IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

Case No.: 1D23-0842

EAGLE TRACE TOWNHOMES CONDOMINIUM ASSOCIATION, INC.,

Appellant,

v.

TRACE HOLDINGS OF GAINESVILLE, LLC., TRACE HOLDINGS 2, LLC., and TRACE HOLDINGS 3, LLC,

Appellees.
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# ANSWER BRIEF OF APPELLEE

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SACHS SAX CAPLAN
Jeremy Dicker, Esq.
Florida Bar No. 68609
Daniel Weber, Esq.
Florida Bar No. 106785
6111 Broken Sound Parkway NW
Suite 200
Boca Raton, Florida 33487
(561) 994-4499
jdicker@ssclawfirm.com
dweber@ssclawfirm.com
*Counsel for Appellee*

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## PREFACE

In this brief, the Appellees, TRACE HOLDINGS OF GAINESVILLE, LLC., TRACE HOLDINGS 2, LLC., and TRACE HOLDINGS 3, LLC, are collectively referred to as "Trace Holdings" or "Appellees."

Appellant, EAGLE TRACE TOWNHOMES CONDOMINIUM ASSOCIATION, INC., is referred to as "the Association" or "Appellant." Appellant's initial brief is cited by the letters "IB." followed by the page number(s).

The record on appeal is cited by the letter "R." followed by the page number(s).

The Appendix to Appellee's Answer Brief, filed contemporaneously with this brief, is cited by "App." followed by the page number(s).

## STATEMENT OF THE CASE AND FACTS

The Association is a condominium association governed under Chapter 718, Florida Statutes, and is responsible for the operation and maintenance of the Eagle Trace Townhomes Condominium. The Declaration of Condominium of Eagle Trace Townhomes Condominium ("Declaration"), which was recorded in the Alachua County official records in 2006, defined the "Developer" as Diamond Regal Development, Inc. ("the Developer"). R. 208; 777. The Declaration revealed that the Developer created the Eagle Trace Townhomes Condominium: "The name by which this condominium is to be identified is Eagle Trace Townhomes Condominium . . . ." R. 208. The Developer's original plan was to build 193 units. R. 370. Eighty-two of the 193 units were built. R. 370.[1]

Trace Holdings would later become the owner of the remaining 111 unbuilt units of the Eagle Trace Townhomes Condominium whereby Appellee, TRACE HOLDINGS OF GAINESVILLE, LLC, owns 48 units; Appellee, TRACE HOLDINGS 2, LLC, owns 49 units; and

1. There is no record support for the Association's statement that the 82 units are generally occupied by residents and that the owners of the built units "actually live" in the community. IB. 1, 7, 22.

Appellee, TRACE HOLDINGS 3, LLC, owns 14 units, none of which were purchased from the Developer. R. 123-130, 370-371.

Trace Holdings owns 57.5% (111/193 units) of the units at Eagle Trace Townhomes Condominium. As stated below by the Association's counsel, through a probate case, the units were conveyed to the Developer's relatives and heirs, who then sold the units to Trace Holdings. R. 877. Trace Holdings did not receive an assignment of any developer rights. R. 371.

In 2017, the Association turned over from the Developer. R. 786, 808. The Declaration was first amended in 2017—prior to Trace Holdings becoming the owner of the remaining 111 unbuilt units. App. 3-7.[2] The first page following the certificate of the 2017 amendment is the survey, which stated: "ONLY IMPROVEMENTS VISIBLE AT THE TIME OF THIS SURVEY HAVE BEEN SHOWN ON THIS DRAWING." App. 4. Thus, the survey portrayed only was built at the time—the 82 built units. On the third page following the certificate of the 2017 amendment is the site plan providing all units

2. The certificates of amendments to the Declaration and the attachments thereto—recorded in the Official Records of Alachua County—are included in Appellee's Appendix to the Answer Brief, as they are better copies than the copies appearing in the record on appeal.

in the condominium, including the 111 unbuilt units which would later be owned by Trace Holdings. App. 6.

The Association denied Trace Holdings from voting its units in the election of the Board of Directors. R. 371. The Association claimed that Trace Holdings is a developer, and consequently, is prohibited from reacquiring control of the Association. R. 371.

In May 2022, the Association filed a one-count Complaint for Declaratory Relief against Trace Holdings. R. 11-14. The Complaint alleged that there was a bona fide, actual, present practical need for the trial court to declare that Trace Holdings: (1) is a developer under section 718.301,[3] Florida Statutes; (2) may not reduce the amount of their assessments; and (3) may not vote their units to retake control of the Association. R. 13-14.

In 2023, after the lawsuit was already initiated, and prior to Trace Holdings representatives having control of a majority of the seats on the Association's Board of Directors, a second amendment to the Declaration was passed by the Association as it was "approved at a duly called meeting of the Unit Owners by an affirmative vote of

3. The term "Developer" is defined, however, in section 718.103.

Unit Owners in excess of 75% of the units in the Condominium." App. 8.[4] Thus, the required vote was more than Trace Holdings' ownership interest. The attachment to the certificate of the second amendment is the site plan showing the proposed new layout of the same 111 units owned by Trace Holdings. App. 10.

Trace Holdings filed its Answer and Affirmative Defenses. R. 72-74.[5]

**Summary Judgment Proceedings**

Trace Holdings filed its Motion for Summary Judgment.[6] R. 86-100. Trace Holdings asserted that it is not a developer of the Eagle Trace Townhomes Condominium as defined under Chapter 718. R. 90. Trace Holdings also contended that even if it was a developer, Trace Holdings would not be prohibited from acquiring control of the Board of Directors. R. 93. Trace Holdings set forth that it is "bulk

4. At the summary judgment hearing, the Association's counsel stated that the Association was not objecting to what is referenced in Exhibit B to the second amendment to the Declaration. R. 460, 803.

5. Trace Holdings had previously moved to dismiss the Complaint due to the Association's failure to satisfy a condition precedent and its failure to state a cause of action. R. 27-30. The trial court entered a Stipulated Order Denying Motion to Dismiss. R. 70-71.

6. Because the summary judgment motion was filed after the 2021 amendment to Florida Rule of Civil Procedure 1.510 became effective, the amended version of rule 1.510 applied below. *See In re Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 77 (Fla. 2021) ("[T]he new rule must govern the adjudication of any summary judgment motion decided on or after [May 1, 2021]. ...").

buyer" as defined under section 718.703(2), Florida Statutes. R. 91-92.

The Association filed its Notice of Filing Affidavit and Arbitration Pleadings Evidence, and Legal Authority in Opposition to Defendants' Motion for Summary Judgment. R. 101-264. In addition, just seventeen days before the summary judgment hearing, the Association filed a Notice of Filing New Summary Judgment Evidence and Law Thereon in Opposition to Defendant's Motion for Summary Judgment. R. 265-369.

**The Summary Judgment Order**

In January 2023, following a hearing, the trial court granted Trace Holdings' Motion for Summary Judgment ("Summary Judgment Order"). R. 370-76. In the Summary Judgment Order, the trial court set forth the central question regarding whether Trace Holdings is a "developer" or a "bulk buyer." R. 370. The trial court determined that the definition of "Developer" in section 718.103 was "clear and unambiguous." R. 372.[7]

7. The statutory definition of "Developer" is currently found in section 718.103(17).

The trial court concluded that "[t]here is no dispute that Trace Holdings did not create the Eagle Trace Townhomes Condominium." R. 373. The court also concluded:

> The uncontroverted evidence show[ed] that [Trace Holdings] [has] not offered any condominium parcels for sale or lease in the ordinary course of its business and have not received an assignment of any developer rights, there [was] no genuine issue of material fact and [Trace Holdings] [is] entitled to judgment as a matter of law.

R. 370. The trial court concluded that "the record is devoid of any evidence that Trace Holdings *actually* offered any parcels for sale or lease." R. 373.

The trial court did "not [find] any evidence that Trace Holdings has advertised, solicited, or ever sold any of its 111 unbuilt units." R. 373. The trial court determined that while Trace Holdings "received building permits, filed notices of commencement, and executed a construction mortgage to build" its units, Trace Holdings "has not sold, offered to sell, or advertised for sale any of the unconstructed units it owns." R. 371. The court noted that there was no record evidence that Trace Holdings regularly offers condominium parcels for sale or that the ordinary course of business for Trace Holdings is to sell or lease parcels. R. 373. The court concluded that for Trace

Holdings to be a "developer," there must be more than simply an intent to construct condominium units. R. 373.

The trial court additionally concluded that Trace Holdings met the statutory definition of "bulk buyer." R. 375. The court noted that "[t]he parties agree[d] that Trace Holdings did not receive an assignment of any developer rights, and that they have acquired more than seven condominium parcels in the Eagle Trace Townhomes Condominium." R. 375.

Accordingly, the trial court granted Trace Holdings' motion for summary judgment and ruled that Trace Holdings is "entitled to vote their units and, if it follows, take control of the Board of Directors." R. 375.[8]

**Final Judgment**

After the Summary Judgment Order was issued, Trace Holdings moved for entry of final judgment. R. 378-379. The Association moved for a rehearing of the Summary Judgment Order ("Motion for Reconsideration"). R. 382-429. The Association's Motion for Reconsideration argued, in part, that there was new evidence proving

8. The trial court found that it was undisputed that the Developer, Diamond Regal Development, Inc., relinquished control of the Association under section 718.301(1)(g), Florida Statutes. R. 371.

Trace Holdings are "Creating Developers." R. 384. The Association also filed a notion to file new evidence. R. 430-440.

The trial court issued a final judgment granting Trace Holdings' motion for entry of final judgment and entered final judgment in favor of Trace Holdings. R. 442. The final judgment expressed that the Association's Complaint was fully disposed and determined Trace Holdings to be the prevailing party. R. 442-443.

By separate order, the trial court denied the Association's Motion for Reconsideration for the reasons provided in the order and for "other reasons stated on the record." R. 444-445. The order provided that the court reviewed the evidence sought to be considered by the Association and concluded that Trace Holdings is not creating the condominium, which already exists, and thus Trace Holdings is not a "creating developer" as defined in section 718.103. R. 444. The court added that "as a bulk buyer, [Trace Holdings] [is] not a developer, and [is] exempted from that definition, by 718.103(16)(c), Fla. Stat." R. 444.

The trial court also provided in the Order:

> This Court does not need to rule on Plaintiff's prayer for relief that all units be assessed the same, nor on the role of the condominium association as owner under

> Chapter 713 in order to avoid construction liens, because (a) the issues are not ripe in that these are not present controversies, making any ruling an advisory opinion, and (b) Plaintiff's request for an injunction is beyond the relief permitted by Chapter 86, Floria Statutes.

R. 444-445.

The Association then filed its notice of appeal of the trial court's final judgment and order denying the Association's motion for reconsideration. R. 462-463.[9]

## SUMMARY OF ARGUMENT

The Association argues that Florida's Distressed Condominium Relief Act ("DCRA") unconstitutionally impairs the unit owners' contract, the Association's Declaration. However, this argument, among others raised in the initial brief, was not argued below and thus is unpreserved for appeal. Therefore, this Court should determine that the Association has waived this argument for failing to raise it below.

Importantly, the Association maintains on appeal that "[t]he material facts were not in dispute." IB. 16. The summary judgment

9. This Court denied the Association's motion for expedited order staying enforcement of the final judgment. The Association also filed a motion to stay enforcement of the final judgment in the trial court, which was denied as moot because a recall vote had occurred and the parties reached an agreement "for the operation and composition of the board during the appeal." R. 746. The trial court entered an order approving the parties' appeal agreement. R. 766-768.

evidence established that Trace Holdings has not conducted any activities to fit within the statutory definition of a developer. Trace Holdings did not create the Eagle Trace Townhomes Condominium as it had already been created by the Developer, Diamond Regal Development, Inc. back in 2006. No phased condominium was accomplished here.

Further, it was undisputed below that Trace Holdings is not offering parcels for sale or lease in the ordinary course of business.

Moreover, it was undisputed that Trace Holdings acquired more than seven condominium parcels in the Eagle Trace Townhomes Condominium. Trace Holdings did not acquire any developer rights. Therefore, the summary judgment evidence established that Trace Holdings is a bulk buyer under Chapter 718, and, by definition, could not be a statutory developer.

Even if Trace Holdings is a developer, section 718.301(e) prohibits "***reacquiring*** control of the association or selecting the majority members of the board of administration." (Emphasis added). Such prohibition would apply to the Developer, Diamond Regal Development, Inc. and not to Trace Holdings, which never relinquished control of the Association. Thus, Trace Holdings is not

prohibited from acquiring control of the board, even if it was a developer.

In addition, the Association's contention that Trace Holdings confessed judgment was not advanced by the Association below and therefore has been waived. Nevertheless, Trace Holdings did not confess judgment. The narrow issue presented to the trial court was whether Trace Holdings is prohibited from acquiring control of the Association. The trial court determined that Trace Holdings was not a statutory developer, which ended the inquiry and paved the way for Trace Holdings to lawfully vote its ownership interest and acquire control of the Association by electing a majority of members of the Association's Board of Directors. Therefore, there was nothing further for the trial court to decide.

Because there was no genuine dispute as to any material fact and that Trace Holdings was entitled to judgment in its favor, the trial court did not err in granting Trace Holdings' motion for summary judgment or entering final judgment. Therefore, this Court should affirm the trial court's final judgment and order denying the Association's motion for reconsideration.

## I. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF TRACE HOLDINGS.

*A. The standard of review is de novo.*

A summary judgment order is subject to a de novo standard of review. *See Futch v. Wal-Mart Stores, Inc.*, 988 So. 2d 687, 690 (Fla. 1st DCA 2008) ("We review the final summary judgment under the de novo standard of review.").

*B. The Association's challenge to the constitutionality of Florida's Distressed Condominium Relief Act was unpreserved for appeal.*

"In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005), *as revised on denial of reh'g* (Nov. 3, 2005) (citation omitted).

Here, the Association claims on appeal that retroactively applying the DCRA, enacted in 2010, "would impair the unit owners' contract, in violation of the Florida Constitution," Art. I, §10, Fla. Const. IB. 13, 28-32. Critically, the Association's argument was unpreserved for appeal because it was not raised at the trial court level. Thus, the Association's argument has been waived.

The Association erroneously relies on *Cohn v. Grand Condominium Ass'n, Inc.*, 62 So. 3d 1120, 1121 (Fla. 2011), and *Hamptons At Tampa Condominium Association Inc. v. Unit Owners Voting For Recall*, 2015 WL 4056020 (Fla. Dep't of Bus. & Pro. Regul. Arb. Aug. 27, 1996). In *Cohn*, the Florida Supreme Court held that the retroactive application of section 718.404(2) would alter the rights of the unit owners in contravention of their contractual agreement where the declaration did not contain "as amended from time to time" language. *Id.* 1121-1122. In *Hamptons*, the arbitrator stated that arbitrators "may decline to retroactively apply statutes unless there is a provision in the declaration that includes an agreement of the parties to be governed in accord with Chapter 718, Florida Statutes, as it may be amended from time to time." *Id.* at *4.

The Association argues that "[t]he declarations in the record here contain no such language." IB. 36. The Association's argument, however, has been waived because the Association did not contend in the trial court that the Association's Declaration lacks this language.

In addition, even if such argument was preserved, the Association has failed to demonstrate reversible error on appeal,

particularly where the trial court correctly ruled that Trace Holdings is not a statutory developer. The Association's contention presupposes that Trace Holdings *is* a developer (which is not the case)—"The law at the time of that contract provided that ***developers*** could not, under any circumstances, maintain ownership of units and use their votes to reacquire control of the board," IB. 31 (emphasis added)—and therefore this claim should be rejected procedurally because it was waived or denied on the merits because the trial court correctly decided that Trace Holdings is not a statutory developer as it did not create a condominium or offer condominium parcels for sale or lease in the ordinary course of business.

Therefore, the Association has not demonstrated error let alone fundamental error in the application of the bulk buyer statute. *See Freiha v. Freiha*, 197 So. 3d 606, 608 (Fla. 1st DCA 2016) ("Issues that are not preserved may still be reviewed for fundamental error. 'Fundamental error, which can be considered on appeal without objection in the lower court, is error which goes to the foundation of the case or goes to the merits of the cause of action.' ") (citation omitted).

In conclusion, this Court should conclude that the Association waived its constitutional impairment argument raised by the Association for the first time on appeal.

### C. *The trial court correctly determined that the summary judgment evidence established that Trace Holdings is not a statutory developer and is, in fact, a statutory bulk buyer.*

Diamond Regal Development, Inc. is the "Developer" referenced in the Declaration. R. 208. *See e.g.*, *Plantation Park Priv. Residences Condo. Ass'n, Inc. v. Orlando Plantation Park*, LLC, No. 609-CV1525-ORL31GJK, 2010 WL 1627137, at *2 (M.D. Fla. Apr. 20, 2010) ("[T]he condominium declaration attached to the Amended Complaint lists only Plantation Park as the developer of the Condominium.").

Trace Holdings is not a statutory developer as defined under section 718.103(17). Section 718.103(17) defines "Developer" as "a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business . . . ." § 718.103(17), Fla. Stat. There was no summary judgment evidence showing that Trace Holding did either. *See e.g., Plantation Park Priv. Residences Condo. Ass'n, Inc.*, 2010 WL 1627137, at *2 ("Absent an allegation that Invsco actually created the Condominium or sold

parcels in same, Invsco was clearly not a "developer" within the meaning of § 718.103(16)").

Rather, the summary judgment evidence established that Trace Holdings is a bulk buyer as defined in section 718.703(2) of the DCRA.

*i. Trace Holdings did not create a condominium.*

The summary judgment evidence established that Trace Holdings did not create a condominium; the condominium already existed. The condominium, as defined by the Declaration, is Eagle Trace Townhomes Condominium, which was created in 2006. R. 208 ("The name by which this condominium is to be identified is Eagle Trace Townhomes Condominium (hereinafter the 'Condominium' "). "A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed." § 718.104(2), Fla. Stat.

At the summary judgment hearing, the trial court aptly stated: "I think we can all agree that Trace Holdings did not create the condominium. . . . [T]he condo's already created, right? The legal

entity of the condo is created. They didn't – Trace did not do that." R. 802-803.

The Association's counsel argued that Trace Holdings is a successor developer of the Eagle Trace Townhomes Condominium because it "[has] to create their new units because they got deleted in [the first amendment to the declaration in] 2017." R. 804. The Association's argument was properly rejected by the trial court. The words "build," "construct," or "create units" are not included in the statutory definition of a developer under section 718.103(17). Therefore, Trace Holdings' constructing or building of the units they own is not the same as "creat[ing] a condominium."

Moreover, contrary to the Association's contention, the 111 units owned by Trace Holdings were not removed from the condominium's governing documents. IB. 2. The 2017 amendment to the Declaration—which was recorded before Trace Holdings owned the 111 unbuilt units—did not delete units. The survey itself noted that it was only portraying what had been built (i.e., the 82 built units): "ONLY IMPROVEMENTS VISIBLE AT THE TIME OF THIS SURVEY HAVE BEEN SHOWN ON THIS DRAWING." App. 4. The site plan, also attached to the certificate of the 2017 amendment, showed

all units in the condominium, including the 111 unbuilt units, which would later be owned by Trace Holdings. App. 6. By the time the first amendment to the Declaration was recorded, the units had already been individually deeded to the Developer's relatives before they were later sold to Trace Holdings. R. 877.

To comply with the City of Gainesville's requirements, a site plan was attached to the certificate of the second amendment. App. 10. This site plan was a modification to the site plan that was attached to the first amendment. App. 10. Both site plans included the 111 units owned by Trace Holdings.

The site plan attached to the second amendment's certificate simply added "Phase II." App. 10. While a draft form of the certificate of second amendment in the record states that "Exhibit B is hereby amended to add a Phase II of Eagle Trace an additional survey of Phase II the condominium property," R. 401, the signed and recorded version states: "Exhibit B is hereby amended to modify the site plan and provide for additional types . . . ." App. 8.

Trace Holdings is not building its units pursuant to a statutory phased condominium or a Phase II. IB. 6. Contrary to the Association's argument, Trace Holdings did not create a new plan or

a new Phase II. IB. 17-18. There was no legal significance regarding the language "Phase II."

The use of the word "Phase" in the site plan was a construct of those in control of the Association, which was not Trace Holdings nor its representatives, R. 885, only to be used in the litigation by the Association to assert that a phased condominium was created.[10]

The Developer's original plan was to build 193 units. R. 370. The documents were not amended to have a phased condominium. Pursuant to Chapter 718, the declaration itself would need to be amended to create a Phase II condominium—which was not done here. This includes section 718.104(2), which states:

> Upon the recording of the declaration, or ***an amendment adding a phase to the condominium under s. 718.403(6)***, all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence . . . .

§ 718.104(2), Fla. Stat. (emphasis added).

In addition, section 718.403(1), which states:

> Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original

10. The City had required an amendment and the Association, which was not controlled by Trace Holdings, had to agree to it. Therefore, Trace Holdings had to accept the language utilized in the form controlled by the Association, if Trace Holdings wanted to comply with the City's requirements.

> declaration of condominium submitting the initial phase to condominium ownership ***or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.***

§ 718.403(1), Fla. Stat. (emphasis added).

The second amendment to the Declaration does not satisfy sections 718.104(2) and 718.403(1). Moreover, there is no summary judgment evidence showing that Trace Holdings filed a survey with the Division of Florida Condominiums, Timeshares and Mobile Homes under Fla. Admin. Code R. 61B-17.003. IB. 20.

The certificate of second amendment to the Declaration states, in pertinent part that the second amendment "was proposed by [Trace Holdings], which [Trace Holdings] are the owners of more than 57% of the Units in the Condominium and was approved at a duly called meeting of the Unit Owners by an affirmative vote of Unit Owners in excess of 75% of the units in the Condominium." App. 8. In other words, the vote was required to be, and in fact was, more than Trace Holdings' ownership interest.

The Association states that Trace Holdings "drafted" the second amendment. IB. 2 (citing R. 458). However, the record citation, the Certificate of Amendment, was signed by the President of the Association. App. 8. It was *the Association*, which was not controlled by Trace Holdings at the pertinent time, that had approved and passed the second amendment to the Declaration. The first amendment to the Declaration was also recorded before Trace Holdings owned their units.

Also, the Association is incorrect in arguing that the second amendment's purpose "was to designate new units and modify the existing site plan for 13 new buildings." IB. 2. Rather, its purpose concerning the existing units provided in the first amendment to the declaration was to put these units in place that needed to accommodate the building code.

Section 718.103(17) defines a developer to include one who "creates ***a condominium***." (Emphasis added.) The statute does not refer to a "person who designates the buildings of a condominium in a declaration," as argued by the Association. IB. 20. Nor does the statute define a developer as an entity "created for the purpose of

building and then selling or renting condominium units," as contended by the Association. IB. 18.

Accordingly, the trial court correctly determined, in the Summary Judgment Order that "[t]here is no dispute that Trace Holdings, did not create the Eagle Trace Townhomes Condominium." R. 373. The trial court did not err in declining to find that Trace Holdings met the definition of "create[d] a condominium" under section 718.103(17). In sum, the trial court correctly applied section 718.103(17).

ii. *Trace Holdings did not offer condominium parcels for sale or lease in the ordinary course of business.*

There was no summary judgment evidence concerning Trace Holdings offering units for sale or lease in the ordinary course of business. The trial court properly found "[t]he ***uncontroverted evidence***[11] show[ed] that [Trace Holdings] [has] not offered any

11. Trace Holdings objected to the Association's submissions on hearsay and relevance grounds. R. 831. In particular, Trace Holdings' counsel objected to the affidavit of Susan Reitnauer, the community's property manager, as inadmissible, which was included in Trace Holdings' Notice of Filing Affidavit and Arbitration Pleadings Evidence. R. 101-264, 786. The court stated that it was not sure what hearsay exception would apply, but would "review whatever is submitted and make my own determination . . . ." R. 814, 816. As to the Association's counsel's memorandum, the Association's counsel conceded he would not be able to present the memorandum to a jury. R. 817. The court stated: "I don't think I'm permitted to go into the record and base my finding of the existence or lack of a genuine issue on a legal memorandum." R. 817. The

condominium parcels for sale or lease in the ordinary course of its business . . . .” R. 370 (emphasis added), “the record is devoid of any evidence that Trace Holdings ***actually*** offered any parcels for sale or lease,” R. 373, Trace Holdings “has not sold, offered to sell, or advertised for sale any of the unconstructed units it owns,” R. 371, and that there was no record evidence showing Trace Holdings regularly offers condominium parcels for sale or that Trace Holdings’ ordinary course of business is to sell or lease parcels. R. 373.

At the summary judgment hearing, the trial court inquired whether there exists “any record evidence that shows that Trace [Holdings] has offered any parcels for sale or lease yet.” R. 806. Counsel for the Association responded: “Only that Trace Holdings II sold units to Trace Holdings III.” R. 806. The Association’s counsel further argued that Trace Holdings is “going to sell them or lease them ***eventually*** . . . .” R. 807 (emphasis added).

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court added that it would not consider inadmissible evidence and that its ruling would be based on the admissible record evidence. R. 835. Also, Trace Holdings objected to the Association’s Notice of Filing New Summary Judgment Evidence where supporting materials were being served only seventeen days before the summary judgment hearing. R. 265-369;784-785. Such submission did not comply with rule 1.510(c)(5). The trial court ultimately stated that it would consider the filing. R. 835.

The trial court also asked the Association's counsel what record evidence he can "point to . . . that there are any advertisements or purchase agreements or anything in which these are being sold in the ordinary course of business?" R. 825. The Association's counsel conceded: "***Not at this moment***." R. 825 (emphasis added). The Association's counsel went on to state:

> But now that the building permits have actually been issued and construction is beginning, I'll – maybe we'll be back in a month with an advertisement where they're preselling units. ***I don't think that controls, though***.
> . . .

R. 826 (emphasis added).

The Association's counsel maintained "[t]hey're going to sell or lease them. . . . In addition, they pulled permits. They're literally building condominiums," before erroneously repeating that Trace Holdings' units were deleted from the first amendment to the Declaration. R. 826.

At the hearing on Trace Holdings' motion for entry of final judgment and the Association's Motion for Reconsideration and motion to file new evidence, the trial court recounted:

> I looked at the record evidence, I did not see any evidence that indicated that Trace Holdings has ever offered or sold any units in the ordinary course of it's [*sic*] business. . . .

> So I felt that the evidence presented today did not show that either Trace Holdings met that definition of developer.

R. 907.

The Association's argument, in its initial brief, that Trace Holdings' "obvious purpose" is to sell or rent units "in the ordinary course of business" does not satisfy section 718.103(17). IB. 7. Applying for permits for constructing units and submitting an engineering plan are also not listed in the definition of a statutory developer under section 718.103(17). IB. 9.

Section 718.103(17) defines a developer to include one who "offers condominium parcels for sale or lease in the ordinary course of business." The statute does not refer to someone who "will offer" condominium parcels for sale.

Therefore, the trial court properly granted Trace Holdings' motion for summary judgment when "the uncontroverted evidence" established that Trace Holdings has not offered any condominium parcels for sale or lease in the ordinary course of its business pursuant to section 718.103(17). R. 370.

In sum, trial court correctly determined that Trace Holdings is not a statutory developer under section 718.103(17).

*iii. Trace Holdings is a bulk buyer.*

Sections 718.701 through 718.71, Florida Statutes, is the "Distressed Condominium Relief Act ["(DCRA)"]," which was enacted in 2010. § 718.701, Fla. Stat. By enacting the DCRA, the Florida Legislature intended to close the gap concerning distressed condominiums and those acquiring large amounts of units to build them. The legislative intent is provided in the DCRA:

> (1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.
>
> (2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association due to the resulting shortage of assessment moneys available for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erodes property values. ***The Legislature finds that individuals and entities within this state and in other states have expressed interest in purchasing unsold inventory in one or more***

***condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential successor purchaser having unknown and unquantifiable risks that the potential purchaser is unwilling to accept.*** As a result, condominium projects stagnate, leaving all parties involved at an impasse and without the ability to find a solution.

(3) The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.

§ 718.702, Fla. Stat. (emphasis added).

As argued in section I(B) of this brief, the Association's claim that the application of DCRA unconstitutionally impairs voting rights, was not raised below and has been waived.

A statutory developer under Chapter 718 "does not include: . . . [a] bulk buyer as defined in s. 718.703." § 718.703(17), Fla. Stat. A "bulk buyer" is defined as:

> [A] person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights . . . .

§ 718.703(2), Fla. Stat.

In its initial brief, the Association acknowledges that it is undisputed that Trace Holdings "each acquired more than seven condominium units in Eagle Trace within the time permitted by section 718.707, Florida Statutes . . . ." IB. 25.

The summary judgment evidence established that Trace Holdings met the statutory definition of a bulk buyer because it acquired 111 units and Trace Holdings did not receive any assignment of any developer rights, R. 375, and that "[t]he ***uncontroverted*** evidence show[ed] that [Trace Holdings] . . . [has] not received an assignment of any developer rights," R. 370 (emphasis added). Moreover, the trial court stated: "***[t]he parties agree[d] that Trace Holdings did not receive an assignment of any developer rights***, and that they have acquired more than seven

condominium parcels in the Eagle Trace Townhomes Condominium." R. 374-375 (emphasis added).

On appeal, however, the Association argues that Trace Holdings acquired the rights of the developer and that Trace Holdings is not a bulk buyer. IB. 10, 12-13, 24. At the hearing on Trace Holdings' motion for entry of final judgment and the Association's Motion for Reconsideration and motion to file new evidence, the Association's counsel conceded that "[n]o developer assigned anything:"

> THE COURT: . . . And then it says: But who does not receive an assignment of any developer rights. And I think all parties have conceded they have not received any developer rights.
>
> [Association's Counsel:] That's an assumption, but not a legal fact, and not a fact. The fact is –
>
> THE COURT: In the purchase of these 111 units, have they been assigned any developer rights?
>
> [Association's counsel:] **No developer assigned anything**. . . . .

R. 877 (emphasis added). Further, the Association's counsel argued "I think the record is clear they started as bulk buyer." R. 881-882. This Court should reject the Association's arguments on appeal where the Association conceded below that no developer rights were

assigned to Trace Holdings and acknowledged that Trace Holdings had fit within the definition of bulk buyer.

Even though it was asserted below by the Association that "[n]o developer assigned anything," and even though the trial court found that the parties agreed that Trace Holdings did not receive an assignment of any developer rights, the Association now claims on appeal that Trace Holdings has an "implied assignment of at least some developer rights." IB. 26. Such argument was also unpreserved for appellate review as it was not argued below.

Nonetheless, the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes, promulgated Fla. Admin. Code R. 61B-23.003, titled "Transition from Developer Control," refers to the "assignment of developer rights" through only an express written agreement:

> (c) As utilized in this rule, the phrase "assignment of developer rights" refers only to a ***written agreement*** whereby the current developer ***expressly*** transfers to the grantee or transferee all developer rights and existing obligations under the declaration of condominium, including any exhibits thereto; under Chapter 718, Florida Statutes, including the provisions of Section 718.203, Florida Statutes; and under these rules.

Fla. Admin. Code R. 61B-23.003(7)(c) (emphasis added).[12]

Accordingly, an express, written agreement is required to assign developer rights. Here, there is no express, written agreement assigning the developer's rights to Trace Holdings—and therefore no such rights have been exercised by Trace Holdings.

Fla. Admin. Code R. 61B-23.003(7)(c) controls and not the case law relied on by the Association which does not concern condominiums governed by Chapter 718. *See All Ways Reliable Bldg. Maint., Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972) (involving an implied contract between a company making repairs and an insurance company, which included an assignment of the claim against the insurer); *USAA Cas. Ins. Co. v. Romm*, 712 So. 2d 405 (Fla. 4th DCA 1998) (providing that under section 627.428(1), an award of attorney's fees is also available to "third parties who claim policy coverage by assignment from the insured"). IB. 26-27. Thus, the Association's cited case law is distinguishable.

Based on the foregoing, this Court should affirm the trial court's judgment because Trace Holdings is a bulk buyer under section

12. The Association also cites to Fla. Admin. Code R. 61B-23.003(7)(c) in its initial brief. IB. 27.

718.703(2), and by definition, is not a developer under section 718.703(17).

*iv. Section 718.301(1) does not restrict Trace Holdings from voting its units and taking control over the Association and electing the Association's Board of Directors.*

Trace Holding is not a developer of the Eagle Trace Townhomes Condominium. Trace Holdings has the same rights as any other condominium unit purchaser and is entitled to vote its units and elect the Association's Board of Directors and obtain control of the Association.

Even if Trace Holdings was a developer, it is not restricted by section 718.301(1), which states, in pertinent part:

> After the developer relinquishes control of the association, ***the developer*** may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of ***reacquiring*** control of the association or selecting the majority members of the board of administration.

§ 718.301(1), Fla. Stat. (emphasis added).

Section 718.301 is a restriction on the *original* developer (i.e., "the developer") who relinquished control of the association, as one cannot "reacquir[e]" something which it did not originally have. As set forth above, the developer of the Eagle Trace Townhomes

Condominium is Diamond Regal Development, Inc. Trace Holdings, which never relinquished control of the Association, is not prohibited from acquiring control of the Association. Trace Holdings could not seek to reacquire control because it never had control in the first place.

The Association relies on *Bishop Associates Ltd. Partnership v. Belkin*, 521 So. 2d 158 (Fla. 1st DCA 1988). IB. 30, 33. In that case, ten entities each purchased units in the residential condominium and said entities obtained control of the association because of their controlling interest. *Id.* at 159. In 1988, this Court agreed that the entities were developers and affirmed the determination that the word "developer" in the 1985 version of the transfer of association control statute "should be interpreted to mean 'subsequent developer,' . . . ." *Id.* at 160, 163.

*Bishop*, however, importantly involved the 1985 version of section 718.301, which did not include the "reacquiring control" language.[13] Also significant, *Bishop* preceded the 2010 enactment of

13. The 1985 version of section 718.301 was quoted in footnote 2 of the *Bishop* opinion. Thereafter, the following language was added to section 718.301(1)(d) effective 1988: "Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of

the bulk buyer statute, section 718.703, in which a bulk buyer is excepted from the statutory definition of "Developer."

In *Bishop*, this Court also noted that a statutory developer included one who "offers condominium parcels for lease in the ordinary course of business" and that the entities' units had been leased and that they "operate the leasing of the units which they own . . . . [and] is an ordinary, common task involved in the managing the condominium as a business." *Id.* at 159-160. In this case, there was no summary judgment evidence establishing that Trace Holdings offers units for lease in the ordinary course of business. Indeed, the trial court determined that "[t]he uncontroverted evidence show[ed] that [Trace Holdings] [has] not offered any condominium parcels for sale or lease in the ordinary course of its business . . . . R. 370.

This Court, in *Bishop*, determined that the entities were not developers in the "regular business of selling" their units where the testimony provided that "all of the partners planned to sell their units 'eventually' . . . ." *Id.* at 161. Here, similarly, the Association's counsel

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***reacquiring control*** of the association or selecting the majority members of the board of administration." Ch. 88-148, § 3, Laws of Fla. (emphasis added).

argued below that Trace Holdings is "going to sell them or lease them ***eventually*** . . . ." R. 807 (emphasis added).

Accordingly, based on the above-stated reasons, the Association's reliance on *Bishop* to conclude that Trace Holdings is a developer and must relinquish control is misplaced.

The trial court below properly distinguished *Bishop*:

> [S]o Bishop is a different case factually as well because that's essentially a case about association turnover. That's what the whole case is about is there was a subsequent developer who – who came in, purchased all these units and was selling or leasing them in the ordinary course of business while the original developer still owned the property.
>
> . . .
>
> And the association wanted the turnover provision in the statute to apply. And that's what Bishop was essentially holding was that the leasing agreement of the subsequent developer did not prohibit the turnover of the association to the individual condo owner.

R. 824.

In *Outrigger Beach Club Condo. Ass'n, Inc. v. Bluegreen Vacations Unlimited, Inc.*, 335 So. 3d 181 (Fla. 5th DCA 2022), the Fifth District Court of Appeal issued a per curiam affirmance decision. Judge Cohen filed a dissenting opinion, stating that the association argued on summary judgment that the appellees were subsequent developers and, as a result, were prohibited from

exercising control of the Association post-turnover. *Id.* at 183 (Cohen, J., dissenting). The appellees contended that the plain language of section 718.301 "restricted the voting powers of only 'the developer' who 'relinquishes control' to the non-developer unit owners . . . ." *Id.* (Cohen, J., dissenting).

Judge Cohen noted that the trial court in *Outrigger*:

> determined that " 'the developer' to which section 718.301(1) refers is the developer who 'relinquishes control of the association' " because "one cannot 'reacquire' that which one did not originally have." The trial court reasoned that section 718.301(1)'s use of "the" to describe "developer" required that conclusion.

*Id.* (Cohen, J., dissenting).

The majority of the appellate panel per curiam affirmed. 335 So. 3d at 181. Judge Cohen disagreed with the trial court's analysis and pointed out that the "majority affirms . . . that section 718.301(1)'s provision relating to reacquiring control of the association is limited ***only to the original developer***." *Id.* at 183 (Cohen, J., dissenting) (emphasis added). Judge Cohen dissented, opining that he would find that section 718.301(1)'s use of "the developer" includes subsequent developers and that he "would find that Appellees qualify as developers within the meaning of the statute, because they 'offer[]

condominium parcels for sale or lease in the ordinary course of business.' " *Id.* at 184, 186 (Cohen, J., dissenting).

Unlike the appellees in *Outrigger*, Trace Holdings is not offering condominium parcels for sale or lease in the ordinary course of business. Further, Judge Cohen was the dissenting judge on the panel. Finally, Judge Cohen did not reference the bulk buyer statute in *Outrigger*.

The Association relies on *Chotka v. Fidelco Growth Investors*, 383 So. 2d 1169 (Fla. 2d DCA 1980), to assert that Trace Holdings is a developer. In *Chotka*, the Second District Cout of Appeal held that the lender became a developer of the project:

> to the extent that they may be held liable for performance of express representations made to the buyer, for patent construction defects in the entire condominium project and for breach of any applicable warranties due to defects in the portions of the projected completed by appellees.

*Id.* at 1170. The Second District reasoned that appellees "became more than just a lender when they took title to the condominium project, completed construction, and, holding themselves out to be the developer and owner of the project, advertised and sold units to purchasers." *Id.*

*Chotka* is distinguishable. The case at bar is not a construction defect action. Further, Trace Holdings has not held itself out as the developer nor have they advertised or sold units to purchasers let alone offer condominium parcels for sale.

Indeed, the Association recognizes that there is a factual distinction as it relates to the instant case. IB. 23. The Association argues that the factual distinction—that Trace Holdings "had not *yet* offered the new units for sale or lease"—is not a "material" distinction. IB. 23. However, section 718.103(17) expressly refers to one who "offers condominium parcels for sale or lease in the ordinary course of business . . . ." § 718.103(17), Fla. Stat. In other words, this *is* a material distinction.

The Association argues that *Hamptons At Tampa Condominium Association Inc. v. Unit Owners Voting For Recall*, 2015 WL 4056020 (Fla. Dep't of Bus. & Pro. Regul. Arb. Aug. 27, 1996), is instructive. IB. 36. However, in *Hamptons*, the arbitrator concluded that the entity "offers condominium parcels for lease in the ordinary course of business therefore it is a developer as defined in section 718.103(16)." *Id.* at *5. As argued in this brief, the summary

judgment evidence did not establish that Trace Holdings is a statutory developer.

Finally, the Association argues that Trace Holdings selected the majority members of the board of administration under section 718.301(1)(g), Fla. Stat. IB. 33. However, because Trace Holdings is not a statutory developer, this claim lacks merit. § 718.301(1), Fla. Stat. (emphasis added) ("After the developer relinquishes control of the association, ***the developer*** may exercise the right to vote any developer-owned units in the same manner as any other unit owner ***except for*** . . . ***selecting the majority members of the board of administration***.") (emphasis added).

To the extent that the Association argues that section 718.301(1) unconstitutionally impairs voting rights, IB. 33, such argument was also not preserved for appellate review by the Association, and therefore, has been waived.

In conclusion, this Court should affirm the final judgment.

## II. THE TRIAL COURT CORRECTLY ENTERED FINAL JUDGMENT IN FAVOR OF TRACE HOLDINGS FOLLOWING THE SUMMARY JUDGMENT ORDER.

*A. The standard of review is de novo.*

"In reviewing the trial court's interpretation and application of Florida law, the standard of review on appeal is de novo." *Pichowski v. Fla. Gas. Transmission Co.*, 857 So. 2d 219, 220 (Fla. 2d DCA 2003).

*B. There was no confession of judgment and there was no actual controversy concerning assessments.*

The Association erroneously claims that Trace Holdings confessed judgment as to the issue of unequal assessments. IB. 39. The claim that Trace Entities confessed judgment was not raised below. Accordingly, the Association's argument has not been preserved for appeal.

Assuming *arguendo* the argument was properly raised by the Association in the trial court, "the confession of judgment rule . . . is not absolute. . . . [T]he rule is intended to penalize insurance companies for wrongfully causing an insured to resort to litigation." *State Farm Fla. Ins. Co. v. Colella*, 95 So. 3d 891, 896 (Fla. 2d DCA

2012). Such doctrine, even if was raised below, has no applicability to this case.

No issues were outstanding as the equal assessments issue was not an actual controversy between the parties. The narrow issue or controversy before the trial court was simply whether Trace Holdings can vote their units to take control of the Association which turned on whether Trace Holdings is a statutory developer. Trace Holdings' counsel contended that final judgment would be appropriate because the court determined that Trace Holdings is not a statutory developer. R. 905. Trace Holdings' counsel did not confess judgment nor make a concession below. IB. 10.

At the summary judgment hearing, when the Association counsel argued equal assessments, the trial court correctly responded:

> But isn't that kind of putting the cart before the horse, right? Where if – I think I have a very narrow issue here, which is does Trace Holdings . . . have the authority to vote. . . . I think the only thing I can rule is – determine is whether or not under the law of Florida is Trace Holding[s] prohibited from acquiring or reacquiring control of the Association.

R. 818-819.

At the hearing on the Association's motion for reconsideration and motion to file new evidence, and Trace Holdings' motion for entry of final judgment, the court determined that "the complaint and the motion for summary judgment addresses all issues present in the complaint. . .. My order answers the uncertainly, which is under the statute does Trace Holdings qualify as a developer." R. 907.

At that hearing, counsel for Trace Holdings stated:

> [T]here is not a controversy about changing assessments. [The Association's counsel] is taking what was essentially settlement communications—a proposed settlement offer—and comporting it to mean that that's the bona fide intention of Trace Holdings, that we want to reduce assessments. That is not a present and actual controversy that would require a declaration.
>
> I agree with your Your Honor. My client agrees with you. The assessments are uniform under statute, under law, and there's no need for a declaration or an order here.
>
> As for . . . special assessments and the like, the law controls – we're certainly not guaranteeing no special assessments. If we got control of the board, we can't say that there wouldn't be special assessments for whatever reason, but again, they're uniform. One thing has nothing to do with the other. Trace Holdings is not asking for a discount. It's not an actual present controversy that requires the Court's intervention. The law is very clear, the assessments are paid uniformly and that is what it is.

R. 890-891. This was not a confession of judgment.

Regarding whether Trace Holdings would be required to pay the same assessment as all other unit owners, the trial court remarked that "[t]he question as to rights under the declaration seems to be pretty clear to me." R. 889.[14] The trial court also stated:

> It seems to me that you're not in doubt of your rights, you just anticipate a future challenge that – and is seems to me this is not a ripe issue at this point. But you think that in the future something may happen and you want an anticipatory Court ruling. It doesn't sound like you're in doubt of your rights. It sounds like you're very clear about your rights. And it's spelled out in the declaration and the Florida statute and case law as to assessment of all condo units.

R. 891.

The following exchange took place between the trial court and the Association's counsel:

> THE COURT: But it seems pretty clear the unambiguous ends in Eagle Trace's declaration as to who gets assessed; right? All units get assessed. There's nothing for me to resolve today; right? There is no uncertainty. There is no ambiguity; right? You would agree it's unambiguous who has to pay assessments?
>
> [Association's counsel:] Yes. But it's not unambiguous what Trace Holdings Group is going to do ***if they take over the board***.

R. 902-903 (emphasis added).

14. Trace Holdings' Answer to the Complaint, at paragraph 1, included that Exhibit A, the Declaration, speaks for itself. R. 72.

"It is axiomatic that a declaratory judgment is not appropriate where there is not a bona fide dispute between contending parties that presents a justiciable question." *Spink v. McConnell*, 529 So. 2d 813, 814 (Fla. 1st DCA 1988). The Association has not demonstrated the existence of an actual present controversy between the parties beyond the question decided by the trial court.

The Association argues in its initial brief that "there is nothing stopping the Trace Entities from imposing unequal assessments . . . ." IB. 46. Simply put, the matter of assessments was not ripe for adjudication, would amount to an advisory opinion, the Association's argument was based on inadmissible settlement communications, and Trace Holdings was not in control of the Association at all relevant times and had no power to do anything concerning the Association's assessments, as it is the Association—not the owners—which sets the assessments.

Insofar as the Association challenges the trial court's ruling that Trace Holdings was the prevailing party, IB. 39, such claim is not ripe for appellate review. *See Ulrich v. Eaton Vance Distribs., Inc.*, 764 So. 2d 731, 733 (Fla. 2d DCA 2000) ("[N]otwithstanding the finality of the judgment as it relates to the underlying dispute, the attorney's fees

issue is not finally resolved or ripe for appellate review until both entitlement and amount have been determined.").

Finally, the Association's reliance on *Gangloff v. Taylor*, 758 So. 2d 1159 (Fla. 4th DCA 2000) and *Breen v. Arbomar Condo. Ass'n*, 501 So. 2d 697 (Fla. 2d DCA 1987), is misplaced. The trial court below did not find the assessments matter to be moot. Rather, the trial court stated that the issue was not ripe. Furthermore, the relied upon cases involved the associations discontinuing a practice after the lawsuits were filed whereas, in this case, Trace Holdings was not in control of the Association at all pertinent times.

Accordingly, this Court should reject the Association's contention that the final judgment was erroneous.[15]

15. Despite referencing the order denying its motion for reconsideration in its notice of appeal, it appears that the Association abandoned any argument on appeal concerning the court's denial of its Motion for Reconsideration. To the extent such claim is being asserted in the initial brief, the trial court properly exercised its discretion in denying the Motion for Consideration. *See Williams v. Sapp*, 255 So. 3d 912, 914 (Fla. 1st DCA 2018) ("Denials of motions for rehearing are reviewed for abuse of discretion."); *Fision Corp. v. Frueh*, 369 So. 3d 1211, 1217 (Fla. 2d DCA 2023) ("As a general rule, a trial court has broad discretion to allow a party to reopen its case and present additional evidence ....") (citation omitted).

## CONCLUSION

For the reasons set forth above, the Court should affirm the trial court's final judgment and the order denying the Association's motion for reconsideration.

Respectfully submitted,

SACHS SAX CAPLAN
Counsel for Appellee

By: */s/ Jeremy Dicker*
Jeremy Dicker, Esq.
Florida Bar No. 68609
Daniel Weber, Esq.
Florida Bar No. 106785
6111 Broken Sound Parkway NW,
Suite 200
Boca Raton, Florida 33487
Tele: (561) 994-4499
Fax: (561) 994-4985
jdicker@ssclawfirm.com
dweber@ssclawfirm.com

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail, through the Court's E-Portal System, to Philip M. Burlington, Esq. and Jeffrey V. Mansell, Esq., BURLINGTON & ROCKENBACH, P.A., 1601 Forum Place, Suite 600, West Palm Beach, FL 33401, pmb@FLAppellateLaw.com;

jvm@FLAppellateLaw.com; kbt@FLAppellateLaw.com, and James F. Gray, Esq., JAMES F. GRAY, P.A., 3615-B N.W. 13th Street, Gainesville, Florida 32609, papagray1@aol.com, this 5th day of January, 2024.

By: */s/ Jeremy Dicker*
Jeremy Dicker, Esq.

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fla. R. App. P. 9.045(e), I hereby certify that this Answer Brief complies with the applicable font and word count limit requirements.

By: */s/ Jeremy Dicker*
Jeremy Dicker, Esq.