DISTRICT COURT OF APPEAL OF FLORIDA
SIXTH DISTRICT

CASE NO.: 6D24-1167
L.T. CASE NO.: 2024-CA-002784-O

EASTWOOD GOLF CLUB, LLC,
a Florida limited liability company,

Appellant

v.

EASTWOOD COMMUNITY ASSOCIATION, INC.,
a Florida not-for-profit corporation,

Appellee

APPELLEE'S ANSWER BRIEF

On Appeal from the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida

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INTRODUCTION

Appellant, Eastwood Golf Club, LLC (the "Golf Club") seeks this Court's review of a non-final order denying its request for an emergency temporary injunction. The Golf Club sought this injunction to prevent Appellee, Eastwood Community Association, Inc. (the "Association") from enforcing recent amendments to its declaration. For the reasons discussed in this Answer Brief, this Court should affirm the trial court's ruling.

Citations to the Golf Club's Initial Brief will be referenced as "IB." followed by any appropriate page numbers. Citations to the Golf Club's Appendix will be referenced as "A." followed by any appropriate PDF reader page numbers. Citations to the Association's supplemental Appendix are referenced as "SA." followed by any appropriate PDF reader page numbers.

STATEMENT OF THE CASE AND FACTS

The Association is a homeowners' association that operates the Eastwood residential community pursuant to its governing documents and chapter 720, Florida Statutes.[1] (A. 25). The Association's original Declaration was recorded in 1988. (A. 25). Then, in 1991, the Association amended its Declaration ("1991 Declaration") which remains the operative governing document. (A. 26, 37-81).

The Country Club Property

Certain definitions and provisions of the 1991 Declaration are at play in this case related to the Country Club, which is defined as

> the EastWood Golf and Country Club, in which all Owners in EastWood (together with certain "outside" people) will be permitted to apply for membership. "Country Club" is also used to describe the golf course, tennis courts, clubhouse, maintenance building and other portions of the Country Club's property as shown on the Master Land Use Plan.

(A. 39) (Art. I, § 2(j)). The Country Club is a member of the Association. (A. 45) (Art. III, § 1).

[1] The Association originally was named Deer Run South Community Association but was re-named in 1991. (A. 26, 37, 39).

The 1991 Declaration also sets forth the real property included in the Country Club:

> (a) Country Club. The Properties described above include, without limitation, areas for residential housing, common areas, public or dedicated roads, utility easements and certain property developed or to be developed, as a golf course with clubhouse, pro-shop and other golf-related amenities (the "Country Club Property"). The Country Club Property includes Parcel 5 and Tract G as shown on the Deer Run South P.U.D. PHASE I PLAT as recorded in Plat Book 22, Pages 134-140, Public Records of Orange County, Florida. It is intended that the Country Club Property shall be owned initially by a for-profit corporation, and such corporation shall operate a Country Club upon the Country Club Property. Matters relating to easements granted to the Country Club by the Declarant[2] over and across certain portions of the Properties, as well as parking privileges, assessment and sharing of certain expenses, architectural control, and ownership and conveyance of the Country Club and Country Club Property are set forth elsewhere in this Declaration.

(A. 43) (Art. II, § 2(a)). The 1991 Declaration further describes how the Country Club's property is intertwined with the identified properties of the community, as well as specific advantages and disadvantages, such as "member of the Country Club and permitted members of the public, which may include customers, guest and

[2] This refers to DRS Limited, which owns more than two-thirds of the total lots, dwelling units, and commercial acres of Eastwood. (A. 37, 39).

invitees, shall have the right to park their vehicles on the roadways located within the Common Properties at reasonable times before, during and after golf tournaments and other approved functions held by/at the Country Club." (A. 51-52) (Art. IV, § 8).

Additionally, Article XI of the 1991 Declaration discusses the conveyance of the Country Club:

> All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other person or entity with regard to the continuing ownership or operation of the Country Club as same presently exists, and no purported representation or warranty in such regard shall ever be effective without an amendment hereto executed or joined into by the Declarant Further, the ownership or operational duties of the Country Club may change at any time and from time to time by virtue of, but without limitation, (i) the sale to or assumption of operations of the Country Club by an independent person or entity, (ii) the conversion of the Country Club membership structure to an "equity" or similar arrangement whereby the members of the Country Club or an entity owned by or controlled by the members thereby become the owner(s) and/or operator(s) of the Country Club, (iii) the conveyance, pursuant to contract, option or otherwise, of the Country Club to one or more affiliates, shareholders, employees or independent contractors of Declarant or the Country Club, or (iv) the conveyance of the Country Club to the Association, with or without consideration and subject or not subject to a mortgage(s) or other encumbrance As to any of the foregoing or any other alternative, no consent of the Association is required for or without consideration and subject to or not subject to any mortgage, covenant, lien or other encumbrance on the applicable land and

> other property No amendment to this Article, and no amendment in derogation hereof to any other provisions of this Declaration, may be made without the written approval thereof by the Country Club The foregoing shall not apply, however, to amendments made by the Declarant. The foregoing shall also apply to other provisions of this Declaration which are, in the sole discretion of the Country Club, for the benefit of the Country Club. No Owner shall have any right to membership in the Country Club solely by virtue of ownership of any Lot, Dwelling Unit, or Commercial Acre, nor shall the Country Club have any obligation to offer memberships to any Owner or any other person.

(A. 72, 154) (Art. XI, § 1).

A few years after the 1991 Declaration, amendments were passed that included the additional language to Article XI to include a new Section 3:

> No amendment to these Declarations shall be made that relates to the Golf Course or the operation thereof without written prior notice to the owner of the Golf Course and right to be heard and in the event the proposed change will have an adverse or serious impact on the Golf Course or the operation thereof in the reasonable opinion of the owner of the Golf Course, the amendment must be approved and executed by the Golf Course owner.

(A. 83-84, 165) (Art. XI, § 3) (the "1994 Amendments").

Then, in 2020, the Association amended Article XII (the "2020 Amendment") regarding how the declaration could be amended: "This Declaration shall be amended at a regular or special meeting of the

Members upon the affirmative vote of not less than a majority of all Owners of Lots, Dwelling Units and Commercial Acres. . . .” (SA. 26).

The 2024 Special Meeting and the 2024 Amendments

In 2024, the Association gave notice of a Special Meeting of the Members to take place on April 10, 2024 (the “Meeting”) where the Association intended to propose three amendments to the 1991 Declaration (the “2024 Amendments”). (A. 86-95).

At the Meeting, the Association’s President asked for comments or objections to the 2024 Amendments in attendance. (SA. 11-12). No comments or objections were voiced. (SA. 11-12). Having received no comment or objection by those in attendance, the Association’s President announced that the 2024 Amendments passed. (A 99; SA. 11-12).

On April 12, 2024, two days after the Meeting, the Golf Club objected to nine subparts of these amendment on grounds that the certain subparts of the 2024 Amendments “were adverse to the golf club property.” (A. 99). The Association rejected the Golf Club’s objection. (A. 99).

The Golf Club Files Suit

Prior to the Meeting, on March 29, 2024, the Golf Club filed a complaint seeking injunctive and declaratory relief related to the 2024 Amendments. (A. 24-95). The complaint sought to enjoin the Association, both temporarily and permanently, from adopted the 2024 Amendments as proposed by the Association. (A. 30-33). The Golf Club also requested the trial court declare that "the 1991 Declaration and 1994 Amendment to not allow [the Association] to amend the Governing Declarations to adopt the relevant proposed amendments explained herein, or any other amendments that will cause adverse impacts" to the Golf Club. (A. 33-34). The Association later denied the Golf Club's claims and asserted the following affirmative defenses: failure to state a claim for a temporary injunction, and that the Golf Club's claims are barred by the doctrines of waiver and estoppel since the Golf Club did not attend the Meeting to voice its objections. (SA. 10-13).

Several days before the Meeting, on April 4, 2024, a hearing took place where the trial court denied the Golf Club's initial request for a temporary injunction without prejudice. (A. 96). Then, after the Association's Meeting, on April 12, 2024, the Golf Club filed its

Renewed Motion for Emergency Temporary Injunction. (A. 98-177). The Golf Club also filed a request for the trial court to take judicial notice of the 2024 Amendments. (A. 178-202).[3]

The Injunction Hearing and Ruling

On April 17, 2024, at 11:42 a.m., the Golf Club noticed a virtual *ex parte* hearing that same day at 1:30 p.m. (SA. 4-5). Due to the late noticed emergency hearing, no response was filed by the Association.

At the injunction hearing, the Golf Club argued that the Association's 1994 Amendments created a "veto power for the right to object to any amendments to the association's declaration that quote, 'have an adverse or serious impact on the golf course or the operation thereof in the reasonable opinion of the owner of the golf course.'" (A. 11). In the Golf Club's opinion, the 1994 Amendments deemed the 2024 Amendments invalid without the Golf Club's approval. (A. 11). The Golf Club discussed its view of the scope of the 2024 Amendments:

> First, it gives the association control over any buildings on my client's property that it did not have before. Two, it gives the association or -- the association has now imposed heightened maintenance and landscaping requirements

[3] The record does indicate whether the trial court took judicial notice of these documents.

> on my client that did not previously exist under the association documents. Third, it gives the association self-help rights to go onto my client's property without permission to execute the various landscaping, the heightened landscaping, and maintenance requirements that it is now imposed. And fourth, it allowed the association to then impose fines and any self-help costs as a special assessment against the owner of the golf club property.

(A. 12-13).

The trial court inquired whether the property in question was still being used as a golf course, which the Golf Club advised it was "no longer being operated actively as a golf course" but that "the ability to use this veto power is not tied to the operation of the golf course. It's tied to the physical property itself." (A. 14). The trial court indicated that "a golf course is a term that has a specific meaning" and referenced Section 3 of the Declaration that discussed the golf course and its operation and how would that change if the golf course was not operating any longer. (A. 14-15).

The Golf Club replied that "because of this restrictive covenant, this veto [p]ower is a property right that attaches to the land itself." (A. 15). The trial court again discussed whether there is "anything in the language of the covenants that would support the argument that golf course means the land as opposed to the course? The golf course

is something that has, you know, tees and tee boxes, and greens, and annoying water traps that I always get caught in." (A. 18).

Then, the Association discussed how "the golf course is not the same as the golf course properties." (A. 19). Pointing to Article 2, Section 2(a) of the Declaration, the Association advised the court of the definition of Country Club property which referred to the physical land and the land descriptions with "the golf club being one aspect of the country club property." (A. 19). The Association argued that, similar to the trial court's point, "the use of the word golf course in the amendment, the 1994 amendment, is significant because the amendment" references "country club property" as set forth in Article XI, Section 1 of the Declaration and as noted by the Golf Club. (A. 19). The Association explained that "when a drafter uses multiple words over and over, they use this word over and over and there's differences, we have to subscribe some meaning to that." (A. 19-20). Additionally, the Association argued that "[b]ecause there's a different meaning ascribed to the golf course in various portions of this declaration, in particular the one that I have pointed to here, we have to ascribe a different meaning to it in the amendment." (A. 20).

The Association addressed the 2024 Amendments and that the Golf Club conceded the golf course no longer existed. (A. 20). The Association also noted that golf course covenants were terminated in 2020 as recorded in Orange County, document number 20200468904. (A. 20).[4] As a result, "[t]he golf course was closed. The golf course owner went around and essentially sprayed weed killer on everything. There is no golf course. There's no evidence that there's a golf course and that's what the amendment addresses." (A. 20). The trial court then announced that it would deny the Renewed Emergency Injunction and that there may be questions as to the 2024 Amendments violated the veto section set forth in Section 3 of the 1994 Amendment, but those would be fact specific and were not on the face of the pleadings. (A. 21).

[4] On September 8, 2020, prior covenants related solely to golf course property were terminated. *See* Termination and Cancellation of Amended and Restated Declaration of Restrictive Covenants for Golf Course Property, Official Record of Orange County, Florida, Document No. 20200468904. The covenants at issue in the 2020 termination were added several years earlier on December 20, 1994, and separate and apart from the 1994 Amendments previously discussed. *See* Amended and Restated Declaration of Restrictive Covenants for Golf Course Property, Official Record of Orange County, Florida, Document No. 19945093212, Book 4834, Page 840.

Subsequently, the trial court rendered its order denying the Golf Club's Renewed Motion for Emergency Temporary Injunction without prejudice. (A. 4-5). The trial court found that the Golf Club did not show a high probability of success on the merits. (A. 4). The court further noted that the question regarding "whether the amendments to Defendant's Declaration violate the veto section has to do with whether the amendments relate to the golf course or the operation thereof. This is a fact specific issue and, based on the pleadings, nothing indicated whether golf course is still in existence." (A. 4). This appeal follows. (SA. 15-19).

SUMMARY OF THE ARGUMENT

This Court should affirm the trial court's denial of the Golf Club's emergency temporary injunction. The Golf Club raises two issues on appeal: whether the trial court included an additional obligation into the Association's governing documents by requiring the golf course to be operational, and whether the Golf Club met its burden to show the element of substantial likelihood of success on the merits. Neither of these arguments provide grounds for this Court to reverse.

First, the trial court correctly interpreted the 1991 Declaration, as amended by the 1994 Amendments and 2020 Amendment, and considered the governing documents' plain language. This included the definition of Country Club property, which listed the golf course as one of several sub-parts of this property. Because "golf course" was not defined in the Association's governing documents, the trial court correctly utilized the common, ordinary meaning of this term which, as it suggests, requires certain features to use for the purpose of playing golf. Because this required the operational use of the golf course property, the trial court did not interject any additional requirement.

Second, the Golf Club fails to meet its burden on appeal to show that it proved the element of substantial likelihood of success on the merits by competent, substantial evidence. The Golf Club presents nothing more than a few passing conclusory statements.

Overall, the Golf Club does not meet the high hurdle and heavy burden it must overcome to have this Court overturn the trial court's decision. The Golf Club did not provide competent, substantial evidence below to demonstrate why it was entitled to the extraordinary and drastic remedy of a temporary injunction that should be sparingly granted. Its shortcomings in the first instance, and failure to meet its burden on appeal, culminate in this Court's affirmance.

STANDARD OF REVIEW

The Association agrees that this Court employs a mixed standard of review for injunction orders. *Lusby v. Canevari*, 363 So. 3d 233, 234 (Fla. 6th DCA 2023). This hybrid review utilizes an abuse of discretion standard on the trial court's factual findings and a *de novo* standard on legal conclusions. *Quirch Foods LLC v. Broce*, 314 So. 3d 327, 337 (Fla. 3d DCA 2020).

ARGUMENT

I. THE TRIAL COURT CORRECTLY INTERPRETED AND APPLIED THE ASSOCIATION'S 1991 DECLARATION, AS AMENDED, AND APPLIED THE COMMON, ORDINARY MEANING OF "GOLF COURSE" WITHOUT INTERJECTING ANY ADDITIONAL REQUIREMENTS.

This Court should pass on deciding the first issue raised by the Golf Club. While the Golf Club argued that the 1994 Amendments created a "veto power" for the Golf Club that "have an adverse or serious impact on the golf course or the operation thereof in the reasonable opinion of the owner of the golf course," (A. 11, 83-84), the ultimate issue of whether the 2024 Amendments violated Article XI, Section 3 of the 1994 Amendment was not decided by the trial court. (A. 4, 21). Instead, the trial court acknowledged this conclusion required a fact specific inquiry that could not be determined on the face of the pleadings. (A. 4, 21). To the extent the trial court's decision could be construed as not deciding this issue, this Court should not decide Issue I raised by the Golf Club. *See Alamagan Corp. v. Daniels Group, Inc.*, 809 So. 2d 22, 26 (Fla. 3d DCA 2002) ("An appellate court may not decide issues that were not ruled on by a trial court in the first instance."); *Margolis v. Klein,* 184 So. 2d 205, 206 (Fla. 3d DCA 1966) ("It is elementary that before a trial

judge will be held in error, he must be presented with an opportunity to rule on the matter before him.").

Even if the Court considers this issue, this Court should affirm. The is no question regarding the contractual nature of an association's declaration. *Woodside Vill. Condo. Ass'n v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002); *Dimitri v. Commercial Ctr. of Miami Master Ass'n, Inc.*, 253 So. 3d 715, 718 (Fla. 3d DCA 2018). Under contract principles, "where a contract is silent as to a particular matter, courts should not, under the guise of construction, impose on parties contractual rights and duties which they themselves omitted." *BMW of N. Am., Inc. v. Krathen*, 471 So. 2d 585, 587 (Fla. 4th DCA 1985). "Where the terms of a contract are clear and unambiguous, the parties' intent must be gleaned from the four corners of the document." *Crawford v. Barker*, 64 So. 3d 1246, 1255 (Fla. 2011). In that situation, "the language itself is the best evidence of the parties' intent, and its plain meaning controls." *Richter v. Richter,* 666 So. 2d 559, 561 (Fla. 4th DCA 1995). "A contract is ambiguous when it is susceptible to more than one reasonable interpretation." *Cleveland v. Crown Fin., LLC*, 183 So. 3d 1206, 1209 (Fla. 1st DCA 2016) (internal citation omitted). "When construing ambiguous language, courts will

approve that construction which comports with logic and reason." *Royal Oak Landing Homeowner's Ass'n, Inc. v. Pelletier*, 620 So. 2d 786, 788 (Fla. 4th DCA 1993).

Because the intent of the parties as expressed through the plain language of a contract controls, it is not for courts to "second guess" the wisdom of the contracting parties, relieve the parties of otherwise agreed to burdens, or rewrite the document. *Okeechobee Resorts, LLC v. E Z Cash Pawn, Inc.*, 145 So. 3d 989, 993 (Fla. 4th DCA 2014). "[T]he court's task is to apply the parties' contract as written, not 'rewrite' it under the guise of judicial construction." *Williams-Paris v. Joseph*, 329 So. 3d 775, 783 (Fla. 4th DCA 2021) (original quotation and citations omitted); *see 19650 NE 18th Ave. LLC v. Presidential Estates Homeowners Ass'n, Inc.*, 103 So. 3d 191, 194 (Fla. 3d DCA 2012) ("A court may not rewrite a contract to add language the parties did not contemplate at the time of execution.").

In interpreting legal texts, "whether such text is found in statutes or contracts, Florida courts have recognized the 'supremacy-of-the-text' principle, which means that '[t]he words of a governing text are of paramount concern, and what they convey, *in their context*, is what the text means.'" *Fla. Farm Bureau Gen. Ins. Co. v. Worrell*,

359 So. 3d 890, 892 (Fla. 5th DCA 2023) (emphasis added) (quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946-47 (Fla. 2020)); *see also Super Cars of Miami, LLC v. Webster*, 300 So. 3d 752, 755 (Fla. 3d DCA 2020) (explaining that contracts must be read and interpreted as a whole and in a manner to avoid rendering any contractual provision meaningless). This principle leaves no room for courts to make a "new contract for the parties." *N. Bay Green Invs., LLC v. Cold Pressed Raw Holdings, LLC*, 388 So. 3d 266, 276 (Fla. 3d DCA 2024).

Additionally, "contracting parties are at liberty to address any issue as they see fit, including the question of whether their agreement may be modified at all, and if so, how." *Fiddlesticks Country Club, Inc. v. Shaw*, 363 So. 3d 1177, 1181-82 (Fla. 6th DCA 2023). "When contracting parties elect to adopt a term or condition, including one addressing the question of modification, it is not the province of a court to second guess the wisdom of their bargain, or to relieve either party from the burden of that bargain by rewriting the document." *Okeechobee Resorts, L.L.C. v. E Z Cash Pawn, Inc.*, 145 So. 3d 989, 993 (Fla. 4th DCA 2014); *see Fiddlesticks*, 363 So. 3d at 1182. This leads to a subsequent issue: "when a contract

contemplates amendment at the outset, subsequent amendments are in accordance with, and not in violation of, the contract even though they alter it." *Fiddlesticks*, 363 So. 3d at 1182 (citing 11 Fla. Jur. Contracts §77).

This Court should affirm since the trial court did not include an "operational requirement" into the Association's 1991 Declaration. Article XI, Section 1 provides that "the ownership or operational duties of the Country Club may change at any time and from time to time . . ." (A. 72, 154). The 1991 Declaration also discussed parking "during and after golf tournaments" when addressing the Country Club property. (A. 51-52, 133-34) (Art. IV, § 8). Additionally, Article XI, Section 3, as amended by the 1994 Amendment, relates to the amendment of the operation of the golf course:

> No amendment to these Declarations shall be made that related to the Golf Course or the operation thereof without written prior notice to the owner of the Golf Course and the right to be heard and in the even the proposed change will have an adverse or serious impact on the Golf Course or the operation thereof in the reasonable opinion of the owner of the Golf Course, the amendment must be approved and executed by the Golf Course owner.

(A. 83-84, 165).

Furthermore, the term "golf course" is only used in the 1991 Declaration as a sub-part of the Country Club Property and is not otherwise defined. (A. 39, 43). Rather than define "golf course" in the governing documents, the term "Country Club Property" is used in the 1991 Declaration and identifies the golf course as one sub-part of the Country Club Property: "The Properties described above include, without limitation, areas for residential housing, common areas, public or dedicated roads, utility easements and certain property developed or to be developed, as a golf course with clubhouse, pro-shop and other golf-related amenities . . ."(A. 43); *see also* (A. 39) ("'Country Club' is also used to describe the golf course, tennis courts, clubhouse, maintenance building and other portions of the Country Club's property . . .").

Absent contractual definition, "golf course" is to be given its common and ordinary meaning. *Murley v. Wiedemann*, 25 So. 3d 27, 29-30 (Fla. 2d DCA 2009) (citation omitted). The common, ordinary meaning of "golf course" is "an area of land laid out for golf with a series of 9 or 18 holes each including tee, fairway, and putting green and often one or more natural or artificial hazards." MERRIAM-WEBSTER DICTIONARY, *available at* https://www.merriam-

webster.com. Under this understanding, the phrase "golf course" referenced in the 1991 Declaration, as amended, and as a sub-part of Country Club Property, specifically refers to property where the game of golf is played.

The Golf Club attempts to isolate itself as the sole property in the Country Club Property, which is contrary to the plain language of 1991 Declaration, as amended. (A. 39, 43). However, the Golf Club ignores that its prior covenants were terminated in 2020, (A. 20), and overlooks its prior concession that the golf course was closed and no longer operational, a requirement for the 1994 Amendment to have any application. (A. 14); *see* (A. 83-84, 165) ("No amendment to these Declarations shall be made that relates to the Golf Course or the operation thereof. . ."). Moreover, the Golf Club incorrectly seeks to distance itself from the common, ordinary meaning of "golf course" even though this term is not otherwise defined by the Association's governing documents. *See Murley*, 25 So. 3d at 29-30.

The trial court did not include an additional operational requirement for the golf course. Instead, the lower court read the entirety of the 1991 Declaration, as amended, and applied the common, ordinary meaning of "golf course" in reaching its

conclusion. *See Fiddlesticks*, 363 So. 3d at 1181-83; *Fla. Farm Bureau*, 359 So. 3d at 892; *Super Cars*, 300 So. 3d at 755. Any veto power the Golf Club might have would not apply since no evidence was presented that the golf course was operational, and the Golf Club conceded as much. (A. 14). Even if the veto provision applied to the 2024 Amendments, the Golf Club did not demonstrate any adverse or serious impact, and no evidence was presented below that there would be such an impact. (A. 83-84, 165). The Golf Club also did not exercise any objection to the 2024 Amendments at the Meeting as required. (SA. 26). Instead, the only objection the Golf Club made occurred *after* the 2024 Amendments passed at the properly noticed Meeting. (A. 99; SA. 26). And, the Golf Club's objections apply to only two of the three 2024 Amendments. *Compare* (A. 27-28) *with* (A. 174-77).

While the Golf Club discusses *Foxfire Properties, LLC v. Foxfire Owners Ass'n, Inc.*, 15 So. 3d 20 (Fla. 2d DCA 2009), this case does not affect the trial court's ruling or this Court's decision. (IB. 16). The Association acknowledges the decision and facts set forth by the Second District in *Foxfire Properties*. However, the language at issue in *Foxfire Properties* is different from the language in this case,

making the case factually inapposite. The mere fact that the Second District found that the trial court erred in making a determination regarding the continued operation of a golf course under the specific language of that association's governing documents does not require a different court under facts with different governing documents to arrive at the same conclusions.

Not only is *Foxfire Properties* factually distinguishable from this case, so too are the cases of *Tropicana Condominium Association, Inc. v. Tropical Condominium, LLC*, 208 So. 3d 755 (Fla. 3d DCA 2016) and *Avila v. Biscayne 21 Condominium, Inc.*, 3D23-1616, 2024 WL 1080073, at *2 (Fla. 3d DCA Mar. 13, 2024) (IB. 15). Neither of these additional cases cited by the Golf Club provide the factual footing the Golf Club strives to achieve.

To start, in *Tropicana*, the Third District addressed an amendment to a condominium's declaration that occurred without unanimous consent. *Tropicana*, 208 So. 3d at 757-58. This proposed amendment to the declaration positioned itself on a 2007 legislative amendment to section 718.117, which the association claimed applied retroactively to and, as a result, made the amendment "unnecessary and without import" even though Tropicana's

declaration did not contain *Kaufman* language.[5] *Id.* at 758. The issue before the court was "whether a retroactive application of the statute exists to override the procedural defect of the Declaration amendments; and, if so, whether such retroactive application is constitutional." *Id.*

The Third District agreed "with the trial court that the Association failed to amend its Declaration properly by accepting amendments that were not approved unanimously," because section 14.5 of the Tropicana Declaration specifically provided that the Termination Provision "cannot be amended without the consent of all Unit Owners and of all record owners of institutional Mortgages upon the Units." *Tropicana*, 208 So. 3d at 758. The court then merely addressed the constitutional issue of "whether a retroactive application of [section 718.177] exists to override the procedural defect of the Declaration amendments; and, if so, whether such

[5] This refers to language identified in *Kaufman v. Shere*, 347 So.2d 627,628 (Fla. 3d DCA 1977) that an association's declaration containing language that provisions of the Condominium Act "as it may be amended from time to time" was not ambiguous to show "the express intention of all parties concerned that the provisions of the Condominium Act were to become a part of the controlling document" regardless of when the provision were enacted.

retroactive application is unconstitutional." *Id.* The Third District agreed with the trial court that, regardless of the association's motives, "the 2007 [statutory] amendment, if retroactively applied, would eviscerate the Tropical owners' contractually bestowed veto rights." *Id.* As such, the court affirmed the trial court's order that it is impermissible to retroactively apply section 718.117. *Id.*

Additionally, no weight should be given to *Avila v. Biscayne 21 Condominium, Inc.*, 3D23-1616, 2024 WL 1080073, at *2 (Fla. 3d DCA Mar. 13, 2024), since this Opinion is not yet final. There, the Third District reversed a trial court's denial of a temporary injunction against a condominium association. *Avila*, 2024 WL 1080073, at *1. However, the association filed its post-Opinion motion rehearing, rehearing *en banc*, and requests for certifying questions of great

public importance.[6] *See* Case Docket of *Avila v. Biscayne 21 Condominium, Inc.*, 3D23-1616, *available at* https://acis.flcourts.gov (last visited Oct. 30, 2024). Leave was granted by the Third District

[6] The Motion for Rehearing argues that the Third District overlooked and misapprehended the plain language of the declaration, and that the Opinion incorrectly analyzed "voting rights" under the condominium termination since the condominium was terminated under section 718.117(3), Florida Statutes. The Motion for Rehearing *En Banc* argues the necessity to address the issue of exceptional importance and the necessity to maintain uniformity of the Third District's decision in *Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d DCA 1977). Additionally, the following questions were requested to be certified as questions of great public importance to the Florida Supreme Court:

1. Where a condominium's declaration requires approval of 100% of the owners to alter owner voting rights but does not require unanimity to amend a voting threshold, can the voting threshold be amended by approval of less than 100% of the owners?

2. When a declaration expressly *submits* the condominium to ownership under the Condominium Act, *as amended*, does the declaration incorporate future statutory amendments? If not, can the association amend its declaration to incorporate amendments to the Condominium Act and use the statutorily approved process under section 718.117(3), Florida Statutes, to terminate the condominium without 100% owner approval?

See Case Docket of *Avila v. Biscayne 21 Condominium, Inc.*, 3D23-1616, *available at* https://acis.flcourts.gov (last visited Oct. 30, 2024).

to allow three amicus curiae briefs in support of the post-Opinion filed by the Florida Chamber of Commerce, developers, and condominium associations. *Id.* As of the time this Answer Brief was filed, which is more than 7 months after the Third District's Opinion, the post-Opinion motion remains outstanding. *Id.*

The Golf Club's reliance on *Tropicana* and *Avila* is misplaced. This case does not address retroactivity and *Kaufman* language. *See Tropicana*, 208 So. 3d at 757-58. Moreover, the issue before the Third District in *Avila* was an amendment related to the voting threshold needed to pass any given amendment, an issue not raised by the Golf Club in this case. Therefore, neither *Tropicana* nor *Avila* present similar circumstances or legal issues and should not be applied to this case.

In sum, the trial court correctly denied the Golf Club's temporary injunction. The trial court did not include or read-in additional rights or restrictions. Instead, the trial court employed the contractual analysis of looking at the governing documents as a whole. Therefore, this Court should affirm.

II. THE TRIAL COURT CORRECTLY DENIED THE TEMPORARY INJUNCTION SINCE THE GOLF CLUB FAILED TO PROVIDE COMPETENT SUBSTANTIAL EVIDENCE TO SHOW A SUBSTANTIAL LIKELIHOOD OF SUCCEEDING ON THE MERITS.

The primary purpose of a temporary injunction is to preserve the status quo while the merits of the underlying dispute are litigated." *Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1199 (Fla. 2d DCA 2014) (quoting *Manatee Cty. v. 1187 Upper James of Fla., LLC*, 104 So. 3d 1118, 1121 (Fla. 2d DCA 2012)); *see Bautista REO U.S., LLC v. ARR Investments, Inc.*, 229 So. 3d 362, 365 (Fla. 4th DCA 2017). A party seeking a temporary injunction must prove four elements: "(1) a likelihood of irreparable harm; (2) unavailability of an adequate legal remedy; (3) a substantial likelihood of succeeding on the merits; and (4) [that] considerations of the public interest support the entry of the injunction." *Lusby*, 363 So. 3d at 235 (quoting *Masters Freight, Inc. v. Servco, Inc.*, 915 So. 2d 666, 666 (Fla. 2d DCA 2005)). The party moving for a temporary injunction has the burden of providing competent, substantial evidence satisfying each of the four elements necessary to obtain a temporary injunction. *SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC*, 78 So. 3d 709, 711 (Fla. 1st DCA 2012).

Once a temporary injunction is denied, "[a]n appellant who challenges the denial of a temporary injunction has a heavy burden." *Perry & Co. v. First Sec. Ins. Underwriters, Inc.*, 654 So. 2d 671 (Fla. 3d DCA 1995). Seeking a temporary injunction has been defined as seeking "an extraordinary and drastic remedy which should be sparingly granted." *Cordis Corp. v. Prooslin*, 482 So. 2d 486, 489 (Fla. 3d DCA 1986); *see Yardley v. Albu*, 826 So. 2d 467, 470 (Fla. 5th DCA 2002).

In this case, the Golf Club only challenges one element: whether the Golf Club has a substantial likelihood of success on the merits of its claims. (IB. 17). Therefore, any discussion regarding the element of irreparable injury is irrelevant and inapplicable. (IB. 17) (citing *Autozone Stores, Inc. v. Ne. Plaza Venture, LLC*, 934 So. 2d 670 (Fla. 2d DCA 2006)).

Turning to the element at issue, "[a] substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 753 (Fla. 1st DCA 1994). The moving party must "advance more than just a colorable claim" and "illustrate 'a clear legal right to relief requested.'" *Fla. Ass'n of Realtors v. Orange*

County, 350 So. 3d 115, 124 (Fla. 5th DCA 2022) (quoting *Mid-Fla. at Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357 (Fla. 5th DCA 1988)).

Despite the requirements for a temporary injunction and the burden on the Golf Club as the moving party, the Golf Club fails to present any argument related to the substantial likelihood of success on the merits. It is true that the Golf Club presents numerous legal authorities and recites legal principles related to injunctions. (IB. 17-20). However, this does not meet the Golf Club's burden on appeal. *See Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived."). Arguments that are not fully briefed are insufficient for appellate review and deemed abandoned. *See Shere v. State*, 742 So. 2d 215, 217 n.6 (Fla. 1999). In this same vein, when only conclusory arguments are made, they "are insufficiently presented for review and are waived." *Hammond v. State*, 34 So. 3d 58, 59 (Fla. 4th DCA 2010).

Other than setting forth general legal principles that the Association does not take issue with, the Golf Club presents a few

conclusory statements. (IB. 17, 20). Still, the Golf Club has not demonstrated how it could circumvent its evidentiary burden for a temporary injunction despite concluding that the trial court "erroneously found that the lack of evidence of the operational status of the golf course meant that Eastwood Golf Club had not demonstrated a high probability of success on the merits." (IB. 17). The Golf Club also has failed to show how the trial court misapplied the law despite claiming so. (IB. 17). Because the Golf Club presented nothing more than conclusory statements and legal principles, the Golf Club has failed to meet its burden on appeal.

Assuming this Court addresses this position, the trial court was correct to deny the Golf Club's temporary injunction. Even though the 1994 Amendment changed Article XI, Section 3 of the 1991 Declaration, the Golf Club ignores the 2020 Amendment regarding the Association's ability to amend the declaration: "This Declaration shall be amended at a regular or special meeting of the Members upon the affirmative vote of not less than a majority of all Owners of Lots, Dwelling Units and Commercial Acres. . . ." (SA. 26). The Golf Club does not acknowledge or make any argument against the implication and application of the 2020 Amendment.

Furthermore, the Association complied with the meeting and notice requirements for the then-proposed 2024 Amendments. No comments or objections were voiced. (SA. 11-12). Having received no comment or objection by those in attendance, the 2024 Amendments passed. (A 99; SA. 11-12). However, two days after the Meeting, the Golf Club objected to nine subparts of two of three 2020 Amendments on grounds that the certain "nine subparts of [two of] the proposed amendments were adverse to the golf club property". (A. 99). The Association rejected the Golf Club's objection. (A. 99). No record evidence shows how this objection and rejection occurred. And, the Golf Club admitted the Meeting was noticed and that it received the notice. (A. 99).

The Association acknowledges that a clear legal right can exist where there is a showing of a violation of governing documents. (IB. 19-20). However, unlike the cases relied on by the Golf Club, the issue before this Court is not for a mandatory injunction. (IB. 19-20); *see Springsted Holdings, Inc. v. Del Prado Mall Prof'l Condo. Ass'n, Inc.*, 349 So. 3d 939, 944 (Fla. 2d DCA 2022) (mandatory injunction); *Amelio v. Marilyn Pines Unit II Condo. Ass'n, Inc.*, 173 So. 3d 1037 (Fla. 2d DCA 2015) (mandatory injunction); *Coconut Key*

Homeowner's Ass'n, Inc. v. Gonzalez, 246 So. 3d 428, 432 (Fla. 4th DCA 2018), *receded from on other grounds by Sherman v. Sherman*, 279 So. 3d 188 (Fla. 4th DCA 2019).

Setting temporary or mandatory distinction aside, the Golf Club overlooks its burden to demonstrate a clear legal right by competent, substantial evidence. *SunTrust*, 78 So. 3d at 711. No evidence was provided below, and no evidence is relied on for this appeal. Instead, the Golf Club looks solely at the provision that it maintains provides veto power.

For this Court to find that Article XI, Section 3, as amended, allows for a *carte blanche* veto power without any evidence to support this claim, this Court would have to look past the evidentiary and procedural burden placed on the party seeking the injunction. Additionally, for this Court to agree with the Golf Club, it would be required to read Article XI, Section 3, as amended, in isolation from the other parts of the 1991 Declaration and ignore the common, ordinary meaning of a "golf course." This would include ignoring: 1) the 2020 Amendment that discussed how amendments to the governing documents would take place; and 2) the Golf Club's admission that the Meeting was properly noticed, and the Golf Club

had an opportunity to be heard at the Meeting but failed to do so. (A. 86-95, 99; SA. 26); *Ham*, 308 So. 3d at 946-47; *Fla. Farm Bureau*, 359 So. 3d at 890; *Super Cars of Miami*, 300 So. 3d at 755. Doing so would lead to the impermissible practice of court making a "new contract for the parties." *N. Bay Green Invs.*, 388 So. 3d at 27. Because the Golf Club failed to present competent substantial evidence for the element of substantial likelihood of success, the trial court correctly determined that a temporary injunction was not appropriate.

CONCLUSION

It is not for this Court, or the trial court in the first instance, to second guess the wisdom of the bargain entered into by contracting parties or rewrite the contract. For the factual and legal reasons previously set forth, Appellee, Community Association, Inc., respectfully requests this Court affirm the trial court's order denying the Golf Club's renewed request for an emergency temporary injunction.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 30th day of October, 2024, a true and correct copy of the foregoing was electronically filed with the Sixth District Court of Appeal by using the Florida Courts e-Filing Portal, therefore furnished via E-mail, to: **Rebecca E. Rhoden, Esquire** and **Joseph A. Kovecses, Jr., Esquire**, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., 215 North Eola Drive, Post Office Box 2809, Orlando, Florida 32802 (rebecca.rhoden@lowndes-law.com; joseph.kovecses@lowndes-law.com), *Counsel for Appellant.*

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045(b), the undersigned counsel hereby certifies that this brief was submitted in Bookman Old Style 14-point font. This brief also complies with the word count limit requirements, excluding the parts exempted by Fla. R. App. P. 9.045(e).

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