No. 2-11-0473

IN THE

APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

SPANISH COURT TWO CONDOMINIUM ASSOCIATION,

Plaintiff-Appellee/
Cross-Appellant.

vs.

LISA CARLSON,

Defendant-Appellant/
Cross-Appellee.

Appeal from the Circuit Court of the Nineteenth Judicial Circuit
Lake County, Illinois, Chancery Division
No. 10 LM 301
The Honorable Michael J. Fusz, Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE/ CROSS-APPELLANT

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Oral Argument Requested

POINTS AND AUTHORITIES

I. NATURE OF THE CASE[1]

Plaintiff-Appellee/Cross-Appellant, the Spanish Court Two Condominium Association (the "Association"), filed a two-count Complaint for Possession of Condominium Unit and Assessments (the "Complaint") against Defendant-Appellant/Cross-Appellee, Lisa Carlson and all Unknown Occupants ("Carlson").

Based on Carlson's failure to pay her Association assessments, Count I of the Complaint sought possession of Carlson's condominium unit pursuant to the Association's Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Spanish Court II Condominium Development (the "Declaration"), the Illinois Condominium Property Act (the "Act") incorporated therein by reference, and the Forcible Entry and Detainer Act ("FED", 735 ILCS 5/9-102, 104.1 and 9-111). Count II of the Complaint also sought possession, as well as monetary damages for breach of contract, in the amount of unpaid common expenses, late charges, interest and fines and attorneys' fees.

In answer to the Complaint, Carlson admitted she had failed to pay her assessments but claimed by way of Affirmative Defenses that she was entitled to withhold assessments because of purported breaches of covenants by the Association with respect to the Association's allegedly leaking roof and/or deteriorating brickwork and set-off. Carlson also filed a Counterclaim largely parroting the allegations of her Affirmative Defenses.

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[1] References herein to "R. C_____" are to Volume I of the Record on Appeal, comprised of the pleadings, motions and orders. References herein to "R. T_____" refer to Volume II of the Record on Appeal, comprised of reports of proceedings. The trial exhibits are referenced herein by their submitting party and exhibit number. The documents comprising the Appendix are attached hereto and – in hopes of avoiding confusion with other markings, notes and exhibit references found thereon – are numbered consecutively beginning with "A001" in the lower *left* corner of each page of the Appendix.

The Association successfully moved that the Counterclaim be severed and that the Affirmative Defenses be stricken, as reflected in the Order entered on November 9, 2010. By Order marked "filed" on January 18, 2011, the trial court granted to the Association an Agreed Order of Possession and Judgment of money damages based on unpaid assessments and late fees of $3,528.76, reserving for further hearing on February 8, 2011 the question of the Association's entitlement to attorney's fees and judgment on its request for unpaid special assessments from Carlson.

At the hearing on February 8, 2011, and continued to March 15, 2011, the trial court heard the testimony of the Association's property manager, Brian Beegun ("Beegun"), and Carlson. The Court also admitted several exhibits into evidence, and heard the closing arguments of the parties' attorneys. On April 21, 2011, the trial court ruled on the remaining issues of the Association's request for judgment based on unpaid (additionally accruing monthly and special) assessments and attorneys' fees, awarding the Association judgment in an amount comprised of additionally accrued monthly assessments, special assessments relating to the limited common element patio doors, and a portion of the Association's requested attorneys' fees and costs. The trial court denied, however, the Association's request for an award of accruing special assessments as it pertained to the fire alarm panel and elevator. This appeal and cross-appeal follow.

II. ISSUES PRESENTED FOR REVIEW ON APPEAL AND CROSS-APPEAL

A. Whether the trial court erred by excluding from its damages award in the Association's favor an amount inclusive of the special assessment based on the fire alarm panel and the elevator.

B. Whether the Association is entitled to an award of such additional attorneys' fees and costs as were generated on appeal, should it prevail thereon in whole or in part.

III. STATEMENT OF JURISDICTION

A. Bases of Appellate Jurisdiction

The final judgment in this matter was as contained in the Forcible Entry / Detainer Order entered on April 21, 2011. (R. C00180). Pursuant to Illinois Supreme Court Rule 303, Carlson had 30 days within which to file her notice of appeal with the Clerk of the Circuit Court. Carlson filed her Notice of Appeal with the Clerk of the Circuit Court on May 20, 2011, within the 30-day filing period. (R. C00183).

Pursuant to Illinois Supreme Court Rule 303(a)(3), the Association then had 10 days after service of the Notice of Appeal upon it in which to file a Notice of Cross-Appeal. Service of the Notice of Appeal was effectuated by mail on May 20, 2011. (R. C00182). Rule 12(c) provides that service by mail is complete four days after mailing. Thus, pursuant to Rule 303(a)(3), the Association had to and including June 3, 2011 in which to file its cross-appeal, the date upon which it was in fact filed. (R. C00188).

B. Standards of Review

1. The standard of review of the trial court's decision to strike the affirmative defenses is *de novo.* Price v. Phillip Morris, Inc., 219 Ill. 2d 182, 235 (2005).

2. The standard of review of the trial court's decision to sever the counterclaim is abuse of discretion. Walter v. Carriage House Hotels, Ltd., 239 Ill. App. 3d 710, 725 (5th Dist. 1993) ("Defendant argues that Shelton's lack of appearance and

B. Whether the Association is entitled to an award of such additional attorneys' fees and costs as were generated on appeal, should it prevail thereon in whole or in part.

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defense at trial unfairly prejudiced defendant. The standard of review on this issue is abuse of discretion").

3. The standard of review of the trial court's award of possession and money damages following evidentiary hearing is abuse of discretion. Carey v. American Family Brokerage, Inc., 391 Ill. App. 3d 273, 277 (1st Dist. 2009) ("[w]hen a challenge is made to a trial court's ruling following a bench trial, the proper standard of review is whether the trial court's judgment is against the manifest weight of the evidence . . . . To reverse a finding of damages, a reviewing court must find that the trial judge ignored the evidence or that the measure of damages was erroneous as a matter of law").

IV. STATUTES INVOLVED

A. The Illinois Condominium Property Act (the "Act"), 765 ILCS 605/1, *et seq.*, *passim*, and Sections 4.1(a)(5); 4.1(b); 9(a); 9.2, 18(a)(8) and 18.4(a), (d) and (l) thereof, in particular; and

B. The Forcible Entry and Detainer Act ("FED"), 735 ILCS 5/9-111, *et seq.*, *passim*, and Sections 9-106 and 9-120 thereof, in particular.

The relevant portions of these Sections of the Acts are included in the Appendix hereto, beginning at p. A047.

V. STATEMENT OF FACTS

A. The Parties

The Association is an Illinois corporation that submitted its property to the provisions of the Illinois Condominium Property Act. (Parties' Joint Trial Exhibit 1, p. 2). Carlson is an owner of property governed by the Association and its Declaration. (R. C00002 and C00022).

B. The Nature of the Dispute / Procedural History

Carlson failed to pay her assessments from August 2009. (R. C00022). Accordingly, the Association filed a Complaint for Possession of Condominium Unit and Assessments against her and all unknown occupants. (R. C00001). In the Complaint, the Association sought possession of the unit based on Carlson's having failed to pay assessments, special assessments, late fees and attorneys' fees. (R. C00003). While admitting that she had not paid her assessments from August 2009, Carlson interposed Affirmative Defenses and a Counterclaim based on breach of contract and set-off. (C00024, C00027 and C00030). On motions filed by the Association, the trial court struck the Affirmative Defenses and severed the Counterclaim from the forcible entry and detainer lawsuit that is the subject of this appeal. (R. C00035, C00040, and C00098).

By Order filed January 18, 2011, the parties entered an Agreed Order of Possession and Judgment that was inclusive of some unpaid assessments and late fees. (R. C00134). The Court conducted a bench trial on the remaining aspects of the case, with sessions transpiring on February 8, 2011 (R. T000001); on March 15, 2011 (R. T000082); and on April 21, 2011. (R. T000166). At the April 21, 2011 session, the Judge gave his ruling orally, explaining the bases for his either including or disallowing various categories of expenses in the monetary damages award to the Association. (R. T000178, *et seq.*) The Court ordered Carlson to pay past-due monthly assessments and special assessments associated with a replacement patio door and a portion of the Association's requested attorneys' fees, but disallowed the special assessments sought for bringing the elevator and fire panel to code. (*Id.*, and Plaintiff's Exhibit 5).

VI. SUMMARY OF ARGUMENT

With respect to the trial court's striking of Carlson's Affirmative Defenses and its severing Carlson's counterclaim, the trial court's order in this regard should be affirmed. Forcible entry and detainer lawsuits are summary statutory proceedings. Since Carlson's Affirmative Defenses and Counterclaim did not fall into one of the four well established and very limited categories of defenses considered "germane" to forcible entry and detainer actions, the trial court's ruling on the Association's motion to strike and quash, as set forth in the Court's November 9, 2010 Order, was correct.

The trial court also ruled well within the manifest weight of the evidence when it found that the special assessment for the patio-door replacement properly was charged against Carlson. First, the Section of the Act (previously Section 9(d)) upon which Article XVI of the Declaration depended as the origin for unit-owner voting on charges of a certain size has been amended to remove that requirement. Second, even were the Court to determine that the requirement still exists, it was nonetheless met.

With respect to that component of the trial court's judgment order of April 21, 2011 that awarded money damages to the Association, the trial court's Order properly included therein attorneys' fees, costs, late fees and the above-referenced special assessment for patio-door replacement. The trial court abused its discretion, however, insofar it disallowed the special assessment imposed against Carlson for the elevator and fire panel. In particular, elevator and fire panel work was both mandated by law because these items were not up to Code, and because any limits in the Declaration on the amounts the Board of Managers could spend on repairs or replacements of existing portions of the common elements are expressly overridden by Section 18.4(a) of the Act.

Additionally, Carlson – who had not exhausted her administrative remedies – cannot be heard to complain about the imposition of special assessments to fund the two identified items.

VII. ARGUMENT

A. The Trial Court Properly Struck Carlson's Affirmative Defenses and Did Not Abuse Its Discretion When it Severed Carlson's Counterclaim from the Forcible Entry and Detainer Action Because the Affirmative Defenses and Counterclaim Were Not "Germane" Thereto

In her Appellate Brief, Carlson engages in a seven-page evaluation of contract construction, duties imposed by a condominium declaration and causes of action that may theoretically arise from violations of the Declaration. While the Association does not contest the general validity of the general propositions of law for which these cases have been cited, it disagrees completely that they have any relevance to this appeal.

It is well established under Illinois law that "[a] forcible entry and detainer proceeding is a summary statutory proceeding to adjudicate and restore rights of possession and, as such, should not be burdened by matters unrelated to the issue of possession." Subway Restaurants, Inc. v. Riggs, 297 Ill. App. 3d 284, 287 (1st Dist. 1998). Indeed, the FED expressly provides that, "except as otherwise provided in Section 9-120, no matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS § 5/9-106.

Numerous cases have evaluated what matters are germane to an action for forcible entry and detainer – and which are not. As explained in Sawyier v. Young, 198 Ill. App. 3d 1047, 1053 (1st Dist. 1990) – a case cited by Defendant – "[w]here a claim seeks damages and not possession, it is not germane to the distinct purposes of the forcible entry and detainer proceeding". Indeed, only four categories of defenses or

counterclaims are deemed "germane" to the issues raised in forcible entry and detainer proceedings:

> (1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; or (4) claims questioning the plaintiff's motivation for bringing the action.

American Nat. Bank by Metroplex, Inc. v. Powell, 293 Ill. App. 3d 1033, 1044 (1st Dist. 1997). *Accord*, Subway Restaurants, Inc. v. Riggs, *supra*, 297 Ill. App. 3d at 287.

In Sawyier, the Court found that the defendant had "conceded the issue of possession", such that that issue "was not even involved in the proceeding." *Id.*, 198 Ill. App. 3d at 1053. *Compare* Defendant's Answer, ¶ 6, and Counterclaim, ¶ 13, in which she admits that she has not paid her assessments (R. C00022 and C00032) and nowhere asserts a paramount right of possession, challenges the validity or enforceability of the agreement (the Declaration), or questions plaintiff's motivation for bring the action. (R. C00001-C00005; C00021-C00033). Indeed, as in Sawyier, Carlson is alleging by way of "defense" a purported breach of contract by the Association (R. C00026, ¶ 13; and R. C00032, ¶ 13) (*compare* Sawyier, wherein the Court noted, dismissively on the question of whether such "defenses" are germane, that the defendant's claim therein sought only "monetary damages for plaintiffs' alleged breach of the real estate contract and the various torts"). *Id.*, 198 Ill. App. 3d at 1054.

The cases cited by Carlson in support of her pursuit of reversal do not hold differently. For example, in Rosewood Corporation v. Fischer, 46 Ill. 2d 249 (1970), the defendants alleged by way of defense that they were grossly overcharged by plaintiffs based on their race. Such a defense falls squarely within one of the four established

categories of germane defenses, namely, that grounded in plaintiff's motivation for bringing suit. Those claims asserted by way of affirmative defenses and counterclaim by Carlson, conversely – and as noted above – are merely claims for money damages based on purported breach of contract or some amorphous tort theory.

Carlson's attempt to distinguish the landlord-tenant cases raising forcible-entry-and-detainer claims fails because it depends on a false assertion: that "[n]o board of managers of a condominium association has the absolute right to collect assessments." (Appellate Brief, p. 17). This proposition runs directly afoul of Section 18.4(d) of the Act, which provides that:

> The board of managers shall exercise for the association all powers, duties and authority vested in the association by law or the condominium instruments except for such powers, duties and authority reserved by law to the members of the association. *The powers and duties of the board of managers shall include, but shall not be limited to, the following:*
>
> * * *
>
> (d) *To collect assessments from unit owners* . . . . [Emphases added].

For the foregoing reasons, this Court should affirm the trial court's Order of November 9, 2010, striking Carlson's Affirmative Defenses, and severing her Counterclaim from the forcible entry and detainer action.

B. It was Not Against the Manifest Weight of the Evidence for the Trial Court to Include Within the Award of Damages to Plaintiff the $1,950 Charge for the Patio Door

In Article I(h) of the Declaration (the parties' joint Trial Exhibit 1), Limited Common Elements are defined thus:

> Limited Common Elements. A portion of the Common Elements exclusively serving a single Unit or adjoining Units as an appurtenance thereto, specifically including, but not by way of limitation, patio areas, balconies, and such portions of the perimeter walls, floors, ceilings, doors,

> vestibules, windows, entryways, and all associated fixtures and structures therein, as lie outside the Unit boundaries . . . .

There can be no question that a patio door fits squarely within the definition provided not only in the Declaration, but in the Act as well. *See* Section 4.1(a)(5) of the Act. The ramifications of this definition are to trigger Article XVI (Limited Common Elements) of the Declaration, which provides in pertinent part, in regards assessments therefor, that:

> 2. Assessments. The Board may, in its discretion, assess only those owners of units to which Limited Common Elements are assigned for any expenditures made by the Board in connection with those Limited Common Elements, rather than assessing all Unit Owners. Provided, however, that if any assessment will involve an expenditure greater than $300.00 then such assessment must be first approved by the affirmative vote of at least two-thirds (2/3) of the Unit Owners voting at a meeting of Unit Owners called for the purpose of approving the assessment.

It bears noting as a threshold matter that the Declaration's reference to the $300 limit is an outdated vestige of its prior adherence to the exact language of the now amended Act. Specifically, at the time the Declaration was drafted, Section 9(d) of the Act required a vote of two thirds of the unit owners: "[i]f an assessment involves proposed expenditures resulting in a total payment assessed to a unit equal to the greater of five times the unit's most recent common expense assessment calculated on a monthly basis or $300." This provision was repealed as of January 1, 1994, by Public Act 88-417. This Section was then replaced with the Act's Section 18(a)(8), which provides a mechanism whereby, in the event of an assessment increase exceeding 15%, unit owners comprising 20% of the total membership could call for a meeting to reject the budget, in other words, effectuate a "backdoor referendum."

With respect to such "backdoor referenda", the Historical Practice Notes to Section 18 of the Condominium Property Act provide, in pertinent part, that:

> P.A. 88-417, eff. January 1, 1994, repealed the unit owner approval requirement of subsection 9(d) and replaced it with the amended procedures set forth in 18(a)(8) giving condominium Boards substantially greater latitude with respect to increases in special assessments . . . . Note further that the back door reference was intended to totally replace the procedure previously set forth in section 9(d), which had placed the burden on the condominium Board to obtain approval from unit owners with two thirds of the interest in the condominium before a large special assessment could be adopted.

Thus, it is apparent that the antiquated language set forth in Article XVI has been effectively repealed by the foregoing amendment to the Act. This conclusion is consistent with the rule of statutory construction "expressio unius exclusio alterius" (meaning: the expression of one thing is the exclusion of another). Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 155 (1997). In other words, by incorporating a mechanism to limit assessment increases into Section 18 of the Act, the Legislature impliedly was prohibiting any other form of limitation.

This argument notwithstanding, the Record reflects that the opportunity to vote *was* provided to the members of the Association and that all unit owners in attendance at the Board meeting on December 16, 2009 voted in favor of the passage of the special assessment. In particular, Plaintiff's Trial Exhibit 3 – the minutes of a meeting of the Board on December 16, 2009 – identified by name the 14 unit owners present at the meeting and that "[t]he persons present were in favor to replace the doors." (R. T000034).

Moreover, and contrary to Carlson's tortured reading into the Declaration of a non-existent requirement that two thirds *of the Association membership in its entirety*

needed to vote on the patio doors (Appellate Brief, p. 20), in fact, only two thirds *of those members present at the meeting* needed to vote in favor of the special assessment to ensure its passage. Here, the vote was unanimous. Even if a vote were required, then – which requirement the Association refutes – such a vote was nonetheless taken out of abundance of caution. This basis of the money damages award in the Association's favor, therefore, should also be affirmed on appeal.

C. The Trial Court Properly Awarded a Monetary Judgment in the Association's Favor that was Inclusive of Attorneys' Fees and Fees for Late Payment of Assessments

As set forth in Section 9(a) of the Act, "[i]t shall be the duty of every unit owner including the developer to pay his proportionate share of the common expenses commencing with the first conveyance." Section 9.2 of the Act further provides that "[a]ny attorneys' fees incurred by the Association arising out of a default by any unit owner . . . in the performance of any of the provision of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense." Such Sections are in accordance with the provisions of the Declaration, to which Carlson is also bound as a matter of law. *See* Joint Trial Exhibit 1 at pp. 3 and 7 (Declaration, Articles VIII and XXI).

The Act also expressly empowers the board of managers to "impose charges for late payment of a unit owner's proportionate share of the common expenses . . . ." Indeed, a late fee in the amount of $25 (as was imposed against Carlson here; R. C00009) has been found by Courts in this State to be *per se* reasonable. Hidden Grove Condominium Association v. Crooks, 318 Ill.App.3d 945 (3rd Dist. 2001).

In any event, however, the trial court's award of monetary damages for unpaid common expenses and late fees was the subject of an Agreed Order of Possession and Judgment as between counsel for the Association and Carlson. (R. C00134). It was expressly understood that the sum included in such agreed order was inclusive of some special assessments and some late fees. (R. T000007, ll.17-20). As an agreed order, the Agreed Order of Possession and Judgment Order is properly unappealable. McGath v. Price, 342 Ill. App. 3d 19, 30 (1st Dist. 2003) ("we agree with [defendants'] contentions that the March 6, 2001, order was unappealable because it was entered as an agreed order").

Carlson cites no case law in support of any of the arguments found at Section III of her Appellate Brief. Allied Am. Ins. Co. v. Ayala, 247 Ill. App. 3d 538, 543 (2nd Dist. 1993) ("[a]lthough plaintiff raises numerous arguments in support of its contention, plaintiff cites no authority for all but one of its arguments, and for that reason alone we could deem them waived"). In addition to the above supported bases, then, this Court should find the arguments raised in Section III of Carlson's Appellate Brief waived, and affirm the trial court's award of late fees and attorneys' fees and costs to the Association.

D. The Trial Court's Disallowance of Monetary Damages to Plaintiff in an Amount Equal to the Special Assessment for the Elevator and Fire Panel, was Erroneous as a Matter of Law and Constitutes an Abuse of Discretion

While the esteemed trial court Judge most commendably sorted through the vast majority of the facts and issues presented in this matter, as to one issue he erred as a matter of law and, thus abused his discretion: in disallowing monetary damages to the Association in an amount commensurate with the special assessment charged against Carlson for the elevator and fire panel that were the subject of a special assessment

against the unit owners. (R. T000184, ll.9-16). In that sole regard, it is respectfully submitted that the trial court's determination was so erroneous as to constitute an abuse of discretion, warranting an outright reversal. In re Estate of Hoover, 155 Ill. 2d 402, 419 (1993) ("the trial court's application of an erroneous rule of law in granting defendants' motion for sanctions constitutes an abuse of discretion).

In particular, the Association introduced evidence of the Board of Manager's having passed a special assessment in connection with its elevator and a fire panel. (R. C000041-42; Plaintiff's Trial Exhibits 4 and 5). As reflected in the minutes at which the Board of Managers passed such special assessment, "[t]he increase in monthly assessments and the special assessment will be used to upgrade the elevator(s) and fire alarm to code."

As a threshold matter, Section 18(a)(8)(iv) of the Act provides that "separate assessments for expenditures relating to emergencies *or mandated by law* may be adopted by the board of managers without being subject to unit owner approval or the provision of item (ii) above or item (v) below." (Emphasis added). Here, minutes from the meeting at which the Board of Managers voted on and approved the special assessment relating to the elevator and fire panel expressly note that "[t]he increase in monthly assessments and the special assessment will be used to upgrade the elevator(s) and fire alarm to code." Since said special assessment properly is deemed mandated by law, no vote of the unit owners is required under the Act.

A unit-owner vote is even more obviously excused under the Act pursuant to Section 18.4(a) thereof, wherein the Act provides that, while "[n]othing in this subsection (a) shall be deemed to invalidate any provision in a condominium instrument placing

limits on expenditures for the common elements, . . . *such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the common elements*." (Emphasis added). This Section of the Act goes on to explain that the term "'repair, replacement or restoration' means expenditures to deteriorated or damaged portions of the property related to the existing . . . structural or mechanical components." Said replacement is expressly permitted to constitute an improvement. *Id.*

Finally, the special assessment is not subject to a vote under Section 18(a)(8) of the Act because it was included in the adopted annual budget. (Plaintiff's Trial Exhibit 5). *See* Act, Section 18(a)(8)(v) ("assessments for additions and alterations to the common elements or to Association-owned property *not included in the adopted annual budget,* shall be separately assessed and are subject to approval of two-thirds of the total votes of all unit owners . . . . ").

Section 4.1(b) of the Act provides that, "in the event of a conflict between the provisions of the declaration and the bylaws or other condominium instruments, the declaration prevails *except to the extent the declaration is inconsistent with this Act*") (emphasis added). Moreover, "[t]he provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument which contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any such instrument which fails to contain the provisions required by this Section shall be deemed to incorporate such provisions by operation of law."

In short, in any number of ways, the special assessment regarding repairs to the elevator and fire panel should have been included as monetary damages in the

Association's favor, and the Court's failure to have so included them constitutes an abuse of discretion and an erroneous application of the law.

E. The Association is Entitled to an Award of its Further Attorneys' Fees and Costs Incurred Relative to This Appeal

On appeal, the Association has incurred substantial additional fees and costs in connection with its defense of the judgments entered in its favor at the trial court level and pursuing the special assessments Carlson has refused to pay. The filing of an appeal constitutes a continuation of the same proceeding as was begun in the Circuit Court, not a new case. Washington v. Civil Service Com'n, 146 Ill.App.3d 73, 76 (1st Dist. 1986). Thus, in the event that the Court upholds the previous judgments in the Association's favor, and/or awards the Association the disallowed special assessment sought on the Association's cross-appeal, the Association seeks an award of such additional attorneys' fees and costs as it will have been caused to expend on this appeal. The Association asks that this Honorable Court remand this particular issue for further proceedings before the trial court to determine the appropriate amount of additional fees and costs to be awarded to it. Wilmette Partners v. Hamel, 230 Ill.App.3d 248, 265-266 (1st Dist. 1992).

VIII. CONCLUSION

For the foregoing reasons, Plaintiff-Appellee/Cross-Appellant, Spanish Court Two Condominium Association, prays that this Honorable Court:

A. Affirm those portions of the Orders dated January 31, 2011 and April 21, 2011 awarding possession and judgment in favor of the Association in amounts commensurate with the then-unpaid general assessments/common expenses and special assessments for the patio doors owed by Defendant-Appellant/Cross-Appellee, Lisa Carlson herein;

B. Reverse outright the trial court's denial of additional money damages to the Association in an amount equal to the special assessments due and owing by Carlson for the fire alarm panel and elevator, namely, of $197.77 per month, beginning January 2011 and continuing through present;

C. To the extent the Association prevails on this appeal, remand this matter to the trial court with instructions to determine such other attorneys' fees and costs as are to be awarded to the Association for all post-judgment matters relating to this litigation, inclusive of the handling of this matter on appeal and through collection on such amended judgment as may be entered in the Association's favor; and

D. Award the Association such other and further relief as the Court deems just and proper.

Respectfully submitted,

SPANISH COURT TWO CONDO-MINIUM ASSOCIATION

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