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

CASE NO.: 1D2023-3091
L.T. NO.: 2020-CA-000278

JAMES G. LINCE,

Appellant,

v.

PELICAN CIRCLE ASSOCIATION, INC., et al.,

Appellees.

ON APPEAL FROM THE FIRST JUDICIAL CIRCUIT COURT
IN AND FOR WALTON COUNTY

INITIAL BRIEF OF APPELLANT JAMES G. LINCE

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SUMMARY OF ARGUMENT

This appeal involves critical issues of fundamental property rights in the context of Florida's subdivision laws and common law. More specifically, the court below summarily and without explanation or basis (1) rewrote decades of Florida law, (2) ignored other portions of Florida law, (3) reversed a 20-year precedent from the same trial court regarding the same subdivision and issue, and (4) granted summary judgment on multiple counts that (i) arose from an operative complaint filed months prior to the motions being filed (ii) during a time that discovery remained ongoing, (iii) and for which there were multiple issues of material fact present that were summarily ignored. These four actions are clear errors of law and abuses of discretion and must be overturned.

This case involves a subdivision formed in 1977 with a recorded declaration that was upheld multiple times as conveying the Common Areas (as defined therein) to the owners of property within the subdivision plat's numbered lots only. Prior attempts to circumvent both its declaration and Florida law, including trying to create a voluntary homeowner's association for subdivision, were previously rejected by the courts.

With that backdrop, the lower court decided to sanction the formation of an illegal Chapter 720 HOA, permit the transfer of rights not held by the

subdivision’s developer to the illegally formed HOA, to allow a so-called quitclaim deed to actually amend the declaration instead, and to disregard the clear language of multiple documents that were in the chain of title for every property considered part of the subdivision.

In short, a grave injustice has been allowed that has taken away valuable property and rights related to subdivision’s common areas from Appellant, clouded previously clear title of properties considered part of the subdivision, and improperly amended the subdivision’s declaration to allow for the creation of a “voluntary” Chapter 720 HOA that vests power to manage and/or participate in decisions regarding common areas only in the relatively few homeowners willing to pay the improper HOA annual assessments and grant it lien rights against their respectively owned subdivision properties.

STATEMENT OF THE CASE AND FACTS

I. Relevant Factual Background

The factual background of this particular development is critical to outline as the 47 years that have elapsed since its Declaration was recorded in 1977 have seen many twists and turns that are relevant to the issues here.

Formation & Evolution of the Camp Creek Lake Subdivision

Camp Creek Lake Subdivision (the “Subdivision”) in Walton County, Florida was originally formed in 1977 by Camp Creek Lake Development Co., Inc. (the “Developer”). The Subdivision’s plat (the “Plat”) and its Declaration of Covenants and Restrictions (the “Declaration”) were both recorded in 1977. (R. 1890).

Since 1977 the Subdivision’s common areas (the “Common Areas”) consisted of the following areas labeled/featured on Plat:

- the private beach located in front of lots numbered 1-15 (the "Private Beach"),
- the area labeled "Recreation Area",
- the labeled 5' and 10’ pedestrian easements,
- the area labeled "S.R.D. Easement" (herein the "Lakefront"), and
- the right of way and road ("Pelican Circle Road").

(R. 1872). Public property records identify the Common Areas as a single, unpartitioned parcel. (R. 1871).

The Common Areas were specifically dedicated to only some of the lots. The Plat shows there are forty-eight (48) numbered lots in the Subdivision (“Numbered Lot(s)”). (R. 1891). The Numbered Lots now consist of fifty-nine (59) unique properties, which represent all Subdivision properties subject to the Declaration, and their owners are collectively

referred to herein as ”Subdivision Owners” or “Numbered Lot Owners”. (R. 1893).

Prior final, non-appealable orders of First Judicial Circuit entered well before the commencement of this action have already conclusively determined the Common Areas are owned by the Plat’s Numbered Lot Owners as tenants in common. (R. 1883). That determination was recorded in the chain of title and the municipality’s tax records reflected that the Numbered Lot Owners held an undivided 1/59th interest in the Common Areas as tenants in common.

Critically, there are clearly defined areas titled “Not Included In Plat” (“NIIP”), which are specifically excluded from the Plat/Subdivision - making them explicitly excluded from the ownership over, and rights to, the Common Areas. (R. 1890). The Developer specifically reserved those rights for the Subdivision Owners, and this intent was clarified in the language of a subsequently recorded release exempting certain lots from the Declaration (the “Release”) wherein Developer stated that “[NIIP] parcels are **not** covered by the Declaration”. (R. 1892-93, emphasis added).

The Developer never made changes to the Declaration when it had the ability to do so, and was administratively dissolved on October 11,

1991. (R. 533). It is undisputed that by 1991, Developer already sold all Numbered Lots and Mr. Padgett had no knowledge of any remaining ownership of Developer in Subdivision or its Common Areas. (R. 549). It is undisputed Developer has not been reinstated. (R. 1963). Therefore, in 2019, no authorized representative for Developer remained, and the Declaration could not be amended to permit an HOA committee without it first being approved or appointed by a majority of the Subdivision Owners. (Id.). No such amendment ever occurred.

Improper Amendment of Declaration

The Declaration contains the following covenants and restrictions relevant to this appeal:

- Developer would only retain total architectural control until it sold all Numbered Lots or until it transferred such control to Subdivision Owners (R. 1962);
- in the absence of any remaining authorized representative for Developer, a committee cannot assume Developer's rights, powers, privileges, and authorities granted under Declaration unless first elected or appointed by a majority of Subdivision Owners (noting specifically that "[n]othing herein shall be construed as conferring any

rights, powers, privileges and authorities in said committee ***except*** in the event aforesaid")(R. 1963-64)(emphasis added);

- a dedication granting exclusive use of the Private Beach and the Recreation Area to Subdivision Owners and affirming that "by so doing, the Developer retain[ed] no right, title or interest in said areas" (the "Dedication")(R. 1891-92);
- a restriction on amending the Declaration without the recorded consent from at least two-thirds of all Subdivision Owners (R. 399); and
- confirmation that the "covenants and restrictions herein shall be deemed to be covenants running with the land. If any person claiming under the Developer shall violate or attempt to violate any of such restrictions or covenants, it shall be lawful for" any Subdivision Owner to maintain an action in law or equity against such perpetrators of the actual or attempted violation. (R. 399).

While attempts have previously been made to reach the requisite threshold of approval for amendment of the Declaration, they have all failed and the original recording still governs.

In 2003, in a case involving a question of ownership and control over the Common Areas, the First Judicial District specifically held that the

Common Areas are owned by the Subdivision Owners as tenants in common. (R. 1883). The real property records and tax records for Common Areas reflected that ownership and value vested in the Subdivision Owners prior to 2019. (R. 1895-96). That value was purloined by Appellees' improper actions and remained stolen by the lower court's improper rulings.

Knowing that the issue was already definitively determined in 2003, nevertheless fifteen years later a small group of owners undertook a scheme to attempt to circumvent that ownership. First, a homeowner's association under Fla. Stat. § 720 (a "Chapter 720 HOA") needed to be created, so on May 6, 2019, Pelican Circle Association, Inc. ("PCA") filed articles of incorporation in Florida ("PCA's Original Articles"). (R. 1910). PCA filings stated (and still state and still advertises to this day) that it exists solely to serve as a Chapter 720 HOA for Subdivision. (R. 1910). Chapter 720 is for a mandatory HOA, which cannot exist here due to the Declaration and the failure of a requisite number of Subdivision Owners agreeing to form one.

Concurrent with the creation of a Chapter 720 HOA, the second step required PCA to solicit from the aged and infirm representative of Developer and his counsel the execution of so-called quitclaim deeds purporting to transfer to PCA title to the Common Areas. (R. 1887). This

end-run around the procedures required by statute and the Declaration was ratified by the lower court's summary judgment order issued in 2022. (R. 1795). The only way the lower court could torture this result was to ignore binding precedent, Florida statute, and the facts as presented, which were still under discovery.

Pablo's Purchase of Subdivision Property

Appellant James G. Lince (herein "Pablo's") purchased real property[1] in the Subdivision on June 6, 2016[2]. (R. 1875). Pablo's decided to purchase this property after it specifically relied on representations from seller, public records, databases, title company reports, and even/or other Subdivision Owners, which all cumulatively established without question that (1) the Subdivision Owners collectively owned Common Areas as tenants-in-common, and (2) that the Subdivision was **not** governed by an HOA. (R. 3026-27).

Prior to Pablo's purchase of Subdivision property, the Subdivision Owners' ownership interest in Common Areas was expressly affirmed in

[1] Identified as Parcel ID No. 28-3S-18-16071-00A-0301. (R. 1875).

[2] Pablo's sold this property during the pendency of this action before the lower court, but retained its rights and interest in this litigation. (R. 1875-76).

final, non-appealable orders entered in previous actions in the First Circuit, which addressed ownership of Subdivision's Common Areas (collectively the "Prior Orders"). (R. 1895-1900). The Prior Orders relevantly made the following findings:

- the Common Areas are "owned in equal undivided shares" by [Subdivision Owners] (R. 1883);
- "[the voluntary HOA] has no authority to bind the owners, the lots or the [Common Areas] by its actions" (Id.);
- "[the voluntary HOA] has no authority to create, sell or enforce [any grant of rights to Common Areas to persons other than Subdivision Owners] which creates, at the very least, a license for the use of [Common Areas]" (Id.);

Consistent with the Prior Orders, property tax records prior to 2019 listed "Camp Creek Lake Owners" as the owner of the Common Areas parcel, and the property taxes for this parcel were (and still are) prorated and added to the individual property tax assessments of each Subdivision Owner only[3]. (R. 1895-96).

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[3] despite Quitclaim Deeds including NIIP properties in their respective definitions of persons considered "Owners".

Execution of Quitclaim Deeds

Sometime prior to May 2019, Defendants Alex Marks and Susan Portanova (together the “Incorporators”) retained defendant Frank Watson, Esq. (“Mr. Watson”) of Watson Sewell P.L.. (together with Mr. Watson, the “Watson Defendants”). (R. 910). This was represented as being for the benefit of all Subdivision Owners, including Appellant, as the actions sought to be taken were being taken for the benefit of all owners (including NIIP owners). As part of this representation, in early 2019, Mr. Watson attempted to contact Kenneth Padgett, the last known President of the dissolved Developer, and connected with Charles E. Garris, Esq. (“Mr. Garris”), the personal attorney-in-fact for Mr. Padgett. (R. 1905). Mr. Watson told Mr. Garris he was reaching out to request Developer execute a quitclaim deed conveying title for Common Areas to PCA[4]. (Id.). Mr. Watson represented himself as counsel for Subdivision’s “association” to Mr. Garris (neglecting to inform him that it was not a valid HOA), informed him that a quitclaim deed was necessary to permit reconstruction of a boardwalk within Common Areas (it was actually already rebuilt in 2018), and that the requested conveyance represented the Subdivision Owners’ wishes (it did

[4] At the time this conversation took place, PCA was not yet incorporated in Florida. (R. 1905).

not). (Id.). Notably, the Subdivision had no HOA (nor could it have one absent consent required by Declaration), and the Common Areas were already owned by the Subdivision Owners. (R. 920). Those facts were known to Mr. Watson or, with reasonable diligence, should have been known by Mr. Watson since a simple title search would have shown the Prior Orders.

Despite only serving as Mr. Padgett's personal Attorney-in-Fact, and not as an authorized corporate representative of the dissolved Developer[5], on May 2, 2019, and having done no inquiry into the validity of the representations from Mr. Watson, Mr. Garris personally executed (on behalf of Developer and Mr. Padgett) the first quitclaim deed Mr. Watson drafted and provided to convey title for Common Areas to grantee PCA (the "May Quitclaim"). (R. 1907, R. 458). The May Quitclaim, recorded on May 16, 2019, was not in fact a true quitclaim deed, as it essentially contained revisions and amendments to the Declaration – changes that were null and

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[5] Underwriting counsel for PCA's insurer emailed Mr. Watson on May 13, 2019 to opine that "there is no presumption that the president of a corporation dissolved or otherwise can delegate their powers via power of attorney to some other party. The [Developer] would have to have articles or a resolution authorizing the president to delegate his authority […] [a]lso, the POA itself doesn't grant [Mr. Garris] powers to transfer any assets owned by this Developer". (R. 1906).

void since the Declaration expressly prescribes a specific process for its revision and amendment that was never followed. (Id.).

On June 6, 2019, Mr. Garris facilitated having Mr. Padgett personally execute on behalf of Developer a second quitclaim deed drafted and provided by Mr. Watson, which again attempted to convey PCA title to Common Areas (the "June Quitclaim", and together with the May Quitclaim the "Quitclaim Deeds"), and it was recorded on June 12, 2019. (R. 1908, R. 464). Neither Quitclaim Deed featured a corporate seal or referenced a corporate resolution evidencing authority for the conveyance. (R. 2083-87). The May and June Quitclaim Deeds both suffered from the same fatal errors.

PCA's Articles of Incorporation

It is undisputed PCA was formed without prior notice to all Subdivision Owners or consent from the same[6,7], contrary to requirements of Fla. Stat. § 720. (R. 540). PCA's Initial Officers and Board of Directors

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[6] This is confirmed by an email produced through discovery in which Mr. Marks states "[w]ithout the ability to timely reach out to 74 homeowners, the HOA was formed [at the direction of [Incorporators]". (R. 605).

[7] Pablo's does not dispute the implication that consent of all owners was required, disputes the claim that 74 homeowners needed to provide consent when there were only 59 Numbered Lot Owners.

were also appointed without regard for Florida law or for the Declaration (which both require a vote of Subdivision Owners). (R. 541). Instead, PCA's Articles appointed the following individuals without any vote to PCA's Board of Directors: Susan Portanova, Alex Marks, Daniel Duggan, Cammie Rash, and Charles Harmon (together "PCA's Initial Directors"); and appointed the following as PCA's Initial Officers: President - Alex Marks; Vice President - Chuck Harmon; Secretary - Daniel Duggan; and Treasurer - Cammie Rash (together "PCA's Initial Officers"). (R. 1910).

Alex Marks and Susan Portanova executed PCA's Original Articles as its incorporators, and Mr. Watson executed the same on behalf of Watson Sewell, P.L. as PCA's authorized agent. (R. 1512).

Although PCA's Original Articles were filed in May 2019, Mr. Harmon emailed Pablo's on August 7, 2019 claiming he was not involved with PCA's formation and that he was not asked to serve as an officer or director of PCA until June 19, 2019 (a request he claims he declined that same day via email). (R. 1910-1911). Despite Mr. Harmon's affidavit that he "did not consent or agree to be an officer or director of [PCA]; [and] [t]hat he did not participate in the formation of [PCA]" (R. 3219), evidence produced in discovery clearly suggests (and was ignored by the lower court) that not only did Mr. Harmon and Ms. Portanova speak as early as April 10, 2019 (a

date which precedes the Quitclaim Deeds & incorporation of PCA) to discuss Mr. Harmon's participation on the Board of Directors for PCA, but also that Mr. Harmon had participated in a separate call with Mr. Watson to discuss certain aspects of operation for the HOA prior to PCA's incorporation. (R. 3131). Mr. Harmon's self-serving affidavit only served to create a factual issue that should have precluded summary judgment.

PCA, its Incorporators, Initial Directors and Initial Officers have all failed to advance any explanation why PCA's Articles were filed naming Mr. Harmon without actually having his consent or agreement to the same. PCA later amended its articles of incorporation on February 20, 2020 ("PCA's Amended Articles", and collectively with PCA's Original Articles "PCA's Articles"). (Id.). PCA's Amended Articles named the following individuals as members of PCA's Board of Directors: Alex Marks, Alan Sielbeck, and Cammie Rash (together "PCA's Amended Directors"); and named the following as PCA's Officers: President - Alex Marks; Vice President – Alan Sielbeck; and Secretary/Treasurer – Cammie Rash (together "PCA's Amended Officers"). (Id.). PCA's Articles identically make the following representations:

- PCA's corporate purpose is to "provid[e] an entity under the Florida Statute Chapter 720 (the "Statute") for the operation of an Owners'

Association … [t]he purpose of [PCA] is to own, maintain and preserve the [C]ommon [A]reas…" (R. 618-622, emphasis added);

- "[PCA] shall have the following specific [power]: 1. To own, hold, improve, and maintain the Common Areas" (R. 619);
- "[a]n Owner may become a Member by executing and recording a covenant encumbering the Owner's real property subjecting their property to the levying powers of [PCA] … [c]hanges of membership in [PCA] shall be established by recording … a deed or other instrument establishing a transfer of record title to a Member's Lot, Parcel or Sub-parcel" (R. 620-21); and
- "[a]ll terms [used in PCA's Articles] shall have the same meaning as set forth, defined and used in Chapter 720, Florida Statute" (herein the "Supremacy Clause"). (R. 622, emphasis added).

PCA's Amended Articles additionally attach as an exhibit the joining covenant that must be executed to become a member of PCA ("PCA Member"), which states "[t]he Owner acknowledges and agrees that by voluntarily joining [PCA] the [Owner's] Property will permanently become subject to and encumbered by the Articles, Bylaws, and any other governing documents of [PCA] and mandatory Membership will be binding on the Owner, and the Owner's assignees, heirs, successors and/or

assigns" and subsequent owners of Owner's property. (R. 2611-2615). The practical impact of this is that once joined "voluntarily", the HOA becomes mandatory as to that parcel and runs with the land.

PCA's DEP Resolution

On or around June 18, 2019, PCA's President executed both a "Joinder and Consent of Owner" and a "Certificate of Corporate Resolution" (together the "PCA DEP Resolution"), which essentially allowed PCA to resolve a potential violation from Florida's Department of Environment Protection ("DEP") related to the reconstruction of a boardwalk structure within Common Areas, completed without unanimous consent of Subdivision Owners required by DEP for issuance of permit prior to its acceptance of the executed PCA DEP Resolution. (R. 1910). That resolution became a permanent record of the DEP related to the Subdivision and further clouded the previously clear title.

PCA Easement

On February 18, 2020, PCA recorded a document purporting to grant "Pelican Owners" (a group including both Subdivision Owners and NIIP Owners) an easement for ingress, egress and use of the "Easement Area" ("PCA Easement"). (R. 1889). The PCA Easement operated to provide, without prior consent/approval of the Owners and without payment, NIIP

Owners with rights to access Common Areas equal to that held by Subdivision Owners. (Id.) The PCA Easement was proposed and ratified by the members of PCA pursuant to PCA's Articles and By-Laws, but without any prior notice or unanimous consent from the Subdivision Owners. (R. 1935). This further clouded title and caused damage to all of the Subdivision Owners because the chain of title now appeared to have an HOA and, if anyone looked up the Sunbiz records for PCA, would see that it was a Chapter 720 HOA.

The lower court's 2022 Order has already affirmed NIIP Owners are **not** entitled to rights equal to those of Subdivision Owners under Declaration, and that the Dedication's grant of exclusive use supersedes any grant of those rights to NIIP Owners contained in the PCA Easement (despite the language of the recorded easement). (R. 1798-99).

II. Relevant Procedural History

The original Complaint filed with the lower court on July 28, 2020 by Pablo's and its co-Plaintiffs Robert and Barbara Brooke (who have not joined Pablo's in this appeal)(together with Pablo's, the "Plaintiffs") against Defendants PCA, each of its Initial Officer and Directors individually[8], Mr.

[8] including Mr. Harmon

Padgett, Developer, and all then-existing NIIP Owners[9]. (R. 85-87). The Complaint alleged each of the following six counts against certain Defendants: (I) Declaratory Judgment as to Subdivision Owner's rights to Common Areas, (II) Quiet Title/Cancellation of Quitclaim Deeds and PCA Easement, (III) Trespass[10], (IV) Slander of Title, (V) Fraud, and (VI) Civil Conspiracy. (R. 96, 98, 101, 103, 105, 106).

On July 9, 2021, the lower court issued an order granting Plaintiffs motion seeking to join Subdivision Owners as co-plaintiffs for Counts I, II & IV, and a Third Amended Complaint including all Subdivision Owners was filed on July 28, 2021. (R. 363).

Plaintiffs first noticed Mr. Garris for deposition on June 23, 2021 (and taken on August 2, 2021), Mr. Padgett on June 25, 2021 (a Suggestion of Death for Mr. Padgett was later filed on July 14, 2021), and Mr. Watson on July 19, 2021 (has not occurred yet) (R. 360). Plaintiffs additionally noticed PCA, Incorporators, Mr. Sielbeck & Mr. Dugan for depositions on February 2, 2022 (to which Defendants filed a Motion for Protective Order in response and none have occurred to-date) (R. 985, 989-95). In May of

[9] Complaint was first amended on October 7, 2020 to correct persons listed as NIIP Owners.

[10] Voluntarily dismissed without prejudice on July 19, 2020.

2022, PCA additionally motioned for a Protective Order continuing Plaintiffs' requested depositions indefinitely, to which an Agreed Order was issued on May 25, 2022. (R. 1754-55).

The lower court's December 12, 2022 Order upholding the validity of the Quitclaim Deeds (and noticed for this appeal) was issued in response to the following motions (filed pursuant to the then-operative Third Amended Complaint) (R. 3611, 3628):

- Pablos' Amended Motion for Partial Summary Judgment as to Count I/Quitclaim Deeds and PCA Easement (and PCA's Response in Opposition) (R. 526-653),
- Second Amended Motion for Partial Summary Judgment as to Count II and NIIP of Count I (and PCA's Response in Opposition) (R. 1680-81), and
- PCA's Cross Motion for Summary Final Judgment as to Plaintiff's Motions for Partial Summary Judgment (and Plaintiff's separate Responses in Opposition, along with Pablo's Memorandum of Law)(R. 1370-1469).

Pablo's moved to amend the Third Amended Complaint in May of 2022 (following Brookes' filing for the same in March of 2022), which were all granted on May 23, 2023, and the operative Fourth Amended Complaint

("4AC") was filed in May 2023, alleging 24 Counts and adding [##] new persons as named Defendants. (R. 1869-2149).

Following the filing of the 4AC, certain Defendants filed the first request for production of documents from Pablo's since the amendment on May 25, 2023. (R. 1869, 2156-89, 2348). Since June 2, 2023, Defendants have collectively filed approximately 18 additional motions for summary judgment with the lower court (the most recent being filed on December 18, 2023). (R. 2249, 2264, 2282, 2300, 2326, 2497, 2600, 2856, 2883, 3209). On September 2, 2023, Pablo's filed an Amended Motion for Summary Judgement, Renewed Motion for Summary Judgement, and Cross-Motions for Summary Judgement on All Counts of 4AC. (R. 2909-3042).

On November 1, 2023, orders for summary judgment and summary final judgment were entered in response to the following motions originally filed by certain Defendants (R. 3219-45):

- Defendants Frank Watson's and Watson Sewell, P.L.'s (together the "Watson Defendants") Motion for Summary Judgment on Count XXIV (Gross Negligence/Negligence) (R. 3246-49),
- Amended MSJ for Counts III (Slander of Title – Quitclaim Deeds and IV (Slander of Title – PCA Easement) (R. 3242-45),

- MSJ Finding that Pablo's Purported Damages Do Not Consist of the Value of a Fractional Ownership Interest in or Loss of the Use of the Private Beach (R. 3239-41),
- MSJs on the following 6 Counts alleging a "False Document" in violation of Florida's False Filing Statute: Count XI (May Quitclaim), Count XII (June Quitclaim), Count XIII (PCA's Articles), Count XIV (PCA's DEP Resolution), Count XV (PCA's Amended Articles), and Count XVI (PCA Easement) (R. 3225-38), and
- Defendant Charles Harmon's MSJ[11] (R. 3219-21).

On November 29, 2023, Pablo's noticed the above orders and the 2022 Order (following the denial of the renewed motion) for appeal. (R. 2909-3042).

[11] Order Granting Summary Final Judgment was issued in Mr. Harmon's favor.

ARGUMENT

I. STANDARD OF REVIEW

On appeal, an order for summary judgment is reviewed de novo. Emerald Coast Utilities Auth. v. Thomas Home Corp., 359 So. 3d 1239, 1249 (Fla. Dist. Ct. App. 2023). Florida has adopted the Federal summary judgment standard. United Auto. Ins. Co. v. Progressive Rehab. & Orthopedic Servs., LLC, 324 So. 3d 1006, 1008 n.4 (Fla. 3d DCA 2021). Under the Federal standard, summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits (if any) show there is no genuine issue of material fact and show the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 319 (1986). Summary judgment is warranted if after adequate time for discovery and, upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. Id.

It is well known that "summary judgment is proper 'if the pleadings and summary judgment evidence [i.e., affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence] on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law". Ridenhour v. State, 338 So. 3d 473, 475 (Fla. 1st DCA 2022)(quoting Lindsey v. Cadence Bank, N.A., 135 So. 3d 1164, 1167 (Fla. 1st DCA 2014)). Every possible inference in favor of the non-moving party opposing summary judgment must be drawn by the appellate court. Bowman v. Barker, 172 So. 3d 1013, 1015 (Fla. 1st DCA 2015).

Summary judgment should only be granted if "the facts are so crystallized that nothing remains but questions of law". Id. (quoting Moore v. Morris, 475 So. 2d 666, 668 (Fla. 1985)). If the record on appeal evidences a reasonable possibility of a genuine dispute regarding a materially factual issue, a grant of summary judgment is inappropriate. Key v. Trattmann, 959 So. 2d 339, 341 (Fla. 1st DCA 2007).

Where a party, through no fault of his own, has not yet completed sufficient discovery to allow the trial court be reasonably certain no such genuine dispute exists, summary judgment will remain premature. Singer v. Star, 510 So. 2d 637, 639 (Fla. 4th DCA 1987)(internal citations omitted); see also Sacramento v. Citizens Prop. Ins. Corp., 342 So. 3d 737, 738 (Fla. 3d DCA 2022), review denied, No. SC22-966, 2022 WL 4682831 (Fla. Oct. 3, 2022)(finding that "[b]ecause Citizens moved for summary judgment while discovery pertaining to key issues was pending, the trial court's summary judgment ruling was premature").

On the basis of the procedural history alone, all of the Motions for Summary Judgment filed after the 4AC was filed should have simply been denied as premature.

II. THE LOWER COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE QUITCLAIM DEEDS CONVEYED BARE TITLE IN THE COMMON AREAS TO PCA.

The only issue in this case that was ripe for Summary Judgment was the question of the validity of the Quitclaim Deeds – a purely legal issue. Each Quitclaim Deed is a document that can be reviewed on its face and the clear language evaluated to determine the legal effect. If an issue in a lawsuit can be resolved based on a review of the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially a matter of law and appropriate for summary judgment. Angell v. Don Jones Ins. Agency, 620 So. 2d 1012, 1014 (Fla. 2d DCA 1993) (citing Kochan v. Am. Fire & Cas. Co., 200 So. 2d 213, 220 (Fla. 2d DCA 1967)). The lower court here erred in finding that the Quitclaim Deeds were (1) valid deeds, and (2) that they conveyed bare title to Common Areas.

Because the lower court specifically relied on the 2022 Order as a predicate for its grant of summary judgment in favor of Defendants in most, if not all, of the orders noticed for this appeal, a review of this order is

warranted. The invalidity of the Quitclaim Deeds themselves form the underlying basis for a majority of Pablo's claims in the 4AC.

The lower court's failure to make a finding regarding the validity of the Quitclaim Deeds that was actually supported by the record evidence was arbitrary, capricious and it materially prejudiced Pablo's ability to subsequently fairly litigate its remaining claims.

A. A Dissolved Corporation Cannot Validly Convey Title To Real Property After It Is Finished Winding Up Its Affairs.

First, the Quitclaim Deeds were executed by a defunct and dissolved corporate entity, which should have rendered them void. A dissolved corporation only retains the power to transfer title to property if it would be necessary for winding up and liquidating the corporation's business. DGG Dev. Corp. v. Est. of Capponi, 983 So. 2d 1232,1234 (Fla. Dist. Ct. App. 2008)(noting this power is not broad, and does not grant a dissolved corporation any additional leeway to, for example, "expand the category of persons expressly authorized by statute to execute a deed on behalf of a

corporation"); see also § 607.1421(3), Florida Statutes (2018)[12]. Outside of this narrow exception, it's generally accepted that:

> **[a] conveyance … by a dissolved corporation *is void and of no effect*[13]**. New Hampshire Fire Insurance Co. v. Virgil & Frank's Locker Service, Inc., 302 F.2d 780 (8th Cir.1962); Hearth Corporation v. C–B–R Development Co., Inc., 210 N.W.2d 632 (Iowa 1973); Cloverfields Improvement Association, Inc. v. Seabreeze Properties, Inc., 32 Md.App. 421, 362 A.2d 675 (1976); Kratky v. Andrews, 224 Minn. 386, 28 N.W.2d 624 (1947); Land Clearance For Redevelopment Authority v. Zitko, 386 S.W.2d 69 (Mo.1964); James v. Unknown Trustees, Etc., 203 Okl. 312, 220 P.2d 831 (1950); Mount Carmel R. Co. v. M.A. Hanna Co., 371 Pa. 232, 89 A.2d 508 (1952). See Patton on Titles § 405 (1938); 19 Am.Jur.2d, Corporations § 2891 (1986); 16A Fletcher Cyclopedia Corporations, Ch. 65, § 8137 (1979).

Brend v. Dome Development, Ltd., 418 N.W.2d 610 (N.D. 1988)(emphasis added).

Here, it's undisputed Developer was administratively dissolved in 1991, and the Quitclaim Deeds were both executed in 2019. The Quitclaim Deeds on their face state the grantor is "a ***dissolved*** Florida Corporation". (R. 596, emphasis added). Any argument that the Quitclaim Deeds were

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[12] Although Fla. Stat. 607.1421 (2018) was repealed by Laws 2019, c. 2019-90, § 186, eff. January 1, 2020, the disputed transactions occurred prior to this date.

[13] Whether a conveyance by a dissolved corporation is void is an issue of first impression before this Court.

necessary for winding up Developer's business is wholly lacking, especially where Developer had been continuously dissolved for a period of almost 30 years prior to their execution. The Quitclaim Deeds were improperly and untimely executed by a dissolved corporation outside of its wind-up phase – making them void as a matter of law.

B. The Quitclaim Deeds Unilaterally Attempted To Amend The Declaration Without The Requisite Consent And Are Therefore Void Ab Initio.

Florida law considers a subdivision's recorded declaration of covenants and restrictions as its constitution, meaning it generally takes precedence over the governing documents for its HOA (if one exists).In Florida, HOAs must overcome the presumption that "covenants that run with the land [are] strictly construed in favor of free and unrestricted use of real property... [and] restrictive covenants are strictly construed against those who assert the power to limit the homeowner's free use of his land". Lathan v. Hanover Woods Homeowners Assoc., 547 So. 2d 319, 321 (Fla. 5th DCA 1989)(internal citations omitted).

"Amendments that alter the pre-existing relationships and rights of subdivision owners are void absent consent with regard to their ability to control subdivision property (or contradict express provisions of subdivision's declaration). Such amendments are usually considered to

destroy the general plan of a subdivision's development and are therefore considered void and unenforceable without the prior consent of all affected owners". Klinow v. Island Court at Boca W. Prop. Owners' Ass'n, 64 So. 3d 177, 180 (Fla. 4th DCA 2011)(citing to Holiday Pines Prop. Owners Ass'n v. Wetherington, 596 So. 2d 84, 87 (Fla. 4th DCA 1992)). A person seeking to amend a subdivision's governing documents without being expressly authorized to do so under the same must therefore have prior consent of **all** subdivision owners. Van Loan v. Heather Hills Prop. Owners Ass'n, Inc., 216 So. 3d 18, 23 (Fla. Dist. Ct. App. 2016)(emphasis added); see also Berger v. Riverwind Parking, LLP, 842 So. 2d 918, 919 (Fla. Dist. Ct. App. 2003); Endruschat v. Am. Title Ins. Co., 377 So. 2d 738, 741 (Fla. Dist. Ct. App. 1979).

It is undisputed that (1) the Declaration does not authorize the formation of any HOA to manage the Subdivision (nor has it been amended to), (2) the Declaration has never been amended by either the Developer (when it had control to amend) or the Subdivision Owners (following Developer's sale of the threshold number of lots), and (3) no vote of a sufficient number of Subdivision Owners has ever been held that would permit any amendment of the Declaration to permit an HOA, and/or subject

Subdivision’s platted lots to additional restrictive covenants has ever occurred. Therefore, they are void on their face.

Further, the Quitclaim Deeds are not even proper quitclaim deeds. Despite the fact they each bear the title “QUIT CLAIM DEED”, the documents include substantial “Covenants & Restrictions” that seek to unilaterally change the Declaration and the rights of the Subdivision Owners.

As a result, the effect of the Quitclaim Deeds (and PCA’s subsequent recording and reliance on the same) created additional restrictive covenants that directly conflicted with those originally granted under Declaration, causing the Quitclaim Deeds to serve as an attempt to amend the Declaration. See Pensacola Beach, LLC v. Am. Fid. Life Ins. Co., 294 So. 3d 976, 983 (Fla. 1st DCA 2020)(finding the legal effect of a document will generally control versus its assigned title).

The attempt to amend the Declaration should have been rejected outright and the Quitclaim Deeds declared void and this Court should reverse the lower court’s granting of PCA’s Motion for Partial Summary Judgment and declare the Quitclaim Deeds void as a matter of law.

C. Even If Quitclaim Deeds Were Not Void, Developer Did Not Have Any Remaining Interest In Common Areas To Convey PCA Upon Their Execution.

i. Prior Binding Precedent Established Subdivision Owners Held Title To Common Areas As Tenants-In-Common Prior To 2019.

Even if the Quitclaim Deeds are not void, nevertheless this Court should reverse the lower court's ruling and award partial Summary Judgment to Appellant because the Quitclaim Deeds did not convey any actual interest. If the grantor holds no interest, then none is conveyed regardless of what the executed quitclaim states.

It is undisputed and unchallenged that the Prior Orders definitively held that the Subdivision Owners held title to the Common Areas a Tenants in Common. There was simply no property interest left with Developer to be conveyed to anyone. The lower court chose to wholly ignore the Prior Orders. That was clear error of law given that the lower court should have taken judicial notice of the same.

A circuit court is authorized to take judicial notice of a judgment from another case if such judgment is pleaded in the case before it. Leatherman v. Alta Cliff Co., 114 Fla. 305, 308, 153 So. 845, 847 (1934). Further, Florida Statute *mandates* that:

> [a] court ***shall take*** judicial notice of any matter in s. 90.202 when a party requests it and:

> (1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.
>
> (2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Fla. Stat. § 90.203 (emphasis added); see also Craig v. Craig, 982 So. 2d 724, 730 (Fla. Dist. Ct. App. 2008).

Here, the Prior Orders were not only properly pleaded in Pablo's underlying respective motion for partial summary judgment (and their holdings undisputed), but the Prior Orders were also properly included in a timely request compelling judicial notice pursuant to Fla. Stat. § 90.203 - the same judicial notice that this Court can and should take.

Had the lower court taken judicial notice, it could only have concluded the Subdivision Owners collectively held title to Common Areas in 2019 Developer therefore had no remaining title or interest to convey PCA by executing the Quitclaim Deeds. Such a finding would not only be consistent with the prior rulings of the First Circuit, but would also render moot remaining questions that now linger (i.e. whether Quitclaim Deeds were validly executed, whether an administratively dissolved corporation can grant covenants and restrictions via quitclaim deed after wind up, or whether PCA had any right to operate as a homeowner's association for Subdivision either voluntarily or pursuant to Fla. Stat. § 720, etc.). Instead,

the lower court seemingly went out of its way to render an opinion so contrary to the record evidence, public policy and basic principles of property ownership that it has only further complicated the Subdivision's state for the Subdivision Owners moving forward.

D. Quitclaim Deeds Were Not Executed In Accordance With Requirements Of Florida Law Applicable To Corporate Conveyances Of Real Property.

Even if the Quitclaim Deeds were valid on their face in terms of what they purported to convey, the entity purporting to convey was a dissolved corporation and was not distributing the assets in the course of a wind up; instead, it was a dissolved corporation attempting to convey and encumber real property almost 30 years after it was administratively dissolved.

When a corporation conveys real property, Florida statute requires the deed be executed by either (1) an **authorized representative** who signs before two witnesses, OR (2) its president, vice president, or chief executive officer ("Corporate Officer"), if the deed also featured its corporate or common seal. § 692.01, Fla. Stat. A dissolved corporation may convey its real property in the same manner as required prior to its dissolution. DGG Dev. Corp. v. Est. of Capponi, 983 So. 2d 1232, 1234 (Fla. Dist. Ct. App. 2008).

If a deed is not executed in compliance with Florida's statutory requirements - for example, if the person signing on behalf of a grantor lacks the authority to do so - the deed is ineffective on its face to convey title. DGG Dev. Corp. v. Estate of Capponi, 983 So. 2d 1232, 1234 (Fla. 5th DCA 2008); George Anderson Training and Consulting Inc. v. Miller Bey Paralegal and Financing, LLC, 313 So. 3d 214, 219-20 (Fla. 2d DCA 2021).

Neither Quitclaim Deed here featured a corporate or common seal, nor did they contain any reference to a corporate resolution of Developer authorizing anyone to convey real property on its behalf[14]. In sum, not only did Mr. Garris lack any authority to execute the May Quitclaim Deed on Developer's behalf pursuant to the POA, but both Quitclaim Deeds also lacked the requisite evidence of authority required by Florida statute for a corporate conveyance executed without a corporate seal. Id. (finding an unsealed deed signed by a corporation's president or vice president still requires corporate authorization to be valid). To the extent this Court should find the Quitclaim Deeds are valid, then whether the respective grantors possessed sufficient requisite authority to convey real property on behalf of Developer is then a genuine dispute of material fact, and it was an abuse of

[14] Further, none was ever produced, identified or suggested/referenced to in any of the written discovery responses submitted to Pablo's on behalf of Developer and/or Mr. Padgett.

discretion for the lower court to grant summary judgment in part in favor of Defendants. Summary judgment should instead be reversed and remanded for further proceedings.

III. LOWER COURT ADDITIONALLY ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY GRANTING SUMMARY JUDGMENTS IN DEFENDANTS' FAVOR AS DISCOVERY REMAINED ONGOING AND NO CASE MANAGEMENT ORDER HAD EVER SET ANY DEADLINES FOR MOTION PRACTICE.

Following its erroneous findings related to the Quitclaim Deeds in the 2022 Order, the lower court used the rulings to wholesale eliminate all claims in the 4AC that were related to an underlying fact of the Quitclaim Deeds being invalid. As such, the lower court erred as a matter of law by granting summary judgment for Defendants on multiple fact-sensitive claims while discovery was still ongoing and genuine issues of fact existed and persisted. Therefore, all of the remaining Motions on appeal should be reinstated and discovery permitted to continue.

a. Summary Judgment Is Inappropriate Where A Genuine Dispute Of Material Fact Exists.

A trial court cannot grant summary judgment to a party when (1) discovery remains open and ongoing, (2) genuine issues of fact exist and persist, and (3) issues of fact remain that should be determined by a jury. The Lower Court committed reversible error by granting 9 Motions for

Summary Judgment filed by Defendants shortly after the filing of the 4AC and when depositions and discovery were continuing. On each of the summary judgment motions filed as to Counts III, IV, XI, XII, XIII, XIV, XV, XVI, and XXIV of the 4AC, filed related to whether Pablo's damages consist of value of fractional share of Private Beach, and filed to all counts alleged against Mr. Harmon (together the "Motions"), material issues of fact existed as to each claim and element of the cause of action. The Lower Court ignored those factual issues and determined, without any basis or explanation, that no factual issues existed and that none could exist because Appellant had sufficient time to undertake necessary discovery in the month between filing the 4AC and the first Motions being filed.

The Lower Court's determinations are all reversible should this Court determine that (1) discovery was ongoing, (2) the factual data presented by Appellant showed material issues of fact, and (3) that a jury was the appropriate body to decide the contested factual issues. As set forth for each of the Motions, there were pertinent, unresolved factual issues material to the elements of the claims. Each claim's elements and factual issues outlined herein compels this Court to correct the errors below, vacate summary judgment for the Motions, and remand Motions for completion of discovery.

i. Genuine Issues Of Material Fact Exist As To Whether Developer Had Any Interest To Convey Via Quitclaim Deeds.

It is well-settled law a quitclaim deed only purports to convey whatever interest the grantor may have had in the land (even if such interest is inchoate or incomplete) when it executes such deed. Wilson v. Kelley, 226 So. 2d 123 (Fla. Dist. Ct. App. 2d Dist. 1969); Van Pelt v. Est. of Clarke, 476 So. 2d 746, 747 (Fla. Dist. Ct. App. 1985).

If a court determines the summary judgment record contains conflicting evidence on a material issue of fact from which a factfinder could reach different conclusions by crediting some evidence over other evidence, the jury as the factfinder should resolve the factual dispute. CG Tides LLC v. SHEDDF3 VNB, LLC, No. 3D23-0071, 2024 WL 2034825, at *3 (Fla. 3d DCA May 8, 2024)(noting summary judgment should not have been entered and explaining that "[t]he point is not that any of these "facts" have been finally established as "true." ***The point is that the evidence and inferences therefrom conflict***. A factfinder could reach different results depending on what evidence it credited and what reasonable inferences it draws from the evidence credited")(emphasis added).

The record here minimally included the Prior Orders, the Declaration, the property tax payment history/record for the Common Areas parcel, and

the exhibits attached to the relevant pleadings in the record. This record established that prior to the execution of the Quitclaim Deeds, the ownership of Common Areas by Subdivision Owners as tenants-in-common was widely recognized not just by Pablo's, but also by local government officials and agencies (i.e. DEP or Customary Use Case), public records, attorneys, private parties, and neighboring individuals, amongst others.

Based on the above, a jury could reasonably find the lower court's reliance on whether the Dedication contained any words of conveyance was misplaced where subsequent court decisions and public records, amongst others, have long since established Subdivision Owners definitively owned Common Areas as tenants in common prior to Developer's execution of Quitclaim Deeds.

ii. Genuine Issue Of Material Fact Exists As To Whether Watson Defendants Owed A Duty To Pablo's As A Subdivision Owner.

Whether a duty for a negligence claim arises from the general facts of a case or from other sources is generally a determination made as a matter of law. Goldberg v. Fla. Power & Light Co., 899 So. 2d 1105, 1110 (Fla. 2005). "[T]he proper inquiry for the reviewing appellate court is whether the defendant's conduct created a foreseeable zone of risk, not whether the

defendant could foresee the specific injury that actually occurred". Hanrahan v. Hometown Am., LLC, 90 So. 3d 915, 917 (Fla. 4th DCA 2012)(quoting McCain v. Fla. Power Corp., 593 So.2d 500, 504 (Fla.1992)).

For a claim of professional negligence, an attorney's duty is limited to clients with whom the attorney shares privity of contract or, where the parties are not in privity, an intended third-party beneficiary of the lawyer's services. Hunt Ridge at Tall Pines, Inc. v. Hall, 766 So. 2d 399, 400 (Fla. 2d DCA 2000). If there is no written contract between the attorney and client, Florida courts routinely look to the underlying transaction documents to determine if it contains a clear expression of the parties to directly benefit a third party or a class of persons to which that party belongs. USA Interactive v. Dow Lohnes & Albertson, P.L.L.C., 328 F. Supp. 2d 1294, 1312 (M.D. Fla. 2004). If it is alleged a defendant's duty is established through the underlying document, and such document contains an ambiguity as to existence or extent of that duty, then whether a duty exists becomes a question of fact for the jury to decide. Casey v. Mistral Condo. Ass'n, Inc., 380 So. 3d 1278, 1284 (Fla. Dist. Ct. App. 2024).

It is undisputed Mr. Watson drafted both Quitclaim Deeds sent to Mr. Garris for execution on behalf of PCA, Mr. Watson's client. The express language used in both Quitclaim Deeds (1) states the respective

conveyance transferring title to PCA was being executed so PCA could hold title to Common Areas "***for the benefit of all the Owners of the Lots***'" (herein the "Owners") attached to each, and (2) specifies who is considered an Owner under each by attaching and referencing exhibits containing a complete list of the Owners identified via Parcel ID Number, leaving no ambiguity. (R. 967-68, 972-73)(emphasis added). It is further undisputed the Parcel ID Number for Pablo's previously owned Subdivision property is listed in exhibits to the Quitclaim Deeds.

The language used by Mr. Watson in the Quitclaim Deeds referring to the conveyances as "for the benefit of all the [listed] Owners" could not have been clearer. Summary judgment should therefore be reversed and remanded to further proceedings.

iii. Genuine Issues Of Material Fact Exist As To Whether Documents Executed By PCA Were False Filings Pursuant To Fla. Stat. § 817.535.

The lower court abused its discretion and committed reversible error in granting Defendants' separate motions for summary judgment seeking a determination regarding whether the Quitclaim Deeds, PCA's Articles, the PCA Easement, and the PCA DEP Resolution each constituted a "false filing" as contemplated by Florida Statute § 817.535 (herein the "False Filing Statute").

The elements of the claims under § 817.535[15] are inherently factual. As discovery was ongoing, it was error for the lower court to conclude that Pablo's had failed to come forward with evidence on its behalf. First, evidence was provided for the lower court's consideration. Second, the evidence showed that Pablo's could make out prima facie cases for these claims and was entitled to have a jury determine the same.

1. Quitclaim Deeds As False Filings

With respect to each of the Quitclaim Deeds, the lower court identically reasoned that because it previously found "the [Quitclaim Deeds] to Pelican Circle Association, Inc. […] recorded in […] the Public Records of Walton County, Florida, were valid conveyances", the validity of the Quitclaim Deeds essentially precluded them from being false filings. (R. 3222-24; R.3225-27).

Should this Honorable Court find Pablo's arguments persuasive and overturn the validity of the Quitclaim Deeds as a matter of law, the lower court's orders for summary judgment related to their false filings also require reversal.

[15] It bears noting that intent is not a mandatory element of a private cause of action under this statute.

The recording of the Quitclaim Deeds created a representation these instruments held a superior interest in Common Areas than that previously claimed by Pablo's. See CG Tides LLC v. SHEDDF3 VNB, LLC, No. 3D23-0071, 2024 WL 2034825, at *3 (Fla. 3d DCA May 8, 2024)). These again are factual issues meriting denial of the summary judgment motions. See CG Tides LLC v. SHEDDF3 VNB, LLC, No. 3D23-0071, 2024 WL 2034825, at *3 (Fla. 3d DCA May 8, 2024).

Whether the filer (as such term is defined in Fla. Stat. § 817.535(1)(a) recorded the Quitclaim Deeds with the requisite "intent to defraud or harass" Subdivision Owners remains a genuine issue of material fact appropriately left for the jury to determine.

As discovery remained active and ongoing, even if the lower court determined that the Quitclaim Deeds were clear and accurate on their face, the mere filing of them raises an inference that there is a superior claim to a set of rights that was not Developer's to convey.

2. PCA Easement As False Filing

The lower court abused its discretion and committed reversible error in granting the motion with respect to the PCA Easement in favor of Defendants, despite explaining that although the "[PCA] Easement may contain materially false statements … [Pablo's] has not met his summary judgment burden to make a sufficient showing, using summary judgment evidence, that the [PCA] Easement was filed with the intent to defraud or harass him". (R. 3237). Even if no sufficient facts existed to support the claims at that time, there was still discovery that was ongoing that would have elucidated such facts.

The express language of the PCA Easement states "[PCA] is the owner of…Common Areas" (R. 1123-26, R. 598-600) and is authorized to "maintain, constrict, install, remove and regulate the improvements" for Common Areas based on the executed June Quitclaim, which is attached as an exhibit to the PCA Easement. (R. 598). This contradicts the Prior Orders and municipal records. Interestingly, Defendants do not dispute (1) that prior to the execution of PCA Easement, Pablo's held rights to access Common Areas granted by the recorded Declaration/Plat. (R. 2889), and (2) the validity of the recorded Release (through which Developer clarified its intent in excluding NIIP Parcels being subject to Declaration).

Viewing the facts in a light most favorable to the non-moving party, a jury could reasonably conclude Defendants, at the time the PCA Easement was filed or directed to be filed, intentionally included NIIP Owners within the scope of the easement's grant despite having prior actual notice that the Declaration and Release together exclusively restricted access to Private Beach to Subdivision Owners and the Declaration precluded any governance or management by PCA of Common Areas without a majority consent of Subdivision Owners.

Whether the Defendants *actually* possessed an intent to improperly and intentionally circumvent the existing restrictions through the recording of the PCA Easement (and therefore defraud or harass Pablo's) is a genuine dispute of material fact and a question of credibility appropriately left for the jury or the trier of fact. Moore v. Wagner, 377 So. 3d 163, 169 (Fla. Dist. Ct. App. 2023).

The lower court abused its discretion and committed reversible error by finding Pablo's failed to meet its summary judgment burden and that Pablo's had sufficient time to conduct discovery. Therefore, summary judgment as to false filing of the PCA Easement granted in favor of Defendants should be reversed and remanded for additional proceedings.

3. PCA Articles As False Filings

The lower court abused its discretion in granting the corresponding motions for summary judgment as to false filing of PCA's Original Articles and PCA's Amended Articles based on its identical determinations that "when viewed as a whole, Pelican Circle Association, Inc.'s [original or] Amended Articles of Incorporation [are] not materially false as a matter of law, and therefore, [are] not a false document that was filed in violation of § 817.535, Florida Statutes". (R. 2301, R. 2601).

For one, PCA cannot simultaneously represent itself as both a homeowners' association "formed for the purpose of providing an entity under the Florida Statute Chapter 720" (R. 2314), and as an entity that is "not a mandatory association operating under Chapter 720, Florida Statutes" (R. 1011), without one of those two representations being false. Either it was formed pursuant to Fla. Stat. § 720 and membership of all Subdivision Owners is therefore mandatory (rendering any statements suggesting membership opportunities in PCA's Articles are voluntary as false), or it was not actually formed for the purpose of serving as a Ch. 720 association (rendering statements describing its sole purpose of governance in PCA's Articles as false). The lower court ignored this contradiction, and summary judgment should be reversed on that basis alone.

PCA seems to double down on its efforts to improperly hold itself out as a Ch. 720 HOA by aligning itself with the statutory definitions through the inclusion of the Supremacy Clause[16], and by keeping the same corporate purpose and Supremacy Clause when filing PCA's Amended Articles, despite making other changes and updates. All of these could evidence intent to a jury.

See S & T Anchorage, Inc. v. Lewis, 575 So. 2d 696, 698 (Fla. 3d DCA 1991) ("The articles and bylaws [of an HOA] must be consistent with the provisions of the superior document, the Declaration").

Summary Judgment on Counts XIII & XVI of the 4AC must be reversed.

4. PCA DEP Resolution As False Filing

Under the False Filing Statute, the phrase "Official record" is defined as:

> the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county

[16] As evidenced by, for example, the Supremacy Clause incorporating the definition for a "Homeowners' association" provided under Florida State, which it defines as: a Florida corporation responsible for the operation of a community […] in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and ***in which membership is a mandatory condition*** of parcel ownership, ***and which is authorized to impose assessments that, if unpaid, may become a lien*** on the parcel". Fla. Stat. § 720.301(9)(emphasis added).

charter, is required or authorized by law to record. Fla. Stat. § 817.535. The FL DEP is a state governmental agency, and therefore has a general duty to provide public access to its records. Fla. Stat. § 119.01(1). The DEP Resolution was submitted to the DEP as part of its records related to a permit request, and was subsequently maintained in its public, online database pursuant to requirements of Florida Statute generally outlined in § 119, rendering it an official record subject to the False Filing Statute. (R. 2975). Where (1) the DEP initially required unanimous consent of Subdivision Owners to prevent removal of the new boardwalk already constructed within in Common Areas due to non-compliance with requirements for the DEP permit previously issued to Ms. Portanova, and (2) the PCA DEP Resolution successfully circumvented such requirement by falsely relying on the May Quitclaim (which Pablo's submits is void for reasons described supra.), a jury could reasonably conclude the PCA DEP Resolution was a false filing under the False Filing Statute. (R. 1967-69). This falsity can additionally be reasonably viewed as intentional where the circumstances outlined by Pablo's indicate Ms. Portanova made a personal investment in reconstructing the boardwalk that was at risk by the DEP, and the Incorporators had actual knowledge

certain Subdivision Owners would not provide DEP their consent and the Declaration did not provide for an HOA. (Id.).

5. Conclusion

Summary judgment as to the false filing Motions for the Quitclaim Deeds, PCA Easement, PCA Articles, and PCA DEP Resolution granted in favor of Defendants was an abuse of lower court's discretion and should be reversed and remanded for additional proceedings.

iv. Genuine Issue Of Material Fact Exists As To Whether Harmon Actively Participated In Formation Of PCA.

The lower court granted summary judgment in favor of Mr. Harmon based on its finding that no summary judgment evidence filed by Pablo's refuted the sworn testimony in Mr. Harmon's affidavit that he essentially had no participation in activities related to PCA, and that his inclusion as a director/officer in PCA's Original Articles was "due to inadvertence or mistake or misunderstanding by someone else". (R. 3220).

Where Pablo's had included in its opposition to this motion written discovery produced by PCA describing a discussion with Mr. Harmon on or around April 10, 2024 about his participation on PCA's Board of Directors

and his inclusion in a call with Mr. Watson to discuss PCA (R. 3219-21) – evidence which, to the contrary, directly describes his participation in PCA's activities, the lower court's grant of summary judgment in Mr. Harmon's favor was a clear abuse of discretion, and judgment should be reversed and remanded for further proceedings as there a genuine dispute of material fact exists.

v. Lower Court Erred In Granting Summary Judgment As To Whether Pablo's Damages Equal A Proportional Interest Of Value Attributed To Private Beach In Favor Of Defendants Without Providing Sufficient Explanation For Appeal.

In Florida, "[a] trial court's determination as to the method of calculating damages is reviewed de novo". Dooley v. Gary the Carpenter Constr., Inc., No. 3, D22-1460, 2023 WL 7359848, at *2 (Fla. 3d DCA Nov. 8, 2023)(citing to Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC, 183 So. 3d 374, 380 (Fla. 3d DCA 2013)).

Here, the lower court's decision to grant summary judgment in Defendants' favor and find Pablo's damages did not include the loss of a 1/59th share of an undivided interest in Private Beach, without further explanation, is contrary to County property records, is an abuse of discretion, and reversible error.

The only explanation the lower court offered in support of its decision are conclusory statements advising "the Amended Order did not confer any ownership rights in the Private Beach on [Pablo's] on his predecessors or successors in title to [Pablo's Property] … [and] that the rulings in this case do not conflict with the Amended Order". (R. 3240-3241).

First, this misstates the plain language of the Amended Order stating that the Common Areas were "owned" by the Subdivision Owners. The lower court failed to provide any explanation "specific enough to provide useful guidance to the parties and appellate court", and summary judgment for this motion should be reversed and remanded. De Cardenas v. White Pine Insurance Company, 347 So.3d 459 (Fla. 3d DCA 2022); see also Fla. R. Civ. P. 1.510.

The grant of summary judgment is also an abuse of discretion because it is irrelevant whether the lower court believed the Amended Order conferred any ownership interest Private Beach to Pablo's. The lower court's own determination that Common Areas include the Private Beach itself affirms the basis for Pablo's inclusion of the same as part of the suggested calculation for its total damages.

Whether the proportional value attributed to the Private Beach (and the scope of that value) must be included in total calculation of Pablo's

damages creates a genuine issue of material fact Thus, the proper question before the lower court was whether Pablo's could prevail on a claim seeking monetary damages by using a proportion of the total value attributed to ownership of the Private Beach for the relevant period appropriately represented value of damages related to Pablo's as one of fifty-nine[17] Subdivision Owners during the relevant time. There was sufficient evidence to get to a jury on the issue and it was clear error to preclude Appellant from that opportunity.

E. LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DISCOVERY IS STILL NECESSARY AND ONGOING.

The Lower Court determined, without any factual or legal basis, that Pablo's had sufficient time to conduct discovery and therefore was deemed to have completed discovery. That was reversible error.

a. Standard of Review

It is an abuse of discretion for a trial court to grant summary judgment and cause irreparable harm by denying the opposing party an opportunity

[17] This number represents the total number of Subdivision Owners Plaintiff submits existed pursuant to Declaration/Plat when this action originally commenced - a fact which was disputed by Defendants advancing that NIIP Owners should also be considered Subdivision Owners prior to lower court's issue of its December 13, 2022 order.

to complete discovery and attempt to establish the elements necessary to prove that party's case, causing the party irreparable harm. Rodriguez v. Avatar Prop. & Cas. Ins. Co., 279 So. 3d 1279, 1281 (Fla. 2d DCA 2019)(internal citations omitted); see also Foster v. Bank of Am., N.A., 215 So. 3d 158, 160 (Fla. 3d DCA 2017)(citing to Publix Super Mkts., Inc. v. Hernandez, 176 So.3d 350, 351–52 (Fla. 3d DCA 2015)).

[S]ummary judgment is premature if the facts have not been sufficiently developed to provide the court with reasonably certainty no genuine issue of material fact will arise or if a party, through no fault of his own, has not yet completed discovery". Singer v. Star, 510 So. 2d 637, 639 (Fla. 4th DCA 1987)(internal citations omitted); see also Sacramento v. Citizens Prop. Ins. Corp., 342 So. 3d 737, 738 (Fla. 3d DCA 2022), review denied, No. SC22-966, 2022 WL 4682831 (Fla. Oct. 3, 2022)(finding that "[b]ecause Citizens moved for summary judgment while discovery pertaining to key issues was pending, the trial court's summary judgment ruling was premature"); Crowell v. Kaufmann, 845 So. 2d 325, 327 (Fla. 2d DCA 2003).

b. It Was An Abuse Of Discretion For Lower Court To Fail To Issue A Case Management Order.

Walton County Administrative Order 2021-12, Section 6(b) provides that "[f]or cases filed before April 30, 2021, the case management order

shall be issued by December 3, 2021", and shall include, amongst other requirements, deadlines for completing fact and expert discovery and resolving pretrial motion.

This action was filed with the lower court on July 28, 2020, yet no case management order giving parties notice of any deadline for completing discovery was ever issued to date, despite Pablo's still-undecided motion in May of 2021 requesting the lower court issue one. (R. 358). The lack of a deadline for discovery has prejudiced Pablo's ability to effectively fact-find related to its claims, and has allowed certain defendants to continuously delay (to their benefit and to Pablo's detriment) Pablo's efforts to engage in more substantive opportunities for discovery via depositions. This is best evidenced by Pablo's ultimate inability to depose Mr. Padgett prior to his death in 2021 (despite seeking to notice it numerous times), approximately two years after this action was initially filed with the lower court. (R. 1877, R. 3030).

c. Depositions Are Still Ongoing.

Florida District Courts agree that if there is a pending deposition that would most likely raise a genuine issue of material fact, discovery is considered ongoing, and summary judgment is premature; this is especially the case if the deposition is noticed. Sacramento, 342 So. 3d at 739.

Additionally, when there is a pending deposition that has the potential to create a genuine issue of material fact, procedural failures, including failure to file a proper motion for continuance and supporting affidavits, are set aside. See Smith v. Smith, 734 So. 2d 1142, 1144–45 (Fla. 5th DCA 1999); Singer, 510 So. 2d at 639.

Pablo's was first noticed for deposition by Defendants on October 9, 2023, and it was ultimately set for December 6, 2023. (R. 3206). Pablo's deposition date, scheduled for *after* the date the most recent Order noticed for appeal here was issued, itself evidences the fact discovery was still ongoing at the time these Motions were improperly heard and decided. Such error compels reversal.

a. Pablo's Has Not Had Sufficient Opportunity To Conduct Meaningful Discovery Under The Applicable Circumstances.

In February of 2022, following the filing of the then-operative Third Amended Complaint, Pablo's noticed eight parties and non-parties for depositions in June of 2022. (R. 1692). In response to motions for protective orders from certain Defendants, an order from the lower court indefinitely continued the depositions until after December 2022 (when 2022 Order was anticipated to be issued). (R. 1754). PCA suggested (and

Pablo's later agreed) the continuance would not cause Pablo's any prejudice as it would prevent the parties and the lower court to potentially expend undue and unnecessary efforts and expenses where Pablo's motion for leave of court to amend the Third Amended Complaint was still pending, and where the filed cross motions for summary judgment could ultimately narrow the scope of issues to be addressed during the noticed depositions following their hearing. (R. 1693-94).

The undersigned counsel entered its appearance on Pablo's behalf in March 2023 prior to filing the 4AC (in May 2023), which added new parties and new counts not previously included in prior complaints. Beginning on July 17, 2023, Pablo's counsel resumed efforts to again schedule the first depositions of certain defendants via email. In August of 2023, the parties agreed to again defer the depositions confirmed (but not yet formally noticed) until the numerous pending summary judgment proceedings were resolved to avoid the parties expending any unnecessary time, labor or expenses before it was known what issues would remain relevant for discussion during depositions.

In large part due to the 18 motions for summary judgment filed by certain Defendants since the 4AC (combined with fact this action was initiated almost simultaneously with the onset of the COVID-19 pandemic

and the systemic, long-term delays and disruptions that accompanied it), Pablo's, through no fault of its own, has still not yet been able to successfully conduct *any* depositions Defendants or non-party witnesses (or serve any interrogatories or document requests needed following such depositions) despite numerous attempts to do so documented in the trial court's docket for this action. Pablo's has repeatedly brought its concerns regarding its inability to fully and sufficiently respond to the motions for summary judgment without first being given a sufficient opportunity to complete discovery before the lower court, and the lower court has repeatedly denied Pablo's any additional opportunity for the same unfairly precluding Pablo's efforts only to conduct depositions of certain Defendants. (R. 31). The lower court has unilaterally ended discovery for one party without notice and without any scheduling order.

Without a case management order providing a definitive date for end of discovery, the lower court's arbitrary determination that Pablo's had sufficient time to complete discovery rendered, made despite Defendant's noticed deposition of Pablo's scheduled to occur after the lower court made such a finding, is a clear abuse of discretion.

F. LOWER COURT ERRED AS A MATTER OF LAW BY GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT FOR SLANDER OF TITLE AND GROSS

NEGLIGENCE BASED ON APPLICATION OF INCORRECT STATUTES OF LIMITATION

a. Claims That Arise From A Written Instrument Are Subject To A 5-Year Statute Of Limitation.

If an action is founded on a written instrument, it will generally be subject to a 5-year limitation. Harris v. Aberdeen Prop. Owners Ass'n, Inc., 135 So. 3d 365, 368 (Fla. 4th DCA 2014)(finding action challenging the validity of a recorded amendment to the association's governing documents was subject to a five-year statute of limitation beginning the date the challenged instrument was first recorded).

iii. Negligence Of Watson Defendants

The lower court erred as a matter of law in finding that Pablo's claim was barred by the 2-year statute of limitations applicable to claim for professional negligence when the claim was based on the recording of a deed, and therefore subject to a 5-year statute of limitation.

The lower court granted summary judgment in favor of the Watson Defendants following its determination Pablo's claim alleged against them in Count XXIV of the 4AC sounded in professional negligence, and was therefore untimely and precluded by the 2-year statute of limitation outlined in Fla. Stat. § 95.11(4). (R. 2156). The lower court also found that (1) Pablo's had no attorney/client relationship with the Watson Defendants,

and (2) the Watson Defendants did not owe Pablo's any duty, either directly or as a third-party beneficiary, and therefore could not breach any duty owed to Pablo's. (R. 2581). Those conclusions ignored that the 4AC pleaded claims for general negligence, and facts were of record that Appellant's awareness of the Watson Defendants' negligence was delayed.

Here, Pablo's claim against the Watson Defendants clearly arises from Mr. Watson's actions related to the Quitclaim Deeds, written instruments, which were both recorded in 2019. The 4AC was filed in 2023, placing Pablo's squarely within the 5-year period after the respective recording dates for the Quitclaim Deeds. It was clear error for the lower to court to grant summary judgment in favor of Watson Defendants.

iv. Slander Of Title By Quitclaim Deeds & PCA Easement

Here, it is undisputed the Quitclaim Deeds and the PCA Easement are all written instruments publicly recorded. Therefore, Pablo's had five years from that date of recording to bring an action for slander of title based on each. Although Count III was first added in the 4AC (filed May 24, 2023), this was still approximately only four years after the date the first of the three instruments (the May Quitclaim) was recorded in May of 2019.

The claim is therefore not time-barred, making it a clear error of law for the lower court find it was.

a. Genuine Issue Of Material Fact Whether Quitclaim Deeds Or PCA Easement Contained Materially False Statement.

If a recorded written instrument relating to a subdivision's governing documents causes ambiguity and creates the appearance of applying to properties not otherwise subject to covenants and restrictions in the latter recorded written instrument, a sufficient cause of action for slander of title exists. Van Loan, 216 So. 3d at 24 (explaining that "[n]either the public nor potential buyers would be aware after reading the [HOA's] amended articles of incorporation and the recorded declaration of amended restrictive covenants that the Homeowners' lots were not subject to the amended restrictive covenants").

These issues are all inherently fact sensitive and for a trier of fact. For example, the recorded Quitclaim Deeds and PCA Easement each expressly provide that PCA holds title to Common Areas in trust and for the benefit of the Owners (identified in exhibits to each as a list of parcel numbers and corresponding street addresses). All three recorded instruments each additionally state membership in PCA is "voluntary", despite identifying PCA as a mandatory homeowner's association existing

pursuant to Florida Statue § 720, and despite each indicating membership would become effective upon the Owner recording a restrictive covenant that would run with the land and subject the Owner's property to PCA's governance and lien authority. Finally, each Subdivision Owner's property deed contains a reference of being subject to the governing Declaration. The interpretation of the Declaration is also a factual matter given the differing interpretations.

For example, the Declaration relevantly references the Subdivision's Plat, lacks any express grant authorizing formation of an HOA, and expressly grants Subdivision Owners exclusive use of the Private Beach & Recreation Area in its Dedication. The Quitclaim Deeds are recorded in chain of title for the Common Areas' parcel and, together with the PCA Articles, are also recorded against title to the parcels of each Subdivision Owner that has voluntarily joined PCA. Neither the Quitclaim Deeds nor PCA Articles themselves expressly specify which of the Subdivision's lots have joined PCA and have therefore bound their respective parcels with additional restrictive covenants related to rights and authority of PCA over such property.

The Parties differ on whether the recorded documents are clear one way or another, thereby creating a factual issue. It is Appellant's assertion

that these recorded documents, when read together with the Declaration (and especially in light of their conflicting statements identifying as both an HOA pursuant to Fla. Stat. § 720, as well as a voluntary association) can reasonably cause a person to believe all Subdivision Owners' are required to be members of PCA and give rise to Pablo's claims for slander of title based on the same. See Van Loan, 216 So. 3d at 23.

The lower court abused its discretion by finding that the Quitclaim Deeds were valid and did not contain a false statement, and finding PCA's Articles did not contain a materially false statement. That is a factual issue and discovery was continuing. Further, even if PCA's Articles were truthful on their face (which Pablo's respectfully argues they are not), such a finding fails to address or consider whether the documents, when read together with the Declaration, could create any ambiguity for the public or potential buyers of Subdivision lots – fact sensitive inquiries for the jury at trial. Therefore, summary judgment for Counts III & IV should be reversed and remanded for further proceedings.

CONCLUSION

The lower court committed reversible error and this Court should correct those errors. First, this Court should reverse the lower court's granting of summary judgment improperly validating the Quitclaim Deeds

and enter judgment in favor of Appellant finding that the Quitclaim Deeds are invalid as a matter of law.

Second, all of the remaining summary judgment findings must be vacated and this matter remanded as it was an error of law and abuse of discretion to even allow summary judgment motions on fact-sensitive claims to be presented and ruled upon when (i) fact discovery remained open and ongoing, (ii) the first motions were filed less than 2 months following filing of the 4AC and no meaningful discovery could have even occurred at that time, (iii) no Case Management Order was ever entered, (iv) no dispositive motion deadline had been set, (v) significant and persistent material factual issues were present, and (vi) the lower court improperly engaged in credibility determinations that are solely within the province of the jury.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

The Undersigned hereby certifies that Arial 14-point font was used in preparation of this Initial Brief and the Brief is less than 13,000 words.

Dated this 19th day of July, 2024.

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I HEREBY CERTIFY that this Brief of Appellant was filed via the Florida Courts E-Filing Portal on the 19th of July 2024, which electronically served copies to all counsel of record, named as follows:

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