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

CASE NO.: 4D 2024-1650
LOWER TRIBUNAL CASE NO.: CACE-23-021885 (08)

HAVEN HOUSE NO. 4, INC.,

***Appellant*,**

v.
MICHAEL SAGARO, CLOTILL SAGARO, JUAN SAGARO ET AL.

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

APPELLANT'S REPLY BRIEF TO

APPELLEES' ANSWER BRIEF FILED BY COUNSEL FOR MICHAEL C. SAGARO, COTILL SAGARO, JUAN SAGARO, HAVEN HOUSE PROPERTY HOLDINGS, LLC, ARLEY CARMONA, ALBERT HERNANDEZ, OMAR DIAZ, PROCAM GROUP, LLC, YOANDI CEBALLOS, EDUARDO MAURIZ AND MANUEL OJEDA

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I. THE SAGARO APPELLEES CANNOT INVOKE ARBITRATION[1].

Appellant Association sued the Sagaro Appellees – not for breach of its Bylaws – but under statutory and common law tort and related equitable causes of action including breach of fiduciary duty, conversion, civil conspiracy, unjust enrichment, constructive trust, injunction and declaratory relief. The Association's claims arise from the Sagaro Appellees' fraud, theft, forgery, self-dealing and other criminality. (A-279-293).

The Sagaro Appellees demand arbitration under Article XV of the Bylaws. But under Article XV, only condominium unit owners called "aggrieved members" who are injured by the Association's interpretation of its Bylaws or the actions of its board of directors have the right to arbitrate. As explained, the Association sued the

[1]"Sagaro Appellees" and "Appellees" collectively mean Michael C. Sagaro, Clotill Sagaro, Juan Sagaro, Haven House Property Holdings, LLC, Arley Carmona, Albert Hernandez, Omar Diaz, Procam Group, LLC, Yoandi Ceballos, Eduardo Mauriz and Manuel Ojeda.

Sagaro Appellees, and therefore, they are not "aggrieved members" under Article XV. Consequently, Appellees have no arbitration right.

Article XV's "aggrieved member" requirement plainly means a person demanding arbitration with the Association must be: (1) aggrieved, *i.e.*, injured, and (2) a member of the Association, *i.e.*, own a condominium parcel. (A-147, Art. XV). Appellees don't meet the test. They are not "the aggrieved members" of the Association which Article XV contemplates. Thus, the Sagaro Appellees have no right to arbitrate the Association's claims against them.

Appellees treat the "aggrieved member" requirement as meaningless. They rewrite Article XV's first sentence, culling text out of context and conjoining it with text that doesn't appear in the provision. Sagaro Br. at 10. By disingenuous amalgamation[2],

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[2]Appellees repurpose XV's text taking the phrase "Any question arising concerning the construction of any of the By-Laws set forth herein or the action on the part of the board of directors with reference to any of the duties and responsibilities placed upon said board of directors," deleting its comma, and combining it with the phrase – "shall be resolved through arbitration" – which does ***not*** appear in Article XV. Sagaro Br. at 10. *See LEN-CG S LLC v. Champions Club*, 336 So. 3d 1245 (Fla. 5th DCA 2022) (disingenuity and text manipulation to advance a litigant's position are disfavored).

Appellees posit Article XV's arbitration right as standalone, assertable by anyone, and boundless, broadly requiring the Association to arbitrate virtually any dispute. Sagaro Br. at 10.

Article XV's first paragraph actually states:

> Section 1. Any question arising concerning the construction of any of the By-Laws set forth herein or the action on the part of the board of directors with reference to any of the duties and responsibilities placed upon said board of directors, **the aggrieved member** shall have the right to have the dispute resolved in question arbitrated pursuant to the terms of the Florida Arbitration Code, Florida Statute 57, et seq.

(A-147, Art. XV) (Emphasis Added).[3]

"A declaration of condominium is a contract between the unit owners and the association and is interpreted like any other contract." *McLlenan v. Cypress Chase N. Condo. No. 4 Ass'n, Inc.*, 387 So. 3d 321,325 (Fla. 4th DCA 2024). "'Where contractual terms are

[3]The comma in Article XV's first sentence signifies the second clause beginning, "the aggrieved member . . . ." qualifies the first clause beginning "Any question . . . ,". *See Kasischke v. Florida*, 991 So.2d 803, 812-13 (Fla. 2008); *Mr. Sign Sign Studios, Inc. v. Miguel*, 877 So. 2d 47, 49-50 (Fla. 4th DCA 2004).

clear and unambiguous, the court is bound by the plain meaning of those terms.'" *Id.* (quoting *Emerald Pointe Prop. Owners Ass'n v. Com. Const. Indus., Inc.*, 978 So. 2d 873, 877 (Fla. 4th DCA 2008)).

A condominium's declaration cannot be interpreted to render any of its terms meaningless. *Walker v. Corinthians S. Condo. Ass'n, Inc.*, 49 Fla. L. Weekly D 2119, 2024 Fla. App. LEXIS 8054, at *1 (Fla. 4th DCA Oct. 16, 2024). Nor can a party "be forced to arbitrate something [to] which he did not agree." *Florida Dep't of Ins. v. World Re, Inc.*, 615 So. 2d 267, 269 (Fla. 5th DCA 1993) (citation omitted). The party asserting the existence of a valid arbitration contract bears the burden of proof. *UATP Mgmt., LLC v. Barnes*, 320 So. 3d 851, 857 (Fla. 2d DCA 2021).

Article XV creates an arbitration right but only for aggrieved members. A party must be "the aggrieved member" of the Association, *i.e.*, he must belong to the class of persons Article XV expressly intends to benefit. *See Santiago v. Neno Rsch., Inc.*, 2024 U.S. Dist. LEXIS 196892, at*25 (M. D. Fla. Oct. 30, 2024) (nonsignatory may invoke arbitration if he falls within identified class of persons whom

the arbitration agreement expressly intends to benefit); *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000) ("the meaning of particular terms may be ascertained by reference to other closely associated words.").

At the May 13, 2024 hearing, Appellees' counsel danced around Appellees' failure to qualify as "aggrieved members." As in this appeal, they erroneously argued the Association's claims require the interpretation of its Bylaws. (A-015-021). Yet, the Association's claims are separate from the Bylaws. *See infra*, pp. 14-18.

The trial judge bought Appellees' argument lock, stock and barrel. He never examined Article XV's plain terms to determine if they show an intent to arbitrate the Association's claims against Appellees. (A-068.). He treated the "aggrieved member" requirement as meaningless. He wrongly opined that fraud was not alleged and the parties were squabbling over the right to serve as Association directors. (A-049, A-066-067). The trial judge granted Appellees' motions to compel arbitration simply because the Bylaws have an arbitration clause. He never determined, contrary to law, if there is

an enforceable agreement to arbitrate the claims against each Appellee. (A-068.).

As his first step, the trial judge had to decide if each Appellee was "the aggrieved member" of the Association, Article XV's *sine qua non*. Yet, following Appellees' counsel's lead, the trial judge ignored Article XV instead of deciding if Appellees were "aggrieved members." The trial judge ignored that Appellees bore the burden to establish an enforceable agreement to arbitrate. He treated the "aggrieved member" requirement as meaningless and rewrote Article XV's unambiguous terms to match Appellees' position.

A. The Sagaro Appellees Are Not "Aggrieved Members."

The Bylaws don't define the adjective "aggrieved," but the law does. "Aggrieved" means injured, *Stewart Agency, Inc. v. Arrigo Enters.*, 266 So. 3d 207, 213 (Fla. 4th DCA 2019), and characterizes one who brings affirmative claims. *See Dial v. Calusa Palms Master Ass'n*, 337 So. 3d 1229, 1231 (Fla. 2022) ("damages in a tort case [are] limited to the actual damages sustained by the aggrieved party") (Polston, J., concurring); *Pacheco v. Samardjich*, 364 So. 3d 1095

(Fla. 3d DCA 2024) (aggrieved plaintiff served process under Hague Convention); *Westgate Resorts, Ltd. v. Reed Hein & Assocs.*, LLC, 2020 U.S. Dist. LEXIS 107235 at *8-9 (M.D. Fla. Apr. 27, 2020) ("the plaintiff is 'aggrieved,' meaning 'its rights have been, are being, or will be adversely affected'").

A defendant is not aggrieved because he was sued. *See Joe Hand Promotions, Inc. v. Soto*, 2014 U.S. Dist. LEXIS 141570, at *2-3 (D. Idaho Oct. 2, 2014) ("By limiting these Cable Communications Policy Act [47 U. S. C. Ch. 5, Subch. V-A] fee-shifting statutes to an 'aggrieved' party, rather than a mere 'prevailing' party (under which a defendant may recover fees under 42 U.S.C. § 1988), Congress signaled its intention not to authorize fee awards for defendants in Cable Act cases.").

Here, the Association sued Appellees, and hence they are not aggrieved. *See MacuHealth, LP v. Vision Elements, Inc.*, 2024 U.S. Dist. LEXIS 141667, at *11-12 (M. D. Fla. Aug. 9, 2024) ("aggrieved party can recover 'actual damages' under section 501.211(2) [and] injunctive relief under section 501.211(1)."); *Lobo v. EC Floral Design*

& Events LLC, 2024 U.S. Dist. LEXIS 45397, at *5 (S. D. Fla. Mar. 13, 2024) ("aggrieved party may bring suit" under Fla. Stat. §448.110).

Besides being aggrieved, a party seeking arbitration must own a unit in the condominium to belong to the Association. This is reinforced by Article XV's second sentence:

> Every condominium parcel owner has signified his intention to have the decision of the arbitrators made a rule of court (pursuant to Florida Statute 57.02) by virtue of his acceptance of the conveyance of the "condominium parcel" to him.

(A-147, Art. XV) (Emphasis Added).

Article IV of the Bylaws defines a member: "Membership in the Association shall be limited to the owners of condominium parcels as identified in the preceding Declaration of Condominium." (A-139). *See Rivercrest Cmty. Ass'n v. Am. Homes 4 Rent Props. One, LLC*, 298 So. 3d 106 (Fla. 2d DCA 2020) (construing "Class A Members" under condominium declaration's plain and unambiguous meaning in the entire agreement's context).

The Bylaws do not give nonmembers rights. Bylaws, Art. I (director *must* be Association member.); Art. IX ("[t]he primary object of the corporation is to operate and maintain the property . . . *for the housing needs of its members*, coupled with the right of occupancy."); Art. XII ("These Restrictions and By-Laws may only be altered, amended or added to at any duly called *meeting of the members*.") (Emphasis Added). (A-134-166, A-147, A-149-150). The Declaration of Condominium also does not confer rights on nonmembers. ¶F, Declaration of Condominium (owner of condominium parcel accepts membership in the Association) (A-152). *See City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000) (one term's expression implies unmentioned terms' exclusion). *See* Fla. Stat. §718.103(3) (defining "Association").

The Association alleged below that the Sagaro Appellees are not lawful unit owners. (A-105-106, A-130-132). The trial court did not hold an evidentiary hearing, and received no evidence as to whether Appellees own units in the condominium.

The factual question of whether Appellees are Association members, however, is not germane to deciding this appeal. Being an "aggrieved member" is a mandatory qualification to arbitrate under Article XV. As a matter of law, Appellees are not aggrieved, as the Association sued them. Appellees cannot be "aggrieved members" even if they were Association members.

Appellees' rely upon antithetical and inapposite authorities. *Seifert v. U. S. Home Corp.*, 750 So. 2d 633 (Fla. 1999) held the mere existence of a contract with an arbitration provision is insufficient to compel arbitration of a dispute because the party seeking arbitration must have the right to arbitrate. By compelling arbitration, the trial court committed reversible error under *Seifert* as Appellees have no arbitration right.

M. P. v. Guiribitey Cosmetic & Beauty Inst., 389 So. 3d 598 (Fla. 3d DCA 2023) concerned whether unconscionability or duress voided an otherwise enforceable arbitration provision. These defenses were not argued or claimed below and are not issues here.

Florida Statute 682.02(1) merely states the legal effect when an arbitration agreement is valid and enforceable.

Finally, Article XV's scope need not be decided. Article XV is unambiguous: a party seeking arbitration must be aggrieved and an Association member. Because the Association sued Appellees, they are not "aggrieved members." Hence, the Association's claims against the Sagaro Appellees are inarbitrable. *Idearc Media Corp. v. Friedman*, 985 So. 2d 1159, 1162 (Fla. 3d DCA 2008) ("where an agreement is unambiguous . . . we enforce the contract as written, no matter how disadvantageous the language might later prove to be.").

II. THE SAGARO APPELLEES ARE NOT IN PRIVITY WITH THE ASSOCIATION.

The Sagaro Appellees contend the Association wrongly argues they are third party beneficiaries *without arbitration rights*. But the Association argued the opposite: Appellees are not intended third-party beneficiaries under the Bylaws, and therefore have no arbitration rights. *See* Appellant's Initial Br. at 42-43. Irrespective of

their status, Appellees cannot demand arbitration because they were sued and are not "aggrieved members."

Appellees further argue they are entitled to arbitration as members, officers or agents within "the organization," which they don't define but presumably they mean the Association. Sagaro Br. at 14. Equating officers and agents with Association members, meaning lawful unit owners, is disingenuous. Irrespective of alleged Association membership, which was not established below, the Sagaro Appellees are not "aggrieved members" under Article XV because the Association sued them.

Appellees next argue they have an arbitration right as officers/agents of Appellee Haven House Property Holdings, LLC ("HHPH"), which they assert is a unit owner and Association member. Agency status is irrelevant. Merely being the agent of a party to an arbitration contract does provide the agent with the right to arbitrate. *Koechli v. BIP Intern., Inc.*, 870 So. 2d 940, 944 (Fla. 1st DCA 2004). Appellees also cannot invoke arbitration because, as discussed, no

Appellee has the status of "aggrieved member" of the Association, *i.e.*, the Association sued Appellees and not vice versa.

The trial court did not hold an evidentiary hearing and made no findings of fact. Thus, Appellees' bare assertions that HHPH is an Association member and that they are HHPH's agents are not evidence, and cannot be considered in this appeal. *Faircloth v. Bliss*, 917 So. 2d 1005,1006-07 (Fla. 4th DCA 2006); *Hitt v. Homes & Land Brokers, Inc.*, 993 So. 2d 1162, 1166 (Fla. 2d DCA 2008).

At bottom, the Association sued Sagaro Appellees. As a result, Appellees are not "aggrieved members." Thus, Appellees have no arbitration right under Article XV.

Finally, Appellee HHPH asserts an arbitration right, although not aggrieved, implying it is an Association member. The Association, however, sued Appellees to set aside HHPH's purported title to eight condominium units which was obtained through a forged Association certificate. (A-104-105, A-130-132).

Under the Declaration of Condominium, "Any attempt to resell or lease a condominium parcel without a prior offer to the

Corporation shall be ***wholly null and void, and shall confer no title or interest whatsoever upon the intended purchaser***." ¶P, Declaration of Condominium (A-159) (Emphasis Added). Moreover, "No unit owner shall have any right to sell his condominium interest, or any part thereof, except as is expressly provided herein." *Id.*

Under the Wrongful Conduct Doctrine, a party cannot assert a right based upon his illegal conduct. *Kaminer v. Eckerd Corp. of Fla.*, 966 So. 2d 452, 454-55 (Fla. 4th DCA 2007). *See Deitrick v. Greaney*, 309 U. S. 190, 196 (1940) ("equity will not permit one to rely on his own wrongful act . . ., to support his own asserted legal title or to defeat a remedy which except for his misconduct would not be available.") (superseded on other grounds); *Glus v. Brooklyn Eastern Terminal*, 359 U.S. 231, 232-33 (1959). ("no man may take advantage of his own wrong.").

Here, the Wrongful Act Doctrine bars HHPH and the other Appellees from using their misconduct as grounds to arbitrate under the Bylaws. *Kaminer v. Eckerd Corp. of Fla.*, 966 So. 2d at 454-55. *See McConnell v. Commonwealth Pictures Corp.*, 7 N.Y.2d 465, 468-

69 (1960) ("a party to an illegal contract cannot ask a court of law to help him carry out his illegal object").

III. THE ASSOCIATION'S CLAIMS AGAINST THE SAGARO APPELLEES FALL OUTSIDE ARTICLE XV'S SCOPE.

Ignoring the "aggrieved member" requirement, the Sagaro Appellees erroneously argue Article XV mandates arbitration of the Association's claims below because they have a nexus to its Bylaws.

The Association's Verified Complaint alleges Appellees hijacked the Association, unlawfully assumed director positions and engaged in thievery, forgery and other tortious and criminal acts. (A-097-132). The Association did not sue Appellees for breaching its Bylaws. (A-116-123, A-124-132). Rather, the Association's claims are brought under Florida Statute 718.111 (Florida Condominium Act, Ch. 718, Fla. Stat.) and the common law. *See Taubenfeld v. Lasko*, 324 So. 3d 529, 537-544 (Fla. 4th DCA 2021) (breach of fiduciary duty and conversion claims against corporate directors and officers).

An association officer or director must discharge his duties in good faith, with ordinary care and in a manner reasonably believed

to be in the association's interest. Fla. Stat. §718.111(1)(d). The statute creates a duty, sets a standard of care and requires the duty be discharged lawfully. *See Florida Discount Props., Inc. v. Windermere Condo., Inc.*, 786 So. 2d 1271, 1272-73 (Fla. 4th DCA 2001) (condominium association judgment against former directors for breaching fiduciary duties arising from corporate opportunity theft); *Oceancrest Condominium Apartments, Inc. v. Donner*, 504 So. 2d 447, 448-450 (Fla. 4th DCA 1987) (developer directors breached duties by failing to collect assessments from developer-owned units).

Section 718.111's fiduciary duty for directors and officers stands independently of condominium declarations and bylaws. Fla. Stat. §718.111(1)(d). Acts of conversion, fraud, self-dealing and betrayal of trust breach the statute. *See Sonny Boy, L.L.C. v. Asnani*, 879 So. 2d 25, 26-29 (Fla. 5th DCA 2004) (affirming dismissal of claims against directors that did not allege fraud and self-dealing).

When the law imposes a duty which is owed generally to others besides the contracting parties in recognition of public policy, a breach of the duty arises in tort, not in contract, and is inarbitrable

unless a contract specifically provides otherwise. *Terminix Int'l Co., L.P. v. Michaels*, 668 So. 2d 1013, 1014-1015 (Fla. 4th DCA 1996), *approved*, *Seifert v. U. S. Home Corp.*, 750 So. 2d 633 (Fla. 1999).

Careplus Health Plans Inc. v. Interamerican Medical Center Group, LLC, 124 So. 3d 968 (Fla. 3d DCA 2013) contradicts Appellees' argument.[4] A party sought arbitration under an agreement without an arbitration clause, bootstrapping it to another agreement that had an arbitration clause. The trial court found no enforceable arbitration agreement and the Third District affirmed: "[t]he absence of any identifiable nexus or significant relationship between the 2010 Agreement and the claims arising out of the 2004 Agreement is fatal to the position taken by CarePlus." 124 So. 3d at 972.

Here,[5] there is no nexus between the Association's claims and

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[4] Appellees misstate *Careplus* as holding: "disputes over which agreement's arbitration clause applied were resolvable within arbitration when there was 'some nexus between the dispute and the contract containing the arbitration clause.'" Sagaro Br. at 15. The quoted language was the defendant's position **not** adopted by the court. *Careplus Health Plans Inc.,* 124 So. 3d at 972.

[5] *Doan v. Amelia Retreat Condominium Ass'n*, 604 So. 2d 1292, 1293 (Fla. 1st DCA 1992) is inapposite. *See* Appellant's Initial Brief,

the Bylaws. The Association seeks to hold the Sagaro Appellees liable directly under Florida statutory and common law for hijacking its corporate entity and looting and victimizing the Association and its members through continuing acts of fraud, conversion and other criminality. *See Schreiber v. Ally Fin., Inc.*, 634 Fed. Appx. 263, 265 (11th Cir. 2015); (plaintiff's statutory and tort claims didn't arise under purchase agreement); *Chun Liu v. Fu Jing Wu*, 2024 U.S. Dist. LEXIS 23850, at *12 (S. D. Fla. January 5, 2024) (same).

The Association never agreed to arbitrate its claims against the Sagaro Appellees. *Florida Dep't of Ins. v. World Re, Inc.*, 615 So. 2d 267, 269 (Fla. 5th DCA 1993). The claims fall outside Article XV's scope even if the Sagaro Appellees were "aggrieved members" which, as a matter of law, they are not.

IV. THE SAGARO APPELLEES CANNOT OBTAIN ARBITRATION UNDER THE DOCTRINE OF EQUITABLE ESTOPPEL.

The Sagaro Appellees speciously argue equitable estoppel requires arbitration of the Association's claims because it "relied

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pp. 19-20.

upon the Declaration [Bylaws] to structure its claims." Sagaro Br. at 18. The Association's claims stand apart from its Bylaws. Moreover, the Association did not and could not have sued Appellees for breaching the Bylaws as they are not parties to them.

Equitable estoppel is unavailable to claim an arbitration right if the plaintiff's claims are based upon duties law otherwise imposes and not pursuant to a contract with an arbitration provision. *Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d 1351, 1354 (11th Cir. 2017). *Accord*, *Chun Liu v. Fu Jing Wu*, 2024 U.S. Dist. LEXIS 23850, at *11 (S. D. Fla. January 5, 2024) (equitable estoppel could not compel arbitration). Equitable estoppel also cannot be used to give a nonparty greater rights than the contract affords the contracting parties. *Marcus v. Fla. Bagels, LLC*, 112 So. 3d 631, 633-635 (Fla. 4th DCA 2013).

Here, the Association did not sue Appellees for breaching the Bylaws, but for tortiously hijacking its corporate entity and appropriating its property. The Association's lawsuit is the affirmative claim of the Association and does not fall under Article

XV. The Association, moreover, could not have sued Appellees for breaching the Bylaws as they are not members of the Association but predators who unlawfully seized director positions and used them to loot the condominium. By seeking arbitration under equitable estoppel, the Sagaro Appellees impermissibly seek rights which Article XV does not provide to the Association and to its members. *Marcus v. Fla. Bagels, LLC*, 112 So. 3d at 633-635.

Hence, equitable estoppel cannot be used to compel arbitration.

V. SECTION VI OF THE SAGARO APPELLEES' BRIEF IS A STEALTH SECOND BRIEF FOR APPELLEE MANAGEMENT 1.

Appellee Management 1, LLC ("Management 1") has counsel who filed an answer brief. The Sagaro Appellees' counsel name their brief, "Appellees' Answer Brief." It does not disclose on whose behalf it was filed. Never having officially appeared for Management 1, the Sagaro Appellees' counsel devote their brief's Section VI to argue that Management 1 is entitled to arbitration. This is counsel's appearance for Management 1.

Candor toward the tribunal is essential. *Boca Burger, Inc. v. Forum*, 912 So. 2d 561,573 (Fla. 2005). An attorney must disclose his representation, and indicate on whose behalf he makes a court filing.[6] Essentially, two briefs have been filed for Management 1 when one is permitted. Appellant respectfully suggests the Court fashion an appropriate remedy.

VI. THE MAY 26, 2024 ORDER IS IN DEROGATION OF THE ASSOCIATION'S JURY TRIAL RIGHT.

Without citing relevant authority,[7] the Sagaro Appellees argue the Association waived its jury trial right by adopting Bylaws with an arbitration clause. Yet, Appellees indisputably are not "aggrieved members" of the Association, and have no arbitration right.

Compulsion of arbitration without a contractual basis impermissibly abrogates the jury trial right. *Seifert v. U. S. Home*

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[6]To avoid confusion, Appellant addresses the Sagaro Appellees' arguments for Management 1 in its reply brief to Management 1's answer brief, at pp. 18-21.

[7]The *Bill Heard Chevrolet v. Wilson*, 877 So. 2d 15 (Fla. 5th DCA 2004) claims, unlike here, were arbitrable. Section 682.03(7) does not abrogate the jury trial right. Fla. Stat. §682.03(7).

Corp., 750 So. 2d 633, 642 (Fla. 1999). The trial court did precisely that, requiring the May 26, 2024 Order's reversal.

CONCLUSION

The Sagaro Appellees are predators who dread the prospect of court scrutiny, preferring arbitration's looser, less exacting rules. But Appellees have no arbitration right, and did not and cannot meet their burden to establish an enforceable arbitration agreement. *UATP Mgmt., LLC v. Barnes*, 320 So. 3d 851, 857 (Fla. 2d DCA 2021).

Article XV's plain and unambiguous language shows the Association never agreed to arbitrate its claims below. *Florida Dep't of Ins. v. World Re, Inc.*, 615 So. 2d 267, 269 (Fla. 5th DCA 1993). Appellees do not meet Article XV's essential "aggrieved member" requirement which disqualifies their arbitration bid. The Association's claims do not hinge on its Bylaws and fall outside Article XV's scope.

The trial judge disregarded Article XV's plain, unambiguous meaning. He impermissibly rewrote Article XV unambiguous terms to render its critical "aggrieved member" requirement meaningless.

Walker v. Corinthians S. Condo. Ass'n, Inc., 49 Fla. L. Weekly D 2119, 2024 Fla. App. LEXIS 8054, at *1 (Fla. 4th DCA Oct. 16, 2024). Directly contravening *Seifert*, the trial court compelled arbitration merely because the Bylaws have an arbitration clause even though it is not an enforceable agreement to arbitrate the Association's claims.

The trial court forced arbitration upon the Association without a contractual basis, and abridged its constitutional right to a jury trial in a court of law. The trial court thereby committed reversible error while rewarding Appellees for their misdeeds.

Accordingly, the trial court's May 26, 2024 Order should be reversed.

December 30, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of Appellant's Reply Brief to the Sagaro Appellees' Answer Brief was served by through the State of Florida efiling portal upon the counsel of record listed on the attached list on December 30, 2024.

/s/Steven F. Samilow
Steven F. Samilow

CERTIFICATION OF COMPLIANCE

Undersigned counsel certifies that this document is typed in Bookman Old Style 14-point font, the words herein do not exceed 4,000, and this document is filed in compliance with Fla. R. App. P. 9.045 and Fla. R. App. P. 9.210.

/s/Steven F. Samilow
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