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IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT, STATE OF FLORIDA

CASE NO.: 3D2023-1363
LOWER TRIBUNAL CASE NO.: 2023-016352-CA-01

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92 ON THE BAY, LLC, a Florida limited liability company
Appellant,

v.

THE RIVER FRONT MASTER ASSOCIATION, INC., a Florida not for profit corporation, and all persons claiming an interest in the subject property by, through or under The River Front Master Association, Inc.
Appellee,

ON APPEAL FROM A NONFINAL ORDER OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI DADE COUNTY, FLORIDA

CONSOLIDATED APPELLANT'S INITIAL BRIEF, VOL. 1

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I. Statement of the Case

This is a consolidated appeal of the trial court's Order Granting Appellee, River Front Master Association, Inc.'s Emergency Motion for Temporary Injunction (hereinafter the "Temporary Injunction") as well as the trial court's *sua sponte* Order Denying Motion for Reconsideration of the Court's Order Granting Defendant's Emergency Motion for Temporary Injunction and Motion to Dissolve Injunction (hereinafter the "Order Denying Motion to Dissolve Injunction"). [*See* App. 363-365, 425-426]. This Court has jurisdiction over both non-final Orders pursuant to Rule 9.130(a)(3)(B), Fla. R. App. P.

The Temporary Injunction on appeal was entered on July 5, 2023, following a non-evidentiary hearing held via Zoom on June 29, 2023. [*See* App. 366-397]. Appellant timely filed its Notice of Appeal on July 27, 2023. [App. 423-424].

The trial court erred as a matter of law in multiple respects when it granted the Temporary Injunction. Specifically, the trial court issued the Temporary Injunction without any evidence entered on the record, and failed to make the requisite factual findings, supported by competent substantial evidence, as to whether Appellee met its burden to establish

each of the elements necessary to obtain a temporary injunction. [*See* App. 366-397]. Furthermore, the trial court improperly relied on *Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627 (Fla. 3d DCA 2009), a case based upon application of the Condominium Act, despite Appellee River Front not being a condominium association. [*See* App. 363-364].

The Order Denying Motion to Dissolve Injunction on appeal was entered on August 7, 2023. [*See* App. 425-426]. This Order was entered by the trial court *sua sponte* in violation of the applicable Florida Rule of Civil Procedure and case law. Appellant timely filed its Notice of Appeal on August 29, 2023. [*See* App. 452-454]. The two appeals were consolidated pursuant to an Order by this Honorable Court entered on September 18, 2023.[*See* App. 455]

II. Statement of the Facts

The River Front is a development located in Miami, Florida. The Master Development Plan calls for the River Front to be developed in six (6) phases consisting of property committed by various developers.[*See* App. 143-144]. The development plan was set forth in that certain Declaration of Master Association Covenants, Restrictions and Easements for The River Front, dated October 17, 2005, and recorded in the Public Records of Miami-Dade County, Florida (hereinafter "Declaration of

Covenants").[*See* App. 138-198]. An Amended and Restated Declaration of Master Association Covenants, Restrictions and Easements for The River Front, dated September 28, 2016, was recorded on October 14, 2016 (hereinafter "Amended Declaration of Covenants"). [*See* App. 224-344].

The property which is the subject of the underlying action (hereinafter "Subject Property") was expressly excluded from the development plan in both the Declaration of Covenants and Amended Declaration of Covenants. At the time, the Subject Property was owned by one of the original developers. The then-owner failed to pay the ad valorem property taxes leading to a tax deed sale in 2018.[*See* App. 90-93]. Appellee, a "master association," was the high bidder at the tax deed sale.

Appellee failed to pay the ad valorem property taxes for 2019 and 2020 but did pay property taxes for 2021 and 2022. [*See* App. 95, 127-128]. Due to Appellee's failure to pay 2019 and 2020 taxes, the Subject Property was again auctioned off in a tax deed sale, which was held on April 20, 2023.[*See* App. 129-131]. The high bidder at the auction was 3025 On the Bay, LLC, an entity related to Appellant through common ownership. [*See* App. 129]. On April 21, 2023, the Miami-Dade Clerk of Court issued a Tax Deed, and recorded the same on April 25, 2023, in favor of 3025 On the Bay, LLC, which took possession of the Subject

Property. [Id.]. The Subject Property was transferred to Appellant on May 3, 2023. Appellant filed its Quiet Title Complaint against Appellee on May 5, 2023.[*See* App. 5-16].

On May 31, 2023, Appellee filed its Motion to Dismiss Complaint and Incorporated Memorandum of Law ("Motion to Dismiss"). [*See* App. 17-62]. There were two primary arguments at the core of Appellee's Motion to Dismiss, only one of them was made part of the Temporary Injunction.[1] [*See* App. 24-26]. On June 23, 2023, Appellee filed its Emergency Motion for Temporary Injunction, which incorporated the Motion to Dismiss. [*See* App. 63-74].

Central to Appellee's argument in its Emergency Motion for Temporary Injunction is that the Subject Property was not subject to separate alienation via tax deed sale based upon §718.107, Fla. Stat. and *Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627 (Fla. 3d DCA 2009). [*See* App. 63-64, 70]. Appellee's other argument, that the Subject Property was not maintained, was baseless as it relied on the argument that leaves on the ground in a park somehow posed a risk to "trespassing children." [*See* App. 67-69].

[1] The other argument is that Appellee allegedly did not receive proper notice of the tax deed sale. However, Appellant has filed with the trial court the Clerk of Court's various notices sent to Appellee in compliance with applicable Florida law.

Ultimately, the trial court relied on the *Village of Doral Place* decision to enter the Temporary Injunction. [*See* App. 387]. However, *Village of Doral Place* can only apply to condominium associations as it is based entirely upon a provision of the Condominium Act; to wit, §718.107, Fla. Stat. As discussed below, the Condominium Act applies only to condominiums. Florida Courts, including the Florida Supreme Court and this Honorable Court, have refused to apply the Condominium Act to communities that are not a condominium association. To be sure, during the non-evidentiary hearing on Appellee's Emergency Motion for Temporary Injunction, Appellee's counsel admitted that Appellee is not governed by Chapter 718 and is, instead, governed by Chapter 720, Florida Statutes. [*See* App. 375, ¶10-17]. Chapter 720, Florida Statutes does not prohibit the separate alienation of common areas. Therefore, the holding and reasoning in *Village of Doral Place* cannot be applied to Chapter 720, Florida Statutes. For the foregoing reasons, Appellee failed to meet its burden and the trial court committed clear legal error in issuing the Temporary Injunction.

Summary of the Argument

The trial court erred as a matter of law in multiple respects when it granted the Temporary Injunction. The trial court issued the Temporary

Injunction without an evidentiary hearing; did not make factual findings regarding the elements required for an injunction; and improperly applied case law based upon the Condominium Act despite the Subject Property not being part of any condominium. Furthermore, Appellee cannot seek an injunction when it has failed to file any pleading seeking relief. Finally, the trial court erred when it entered the Order Denying Motion to Dissolve Injunction *sua sponte* as the applicable Rule of Civil Procedure and case law require an evidentiary hearing be held within five (5) days of Appellant's request for hearing.

Argument

I. Standard of Review

A hybrid standard of review applies to a trial court's orders on a request for a temporary injunction. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017). "To the extent the trial court's order is based on factual findings, [an appellate court] will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review." *Gainesville Woman Care*, 210 So. 3d at 1258. (quoting *Fla. High Sch. Athletic Ass'n v. Rosenberg*, 117 So. 3d 825, 826 (Fla. 4th DCA 2013)). "[T]he trial court's factual determinations must be supported by competent, substantial evidence." *Planned Parenthood of Greater*

Orlando, Inc. v. MMB Props., 211 So. 3d 918, 926 (Fla. 2017). Stated otherwise, a trial court's *factual* findings are accorded deference, as long as the record contains competent substantial evidence in support of the trial court's factual findings. However, should the trial court's factual findings lack competent substantial evidence in support of the trial court's factual findings, such findings are not afforded deference. Any legal conclusions are subject to de novo review.

A petition for a temporary injunction must show a *prima facie* right to the relief requested:

> "To obtain a temporary injunction, a party seeking relief must satisfy the following four-part test: "[1] a substantial likelihood of success on the merits; [2] lack of an adequate remedy at law; [3] irreparable harm absent the entry of an injunction; [4] and that injunctive relief will serve the public interest."

St. Brendan High School, 275 So. 3d at 221 (citing *Gainesville Woman Care*, supra). "If the party fails to meet any of these requirements, the motion must be denied." *Id.* (emphasis added) (internal citations omitted).

II. The trial court issued the Temporary Injunction without holding an evidentiary hearing and without accepting any evidence.

Failure to conduct an evidentiary hearing prior to entering an injunction violates due process. *See Bull Motors, LLC v. Brown*, 152 So. 3d 32 (Fla. 3d DCA 2014) (reversing and vacating order issuing a permanent

injunction for failure to hold evidentiary hearing); *Waste Mgmt., Inc. v. Dunn*, 873 So. 2d 623 (Fla. 3d DCA 2004) (reversing and vacating order issuing temporary injunction for failure to hold evidentiary hearing). Furthermore, the entry of an injunction must be supported by "competent substantial evidence." *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 926 (Fla. 2017).

In the case at bar, Appellee proffered no evidence at the hearing to support its application for an injunction. The only thing Appellee proffered was a single affidavit containing a single substantive sentence stating that the affiant has "read every statement made in the Motion and hereby confirm that the facts and circumstances set forth and described therein are true and correct to the best of my knowledge." [*See* App. 75-76]. The affidavit was only mentioned in passing during the hearing.

Instead of presenting evidence or witness testimony, the hearing consisted solely of arguments by counsel. The arguments overwhelmingly revolved around the issue of whether *Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627 (Fla. 3d DCA 2009) applies to the case at bar. [*See* App. 374-390]. No witnesses testified and there were no documents submitted into evidence. Indeed, none were even proffered by Appellee during the hearing. Therefore, Appellee failed to meet its burden

and the trial court erred in issuing the Temporary Injunction without holding an evidentiary hearing and without accepting evidence.

III. The Trial Court failed to make clear, definite, and unequivocally sufficient factual findings to support each of the four elements required for the entry of the Temporary Injunction.

"Clear, definite, and unequivocally sufficient factual findings must support ***each of the four conclusions*** necessary to justify entry of a preliminary injunction." *Angelino v. Santa Barbara Enterprises, LLC*, 2 So. 3d 1100, 1103 (Fla. 3d DCA 2009) (emphasis added) (internal citations omitted); *see also Castillo Grand Residences Condo. Ass'n, Inc. v. Stern*, 304 So. 3d 23, 27 (Fla. 4th DCA 2020) (internal citations omitted); *Aligned Bayshore Marina, LLC v. American Watersports Coconut Grove, LLC*, 207 So. 3d 331 (Fla. 3d DCA 2016); *St. Brendan High School, Inc. v. Neff*, 275 So. 3d 220 (Fla. 3d DCA 2019). A temporary injunction that "merely recites the legal conclusions" is insufficient. *Angelino v. Santa Barbara Enters.,* 2 So.3d 1100, 1103 (Fla. 3d DCA 2009).

In the case at bar, neither the Temporary Injunction on appeal nor the hearing transcript provide the specific factual findings necessary to support the entry of the Temporary Injunction. [*See* App. 372-396]. To the contrary, there was virtually no discussion, much less specific findings, regarding all

but one of the elements needed to grant an injunction.[2] Specifically, the record is nearly silent as to (1) whether Appellee has an adequate remedy at law, (2) whether Appellee would suffer an irreparable harm absent the entry of an injunction, or (3) whether injunctive relief would serve the public interest. [Id.]. Instead, the Temporary Injunction "merely recites the legal conclusions" regarding those elements and is, therefore, insufficient as a matter of law. *Id*.; *see also Chevaldina v. R.K./FL Management, Inc.*, 133 So.3d 1086 (Fla. 3d DCA 2014).

IV. Appellee has not presented any pleadings seeking relief and, therefore, there is no underlying claim for which to base its request for a temporary injunction.

An injunction is not a cause of action but, rather, a remedy sought to maintain the status quo. "It is fundamental that a party must first file a complaint or allege a cause of action in a pleading for a temporary injunction before injunctive relief can be granted." *Cadillac Plastic Group,*

[2] The sole element that was argued during the hearing was whether Appellee has a substantial likelihood of success on the merits. As discussed in Section V., the trial court's application of *Village of Doral Place* to this matter contradicts clear precedent by the Florida Supreme Court and this Honorable Court. Specifically, *Village of Doral Place* stands for the proposition that §718.107, Fla. Stat. prohibits the separate sale of condominium common elements. However, the Florida Supreme Court and this Honorable Court have refused to apply provisions of the Condominium Act to any common interest communities that are not condominium associations.

Inc. v. Barnett Bank of Martin County, N.A., 590 So. 2d 1063 (Fla. 4th DCA 1991) (*cited by Giller v. Giller*, 338 So. 3d 999 (Fla. 3d DCA 2022).

As of the filing of the instant Initial Brief, Appellee River Front has failed to file a complaint, counterclaim, third-party complaint or any other pleading seeking to set aside the Tax Deed. Indeed, Appellee has not filed an answer to Appellant's Complaint. Therefore, Appellee has failed to seek any ultimate relief in the underlying action. As the only pleading is Appellant's Quiet Title action pursuant to §65.081, Fla. Stat., Appellee's only defense thereto is that the taxes assessed against the property had been paid before the issuance of the tax deed. §65.081(3), Fla. Stat.

Appellee's Emergency Motion for Temporary Injunction "is not a sufficient vehicle to fulfill this requirement." *Cadillac Plastic Group* at 1063. In order to attack Appellant's Tax Deed, Appellee must file suit against the Miami-Dade Tax Collector, which Appellee has not done. §194.181(3) ("In any suit involving the collection of any tax on property, as well as questions relating to tax certificates or applications for tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.").

Despite Appellee's failure to initiate proceedings to invalidate Appellant's Tax Deed, Appellee sought and obtained the Temporary Injunction which stripped Appellant of possession of its property. *See*

§197.562, Fla. Stat. ("...the grantee of a tax deed under this law shall be entitled to immediate possession of the lands described in the deed."); and *Lance v. Smith*, 123 Fla. 461, 467 (Fla. 1936) ("The delivery of the deed is the final act of its execution and marks the period or date when title passes from the state to the applicant for the deed."). [*See* App. 363-365].

V. The Trial Court improperly applied a provision of the Condominium Act to a non-condominium contradicting clear precedent by the Florida Supreme Court and this Honorable Court.

The Florida Supreme Court and this Honorable Court have refused to apply the Condominium Act to any property or community association that is not a condominium association. *See Dept. of Bus. Reg. v. Siegel*, 479 So. 2d 112 (Fla. 1985) (declining to apply Chapter 718, Fla. Stat. to the Towers of Quayside Homeowners Ass'n, a development that is strikingly similar to Defendant River Front); *see also*, *Raines v. Palm Beach Leisureville Comm. Ass'n, Inc.*, 413 So. 2d 30 (Fla. 1982) (holding that the master association is not subject to the Condominium Act.); *but see Dimitri v. Comm. Center of Miami Master Ass'n, Inc.*, 253 So. 3d 715 (Fla. 3d DCA 2018) (discussing the legislative amendment to the definition of condominium, which amendment would not change the result here

because it would not include the Defendant as a "condominium association"[3]).

In applying *Village of Doral Place*, the trial court is doing what the Florida Supreme Court and this Honorable Court have refused to do; specifically, applying the Condominium Act to a community that is not a condominium association. To be sure, *Village of Doral Place* stands for the proposition that a condominium's common elements cannot be sold at a tax deed sale because the Condominium Act prohibits the separate sale of a common element. *See* §718.107, Fla. Stat. ("Restraint upon separation and partition of common elements."); *Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627, 629 (Fla. 3d DCA 2009) ("The tax deed sale was illegal because it violated section 718.107, Florida Statutes (2003). That statute forbids the separate sale of the common elements of a condominium."). Nothing within *Village of Doral Place*, the Condominium Act, nor any decision of the Florida Supreme Court or this Honorable Court suggests that §718.107, Fla. Stat. operates outside the realm of a

[3] The amendment would not change the result here because the law still requires that the "membership in the entity is composed *exclusively of unit owners or their elected or appointed representatives* and is a required condition of unit ownership." Fla. Stat. §718.103(2) (emphasis added). The River Front is not composed "exclusively of unit owners or their elected or appointed representatives." *See* Sec. 3.1 of the Declaration of Covenants (describing membership in the Defendant Master Association).

condominium. Accordingly, the trial court committed clear legal error in applying *Village of Doral Place* in the instant matter. [*See* App. 363-365].

For the avoidance of doubt, during the hearing, Appellee's counsel stated "in that particular case [*Village of Doral Place*], that association was governed by Chapter 718 Florida statutes, which is the Condominium Act. Here, I'm a Master Association; so I'm governed by Chapter 720, but it's a distinction without a difference."[*See* App. 375, ¶13-17]. In other words, Appellee's counsel admitted that Appellee is not governed by the Condominium Act and, instead, is governed by Chapter 720. Importantly, Appellee has failed to point to any provision of Chapter 720 that prohibits the separate sale of a common area in a community governed by Chapter 720. Such a provision does not exist. In fact, Appellee's own governing documents specifically contemplate the possibility that a common area could be transferred. [*See* App. 135-352].

VI. The Trial Court abused its discretion in denying the Motion to Dissolve because Appellant demonstrated clear legal error or misapprehension.

The "denial of a motion to modify or dissolve is also an abuse of discretion where a party can demonstrate clear legal error or misapprehension of facts on the part of the trial court." *Planned Parenthood of Greater Orlando, Inc. v. MMB Properties*, 211 So.3d 918, 925 (Fla.

2017). As argued in Section V above, the trial court committed clear legal error in applying *Village of Doral Place* to the instant matter. Appellant properly raised the issue before the trial court in the Motion to Dissolve. [*See* App. 398-410]. However, the trial court refused to hold a hearing on the subject. [*See* App. 429-451]. Instead, the trial court *sua sponte* entered the Order Denying Motion to Dissolve Injunction. [*See* App. 425-426].

Moreover, the trial court's reasoning seems to be based upon other legal errors. For example, the trial court stated multiple times that Appellant does not own the Subject Property. [*See* App. 381, 392]. The trial court also seemed to disregard Appellant's clear statutory right to possession of the Subject Property following the issuance of the Tax Deed. [*See* App. 381, 383, 387, 388, 391-392]. Lastly, the trial court seems to have disregarded that the issuance of the Tax Deed is "prima facie evidence of the regularity of all proceedings from the valuation of the lands to the issuance of the deed, inclusive." Fla. Stat. §197.552.

The sum of the trial court's legal errors has resulted in a Tax Deed purchaser being stripped of its statutory right to possession of real property, without any evidence whatsoever, through the application of an Act that the Florida Supreme Court and this Honorable have refused to apply to

communities such as the Appellee, despite Appellee's admitted failure to pay property taxes.

Conclusion

The trial court erred as a matter of law in multiple respects when it issued the Temporary Injunction. The trial court erred in not holding an evidentiary hearing or accept any evidence. Furthermore, the trial court erred in failing to make clear, definite and unequivocally sufficient factual findings specific to each of the required elements to enter an injunction. Because Appellee has failed to initiate proceedings to invalidate the Tax Deed, there is no underlying cause of action present to support the application for an injunction. And, the trial court erred in applying a decision of this Court which is limited to condominium associations where the Subject Property is not subject to the Condominium Act.

Dated: September 28, 2023

Respectfully submitted,

/s/ Pedro A. Perez-Roura_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing furnished by Florida Court E-Filing Portal on the 28th day of September 2023 upon the following:

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CERTIFICATE OF COMPLIANCE WITH FLORIDA RULE OF APPELLATE PROCEDURE 9.045

Pursuant to Fla. R. App. P. 9.210(b)(8), the undersigned hereby certifies that this document complies with the applicable font and word count limit requirements delineated in Fla. R. App. P. 9.045.

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