

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

IN RE:

CASE NO.: CACE 24-005243

HERON POND CONDOMINIUM
ASSOCIATION, INC.

Petitioner.

v.

HERON POND CONDOMINIUM
ASSOCIATION, INC.,

Defendant/Respondent

**RECEIVER, DANIEL J. STERMER'S, EMERGENCY MOTION FOR STATUS
CONFERENCE**

Receiver, Daniel J. Stermer (the "Receiver"), not individually, but solely in his capacity as Receiver of the Heron Pond Condominium Association, Inc. (the "Association"), by and through his undersigned proposed counsel, respectfully requests the Court to schedule an emergency Status Hearing regarding the ACG Engineering Services, Inc. ("ACG") Engineering Report dated July 22, 2024, that was filed with this Court through a Notice of Filing and which is attached hereto as **Exhibit "A"**. In support of this Motion, the Receiver states:

1. On April 16, 2024, the Plaintiffs, Heron Pond Condominium Association, Inc. (the "Plaintiff" or "Association"), commenced this action by the filing of a Verified Petition For Appointment of a Receiver against the Association.

2. Heron Pond is an "Association" as defined in Chapter 718, Florida Statutes, located within Broward County and is governed by the Declaration of Condominium Establishing Heron

Pond Condominium (the “Declaration”), recorded on June 14, 2006 in Official Records Book 42216, Page 910, in the Public Records of Broward County, Florida. The Association is comprised of 304 individual units contained in 19 separate buildings (the “Buildings”) owned by various individuals and entities (the “Members”).

3. Prior to the commencement of this case, as of September 12, 2023, six out of the nineteen buildings located within the Association were declared unsafe structures by the City of Pembroke Pines (the “City”) and rendered uninhabitable. Prior to the commencement of this case, an additional 26 units in the remaining buildings have also been rendered uninhabitable by the City. The issues which resulted in this determination included significant structural issues plaguing the Buildings which appear to have been as a result of longstanding neglect and failure to repair the buildings and units.

4. On April 16, 2024, the Association’s Board of Directors filed an *Ex Parte Verified Emergency Motion for Appointment of a Receiver* (the “Receiver Motion”), recognizing “the monumental task ahead and realizing that they are incapable of addressing the myriad of issues plaguing the Association caused by the conduct of the prior Board of Directors that permitted the Association Property to fall into a state of substantial disrepair.” *See* Receiver Motion ¶1. The Receiver Motion asserted that the Association and its Members’ properties are being wasted, lost, deteriorated, destroyed and deprived because of the prior deplorable conduct. . . and that the appointment of a receiver is necessary and proper to preserve the Association’s and its Members’ properties. *See* Motion ¶3.

5. On April 26, 2024, the Court entered an *Order Granting Verified Petition for Appointment of Receiver* (the “Order Appointing Receiver”), thereby appointing Daniel J. Stermer as Receiver for the Association.

6. Consistent with the Order Appointing Receiver, the Receiver has filed reports with this Court. Specifically, On May 24, 2024, the Receiver filed *Receiver's Inventory Report*, reflecting the property coming into the Receiver's control and possession. On May 24, 2024, the Receiver Filed his *First Monthly Report*. On June 25, 2024, the Receiver filed his *Second Monthly Report*. Each of these reports has been transmitted via email to all Unit Owners and renters and posted on the Receiver's website (www.heronpondreceiver.com). The Receiver's Third Monthly Report is being prepared and will be filed on or before July 25, 2024.

7. Since his appointment, the Receiver has been focused on assessing the condition of the Buildings (with the assistance of licensed and professional engineers and construction experts) to determine if the Buildings and individual units are safe, habitable, and whether the repair and rehabilitation is possible and/or economically feasible. At the forefront of this assessment has been the concern for the life and safety of the Unit Owners and residents.

8. Since his appointment, it has become clear to the Receiver that the condition of the Units and the Buildings is worse than originally reported. This is further evidenced by the fact that on July 3, 2024, the City declared Building 9 as an unsafe structure and required all residents to vacate the Building by July 15, 2024. Thus, to date, 134 units have been deemed unsafe by the City (16 Units in each of Buildings 2, 3, 5, 9, 10, 14, and 16 plus: (i) Building 4 (Units # 104, 105, 108, 204, 205, and 208); (ii) Building 11 (Units # 102, 104, 107, 202, 204, and 207); (iii) Building 12 (Units # 101 & 201); (iv) Building 13 (Units # 107, and 207); (v) Building 17 (Units # 101, 108, 201, and 208); and (vi) Building 18 (Units # 102 & 202) resulting in the displacement of many residents that were forced to leave their homes and find alternative living arrangements.

9. On July 4, 2024, the Receiver transmitted via email to all Unit Owners and residents on the Association Distribution List notice that the City of Pembroke Pines issued Unsafe Structure

Notices for Building 9, requiring all residents to vacate Building 9 on or before July 15, 2024.

10. On July 22, 2024, the Receiver received an updated Engineering Report from ACG Engineering Services, Inc. (the “Engineering Report”) which was filed with the Court pursuant to the Notice of Filing and attached hereto as Exhibit “A”. The Engineering Report has also been provided to the Members and residents by posting the Notice of Filing on the Receiver’s Website and by email transmittal.

11. The Engineering Report provides ACG’s prior history with the Buildings and Association along with their prior recommendations and status of repairs. ACG advises that in addition to the structural damages that were previously discovered and disclosed in prior engineering reports, they have since discovered, with the assistance and consultation with SPEC (Specialty Engineering Consultants, Inc. – the court approved engineer engaged by the Receiver), existing conditions, separate and apart from the repair process, that speak to the concern regarding the lateral load resistance of the Buildings in the case of a storm event. These lateral load deficiencies were “hidden in the structures, the ‘bones’ of the buildings, and are not detectable by visual examination of the buildings interiors and exteriors.”

12. ACG’s Engineering Report recommends that all 19 buildings should be vacated, at least until the end of “hurricane season,” or “until the required repairs have been completed and the buildings are once again deemed to be habitable.” The Receiver participated in a meeting with certain City representatives and officials the morning of July 23, 2024. The Receiver understands that the City is currently deliberating to determine their next steps regarding the remaining Buildings. In the interest of transparency and full disclosure, given the life, health, and safety issues pertaining to the Engineering Report, the Receiver files this Motion requesting the scheduling of an emergency status hearing with the Court.

WHEREFORE the Receiver requests the Court schedule an emergency hearing to allow the Receiver to more fully report to the Court on the issues surrounding the Engineering Report, discuss some of the next steps and grant any other and further relief as the Court deems proper.

Dated: July 24, 2024

Respectfully submitted,

BERGER SINGERMAN LLP
Proposed Counsel for Receiver
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By: /s/ Brian G Rich

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I HEREBY CERTIFY that on this 24th day of July 2024, the foregoing was filed electronically through the Florida Court's E-Filing Portal, which will send notice of electronic filing to all electronic service parties.

By: /s/ Brian G. Rich
Brian G. Rich

EXHIBIT A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

IN RE:

CASE NO.: CACE 24-005243

HERON POND CONDOMINIUM
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**NOTICE OF FILING ACG ENGINEERING SERVICES, INC. ENGINEERING
REPORT DATED JULY 22, 2024**

Daniel J. Stermer, not individually, but solely in his capacity as Court Appointed Receiver (the “Receiver”), over the Heron Pond Condominium Association, Inc., (the “Association”) by and through its undersigned counsel, hereby gives notice of filing of the attached ACG Engineering Services, Inc. Engineering Report dated July 22, 2024, advising that “all 19 buildings should be vacated” due to structural damages and deficiencies.

Dated: July 24, 2024

Respectfully submitted,

BERGER SINGERMANN LLP
Counsel for Receiver
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By: /s/ Brian G. Rich
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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I HEREBY CERTIFY that on this 24th day of July 2024, the foregoing was filed electronically through the Florida Court's E-Filing Portal, which will send notice of electronic filing to all electronic service parties.

By: /s/ Brian G. Rich
Brian G. Rich



Date: July 22nd, 2024

To: Board of Directors
Heron Pond Condominium Assoc., Inc.
8400 SW 1st Street
Pembroke Pines, FL 33025

Building Officials
Pembroke Pines Building Department
601 City Center Way
Pembroke Pines, FL 33025

Re: Heron Pond Condominium
Buildings 1 through 19
Update on Structural Status

Dear Directors/Building Officials:

Almost a year ago Andres Caicedo and I, representing ACG Engineering Services, Inc. (ACG), attended a meeting that included representatives from the City of Pembroke Pines, the property manager for Heron Pond at the time, and several owners from Heron Pond. During that meeting, as we discussed our initial findings as detailed in our initial reports for Buildings #2, #3, and #10 and the procedures to be followed to repair all nineteen (19) buildings, we laid out our position that there were individual units that needed to be evacuated based on our findings and that access to all balconies needed to be eliminated. Our position allowed for unit owners residing in units where no signs of interior deterioration had been observed to remain in their units without access to their balconies except in the case of emergencies.

During that part of the meeting, we were asked by the Fire Department what our recommendations would be should a storm be forecast to make landfall at the property. The ACG response was that we did not have enough information regarding the true conditions of the concealed structural elements to allow us to recommend that the buildings were safe for sanctuary in the case of an impending storm event. Therefore, ACG would recommend that all buildings be temporarily evacuated in the event of a tropical storm or hurricane warning that included the Heron Pond property within the warning area.

At the time of the meeting, the understanding between ACG and Heron Pond was that the buildings would be repaired expeditiously and in accordance with the Florida Building Code. Given the original intent and the pace with which the Contractor eventually commenced his work, the repairs would have been completed on at least 12 of the 19 buildings by now. Given the fact that we were addressing the buildings in order of worst to best structural conditions, and based on our conception of the damages, we expected to be repairing the buildings with the least number of deficiencies by this point in time. The storm warning evacuation procedure stated above would have remained in place for those buildings not yet repaired, with the understanding that the first dozen buildings already repaired, with any deficiencies discovered having been addressed, would be structurally sound.

The initial pace of the repair project lasted for less than a month, with the amount of work done per day being drastically reduced as the December holidays approached. The initial pace was never matched, or even closely approached, again. As things stand today, the structure of only one of the 19 buildings (Buildings #2) has been completely repaired and two others (Buildings #3 and #10) have been repaired to a level above 50%. None of the first six buildings (Buildings #2, #3, #10, #5, #14, and #16) has been completed and turned back over to the unit owners.



In addition to the change in pace which has resulted in most of the buildings remaining in their damaged, unrepaired conditions, we have discovered existing conditions, as part of our repair process, that speak to the concern regarding the lateral load resistance of the buildings in the case of a storm event. While the damages to the structure that affect the building's vertical (gravity) load support strength were in line with our initial findings, much about the building's lateral (wind) load support has been discovered as part of the repair process we have designed and observed and as part of discoveries made by an independent engineering firm, Specialty Engineering Consultants, Inc. (SPEC).

We observed and corrected deficiencies in the lateral load resistance structural components that were discovered during the repair processes in Buildings #2, #3, and #10. SPEC has discovered a number of deficiencies in Building #9 as well. The lateral load deficiencies are different from the structural damages that have been the focus of the year-long repair project. While the repair details in the permit documents include proper connections for the lateral load conditions, and while those connections have been applied throughout the first three buildings where the absence of proper connections were discovered, the other 16 buildings, where repairs have not yet started, likely have the same wind load resistance deficiencies.

The structural damages, discovered during our survey and described in our reports, are a result of long-term exposure to the elements (moisture, termites, etc.). However, the lateral load deficiencies, such as the absence or under-sizing of necessary connections, are the result of some combination of inadequate design and inadequate construction practices. The lateral load deficiencies, hidden in the structures, the "bones" of the buildings, are not detectable by visual examination of the buildings' interiors or exteriors and they are not the cause of the visual signs of damage that led to the concerns about the structures and the commencement of the repair project.

Nevertheless, based on the fact that we are now aware of a consistency of lateral load deficiencies noted in all four buildings that have had the support structures significantly exposed to date, it is my professional opinion, to the best of my knowledge, that all 19 buildings should be vacated, at least until the end of "hurricane season," or until the required repairs have been completed and the buildings are once again deemed to be habitable.

If you have any questions, comments, or concerns, please let us know. Thank you.

Respectfully submitted,

Henry S. Kreh, P.E.
Vice President
ACG Engineering Services, Inc.
FL P.E. No. 39539/FL S.I. No. 736

