
236. The Plaintiff reasonably relied upon these misstatements.
237. Reasonable reliance is presumed when based upon purportedly audited financial statements.
238. The Plaintiff has been damaged thereby.

Wherefore, the Plaintiff demands judgment against Fortune Ocean, Ocean Residences, HLB and DeFortuna for damages, interest, attorneys' fees, costs, and such other relief as the Court deems appropriate.

COUNT IX
BRREACH OF CONTRACT

239. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
240. Florida Beach sues Ocean Residences and Fortune Ocean for Breach of Partnership Agreement.



241. Fortune Ocean was required to repay Florida Beach's principal and pay a pro rata share of its profits to each of its Limited Partners, pursuant to Article 6 of the Partnership Agreement attached hereto as Exhibit 1.

242. Fortune Ocean breached that agreement by failing to pay Florida Beach its rightful share of principal and profit.

243. Florida Beach has been damaged thereby.

Wherefore, Florida Beach demands judgment against Fortune Ocean and Ocean Residences, attorneys' fees pursuant to § 16.10 of the Partnership Agreement, costs, and such other relief as the Court deems appropriate.

COUNT X
BREACH OF CONTRACT

244. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.

245. Florida Beach sues Ocean Residences and Fortune Ocean for Breach of Partnership Agreement.

246. Fortune Ocean was only allowed to hire affiliated entities to perform work for Jade Ocean if they charged market rates.

247. Fortune Ocean breached that agreement by paying exorbitant rates to Fortune Sales, Fortune International Management, Fortune International Equity, Corp. and Fortune Development Corp.

248. Florida Beach has been damaged thereby.

Wherefore, Florida Beach demands judgment against Ocean Residences and Fortune Ocean for damages, interest, attorneys' fees pursuant to § 16.10 of the Partnership Agreement, costs, and such other relief as the Court deems appropriate.



COUNT XI
BREACH OF CONTRACT

249. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
250. Spartan sues Fortune Ocean for Breach of contract.
251. Spartan executed a Loan Agreement (“Spartan Loan Agreement”) and a Balloon Note (“Spartan Note”). Exhibit 2.
252. The Spartan Loan Agreement and Spartan Note collectively create a binding contract between the parties.
253. Fortune Ocean breached the Spartan Loan Agreement and Note by failing to repay principal and interest pursuant to paragraph 7.
254. Fortune Ocean breached the Spartan Loan Agreement by paying select portfolio loans, while paying nothing to Spartan in violation a paragraph 7.
255. Spartan has been damaged thereby.

Wherefore, Spartan demands judgment against Fortune Ocean, for damages, attorneys’ fees, costs, and such other relief as the Court deems appropriate.

COUNT XII
BREACH OF CONTRACT

256. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
257. Capital sues Fortune Ocean for Breach of contract.
258. Capital executed a Loan Agreement (“Capital Loan Agreement”) and a Balloon Note (“Capital Note”). Exhibit 3.



259. The Capital Loan Agreement and Spartan Note collectively created a binding contract between the parties.
260. Fortune Ocean breached the Capital Loan Agreement and Note by failing to repay principal and interest, pursuant to paragraph 7.
261. Fortune Ocean Breached the Capital Loan Agreement by paying select portfolio loans, while paying nothing to Spartan in violation of paragraph 7.
262. Capital has been damaged thereby.

Wherefore, Capital demands judgment against Fortune Ocean for damages, interest, attorneys' fees, costs, and such other relief as the Court deems appropriate.

COUNT XIII
NEGLIGENCE

263. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
264. HLB Gravier, LLP is a firm of certified public accountants licensed to do business in the state of Florida.
265. HLB failed to follow generally accepted accounting principles and generally accepted auditing standards when conducting the financial statement audit of Fortune's books and records, as of December 31, 2010.
266. In the audited financial statements for the period ending December 31, 2010, HLB reported an unrealized and unsupported loss from decrease in market value of units held for sale in the indicated amount of \$6,318,584, without any adequate explanation and support.
267. Similarly, HLB never explains why the loss is adjusted from the \$53,393,841 originally reported in Partnership's 2009 schedule M-3, page 3, Form 1065, U.S. Return of Partnership Income, as filed with the Internal Revenue Service by the Partnership, to \$6,318,584.



268. Generally Accepted Accounting Principles (GAAP) would require informative disclosures and explanations for a material adjustment such as these.
269. HLB failed to separately report the Project's revenue and expenses for the twelve months ending on December 31, 2010.
270. HLB failed to separately report the Project's cash flows for the twelve months ending on December 31, 2010.
271. This is material because significant cash flows resulted from the activities for the twelve months ending on December 31, 2010, as evidenced in the related 2010 partnership income tax return.
272. The financial statements for the year ending December 31, 2010, audited by HLB, presented to the Limited Partners, failed to disclose the details of related party transactions.
273. For instance, three units were sold to equity members.
274. However, there is no record of the terms under which they were sold.
275. As evidenced by the foregoing and other facts, HLB failed to exercise reasonable care in the performance of its duties as an accountant and independent auditor.
276. As an independent auditor, HLB owes a duty to the investors and lenders of the Jade Beach project who relied on this data and the Plaintiff's reasonably relied upon it.
277. As a proximate result of that failure and reliance, the Plaintiff was damaged.

Wherefore, the Plaintiff demands judgment against HLB including damages, costs, prejudgment interest, and such other relief as the Court deems proper.

COUNT XIV
CONSPIRACY TO COMMIT FRAUD



278. The Plaintiffs adopt and re-allege the Facts Common to All Counts as if more fully set forth herein.
279. The Plaintiff sues DeFortuna, Ocean Residences, Fortune Ocean and HLB Gravier for Fraud.
280. This count is pled in the alternative to the Plaintiff's RICO claim.
281. The Defendants conspired with each other to commit fraud against a group of investors, which includes the Plaintiffs.
282. Investors were presented with a Prospectus that projected a future profit and a Partnership Agreement, which indicated they would be entitled to their share of the profits of this project.
283. Florida Beach was given the prospectus and then executed the Partnership Agreement on or about June 16, 2005.
284. These statements were designed to cause investors to give money to Ocean Residences, Fortune Ocean and, indirectly, to DeFortuna.
285. The Defendants knew at the time they made these statements that they were false.
286. The Defendants always intended to steal the Plaintiffs', and other investors' money.
287. Further, they sent a series of false member status reports to hide their ongoing theft.
288. When the project was nearly completed, HLB Gravier sent false audited financial statements to cover up the theft.
289. Florida Beach believed, and relied upon, the false statements, until having the prospectus, member statements and audits reviewed by a forensic expert.
290. Florida Beach would never have invested but for the false statements contained in the prospectus.



291. Florida Beach would have pursued its rights sooner but for the misrepresentations contained in the member status reports and the audit.

292. As a proximate result of these acts, the Plaintiffs were damaged.

Wherefore, Florida Beach demands judgment against DeFortuna, Ocean Residences, Fortune Ocean and HLB including damages, interest, and costs, and any other or further relief this Court deems just and proper.

COUNT XVI
ACCESS TO RECORDS

293. Florida Beach adopts and re-alleges the Facts Common to All Counts as if more fully set forth herein.

294. The Plaintiff, Florida Beach, is a Limited Partner of Fortune Ocean and has the right to access corporate records pursuant to Florida Statute § 620.1304 and § 14.3 of the Agreement of Limited Partnership.

295. Fortune Ocean provided some records, but they were incomplete and often redacted.

296. Fortune Ocean refused to provide, *inter alia*, the insurance policies purchased for this project.

297. A final demand for those records was made on April 20, 2012.

298. However, response continues to be incomplete.

Wherefore, Florida Beach demands judgment against Fortune Ocean including an accounting, attorneys fees, damages, prejudgment interest, and costs, and any other or further relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

299. Plaintiffs hereby demands a trial by jury on all issues so triable.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed to Susan E. Raffanello, Esq., at sraffanello@coffeyburlington.com, lmaclaren@coffeyburlington.com, service@coffeyburlington.com and to Gary R. Shendell, Esq., at gary@shendellpollock.com, lane@shendellpollock.com, grs@shendellpollock.com on June 18, 2014.

Respectfully submitted,

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