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3D2023-1081  
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**UNITED STATES COURT OF APPEALS**  
**ELEVENTH CIRCUIT**  
\*\*\*\*\*

\*\*\*\*\*  
**CARLOS CORDOVA**  
**(Appellant/Petitioner)**

v.

**ENCLAVE AT THE PARK**  
**CONDOMINIUM ASSOCIATION INC**  
**(Appellee/Respondent)**  
\*\*\*\*\*

On Appeal From The  
United States District Court, Florida, Eleventh District  
LTNo 2022-013237-CA-01

\*\*\*\*\*  
**APPELLANT'S OPENING BRIEF**

\*\*\*\*\*

**Carlos Cordova**, Defendant  
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**ORAL ARGUMENT REQUESTED**  
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UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

*Carlos Cordova v Enclave at the Park Condominium Association,  
Inc , 3D2023-1081*

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

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Lower Tribunal:

Judge Thomas Rebull

Circuit Court  
Judge

Judge William Thomas

Circuit Court  
Judge

Non-Parties:

Attorney Evelyn Greenstone-  
Kammet

([ticker001])

State of Attorney Office

([ticker002])

Parties:

Carlos Cordova

Appellant/  
Petitioner

Enclave at the Park  
Condominium Association,  
INC.

(Appellee/  
Respondent)

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11<sup>th</sup> Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

**STATEMENT REGARDING ORAL ARGUMENT**

Appellant respectfully requests oral argument as this case presents novel/complex topics of law and public trust. In particular, he believes verbal presentation will benefit Issues 01, 02, 03, 04 and 05. Pursuant to Rule 34(a) Fed. R. App. P. a party can request oral argument from this Honorable Court (also see Rule 28-1(c) 11<sup>th</sup> Cir. R.).

At this moment, Appellant does not know whether Appellee will file a brief. Nor is he sure if he will file a subsequent reply brief. Thus, it appears important for this Honorable Court to entertain oral argument so that any questions that it has may be addressed.

Lastly, Appellant asserts that none of the factors listed in Rule 34(a)(2) Fed. R. App. P. exist in this appeal.

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**Governing Law**

Enclave at the Park Condominium Declaration

## INTRODUCTION

Appellant, Carlos Cordova, was the Defendant in the lower tribunal; and will be referred to in this brief as "Carlos Cordova" (Rule 28(d) Fed. R. App. P.). Appellee, Enclave at the Park Condominium Association, INC , was the Plaintiff in the lower tribunal; and will be referred to as "The Association".

The following references will be used in this brief:

[A\_] Appendix on Appeal<sup>1/</sup>

The following abbreviations will also be used:

FS Florida Statute

LT Lower Tribunal

3DCA Third District Court of Appeal

## JURISDICTIONAL STATEMENT

The Third District Court had jurisdiction over this matter under Rule 9.110. Carlos Cordova filed a timely notice of appeal (tolled by Rule 4(a)(4)(A)(iv)-(vi) Fed. R. App. P.).

## STATEMENT OF THE ISSUES ON APPEAL

- I. Whether the circuit court erred when issued a final judgment while there was still an issue of material fact still pending to be proven. not issues of facts while there was an issue of fact still to be proven. The Enclave at the Park Condominium Declaration Provision 11.0 requires the approval of the majority of the homeowners authorizing the association to buy the unit. The circuit court lacked of such evidence allowing the association to arbitrary use the Right of First Refusal.
- II. Whether the circuit court erred when confused the right of first offer for the right of first refusal in violation of the condominium Declaration.
- III. Whether the circuit court erred when enforced an offer presented by the association under the false allegation of Right of First Refusal in violation of the condominium declaration.
- IV. Whether The Association offer ( not a contract) can bind obligation and responsibilities to force Carlos Cordova to sell his property to the association.

- V. Whether the circuit court erred when granted the final judgment for specific performance based on the rejection of Mr Cordova to accept the Association's offer.
- VI. Whether the circuit court erred when granted a final summary judgement in violation of the Condominium Declaration which does not stipulate any damages.
- VII. Whether Marlin Scattolini affidavit could be used in support of the final judgement when she has performed her role as property manager without the proper license and after falsifying association's records.
- VIII. Whether the final judgment is enforceable against Carlos Cordova after the circuit court ignored that his was not longer the owner of the property.

### **STATEMENT OF THE CASE**

#### Overview

1. The Right of First Refusal is used to preserve the property value of the condominium units. Such right can not be use arbitrarily. When exercised approved by the majority of the homeowners of the Enclave At the Park Condominium. Therefore, Fifty three (53) approvals were needed authorizing the Association to purchase Carlos Cordova's unit #239.

2. The Fifth Amendment of the Constitution and s. 9 of Art. I of Florida Constitution reads" " No one shall be deprived of life, liberty or property without due process of the law"
3. On May 19, 2023 The Eleventh Circuit Court presided by Judge Thomas Rebull granted to the Association a Final Judgment. Such judgments ordered to Carlos Cordova to: "1.- Accept the Offer presented by the Association within 10 days. 2.- Sell his unit #239 under the Association terms and conditions expressed in its offer. 3.Facilitate the closing of unit #239 under the Association's terms and conditions expressed in its offer. 4.- Transfer tile of Property in 10 days".
4. On May 19, 2023, The Final Summary Judgement was granted without the lower tribunal obtaining and validating that the Association has followed and respected the condominium Declaration by requesting the approval of the majority of the homeowners. There is not record in the lower tribunal showing that the Association complied with the Declaration, provision 11.3 **Association Election to Purchase:** "The Association shall not exercise any option to purchase any unit as hereinabove set forth without prior approval of a majority of the Unit Owners voting at a meeting at which quorum is present.
5. On May 20, 2023, Carlos Cordova filed an Emergency Motion for Restitution of Rights. LT Docket #67 because his homeownership

rights were violated when the summary judgement was forcing him to sell his unit.

6. On May 20, 2023, Carlos Cordova filed a motion for Rehearing pursuant Rule 1.530.
7. On May 24, 2023, Judge Rebull flat denied both motions.
8. The lower tribunal omitted the provisions and stipulations described on the condominium declaration of the Enclave at the Park.
9. On June 11, 2023, Carlos Cordova submitted a second Emergency Motion for restitution of due process and renewed motion for reconsideration.
10. On June 14, 2023, the substituted Judge of division 27 denied the second motion and directed Carlos Cordova to file an appeal.
11. The circuit court role was to enforce the governing law of the community which is stipulated in the condominium declaration provision 11.0.

#### **SUMMARY OF ARGUMENTS**

12. **First Issue:** Under the federal summary judgement, which is now the standard applicable, a party is entitle to summary judgment where there is not genuine dispute as to material fact and the movant is entitle to judgement as matter of law. *Celotex Corp v. Catrett*, 477 U.S. 317 222-23(1986).

13. A factual issue is genuine if the evidence is such that a reasonable jury could rely on such evidence to return the verdict for the non movant party. *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).
14. A fact is deemed material if it might affect the outcome of the suit *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).
15. The Enclave at the Park Condominium Declaration Under provision 11.3 reads : **Association Election to Purchase:** "The Association shall not exercise any option to purchase any unit as hereinabove set forth without prior approval of a majority of the Unit Owners voting at a meeting at which quorum is present.
16. The lower tribunal lacks of evidence showing that the Association has requested a meeting among the homeowners to solicit the approval to purchase Carlos Cordova's unit 239.
17. The lower tribunal lacks of evidence that the association received the approval from Fifty three (53) homeowners authorizing the association to purchase Carlos Cordova's unit 239.
18. **Second Issue:** The lower tribunal confused the right of first offer for the right of first refusal.
19. On the final judgment Paragraph 6 reads The association notified Mr. Cordova that the Association was exercising its Right of First Refusal and provided Mr. Cordova with a matching offer.

20. The condominium declaration under right of first refusal clearly stipulates under 11.1 Approval by Association (a) that Carlos Cordova was to provide an offer containing the same terms and conditions as contained in the outside offer. The offer needed to be accompanied with the executed offer from the third party. However, Mr Cordova never accepted the third party offer and therefore, there was no need to initiate the right of first refusal.

21. The condominium declaration reads under provision 11.1 Approval by Association (a) Notice of Outside Offer: " Any Unit Owner who receives a bona fide written offer, (hereinafter called "The Outside Offer") which he intends to accept for the purchase of his Unit shall: (a) give notice to the Association, by registered or certified mail, return receipt requested, of such offer and intention, together with the name, address, business, occupation or employment, if any, of the proposed purchaser and the terms of the proposed transaction and shall enclose with such a notice an executed copy of the Outside Offer; b) such notice shall include an offer to sell such unit to the Association or its designee , on the same terms and conditions as contained in the Outside Offer. Such notice shall constitute a representation and warranty to the Association that such unit Owner believes the Outside Offer to be bona fide".

22. Carlos Cordova never accepted the third party offer.

23. Carlos Cordova never executed the third party offer. Therefore, there was no need to request approval by the Association.
24. Nonetheless, it is not the association role to initiate the right of first refusal by its own or by presenting an offer to Carlos Cordova with the intention to buy his unit.
25. **Third Issue:** The lower tribunal erred when enforced an offer that was presented by the Association to Mr Cordova with its intention to buy his unit #239 under the false pretention of Right Of First Refusal. Mr Cordova never accepted the offer, sign it and became a contract.
26. In the final Judgement Paragraph 10 reads: " The evidence also shows that the Association made an offer under the same material terms as the outside offer.
27. The declaration shows under provision 11.1 that the offers was to be made by Carlos Cordova to the Association instead of vice versa.
28. **Fourth Issue:** The Association offer was born as an offer and die as an offer. It never became a contract.
29. The circuit court lacks of evidence showing that Mr Cordova accepted the Association's offer and he was bound to any obligations and responsibilities contained on it.
30. An offer does not create contractual obligations until all parties sign it and agree to it.

31. An offer presented under the false pretention of the right of first refusal cannot be used to force Carlos Cordova to sell his unit.

32. **Fifth Issue:** The civil action initiated by the Association was under the cause of action of specific performance. Yet there was never a contract signed by all parties ( the Association and Mr Cordova).

33. A specific performance requires a formal contract not an offer

34. The lower court tribunal erred when is pretending to enforce an offer as it was a contract.

35. A simple offer from the Association with the intention to buy Mr Cordova's unit cannot be confused with a contract.

36. **Sixth Issue:** The lower court granted a benefit that is not stipulated in the Condominium Declaration.

37. The Declaration under provision 11.5 Subsequent Offers reads as: In the event that the Unit Owner shall not consummate the contract to sell pursuant to all terms and conditions set forth in his notice to the Association, then should such unit Owner thereafter elect to sell such Unit to the same or another Outside Offeror on the same or other terms and conditions, the Unit Owner shall comply with all the provisions of this Article.

38. The declaration clearly said that in the event of a CONTRACT no specific performance damages should granted in favor of the association except that a Unit Owner must comply with all the

provisions if Mr. Cordova decides to sell his unit again to the same or to another buyer.

39. Therefore, the final judgement granted by the lower court was an abuse of discretion in disregard of the condominium declaration which is the law governing the community.

40. **Seventh Issue:** The Renewed Summary Judgment was supported with an affidavit provided by Marlin Scattolini.

41. Marlin Scattolini was performing her role of Community Property Manager without a proper license. Such unlicensed activity was done in violation of the Condominium Declaration Exhibit O which requires the Community Association Property Manager to be licensed pursuant F.S. Chapter 468, Part VIII known as the Community Association Manager Law.

42. Marlin Scattolini has an open investigation in the State of Office Attorney Case 22-742 for falsifying the association bank statements and records.

43. The court has found that the conflict on the affidavit provided is sufficient to create a genuine issue of material fact. See *New Prime, Inc. v. Professional Logistic Management Co. Inc* 28 S.W. 3d 898, 904 ( Mo App. S.D. 2000).

44. The Conflicting Affidavit of Marlin Scattolini in support of the renewed summary judgment was already a sufficient ground to deny the final summary judgement. See *CGI Silvercote Inc. v. Custom Warehouse, Inc.* 77 SW 3d 701 (2002).

- 45. Eight Issue:** The final judgment is not longer enforceable because Carlos Cordova is not longer the owner of his unit.
46. Carlos Cordova never received any prohibition to transfer or sell his unit accordingly with the condominium declaration 11.8 which allowed him to sell his unit to his mother.
47. The Condominium Declaration 11.8 Restrictions/ Exceptions to Right of First Refusal: The right of first refusal shall not apply to any of the following:
48. Any sale or conveyance of any unit by: a) the Unit owner thereof to his spouse, adult children, parents, parents in law, adult siblings or to any or more of them.
49. On April 21, 2023, Carlos Cordova conveyed his unit to his mother.
50. Therefore, by the time the final judgment was granted Mr Carlos Cordova was not longer the owner of the unit or has any rights to convey, sell, rent or transfer the unit because the unit belongs to a new owner.

#### **CONCLUSION**

The Final Judgment granted by the lower court fell through the crack as demonstrated through issues 1-8. The enforcement of such judgment constituted a violation of homeownership rights of Mr Cordova over his property by allowing an arbitrary Association misuse the right of first refusal without receiving the proper

approval. Additionally, the reverse on the process by the Association conversed the right of first refusal into a right of first offer. Finally, using a questionable affidavit from Marlin Scattolini who integrity is questionable and she in under a criminal investigation, is enough to reversed the Lower Tribunal decision.

WHEREFORE, Appellant Carlos Cordova asks this Court to reverse the lower tribunal's judgment, because it was erred and abusive.

Dated this 22<sup>nd</sup> day of September, 2023.

Respectfully submitted,

/s/ Carlos Cordova

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**CERTIFICATE OF COMPLIANCE**

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09/22/2023

Date

/s/ Carlos Cordova

Carlos Cordova

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of September, 2023 , I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list which include all the attorneys representing the Association.

**/s/ Carlos Cordova**



Endnotes:

<sup>1/</sup> [A0210] means page 210 from the appendix.

**How-To Guide:** (interactive)

[TextBookDiscrimination.com/Guides/Briefs/Initial.html](http://TextBookDiscrimination.com/Guides/Briefs/Initial.html)

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