

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

Case No.: 3D23-1363

Lower Tribunal Case No. 23-16352

92 On the Bay, LLC,
Appellant,

v.

The River Front Master Association, Inc.,
Appellee,

APPELLEE'S ANSWER BRIEF

ON APPEAL FROM NON-FINAL ORDERS OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

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STATEMENT OF THE CASE AND OF THE FACTS

I. STATEMENT OF THE CASE

The dispute before this Honorable Court between 92 On The Bay, LLC (“92OTB” or “Appellant”) and The River Front Master Association, Inc. (“RFM” or “Appellee”) stems from the issuance of a tax deed to a property upon which a playground and walk area are situated (“Subject Property”).

The trial court’s Order Granting Defendant’s Emergency Motion for Temporary Injunction (“Order” or “Temporary Injunction”) on appeal prevents 92OTB from barring access to the Subject Property was entered on July 5, 2023, following an appropriate hearing wherein the evidence and legal authorities supporting the trial court’s Order were duly considered. App., 370-96. The parties were at liberty to present and discuss any and all evidence in support of their respective positions at the hearing. Evidence supporting the Appellee’s position was filed and part of the record prior to same, which was held on June 29, 2023. See App., 32, 34-42, 63-76, 135-352. Contrary to Appellant’s assertion, the trial court’s Order granting the temporary injunction set forth sufficient factual findings and was supported by competent and substantial record evidence

with respect to all elements necessary under Florida Law. App., 363-65. With the presented factual landscape and due guidance supplied by controlling precedent from this Honorable Court, the trial court entered a sufficiently specific order granting a temporary injunction.

Appellant moved the trial court for reconsideration of that Order but in so moving also titled its motion as one for dissolution of the temporary injunction. Appellee speculates that the trial court construed Appellant's double-named motion as one properly considered to be for reconsideration only and set a hearing date beyond five days out. Appellant then filed its notice of appeal of the Temporary Injunction. Thereafter, the trial court appropriately exercised its discretion and *sua sponte* denied Appellant's motion for reconsideration. This consolidated appeal follows.

II. STATEMENT OF THE FACTS

The Subject Property was acquired by Appellant via tax deed in 2018. App., 32. Following said acquisition, RFM made the Subject Property part of RFM's Committed Property to serve as a Common Area and "held as a dog walk subject to the covenants, restrictions and easements set forth in the Master Declaration" by virtue of a Supplemental Declaration and Fourth Amendment to Amended and

Restated Declaration of Master Association Covenants, Easements and Restrictions for the River Front. *See App.*, 35-41.

Subsequently, RFM itself failed to pay taxes owed on the Subject Property. However, due to the Subject Property now constituting a common element of multiple condominiums the property should not have been sold separately via tax deed. Nevertheless, a tax deed sale was held and a tax deed was issued to the highest bidder. The high bidder, an entity with common ownership to 92OTB, transferred its “ownership” of the Subject Property to 92OTB on May 3, 2023. Thereafter, 92OTB improperly prevented RFM and its members from accessing the Subject Property by placing locks and chains on the entry gates to same; *App.*, 66; and instituted an action to quiet title. Of note (and quite obviously), commencement of the action by 92OTB vested jurisdiction in the trial court.

Not only did covenants running with the land survive issuance of a tax deed, but RFM maintains that the tax deed was improperly issued in violation of controlling Florida law and as a result, is a legal nullity. Accordingly, RFM sought injunctive relief from the trial court to enjoin 92OTB from preventing access to RFM and its members until such time as title to the Subject Property could be quieted. *See*

App., 63-74. Further, due to need to prevent injury to potential trespassing children drawn to an attractive nuisance with hidden and unappreciated dangers (and to address the corresponding risk of liability that may be charged to RFM with knowledge of the unkempt conditions), the injunctive relief was sought on an emergency basis.¹ See App., 67-69.

SUMMARY OF ARGUMENT

The trial court's issuance of a temporary injunction is supported by (and cites to) the requisite facts and controlling law. Record evidence exists that covenants running with the land survived issuance of a tax deed to the Subject Property and entitle Appellee (and its members) continued access to same. Further, record evidence supports that the Subject Property constitutes a common element to multiple condominiums, and as such, cannot be separately alienated via tax deed. Appellee's arguments on appeal as to the trial court order granting the temporary injunction are unavailing. As for the second order appealed (i.e., the trial court's *sua*

¹ 92OTB did not maintain the Subject Property and allowed accumulations of leaves to develop in multiple areas on the Subject Property in the middle of hurricane season.

sponte denial of Appellee’s Motion for Reconsideration/to Dissolve), the trial court was well within its discretion to construe the substance of the motion as solely seeking reconsideration (with dissolution being nothing more than a tactic for the sake of expedience), and therefore, did not err in denying it without a hearing.

I. STANDARD OF REVIEW

“The standard of review of trial court orders on requests for temporary injunctions is a hybrid. To the extent the trial court's order is based on factual findings, we will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to *de novo* review.” *Quirch Foods LLC v. Broce*, 314 So. 3d 327, 337 (Fla. 3d DCA 2020) (citations omitted). “To obtain a temporary injunction, the petitioner must satisfy a four-part test under Florida law: “(1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest.” *Id.* at 338.

“[T]rial courts enjoy ‘broad discretion in granting, denying, dissolving, or modifying injunctions, and unless a clear abuse of

discretion is demonstrated, an appellate court must not disturb the trial court's decision.” *City of Miami Beach v. Cleavelander Ocean, L.P.*, 338 So. 3d 16, 21 (Fla. 3d DCA 2022) (quoting *Jackson v. Echols*, 937 So. 2d 1247, 1249 (Fla. 3d DCA 2006)). Indeed, “[a] trial court's ruling on a motion for a temporary injunction is clothed with a presumption of correctness, subject to reversal only for an abuse of discretion.” *Williams v. Victim Just., P.C.*, 198 So. 3d 822, 825-26 (Fla. 2d DCA 2016) (citing *Orkin Extermination Co. v. Tfank*, 766 So.2d 318, 319 (Fla. 4th DCA 2000)).

II. THE TRIAL COURT ISSUED THE TEMPORARY INJUNCTION AFTER AN APPROPRIATE HEARING

The hearing held by the trial court to address Appellee’s Emergency Motion for Temporary Injunction (“Emergency Motion”) was appropriate in every way and its scope was dictated solely by what remained to be addressed. Be that as it may, Appellant complains on appeal that due process was violated and that the hearing’s parameters were in some way inappropriate. Appellant overlooks the significance of the exhibits to the Complaint and Motion to Dismiss as well as other materials filed via Notices of Filing (by Appellant) prior to hearing. A full record supporting the Temporary

Injunction was established prior to entry of same and all materials were considered by the trial court. *See generally* App., 5-362. No additional evidence was needed at the hearing so the parties and the court confined the discussion to matters of law and legal conclusions that could be arrived at from consideration of the evidence and binding authority controlling same. Even so, the judge advised at hearing that she would allow Appellant's counsel to make his record. *See* App., 390.

Nothing stopped Appellant from offering any additional evidence it felt may be appropriate to present to the court. No additional evidence was needed from Appellee because sufficient evidence existed on the record to establish the elements justifying the issuance of the Temporary Injunction. River Front Master's current Board President, Shahab Karmely, was in attendance to offer testimony, if necessary. However, the *facts* of this case are not really in dispute and testimony was not required for the Appellee to satisfy the requirements for a temporary injunction. The dispute is centered on the legal effect of various documents properly submitted for the trial court's consideration prior to the hearing and entry of the Order granting the temporary injunction. Further, the dispute involves the

effect of this Court’s precedent as applied to the concept and membership of a Master Association.

As acknowledge by this Court and others, “[w]hether a master association is controlled by chapter 718 is an admittedly confusing area of law.” *Dimitri v. Com. Ctr. of Miami Master Ass’n, Inc.*, 253 So. 3d 715, 717 (Fla. 3d DCA 2018).² However, when armed with the record evidence it had in this case, the trial court was within its discretion to consider the facts and apply the law as it saw just and appropriate. An evidentiary hearing is really only necessary and warranted when there are disputed facts. Here the facts are not in dispute. As Appellant is aware, legal conclusions related to the granting of a temporary injunction are subject to de novo review. Appellant’s Consolidated Initial Br., 11 (citing *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017)). The learned

² Here, the confusing area of law is more about the identification of condominium property as opposed to operation and obligations of the Appellee association. Appellant’s confusion seems to stem from failing to appreciate the intertwined nature of the master association with the condominium association and the interplay of their respective controlling documents. See App., 248, Master Declaration, Section 11.2 (“Cumulative Effect; Conflict. The covenants, restrictions and provision of this Declaration shall be cumulative with those of the declarations of condominium or declarations of covenants and restrictions for the Local Associations.”).

trial court acknowledged its own considerable experience with condominium properties while also acknowledging the uncommon situation presented here. Indeed, the trial court judge indicated (if even only implicitly) that she had made at least a preliminary assessment that the Subject Property constitutes a condominium common element. *See App.*, 381 (“I’ve been on the bench seventeen years. I’ve been a lawyer thirty-two; okay? I have never seen a common element of a condo sold at a Tax Deed sale.”)

The case law upon which Appellant relies is distinguishable from the instant matter. In *Bull Motors, L.L.C. v. Brown*, 152 So. 3d 32 (Fla. 3d DCA 2014), this Court reversed the granting of a permanent injunction because the party opposing the injunctive relief was never afforded the opportunity to be heard or even file a response prior to entry of the trial court’s injunctive relief order. Here, the Appellant filed a response in opposition, supplemented the record with filing of documentary evidence prior to attending a hearing on the issue, and argued in opposition to the injunctive relief. *Bull*

Motors does not support Appellant's claim that its due process rights were violated.³

III. THE TRIAL COURT'S ORDER SET FORTH THE REASONS FOR ENTRY OF SAME WITH SUFFICIENT SPECIFICITY

Contrary to the Appellant's contention, the trial court's order granting the temporary injunction sets forth the reasons with sufficient specificity and does not merely recite legal conclusions. Although the temporary injunction order is efficiently worded, each of the findings required to sustain the temporary injunction are appropriately set forth in same. The order acknowledges that the Court reviewed the filings and requisite facts presented, legal authorities relied upon, and had the benefit of oral argument to discuss the pertinent facts on the record. Defendant's Motion addressed these elements and explained how they were satisfied by the facts of the case. Appellant appears to suggest that each argument in the moving paper addressing each element was not dissected and examined at oral argument, and therefore, the

³The other case cited by Appellant on this point, *Waste Mgmt., Inc. of Fla. v. Dunn*, 873 So. 2d 623 (Fla. 3d DCA 2004), is a two sentence per curiam opinion that offers no analysis of facts of that case, and therefore, adds nothing to guide the Court's analysis here.

injunctive relief is improper. This is not what the law requires. The reasons for entry of the Temporary Injunction are specified as mandated by Florida Rule of Civil Procedure 1.610 (c).

For convenient review, the Order provides, in pertinent part, the following:

The Court finds that Defendant has established the elements required for injunctive relief. Specifically, **the Court finds that Defendant will suffer irreparable harm with no adequate remedy at law** if its ability to access its property is not immediately remedied. Given the legal authority in Defendant's Motion, *see e.g., Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627 (Fla. 3d DCA 2009), and the facts as presented and discussed on the record, **the Court further finds that Defendant has a substantial likelihood of success on the merits on its position.** Additionally, **the injury to the movant far outweighs the potential harm to the Plaintiff in this case** as the movant seeks to maintain and access the property as it previously had before it was denied access to the property and Plaintiff's plans for development of the property are still being explored. Moreover, while Plaintiff may have a Tax Deed (the validity of which is in dispute), it has not yet quieted title and its claimed superior property right has not been adjudicated or otherwise established. Finally, **the public interest is not disserved by the injunctive relief granted here** because the public has an interest in the enforcement of property rights as well as the maintenance of playground areas that may constitute attractive nuisances because of concealed dangers and/or dangerous conditions. Accordingly, Defendant's Motion is GRANTED.

App., 363-64, Order, ¶ 1 (emphasis added).

Lack of Adequate Remedy at Law and Irreparable Harm

The Order addresses both elements together and frames the finding in property terms – presumably because Defendant’s Emergency Motion accurately pointed out that these factors – in essence – go hand-in-hand. Defendant’s Emergency Motion explained how the property rights involved in this dispute established both elements. App., 69-70. The Order’s acknowledgement of both of these elements being met on such bases is clear in the statement that “Defendant will suffer irreparable harm with no adequate remedy at law *if its ability to access its property is not immediately remedied.*” App., 363-64, Order, ¶ 1 (emphasis added). Brevity as to the factual findings on irreparable harm and there being no adequate remedy at law does not render the Order legally insufficient.

Public Interest

Again framed in terms of property rights, the court acknowledged in its Order the import of enforcing such rights and the public’s interest in same. App., 363-64, Order, ¶ 1; *see AmeriGas Propane, Inc. v. Sanchez*, 335 So. 3d 1253 (Fla. 3d DCA 2021) (acknowledging that the public has a cognizable interest in the enforcement of contractual rights and such enforcement

demonstrates that courts recognize and will uphold same). The court also acknowledged in its Order the public's interest in having the risks posed by a property's features constituting an attractive nuisance eliminated. App., 363-64, Order, ¶ 1.

Injury to Petitioner Outweighs Harm to Respondent

Appellant does not appear to take issue with this element being addressed and adequate by the trial court's Order. The court elaborated on its findings here by acknowledging that "the movant seeks to maintain and access the property as it previously had before it was denied access to the property and [Appellant]'s plans for development of the property are still being explored." App., 363-64, Order. at ¶ 1; *see also* App., 377-78, 387.

Substantial Likelihood of Success on the Merits

As discussed at the hearing on Appellee's Emergency Motion, there are a two very strong arguments that Appellee has undisturbed rights to the continued use of the Subject Property. *See* App., 372-77, 384. First (and discussed most thoroughly at the hearing on the Emergency Motion), Appellee executed and recorded the appropriate documents to have the Subject Property classified as a Common Area for the benefit of its member condominium associations. App., 33-

42, Def.'s Mot. to Dismiss, Ex. C.⁴ Moreover, the trial Court explicitly acknowledged the effect of controlling case law on its perception of Appellee's likelihood of success by citing to same in its Order. Given the argument at the subject hearing and citation to the case law discussed, the trial court's Order does not fail to state the reasons for entry of the injunction as required by Florida Rule of Civil Procedure 1.610(c). The relevant Master Association documents were filed with the Court on June 27, 2023, ahead of the June 29, hearing.⁵ App., 77-352.

Second (and perhaps more obvious – though less absolute), even if the tax deed were properly issued (it was not), the covenants running with the land; *see* App., 77-352; survive and remain enforceable after the issuance of a tax deed. § 197.573, Fla. Stat. The Appellee and its members' access to the property remained intact and the Appellant's wrongful actions to bar entry and enjoyment of the Subject Property was rightly enjoined. This was discussed at the

⁴ The effect of this classification is discussed below in section V.

⁵ Appellee finds it curious that the Appellant contends no evidence was offered or considered during the hearing in front of the trial court where the ruling was issued granting the temporary injunction when the Appellant is the party that filed the evidence supporting Appellee's position. App., 77-78, 135-36.

hearing and was a factor underlying the court's issuance of the Temporary Injunction. App., 384, 388; *see also* App., 363-64, Order, ¶ 1 (“**Given the legal authority in Defendant’s Motion**, *see e.g.*, *Village of Doral Place Ass’n, Inc. v. RU4 Real, Inc.*, 22 So. 3d 627 (Fla. 3d DCA 2009), **and the facts as presented and discussed on the record**, the Court further finds that Defendant has a substantial likelihood of success on the merits on its position. [. . .] Moreover, while Plaintiff may have a Tax Deed (the validity of which is in dispute), it has not yet quieted title and its claimed superior property right has not been adjudicated or otherwise established.”)

“A plaintiff can show a substantial likelihood of success ‘if good reasons for anticipating that result are demonstrated.’” *Miami-Dade Cnty. v. Miami Gardens Square One, Inc.*, 314 So. 3d 389, 397 (Fla. 3d DCA 2020) (citations omitted). The trial court’s Order sufficiently supported its finding that Appellee demonstrated a substantial likelihood of success with reference to controlling legal authority, the facts on record, and the discussion that took place at oral argument. The law does not require the trial court to force comprehension upon the Appellant. It only requires specified reasons for entry of the Order based on sufficient record evidence. Fla. R. Civ. P. 1.610(c).

IV. APPELLANT’S COMPLAINT INVOKED THE TRIAL COURT’S JURISDICTION THEREBY PERMITTING IT TO EXERCISE ITS POWERS IN EQUITY

Appellant commenced an action by filing a Complaint seeking to quiet title to the subject Property. Once a trial court’s jurisdiction has been properly invoked by the commencement action, a motion seeking preliminary injunctive relief may be properly granted regardless of whether the complaint includes a claim for injunctive relief. *See Nelson Tree Service, Inc. v. Gray*, 978 So. 2d 198, 200 (Fla. 1st DCA 2008) (citing *Lingelbach’s Bavarian Restaurants, Inc. v. Del Bello*, 467 So. 2d 476, 479 (Fla. 2d DCA 1985)).⁶ Accordingly, Appellant’s argument that Appellee’s Emergency Motion for

⁶ The *Del Bello* case discusses the 1981 Amendment to Florida Rule of Civil Procedure 1.610 and the Committee Notes associated therewith. The *Del Bello* court explains that an apparent paradox is created in the Committee Notes by operation of Rule 1.100 and the distinction between a “pleading” and a “motion.” *See* 467 So. 2d at 478. After careful analysis about how to treat the paradox led to a forked path forward (ignore it altogether or announce an alternate reading), the court deferred to the guidance provided by the purpose of the 1981 amendments, i.e. “to bring our procedural rule governing injunctions in line with Rule 65 of the Federal Rules of Civil Procedure.” *Id.* The court ultimately concluded that “[a] comparison of those rules, which are in absolute parallel, leaves no question that an ‘application for a preliminary injunction’ pursuant to Rule 1.610 is achieved by Motion.” *Id.* at 478-79.

Temporary Injunction was improper and/or procedural defective because Appellee had not yet filed a pleading is without merit.

Cases cited by Appellant do not support the position for which they are offered, i.e. that Appellee must first file a pleading before it can seek injunctive relief. Rather, the cases merely stand for the proposition that: a complaint must first be filed (i.e., an action commenced) before a court's jurisdiction is invoked thereby permitting it to exercise its equitable powers to grant injunctive relief. See e.g. *Cadillac Plastic Grp., Inc. v. Barnett Back of Martin County, N.A.*, 590 So. 2d 1063 (Fla. 4th DCA 1991) (vacating a temporary injunction where no complaint was filed before or after a motion for temporary injunction was filed and granted). Indeed, the cases upon which Appellant's cited legal authority themselves rely similarly do not support the over-extended legal effect Appellant attributes to same, and only stand for the above-mentioned (and underlined) proposition. See *Hall v. Hanford*, 64 So. 2d 303, 304 (Fla. 1953) ("No injunction can issue without a bill of complaint."); *Merrell v. Bonita Springs Golf Course, Ltd.*, 512 So. 2d 974, 975 (Fla. 2d DCA 1987) (citing *Del Bello* and reversing an order issuing an injunction because

neither the complaint nor a motion sought injunctive relief – either of which being sufficient predicates for providing same).

The trial court had the required jurisdiction (and factual bases) to issue the Temporary Injunction at issue and Appellant’s suggestion that such relief was beyond the reach of Appellee for want of a pleading is ill-conceived.

V. THE TRIAL COURT’S ORDER DOES NOT MISAPPLY ANY PROVISION OF THE CONDOMINIUM ACT NOR DOES IT CONTRADICT CONTROLLING PRECEDENT

It is known as the Condominium Act – not the Condominium Association Act. § 718.101, Fla. Stat. Despite the narrow channel within which Appellant’s arguments reside, Chapter 718’s controlling effect is not isolated to just the entity managing or otherwise operating the property. Rather, “[t]he purposes of chapter 718 are to give statutory recognition to the condominium form of ownership and to establish procedures for the creation, sale, and operation of condominiums.” *Raines v. Palm Beach Leisureville Cmty. Ass’n, Inc.*, 413 So. 2d 30, 32 (Fla. 1982) (citing § 718.102, Fla. Stat.). Accordingly, one must look – as demonstrated by the Florida Supreme Court and Florida’s District Courts of Appeal – to statutory definitions to ascertain whether property or an association fall within

the scope of the Condominium Act. *See e.g., Dimitri*, 253 So. 3d at 717 (determining whether definition of “association” in Condominium Act applies to facts); *Village of Doral Place Ass’n, Inc.*, 22 So. 3d 627 (determining that property at issue satisfied the statutory definition of “common element,” and therefore, could not be separately sold).

Third DCA precedent clearly demonstrates this Court’s proclivity to explain the reach and impact of the Condominium Act through definitional analysis and application. *See id.* Here, like so many instances facing Florida courts before, the facts presented lend themselves to such an analysis that in turn inevitably leads to a simple conclusion: the Subject Property constitutes a common element to condominiums. As such, it cannot be sold separately via tax deed. *Id.*

Statutory and Master Declaration Definitional Analysis: The Subject Property Constitutes a Common Element to Member Condominiums

“‘Condominium property’ means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon ***and all easements and rights appurtenant thereto intended for use in connection with the condominium.***” § 718.103(14), Fla. Stat.

(emphasis added). “Common elements” is defined as “the portions of the **condominium property not included in the units.** § 718.103(9), Fla. Stat. (emphasis added). Defendant’s Amended and Restated Declaration of Master Association Covenants, Easements and Restrictions for The River Front (“Master Declaration”) provides, in relevant part, the following definitions:

Section 1.10 “Common Areas” or “Common Properties” shall mean all Committed Property located within the Project which is designed and intended for the common, non-exclusive use of the Owners (also as hereinafter defined), including but not limited to those areas designated as common areas . . . and such similar items or property which may hereafter be added by supplemental declaration

Section 1.22 “The Property” or “Committed Property” shall mean and refer to all that certain real property currently subject to this Declaration, and all additions thereto as are hereafter made subject to this Declaration by way of Supplemental Declaration. . . .

Section 1.25 “Member” shall mean and refer to each Local Association (sometimes referred to “Local Association Member”). Each Developed Lot Owner, **each Unit Owner** and the Declarant.

Section 1.26 “Owner” shall mean and refer to **Unit Owners**, Developed Lot Owners and Undeveloped Low Owners collectively.

Section 1.29 “Supplemental Declaration” shall mean and refer to any instrument recorded by any Developer together with the Declarant for the purpose of adding

property to the Committed Property, for purposes of specifically identifying the portion of the Project to be a designated Common Area . . .

Section 1.31 “Unit” shall mean and refer to a Residential Unit or Commercial Unit.

Section 1.32 “Unit Owner” shall mean and refer to the record owner, including Developer(s), whether one or more persons or entities, of the fee simple title to any Unit located within the Property.

App., 226-28 (emphasis added). The Master Declaration further provides, in relevant part:

ARTICLE IV

COMMON AREAS; CERTAIN EASEMENTS; COMMUNITY SYSTEMS

Section 4.1. Ownership. The Common Areas are hereby dedicated to the joint and several use, in common, of the Developers, Developed Lot Owners, Undeveloped Lot Owners and the **Unit Owners** that may from time to time constitute part of the Property. . . .

Section 4.2. Owners’ and Members’ Easements. **Each Member**, the Developers, each Undeveloped Lot Owner, and their respective tenants, agents and invitees of each of them, **shall have a permanent and perpetual non-exclusive easement for the use and enjoyment of all Common Areas** in common with all other such Members of the Master Association, Developers, and Undeveloped Lot Owners, their tenants, agents and invitees, subject to this Master Declaration.

Section 4.3. Easements Appurtenant. The easements provided in Section 4.2 shall be appurtenant to and shall pass with the title to each Lot and each Unit.

App., 231-32 (emphasis added).

As mentioned at the outset of this brief, following acquisition of the Subject Property, RFM made it part of RFM's Committed Property and a Common Area to "be held as a dog walk subject to the covenants, restrictions and easements set forth in the Master Declaration" by virtue of a Supplemental Declaration and Fourth Amendment to Amended and Restated Declaration of Master Association Covenants, Easements and Restrictions for the River Front. See App. at 35-41. Finally, it should be noted that an "association" may fall within the purview of another controlling chapter, such as the Homeowners' Association Act, but the unit owners comprising same may still have nonexclusive ownership of appurtenant condominium property (e.g., common elements). See *Eastwood Shores Prop. Owners Ass'n, Inc. v. Dep't of Econ. Opportunity*, 264 So. 3d 264, 268, n.8 (Fla. 2d DCA 2019); see also *Randolph Farms I Condo. Ass'n, Inc. v. Otto*, 365 So. 3d 1259, 1262 (Fla. 2d DCA 2023).

RFM falling outside the definition of "association" in the Condominium Act does not alter its relationship with its member condominium associations and its ability to create covenants

running with the land for their benefit that ultimately constitute condominium common elements; the declaration controls those relationships. *See Heron at Destin W. Beach & Bay Resort Condo. Ass'n v. Osprey at Destin W. Beach*, 94 So. 3d 623, 628 (Fla. 1st DCA 2012) (explaining that a declaration acts as the “constitution” of a nonprofit master association and “strictly governs the relationships among the members and the association,” regardless of whether the master association qualifies as an “association” under section 718.103(2) of the Florida Statutes (2009))

Appellee has never asserted that it was a condominium association. Instead rather, Appellee has consistently maintained that the Subject Property is not subject to separate sale because it constitutes a condominium common element by combined operation of statute and the Declaration of Master Association Covenants, Easements and Restrictions for The River Front.⁷ Looking to nothing beyond the Master Declaration and the definitions in Florida’s

⁷ Appellant made this document part of the record below when it filed same with the Court ahead of the hearing on the Emergency Motion for Temporary Injunction. *See* n.4, *supra*. If Appellant had not so filed, Appellee would have either filed the document itself or introduced the document as evidence to the Court at the appropriate hearing.

Condominium Act, it is clear that the Subject Property constitutes a common element of condominium property. See *Dimitri*, 253 So. 3d at 717; *Village of Doral Place Ass'n, Inc.*, 22 So. 3d 627; § 718.103(9), Fla. Stat. Accordingly, the Subject Property cannot be sold separately via a tax deed based upon section 718.107, Florida Statutes. *Village of Doral Place Ass'n*, 22 So. 3d 627.

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO RECONSIDER/ DISSOLVE – APPELLANT FAILED TO DEMONSTRATE CLEAR LEGAL ERROR, MISAPPREHENSION OF THE FACTS, OR A CHANGE IN CIRCUMSTANCES

The Trial Court did not err in Denying *sua sponte* the Appellant's Motion to Reconsider/Dissolve ("Motion") because the Motion was most appropriately framed as – and correctly considered to be – a Motion for Reconsideration. As such, the court below was well within its discretion to Order the Motion denied. In Florida, it is well settled that "[a] trial court retains inherent authority to reconsider, and if deemed appropriate, alter or retract any of its nonfinal rulings prior to the entry of the final judgment or order terminating an action." *Silvestrone v. Edell*, 721 So. 2d 1173, 1175 (Fla. 1998); see also *Taufer v. Wells Fargo Bank, N.A.*, 278 So. 3d 335, 336-37 (Fla. 3d DCA 2019); *O'Brien v. Stermer*, 98 So. 3d 1245, 1248

(Fla. 3d DCA 2012); *Bettez v. Miami*, 510 So. 2d 1242, 1243 (Fla. 3d DCA 1987); *Hunter v. Dennies Constr. Co.*, 693 So. 2d 615, 616 (Fla. 2d DCA 1997). “However, the court is not required to exercise that authority, and its decisions whether to do so generally are not reviewable.” *Hunter*, 693 So. 2d at 616 (citing *Bettez*, 510 So. 2d at 1243 and *Arnold v. Masseur*, 493 So. 2d 91, 92 (Fla. 5th DCA 1986)).

“With respect to the characterization of motions, Florida courts place substance over form. In other words, ‘if the motion is mislabeled, the court will look to the substance of the motion, not the label.’” *Indymac Fed. Bank FSB v. Hagan*, 104 So. 3d 1232, 1236 (Fla. 3d DCA 2012) (quoting *Indus. Affiliates, Ltd. v. Testa*, 770 So. 2d 202, n.1 (Fla. 3d DCA 2000)). Appellant did not present any new argument in its Motion for Reconsideration, nor did it demonstrate that the trial court misapprehended the applicable facts. Moreover, there was no suggestion that a change in circumstances occurred, which may have provided contextual support and warranted the trial court to characterize the motion as being one seeking dissolution of the temporary injunction. Instead, the Appellant was merely displeased with the result and in an attempt to have a prompt

hearing on a motion for reconsideration threw on the moniker “Motion to Dissolve” in order to jump other cases on the trial court’s hearing calendar.

It is unclear to Appellee what the practical effect of appealing the trial court’s second order will have, if any. It would seem that resolution of the appealed order granting the temporary injunction will necessarily resolve the second *sua sponte* order.

CONCLUSION

The trial court’s temporary injunction was properly issued. It is supported by sufficient evidence and based on controlling legal authority. The trial court did not err in construing Appellant’s Motion for Reconsideration/ to Dissolve as nothing more than a motion for reconsideration and did not abuse its discretion in denying same without hearing. This Honorable Court should affirm both orders.

Dated: December 14, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished upon the parties on the Service List on this 14th day of December, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements set forth Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B).

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