In the District Court of Appeal of Florida
Third District

DE SOLEIL SOUTH BEACH ASSOCIATION, INC., a Florida Not for profit corporation,

Appellant,

v.

Case No: 3D2024-0707
L.T. 2016-020833-CA-01

AMBER PERRIN and SUSAN RAINONE as TRUSTEE OF THE SUSAN RAINONE REVOCABLE TRUST,

Appellees.
_____/

On Final Appeal from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida

_____

ANSWER BRIEF OF APPELLEE AMBER PERRIN

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STATEMENT OF THE CASE AND FACTS

In this action which arises from the parties' dispute regarding the Second Amendment to the Master Declaration governing a five-story, mixed-use building in Miami Beach, the trial court (Walsh, J.):

(1) denied Appellant [Plaintiff/Counter-Defendant below] De Soleil South Beach Association, Inc.'s (hereinafter, "De Soleil" or "Master Association") Motions for Summary Judgment on Damages and Counterclaim Liability Issues. (R. 4187-4202; 4448-4459; 6302-6308);

(2) granted final summary judgment in favor of Appellee [Defendant/Counter-Plaintiff below] Amber Perrin (hereinafter "Perrin") finding that "the Second Amendment to the Master Declaration (R. 375-379) is illegal and void to the extent that it grants the Master Association the right to own, control, and assess for the cost of operating/maintaining Shared Facilities that a 'common elements' defined by Chapter 718.108 (1)" Florida Statutes ("Florida's Condominium Act"). (R. 4187-4202; 4448-4459; 6302-6308); and

(3) entered final judgment on the September 8, 2023 jury verdict awarding $86,800.00 in damages to Perrin and $54,800.00 in damages to Appellee [Defendant/Counter-Plaintiff below] Susan

Rainone, as Trustee of the Susan Rainone Revocable Trust (hereinafter "Rainone"), plus post-judgment statutory "interest at the rate of 9.09% per annum subject to adjustment pursuant to Fla. Stat. § 55.30." (R. 4500; 6302-6308); and

(4) denied each of De Soleil's post-trial motions (R. 5382-5387; 5388-5400; 6302-6308).

The Mixed-Use Building

As described in the Master Declaration at ¶1.4, the five-story, mixed-use building at issue in this case is divided into three separate parcels: (1) the Garage Parcel [the lowest floor]; (2) the Commercial Parcel [the first floor]; and (3) the Residential Parcel [floors two, three, four, and the roof]. (R. 72; 78-79; 127-132; 4188). The Residential Parcel is composed of individual condominium units. (R. 78-79; 131-132; 4188).

The owner of each Parcel has one vote as a member of the Master Association (R. 202; 244; 4189). The sole Managing Member of the mixed-use building's Developer South Beach Resort Development, Inc. (the "Developer") is Louis Taic ("Taic"). The Developer owns the Garage Parcel and the Commercial Parcel. (R. 77; 4189). The Residential Association – as opposed to the individual

condominium owners – owns the Residential Parcel. (R. 78; 4189). Because the Developer holds two-thirds of the votes of the Master Association, the Developer controls the ability to amend the Master Declaration. (R. 72; 77; 119; 202; 244; 4189).

Prior to selling the condominiums in the Residential Parcel, the Developer disclosed in writing to potential purchasers (including a representative of Perrin) that the purchase of a Residential Condominium Unit is "in many ways similar to the manner in which a single-family homeowner owns his or her home." (R. 3284; R. 3288-3292). Perrin purchased her property from the Developer on December 7, 2006, and is the owner of condominium unit PH 9 within the Residential Parcel. (R. 3284; 3294-3296; 4188). The Special Condominium Warranty Deeds through which the condominium owners acquired fee simple title provided that each residential unit was to be occupied by its owner(s) or rented out in the owner(s)' sole discretion, and not for use as a hotel room. (R. 4188).

The "Shared Facilities"

As defined in the Master Declaration at ¶1.51, "Shared Facilities" are "those portions, components, features or systems of

the Building which by purpose, nature, intent or function afford benefits or serve more than one Parcel in the Building…." (R. 204). A non-exhaustive list of "Shared Facilities" is included in Exhibit B to the Master Declaration. (R. 204-205; 258-260). "The recreational facilities in the Building, including the swimming pool, spas, health club facilities and equipment are specifically declared NOT to be Shared Facilities. These items are available to the owners and Occupants of Residential Condominium Units only[.]" (R. 258).

The Master Association is afforded authority to operate and maintain the "Shared Facilities" and take "whatever other actions the Master Association deems advisable with respect to the Shared Facilities as may be permitted hereunder or by law." (R. 77; 82-83; 85-86; 95). Residential condominium unit owners are provided limited easements for the use of the "Shared Facilities" to the extent necessary to receive the benefit of each in accordance with the respective intended purpose of each particular Shared Facility. (R. 81-82). Any Residential condominium unit owner may delegate her or his right to use and enjoy the Shared Facilities to her or his guests or family members to whom the Residential Condominium Declaration permits. (R. 84-85).

The Mixed-Use Building Manager
DSM d/b/a Z Ocean Hotel

On January 1, 2013, the Master Association entered into an Exclusive Property Management Agreement with De Soleil Management, LLC ("DSM"), a for-profit rental company, to be its agent to operate the mixed-use building. (R. 3285; 3302-3306; 4190). In addition to being the Managing Member of the Developer, which owns the Garage Parcel and Commercial Parcel and thus, controls the Master Association, Taic also controls DSM. (R. 3208-3211; 4190).

On February 5, 2016, DSM d/b/a Z Ocean Hotel issued a set of policies that applied only to Residential Condominium Unit owners that did not participate in DSM's "Hotel rental program." (R. 3285; 3308-3311). Perrin is not and has never been a member of the Hotel rental program. (R. 2942-2944; 3285). These policies provided that Residential Condominium Unit owners, like Perrin, would no longer have access to internet services, telephone service, fitness centers, or be able to gift parking to her or his guest(s). (R. 3285; 3308; 3311).

The Second Amendment

The Master Association enacted the Second Amendment on July 13, 2016. (R. 3285-3286; 3321-3325). As owner of the Garage Parcel and Commercial Parcel, the Developer passed the Second Amendment by a vote of 2 to 1, with the Residential Association voting against it. (R. 3321-3325).

Taic, as the Manager, signed the Second Amendment on behalf of both "Owner of Garage Parcel and Commercial Parcel." (R. 3325).

The Second Amendment includes restrictions and grants of authority which, in relevant part (R. 3321-3325; 4190-4191):

a. Provide that 'no Owner and no Condominium Unit Owner has the right to enter the Garage Parcel,' (¶ 4);

b. Require that '[e]ach Condominium Unit Owner who determines to lease/rent his or her Unit on a daily, weekly, monthly or annual basis, must notify the Master Association at least 24 hours in advance of every occupancy (notice must be received by noon on Friday for arrivals scheduled for Saturday, Sunday, and Monday), of the names of the persons who will be occupying the Condominium Unit and the dates of such occupancy so that because of 'life/safety concerns' the Master Association can notify the security personnel.' (¶ 6);

c. State that '[a]ll concrete and guard railings throughout the Building shall be deemed Shared Facilities' which are subject to Master Association control,' (¶ 8);

d. Restrict access of contractors and service personnel absent proof of a clean drug test, clean criminal background check, two references from former employers, clean record that he/she is not on the National Sex Offender Registry, licenses and proof of valid Social Security number,' (¶ 11);

e. Permits the Master Association the power to evict any occupants or residential condominium units for any rule violations, as if the Master Association 'were the Owner of the Condominium Unit' and without any Court Order,' (¶ 10);

f. Insulates the Master Association from any liability for self-help evictions, (¶ 10);

g. Allows the Master Association to control garbage placed in 'any portion of a Parcel within common hallways, elevators and passageways,' (¶ 12);

h. Allows the Master Association to levy fines and place liens in excess of $1,000 in the aggregate, on an individual condominium unit, in violation of Fla. Stat. § 718.303(3). (¶ 13).

Perrin challenged the legality and reasonableness of each restriction in the Second Amendment. (R. 359-360).

Enforcement Of The Second Amendment

After enacting the Second Amendment, the Master Association quickly moved to enforce its draconian rules and regulations to the detriment of the individual Condominium Unit Owners, including Perrin, who were not part of DSM's for-profit Hotel rental program. The Master Association restricted access to common elements. Indeed, the Master Association does not allow Residential

Condominium Unit Owners to enter the Building, and access the parking garage, trash facilities, lobby, elevator, gym, pool, or other new areas of the Building designated as "Shared Facilities" unless their names are on a list provided to DSM along with the date(s) that the owner will be using her or his own residence. (R. 2923-2934; 3028-3030). The Master Association hired security guards to deny elevator access to housekeeping or maintenance staff hired by Residential Condominium Unit Owners not in DSM's Hotel rental program. The Master Association further advised that the security guards would call the police and report the housekeeping or maintenance staff as trespassers. (R. 3028-3029).

The Master Association's security guards banged on the doors of Residential Condominium Unit Owners at all hours to enforce its occupancy requirements. (R. 3028-3029). If a Residential Condominium Unit Owner was in her or his own unit on a weekend but did not advise the Master Association by noon on Friday, DSM levied a fine of $100 per violation on the Master Association's behalf or forcibly entered into the unit. (R. 3028-3029; R. 3286).

The Master Association levied fines and filed a Claim of Lien against Perrin for approximately $13,800. (R. 4193). Perrin testified

that the Second Amendment "basically takes away rights to – to have access to the Building" such that Residential Condominium Unit Owners "basically have no right to freely go in and out of [their] condo as – as an owner." (R. 3026).

Because Taic controls the Master Association and DSM, the occupancy rules did not affect Residential Condominium Unit Owners who participated in the DSM Hotel Rental program. With respect to those units, the Master Association determined that the Second Amendment was satisfied because occupancy information is provided to DSM as soon as it receives a hotel or rental booking for those Residential Condominium Units within the DSM Hotel Rental program. (R. 3286).

Summary Judgment Proceedings

De Soleil filed separate motions for summary judgment on liability and damages in connection with the Counterclaim. (R. 3199-3219; 3462-3473). In support of its dispositive motion as to Counterclaim damages, De Soleil filed excerpts of the deposition transcripts for David Ocomo (Perrin's husband), Joe Rainone (Rainone's husband), and Perrin. (R. 2903-3065). De Soleil also filed a Sworn Statement of Taic. (R. 3091-3198). Finally, De Soleil

requested that the trial court take judicial notice of the Final Judgment of Foreclosure in *De Soleil South Beach Association, Inc. v. Shlomo Pollak, et al.,* Miami-Dade County Case No. 2017-020910 (September 21, 2021), affirmed in *Pollak v. De Soleil South Beach Association, Inc.*, 352 So. 3d 318 (Fla. 3d DCA Nov. 23, 2022) (per curiam). (R. 3066-3090). Perrin and Rainone collectively opposed De Soleil's dispositive motion on damages. The opposition was supported by the Sworn Declarations of Perrin and Joe Rainone. (R. 3250–3454). De Soleil thereafter filed a Reply. (R. 3458-3461).

De Soleil also filed a Motion for Summary Judgment on Counterclaim Liability Issues supported by the Sworn Statements of Mark Grant ("Grant") and Taic. (R. 3462-3600). Perrin and Rainone opposed De Soleil's dispositive motion as to liability. The opposition was supported by Perrin's Supplemental Sworn Declaration and the Sworn Declarations of David Ocomo and Joe Rainone. (R. 3686-3767). De Soleil thereafter filed a Reply. (R. 4037-4039).

Perrin and Rainone, with leave of the trial court, filed their Cross-Motion for Summary Judgment on Liability. (R. 3601-3676). De Soleil opposed the Cross-Motion supported by the Sworn Statements of Taic and Grant. (R. 3768-3827). After filing Perrin's

Amended Supplemental Sworn Declaration, Perrin and Rainone filed their Reply. (R. 3830-3889; 3941-3966).

The trial court heard argument on the cross-dispositive motions on June 8, 2023 (R. 4049-4157) and issued an Omnibus Order on Motions for Summary Judgment on July 13, 2023. (R. 4187-4202). The trial court found as a matter of law "that the Second Amendment to the Master Declaration is illegal and void to the extent that it grants the Master Association the right to own, control and assess for the cost of operating/maintaining Shared Facilities that are 'common elements' as defined by § 718.108(1)" of the Florida Condominium Act. (R. 4200-4201).

On August 1, 2023, the trial court granted supplemental relief to Perrin and Rainone "in the form of a satisfaction or partial satisfaction of lien filed and recorded by De Soleil" for the claims of lien against Perrin and Rainone "which are related to the Master Association fining these units for violating the Second Amendment." (R. 4263-4265).

De Soleil moved for reconsideration of the trial court's July 13, 2023 Omnibus Order, which Perrin and Rainone opposed, and to which De Soleil replied. (R. 4203-4217; 4220-4259; 4267-4432;

4433-4441). On August 28, 2023, the trial court entered an Order Denying Motion for Reconsideration and Amending Omnibus Order on Motions for Summary Judgment. (R. 4448-4459). In its August 28, 2023 Order, the trial court expressly rejected De Soleil's argument that it should apply the reasoning in an unrelated case *(Pollak v. De Soleil South Beach Association, Inc.*, 352 So. 3d 318 (Fla. 3d DCA 2022)) ("*Pollak*") to the instant case. The trial court explained that in *Pollak* trial court held that certain rules implemented by the Master Association pursuant to the Second Amendment were reasonable under the business judgment rule, and this Court affirmed per curiam. *Pollak*, however, is not a binding legal precedent. See *Dept. of Legal Affs. v. Dist. Ct. of Appeal, 5th Dist.,* 434 So. 2d 310 (Fla. 1983) (holding that a per curiam appellate court decision with no written opinion has no precedential value.) Moreover, Perrin and Rainone were not parties in the *Pollak* case, and thus the trial court ruling does not bind them.

The trial court next explained that "[i]n another appellate decision involving restrictions upon owners in a similar mixed-use building, [this Court] invalidated provisions of a master declaration that illegally divested residential unit owners of their statutory rights

to an undivided interest in "common elements" by reclassification in violation of Chapter 718. *See IconBrickell Condo. No. Three Assn., Inc. v. New Media Consulting*, LLC, 310 So. 3d 477 (Fla. 3d DCA 2020) ("*IconBrickell*"). *IconBrickell* was subsequently followed by [the well-reasoned opinion of The Honorable Michael A. Hanzman] in *Central Carillon Condominium Beach Association, Inc. v. Carillon Hotel, LLC, et al.*, Case No. 2016-011172-CA-01 (Fla. 11th Cir. Ct. Jan. 30, 2023)[1] ("*Carillon*")." (R. 4451). The trial court amended ¶ 66 of its July 13, 2023 Omnibus Order "[t]o clarify any misunderstanding" to read as follows (R. 4456-4458, emphasis in original):

> **66. The Court concludes that the Second Amendment to the Master Declaration is illegal and void to the extent to the extent that it (i) grants the Master Association the right to own, control and assess for the cost of operating/maintaining Shared Facilities that are "common elements" as defined by Florida Statute §718.108, or (ii) allows the Master Association to exercise rights and authorities that must be exercised by an association controlled by unit owners (i.e., the Residential Association) or that must otherwise be granted by the unit owners under Chapter 718. The Court specifically notes the following illegalities within the Second Amendment:**
>
> **A. Section 4 amending Section 2.2 of the Master Declaration to prohibit individual unit owners from accessing the Garage Parcel is illegal and void for violating Chapter 718 only to the extent that it**

[1] *Carillon*, 2023 WL 1429624 (Fla. 11th Cir. Ct. Jan. 30, 2023).

improperly interferes with unit owners' rights to common elements under Chapter 718.

B. Section 5 amending Section 5.4 of the Master Declaration to allow the Master Association to directly collect assessments from individual condominium unit owners and place liens against Case No: 2016-020883-CA-01 Page 9 of 12 individual condominium units is illegal and void for violating Chapter 718. Prior to the Second Amendment, the Master Declaration only allowed the Master Association to exercise such rights with respect to "Owners" as defined under Section 1.39, which includes the Residential Condominium Association but not the individual unit owners.

C. Section 6 amending Section 6.1 of the Master Declaration to require unit owners to notify the Master Association of rentals at least twenty-four hours in advance of arrival, and by noon Friday for arrivals scheduled for Saturday, Sunday, and Monday, is illegal and void for violating Chapter 718. While Section 6.1 of the Master Declaration did include a notification requirement, the Second Amendment significantly expands on it by requiring a specific time limit for advance notice.

D. Section 8 amending Section 6.5 of the Master Declaration stating "all concrete and guard railings throughout the building shall be deemed Shared Facilities and the maintenance thereof shall be the responsibility of the Master Association" is illegal and void for redefining common elements as "Shared Facilities" in violation of Chapter 718.

E. Section 9 amending Section 6.6 of the Master Declaration to require specific insurance coverages and amounts for any and all agents or contractors engaged by any Condominium Unit Owner to assist in the operation (including renting) or Maintenance (as such term is defined in the Master Declaration) of the

Unit is illegal and void for violating Chapter 718. The Master Association cannot usurp the authority to determine who is granted access to condominium property.

F. Section 10 amending Section 6.7 of the Master Declaration to give the Master Association power to evict occupants of any Unit as if it were the owner of the Unit is illegal and void for violating Chapter 718. Not even the Residential Association has such broad and unconstrained authority to evict under Chapter 718 and the Unit Owners never consented to granting such authority.

G. Section 11 adding a new Section 6.8 to the Master Declaration instituting numerous new requirements for service personnel and contractors (including drug testing, criminal background check, references, clean record of not being on the National Sex Offender Registry, evidence of licensure, and social security number) is illegal and void for violating Chapter 718. The Master Association cannot usurp the authority to determine who is granted access to condominium property.

H. Section 12 adding a new Section 6.9 to the Master Declaration regarding "clean corridors and common areas" is illegal and void for violating Chapter 718. The Master Association cannot usurp the authority to regulate condominium property.

I. Section 13 adding a new Section 6.10 to the Master Declaration regarding the "right to fine" is illegal and void for violating Chapter 718.

The trial court expressly held that its "Order is consistent with the decisions in *IconBrickell* and *Carillon*." (R. 4452).

Finally, trial court rejected De Soleil's argument that the July 13, 2023 Omnibus Order granting Perrin and Rainone's Cross-

Motion for Summary Judgment "relies on certain disputed facts." The trial court explained that it (R. 4449, emphasis supplied):

> determined that the Second Amendment is illegal as a matter of law based on the terms of the Second Amendment and the plain language of Chapter 718. Some disputed facts were provided by way of background, and others for the purpose of demonstrating disputed issues of damages to be decided by a jury, but **none** [of the disputed facts] **were relied upon in determining that the Second Amendment is illegal as a matter of law.**

Jury Trial On Damages And Verdict

Consequent to its summary judgment rulings, the trial court found "a genuine dispute of material fact to be decided by a jury as to whether [Perrin and/or Rainone] suffered compensable damages as a result of the Master Association's actions related to enacting and enforcing the Second Amendment to the Master Declaration." (R. 4191-4192; 4201).

A jury trial commenced on September 6, 2023 on whether Perrin and/or Rainone suffered compensable damages as a result of De Soleil's breach of the Master Declaration, and if so, in what amount.

Over the objection of De Soleil, the trial court found that "Perrin may testify as to both damages and to the decline in the value of her

property allegedly caused by the Master Association's enactment and enforcement of the Second Amendment." (R. 5395). The trial court also specifically found that "Perrin may testify as to economic harm caused by loss of use and enjoyment cause by the Master Association's deprivation of her ability to access her unit and the common elements and by its interfering with the quiet enjoyment of her unit." (R. 5395).

At trial, De Soleil again challenged Perrin's competency to testify about causation and diminution in value damages, and the trial court again affirmed Perrin's ability – as the property owner – to testify on the value of her PH9 condominium unit both when she purchased it in 2006 and the value in 2016. (R. 5219-5224). At trial, the trial court affirmed its prior rulings regarding Perrin's competency to testify as to damages at trial.

After the trial court denied De Soleil's motion for directed verdict, the jury on September 8, 2023 entered a verdict in favor of (1) Perrin in the amount of $86,800, and (2) Rainone in the amount of $54,800. (R. 4500).

On September 18, 2023, De Soleil filed a Motion for Judgment Notwithstanding the Verdict and Renewed Motion for Directed

Verdict. (R. 4795-4807). Perrin and Rainone each opposed the post-trial motion and De Soleil replied to each. (R. 4920-4941). On March 4, 2024, the trial court denied De Soleil's Motion for Judgment Notwithstanding the Verdict and Renewed Motion for Directed Verdict. (R. 5388-5400). The trial court expressly found that (R. 5396-5397):

> the jury's verdict in favor of Perrin was supported by competent and substantial evidence, including Perrin's direct testimony as to diminution in value damages and the following competent circumstantial evidence of damages:
>
> - evidence of Perrin's purchase price preconstruction in 2001 ($700K in 2006) and the value of the Unit at the time of closing in 2006 ($800,000 - $1 Million) (*see* R. 5218-5219);
> - evidence that in 2016, prior to the Second Amendment, the Unit was worth between $1.5 – $1.8 Million (R. 5233); and that, but for the Second Amendment, it would have been worth $2 Million (R. 5247-5248; 5283);
> - evidence of the various methodologies used to value real property – based on the dollar per square foot and income capitalization methods – which factor in and are dependent on the amenities and ability to earn rental income (R. 4964-4965; 5045-5046); evidence of the sale price of similarly situated condominiums on a dollar per square foot basis as compared to the sale price of units in the Building (the sales comparison approach), and Mr. Taic's statement regarding what units at the Building should be worth based on a market capitalization rate (R. 4966-4967; 4982-4983; 5022; 5046; 5052); evidence of publicly available sales data, which showed that Perrin's Unit value was significantly

> lower than the sales prices of other comparable condominiums on Miami Beach, (*see* R. 5052-5054; 5084-5085); evidence of the mathematical formulae Perrin used to calculate the expected property value of her Unit (*see* R. 5044-5047); and evidence of the Master Association's conduct (e.g., restriction of access to lobby, elevators, and guests) and the effect it had on Perrin's use and enjoyment of the Building and her Unit (*see* R. 4986-4991).

The trial court concluded that "[t]he jury was free to accept, reject, or give the trial testimony whatever weight it deserves, and this Court will not invade the province of the jury by reweighing the credibility of the witnesses and the evidence." (R.5397-5398).

The trial court entered Final Judgment on March 25, 2024, and an Amended Final Judgment the following day. (R. 5562-5568; 6302-6308).

De Soleil filed this appeal while its Motion for Rehearing was pending. (R. 5754-5762; 5569-5753). On June 4, 2024, the trial court denied the Motion for Rehearing finding that "[t]he grounds stated within the motion are either untimely, improper for rehearing, purport to reargue grounds, raise new issues, or are without merit." (D.E. 408).

SUMMARY OF ARGUMENTS

The Amended Final Judgment dated March 26, 2024 (R. 6302-6308) does not grant relief outside of the pleadings. De Soleil initiated this lawsuit seeking a declaratory judgment that the Second Amendment to the Master Declaration is enforceable. (R. 60-185). The Counterclaim Plaintiffs sought a declaratory judgment as to the illegality of the Second Amendment. The trial court held that the Second Amendment is invalid. (R. 4198-4201; 4449-4450; 4456-4458).

The Master Association is not permitted as a matter of law to override the Residential Declaration and assert control over the Condominium Parcel which is owned by the Residential Association. Indeed, the Developer may not use the Master Association to circumvent the protections of Chapter 718 of the Florida Condominium Act.

Perrin, as the owner of the PH9 condominium unit, was qualified to testify before the jury as to the value of her property, including diminished value, based or her personal knowledge and experience with the property. Perrin testified to the casual link

between the Master Association's enactment and enforcement of the Second Amendment and the damage she suffered.

The recent amendments to the Florida Condominium Act – Ch. 2024-244 do not require the reversal of the Amended Final Judgment. Notwithstanding the amendments, only the Residential Association may control condominium property. Here, the trial court's ruling correctly prevents the Master Association from taking control over individual condominium units and flagrantly violating Chapter 718.

STANDARD OF REVIEW

Orders granting summary judgment are reviewed *de novo*. *Raffay v. Longwood House Condo Assn., Inc.*, 389 So.3d 589, 591 (Fla. 3d DCA 2023), citing *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). The review of a trial court's interpretation of a statute is *de novo* and it begins, as always, with the text of the statute. *Lam v. Univision Communications, Inc.*, 329 So. 3d 190, 194 (Fla. 3d DCA 2021), citing *Page v. Deutsche Bank Tr. Co. Americas*, 308 So. 3d 953, 958 (Fla. 2020).

Furthermore, "[a] trial judge's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion … [and]

is limited by the rules of evidence." *Hayes v. Wal-Mart Stores, Inc.* 933 So. 2d 124, 126 (Fla. 4th DCA 2006) (quoting *Johnston v. State*, 863 So. 2d 271, 278 (Fla. 2003)). The appellate court must determine if the trial court's allowance or exclusion of the witnesses was based on an erroneous view of the law or a clearly erroneous assessment of the evidence. *Salazer v. State,* 991 So. 2d 364, 373 (Fla. 2008).

As this Court recently explained in *Miami-Dade County v. Guyton*, 388 So. 3d 50, 51-52 (2023):

> While we apply *de novo* review to these rulings, in reviewing the trial court's denial of the [defendant's] motion for directed verdict (and motion for judgment in accordance with its earlier motion for directed verdict) '[a]n appellate court must evaluate the evidence in the light most favorable to the non-moving party, drawing every reasonable inference flowing from the evidence in the nonmoving party's favor,' and '[i]f there is conflicting evidence or if different reasonable inferences may be drawn from the evidence, then the issue is factual and should be submitted to the jury for resolution.' *Miami - Dade Cty. v. Eghbal*, 54 So. 3d 525, 526 (Fla. 3d DCA 2011) (citations omitted). A directed verdict should only be granted (or affirmed on appeal) 'where no proper view of the evidence could sustain a verdict in favor of the nonmoving party.' *Banco Espirito Santo Intl., Ltd. v. BDO Intl., B.V.*, 979 So. 2d 1030, 1032 (Fla. 3d DCA 2008) (quoting *Owens v. Public Supermarkets, Inc.*, 802 So. 2d 315, 329 (Fla. 2001)). "A directed verdict is proper only when the record conclusively shows an absence of facts or inferences from facts to support a Jury verdict, viewing the evidence in a light most favorable to the nonmoving party." *Medina v. Peralta*, 802 So. 2d 376, 378 (Fla. 3d

> DCA 2001). Because there were disputed issues of material fact at the summary judgment stage—…—we affirm the trial court's denial of the [defendant's] motion for summary judgment. And because the evidence admitted at trial, viewed in a light most favorable to [the plaintiff], supported the jury's verdict, we affirm as well the trial court's denial of the [defendant's] motion for directed verdict and motion for judgment in accordance with its earlier motion for directed verdict.

ARGUMENT

The Amended Final Judgment Does Not Grant Relief Outside The Pleadings

De Soleil initiated this lawsuit seeking a declaratory judgment that the Second Amendment is enforceable. (R. 60-185). In their Counterclaim, Perrin and Rainone sought a declaratory judgment as to the illegality of the Second Amendment. (R. 363-365). The trial court, in its Omnibus Order on Motions for Summary Judgment, as amended for clarification and later reduced to a Final Judgment, ruled that "the Second Amendment to the Master Declaration is illegal and void to the extent that it grants the Master Association the right to own, control and assess for the cost of operating/maintaining Shared Facilities that are 'common elements' as defined by § 718.108(1)" of the Florida Condominium Act. (R. 4449). The trial court further explained: "The Master Declaration does not override the legal protections afforded to residential unit owners by Chapter

718 and the Court is not constrained by the Master Declaration's terms in enforcing Chapter 718 to grant relief to the Counter-Plaintiffs from the Second Amendment." (R. 4449).

The trial court further rejected De Soleil's argument that the Second Amendment only clarified rights already granted to it in the Master Declaration. The trial court found (R. 4198-4201; 4450; 4456-4458):

> [t]he Second Amendment significantly expands on the Master Declaration's terms and thus violates the protections of Chapter 718. This is why the Second Amendment is illegal and void to the extent that it grants the Master Association the right to own, control, and assess for the cost of operating/maintaining Shared Facilities that are 'common elements' as defined by Florida Statute § 718.108.

Assuming arguendo that the trial court's ruling is based on improper reasoning – *which it is not* – the ruling nonetheless will be upheld if there is any theory or principle of law in the record which would support the ruling. In *Estate of Yohn*, the Supreme Court stated (238 So.2d 290, 295 (Fla. 1970)):

> It is elementary that the theories or reasons assigned by the lower court as its basis for the order or judgment appealed from, although sometimes helpful, are not in any way controlling on appeal and the Appellate Court will make its own determination as to the correctness of the decision of the lower court, regardless

> of the reasons or theories assigned therefor. Stated another way, if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.

Accordingly, the trial court's grant of summary judgment later reduced to a Final Judgment in favor of Perrin and Rainone on the invalidity of the Second Amendment as a matter of law is proper and should be affirmed by this Court.

The Master Association Is Not Permitted As A Matter Of Law To Override The Residential Declaration And Assert Control Over The Condominium Parcel

It is undisputed that Perrin and Rainone purchased their condominium units subject to the Residential Declaration and the Master Declaration, as recorded at the time of purchase, and subject to amendments, but only amendments permitted by Florida law. *Palm Bay Towers Corp. v. Brooks*, 466 So. 2d 1071, 1074 (Fla. 3d DCA 1984) (holding that condominium declaration which overruled provisions of condominium act was illegal).

The Master Declaration and the Residential Declaration are contracts. *See e.g., Cohn v. Grand Condo. Assn, Inc.*, 62 So. 3d 1120, 1121 (Fla. 2011). Contracts are voluntary undertakings, and contracting parties are free to bargain for and specify the terms and

conditions of their agreement. *Okeechobee Resorts, LLC v. E Z Cash Pawn, Inc.*, 145 So. 3d 989, 993 (Fla. 4th DCA 2014); *Castro v. Mercantil Commercebank, NA*, 305 So. 3d 623, 626 (Fla. 3d DCA 2020). A declaration is a contract, s*ee, e.g., Cohn*, 62 So. 3d at 1121 (a declaration of condominium . . . operates as a contract among unit owners and the association) and though it is not negotiated in the traditional sense, those who purchase condominiums are charged with knowledge of and bound by its provisions. *See, e.g., Providence Square Assn, Inc. v. Biancardz*, 507 So. 2d 1366, 1372 (Fla. 1987) (noting that condominium purchasers are charged with notice of the recorded documents); *Woodside Vill. Condo. Assn Inc. v. Jahren*, 806 So. 2d 452, 461 (F1a. 2002) ("we find that [owners] were on notice that the unique form of ownership they acquired when they purchased their units . . . was subject to change . . . and that they would be bound by properly adopted amendments"); *12550 Biscayne Condo. Assn. Inc. v. NRD Investments, LLC*, 336 So. 3d 750, 755 (Fla. 3d DCA 2021) ("[t]he commercial Association members purchased their condominium units with the ability . . . to understand the terms in the publicly recorded REA and the Declaration which govern the

parking and antenna easements"). So, like any other contract, a declaration will generally be enforced as written.

Like most legal rules, this one has exceptions; one being where a contract (or any of its provisions) violates a statute or public policy and is therefore unlawful, void, and unenforceable. *See, e.g., Hernandez v. Crespo*, 211 So. 3d 19, 24 (Fla. 2016) ("contractual provision that contravenes legislative intent in a way that is clearly injurious to the public good violates public policy and is thus unenforceable"); *Park v. Wausau Underwriters Ins. Co.*, 547 So. 2d 213, 215 (Fla. 4th DCA 1989) ("[t]he general rule is that a contract (such as an insurance policy) which is violative of a statute or public policy will not be enforced by the courts").

As this Court has made clear in *Gables Ins. Recovery, Inc. v. Citizens Prop. Ins. Corp*, 261 So. 3d 613, 624 (Fla. 3d DCA 2018) (internal citation omitted):

> an agreement that is violative of a provision of a constitution or a valid statute, or an agreement which cannot be performed without violating such a constitutional or statutory provision, is illegal and void. We have consistently applied this rule to invalidate contracts that violate the law.

This Court further reasoned that "this principle must be given special force in the condominium field in which the Legislature has found necessary statutorily to overcome" a developer's "self-dealing-type" agreements. *Palm Bay Towers Corp.,* 466 So. 2d at 1074; *accord*, *IconBrickell,* 310 So. 3d at 480 (explaining that "condominium ownership is created only by statute" and that any declaration that conflicts with the Condominium Act must be declared invalid)); Fla. Stat. § 718.102 ("Every condominium created and existing in this state shall be subject to the provisions of this chapter"). Condominium property is regulated by Florida Chapter 718, *et seq.*, (the "Florida Condominium Act"). *Woodside Vill. Condo.,* 806 So. 2d at 455.

"[E]mbedded throughout Chapter 718 is an unambiguous legislative edict: **condominium property, including common elements, is to be owned and controlled by all unit owners, and control over such property must be exercised democratically.**" *See e.g., White Egret Condo., Inc. v. Franklin*, 379 So. 2d 346, 350 (Fla. 1979) (emphasis supplied). As the Florida Supreme Court explained: inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority

of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.. *Franklin*, 379 So. 2d at 350. "But the Legislature, as a matter of public policy, decided that property owners will 'give up' only a 'certain degree of freedom and choice,' *id.*; not the right to have any say at all." *Id.* (citing *Century Vill., Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Assn*, 361 So. 2d 128, 133 (Fla. 1978) ("[i]n Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature"). Accordingly, condominium unit owners constitute "little democratic sub society[ies]" which are afforded specific statutory rights to control condominium property. *Franklin*, 379 So. 3d at 350, 358, 359.

Chapter 718 "mandates that: '[e]very condominium created and existing in this state shall be subject to the provisions of this chapter,' making it abundantly clear that the field of condominium regulation has been fully pre-empted." Fla. Stat. § 718.104; *R.R. v. New Life Cmty. Church of CMA, Inc.*, 303 So. 3d 916, 923 (Fla. 2020).

The Florida Condominium Act defines "common elements" and requires that any "common elements" be subject to the democratic

control of condominium unit owners. The Florida Condominium Act defines "common elements" as follows (Fla. Stat. § 718.108(1)):

> a. The condominium property which is not included within the units.
>
> b. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
>
> c. An easement of support in every portion of a unit which contributes to the support of a building.
>
> d. The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

Common elements are "the portions of the condominium property not included in the units." Fla. Stat. § 718.103(8). "There are no exceptions." *Carillon,* at p. 24. This includes conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements; property and installations required for the furnishing of utilities and other services, including electrical, mechanical, water, and all other utility systems and facilities; facilities which contribute to the support of the condominium building, such as structural, roofing, and internal and external support systems and facilities; residential lobbies; elevators; and trash disposal systems. Fla. Stat. §§ 718.108, 718.107. "If facilities/components serving a condominium fit within the statutory

definition of 'common elements,' they are required to be owned/operated democratically by all unit owners." *Id.* "The Act makes no exception for condominiums located within, and a part of, a 'mixed-use development.'" *Id.*

Each condominium unit shall: (i) own "[a]n undivided share in the common elements and common surplus"; (ii) retain the exclusive right to use and enjoy all "common elements" in accordance with their intended purposes, and (iii) each unit owner's undivided share of the common elements "shall not be separated from [the unit] and shall pass with the title to the unit…" Fla. Stat. § 718.106(2)-(3); Fla. Stat. §718.107. Only the condominium association may control condominium property. Fla. Stat. § 718.111(1)(a)).

The Florida Condominium Act thus mandates that (i) certain property remains as common elements; (ii) an association controlled by unit owners operate and maintain common elements; and (iii) only an association controlled by unit owners have the power to assess unit owners to operate and maintain common elements. Fla. Stat. § 718. Under well-settled Florida law, a developer may not use a master association to circumvent the protections of Chapter 718. *Downey v. Jungle Den Villas Recreation Assn, Inc.*, 525 So. 2d 438,

441 (Fla. 5th DCA 1988) ("The legislative intent of the requirement in section 718.110(4) of unanimous approval of any material alteration or modification of the appurtenances to a condominium unit should not be vulnerable to circumvention by the simple act of setting up an ostensibly independent corporation empowered to perform some of the functions of a condominium association but without the unit owner protection provided by chapter 718, Florida Statutes"); *IconBrickell,* 310 So. 3d at 481.

IconBrickell is a proverbial "red cow" – a term used to describe a case directly on point, a commanding precedent. *See Corn v. City of Lauderdale Lakes*, 997 F.2d 1369 (11th Cir. 1993). In *IconBrickell,* a mixed-use building was comprised of three towers subject to both a "master declaration of condominium knows as the Declaration of Covenants, Restrictions and Easements for IconBrickell" and condominium declarations for each of the towers. This Court found that the condominium's declaration of property as "Shared Facilities" rather than "common elements" was unlawful under Chapter 718 of the Florida Condominium Act. *IconBrickell*, 310 So.2d at 481-82, In so doing, this Court, held that the declaration unlawfully: (a) re-designated common elements within the condominium properties in

the three towers as "shared facilities," (b) gave control over all of those shared facilities to the developer which owns the "hotel lot," and (c) allowed the hotel owner to assess residential condominium unit owners in the three towers to maintain and operate the shared facilities.

The Developer or Master Association "may not skirt this legislative command by conveniently "recharacterizing" common elements as "Shared Facilities." *IconBrickell, supra.* To hold otherwise would allow the Master Association to "circumvent the statutory protections afforded by the Florida Condominium Act by simply placing condominium associations under the umbrella of a master association and using that master association to grant a commercial operator complete ownership of, and control over, property the Legislature has said must be owned/controlled by unit owners, would neuter Chapter 718 and render its protections anemic." As *IconBrickell* tells us, that is illegal.

Here, as in *IconBrickell*, through the Second Amendment, the Developer / Master Association (a) re-designated as Shared Facilities "[a]ll concrete and guard rails", (b) afforded control and dominion over the lobbies, elevators, common areas, indoor areas, passageways, *etc.*

to the Developer that owns the Commercial Parcel and the Garage Parcel, and (c) allowed the Developer to final residential condominium unit owners based on its enforcement of the "Shared Facilities" and common elements. (R. 815-819).

The Master Association's enactment of the Second Amendment which divests condominium owners of their right to own and control the statutory common elements attempts to do indirectly that which a developer may not lawfully do directly. *See Carillon* at p. 3-4 (citing *Clermont-Minneola Country Club v. Loblaw*, 143 So. 129, 134 (Fla. 1932) ("[i]t is a fundamental principle of law that a person will not be permitted to do indirectly what he is not permitted to do directly"); *IconBrickell* 310 So. 3d at 481 (invalidating provisions of declaration that illegally divested unit owners of their statutory rights to an undivided interest in "common elements" by reclassification). As aptly stated by Judge Hanzman in the Carillon, if the law were to recognize such expropriation of the common elements, the unit owners would be rendered "nothing more than long-term hotel guests." *Carillon* at p. 8.

As this Court recognized in *IconBrickell*, the improper designation of these common elements as shared components

"burdens residential unit owners with those expenses incurred by [the Hotel]," while at the same time allowing the Hotel to be "unencumbered by certain statutory provisions regulating condominium association assessments." *IconBrickell*, 310 So. 3d at 479. *IconBrickell* held that the designation of " 'wires, conduits, pipes, ducts, transformers, cables,' residential lobby and elevators, and communal trash disposal systems" as shared components "indubitably contravenes the edict of the Act." 310 So. 3d at 481.

Based on these settled principles and in reliance on *IconBrickell* and *Carillon*, the trial court correctly concluded that "the Second Amendment to the Master Declaration is illegal and void to the extent to the extent that it grants the Master Association the right to own, control and assess for the cost of operating/maintaining Shared Facilities that are 'common elements' as defined by Chapter § 718.108(1)." (R. 4200-4201). De Soleil may not strip Perrin and/or Rainone of their use of common elements as defined by Chapter 718. (R. 4452-53). Accordingly, the trial court's grant of summary judgment later reduced to a Final Judgment in favor of Perrin and Rainone on the invalidity of the Second Amendment as a matter of law is proper and should be affirmed by this Court.

Perrin, As The Condominium Owner, Was Qualified To Testify Before The Jury As To The Value Of Her Real Property

De Soleil repeatedly challenged Perrin's ability to testify as to both damages and the decline in the value of her condominium unit allegedly caused by De Soleil's enactment and enforcement of the Second Amendment. The trial court rejected De Soleil's objections. The trial court explained "[t]here is ample case law supporting the proposition that an owner of property may testify to its value though not qualified as an expert." *See Salvage & Surplus, Inc. v. Weintraub*, 131 So.2d 515, 516 (Fla. 3d DCA 1961) (acknowledging rules that "permits the owner of property to testify to its value though not qualified as an expert."). "Florida courts have allowed property owners to testify as to their property's value, including diminished value, based on personal knowledge and experience with the property." *See Sabal Trail Transmission, LLC, v. 3.921 Acres of Land in Lake Cty., Fla.*, 947 F.3d 1362, 1369 (11th Cir. 2020) (Holding that the District Court did not abuse its discretion in allowing one of two landowners to offer lay opinion testimony regarding how a natural gas pipeline would diminish property value. Although landowner had no prior experience selling property encumbered by a pipeline, her

testimony was based on personal knowledge from experience selling 224 similar lots for rural residential development, not speculation.")

Here, the only requirement necessary to qualify Perrin to testify was that she be shown to have knowledge regarding the condominium and its value. At her deposition and at trial, Perrin testified that she is familiar with the value of her property and its value over time and had bought and sold similarly situated condominiums in Miami Beach as a realtor. (R. 3048-3050; 4455; 5216; 5219; 5238-5241; 5245-5246; 5234-5236; 5248-5249). The trial court found that Perrin was qualified to "testify as to both damages and to the decline in the value of her [condominium unit]" and "as to economic harm caused by loss of use or enjoyment caused by the Master Association's deprivation of their ability to access [her] unit and the common elements and by its interfering with the quiet enjoyment of [her] unit." (R. 4455-4456).

After the trial court denied De Soleil's motion for directed verdict, the jury entered a verdict in favor of (1) Perrin in the amount of $86,800, and (2) Rainone in the amount of $54,800 on September 8, 2023. (R. 4500).

The trial court denied De Soleil's Motion for Judgment Notwithstanding the Verdict and Renewed Motion for Directed Verdict. (R. 5388-5400). The trial court expressly found that (R. 5396-5397):

> the jury's verdict in favor of Perrin was supported by competent and substantial evidence, including Perrin's direct testimony as to diminution in value damages and the following competent circumstantial evidence of damages:
>
> - evidence of Perrin's purchase price preconstruction in 2001 ($700K in 2006) and the value of the Unit at the time of closing in 2006 ($800,000 - $1 Million) (*see* R. 5218-5219);
> - evidence that in 2016, prior to the Second Amendment, the Unit was worth between $1.5 – $1.8 Million (R. 5233); and that, but for the Second Amendment, it would have been worth $2 Million (R. 5247-5248; 5283);
> - evidence of the various methodologies used to value real property – based on the dollar per square foot and income capitalization methods – which factor in and are dependent on the amenities and ability to earn rental income (R. 4964-4965; 5045-5046); evidence of the sale price of similarly situated condominiums on a dollar per square foot basis as compared to the sale price of units in the Building (the sales comparison approach), and Mr. Taic's statement regarding what units at the Building should be worth based on a market capitalization rate (R. 4966-4967; 4982-4983; 5022; 5046; 5052); evidence of publicly available sales data, which showed that Perrin's Unit value was significantly lower than the sales prices of other comparable condominiums on Miami Beach, (*see* R. 5052-5054; 5084-5085); evidence of the mathematical formulae Perrin used to calculate the expected property value of

her Unit (*see* R. 5044-5047); and evidence of the Master Association's conduct (e.g., restriction of access to lobby, elevators, and guests) and the effect it had on Perrin's use and enjoyment of the Building and her Unit (*see* R. 4986-4991).

The trial court concluded that "[t]he jury was free to accept, reject, or give the trial testimony whatever weight it deserves, and this Court will not invade the province of the jury by reweighing the credibility of the witnesses and the evidence." (R.5397-5398).

De Soleil asks this Court to set aside the jury's verdict in favor of Perrin. In so doing, it asks this Court to violate well-settled precedent that a jury verdict should be set aside with "extreme caution" and only where there is ***no competent evidence*** to permit a reasonable jury to render a verdict in Perrin's favor. *Houghton v. Bond,* 680 So. 2d 514, 522 (Fla. 1st DCA 1996); *Pugliese v. Terek*, 117 So. 3d 1230 (Fla. 3d DCA 2013).

The Master Association challenges causation. As a general rule, the issue of causation is a jury question. *Antun Invs. Corp. v. Ergas*, 549 So. 2d 706, 709 (Fla. 3d DCA 1989) ("The question of causation is an issue of fact to be determined by the trier of fact."). "[I]n a civil case, a fact may be established by circumstantial evidence as effectively and conclusively as it may be proved by direct positive

evidence." *Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960). Here, there were both.

The rule on diminution of value measures damages as "the difference between the value of real property before and after the injury" *U.S. Steel Corp. v. Benefield*, 352 So. 2d (Fla. 2d DCA 1977), *cert. denied*, 364 So. 2d 881 (Fla. 1978). Perrin testified at trial that, as a result of the injury – the Master Association's material contractual breaches of the Master Declaration – including but not limited to Taic's passing of the Second Amendment, Perrin was damaged and suffered a diminution in the value of her PH9 condominium unit. Perrin testified to the casual link directly. There was also a myriad of circumstantial evidence which the trial court outlined by bullet points in its Order denying De Soleil's Motion for Judgment Notwithstanding the Verdict and Renewed Motion for Directed Verdict. (R. 5396-5397). Taken together, Perrin presented the jury with a "but for" causation analysis: ***But for*** the Master Association's wrongful conduct, Perrin knows what her real property ***should have*** been worth.

Under these circumstances, the jury verdict in favor of Perrin which was reduced to a Final Judgment should be affirmed.

The Recent Amendments To The Florida Condominium Act Do Not Require Reversal Of The Amended Final Judgment

De Soleil asks this Court to overturn the Amended Final Judgment through the application of Ch. 2024-244. This Court should decline to do so.

Section 718.103(14) of the Florida Condominium Act as amended by the Legislature through Ch. 2024-244 defines "Condominium property" as follows:

> (14) "Condominium property" means the lands, leaseholds and improvements, any ~~and~~ personal property, and all easements and rights appurtenant thereto regardless of whether contiguous, which ~~that~~ are subjected to condominium ownership ~~whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use with the condominium~~.[2]

This amendment does not reduce the property owned by Perrin.

Moreover, the amendment went into effect on October 1, 2024 and expressly states that it "do[es] not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024. The trial court's March 26, 2024 Amended Final Judgment is a "final adjudication" for which retroactivity will not apply.

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[2] Words ~~stricken~~ are deletions; words underlined are additions.

Section 718.103(26) of the Florida Condominium Act was not amended by the Legislature through Ch. 2024-244. Within the definition of "Residential condominium," it expressly states "[a] condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404. As the trial court found "De Soleil's Master Declaration defines the building as containing a 'Residential Parcel,' 'Commercial Parcel,' and 'Garage Parcel.'" (R. 71; 4452). The trial court continued to explain that "[a]s such De Soleil squarely falls within the definition of a 'mixed-use condominium' under Chapter 718." (R. 4452).

Section 718.108 of the Florida Condominium Act was not amended by the Legislature through Ch. 2024-244. It defines "Common elements" to include:

> (1) … within its meaning the following:
>
> (a) The condominium property which is not included within the units.
>
> (b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
>
> (c) An easement of support in every portion of a unit which contributes support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

Here, the Second Amendment violates the Florida Condominium Law because it (A) prohibits individual condominium owners from accessing the parking garage, (B) denies individual condominium owners (and their guests) access to the lobby and elevators such that the owners (and their guests) are unable to utilize their individual condominium unit, (C) denies individual condominium owners (and their guests) access to the gym, pool, trash facilities, and the roof of the building, (D) re-defines common elements such as "all concrete and guard railings throughout the building" as Shared Facilities, (E) impermissibly allows the Master Association to directly collect assessments from individual condominium owners and place liens against individual condominium units, (F) usurps the authority of the individual condominium owns as to who is granted access to the condominium property, (G) illegally authorizes the Master Association to fine individual condominium owners, and (H) gives the Master

Association the power to evict occupants of any condominium unit as if it were the Owner of the condominium unit – *which it is not*.

As explained above, only the condominium association may control condominium property. Fla. Stat. § 718.111(1)(a)). The Florida Condominium Act thus mandates that (i) certain property remains as common elements; (ii) an association controlled by unit owners operate and maintain common elements; and (iii) only an association controlled by unit owners have the power to assess unit owners to operate and maintain common elements. Fla. Stat. § 718. Under well-settled Florida law, a developer may not use a master association to circumvent the protections of Chapter 718. *Downey v. Jungle Den Villas Recreation Assn, Inc.*, 525 So. 2d 438, 441 (Fla. 5th DCA 1988) ("The legislative intent of the requirement in section 718.110(4) of unanimous approval of any material alteration or modification of the appurtenances to a condominium unit should not be vulnerable to circumvention by the simple act of setting up an ostensibly independent corporation empowered to perform some of the functions of a condominium association but without the unit owner protection provided by chapter 718, Florida Statutes"); *IconBrickell,* 310 So. 3d at 481.

Here, the trial court's ruling correctly prevents the Master Association from taking control over individual condominium units and flagrantly violating Chapter 718. Thus, the rights of Perrin and Rainone, as owners of individual condominium units, continue to exist notwithstanding the amendments to the Florida Condominium Act set forth in Ch. 2024-244.

Accordingly, this Court should find that the recent amendments to the Florida Condominium Act do not require the reversal of the Final Amended Judgment which declared the Second Amendment to the Master Declaration illegal and invalid as a matter of law.

CONCLUSION

Perrin respectfully requests that the Amended Final Judgment be affirmed in its entirety.

Dated: December 9, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type style utilized in this Answer Brief is Bookman Old Style 14-point font and based upon the word count of Microsoft Word, this Answer Brief contains 9,232 words.

/s/ Joseph I. Pardo
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 9, 2024, a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel of record:

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