

Notice Memo

To: Attorneys Tamar, Larry Shendell And Shendell And Associates PA

I reviewed the "threat letter" of April 29, 2016. Since my wife, Joyce Arnoff is one of the addressees, I am responding to your letter as her attorney. Respectfully, I highly recommend that you withdraw the letter as the lawsuit you intend to bring on behalf of Palm Aire Condo Association II ("PACC2") is not grounded in fact nor colorable in law. It will be a serious breach of professional ethics on your part; also showing a lack of competency for the reasons I set forth below.

You allege that nine (9) persons elected to the PACC2 Board upon the expiration of the pre -existing Board's term(s) on March 2, 2016 are guilty of conversion, civil conspiracy, and violations of the Florida Anti-Racketeering Statute by approving the payment of bills for professional services to Kaye, Bender, and Rembaum, PA. Ostensibly, the services were rendered prior to March 2, 2016 and not for the benefit of the Association but, *inter alia.*; Peter Kretz and another one of the directors as well as the submission of a petition for arbitration to challenge the March 2015 election under the auspices of Florida's Division of Business and Professional Regulation ("DBPR").

In addition to the payment for past and present legal services, you claim that there was conversion of other funds for **unspecified** expenditures that constituted along with the legal services an aggregate sum of \$223,961.64. Instead claiming conversion, why not ask for an accounting?

Conversion is the intentional misappropriation of the funds and property of another; not for the use and benefit of the other party but for one's own use and benefit. Upon this claim of conversion is the premise both for the civil conspiracy and pattern of racketeering claims by the Board voted in by the overwhelming majority of PACC2 unit owners on March 2, 2016. Since there was **no** conversion, the claim of civil conspiracy fails because of the absence of an "independent wrong". There is similarly **no** pattern of racketeering because the payments were for legitimate expenditures of the Association and/or for persons acting on behalf of and for the benefit of the Association.

Chapter 718.1224 of the Florida Statutes (Title XL, Real and Personal Property, Chapter 718, Condominiums) prohibits SLAPP and/or retaliatory lawsuits. Chapter 718.123, "Right of Owners to Peaceably Assemble", protects First Amendment rights and the rights of free expression and association under Chapter 718 for unit owners and obviously Directors acting on their behalf.

I am attaching Article XI, Indemnification, page 12 of the By-Laws. The expenditures of funds incurred by a Director and/or officer "reasonably incurred...in connection with any action...or proceeding to which he may be made a party by reason of his being a Director or Officer of the Corporation including reasonable counsel fees to be approved by the Corporation..." is subject to indemnification. The sole exception to the indemnification occurs if the director has been "**finally adjudged** in such action, suit, or proceeding to be liable for or guilty of gross negligence or willful misconduct." (Emphasis Added) In neither case has there been a final adjudication of gross negligence or willful misconduct in respect to Peter Kretz and the other Director. Indemnification was perfectly proper and that negates your claim of conversion.

The suit against Peter Kretz and the other director was a SLAPP and retaliatory lawsuit that resulted from Peter Kretz's opposition and prior complaints to authorities.

As I have previously communicated to you the pre-textual delinquencies resulting from your seriously flawed legal advice and counsel to the 2015 Board that led candidates in the March 2015 election being disqualified the day of the election because of "restrictive endorsements" on their assessment checks; was wrong as a matter of law. The prime example was candidate and now Board member Rose Cilone. She was overwhelmingly voted for both the 2015 and 2016 Boards and your advice and counsel thus undermined the community's democracy.

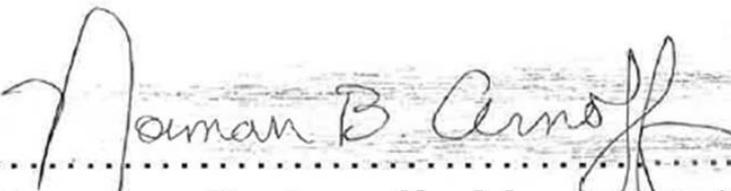
I fully expect if the issues are pursued in the courts that the "concerned unit owners" will prevail and your legal errors will be made manifest. Also in this context as well, there has not been a final adjudication. Indemnification was and is perfectly proper, thus negating your claims of conversion and the other two (2) alleged wrongs.

I reviewed the 2015 Directors and Officers Policy and determined that the

insured versus insured exclusion was fully deleted in the policy's endorsements. Therefore, assuming other conditions were previously satisfied both PACC2, the insured organization, as well as the dissenting Directors, who were and are "insureds" under the policy; would be covered.

Here too, your claim of conversion and other wrongs are frivolous because not only should the dissenting Directors who were sued in their capacity of Directors but PACC2 as well also be indemnified for its legal costs and expenses. Did your firm as Association counsel timely and accurately report the claims to the insurer to get coverage, even minimally for the Association?

I respectfully suggest you give the foregoing consideration and not follow up on your threat that is not only going to hurt the Association but every unit owner as well since significant money will be lost by the Association, including a serious increase in insurance premiums if not a loss of coverage. Insurers are ill disposed to insured organizations and insureds who litigate unnecessarily and for no valid reason. Thank you for your anticipated courtesy and cooperation.



Norman B. Arnoff, May 4, 2016

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ARTICLE IX. AMENDMENTS TO THE BY-LAWS.

These By-Laws may be altered, amended or added to at any duly called meeting of the unit owners, provided:-

(1) Notice of the meeting shall contain a statement of the proposed Amendment.

(2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the Voting Members casting a majority of the total votes of the unit owners.

(3) If the Amendment has not been approved by the unanimous vote of the Board of Directors of the Association, then the Amendment shall be approved by the affirmative vote of the Voting Members casting not less than three-fourths (3/4ths) of the total votes of the unit owners; and,

(4) Said Amendment shall be recorded and certificated as required by the Condominium Act. Notwithstanding the provisions of this Article IX, these By-Laws may only be amended in compliance with Article II-A., Section 7, of these By-Laws.

ARTICLE X. NOTICES.

Whatever notices are required to be sent hereunder, shall be delivered or sent in accordance with the applicable provisions for notices, as set forth in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XI. INDEMNIFICATION

The Corporation shall indemnify every Director and every Officer, his heirs, executors and administrators, against all loss, costs and expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party, by reason of his being or having been a Director or Officer of the Corporation, including reasonable counsel fees to be approved by the Corporation, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XII. LIABILITY SURVIVES TERMINATION OF MEMBERSHIP.

The termination of membership in the Condominium shall not relieve or release any such former owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.