

OAKLAND PARK

## Lawsuit targets wind insurance coverage

BY JULIA CARDENUTO  
South Florida News Service

Carla Gemmati, 45, a resident at the Lake Pointe Condominium in Oakland Park, saw her mortgage almost double from \$975 to \$1,700 in December.

The additional cost was to cover a windstorm insurance that her condominium's association had just eliminated, forcing her mortgage lender, Bank of America, to purchase a policy of more than \$4,500 on her behalf and charge the cost against her monthly mortgage payment.

"I haven't been able to make the whole payment," Gemmati said. "If I can't make the payments, I foresee that [a foreclosure] can happen."

Windstorm insurance coverage is mandated under Chapter 718 of Florida Statutes, or the Condominium Act. According to the law, insurers issuing residential property insurance policies, in this case the condominium's association, are required to include hurricane windstorm coverage.

In February, Gemmati filed an unprecedented lawsuit against the condominium association and members of its board in order to regain the windstorm coverage and get reimbursed for the price hike in her mortgage.

The lawsuit states that "the defendants intentionally refused to obtain and maintain adequate insurance, specifically windstorm coverage."

Robert Kaye, a managing member of Kaye & Bender in Pompano Beach, is representing Gemmati, who is a collection specialist in the same firm.

"Florida Statute and the declaration of the condominium require the association to provide a certain level of insurance for the buildings and that includes the windstorm insurance," Kaye said.

Gemmati has been living at the Lake Pointe Condominium for five years. Up until last September, the windstorm coverage was provided by the association and included in the \$375 fee homeowners paid each month to the association.

"All the insurances are supposed to be included," Gemmati said.

Members of the board and the association of Lake Pointe Condominium and the lawyer representing them did not want to comment after several attempts.

As of March 10, Kaye said the association had not yet contacted him regarding the lawsuit.

Kaye said there was an extension on the previously set deadline for the board and association to respond to the lawsuit with an action path. The new deadline is Monday.

Gemmati said she was not notified of the wind-

storm insurance cancellation but received a different kind of letter last November. Her mortgage lender stated Gemmati needed to present proof of adequate windstorm insurance or it would have to purchase insurance on her behalf and add the cost to her mortgage payments.

Kaye said after Gemmati received the first letter from her mortgage lender, he wrote to the association.

"A property manager contacted me saying they were not going to obtain the insurance," Kaye said. "We wrote again saying they needed to reimburse [Gemmati] for the cost. After that they stopped responding and we filed the lawsuit to reimburse the cost and provide coverage."

Property manager Bob Mandell declined to comment.

Mortgage lenders usu-

ally hold the right, as stated in lender-borrower contracts, to add a lender-placed insurance if the borrower fails to maintain evidence of existing and acceptable insurance.

Bank of America, Gemmati's lender, notified her on Dec. 17 that it had purchased windstorm insurance at BAC Home Loans Servicing, LP, a subsidiary of Bank of America, at Gemmati's expense.

The letter stated that Gemmati was "obligated by [her] loan agreement to reimburse BAC Home Loans for the premium paid."

The premium cost \$4,515.70, which was transferred to Gemmati's monthly mortgage payments, skyrocketing it to \$1,700.

"I don't like that I can't make my payments. I get nervous," Gemmati said. "I just hope to get this all straightened out soon."

Kaye said that the suit was also filed as a derivative action on behalf of all members of the association, which is made possible by Chapter 617 of the Florida Not-For-Profit Corporation Statute.

No other homeowners have come forward to join Gemmati in the lawsuit.

Kaye said that even if the association decides to repurchase the windstorm insurance, legal action will still be sought in order to reimburse Gemmati and possibly other homeowners.

"If they get the policy in place soon, it's possible that there will be no large amount of damages," Kaye said. "They might not have much expense for those premiums [charged to homeowners' mortgages]."



**STRUGGLING:** Carla Gemmati, a resident at the Lake Pointe Condominium in Oakland Park says she may face foreclosure because of the cost of wind insurance.

Attorney Cheryl Levine, who is representing the association and board members, did not respond to several attempts to contact her.