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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
SIXTH DISTRICT

CASE NO. 6D2024-1167

L.T. CASE NO. 2024-CA-002784-O
on appeal from the Ninth Judicial Circuit
in and for Orange County, Florida

EASTWOOD GOLF CLUB, LLC, a Florida limited liability company

Appellant,

v.

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

Appellee. /

INITIAL BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

This is an appeal of a non-final order denying a motion for a temporary injunction. This Court has jurisdiction pursuant to Rule 9.130(a)(3)(B), *Florida Rules of Appellate Procedure*.

PRELIMINARY STATEMENT

Appellant, Eastwood Golf Club, LLC, will be referred to as "Eastwood Golf Club." Appellee, Eastwood Community Association, Inc., will be referred to as "ECA." This Initial Brief is accompanied by an Appendix pursuant to Rule 9.130(e), *Florida Rules of Appellate Procedure*. References to portions of the Appendix will be referred to as "App. Tab __."

STATEMENT OF THE CASE AND FACTS

Eastwood Golf Club filed the underlying action as a member of ECA seeking to enjoin ECA from adopting and enforcing various amendments to its governing declaration documents based on a veto power created in those very same declaration documents. Eastwood Golf Club filed a motion for a temporary injunction to enjoin enforcement of the adverse amendments under Rule 1.610, *Florida Rules of Civil Procedure*, which contemplates a ruling based on verified pleadings.

ECA is a homeowners' association that is responsible for the operation of the Eastwood planned development residential community within Orange

County, Florida. (*See* Plaintiff's Verified Complaint for Injunctive and Declaratory Relief ("Verified Complaint"), filed March 29, 2024, App. Tab C, ¶ 5). Orange County initially approved development of the community as the Deer Run South Planned Development, with the original declaration of covenants recorded in 1988. (*Id.* at ¶¶ 7 & 8). On May 10, 1991, an Amended, Restated and Consolidated Declarations of Covenants and Restrictions for Eastwood ("1991 Declaration") was recorded in Orange County's Official Records at Book 4286, Page 1408. (*Id.* at ¶ 13). Except as later amended, in part, the 1991 Declaration remains in effect. (*Id.* at ¶ 14). It was within the 1991 Declaration that the community was renamed as the Eastwood community and that ECA was named and conceptually formed. (*Id.* at ¶ 15). Eastwood Golf Club is the owner of golf course property within the Eastwood community and is a voting member of ECA under Article III of the 1991 Declaration. (*Id.* at ¶ 16). The 1991 Declaration, attached as Exhibit A to the Verified Complaint, uses the term "Country Club" to define the golf course property and its "golf related amenities" as follows:

> (j) "Country Club" shall mean 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.

(*Id.* at Exhibit A, pg. 3) (emphasis added).

> (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 related to easements granted to the Country Club by the Declarant over and across certain portions of the Properties, as well as parking privileges, assessments 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.

(*Id.* at Exhibit A, pg. 7) (emphasis added). Furthermore, the 1991 Declaration sets forth a clear intent to protect the Country Club, including the golf course property, from other members of the association and the ECA itself, with specific protections contained in Article XI of the 1991 Declaration, as follows:

ARTICLE XI

THE COUNTRY CLUB

Section 1. Conveyance of 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** . . . . 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.[1] 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

[1] "Declarant" is defined in the 1991 Declaration to mean DRS Limited, a Florida limited partnership. The title of "Declarant" does not automatically pass to successors or assigns of DRS Limited without a specific recorded assignment of the "Declarant" title by DRS Limited accepted by the assignee. (App. Tab. C, Exhibit A, pg. 3-4). ECA is not the "Declarant." (*Id.*)

> 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**.

(*Id.* at Exhibit A, pg. 36) (emphasis added). Article XI, Section 1 thus states that: (1) there is no obligation to continue operation of the golf course; (2) ownership and the operational status of the golf course property and "Country Club" can change at any time without impacting the rights of the golf course owner; and (3) there is no obligation to offer membership to the golf course to anyone owning property within ECA. (*See id*). Furthermore, any attempt to amend these provisions requires approval of the "Country Club." (*See id*).

On December 22, 1994, a Supplemental Declaration and Amendment to Amended, Restated and Consolidated Declaration of Covenants and Restrictions for Eastwood ("1994 Amendment") was recorded in Orange County's Official Records at Book 4835, Page 1152. (*Id.* at ¶ 21). The 1994 Amendment is attached as Exhibit B to the Verified Complaint.

The 1994 Amendment created a new Article XI, Section 3, in relation to the 1991 Declaration, which states in its entirety that:

> 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**.

(*Id.* at ¶ 22 & Exhibit B, pg. 1-2) (emphasis added). The provisions of the 1991 Declaration not in conflict with the 1994 Amendment remained in full force and effect after the amendment. (*Id.* at Exhibit B, pg. 1-2). The 1994 Amendment provides further protections to the "Golf Course" property, including the Eastwood Golf Club property, by giving the property owner a veto power over amendments to ECA's declarations. This veto power applies "to the Golf Course **or** the operation thereof . . . ." (*Id.* at Exhibit B, pg. 1). The veto power therefore applies to any proposed amendments that adversely impact the golf course property *or* golf course operations independently of each other. (*See id.*).

The term "Golf Course" is not defined in the 1994 Amendment, but the new provision is put within Article XI of the 1991 Declaration, which Article XI is titled "THE COUNTRY CLUB." (*Id.* at Exhibit A, pg. 36 and Exhibit B, pg. 1-2). All definitions of Country Club within the 1991 Declaration refer to its primary use as a golf course. (*See id.* at Exhibit A, pg. 3 and 7). The 1994 Amendment was thus intended to benefit the golf course property now

owned by Eastwood Golf Club. (*See id.* at Exhibit A, pg. 3, 7, 36 and Exhibit B, pg. 1-2).

ECA gave notice to Plaintiff as the owner of the golf course that ECA intended to propose three amendments to its declarations at a meeting on April 10, 2024. (*Id.* at ¶ 25). Eastwood Golf Club determined in its reasonable opinion that several subparts of the proposed amendments would cause adverse or serious impacts to its golf course property. (*Id.*). Eastwood Golf Club provided a written objection to the proposed amendments to ECA both before the adoption vote occurred on April 10, 2024, (*see, generally, id.*) and on April 12, 2024 (*see* Plaintiff's Verified Renewed Motion for Emergency Temporary Injunction ("Verified Motion"), filed April 12, 2024, App. Tab E, pg. 2). ECA did not revise or withdraw the proposed adverse amendments.

Eastwood Golf Club filed its Verified Complaint on March 29, 2024, seeking a temporary and permanent injunction and declaratory relief. (*Id.*). Both parties appeared at a temporary injunction hearing on April 4, 2024, but the lower tribunal denied the request for temporary injunction without prejudice as the April 10, 2024, vote had not yet occurred and the anticipated harm to Eastwood Golf Club was too speculative and contingent. (Order

Denying Without Prejudice Plaintiff's Motion for Temporary Injunction, App. Tab. D, pg. 1).

On April 10, 2024, the required majority of ECA members voted to approve all proposed amendments, including those objected to by Eastwood Golf Club. (*See* App. Tab E, pg. 2). Eastwood Golf Club communicated its renewed objections and veto of the relevant amendment provisions to ECA on April 12, 2024, but ECA refused to acknowledge or apply the veto. (*Id.*). Eastwood Golf Club filed its Verified Motion on April 12, 2024, to bring the issue back before the lower tribunal as the risk of ECA violating the 1991 Declaration and the 1994 Amendment was no longer contingent or speculative. (*See id.*). ECA recorded all adverse amendments over Eastwood Golf Club's objection and veto on April 12, 2024. (*See* Plaintiff's Request for Judicial Notice, filed April 17, 2024, App. Tab. F).

The parties attended a hearing on Eastwood Golf Club's Verified Motion on April 17, 2024. (*See* App. Tab A and B). On May 20, 2024, the lower tribunal entered its Order Denying Without Prejudice Plaintiff's Verified Renewed Motion for Emergency Temporary Injunction ("Order"). (App. Tab A). The substantive ruling in the Order reads, in its entirety, that

> For the reasons stated on the record during the April 17, 2024 hearing, Plaintiff's Verified Renewed Motion for Emergency Temporary Injunction is denied without prejudice. Plaintiff has not shown there is a

> high probability of success on the merits of this case. The question of 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 indicates whether the golf course is still in existence.

(*Id.*) During the hearing, the lower tribunal further explained its finding that the 1994 Amendment required the golf course to continue its operations in order to exercise the veto power. (*See* Transcript of Hearing on Plaintiff's Verified Renewed Motion for Emergency Temporary Injunction, App Tab B).

Eastwood Golf Club timely filed its Notice of Appeal.

SUMMARY OF ARGUMENT

The lower tribunal's denial of the Verified Motion involved both a misapplication of the law and an abuse of discretion in its factual findings. First, the veto power is a vested contractual right that Eastwood Golf Club holds as against the other members of the association and ECA as an entity that is wholly independent of the operational status of the golf course. Neither the unambiguous terms of the 1994 Amendment nor Florida law require that golf course operations continue in order that the owner of the golf course property can exercise its veto power over adverse amendments. Second, Eastwood Golf Club proffered sufficient evidence to establish a substantial likelihood of success on the merits to warrant the temporary

injunction. Eastwood Golf Club presented evidence that the claimed veto power was clearly stated in the 1994 Declaration and that ECA adopted and recorded amendments to the declaration documents adverse to Eastwood Golf Club over Eastwood Golf Club's objections. The evidence that ECA was violating its own declarations was sufficient evidence of the likelihood of success on the merits to warrant a temporary injunction.

STATEMENT OF PRESERVATION

The issue of whether Appellant was entitled to a temporary injunction on the basis of the veto power granted by the 1994 Amendment to preclude the adverse amendments was raised in the Verified Complaint (App. Tab C) and Verified Motion (App. Tab E). The issue of Appellant's ability to use the veto power regardless of the operational status of the golf course was raised during the hearing on April 17, 2024. (App. Tab B). The lower tribunal ruled on these issues in the Order denying the Verified Motion. (App. Tab A).

ARGUMENT

a. Standard of Review

This Court applies a mixed standard of review when considering a trial court's decision on a motion for a temporary injunction. *See Lusby v. Canevari*, 363 So. 3d 233, 234 (Fla. 6th DCA 2023). "To the extent the trial court's order is based on factual findings, [the Court] will not reverse unless

the trial court abused its discretion; however, any legal conclusions are subject to de novo review." *Id.* at 234-35. *See also Florida Ass'n of Realtors v. Orange Cnty.*, 350 So. 3d 115, 123 (Fla. 5th DCA 2022), *reh'g denied* (Nov. 2, 2022), *review denied sub nom. Orange Cnty., Florida v. Cowles*, SC2022-1656, 2023 WL 2968082 (Fla. Apr. 17, 2023) (finding that the abuse of discretion standard is applied to factual findings while a trial court's legal conclusions are subject to a de novo review).

b. Elements for a Temporary Injunction

"Injunctive relief is normally available to redress violations of restrictive covenants affecting real property[.]" *Autozone Stores, Inc. v. Ne. Plaza Venture, LLC*, 934 So. 2d 670, 673 (Fla. 2d DCA 2006) (internal quotes omitted). This includes the right to obtain an injunction to enforce restrictive covenants requiring consent for an act involving real property. *Blue Reef Holding Corp., Inc. v. Coyne*, 645 So. 2d 1053, 1054 (Fla. 4th DCA 1994) (holding that a temporary injunction was required where the relevant declaration of covenants and restrictions prevented the master developer from changing the size and configuration of common property without the consent of the lot owners); *Jack Eckerd Corp. v. 17070 Collins Ave. Shopping Ctr., Ltd.*, 563 So. 2d 103, 105 (Fla. 3d DCA 1990) (holding that a temporary injunction was appropriate to prevent a landlord from reducing a

parking area without the prior written consent of the tenant, which was required under the operative commercial lease).

"The primary purpose of a temporary injunction is to preserve the status quo while the merits of the underlying dispute are litigated." *Manatee Cnty. v. 1187 Upper James of Florida, LLC*, 104 So. 3d 1118, 1121 (Fla. 2d DCA 2012) (emphasis added). To obtain a temporary injunction under Rule 1.610, a movant must generally show: "(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.

However, "irreparable injury is not required to be shown to enjoin a violation of a restrictive covenant affecting real property." *Blue Reef Holding Corp., Inc.*, 645 So. 2d at 1055. *See also Jack Eckerd Corp*., 563 So. 2d at 105 ("Where an injunction is sought to prevent the violation of a restrictive covenant, appropriate allegations showing the violation are sufficient and it is not necessary to allege, or show, that the violation amounts to an irreparable injury."). *See also Autozone Stores, Inc.*, 934 So. 2d at 673 ("Florida law has long recognized that injunctive relief is available to remedy the violation of a restrictive covenant without a showing that the violation has

caused an irreparable injury—that is, an injury for which there is no adequate remedy at law.").

Here, the lower tribunal's Order was specifically based on Eastwood Golf Club's failure to establish a "high probability of success on the merits of this case" because of the lower tribunal's determination that the operational status of the golf course was required for use of the veto power. (App. Tab A). As explained below, the operational status of the golf course is immaterial to the application of the veto power in the 1994 Amendment and Eastwood Golf Club set forth a clear factual basis for its substantial likelihood of success on the merits in support of the requested temporary injunction.

c. Interpretation of Declaration Terms

"Restrictions found within a Declaration are afforded a strong presumption of validity, and a reasonable unambiguous restriction will be enforced according to the intent of the parties as expressed by the clear and ordinary meaning of its terms[.]" *Coral Lakes Cmty. Ass'n, Inc. v. Busey Bank, N.A.*, 30 So. 3d 579, 584 (Fla. 2d DCA 2010). *See also Emerald Estates Cmty. Ass'n, Inc. v. Gorodetzer*, 819 So. 2d 190, 193 (Fla. 4th DCA 2002) ("Restrictions found within a Declaration are afforded a strong presumption of validity, and a reasonable unambiguous restriction will be

enforced according to the intent of the parties as expressed by the clear and ordinary meaning of its terms[.]").

The existence of the veto power in the 1994 Amendment is not disputed and its terms are clear and unambiguous and must be applied as intended – to protect the golf course property from adverse amendments to the ECA declarations. (App. Tab C, Exhibit B, pg. 1-2). As set forth herein, the lower tribunal erred in denying Eastwood Golf Club's request for a temporary injunction based on an incorrect legal conclusions and misapplication of the facts to the elements for the cause of action.

I. THE LOWER TRIBUNAL ERRED BY READING AN OBLIGATION INTO THE DECLARATION DOCUMENTS REQUIRING CONTINUING OPERATION OF THE GOLF COURSE, WHICH DEPRIVED APPELLANT OF A VESTED CONTRACTUAL RIGHT GRANTED TO IT WITHIN THE DECLARATION DOCUMENTS.

The lower tribunal misapplied the law by reading an obligation into the 1994 Amendment that Eastwood Golf Club must continue golf course operations in order to exercise the veto power. (*See, generally*, App. Tab C, Exhibits A and B). That obligation does not exist in any of the declaration documents. The lower tribunal's insertion of the operational requirement deprives Eastwood Golf Club of a vested contractual right to protect its property from adverse amendments by ECA.

The veto power provided in the 1994 Amendment is a vested contractual right in the owner of the "Golf Course" property, i.e. Eastwood Golf Club, which was created to protect the Golf Course property from any adverse amendments to the declaration documents. *See Tropicana Condo. Ass'n, Inc. v. Tropical Condo., LLC*, 208 So. 3d 755, 758 (Fla. 3d DCA 2016) ("We agree with the trial court that the Association failed to amend its Declaration properly by accepting amendments" over a vested right to a contractual veto power in the Declaration). Florida law protects veto powers provided in restrictive covenants as vested rights. *Id. See also Avila v. Biscayne 21 Condo., Inc.*, 3D23-1616, 2024 WL 1080073, at *2 (Fla. 3d DCA Mar. 13, 2024) ("By requiring a unanimous vote for termination, the declaration originally gave every unit owner an effective veto over any termination plan, which would be lost if the amendments at issue here were enforced.").

Importantly, "there is nothing in the [1994 Amendment] that indicates that the [veto] provision is ineffectual if the golf course is unilaterally closed." *Foxfire Properties, LLC v. Foxfire Owners Ass'n, Inc.*, 15 So. 3d 20, 23 (Fla. 2d DCA 2009). It was improper for the lower tribunal to read an obligation into the 1994 Amendment or the 1991 Declaration that Eastwood Golf Club was required to operate a golf course on its property as a condition precedent

to invoke its veto power. *Id.* ("We accept the argument that the Covenant and Restriction . . . does not create an affirmative duty to operate a golf course.").

In *Foxfire Properties, LLC*, the owners of Foxfire Golf Course closed the golf course and sought to release and terminate a restriction in the applicable declaration limiting use of the property to a golf course pursuant to provisions that allowed termination of the restriction if the golf course use was "no longer economically feasible." *Id.* at 21. The Foxfire Owners Association objected to the release and termination of the restriction, arguing that an arbitration provision associated with the termination could only be invoked if the golf course was continuing to operate pending arbitration. *Id.* at 22. The appellate court found that the relevant provision was not dependent on the continued operation of the golf course and could be invoked even where the operations had ceased. *Id.* at 23.

Here, the 1991 Declaration specifically provided that the golf course property owner had no continuing obligation to operate the golf course. (App. Tab C, Exhibit A, pg. 36). The veto power created in the 1994 Amendment applies equally to adverse amendments relating to both the real property itself **or** to the operation of the golf course. (App. Tab C, Exhibit B). Thus,

the lower tribunal incorrectly based its Order on whether the Eastwood Golf Course was still operating its property as a golf course.

II. THE LOWER TRIBUNAL ERRED IN FINDING THAT THERE WAS NOT SUFFICIENT FACTUAL SHOWING OF A HIGH PROBABILITY OF SUCCESS ON THE MERITS TO JUSTIFY THE REQUESTED TEMPORARY INJUNCTION.

The lower tribunal misapplied the law on Eastwood Golf Club's required showing to meet the "substantial likelihood of success" element for a temporary injunction claim and 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.

In Florida, public policy and the common law favor injunctions as a means to enforce restrictive covenants affecting real property. Indeed, "[i]njunctive relief is normally available to redress violations of restrictive covenants affecting real property without proof of irreparable injury or a showing that a judgment for damages would be inadequate." *Autozone Stores, Inc.*, 934 So. 2d at 673 (internal quotes omitted). This is because "[t]he value of a restrictive covenant is often difficult to quantify and may be impossible to replace." *Id.* (internal quotes omitted).

"In interpreting restrictive covenant provisions, a court should give effect to the commonly understood meaning of the words of the pertinent provisions." *Gem Estates Mobile Home Vill. Ass'n, Inc. v. Bluhm*, 885 So.

2d 435, 437 (Fla. 2d DCA 2004). "While restrictive covenants should be narrowly construed, they should never be construed in a manner that would defeat the plain and obvious purpose and intent of the restriction." *Id.* at 438. "The general rule is that a reasonable, unambiguous restriction will be enforced according to the intent of the parties, as expressed by the clear and ordinary meaning of its terms." *Id.* (internal quotes omitted). "If it is necessary to construe a somewhat ambiguous term, the intent of the parties as to the evil sought to be avoided expressed by the covenants as a whole will be determinative." *Id.* (internal quotes omitted).

In considering the elements for a temporary injunction, "[a] substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *Bd. of Cnty. Commissioners, Santa Rosa Cnty. v. Home Builders Ass'n of W. Florida, Inc.*, 325 So. 3d 981, 984 (Fla. 1st DCA 2021) (internal quotes omitted) (affirming a temporary injunction where the movant introduced competent and substantial evidence in support of its request). Functionally, to establish a substantial likelihood of success on the merits, a movant for a temporary injunction must "advance more than just a colorable claim." *Florida Ass'n of Realtors,* 350 So. 3d at 124. "Instead, it must illustrate a clear legal right to relief requested." *Id.* (internal quotes omitted) (finding that the movant established a substantial likelihood

of success on the merits based on a legal interpretation of a challenged ordinance against the Florida Constitution and relevant statutes).

A party to a contract generally has a clear legal right to enforce the terms of the contract. *Wilson v. Sandstrom*, 317 So. 2d 732, 737 (Fla. 1975) (finding that the movant established a clear legal right to support a mandatory temporary injunction based on a contract between the parties). A declaration of restrictive covenants and other governing documents controlling a community association are a contract between and among the association and its members that create vested contractual rights among the parties. *Fiddlesticks Country Club, Inc. v. Shaw*, 363 So. 3d 1177, 1181 (Fla. 6th DCA 2023), review denied, SC2023-1029, 2023 WL 6296237 (Fla. Sept. 27, 2023) ("As a result, we analyze the vested rights issue through the lens of what the Florida Supreme Court has determined is a contractual relationship.").

Furthermore, members of a homeowners, condominium, or other community association have a well-established clear legal right to enforce provisions of the community declarations and restrictive covenants such that evidence that an association is violating its own declarations is sufficient evidence of the likelihood of success on the merits to support an injunction. *Springsted Holdings, Inc. v. Del Prado Mall Prof'l Condo. Ass'n, Inc.*, 349 So.

3d 939, 944 (Fla. 2d DCA 2022) (reversing and remanding for entry of an injunction against the association where the movant established the association was in violation of its own governing documents based on the rights granted to the movant in the governing documents); *Amelio v. Marilyn Pines Unit II Condo. Ass'n, Inc.*, 173 So. 3d 1037, 1040 (Fla. 2d DCA 2015) (finding that condominium association members had a clear legal right to enforce the association's repair obligations under the governing declaration of condominium through a mandatory injunction action). *See also Coconut Key Homeowner's Ass'n, Inc. v. Gonzalez*, 246 So. 3d 428, 432 (Fla. 4th DCA 2018) (finding that a jury determination that an association violated its own governing documents on a breach of contract claim was sufficient evidence that the association violated a clear legal right of the movant in a later motion for a mandatory injunction), *receded from on other grounds by Sherman v. Sherman*, 279 So. 3d 188 (Fla. 4th DCA 2019).

Based upon the foregoing, the lower tribunal erred in finding that Eastwood Golf Club failed to establish a substantial likelihood of success on the merits to support a temporary injunction.

CONCLUSION

The lower tribunal erred in denying the Verified Motion based on the operational status of the golf course. The 1991 Declaration and the 1994

Amendment created a vested right in favor of Eastwood Golf Club to veto any amendments to the ECA declarations that Eastwood Golf Club determined would be injurious to its property, whether or not the property was operating as a golf course. The lower tribunal misapplied the law in reading the operational requirement into the declarations. The lower tribunal misapplied the law and abused its discretion in making factual findings regarding Eastwood Golf Club's obligation to show continuing operation of the golf club to establish a substantial likelihood of success for the temporary injunction. For the foregoing reasons, Eastwood Golf Club respectfully submits that the Court should reverse the Order of the lower tribunal and should direct the lower tribunal to enter the requested temporary injunction pending resolution of underlying action.

Respectfully submitted this 25th day of June, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June 2024, that a true and correct copy of the foregoing was e-filed via the Florida Court e-portal system and served via email to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements set forth in Rule 9.045 and Rule 9.210 of the Florida Rules of Appellate Procedure.

/s/ Rebecca E. Rhoden
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