

**CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

VERANDA PARTNERS, LLC, a
Florida limited liability corporation,

Plaintiff/Counter-Defendant,

vs.

LARRY GILES, individually,

Defendant/Counterclaimant.

CASE NO.: 07-CA-2622

JUDGE: Dv. 33 (Sprinkel)

**DEFENDANT/COUNTERCLAIMANT'S MOTION
FOR FINAL DEFAULT JUDGMENT**

COMES NOW, the Defendant/Counterclaimant, LARRY GILES (hereinafter, "GILES"), by and through the undersigned attorney, pursuant to Florida Rule of Civil Procedure 1.500(e), and respectfully request this Court enter final judgment of default against the Plaintiff/Counter-Defendant, VERANDA PARTNERS, LLC (hereinafter, "VERANDA"). As grounds, GILES would further state as follows:

1. On May 14, 2008, GILES, in conjunction with the specific consent of VERANDA's counsel, filed his Stipulated Motion for Leave to Amend Counterclaim. A copy of the actual Amended Counterclaim was attached to the Stipulation. Subsequently, on May 27, 2008, the Court signed its Order granting the abovementioned Stipulated Motion; deeming the Amended Counterclaim as filed; and providing VERANDA with a twenty (20) days to file its response to the Amended Counterclaim.

2. VERANDA defaulted in the case-at-bar by failing to file or serve an answer to the Amended Counterclaim by June 16, 2008.

3. On July 14, 2008, the Court entered a default against VERANDA on GILES' Amended Counterclaim.

4. GILES' Amended Counterclaim is centered on VERANDA's violation of *Fla. Stat.* § 720.304 (2007). This section prohibits the filing and maintenance of a "SLAPP" (Strategic Lawsuit Against Public Participation) lawsuit. Specifically, the SLAPP suit in the case-at-bar has been identified as VERANDA's defamation claim in its Amended Complaint.

5. § 720.304(4) *Fla. Stat.* (2007) specifically provides that

it is the public policy of this state that government entities, business organizations, and individuals not engage in SLAPP suits because such actions are inconsistent with the right of parcel owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against parcel owners who address matters concerning their homeowners' association will preserve this fundamental state policy, preserve the constitutional rights of parcel owners, and assure the continuation of representative government in this state.

6. Accordingly, § 720.304(4)(c) *Fla. Stat.* (2007), provides that

[t]he court may award the parcel owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. *The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.*

(Emphasis added). In other words, the Legislature has articulated a specific entitlement to attorneys' fees by the aggrieved party – in the instant matter, GILES.

7. Since April 2007, GILES has been required to defend himself against VERANDA's SLAPP suit. The Counterclaim and Amended Counterclaim were directly

responsive to VERANDA's efforts to harass GILES and to silence him from exerting his First Amendment rights to speech and to petition for redress of grievances.

8. As a direct result of VERANDA's filing and maintaining its SLAPP lawsuit against GILES, he suffered special damages in the nature of attorneys fees incurred in defending against this frivolous and statutorily-prohibited action. As set forth in the Affidavit of Attorney Derek B. Brett attached hereto as Exhibit "A", these special damages amount to \$35,088.00.

9. Further, GILES has incurred attorneys' fees in prosecuting the Counterclaim against VERANDA, pursuant to § 720.304(4)(c) *Fla. Stat.* (2007), in the amount of \$74,168.29. This damage amount is subject to trebling by the Court pursuant to § 720.304(4)(c) *Fla. Stat.* (2007). Accordingly, GILES requests damages in the total amount of \$105,264.00.

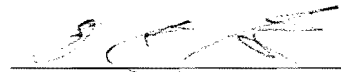
10. GILES further incurred compensable court costs in this matter in the amount of \$1,975.40. *See* Exhibit "A," attached hereto.

11. GILES respectfully requests the Court award a default judgment against VERANDA, pursuant to the provisions of § 720.304(4)(c) *Fla. Stat.* (2007), in the amount of \$105,264.00 in damages plus \$74,168.29 in attorneys fees, for a total of **\$181,407.69**.

12. In addition, GILES requests, pursuant to *Fla.R.Civ.P.* 1.560(c), that VERANDA be ordered to complete *Fla.R.Civ.P.* Form 1.977 (Fact Information Sheet) under oath, including all required attachments, and serve it on GILES' attorney, within forty-five (45) days from the date of the final judgment, unless said judgment is satisfied or post-judgment discovery is stayed.

WHEREFORE, GILES respectfully requests this Court enter final judgment of default as set forth above against the Plaintiff/Counterclaimant VERANDA PARTNERS, LLC, for which sum let execution issue.


WESTON, GARROU, WALTERS & MOONEY



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was dispatched via U.S. Mail to Veranda Partners, LLC, c/o Kevin Azzouz, 7065 Westpointe Blvd., Ste. 318, Orlando, FL 32835, this 5th day of September, 2008.



DEREK B. BRETT

**IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT,
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CASE NO.: 07-CA-2622

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**AFFIDAVIT OF ATTORNEY DEREK B. BRETT IN SUPPORT OF
GILES' MOTION FOR FINAL DEFAULT JUDGMENT**

**STATE OF FLORIDA
COUNTY OF SEMINOLE**

BEFORE ME, the undersigned authority, personally appeared, DEREK B. BRETT, who, after being first duly sworn, deposes and says:

1. My name is DEREK B. BRETT. I am over eighteen (18) years of age, and am otherwise competent to make this Affidavit. All statements made herein are based on my personal and professional knowledge.
2. I am one of the attorneys of record for the Counterclaimant, LARRY GILES (hereinafter "GILES"), in the case-at-bar. My written statements in the instant Affidavit are given solely in support of the Motion for Final Default Judgment, currently pending before the Court.
3. Since April 2007, the Law Firm of Weston, Garrou, Walters & Mooney (formerly, "Weston, Garrou, DeWitt & Walters," and hereinafter referred to as "WGWM"), has actively represented GILES in his defense to Veranda Partners, LLC's (hereinafter, "VERANDA")

allegations in the latter's Complaint and Amended Complaint. This representation also included prosecution of the Counterclaim and Amended Counterclaim filed by GILES, premised upon VERANDA's violation of § 720.304 *Fla. Stat.* (2007).¹ That section strictly prohibits the filing of "SLAPPs" ("Strategic Lawsuits Against Public Participation"), such as the one filed against GILES by VERANDA.

4. As described in GILES' Motion for Final Default Judgment, he is statutorily entitled to both an award of attorneys' fees, as well as damages relating to his defense of VERANDA's unlawful claims. § 720.304(4)(c) *Fla. Stat.* (2007), mandates the award of attorneys' fees incurred in prosecuting GILES counterclaim against VERANDA's premised on its SLAPP suit.

5. As of August 31, 2008, in defense against VERANDA's SLAPP suit, GILES has incurred special compensatory damages in the amount of \$35,088.00. This amount is exclusively comprised of reasonable attorneys' fees incurred by GILES in vigorously defending against VERANDA's SLAPP suit. This amount can be trebled pursuant to § 720.304(4)(c) *Fla. Stat.* (2007). Upon statutorily-permitted trebling of these damages, GILES is entitled to an award of compensation in the amount of \$105,264.00.

6. Further, as of August 31, 2008, in prosecuting VERANDA for its violations of § 720.304 *Fla. Stat.* (2007), GILES has incurred reasonable attorneys' fees in the amount of \$74,168.29. This amount was calculated using contemporaneously-generated time entries by the time keepers billing time to this file. This amount only includes time devoted to prosecution of the SLAPP claim, and does not include any time associated with GILES' related claim against VERANDA for Abuse of Process.

¹ The Amended Counterclaim also included a count for Abuse of Process. No compensation, fees or costs are sought for this count.

7. The undersigned represents and certifies that all of the time reflected in the above-calculated amounts was necessary and reasonable during its seventeen (17) month representation of GILES.

8. As of August 31, 2008, WGWM's billing records demonstrate that it has expended 526.70 hours of work on the instant litigation. Three (3) attorneys and one (1) law clerk have worked on this matter at the following rates:

- a. Attorney Lawrence Walter's established billing rate throughout the instant litigation was, and remains, \$425.00 per hour;
- b. Attorneys Derek Brett and Marc Randazza's established billing rate is \$290.00 per hour. Prior to January 1, 2008, Brett and Randazza's rates were \$250.00 per hour; and,
- c. Law Clerk Zac Papantoniou's established billing rate throughout the instant litigation was, and remains, \$100.00 per hour.

9. WGWM has expended significant time and effort contesting VERANDA's lawsuit, as well as GILES' countersuit. The court record, which presently occupies three (3) separate volumes with the Clerk of Courts, adequately reflects the significant time required to engage in prolonged and spirited motion and discovery practice, and trial preparation, against VERANDA.

10. A review of WGWM's billing records indicates that GILES incurred \$ 1975.40 in compensable court costs in the above-styled case. A detail of the costs incurred is set forth below:

| Description | Amount |
|----------------------------|----------|
| Copies | \$831.75 |
| Court Reporter/Transcripts | \$759.35 |
| Faxes | \$250.00 |
| Federal Express | \$24.35 |
| Courthouse Parking | \$13.00 |
| Mileage | \$23.40 |
| Long Distance | \$16.20 |
| Postage | 57.35 |

Total: \$1975.40

All of the costs incurred herein were necessary and reasonable.

FURTHER AFFIANT SAYETH NAUGHT.

[Signature]
DEREK B. BRETT
Fla. Bar No.: 0090750

DATED THIS 5th DAY OF SEPTEMBER 2008.

STATE OF FLORIDA
COUNTY OF SEMINOLE

Affirmed and signed before me this 5th day of SEPTEMBER 2008, by DEREK B. BRETT.

who is personally known to me, or
 who produced the following identification: _____.

NOTARY PUBLIC:

SIGN: *Jessica J. Aponte*

PRINT: *Jessica J. Aponte*

Commission Expiration Date & Commission Number: _____

