

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA  
CIVIL DIVISION**

FLOW WAY COMMUNITY DEVELOPMENT  
DISTRICT,

Plaintiff,

v.

Case No.: 20-CA-4147

TAYLOR MORRISON OF FLORIDA, INC.,  
TAYLOR MORRISON ESPLANADE NAPLES,  
LLC, TIM HALL, TURRELL, HALL & ASSOCIATES,  
INC., STEPHEN REITER, ADAM PAINTER, ANDREW  
MILLER, JOHN WOLLARD, CHRISTOPHER NIRENBERG,  
and ESPLANADE GOLF & COUNTRY CLUB OF NAPLES,  
INC.,

Defendants.

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**PLAINTIFF'S REPLY TO DEFENDANT TIM HALL'S AFFIRMATIVE DEFENSES TO THE  
THIRD AMENDED COMPLAINT**

Plaintiff, FLOW WAY COMMUNITY DEVELOPMENT DISTRICT ("Plaintiff"), by and through its undersigned counsel, and in accordance with the Florida Rules of Civil Procedure, hereby replies to the Affirmative Defenses filed by Defendant, TIM HALL ("Hall"), in response to the Third Amended Complaint as follows:

1. **First Affirmative Defense:** Plaintiff denies Defendant Hall's First Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that the First Affirmative Defense serves as nothing more than a denial of the allegations set forth by Plaintiff against Defendant Hall for breach of fiduciary duty. As such, the First Affirmative Defense fails. *See generally, Wiggins v. Portmay Corp.*, 430 So. 2d 541, 542 (Fla. 1st DCA 1983) ("Affirmative defenses do not simply deny the facts of the opposing party's claim. They raise some new matter which defeats an otherwise apparently valid claim."). Plaintiff has sufficiently pled a claim for breach of fiduciary duty against Defendant Hall. Hall exceeded the scope of his authority and/or agency. Specifically, Hall took actions on behalf of, or otherwise at

the direction of, TAYLOR MORRISON ESPLANADE NAPLES, LLC (“TM Esplanade”) and/or TAYLOR MORRISON OF FLORIDA, INC. (“TM”), that were to their benefit and to the detriment of Plaintiff.

2. **Second Affirmative Defense:** Plaintiff denies Defendant Hall’s Second Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that its claims for declaratory relief are not brought against Defendant Hall, and his Second Affirmative Defense is therefore inapplicable. The only claim pending against Defendant Hall in the Third Amended Complaint is count V for breach of fiduciary duty. Defendant Hall’s Second Affirmative Defense fails.

3. **Third Affirmative Defense:** Plaintiff denies Defendant Hall’s Third Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that the Third Affirmative Defense serves as nothing more than a denial of the allegations set forth by Plaintiff against Defendant Hall for breach of fiduciary duty. As such, the Third Affirmative Defense fails. See *id.* Plaintiff has sufficiently pled a claim for breach of fiduciary duty against Defendant Hall. Hall exceeded the scope of his authority and/or agency. Specifically, Hall took actions on behalf of, or otherwise at the direction of, TM Esplanade and/or TM that were to their benefit and to the detriment of Plaintiff.

4. **Fourth Affirmative Defense:** Plaintiff denies Defendant Hall’s Fourth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that, as a resident-controlled board, it has not condoned nor participated in the actions or decisions of Defendant Hall. Rather, and as set forth more fully in the Third Amended Complaint (the factual allegations of which are incorporated herein for all purposes), Hall was serving as a representative on behalf of the developer, TM Esplanade, at a time when Plaintiff was developer-controlled. The actions undertaken by Hall were for the benefit of TM Esplanade and/or TM, and to the detriment of Plaintiff. Accordingly, the Fourth Affirmative Defense fails.

5. **Fifth Affirmative Defense:** Plaintiff denies Defendant Hall's Fifth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that the Fifth Affirmative Defense serves as nothing more than a denial of Plaintiff's entitlement to damages, as pled within the Third Amended Complaint. Further, Plaintiff, only as recently as November 2020, became resident-controlled; and, at all times prior and relevant to the claims, Plaintiff was developer-controlled. As such, TM and TM Esplanade improperly directed Hall to act on their behalf, which was to the detriment of Plaintiff. After Plaintiff became resident-controlled, Plaintiff brought the instant action so as to address the losses sustained to it as a result of the Defendants' wrongdoings, as set forth more fully in the Third Amended Complaint (the factual allegations of which are incorporated herein for all purposes). Thus, the Fifth Affirmative Defense fails.

6. **Sixth Affirmative Defense:** Plaintiff denies Defendant Hall's Sixth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff hereby restates and incorporates its reply to the Fourth Affirmative Defense, above, as if also set forth herein in full. Further, Hall knew or should have known that the actions undertaken on behalf of, or otherwise at the request of, TM and/or TM Esplanade were to the detriment of the CDD and in violation of the relevant permit conditions discussed within the Third Amended Complaint (the factual allegations of which are incorporated herein for all purposes). As a result, the Sixth Affirmative Defense fails.

7. **Seventh Affirmative Defense:** Plaintiff denies Defendant Hall's Seventh Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that to the extent that Hall is attempting to, or has, adopted and incorporated any affirmative defenses pled by Defendants, Taylor Morrison of Florida, Inc., Taylor Morrison Esplanade Naples, LLC, Turrell, Hall & Associates, Inc., Stephen Reiter, Adam Painter, Andrew Miller, John Wollard, Christopher Nirenberg, and/or Esplanade Golf & Country Club of Naples,

Inc.'s (collectively "Defendants"), Affirmative Defenses, Plaintiff restates and incorporates its respective replies to those Affirmative Defenses as if also set forth herein in full.

8. **Eighth Affirmative Defense:** Plaintiff denies Defendant Hall's Eighth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that the defense of set off does not serve as a bar to Plaintiff's claims.

9. **Ninth Affirmative Defense:** Plaintiff denies Defendant Hall's Ninth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that Florida law is clear that to assert a *Fabre* defense and be able to present the non-party at trial, a "defendant must plead as an affirmative defense the negligence of the nonparty and specifically identify the party." *Nash v. Wells Fargo Guard Servs., Inc.*, 678 So. 2d 1262, 1264 (Fla. 1996); *see also Claudio v. Regalado*, 116 So. 3d 451, 454 (Fla. 2d DCA 2013) (distinguishing counter-defendants from *Fabre* Defendants, and specifying that for the latter to be on a verdict form, both the negligence and identity of the non-party must be pled). Defendant Hall has failed to identify any other parties it contends to be at fault and has failed to identify any specific negligent acts of those parties. As such, its Ninth Affirmative Defense is improperly pled and does not serve as a bar to Plaintiff's claims.

Defendant Hall has also failed to allege any negligent acts of Plaintiff, which would implicate the comparative fault provision of Section 768.81, Florida Statutes. Accordingly, Defendant Hall's Ninth Affirmative Defense fails.

10. **Tenth Affirmative Defense:** Plaintiff denies Defendant Hall's Tenth Affirmative Defense, and demands strict proof thereof. In further reply to this Affirmative Defense, Plaintiff asserts that Defendant Hall has failed to identify or allege any negligent act of Plaintiff that could have caused or otherwise contributed to its damages asserted in the Third Amended Complaint. Quite simply, there is none. Accordingly, Defendant Hall's Tenth Affirmative Defense fails.

11. **Eleventh Affirmative Defense:** Plaintiff denies Defendant Hall's Eleventh Affirmative Defense, and demands strict proof thereof. In further reply, Plaintiff asserts that the

Eleventh Affirmative Defense is merely duplicative of the Ninth and Tenth Affirmative Defenses asserted by Defendant Hall and accordingly fails as a result thereof. To the extent that a reply is necessary, however, Plaintiff restates and incorporates its replies to the Ninth and Tenth Affirmative Defenses, above, as if also set forth in full herein.

12. Lastly, Plaintiff asserts that Defendant Hall is estopped from asserting, or has waived his right to assert, each and every one of his Affirmative Defenses due to his own acts, representations, and/or omissions, as set forth more fully in Plaintiff's Third Amended Complaint (the factual allegations of which are incorporated herein for all purposes).

WHEREFORE, Plaintiff, FLOW WAY COMMUNITY DEVELOPMENT DISTRICT, requests the entry of Judgment in its favor, and against Defendant, TIM HALL, denying the relief requested by Defendant Hall, and awarding all damages, pre- and post-judgment interest, and costs to Plaintiff, together with all such other and further relief that the Court deems just and proper.

Dated this 21<sup>st</sup> day of June, 2021.

**WOODS, WEIDENMILLER, MICHETTI &  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court via the E-Filing Portal on this 21<sup>st</sup> day of June 2021, which will send notification to the following counsel of record:

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