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FT. CAROLINE DEVELOPMENT, CORP.,
a Florida corporation

Plaintiff,

v.

GATELY OAKS UNIT FOUR HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2020-CA-399

DIVISION: CV-A

**LIMITED APPEARANCE, MOTION TO QUASH SERVICE OF PROCESS AND
MOTION TO SET ASIDE CLERK'S DEFAULT AND FINAL SUMMARY JUDGMENT**

Defendant, GATELY OAKS UNIT FOUR HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association"), makes this limited appearance, moves this Court to quash service of process purportedly made against the Association, and moves the Court to set aside the Clerk's Default and Final Summary Judgment against the Association, and states:

Background

1. On January 31, 2020, Plaintiff, FT. CAROLINE DEVELOPMENT, CORP., a Florida corporation ("Plaintiff"), filed a purported *Return of Service* of the Association [**Docket No. 006**].

2. The service states that:

I, George Yazgi, do hereby affirm that on the **29th day of January, 2020 at 2:48 pm, I:** served a **CORPORATION/LLC** by delivering a true copy of the **Summons, Complaint for Declaratory Judgment with Exhibits** with the date and hour of service endorsed thereon by me, to: **LIZ CRAWFORD** as **OFFICE MANAGER FOR THE R/A, ELIM SERVICES** for **GATELY OAKS UNIT FOUR HOMEOWNERS ASSOCIATION, INC.**, at the address of:

1941 MAYPORT ROAD, JACKSONVILLE, FL 32233, and informed said person of the contents therein, in compliance with state statutes.

3. This process, however, was not served in accordance with Florida law.

4. Liz Crawford was not served process in this action nor was any other employee or representative of Elim Services, Inc. ("Registered Agent"). Attached as **Exhibit "A"** is an affidavit of Liz Crawford attesting to the foregoing, and attached as **Exhibit "B"** is an affidavit of Rhonda Hutto attesting to the foregoing.

5. The Association had no notice of this action prior to entry of the *Final Summary Judgment* [**Docket No. 013**] against the Association. Attached as **Exhibit "C"** is an affidavit of Scott Wilson, President of the Association, attesting to the fact that (i) neither the Association's Board of Directors or its other agents were served; and (ii) the Association was not aware of this action until its general counsel, Ansbacher Law, P.A. ("Ansbacher Law"), notified the Association that it had been mailed a copy of the Final Summary Judgment on May 6, 2020.

6. Ansbacher Law was also unaware of this action until it received a copy of the Final Summary Judgment by mail on May 6, 2020. Attached as **Exhibit "D"** is the envelope addressed to Ansbacher Law containing a copy of the judgment.

7. Following delivery of a copy of the Final Summary Judgment, Ansbacher Law raised the concern regarding service to counsel for Plaintiff and requested that Plaintiff consent to setting aside the Clerk's Default and Final Summary Judgment entered against the Association.

8. Counsel for Plaintiff has after several telephone conferences not agreed to this request, but has yet to substantively respond.

9. Plaintiff and its counsel were well aware that the Association was represented by Ansbacher Law, and the Association disputed the relief ultimately sought in this action as

evidenced by the letter from Ansbacher Law to Randall L. Towers, President of Ft. Caroline Development Corp., attached as Exhibit B to the Complaint. Yet Plaintiff made no effort to contact Ansbacher Law at any time, and instead proceeded to obtain a final judgment without any trial or hearing on the merits of the dispute.

Limited Appearance

10. The Association and its counsel, Ansbacher Law, appear solely for the purposes of seeking to quash the purported service of process in this action and to set aside the Clerk's Default and Final Summary Judgment entered against the Association.

11. The Association does not otherwise consent to the jurisdiction of this Court on the basis that proper service of process has not been affected upon it.

12. Ansbacher Law appears for the sole purpose of seeking to quash the service of process and to set aside the Clerk's Default and Summary Judgment entered against the Association.

Motion to Quash For Lack of Personal Jurisdiction

13. Section 48.21(1), Fla. Stat., requires that each person who effects service of process *"shall note on a return [...] the name of the person on whom it was served, and, if the person is served in a representative capacity, the position occupied by the person."*

14. Pursuant to Section 48.21(2), Fla. Stat., a failure to state such facts invalidates the service.

15. As an initial matter, service did not occur on the individual identified in the Return of Service. As such same failed to comply with Section 48.21, Fla. Stat.

16. Further, service did not occur on any employee or representative of the Registered Agent nor did it occur on the Association's Board of Directors or any of its other agents.

17. Pursuant to Liz Crawford's Affidavit, she was not served with process on January 29, 2020 or at any other time, nor is she aware of another employee or representative of the Registered Agent who was served on January 29, 2020 or any other time.

18. Pursuant to Rhonda Hutto's Affidavit, she was not served with process on January 29, 2020 or at any other time, nor is she aware of another employee or representative of the Registered Agent who was served on January 29, 2020 or any other time.

19. Pursuant to Scott Wilson's Affidavit, neither the Association's Board of Directors nor its other agents were served with process.

20. Accordingly, the Return of Service and any purported service of the Association should be quashed and service should be required in accordance with Florida law.

WHEREFORE, the Association moves that this Court quash the Return of Service and any purported service against it, withdraw the Final Summary Judgment entered against the Association, and grant such further and general relief that this Court deems just.

Motion to Set Aside Clerk's Default and Final Summary Judgment

21. The Association moves that this Court set aside the Clerk's Default as well as the Final Summary Judgment entered against it in this action.

22. As service of process was not served on the Registered Agent and service of process had not been legally affected upon the Association, jurisdiction did not exist for entry of a default or final summary judgment against the Association.

23. Further, as the Association had no notice of either Plaintiff's *Motion for Default* [Docket No. 007] or the hearing on Plaintiff's *Motion for Final Summary Judgment* [Docket No. 009], the Clerk's Default and Final Summary Judgment are void. *See Renovaship, Inc. v. Quatremain*, 208 So. 3d 280, 285 (Fla. 3d 2016) ("The general principle of law is well-settled: a

final judgment entered without adequate notice of the hearing and an opportunity to be heard is void.")

24. Alternatively, even if such jurisdiction did exist, the Association can show excusable neglect, meritorious defense, and due diligence in addressing the matter.

25. As the Association was not aware of this action or the purported service of process until May 06, 2020, its failure to respond to the complaint prior to this Motion is excusable.

26. The Association does not agree with the findings in the Final Summary Judgment as Plaintiff's proposed use violates Section 10.1 of the Declaration of Covenants and Restrictions for Gately Oaks Unit Four's (the "Declaration") requirement that all lots "be used for residential dwellings and for no other purpose[...]"

27. The Association asserts that Section 10.21 of the Declaration is null and void as the transition of association control from Plaintiff to the homeowners has already occurred. As such Plaintiff does not have a right to unilaterally re-plat Lot 2 of Gately Oaks Unit Four.

28. The Association disputes that Plaintiff is the owner and holder of any developer rights reserved in the Declaration, and thus is not entitled to assert any claims for relief on such basis.

29. Section 11.7 of Declaration no longer reserves an easement across the Subdivision for Plaintiff as: (i) Plaintiff's right "*unilaterally* to subject property" to the Declaration terminated as the transition of control of the Association from Plaintiff to non-developer members already occurred; and (ii) Plaintiff ceased to own "any property within the Subdivision for development or sale." Title to Lot 2 of Gately Oaks Unit Four was not transferred back to Plaintiff until February of 2018. Prior to February of 2018, Plaintiff's easement rights under Section 11.7 of the

Declaration had already expired. A copy of the warranty deed vesting title to Plaintiff is attached hereto as **Exhibit "E."**

30. For each of these reasons, the Association can demonstrate a meritorious defense.

31. Upon learning of the action on May 06, 2020, after Final Summary Judgment had already been entered, the Association immediately noticed a board meeting in order to request the assistance of Ansbacher Law with respect to this action.

32. Upon authorizing Ansbacher Law's assistance at a duly noticed board meeting held on May 8, 2020, the Association immediately began investigating the validity of the purported Return of Service and whether process had actually been served on the Registered Agent.

33. The Association's counsel promptly called Plaintiff's counsel to: (a) determine why Plaintiff's counsel failed to notify them of the action when such counsel clearly knew the Association was generally represented by Ansbacher Law, as evidenced by Exhibit "B" to Plaintiff's Complaint; and (b) seek Plaintiff's consent in setting aside the Clerk's Default and Final Summary Judgment.

34. Such steps constitute due diligence by the Association upon learning of the action and purported service of process.

35. Default judgments are not favored and "a court's discretion should be liberally exercised and all reasonable doubt resolved in favor of granting applications for relief so as to permit a determination of the controversy upon the merits." *Paul v. Wells Fargo, N.A.*, 68 So. 3d 979, 981 (Fla. 2d DCA 2011).

WHEREFORE, the Association requests that this Court set aside the Clerk's Default and Final Summary Judgment against the Association, and grant such further and general relief as this Court deems just.

ANSBACHER LAW

/s/ Thomas D. Jenks

Barry B. Ansbacher
Florida Bar No. 792901
Thomas D. Jenks
Florida Bar No. 126449
8818 Goodbys Executive Drive, Suite 100
Jacksonville, Florida 32217-4692
904.737.4600 Voice
904.254.4409 Fax
ATTORNEY FOR THE ASSOCIATION FOR
LIMITED PURPOSES DESCRIBED IN THIS
MOTION

**Email Addresses Designated for service
Pursuant to Fla. R. Jud. Admin 2.516:**

Primary: tdj@ansbacher.net
bba@ansbacher.net
Secondary: litigation@ansbacher.net
alawpleadings@gmail.com
cca@ansbacher.net

CERTIFICATE OF SERVICE

I CERTIFY that a copy of this document has been served on this 22nd day of May, 2020 to the parties identified below (i) through the Florida Courts E-Filing Portal and/or by E-mail pursuant to Fla.R.Jud.Admin. Rule 2.516(b)1, or (ii) by the alternative method specified above the party's name.

/s/ Thomas D. Jenks

Attorney

SERVICE LIST

Paul M. Harden paul_harden@bellsouth.net	
---	--

PAUL M. HARDEN 501 Riverside Avenue, Suite 901 Jacksonville, Florida 32202 Telephone: 396-5731 Fax: (904) 399-5461 <i>Counsel for Plaintiff</i>	
--	--

EXHIBIT "A"
AFFIDAVIT OF LIZ CRAWFORD

FT. CAROLINE DEVELOPMENT, CORP.,
a Florida corporation

Plaintiff,

v.

GATELY OAKS UNIT FOUR HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.:

DIVISION:

AFFIDAVIT OF LIZ CRAWFORD

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared, LIZ CRAWFORD
("Affiant"), who, upon being duly sworn upon oath, deposes and says:

1. My name is Liz Crawford and I am over the age of 18 and legally competent to make this Affidavit. The matters set forth in this Affidavit are based on my personal knowledge.
2. At all times material I have been the office manager for Elim Services, Inc., a Florida corporation ("Elim").
3. At all times material Elim has served as registered agent for Gately Oaks Unit Four Homeowners Association, Inc., a Florida not-for-profit corporation (the "Association").
4. Elim also serves as registered agent for various other community associations organized under the laws of the State of Florida.
5. When accepting service of process on behalf of the community associations for which Elim serves as registered agent to, Elim adheres to the following procedures:

a. Upon receipt of a summons and complaint, it is placed in either the "AR" Folder or "CAM" Folder applicable to the affected community association.

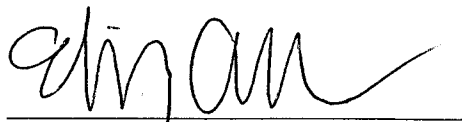
b. Upon placement of the summons and complaint into the applicable "AR" or "CAM" folder, either the AR representative or community association manager forwards same to the affected community association.

6. I, nor to my knowledge any other employee or agent of Elim, was aware of the action styled as *Ft. Caroline Development, Corp. v. Gately Oaks Unit Four Homeowners Association, Inc.*, Case No. 16-2020-CA-000399, in the Circuit Court, Fourth Judicial Circuit, for Duval County, Florida (the "Action"), until we were made aware by Ansbacher Law, P.A. on or about May 06, 2020.

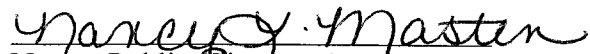
7. I was not served the summons and complaint in this Action by George Yazgi or any other person on January 29, 2020.

8. I have not at any time been served the summons and complaint in this Action by George Yazgi or any other person.

FURTHER AFFIANT SAYETH NAUGHT.


LIZ CRAWFORD, Affiant

Sworn to and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 22nd day of May, 2020, by LIZ CRAWFORD who ☒ is personally known to me or ☐ produced _____ as identification.


Notary Public (Signature)

Notary Public (Typed, stamped, or printed)

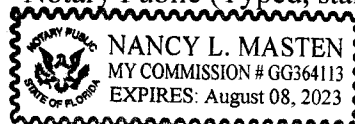


EXHIBIT "B"

AFFIDAVIT OF RHONDA HUTTO

FT. CAROLINE DEVELOPMENT, CORP.,
a Florida corporation

Plaintiff,

v.

GATELY OAKS UNIT FOUR HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.:

DIVISION:

AFFIDAVIT OF RHONDA HUTTO

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared, RHONDA HUTTO ("Affiant"), who, upon being duly sworn upon oath, deposes and says:

1. My name is Rhonda Hutto and I am over the age of 18 and legally competent to make this Affidavit. The matters set forth in this Affidavit are based on my personal knowledge.
2. At all times material I have been a Community Association Manager with Elim Services, Inc., a Florida corporation ("Elim").
3. At all times material Elim has served as registered agent for Gately Oaks Unit Four Homeowners Association, Inc., a Florida not-for-profit corporation (the "Association").
4. Elim also serves as registered agent for various other community associations organized under the laws of the State of Florida.
5. When accepting service of process on behalf of the community associations for which Elim serves as registered agent to, Elim adheres to the following procedures:

a. Upon receipt of a summons and complaint, it is placed in either the "AR" Folder or "CAM" Folder applicable to the affected community association.

b. Upon placement of the summons and complaint into the applicable "AR" or "CAM" folder, either the AR representative or community association manager forwards same to the affected community association.

6. I, nor to my knowledge any other employee or agent of Elim, was aware of the action styled as *Ft. Caroline Development, Corp. v. Gately Oaks Unit Four Homeowners Association, Inc.*, Case No. 16-2020-CA-000399, in the Circuit Court, Fourth Judicial Circuit, for Duval County, Florida (the "Action"), until we were made aware by Ansbacher Law, P.A. on or about May 06, 2020.

7. To the best of my knowledge and belief, on January 29, 2020 at 2:48 pm, the following employees and representatives of Elim were present at 1941 Mayport Road, Jacksonville, Florida 32233:

a. Liz Crawford; and

b. Elena Deesa Armstrong.

8. I was not served with the summons and complaint in this Action by George Yazgi or any other person on January 29, 2020.

9. I have not at any time been served with the summons and complaint in this Action by George Yazgi or any other person.

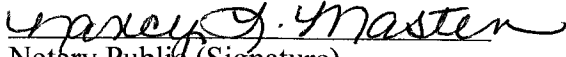
10. To the best of my knowledge and belief, none of the individuals listed in Paragraph 7 of this Affidavit were served the summons and complaint in this Action by George Yazgi or any other person on January 29, 2020.

11. To the best of my knowledge and belief, no other employees or agents of Elim were ever served the summons and complaint in this Action.

FURTHER AFFIANT SAYETH NAUGHT.


RHONDA HUTTO, Affiant

Sworn to and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 22nd day of May, 2020, by RHONDA HUTTO who ☒ is personally known to me or ☐ produced _____ as identification.


Notary Public (Signature)

Notary Public (Typed, stamped, or printed)

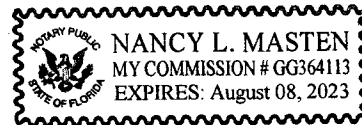


EXHIBIT "C"
AFFIDAVIT OF SCOTT WILSON

FT. CAROLINE DEVELOPMENT, CORP.,
a Florida corporation

Plaintiff,

v.

GATELY OAKS UNIT FOUR HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

CASE NO.:
DIVISION:

AFFIDAVIT OF SCOTT WILSON

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared, Scott Wilson ("Affiant"),
who, upon being duly sworn upon oath, deposes and says:

1. My name is Scott Wilson and I am over the age of 18 and legally competent to
make this Affidavit. The matters set forth in this Affidavit are based upon my personal
knowledge.

2. At all times material I have served as President of Gately Oaks Unit Four
Homeowners Association, Inc. (the "Association").

3. At all times material, Elim Services, Inc. ("Elim") has served as registered agent
for the Association.

4. I, nor any other board member, received a copy of the summons and complaint
purportedly served on Elim or any other notice whatsoever regarding the action styled as *Ft.
Caroline Development, Corp. v. Gately Oaks Unit Four Homeowners Association, Inc.*, Case No.

16-2020-CA-000399, in the Circuit Court, Fourth Judicial Circuit, for Duval County, Florida (the "Action").

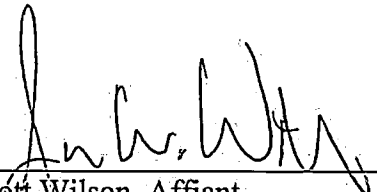
5. I, nor any other Board Member, was served with process in the Action by George Yazgi or any other person at any time.

6. I, nor any other board member, was made aware of the Action, until we were informed by our general counsel, Ansbacher Law, P.A., that a copy of the *Final Summary Judgment* was delivered to them on May 06, 2020.

7. Upon learning of the Action, the Association's Board of Directors duly noticed an attorney-client meeting of the Board of Directors for May 8, 2020.

8. At such meeting, the Board of Directors approved seeking the assistance of Ansbacher Law, P.A. with respect to the Action.

FURTHER AFFIANT SAYETH NAUGHT.



Scott Wilson, Affiant

Sworn to and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 19th day of May, 2020, by Scott Wilson who ☐ is personally known to me or ☒ produced FL DL as identification.





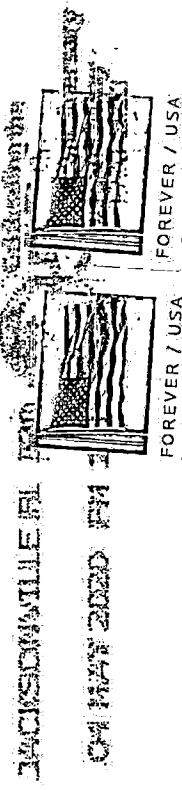
Notary Public (Signature)

Dawn Veree Marshall
Notary Public (Typed, stamped, or printed)

EXHIBIT "D"

ENVELOPE CONTAINING FINAL SUMMARY JUDGMENT

Waddell A. Wallace, III
Circuit Judge
Duval County Courthouse
501 W. Adams Street
Jacksonville, FL 32202



Ansbacher Law
Attn: Christine M. Ertel, Esq.
8188 Goodbye Executive Dr.
Suite 100
Jacksonville, FL 32217-4695

Received
MAY 06 2020

32217-468770

EXHIBIT "E"

LOT 2 DEED

Prepared By and Return To:

Johnni Nicole Causey, V.P.

Landmark Title

4540 Southside Boulevard, Suite 202

Jacksonville, Florida 32216

File No.: LMT 18-0137

General Warranty Deed

Made this February 2, 2018, By **Dawn A. Morgan and John S. Morgan, wife and husband**, whose address is: 9725 N. Lake Creek Parkway, Apt. 3232, Austin, Texas 78717, hereinafter called the Grantor, to **Ft. Caroline Development Corp., a Florida Corporation**, whose address is: 161 Hampton Drive, Ste. 1, St. Augustine, FL 32092, hereinafter called the Grantee:

(Whenever used herein the term "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the Grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Duval County, Florida, more particularly described as follows:

Lot 2 of GATELY OAKS - UNIT FOUR, according to the plat thereof as recorded in Plat Book 53, Page(s) 58, 58A through 58E, of the Public Records of Duval County, Florida.

Parcel ID Number: **162191-8710**

Subject to taxes accruing subsequent to December 31, 2017.

Subject to covenants, restrictions and easements of record, if any; however, this reference thereto shall not operate to reimpose same.

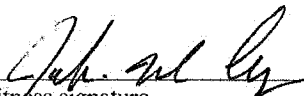
Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

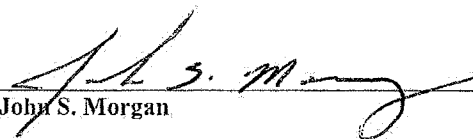
To Have and to Hold, the same in fee simple forever.

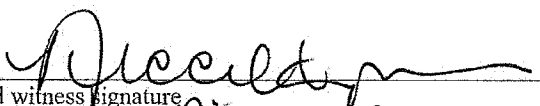
And the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

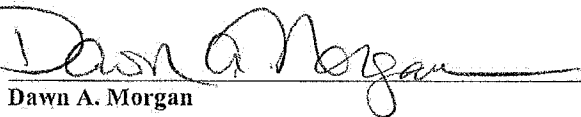
In Witness Whereof, the Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:


1st witness signature
Witness Printed Name Johnni Nicole Causey

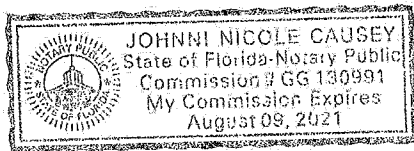

John S. Morgan (Seal)

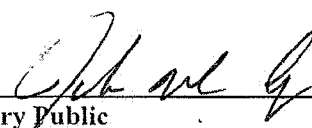

2nd witness signature
Witness Printed Name Niccole Sprague


Dawn A. Morgan (Seal)

State of Florida
County of Duval

The foregoing instrument was acknowledged before me this 26th day of January, 2018, by John S. Morgan and Dawn A. Morgan, who is/are personally known to me or who has produced a valid driver's license as identification.




Notary Public

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