Filing # 203717856 E-Filed 07/31/2024 09:12:59 AM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MIRADOR 1000 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, and MIRADOR 1200 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation,

Plaintiffs,

v.

Case No. 2022-003183 CA-01 (31)
[Third DCA No. No. 3D24-872]

MIRADOR MASTER ASSOCIATION, INC., a Florida not-for-profit corporation; MIRADOR 1035 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation; 1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation; and MIRADOR 1125 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation,

Defendants.

_______________________________________/

AMENDED NOTICE OF APPEAL[1]
(Re. Court's July 12th Order Granting in Part and Denying Plaintiffs' Motion for Rehearing etc. [D.E. 192])

Plaintiffs, Mirador 1000 Condominium Association, Inc. ("Mirador 1000") and Mirador 1200 Condominium Association, Inc. ("Mirador 1200") (collectively, "Plaintiffs") hereby notice their appeal to the Third District Court of Appeal of this Court's ORDER ON RECEIVER'S MOTION FOR SUMMARY JUDGMENT AND MIRADOR 1000 AND MIRADOR 1200'S CROSS-MOTION FOR SUMMARY JUDGMENT (hereinafter, the "Final Summary Judgment") [D.E. 164], entered on May 2, 2024, and rendered final on July 12, 2024, by the Court's entry of

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[1] The original Notice of Appeal [D.E. 165] was transmitted to the Third District Court of Appeal and docketed as case number 3D24-872.

its ORDER GRANTING IN PART AND DENYING PLAINTIFFS' MOTION FOR REHEARING AND FOR ORAL ARGUMENT AND AMENDING ORDER ON MOTIONS FOR SUMMARY JUDGMENT [D.E. 192] (hereinafter the "Order on Rehearing"), copies of which are attached as Exhibit 1 and Exhibit 2, respectively.

The referenced Final Summary Judgment is in the nature of a final order, appealable pursuant to Florida Rule of Appellate Procedure 9.110.[2]

Respectfully submitted,

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STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE 7-31 AD 2024
JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County
Deputy Clerk 12662

By:/s/ Elliot B. Kula
Elliot B. Kula

[2] Plaintiffs proceeded in an abundance of caution to (prematurely) file their Notice of Appeal on May 13th [D.E. 165], contemporaneously with the timely filing of their authorized motion for rehearing [D.E. 168], *see* Fla. R. Civ. P. 1.530, the filing of which motion suspended rendition of the Final Summary Judgment (*see* Fla. R. App. P. 9.020(h)) pending the Court's ruling on the motion for rehearing. This Amended Notice of Appeal is filed because the Order on Rehearing substantively modified the Final Summary Judgment. *See Santos v. HSBC Bank USA, Nat'l Ass'n etc.*, 258 So. 23d 535, 537 (Fla. 3d DCA 2018) (explaining that "[i]n such instances, the appellant must formally invoke the appellate court's jurisdiction to review the post-notice-of-appeal acts by filing a new notice of appeal or by amending its prior notice of appeal to include those acts").

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024, I electronically filed the foregoing via the Florida Courts' e-portal which will serve a copy by electronic mail to all counsel of record, as follows:

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EXHIBIT 1

ORDER ON RECEIVER'S MOTION FOR SUMMARY JUDGMENT AND MIRADOR 1000 AND MIRADOR 1200'S CROSS-MOTION FOR SUMMARY JUDGMENT

Entered on May 2, 2024

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2022-003183-CA-01
SECTION: CA44
JUDGE: Lisa Walsh

Mirador 1000 Condominium Association Inc

Plaintiff(s)

vs.

Mirador Master Association Inc

Defendant(s)

_____________________________/

ORDER ON RECEIVER'S MOTION FOR SUMMARY JUDGMENT AND MIRADOR 1000 AND MIRADOR 1200'S CROSS-MOTION FOR SUMMARY JUDGMENT

Docket Index Number: **111, 139, 134, 135, 137, 147, 148**

THIS CAUSE having come before Court for hearing February 7, 2024 on the Receiver's Motion for Summary Judgment (DE 111) and Mirador 1000 Condominium Association, Inc. and Mirador 1200 Condominium Association, Inc.'s cross motion for summary judgment (DE 139), and the Court having read all of the parties' submissions, having heard the parties' arguments at hearing, being advised that there is generally no disputed issues of fact, recognizing the Joinder of Mirador 1125, Mirador 1035, and 1100 West in the Receiver's Motion (DEs 134, 135, 137,147, 148), and the Court being otherwise duly advised in the premises, it is hereby **ORDERED**:

Undisputed Facts

The Mirador Master Association, Inc. ("Master" or "Mirador Master") is a master homeowner's association comprised of five sub-condominium associations, Mirador 1000 Condominium Association, Inc. ("Mirador 1000"), Mirador 1200 Condominium Association, Inc. ("Mirador 1200"), Mirador 1035 Condominium Association, Inc. ("Mirador 1035"), 1100 West Condominium Association, Inc. ("1100 West"), and Mirador 1125 Condominium Association, Inc. ("Mirador 1125") pursuant to a master declaration ("Master Declaration"). The Master Declaration sets forth the rights and obligations of each of its members to use certain Shared

Facilities, including a gym located in Mirador 1000, and a Parking Facility located in Mirador 1125. The rights, obligations, and expenses of all unit owners in Mirador 1125, including the Master as the owner of Commercial Unit CU-1 and its Limited Common Elements, are governed by a declaration of condominium ("1125 Declaration").

Pursuant to Article I, Section 1(o) of the Master Declaration, the Parking Facility is defined as "Commercial Unit 1 (CU-1) in the Mirador 1125 Condominium and its Limited Common Elements." Although not specifically defined in the Master Declaration, the term "Limited Common Elements" is defined in the 1125 Declaration as "those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as same are shown on the Condominium Plat or are specified in this Declaration." The 1125 Condominium Plat notes "Parking Spaces are Limited Common Elements to CU-1." See 1125 Declaration at p.41. Thus, pursuant to the provisions of the Master Declaration and the 1125 Declaration, the Parking Facility consists of Unit CU-1 and its Limited Common Elements, which are the parking spaces (collectively, the "Parking Facility"). Under the 1125 Declaration at 3.3(b), the Master Association is responsible for the maintenance and repair of the Parking Facility as "Limited Common Elements" of CU-1.

As set forth in Article III of the Master Declaration, "[t]he Parking Facility shall be the sole and exclusive property of the Master Association .... [and], in exchange for each of the Associations' covenant and agreement to pay its proportionate share of the cost and expense of operating, maintaining and repairing the Parking Facility..." Each owner of a condominium unit in any of the sub-associations, including Mirador 1000 and Mirador 1200 may use "the valet parking service in the Parking Facility at no additional charge on a space-available basis." Pursuant to Article V, Section 2(d) of the Master Declaration, the Master Association is required to "maintain, operate, repair, alter, renovate, reconstruct, and replace any and all Shared Facilities so that ... the structural integrity of the Shared Facility ... [is not] jeopardized ... [and]any Shared Facility that is partially or totally destroyed or damaged, must be repaired or reconstructed, unless the Board and the Declarant agree otherwise." Pursuant to Article VI of the Master Declaration, the members of the Mirador Master are required to pay their respective proportional share of the expenses of the Mirador Master.

Similarly, pursuant to Section 3.3(b) of the 1125 Declaration, "all maintenance, repairs, replacements and reconstructions of, in or to any Limited Common Elements, whether structural or nonstructural, ordinary or extraordinary (including, without limitation maintenance and reconstruction of any exterior wall or railing of balcony patio) shall be performed by the Owner of such Unit at such Unit Owner's sole cost and expense, except as otherwise expressly to the contrary herein." Further, 3.3(a) of the 1125 Declaration provides:

> each Unit may have as Limited Common Elements appurtenant thereto such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to: (a) any portion(s) of the Common Elements, including, but not limited to, conduits, ducts, plumbing, wiring and other facilities, for the furnishing of utility and other services to a particular Unit shall be a Limited Common Element appurtenant to that Unit if it only supplies that Unit to the exclusion of all other Units .... The Parking Spaces shown on the plan are Limited Common Elements to the Units they are assigned to, by Assignment given by the Developer.

Article VI of the Master Declaration sets forth a pro rata sharing of Shared Facilities expenses based on the number of dwelling units at each Association. The Shared Facilities Expenses include maintenance, operation, insurance, repair, and refurbishment of the Shared Facilities. Additional Shared Facilities Expenses "may be required in any given year for the purpose of defraying ... any unexpected Shared Facilities Expense or the expense arising out of any construction or reconstruction (net of insurance proceeds after a casualty loss), refurbishment, renovation, or unexpected repair or replacement of a Shared Facility." Mirador 1000 with 448 units is responsible for 35.0822% of the Parking Facility expenses, and Mirador 1200 with 411 units is responsible for 32.1848% of the Parking Facility expenses. Between 2007 and at least 2020, the Mirador Associations paid their pro rata share of the Shared Facilities Expenses. The Receiver's Declaration on this issue was undisputed.

Pursuant to the Master Declaration, the Parking Facility is deemed a

"Prohibited Deletion," which is defined as a portion of the Master Property "which may not be deleted from encumbrance by the Master Declaration." Similarly, the Declarant "reserves the right to unilaterally withdraw either or both of Mirador Central or Mirador North, from participation in the Master Association's responsibilities related to all matters other than the Parking Facility." Pursuant to Article IV [mislabeled in declaration as Article VI], Section 2(b) of the Master Declaration, if withdrawal happens, the portion of Shared Facilities Expenses attributable to the parking facility "shall continue to be allocated pro rata across all Associations based on the number of dwelling units."

Plaintiffs' Claims

Because each of the claims set forth in Plaintiffs' Amended Complaint is based upon an interpretation of the language of the Declarations which is a question of law summary judgment is appropriate as to all counts. *See Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 131 (Fla. 2000).

Plaintiffs assert that certain language contained in the 1125 Declaration requires that only the six residential unit owners in Mirador 1125 must pay for 91% all maintenance and repairs of the Parking Facility. Specifically, Plaintiffs have pointed to the last sentence of Section 3.3(b) of the Mirador 1125 Declaration for support of their position that the Mirador 1125 Association is responsible for the entire Parking Facility. That sentence reads: "The [1125] Association shall be responsible for the maintenance, repair, replacements and reconstruction, of parking spaces." Plaintiffs further argue for a strict interpretation of the phrase "parking spaces" found in the definition of "Parking Facility" under the Master Declaration, arguing that such phrase refers only to the literal parking spaces themselves and does not include any other part of the structure containing the parking spaces. According to Plaintiffs' interpretation, the maintenance and repair of the entire structure housing the Parking Facility, which provides parking for all five buildings in the Mirador development, is primarily the responsibility of the six unit owners in Mirador 1125. It should be noted that other than a mere six residential units, this entire building is devoted to the purpose of parking, not only for the six unit owners of Mirador 1125 but for the 1200 residents of all 5 buildings.

Findings and Conclusions of Law

I find that Section 3.3 read in its entirety, and together with the Master Declaration, does not compel the conclusion Plaintiff seeks. Section 3.3(a)(1) provides that the parking areas are Limited Common Elements of the Condominium and are set out in in the Plat, which provides specifically that the parking spaces are limited common elements to the Master's unit, Unit CU-1. Section 3.3(a)(1) and (b) also provide that the owner to which the limited common elements are assigned is responsible for their maintenance. Further, it is undisputed that the remaining parking spaces not assigned to CU-1 are assigned first to the developer, and then from the developer to the other six unit owners in Mirador 1125. *See* 1125 Declaration at p. 47. Accordingly, there are no other parking spaces which are not Limited Common Elements assigned to a unit in Mirador 1125. The only logical interpretation of the last sentence of paragraph 3.3(b) (which refers to undefined "parking spaces") is that the parking spaces which are not assigned to CU-1 or to the Residential Unit owners of Mirador 1125 will be maintained by the Mirador 1125 Association, not that the Mirador 1125 Association is responsible for maintenance of the entire Parking Facility.

I must also reject Plaintiffs' argument that the Parking Facility includes only the actual parking spaces and Unit CU-1, yet excludes all remaining parts of the structure housing the facility. While the definition of "Parking Facility" provided in the Master Declaration fails to explicitly state which Limited Common Elements are part of the Parking Facility, and while the 1125 Declaration only specifically mentions the "parking spaces" as Limited Common Elements of the Parking Facility, I find that the defined term "Parking Facility" also necessarily includes those Limited Common Elements that service the Parking Facility, including but not limited to structural elements. Under Section 3.3(a) of the 1125 Declaration, any Common Elements exclusively servicing the Parking Facility, which includes both Unit CU-1 and the parking spaces, are "Limited Common Elements" appurtenant to the Parking Facility. Under Section 3.3(b), such Limited Common Elements appurtenant to a Unit are the responsibility of the Unit Owner (i.e., the Master Association). As such, I find the Declarations clearly and unambiguously establish that the Master Association is responsible for servicing, repairing, and maintaining the Parking Facility and its appurtenant Limited Common Elements. Plaintiffs' reading (while clever) is contrary to the other provisions of the Declarations and, thus, simply incorrect. *See Wright & Seaton, Inc. v. Prescott*, 420 So. 2d 623, 629 (Fla. 4th DCA 1982) (requiring "an interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties.") *citing Bay Management, Inc. v. Beau Monde, Inc.*, 366 So. 2d 788, 791 (Fla. 2d DCA 1978); *see also Baker & Co.,*

Florida v. Goding, 317 So. 2d 118, 119 (Fla. 3d DCA 1975).

Moreover, Plaintiffs' proposed interpretation of the Declarations would render an absurd economic result, allowing 1,271 units among the various associations to benefit from and make use of the Parking Facility, while the expense to operate, maintain, and repair the Parking Facility is foisted upon six residential units. Moreover, the Master Declaration grants unit owners rights of ingress and egress to the Parking Facility, as well as rights to use assigned parking spaces and valet parking services. The court is obligated to read all relevant sections of all declarations *in pari materia*. The Court is further obligated to interpret the language

of the documents so that it comports with logic and reason. *See Wright & Seaton, Inc. v. Prescott*, 420 So. 2d 623, 629 (Fla. 4th DCA 1982). It is neither logical nor reasonable to hold six unit owners responsible for maintenance and repair of the entire Parking Facility, when the documents contemplate use of a "parking facility,"

and ingress and egress from that facility by all residents of all members of the master association. Nor does this interpretation comport with the intent of the drafters, as expressed by the entirety of the document. In construing the terms of a contract, the court must of course interpret the plain language of the relevant documents, but not in a manner that yields an absurd result. *People's Tr. Ins. Co. v. Lamolli*, 352 So. 3d 890, 894 (Fla. 4th DCA 2022) The court must also consider the objects to be accomplished and "should arrive at an interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties." *Wright & Seaton, Inc. v. Prescott*, 420 So. 2d 623, 629 (Fla. 4th DCA 1982), *citing Bay Management, Inc. v. Beau Monde, Inc.*, 366 So. 2d 788, 791 (Fla. 2d DCA 1978).

When ambiguous language "is susceptible of two constructions, the court will approve that construction which comports with logic and reason." *Baker & Co., Florida v. Goding*, 317 So. 2d 118, 119 (Fla. 3d DCA 1975). Here, whether the language is clear on its face or ambiguous, Plaintiffs' strained interpretation of the Declarations is incorrect and, thus, their claims fail. *See Wright & Seaton, Inc.*, 420 So. 2d at 629 (requiring application of reason, probability, and practicality); *Baker & Co.*, 317 So. 2d at 119 (requiring application of logic and reason). None of the other sections of either the Master Declaration or the 1125 Declaration would indicate that, in establishing a Parking Facility where all five condominium associations comprising more than twelve hundred units having the right to use the

facilities, the onus of paying for virtually all of the operation and maintenance of that structure would fall on only six residential units. Plaintiffs' requested result does not comport with the language of the Declarations, the intent of the parties, nor common sense.

Even if there was some ambiguity as to the meaning of the Declarations on this point because of the language in the paragraph 3.3 (b) of 1125 Declaration, the Plaintiffs' course of conduct the past fifteen years, during which time they paid their proportionate share of the operation and maintenance of the entire Parking Facility prohibits Plaintiffs' newly-minted reading of the 1125 Declaration. *See Towers of Porto Vita- South Tower Condo. Ass'n v. Porto Vita Prop. Owners Ass'n*, Case No. 2016-009324 CA 01, 2018 Fla. Cir. LEXIS 11989, *7 (Fla. 11th Cir. Sept. 11, 2018) ("In interpreting a contract, a court should look at the terms specifically mentioned in the agreement for guidance in determining the intent of the parties in using a particular term. It is imperative for courts to consider the objectives and purposes to be accomplished by the parties. ... In addition, the Court, on its own initiative, finds that in accordance with Florida Supreme Court precedent, '**the actions of the parties may be considered as a means of determining the interpretation that they themselves have placed upon the contract**.'") (emphasis added; citations omitted). The undisputed evidence with respect to the parties' responsibilities to operate and maintain the Parking Facility over the past fifteen (15) years is reliable evidence that the parties intended for all associations to pay their proportionate share for the operation and maintenance of the Parking Facility, which they were all entitled to use.

Finally, Plaintiffs' reliance on *Central Carillon Beach Condominium Ass'n, Inc. v. Carillon Hotel, LLC,* Case No. 2016-011172-CA-01, 2023 WL 1429624, at *1-2 (Fla. 11 Cir. Jan. 30, 2023), *De Soleil South Beach Ass'n, Inc. v. Perrin*, 2023 WL 7210355 (Fla. 11th Cir. Ct. July 13, 2023), *De Soleil South Beach Ass'n, Inc. v. Perrin*, 2023 WL 7210373 (Fla. 11th Cir. Ct. Aug. 28, 2023), and *IconBrickell Condo. No. Three Ass'n, Inc. v. New Media Consulting, LLC*, 310 So. 3d 477, 479 (Fla. 3d DCA 2020) is misplaced. In fact, this case presents the converse of these authorities. Each of these cases involved a situation where because the Developer maintained control and began to usurp the use of common elements, the unit owners had no representation or control over common areas of the property, thus bypassing the democratic dictates of chapter 718. Here, the unit owners remain democratically

in control, as they appoint the members of the board of directors of the Master Association, and it is Plaintiffs' requested interpretation that would remove control of the Parking Facility from the unit owners and place it in the hands of the six townhome owners of Mirador 1125.

The Affirmative Defenses

Statute of Limitations

Plaintiffs' claims are based upon an interpretation of the language set forth in the Master Declaration and 1125 Declaration, which were entered into and recorded in the public record in December 2004 and February 2005, respectively. Section 95.11(2)(b), Florida Statutes, provides a five-year limitation to bring a "legal or equitable action on a contract, obligation, or liability founded on a written instrument." Florida courts have recognized that a recorded declaration is a "written instrument." *See Hogg v. Vills. of Bloomingdale I Homeowners Ass'n*, 48 Fla. L. Weekly D588, *6 (Fla. 2d DCA March 17, 2023); *Silver Shells Corp v. St. Maarten as Silver Shells Condo Ass'n*, 169 So. 3d 197, 201-202 (Fla. 1st DCA 2015); *LEN-CG S., LLC v. Champions Club Condo. Ass'n*, 336 So. 3d 1245, 1248 (Fla. 5th DCA 2022)(*citing Cohn v. Grand Condo. Ass'n*, 62 So. 3d 1120, 1121 (Fla. 2011)). Thus, claims brought regarding the meaning or application of recorded documents must be brought within five years of the recording of the document. *Id.* Here, Plaintiffs filed their claims 17 years after the declarations at issue were recorded, which is 12 years too late. *See Harris v. Aberdeen Prop. Owners Ass'n, Inc.,* 135 So. 3d 365 (Fla. 4th DCA 2014) Plaintiffs argue that they did not begin paying Master Association assessments until 2007. Even if so, Plaintiffs' claim is 10 years too late.

Waiver

Plaintiffs' claims are also barred by the doctrine of waiver. "A waiver is the intentional relinquishment of a known right and may be express or implied." *Torres v. K-Site 500 Assocs.*, 632 So. 2d 110, 112 (Fla. 3d DCA 1994) (*citing Thomas N. Carlton Estate v. Keller*, 52 So. 2d 131 (Fla. 1951)). Moreover, "[a]s a general principle of law, the doctrine of waiver encompasses not only the intentional or voluntary relinquishment of a known right, but also conduct that warrants an inference of the relinquishment of a known right." *Singer v. Singer*, 442 So. 2d 1020, 1022 (Fla. 3d DCA 1983). Here, with the full knowledge of the Master Declaration and the 1125 Declaration, Plaintiffs paid their proportionate share of the Shared Facilities Expenses since at least 2007 while failing to raise any argument that they should not be required to make the payments. Plaintiffs' actions result in a waiver of

the claims it brings in this action.

Estoppel

Plaintiffs' claims are barred by the fact that their conduct for the past more than 15 years has established the fact that they understood that the Master was responsible for Parking Facility's expenses and in fact participated pro rata in their share of those expenses. Allowing Plaintiffs now to take the opposite position would prejudice the owners of the six residential units of Mirador 1125, whom Plaintiffs now seek to burden with the expenses of the Parking Facility while Plaintiffs continue to benefit from its use. Plaintiffs' current interpretation of the Declarations would work a substantial injury also to the Master, because the six unit owners cannot possibly afford to operate, maintain, and repair the Parking Facility with only a 9.3% contribution from the Master. Thus, Plaintiffs are estopped from changing their course of conduct and disclaiming responsibility for the Parking Facility expenses.

Laches

Plaintiffs' claims are also barred by the doctrine of laches. Laches works to bar a claim where there has been an "[u]nreasonable delay in enforcing a right, coupled with disadvantage to another." *Horowitz v. United Nat'l Corp.*, 324 So. 2d 189, 190 (Fla. 3d DCA 1975). As noted above, Plaintiffs sat by for at least 15 years and failed to enforce their purported rights under the Declarations not to have to pay a reasonable share of the expenses of the Parking Facility. In the meantime, Plaintiffs have benefitted from the use of the Parking Facility and have contributed to its need for maintenance and repair, expenses which grow as the Parking Facility ages. Plaintiffs' new position regarding the Parking Facility expenses, as noted above, disadvantages both the six residential unit owners and the Master.

Unjust Enrichment

Plaintiffs' claim for unjust enrichment fails as a matter of law. As noted above, "[a] condominium declaration operates as a contract, 'spelling out mutual rights and

obligations of the parties thereto.'" *See LEN-CG S., LLC*, 336 So. 3d at 1248 (*citing Cohn*, 62 So. 3d at 1121). Plaintiffs have brought claims for breach of contract (Count II) and unjust enrichment (Count V), both of which are based upon the same interpretation of the Condominium Declarations. Because the claim for unjust enrichment does not lie outside the scope of the Declarations, it cannot survive as a matter of law. *See Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696, 697 (Fla. 1st DCA 2008) ("[An] unjust enrichment claim is precluded by the existence of an express contract between the parties concerning the same subject matter."); *see also 1021018 Alberta Ltd. v. Netpaying, Inc.*, No. 8:10-cv-568- T-27MAP, 2011 WL 1103635, at *5 (M.D. Fla. Mar. 24, 2011) (Florida courts have held that "a plaintiff cannot pursue a quasi-contract claim for unjust enrichment if an express contract exists concerning the same subject matter."). Moreover, the claim is based on the same premise that the Master is not responsible for the operation of the Parking Facility, which fails as a matter of law as set forth above.

For the foregoing reasons, the Court grants final summary judgment as follows:

1. Judgment is entered against Plaintiffs and in favor of Defendant as to all counts. For the reasons set forth above, the Plaintiffs' cross motion for summary judgment is denied.

2. To clarify the rights of the Master Association which is in Receivership, the Court declares:

a. The language of the Declarations provide that the parking structure located at Mirador 1125 must be operated, maintained, and repaired by the Master Association as part of the Parking Facility, as defined in the Master Declaration;

b. The Parking Facility consists of Unit C-1 and its Limited Common Elements, which are the parking spaces;

c. The Parking Facility does not include those spaces in the Parking Facility that

have been assigned specifically to the unit owners of Mirador 1125;

d. The Master Association is responsible for the operation, maintenance, and repair of the Parking Facility (collectively, the "Parking Facility Expenses");

e. The Parking Facility Expenses include those related to the stairwells, doors, elevators, structure, façade, electrical, lighting, fire alarm system, gates, air conditioning, management services, security services, trash removal, pest control, janitorial services, property insurance, and maintenance, and reserves for same;

f. Each of the Associations, through the Master Association, is responsible for its proportionate share of the Parking Facility Expenses, as set forth in the Master Association's annual budget;

g. The Parking Facility Expenses do not include maintenance of the grounds, landscaping, or maintenance of the portions of the façade and structure of the building servicing only the residential units in the Mirador 1125 condominium or the limited common elements assigned to the other owners of the Mirador 1125 condominium.

3. The Master Association and its Receiver are awarded their reasonable attorneys' fees and costs expended in defending this action on behalf of the Master Association, pursuant to Article X, Section 3 of the Master Declaration, the amount of which to be determined at a later date.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 2nd day of May, 2024.

2022-003183-CA-01 05-02-2024 8:50 AM
Hon. Lisa Walsh

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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EXHIBIT 2

ORDER GRANTING IN PART AND DENYING PLAINTIFFS' MOTION FOR REHEARING AND FOR ORAL ARGUMENT AND AMENDING ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Entered on July 12, 2024

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2022-003183-CA-01
SECTION: CA44
JUDGE: Lisa Walsh

Mirador 1000 Condominium Association Inc

Plaintiff(s)

vs.

Mirador Master Association Inc

Defendant(s)

______________________________/

ORDER GRANTING IN PART AND DENYING PLAINTIFFS' MOTION FOR REHEARING AND FOR ORAL ARGUMENT AND AMENDING ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Docket Index Number: **168**

This cause comes before the Court on Plaintiffs', Mirador 1000 Condominium Association, Inc. ("**Mirador 1000**") and Mirador 1200 Condominium Association, Inc. ("**Mirador 1200**") (collectively, "**Plaintiffs**"), Motion for Rehearing [D.E. 168] ("**Motion**") of the Order on the Receiver (the "**Receiver**") for Defendant Mirador Master Association, Inc.'s ("**Master**" or "**Master Association**") Motion for Summary Judgment [D.E. 111] and Plaintiffs' Cross-Motion for Summary Judgment (each, an "**MSJ**") [D.E. 164], entered on May 2, 2024 (the "**Order**"). Having reviewed the filings of the parties, the Court hereby rules as follows:

1. The Court deems it unnecessary to hear oral arguments on this matter. Plaintiffs' Motion for Rehearing is hereby GRANTED in part and DENIED in part.
2. Plaintiffs claim the Order failed to address the issue of their withdrawal from the gym. The Court notes that all parties agree regarding such withdrawal and,

as such, the Court hereby amends its Order as follows:

a. A new paragraph 4 is added on the final page to state: "The Court acknowledges that the parties agree that Mirador 1200 has withdrawn from the gym and, therefore, as of the date of such withdrawal, Plaintiffs are not responsible for costs associated with the gym."

3. Plaintiffs' Motion for Rehearing is otherwise DENIED except as explicitly stated herein.

4. The Court rejects Plaintiffs' assertion that "the Order erroneously granted summary judgment in favor of the receiver instead of Plaintiffs on Plaintiffs' affirmative claims for declaratory relief (e.g., landscaping, grounds, exterior/façade, 1125 residential unit expenses)." *See* Motion at pp. 2-3. On pages 50-51 of Plaintiffs' Cross Motion for Partial Summary Judgment (D.E. 139), Plaintiffs seek a declaratory judgment from the Court on fourteen items, all of which are based on Plaintiffs' interpretation of the Master Declaration and 1125 Declaration. That interpretation would require the six unit-owners of Mirador 1125 to pay 91% of all maintenance and repairs of the Parking Facility and would further require the Mirador 1125 Condominium Association to bear the entire cost of operation and repair of the building housing the parking facility. The Court's Order explicitly rejects Plaintiffs' interpretation and declined to issue the declaratory judgments specified by Plaintiff. Rather, the Court granted the summary judgment sought by Receiver with a few changes and additions. *See* Master Association's Motion for Summary Judgment at pages 14-15 [D.E. 111]. The Court found that Parking Facility Expenses include a number of items related to operation, maintenance and repair of the structure housing the Parking Facility, but excluded "maintenance of the grounds, landscaping or maintenance of the portions of the façade and structure of the building ***servicing only the residential units*** in the Mirador 1125 Condominium or the limited common elements assigned to the other owners of the Mirador 1125 Condominium." Order at page 11, ¶ 2.g. In other words, to

the extent any of the foregoing items can be said to exclusively service the residential units, they are the responsibility of the Mirador 1125 Association. To the extent they also service the Parking Facility, they are a Parking Facility Expense. The relief granted is substantially different from the relief requested by Plaintiffs' Cross Motion for Partial Summary Judgment (see pp. 50-51). Although the declaratory relief granted is different than what was requested by Plaintiffs, the Court appropriately interpreted the declarations as within the authority granted to the Court by Fla. Stat. 86.011. *See Hyman v. Daoud*, 194 So. 3d. 392, 394-395 (Fla. 3d DCA 2016). For the same reasons, the Court also rejects Plaintiffs' assertion that its due process rights were somehow violated because the Court granted the declaratory relief as requested by the Receiver.

5. The Court denies those aspects of Plaintiffs' Motion seeking a further detailed declaration or asking the Court to devise a formula for allocation or computation of the responsibility of the Master Association and Mirador 1125 Association for the building façade and structure. The Court reiterates its statement in the Order that "[e]ach of the Associations, through the Master Association, is responsible for its proportionate share of the Parking Facility Expenses, as set forth in the Master Association's annual budget." Order at p. 11. The Court further notes that if it were to engage in such activity, it could be drawn into reforming the declarations of condominium.

6. The Court rejects Plaintiffs' other arguments regarding its interpretation of the declarations of condominium. The Order did not mention "reformation," nor did it "resort to" course of conduct in interpreting the contract. The Order clearly stated that the Court adopted the interpretation that best comports with logic and reason. *See* Order at Pages 5-6. Plaintiffs' Reply in Further Support of Motion for Rehearing [D.E. 186] vigorously contests the accuracy of the Receiver's sworn statement regarding Plaintiffs' history of paying the Parking Facility Expenses assessed by the Master Association and claims the Receiver improperly withheld evidence that would disprove such claim. However, the

Court would point Plaintiffs to their own statement that they "do not dispute that they have paid Master assessments, but dispute that all such assessments were lawful or authorized." *See* Plaintiffs Mirador 1000 and Mirador 1200 Response to Receiver for Mirador Master's Statement of Facts, at ¶ 18 [D.E. 138]. Plaintiffs are bound to their representations. If Plaintiffs have paid the Master assessments, which are primarily parking facility expenses, they have paid parking facility expenses. Nonetheless, the Court need not rely on the parties' alleged course of conduct in this case.

7. The Court rejects Plaintiffs' arguments regarding the Court's ruling on the count for unjust enrichment.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 12th day of July, 2024.

2022-003183-CA-01 07-12-2024 4:03 PM
Hon. Lisa Walsh

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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