

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

LARRY CINCO AND PAUL FLAIG,

Appellants/Cross-Appellees,

v.

Case No. 5D18-2897

COQUINA PALMS HOMEOWNERS ASSOC., INC.,

Appellee/Cross-Appellant.

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Opinion filed August 21, 2020

Appeal from the Circuit Court
for Brevard County,
Tonya B. Rainwater, Judge.

Adam M. Bird, of WhiteBird, PLLC,
Melbourne, for Appellant/Cross-Appellee,
Paul Flaig.

Charles A. Schillinger, of Schillinger &
Coleman, P.A., Melbourne, for
Appellant/Cross-Appellee, Larry Cinco.

Charles C. Powers, of The Powers Law
Firm, Indian Harbour Beach, for
Appellee/Cross-Appellant.

PER CURIAM.

Appellants Larry Cinco (“Cinco”) and Paul Flaig (“Flaig”) appeal a final judgment in favor of Coquina Palms Homeowners Association, Inc. (the “HOA”). Of the thirteen issues raised on appeal, one merits discussion. We agree with Flaig that the trial court erred in

awarding the HOA relief under the wrongful act doctrine when the HOA did not plead this special damage.

Following a bifurcated bench trial, the HOA prevailed on its breach of fiduciary duty claim against Flaig and its conspiracy to commit fraud claim against Cinco. Flaig, an HOA board member, had conspired with Cinco, his long-time friend, to defraud the HOA. This conspiracy included Flaig's efforts to facilitate Cinco's unsuccessful lawsuit against the HOA, which caused the HOA to incur attorney's fees. The trial court awarded the HOA its attorney's fees as damages for Flaig's breach of fiduciary duty under the wrongful act doctrine.

The wrongful act doctrine is an exception to the general rule that attorney's fees are recoverable only when a contract or statute authorizes recovery. *Bidon v. Dep't of Prof'l Reg.*, 596 So. 2d 450, 452 n.3 (Fla. 1992). The doctrine allows a plaintiff to recover its attorney's fees as a special damage when a defendant's wrongful act caused the plaintiff to litigate with a third party. *Rayburn v. Bright*, 163 So. 3d 735, 736–37 (Fla. 5th DCA 2015). Special damages “do not follow by implication of law merely upon proof of the breach.” *Land Title of Cent. Fla., LLC v. Jimenez*, 946 So. 2d 90, 93 (Fla. 5th DCA 2006). As with all special damages, the HOA had to specifically plead the wrongful act doctrine. *See id.*; *See also* Fla. R. Civ. P. 1.120(g).

In its second amended third-party complaint, the HOA merely alleged that it had suffered damages, including attorney's fees, “as a direct and proximate cause of [Flaig's] material and substantial breach of fiduciary duty.” The HOA did not specifically plead the wrongful act doctrine, and accordingly, it cannot recover its fees on this basis. On remand, the trial court should vacate that portion of the final judgment awarding the HOA

damages against Flaig based on the wrongful act doctrine and enter a judgment for nominal damages. See *Stevens v. Cricket Club Condo., Inc.*, 784 So. 2d 517, 519 (Fla. 3d DCA 2001); *Muroff v. Dill*, 386 So. 2d 1281, 1284 (Fla. 4th DCA 1980). Finally, the trial court should conduct further proceedings related to the HOA's potential entitlement to attorney's fees on the five other bases the HOA advanced, as well as an award of prevailing party costs.

AFFIRMED in part; REVERSED in part; and REMANDED with INSTRUCTIONS.

EVANDER, C.J., SASSO and TRAVER, JJ., concur.