

# Lawfare And Its Impact on Society

A CASE STUDY PREPARED BY: TARA EZER  
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## Table of Contents

<b>Introduction .....</b>	<b>2</b>
<b>Background .....</b>	<b>3</b>
<b>Case Timeline .....</b>	<b>4</b>
<b>Appeals and Higher Court Actions .....</b>	<b>4</b>
<b>Legal Analysis .....</b>	<b>7</b>
<b>Honoring Civic Responsibilities .....</b>	<b>7</b>

## **Introduction**

This document provides an overview of *Ezer v. Holdack et al.*, a condominium derivative action initiated in the [17th Judicial Circuit in Broward County, Florida](#). The case advanced to the Fourth District Court of Appeal and was reviewed by the Florida Supreme Court.

More than a legal record, this case now serves as a public-use precedent illustrating how procedural mechanisms, nonprofit corporate statutes and judicial discretion can intersect to foreclose accountability, erode public confidence, and undermine the perceived integrity of the judicial system.

In the absence of a review of the underlying facts, the judicial system remains vulnerable to abuse and manipulation. Ezer’s story serves as a cautionary tale against the misuse of legal process—commonly referred to as “lawfare”—which poses a threat to the foundational system of checks and balances entrusted to the judiciary by the citizenry.

### **Readers will learn:**

- The background of the case and the legal issues involved
- The procedural path the case followed through Florida’s court system
- The broader societal impact of lawfare in civil disputes

## Background

### Case numbers

- **17<sup>th</sup> District of Broward County:** CACE-20-020261
- **Fourth District Court of Appeal:** Case No. 4D21-3528
- **Supreme Court of the State of Florida:** SC2023-0676

### Nature of Action

This matter was initially filed as a shareholder derivative action by then unit owner Tara Ezer on October 12, 2020 pursuant to:

- [Florida Statutes §617.07401](#), governing derivative actions for not-for-profit corporations
- [Florida Statutes §718.303](#), addressing violations of condominium statutes and governing documents

The suit sought to hold members of the condominium board accountable for multiple alleged violations of the Association's Declaration and By-Laws.

These violations included entering into unauthorized financial commitments and making material alterations to the condominium's common elements without the required unit owner approval.

Because the conduct in question involved decisions made by the full sitting board at that time, and the board could not reasonably be expected to take action against itself, the Plaintiff filed the lawsuit directly as a derivative action. The complaint further alleged that waiting the 90-day period under Fla. Stat. §617.07401 would cause irreparable harm to the Association and its members.

### Operative Complaint

The **Verified Second Amended Complaint**, accepted by the court on **March 17, 2021**, became the operative pleading upon Plaintiff's independent discovery of documentation that warranted the filing of an amended complaint and alleged the following six causes of action:

1. Declaratory Judgment
2. Injunctive Relief
3. Appointment of a Receiver
4. Breach of Fiduciary Duty
5. Civil Conspiracy to Commit Fraud and Breach of Fiduciary Duties
6. Aiding and Abetting Fraud and Breach of Fiduciary Duties

## Case Timeline

### Trial Court – 17th Judicial Circuit (October 2020 – November 2021)

*Case No. CACE-20-020261*

#### Key Procedural Events

- **October 12, 2020** – Complaint filed
- **January 14, 2021** – Agreed Order granting Plaintiff’s request for Temporary Injunction
- **March 17, 2021** – Verified Second Amended Complaint accepted by the court
- **October 19, 2021** – Emergency Motion to Appoint Receiver filed (no ruling issued)
- **November 24, 2021** – Final Order of Dismissal entered

#### Key Takeaways from the Trial Court Phase

- Following the entry of the Temporary Injunction, Defendants moved to transfer the case to the Complex Business Litigation Division.
- Throughout the trial court phase, Defendants sought extensions on nearly every motion, at one stage prompting Plaintiff to draft an opposition to a fourth consecutive request by the Defendants for additional time to respond to the complaint.
- The defense was represented by insurance-appointed counsel, with legal fees funded through the condominium association’s insurance policy. Plaintiff, by contrast, paid for her own legal representation out of pocket.
- No meaningful exchange of discovery occurred during the trial court phase.
- Although the complaint alleged fraud and fiduciary breaches, the court dismissed the case based solely on a special litigation committee’s internal report, without reaching the merits. The core claims were not substantively contested by Defendants during the proceedings.
- At various points during the proceedings, Plaintiff was subjected to adversarial tactics, including undue hostility, which created needless anxiety for asserting her legal rights.

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## Appeals and Higher Court Actions

### Fourth District Court of Appeal (December 2021 – April 2023)

*Case No. 4D21-3528*

#### Key Procedural Events

- **December 14, 2021** – Notice of Appeal filed
- **February 10, 2022** – Initial Brief filed by Plaintiff
- **July 25, 2022** – Appellees’ Answer Brief filed (after three extension requests)
- **March 1, 2023** – Written opinion issued by Judge Warner, joined by Judges Ciklin and Forst
- **March 13, 2023** – Motion for Rehearing / Rehearing En Banc / Certification filed by Plaintiff

- **April 19, 2023** – Motion denied; appellate attorney’s fees granted to Appellees and remanded to the trial court for determination

### **Key Takeaways from the Appellate Phase**

- The appellate court affirmed dismissal under Fla. Stat. §617.07401(3)(b), holding that a special litigation committee may terminate a derivative suit if it is deemed independent, acted in good faith, and conducted a reasonable investigation.
- The court declined to evaluate the substantive conclusions of the committee’s report and limited its review strictly to procedural compliance—without adjudicating the merits of Plaintiff’s allegations.
- Plaintiff’s Motion for Rehearing was filed pursuant to [Fla. R. App. P. 9.330\(2\)\(A\)](#), which permits rehearing where the court has “overlooked or misapprehended” matters in its order. The motion asserted that **the appellate court misapprehended relevant Florida law, misapplied governing precedent, and overlooked material facts in the record**—particularly concerning the independence and legal exposure of the special litigation committee members.
- The case raises broader questions about the application of Delaware corporate law to Florida not-for-profit corporations—including condominium associations—the use of internal committees to shield governance conduct from scrutiny, and the systemic barriers faced by members or stakeholders seeking accountability within nonprofit corporate structures.
- Appellees received three extensions to file their answer brief.

### **Florida Supreme Court (May 2023 – October 2023)**

*Case No. SC2023-0676*

#### Key Procedural Events

- **May 12, 2023** – Notice to Invoke Discretionary Jurisdiction filed
- **May 22, 2023** – Petitioner’s Jurisdictional Brief filed
- **June 21, 2023** – Respondents’ Jurisdictional Brief filed
- **October 24, 2023** – Florida Supreme Court denied review without written opinion

### **Key Takeaways from the Florida Supreme Court Phase**

- Plaintiff sought discretionary review under [Article V, Section 3\(b\)\(3\)](#) of the Florida Constitution, asserting that the Fourth District’s ruling conflicted with established Florida precedent and **raised issues of great public importance**.
- The Jurisdictional Brief argued that the appellate court misapplied the standard of review under Fla. Stat. §617.07401(3) and failed to apply the ordinary-meaning rule—overlooking the plain definition of the statutory term independent—as required under Florida Supreme Court precedent, including *Conage v. United States*.
- The brief further contended that the Fourth District improperly relied on Delaware corporate law to interpret Florida’s statutory language—even after holding that the statute was unambiguous—thereby departing from this Court’s established rules prohibiting reliance on extrinsic sources when construing plain statutory text.

- The brief emphasized that not-for-profit corporations—including condominium associations—play a significant role in Florida’s civic and economic structure. It argued that the decision below, if left unreviewed, would undermine statutory safeguards and diminish judicial oversight of internal governance practices within these entities.
- On October 24, 2023, the Florida Supreme Court declined to exercise jurisdiction and dismissed the matter without written opinion leaving the underlying legal questions unresolved and reinforcing the procedural finality of the lower court’s ruling.

## Legal Analysis

Lawfare refers to the intentional use of legal processes to exhaust, delay, or deter individuals from pursuing valid claims. It's a structural pattern in which procedural rules and institutional resources align to subvert accountability.

This summary reflects one dimension of a broader story: the judicial record spanning the 17th Judicial Circuit through the Florida Supreme Court. What began as a focused civil action—grounded in clearly defined statutory and contractual obligations—evolved into a cautionary example of how legal procedures, when improperly used, can shield misconduct and undermine legitimate claims.

At no point in this case did any court address the actual conduct in question: the unauthorized execution of an \$800,000 loan and a \$434,098.26 construction contract, in violation of the condominium's governing documents. Instead, the litigation was dismissed through procedural statutes, relying on internal reports and committee findings without fact-finding or evidentiary review.

Beyond the courtroom, related efforts with the Executive Branch—namely, the Department of Business and Professional Regulation (DBPR)—encountered similarities demonstrating a critical need for reform. It is worthy to note that in one complaint, DBPR did issue a finding of probable cause, resulting in a penalty initially assessed against the condominium association. That penalty was later shifted to the property management company as a result of Ezer's due diligence in protecting the best interests of the Association, marking institutional acknowledgment that her claims were warranted.

Still, most communications were ignored. Facts were not disputed but rather dismissed without examination. At times, reputational smearing was used to discredit legitimate inquiry.

This is not just about one plaintiff or one building. It is an example of what occurs when lawfare—the strategic use of legal and bureaucratic procedures to suppress dissent—goes unchecked.

The volume of filings, motions, and defenses became a deterrent, discouraging review rather than inviting it. In the end, what should have been a simple enforcement of bylaws became—and remains—a procedural gauntlet spanning multiple courts and agencies.

## Honoring Civic Responsibilities

Although the courts did not reach the merits of this case, the effort to organize, document, and press forward has value in and of itself.

Whether directly or indirectly, changes such as the passage of [Florida Senate Bill 1021 \(2024\)](#) demonstrate that systemic pressures can yield movement when citizens take aligned, lawful action.

This case study is offered in the public interest with the intention of contributing to a thoughtful and balanced review of law, process and oversight. If aspects of legal reasoning or due process merit reconsideration, they deserve acknowledgment because public confidence in the judicial system relies on its ability to listen, reflect, and course correct.

*Author's Note: This document was compiled with the assistance of OpenAI's ChatGPT.*

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