

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

**RICHARD HANEY, SEMYON GENIS)
AND MANYA SCHONFELD)
on behalf of themselves and others)
similarly situated,)**

Plaintiffs,)

-vs-)

**GEORGE F. PLUCIENKOWSKI;)
LUIS A. D'AGOSTINO;)
ALVARO R. MINOR;)
GREGORY KHESS;)
JOSHUA G. BUSTOS; AND)
THE PINNACLE CONDOMINIUM)
ASSOCIATION, INC.)**

Defendants)

*** * * * ***

CASE NO. 12-17609 CA12

THE ORIGINAL FILED
IN THE OFFICE OF THE CLERK

OCT 11 2012

CIRCUIT & COUNTY COURTS
MIAMI-DADE COUNTY FLORIDA

**AMENDED CLASS REPRESENTATION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

This amended complaint of RICHARD HANEY, SEMYON GENIS and MANYA SCHONFELD (“Plaintiffs”), by their attorneys, on behalf of themselves and all others similarly situated, makes the following allegations and claims for his class action complaint against Defendants George Plucienkowski, Luis D’Agostino, Alvaro Minor, Gregory Khes, Joshua Bustos, and The Pinnacle Condominium Association, Inc. The following allegations are made upon information and belief, except as to allegations specifically pertaining to Plaintiffs, which are made upon knowledge:

JURISDICTION AND VENUE

1. This is an action for money damages in which the amount in controversy exceeds the sum of \$15,000.00, exclusive of interest, costs, and attorney's fees. This Court has jurisdiction over the subject matter and all causes of action asserted herein.

2. The Court has personal jurisdiction over the Defendants named in the above caption because Defendants have, at all times relevant to this cause of action, individually or through their agents, subsidiaries, officers or representatives, operated, conducted, engaged in and carried on substantial and non-isolated business activity in the State of Florida, and Defendants caused damages to Plaintiffs and Class members, which arose out of the acts or omissions that occurred in the State of Florida.

3. Venue is appropriate because Defendants the underlying actions complained of herein took place Miami-Dade County, Florida.

4. Plaintiff Richard Haney is a citizen of the State of Georgia who suffered damages due to acts or omissions of the Defendants.

5. Plaintiff Semyon Genis is a citizen of the State of Florida who suffered damages due to acts or omissions of the Defendants.

6. Plaintiff Manya Schonfeld is a citizen of the State of Florida who suffered damages due to acts or omissions of the Defendants.

PARTIES

A. PLAINTIFFS

7. Plaintiff Richard M. Haney is a citizen of Georgia. Plaintiff Haney owns a unit in the Pinnacle Condominium building.

8. Plaintiff Semyon Genis is a citizen of Florida. Plaintiff Genis owns a unit in the Pinnacle Condominium building.

9. Plaintiff Manya Schonfeld is a citizen of Florida. Plaintiff Schonfeld owns a unit in the Pinnacle Condominium building.

B. DEFENDANTS

10. Five of the named Defendants are current or former Officers and/or Directors of The Pinnacle Condominium Association, Inc. ("Association"), a not-for-profit Corporation organized in Florida, whose principle place of business is in Miami-Dade County, Florida, at 17555 Collins, Sunny Isles, Florida, 33160. The Association is also made a Defendant herein solely insofar as it may be liable for the actions of the named Defendant-Directors. The five Defendant-Directors are sued in their official capacity acting on behalf of the Association. At all times pertinent to this case, the Defendant-Directors acted jointly with each other and the Association, and on behalf of the Association. The five Defendant-Directors and the Association are collectively referred to herein as "Defendant."

FACTUAL NARRATIVE

11. On or about March 3, 2006, the Pinnacle Condominium Association, Inc. ("Association") a Florida non-profit corporation, by and through its Board of Directors, entered into two contracts (the "Contracts") with Continental Painting, Waterproofing & Restoration, Inc., ("CPWR") for certain exterior repairs and painting work at the Pinnacle Condominium (the "Condominium").

12. On or about April of 2006, the Pinnacle Board of Directors comprised of Jad Shor, *President*, Harold Richmond, *Vice President*, Lenard Gerb, *Treasurer*, Courtland Reeves,

Secretary, and Moshe Mann, *Director*, (the “old Board”) levied an assessment on the Association in excess of \$3,000,000.00 in order to finance the contracts and other projects.

13. On or about August 16, 2006, the old Board resigned under pressure from certain Association members.

14. On or about August 24, 2006, the old Board was replaced by George Plucienkowski, *President*, Luis D’Agostino, *Vice President*, Ivo Grenacher, *Treasurer*, Sophia Buyanovksi, *Secretary*, and Gregory Khess, *Director*. On September 13, 2006, the Association filed their “2006 Not-for-Profit Corporation Amended Annual Report” reflecting changes in the Board of Directors.

15. On or about January 24, 2007, Ivo Grenacher resigned from the Board of Directors, and Joshua Bustos was installed as Treasurer of the Board of Directors.

16. On or about April 21, 2008, then-Secretary of the Board of Directors Karina Klee was replaced by Alvaro Minor as Secretary of the Board of Directors.

17. Between September 1, 2006 and March 29, 2007, the Board of Directors of the Association, specifically Defendant, on their own impetus and motivation, reviewed the CPWR contracts. Without obtaining any professional opinion stating that the Contracts were invalid, the Defendant determined that the contracts were procured by self-dealing, not valid, and could not be enforced. Commensurate with their determination, Defendant instructed CPWR to cease operation at the Condominium, and the Association declined to make further payment upon the contracts.

18. On March 30, 2007, after negotiations upon the Contracts were not successful, CPWR filed suit against the Association, instituting the action of *Continental Painting*,

Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06.

19. On July 20, 2008, during the litigation over the contracts, a non-binding Arbitration resulted in a finding in favor of CPWR that the Association breached the contracts, and awarded CPWR **\$1,320,795.91**. The Association continued to litigate the matter.

20. On June 19, 2009, following a jury trial, a jury returned verdicts in favor of CPWR in all respects.

21. On August 4, 2009, the trial Court denied all of the Association's post-trial motions for relief from the jury verdicts.

22. The Final Judgment awarded CPWR **\$1,987,534.66** in money damages, and imposed construction liens against the Condominium, which attached to individual units in the proportion for which the Unit Owners were liable for common expenses.

23. On November 4, 2009, the Association filed an appeal to the Third District Court of Appeal of Florida.

24. On January 29, 2010, CPWR filed a Motion for Attorneys Fees and Costs, which sought a total of \$1,088,113.39 for attorneys' fees and taxable costs.

25. On February 3, 2010, CPWR and the Association, by and through the Defendant-Directors, entered into a settlement agreement whereby the Association would pay \$2,440,000.00 to CPWR in full settlement of all claims related to the contracts, and in cancelation of the liens and public sales ("Settlement Agreement"). (*See* Exhibit A). The Settlement Agreement, at n.1, provides that CPWR will furnish a list of Unit Owners and their respective credit amounts within five days of the Settlement Agreement.

26. From February 3, 2010, under the terms of the Settlement Agreement and the Association By-Laws, each Unit Owner, including Plaintiffs, at the Pinnacle owes CPWR a proportional share of the **\$2,440,000.00** settlement amount.

CLASS REPRESENTATION ALLEGATIONS

27. Plaintiffs and the Class members incorporate and reallege the above paragraphs.

28. This class action is brought pursuant to: Florida Rule of Civil Procedure 1.220(a), 1.220(b)(2), and/or 1.220(b)(3).

29. **Common Questions of Law and Fact**—Fla. R. Civ. P. 1220(c)(2)(B): All members of the Class have been subject to and affected by the same practices and policies and common thread of misconduct resulting in injury to Plaintiffs and all members of the Class as described herein. There are numerous questions of law and fact that are common to the class. These common questions include, but are not limited to, the following:

- a. whether or not the injurious actions of the Defendant occurred while they were acting in their capacity as Directors of the Association;
- b. whether or not the Defendant breached their duties owed to the Association members by committing the actions which resulted in the lawsuit settlement;
- c. whether or not the Defendant's actions or omissions surrounding the breach of the CPWR contract constitute negligence;
- d. whether or not the Defendant knew or should have known of the immense risk posed by violating the CPWR contracts;
- e. whether Defendant's actions are the proximate and legal cause or a substantial factor in causing the damages to the Plaintiff Class.

f. whether or not Defendant is liable to the Plaintiff class for the damages caused by their actions or omissions complained of herein.

30. **Typicality**—Fla. R. Civ. P. 1220(c)(2)(C): The claims advanced by Plaintiffs as the representative parties of the putative class are typical of the claims of each member of the class, and do not conflict with the interests of any other member of the class. Each member of the proposed class is a current unit owner, or was previously a unit owner at the relevant times of the acts complained of herein, at the Pinnacle Condominium, a 244-unit luxury condominium building located at 17555 Collins Avenue, Sunny Isles Beach, Florida, 33160.

31. Unit owners at the Condominium are also individual members of the Pinnacle Condominium Association, Inc. The Association is a non-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida.

32. Each member of the Association was subjected to their relative portion of the financial component of a February 3, 2010 Settlement Agreement between CPWR and the Association. The settlement was entered into by the Association's Board of Directors, with George Plucienkowski, Alvaro Minor, and Gregory Khess acting as signatories. At Paragraph 12(b) of the Settlement, the signatory Directors represent that the Board of Directors has full power and authority to enter into the settlement on behalf of the Association.

33. The settlement obligates the association to pay to CPWR the amount of Two Million Four Hundred Forty Thousand Dollars (\$2,440,000.00) ("settlement amount"), in full settlement of a breach-of-contract action filed by CPWR against the Association on March 30, 2007, in the Circuit Court of the Eleventh District in and for Miami-Dade County, Florida, Case No. 07-09196 CA 06 (the "lawsuit").

34. The settlement amount is split proportionally among all Pinnacle unit owners. Plaintiffs' claims for damages arise from their portion of the settlement obligation. Those claims are shared virtually equivalently by each member of the proposed class. Therefore, the claims of Plaintiffs as class representatives are typical of each member of the proposed class.

35. **Numerosity**—Fla. R. Civ. P. 1220(c)(2)(D)(i): The class consists of numerous individuals throughout Florida, making individual joinder impractical, in satisfaction of Rule 1.220. The approximate number of class members estimated at 230. There are 244 units at the Condominium. At least five current-or-former unit owners are Defendants in this matter, and therefore cannot also be members of the class. In addition, several owners own multiple units, and therefore have multiple interests in this claim, but are nonetheless one class member.

36. **Class Definition**—Fla. R. Civ. P. 1220(c)(2)(D)(ii): Plaintiffs sue on their own behalf and on behalf of a Class defined as:

“All condominium unit owners at the Pinnacle Condominium who suffered financial damage from the obligations imputed upon them under the February 2, 2010 Settlement Agreement for the matter of “*Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association*, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06”, who were not complicit in the underlying negligent acts or tortious conduct resulting in the referenced lawsuit and subsequent settlement agreement.”

37. **Adequacy**—Fla. R. Civ. P. 1220(c)(2)(D)(iii): Plaintiff Richard Haney will fairly and adequately protect and represents the interests of each member of the plaintiff Class. Specific facts supporting this assertion are: (1) Plaintiff Haney purchased a condominium unit in the Pinnacle in 2004; (2) Plaintiff Haney was the owner of Unit 3001 at the Pinnacle; (3) Plaintiff Haney transferred his ownership interest in Unit 3001 to the HANEY FAMILY PARTNERSHIP, a partnership of which Plaintiff Richard Haney is the Managing Partner, on October 27, 2010; (4) Plaintiff Haney is current on his condominium fees of \$3,739 per quarter-

year; (5) Plaintiff Haney suffered damage in the amount of **\$11,186.91** under the lawsuit settlement agreement; (6) Plaintiff Haney has taken numerous steps in furtherance of the class of Plaintiffs, including locating counsel, obtaining important documentation and evidence in connection with this suit, and corresponding extensively with counsel in furtherance of this action.

38. Plaintiff Semyon Genis will fairly and adequately protect and represents the interests of each member of the plaintiff Class. Specific facts supporting this assertion are: (1) Plaintiff Genis purchased a condominium unit in the Pinnacle building on April 3, 2001; (2) Plaintiff Genis is the co-owner of Unit 505; (3) Plaintiff Genis is current on his condominium fees of \$3739 per quarter-year; (4) Plaintiff Genis suffered damage in excess of **\$10,000.00** under the lawsuit settlement agreement.

39. Plaintiff Manya Schonfeld will fairly and adequately protect and represents the interests of each member of the plaintiff Class. Specific facts supporting this assertion are: (1) Plaintiff Schonfeld purchased a condominium unit in the Pinnacle building on or about March of 2001; (2) Plaintiff Schonfeld is the owner of Unit 1806; (3) Plaintiff Schonfeld is current on her condominium fees of \$3739 per quarter-year; (4) Plaintiff Schonfeld suffered damage in excess of **\$10,000.00** under the lawsuit settlement agreement.

40. The particular facts and circumstances supporting the conclusions required of the Court in determining that a class action may be maintained under Florida Rule of Civil Procedure 1.220(a), 1.220(b)(2), and/or 1.220(b)(3) are as follows:

- a. Defendant made material misrepresentations and omissions to members of the Association regarding the validity of the CPWR contracts, the status of the settlement negotiations, and the veracity of their litigious position.

- b. Defendant breached their fiduciary duty to the Association members by violating the CPWR contracts.
- c. Defendant, through their various injurious acts, brought on the breach of contract action which resulted in a \$2,440,000 lawsuit settlement, of which each and every unit-owner must pay a per-unit portion.
- d. Defendant is liable to the Plaintiffs for their actions or omissions which caused the \$2,440,000.00 liability against the Association.
- e. The claims of all unit-owners of the Association (excluding Defendant) are virtually equivalent in that their damages are suffered in connection with their membership in the Association, therefore a judgment in favor of or against any Plaintiff will, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or will substantially impair or impede the ability of other class members who are not parties to the adjudications to protect their interests.

COUNT I
BREACH OF FIDUCIARY DUTY

41. Plaintiffs repeat and re-allege each and every allegation above as though fully set forth herein.

42. On or about March 6, 2006, the Association, through its officers and Board of Directors, entered into one painting contract and one construction contract ("the Contracts") with Continental Painting, Waterproofing & Restoration, Inc., ("CPWR").

43. On or about August 16, 2006, the Association's Board of Directors resigned, and were replaced by an entirely new five-member Board of Directors on or about August 24, 2006.

44. Upon their installation as Directors, the new board of directors owed the Association and its members a fiduciary duty, pursuant to Association By-Law No. 7.

45. The new board of directors, including Defendant, reviewed the existing contracts and decided that the CPWR contracts were invalid. Defendant violated the contracts, resulting in CPWR filing suit, followed by several years of litigation over the contracts. After losing a non-binding arbitration and a jury trial, on February 3, 2010, Defendant, acting jointly and in their capacity as Directors of the Association, entered into a settlement agreement for \$2,440,000.00.

46. The settlement amount of \$2,440,000.00 is a liability of the Association, and that cost was imputed proportionally upon each and every unit under the terms of the Settlement Agreement, and under the Association By-laws. The proportional share of the settlement cost is an injury to each Association member.

47. Defendant's conduct caused the damage to the Plaintiffs by causing the breaches of contract, exacerbating the damage by pursuing costly litigation, and ultimately binding the Association members under the Settlement Agreement.

COUNT II **NEGLIGENCE**

48. Plaintiffs repeat and re-allege each and every allegation above as though fully set forth herein.

49. Defendant had a duty to the class to act as reasonable prudent Directors of the Pinnacle Condominium Association Board of Directors.

50. The following described acts were caused through negligence of Defendant, their officers, or agents, and constitute breach of Defendant's duty to the Plaintiffs:

- a. Failure to consult with legal counsel in advance of deciding to violate the CPWR contracts.

- b. Failure to consult with professional engineers or obtain a professional engineering evaluation regarding the condition of the work performed by CPWR on the Pinnacle Building under the exterior repair and painting contracts.
- c. Failure to adhere to the reported recommendations of professional engineers indicating that the exterior work performed by CPWR on the Pinnacle was satisfactory.
- d. Failure to read or review the CPWR contracts in advance of violating the CPWR contracts.
- e. Any and all other acts of negligence that may be revealed during discovery or proven at trial.

51. Defendant's breach is the proximate and legal cause of Plaintiffs' damages. Specifically, the Defendant's breach of duty to the Plaintiffs directly caused the litigation, which directly resulted in the settlement causing \$2,440,000 in damages to the Plaintiffs. But for the Defendant's negligence, the Plaintiffs would not suffer \$2,440,000 in damages

52. As a result of Defendant's breach, Plaintiffs suffered damage in the form of the pro-rata apportioned settlement agreement executed by Defendant on February 3, 2010, and subsequently enforced against the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follow:

- (i) Declaring that this action is properly maintainable as a class action pursuant to Florida Rules of Civil Procedure 1.220, certifying Plaintiffs as the class

representatives and designating its counsel Baron & Herskowitz and Bruno & Bruno, LLP, as counsel for the class;

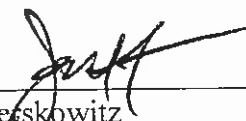
- (ii) Awarding Plaintiffs and the Class compensatory damages, and attorney's fees for Defendant's acts and omissions complained of herein;
- (iii) Awarding pre-judgment and post-judgment interest at the maximum rate allowable by law;
- (iv) Awarding attorneys' fees, expenses, and costs of litigation;
- (v) Awarding such other and further relief available under all applicable laws, and any relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all claims so triable as a matter of right.

Dated: October 9th, 2012.

BARON & HERSKOWITZ

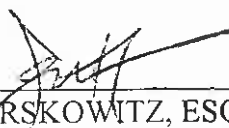
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Daniel Meyer, Esq., dmeyer@brunobrunolaw.com; Joe Bruno, Esq., jbruno@brunobrunolaw.com; Jon Catizon, Esq., catizone@litchfieldcavo.com; Lynn Hudson, Hudson@litchfieldcavo.com; and Thomas Jerla, Esq., jerla@litchfieldcavo.com via electronic mail this ~~9th~~ day of October, 2012.



JON HERSKOWITZ, ESQ.