
**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 INITIAL BRIEF

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STATEMENT OF JURISDICTION

This case is the interlocutory appeal of the lower's tribunal's May 26, 2024 order which granted five separate motions by Appellees to compel the arbitration of Appellant's legal and equitable tort and related claims against them.

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STATEMENT OF THE CASE AND OF THE FACTS[1]

I. INTRODUCTION

Appellant Haven House No. 4, Inc. ("Appellant" or the "Association") is the governing body of Haven House No. 4 condominium ("Haven House 4" or the "Condominium") in Pompano Beach. Appellees are 15 individuals and closely held business entities. They include two former owners and directors and 11 individuals and business entities posing as directors, property managers and owners in the Condominium. None of the Appellees, is a current lawful unit owner or member of the Association.

In the Broward Circuit Court, the Association sued Appellees for, among other things, fraud, conversion of Association funds and other property including its business records, forgery of official signatures on a property transfer approval certificate and reports filed with the Florida Division of Corporations and other fiduciary breaches and requested a jury trial. The essential gravamen is that Appellees, through criminal and tortious acts, hijacked the

[1]"A-page number, l. or ¶" refers to the Appendix and accompanying line or paragraph numbers.

Association's corporate identity and director offices and used them to commit criminal and tortious acts to enrich themselves.

Article XV of the Association's Declaration of Restrictions and By-Laws (the "By-Laws") provides a limited right of arbitration to address the claims of "aggrieved members'" against the Association involving "construction" of its By-Laws or action by its Board of Directors as to its "duties and responsibilities."

As will be discussed, Article XV's arbitration clause is inapplicable to the issues Appellant raised in its Verified Complaint. Appellees are not members of the Association or in privity with it. The Association's claims against Appellees do not concern construction of its By-Laws or action of its Board of Directors concerning its duties and responsibilities. Rather, Appellant's claims are founded upon legal principles enshrined by the common law, Chapter 718, Florida Statutes, and other law. Appellees sought arbitration to avoid being placed under oath to answer for their fraud, forgery and conversion.

On May 26, 2024, after a non-evidentiary hearing, the trial court entered its interlocutory order (the "Order Compelling Arbitration"), which Appellant by this action now appeals. The trial court's Order Compelling Arbitration granted Appellees' five separate

motions to compel the arbitration of Appellant's claims against them. Yet, the trial court did not find, as required, that there is a binding agreement among the parties to arbitrate the claims below. As to one Appellee, the trial judge expressly passed on that duty to the hypothetical arbitrator. Moreover, none of Appellant's claims fall within the scope of arbitration under the By-Laws even if an agreement to arbitrate the claims existed.

II. COURSE OF THE PROCEEDINGS BELOW

On December 2, 2023, the Association filed the action below in the Broward Circuit Court against Appellees Michael C. Sagaro (Sagaro"), Clotill Sagaro, Juan Sagaro (Sagaro, Clotill Sagaro and Juan Sagaro collectively are the "Sagaro Appellees"), Victoria Pristo ("Pristo"), Anthony Colangelo ("Colangelo"), VA Horse Farms, LLC ("VA Horse Farms"), Haven House Property Holdings, LLC. ("HHPH"), Arley Carmona ("Carmona"), Albert Hernandez ("Hernandez"), Management 1, LLC ("Management 1"), Omar Diaz ("Diaz"), Procam Group, LLC ("Procam"), Yoandi Ceballos ("Ceballos"), Eduardo Mauriz ("Mauriz") and Manuel Ojeda ("Ojeda") as well as Defendant Edson Chagas who is not a party to the appeal.

The Association's Verified Complaint[2] alleges 13 claims arising from Appellees' criminal and tortious acts of forgery, conversion, fraud, breach of fiduciary duty and civil conspiracy in their illegal takeover of the Association. (A-097-227; A-001-002). Although the Verified Complaint refers to and quotes terms of the By-Laws and Declaration of Condominium as background, and the instruments are exhibits, Appellant's claims don't aver breach of contract. Nor does their resolution depend upon construction of the By-Laws or the duties or responsibilities of its Board of Directors.

Count I claims damages against the Sagaro Appellees and Appellees Carmona and Hernandez for conversion, fraud, forgery and breach of the fiduciary duties under Florida Statute 718.111(1)(d) that they purported to assume after their illegal appointment to the Board by Pristo and Colangelo. (A-116-117, ¶¶65-68).

Count II claims damages against the Sagaro Appellees,

[2]The Verified Complaint's allegations are sworn under penalty of perjury by the Association's directors and officers: Arthur Stachurski, president/director, Linda Anderson treasurer/director, and Kathleen Garafola, director. (A-229-231). The Court may treat these sworn allegations as testimony. *See Brooks v. Miller*, 78 F.4th 1267, 1272 (11th Cir. 2023). Appellees provided no sworn testimony.

Carmona, Hernandez, Management 1, Diaz and Procam for converting Association's funds and property. (A-118, ¶¶69-71).

Count III claims damages against Management 1, Diaz and Procam for breaching common law and statutory fiduciary duties of fidelity, loyalty and due care that they purported to assume as property managers for the Association and by aiding and abetting the Sagaro Appellees' tortious acts. (A-118-119, ¶¶72-76).

Count IV seeks temporary and permanent injunctive relief against Sagaro, Management 1, Diaz, Procam, Ceballos, Mauriz and Ojeda for acting for the Association without authority. (A-119-121, ¶¶77-85).

Count V seeks declaratory relief that Sagaro, Ceballos, Mauriz and Ojeda lack authority to act for the Association and have usurped the Board's authority. (A-121-123, ¶¶86-91).

Count VI claims damages against Pristo and Colangelo for breaching their director/officer fiduciary duties of loyalty and due care to the Association under Florida Statute 718.111(1)(d). (A-123-124, ¶¶92-97).

Count VII claims damages for civil conspiracy arising from Pristo's, Colangelo's and the Sagaro Appellees' concerted action to

seize control of the Board of Directors for Sagaro's benefit and to arrogate to Sagaro and his agents, without lawful authority, the Board's powers. (A-124-125, ¶¶98-100).

Count VIII seeks declaratory relief that Ceballos, Mauriz and Ojeda lack authority to act for the Association and cannot approve unit 209's sale. Count IX seeks temporary and permanent injunctive relief to bar Ceballos, Mauriz and Ojeda from approving unit 209's sale and from otherwise claiming to act for the Association. (A-125-126, ¶¶101-104; A-126-128, ¶¶105-116).

Count X seeks to impose a constructive trust over its funds and other property held by the Sagaro Appellees, Carmona Hernandez, Management 1, Diaz and Procam. (A-128, ¶¶117-119).

Count XI claims damages for unjust enrichment against the Sagaro Appellees, Carmona and Hernandez, Management 1, Diaz and Procam for converting the Association's books of record, financial accounts and receivables through the false and fraudulent assumption of authority for the Association and abuse of the fiduciary obligations they purported to assume. (A-129, ¶¶120-124).

Count XII claims damages against the Sagaro Appellees, Carmona and Hernandez, Management 1, Diaz and Procam for

conspiring to misuse and steal Association funds and other property, neglecting the fiduciary duties they purported assume for the Association and thwarting unit owners from electing directors.

Count XII claims damages against Ceballos, Mauriz and Ojeda for furthering the Sagaro Appellees' scheme by, among other things, fraudulently acting as Association directors in violation of Florida Statute 718.111(1)(d). (A-129-130, ¶¶125-127).

Count XIII seeks an order to void and set aside the September 26, 2020 sale of the eight units *i.e.*, 105, 210, 211, 304, 312, 107, 201, 308 in the Condominium, by Pristo and VA Horse Farms to Appellee HHPH as it was effected through a phony/forged approval certificate in the name of the Association. (A-130-131, ¶¶128-131).

Appellant's Verified Complaint seeks a jury trial. [A-097].

Aligned in separate groups, Appellees filed the following five motions to compel arbitration of the Association's claims and to stay the lawsuit, arguing the Association's By-Laws require arbitration of the claims against them:[3]

[3]All Appellees sought lengthy extensions to respond to the Verified Complaint and the discovery served with it. (A-001-002).

- Pristo's Motion to Compel Arbitration and to Stay Litigation (February 20, 2024) which Colangelo and VA Horse Farms adopted in toto by joinder (February 21, 2024. (A-232-234; A-235-239);
- Sagaro Appellees' and HHPH's Motion to Compel Arbitration and Stay Proceedings (February 22, 2024). (A-240-246);
- Diaz's and Procam's Motion to Compel Arbitration and Stay Proceedings (March 14, 2024). (A-247-254);
- Management 1's Motion to Compel Arbitration and to Stay the Litigation (March 27, 2024). (A-255-397); and
- Carmona's, Hernandez's, Ceballos', Mauriz's and Ojeda's Motion to Compel Arbitration and Stay Proceedings (April 21, 2024). (A-398-403).

Appellant opposed the motions to compel arbitration. (A-404-416; A-417-432; A-433-445; A-446-459; A-460-473). Appellees, save Management 1, replied to Appellant's responses in opposition. (A-474-479 & A-500-501; A-480-486; A- 487-493; A-494-499).

The trial court held a non-evidentiary hearing on Appellees' motions to compel on May 13, 2024. (A-007-096). The only sworn

facts presented were those in the Association's Verified Amended Complaint. Appellees presented no sworn affidavits at or before the hearing and their motions were not verified or otherwise sworn. The only admissible facts before the trial court were those averred in Appellant's Verified Complaint.

The trial judge fully granted four of Appellees' motions to compel arbitration. As to Management 1, the trial court stayed the Association's claims against it but ruled the arbitrator would determine whether the Association's claims were subject to arbitration. (A-067, ll. 18-25; A-068, 1-25; A-069, ll. 1-25; A-070, ll.1-25; A-071, ll. 1-14). [4]

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[4]At the May 13, 2024 hearing, Appellant told the trial court that Sagaro's attorneys on February 20, 2024 filed a lawsuit in the Association's name styled, *Haven House No. 4, Inc. v. Linda Anderson et al.*, Case No. CACE 24-002348 (Broward Cir. Ct.). The filing was coincident with Appellees' filing of their motions to compel arbitration. (A.027-028). The second case was initiated without Association authority, and the required notices of related cases were not filed. The second case is an end run of this matter while this case is stayed to obtain a declaration that Appellees Ceballos, Mauriz and Ojeda are the Association's directors and prevent the actual directors, Ms. Anderson, Mr. Stachurski and Ms. Garafola, from performing their duties. Sagaro also used the second case to issue a subpoena duces tecum to FPL for information that would disclose the Association's account number and banking information. Counsel for the Association appeared in the second case, moved for a protective order and to disqualify the counsel who filed the case. The presiding

On May 26, 2024, the trial court entered its written Order Granting Defendants' Motions to Compel Arbitration ("Order Compelling Arbitration"). (A-003-006). It provides in relevant part:

> **ORDERED AND ADJUDGED** as follows:
>
> 1. The recorded Declaration of Restrictions and By-Laws of Haven House No. 4 Inc., ("the Declaration") contains an arbitration provision in Article XV which provides:
>
> > 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. 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.,. [sic].
>
> 2. Plaintiff's claims against Defendants Michael C. Sagaro, Clotill Sagaro, Juan Sagaro, Haven House Property Holdings, LLC, Arley Carmona, Albert Hernandez, Yoandi Ceballos, Eduardo Mauriz, Manuel Ojeda, Omar Diaz, Procam Group, LLC, Victoria Pristo, Anthony Colangelo, and VA Horse Farms, LLC ("the Moving Defendants") are arbitrable, as they fundamentally concern core issues

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judge, Circuit Judge Keathan Frink, declined to hear the matter, and on August 5, 2024, he *sua sponte* entered an order transferring it to Judge Haimes.

regarding the control of the Association's Board and the propriety of Moving Defendants' actions under the Declaration.

3. These core issues are inextricably intertwined, requiring interpretation of the Declaration to determine the scope of authority and permissible actions of the Board members. Because resolution of the core issues requires the reference to or construction of the Declaration, the claims against the Moving Defendants have a significant relationship to the Declaration.

4. To the extent there is any doubt regarding compelling arbitration, such doubt must be resolved in favor of arbitration. *Doan v. Amelia Retreat Condominium Ass'n*, 604 So. 2d 1292, 1293 (Fla. 1st DCA 1992) (quoting *Ronbeck Constr. Co. v. Savanna Club Corp.*, 592 So. 2d 344, 346 (Fla. 4th DCA 1992) ("Florida courts, like Federal courts, should resolve all doubts in favor of arbitration rather than against it")).

5. "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration." Fla. Stat. § 682.03(7) (2024).

6. The Arbitrator shall determine whether Management 1, LLC is subject to the arbitration provision of the Declaration.

7. In the event that the case styled, *Haven House No. 4, Inc. v. Linda Anderson, Arthur Stachurski and Kathleen Garafola*, Case Number 002348 (12) is consolidated into this action, the claims in that matter will be arbitrated in the manner set forth herein with the other claims being arbitrated in the same arbitration proceeding to avoid the risk of inconsistent adjudications and the multiplicity of actions as they arise out of a common set of operative facts.

> Accordingly, after due consideration, and for the additional reasons stated on the record at the May 13, 2024 hearing (Court Reporter present), it is
>
> **ORDERED AND ADJUDGED**:
>
> a. Plaintiff's claims against the Moving Defendants are compelled to arbitration.
> b. This action is stayed as to all Defendants pending the outcome of arbitration.

(A-003-006).

This Appeal followed.

As will be explained, the trial court erred by: (1) not determining that the parties have an enforceable agreement to arbitrate the claims at issue and (2) finding that Appellant's claims are within Article XV's scope of arbitration. For these and the other reasons below, the Order Compelling Arbitration should be reversed.

III. STATEMENT OF THE FACTS

Haven House 4 was built 60 years ago, and comprises 36 modest one and two bedroom condominium units in a three-story building abutting East Sample Road in Pompano Beach. (A-100, ¶21). Haven House 4 is one of six almost identical, separately governed condominiums in close proximity along East Sample Road which Haven Plaza developed. All share the "Haven House" name, *i.e.*

Haven House Nos. 1-6. (A-101, ¶22).

Article XV of the Association's By-Laws, enacted 60 years ago, provides:

> 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.
>
> 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).

On or about 2014, Pristo and Colangelo, who are a couple, began buying units in Haven House No. 4. They bought units in other Haven House-named condominiums. Ultimately, they acquired a total of eight units in Haven House 4: units 105, 210, 211, 304, 312, 107, 201, 308 (the "Eight Units"). Colangelo later transferred ownership of his units in Haven House 4 to Appellee VA Horse Farms, a Florida limited liability company that Pristo and he own. (A-103, ¶¶31, 34).

Using guile and ingratiation, Pristo and Colangelo insinuated themselves into the condominiums' administration, securing director and officer positions in Haven House 4 and in the other Haven House condominiums. As of 2019, when the Association's annual meeting and election was held, Appellant's Board of Directors comprised Pristo, Colangelo, Dean Garafola, Kathy Garafola, his wife, and Joey Habib.[5] (A-103-104, ¶¶32-33). They continued in office during 2020 as the May 4, 2020 annual meeting/election was not held because of COVID-19 and never rescheduled. (A-104, ¶33).

Pristo was appointed Association secretary, with responsibility for records. Sometime during 2020, Colangelo became Association president when Mr. Garafola died. (A-103-104, ¶32).

The Association employed Eva Smith as property manager. She suffered from dementia and Pristo and Colangelo took advantage, having her perform work for Haven House Nos. 2 and 3, which they controlled, at the Association's expense. (A-103-104, ¶32).

By 2020, Pristo and Colangelo owned and/or controlled 41

[5]The facts are as averred in Appellant's Verified Complaint.

units in five of the six Haven House-named condominiums,[6] including the Eight Units in the Condominium. (A-104-105, ¶34).

On or about September 26, 2020, Pristo and Colangelo sold their 41 Haven House units, including the Eight Units in the Condominium to Appellee HHPH, which Sagaro owns and/or controls, for nearly $5 million.[7] (A-104-105, ¶34).

The Association's Board never was presented with the sale of the Eight Units to HHPH for approval, as paragraph P of the Declaration of Condominium requires. (A-159). As an end run, Pristo and Colangelo used a phony certificate of approval which bore the forged signature of director Habib,[8] purportedly notarized by Ms.

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[6]The other units included in the September 26, 2020 conveyance to HHPH are in Haven House No. 2, Haven House No. 3, Haven House No. 5 and Haven House No. 6. (A-168-171).

[7]Pristo and Colangelo at that time were in litigation brought by Haven House No. 1 likewise alleging fraud, forgery of the association's president's signature, breach of fiduciary duty and other misconduct. *See Haven House No. 1, Inc. v. Pristo et al.*, CONO 21-023769 (Deluca, J). (A-104, ¶34, fn. 3). This appears why the four units there under their control at the time were unsold. The case eventually settled.

[8]Ms. Habib gave a sworn affidavit dated December 8, 2023 stating under penalty of perjury that: her purported signature on the property approval certificate is not genuine, she never met with Ms. Smith to sign the instrument and she declined to sign a property approval certificate Pristo and Colangelo tendered. (A.512-513, ¶¶3-

Smith, whose competency was doubtful, to complete the sale. The forged certificate of approval then was recorded in the Broward public records as part of the deed. (A-105, ¶35).

As part of the sale consideration, Pristo and Colangelo gave control of the Association's Board of Directors to Sagaro, his wife Clotill Sagaro, and his father Juan Sagaro. This was done *ultra vires* without Board authority, by fiat appointment of the Sagaro Appellees to the Board, thereby giving them majority control. (A-105-106, ¶36; A-106, ¶37).

Thereafter, the Sagaro Appellees hired captive stooge property managers for the Condominium, which they owned and/or controlled, including Appellees Management 1, Diaz and Procam to further their interests to the Association's detriment.

Management 1's motion to compel includes a purported agreement dated June 20, 2023, that Sagaro supposedly signed on the Association's behalf. The "agreement" does not provide for mandatory arbitration. (A-391-397).

The Sagaro Appellees, none of whom is a unit owner, breached

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4). Had the trial court held an evidentiary hearing, these facts would have been elicited.

the fiduciary duties they had arrogated to themselves with Pristo's and Colangelo's connivance, and engaged in acts of misconduct, in which they were joined by Management 1, Diaz, Procam, Carmona, Hernandez, Ceballos, Mauriz and Ojeda. Their acts include conversion, self-dealing, fraud and breaches of fiduciary duty. The Verified Complaint thus alleges that these Appellees:

- Failed to account for $97,222 which Plaintiff had paid for a roof replacement and listed it falsely in the financial statements it prepared for Plaintiff as an unpaid obligation, thereby falsely indicating a loss when the monies owed already had been paid;

- On or about April 27, 2021, Sagaro by check withdrew the sum of $25,000 from Haven House's bank account at Center State Bank, through a check made payable to Haven House No. 4, and deposited it to an unknown Account;

- Failed to account for the monthly maintenance payments it collected from owners;

- Transferred thousands of dollars from Plaintiff's bank accounts for unknown purposes;

- Refused to pay invoices from Broward County for water services for the building, leading to an outstanding $8,000 unpaid water bill, and multiple water service threatened shut-offs to the Condominium; Moreover, Board member Kathy Garafola, whose trust owns five units in the Condominium, paid $1,988.72 in cash out of her own pocket to Broward County to re-activate service after the water to the building was shut-off for non-payment on August 22, 2023;

- Allowed the governmental license for the building elevator to expire without renewing it;

- Failed to repair the elevator after it broke down;

- Disconnected the elevator maintenance room air conditioner even though heat sensitive equipment is located there in order to save money and despite being warned not to do so;

- Failed to maintain the Condominium's fire control system, leading to its malfunction in January 2023, [and] the endangerment of residents;

- Replaced the fire alarm control box without a permit causing the City of Pompano Beach Fire Marshall to impose substantial fines which total more than $10,000 and accrue at the rate of $250 per day;

- Failed in June 2023 to address a roof leak which caused the failure of a fire sensor and instead of repairing the leak, replaced the sensor three times at a cost of $2,600; eventually the problem was solved by a roof repair arranged by Plaintiff's new board which was installed as the result of the recall which became effective on September 30, 2023, as will be explained *infra*.

- Failed to maintain the laundry rooms, leading to the complete breakdown of all washers and dryers which have not been working since 2021, thereby forcing residents to have the inconvenience and expense of using off-site coin laundries;

- Closed and locked the three building laundry rooms, leaving residents without access to resident storage units;

- Failed to enforce bylaws restrictions against tenants of Defendants leading to unresolved noise complaints and trash strewn throughout the common areas;

- Failed to maintain the common areas resulting in trash and garbage not being collected.

- Failed to provide owners with the required full annual financial reports of revenues and expenditures.

- Used monies from Plaintiff's bank account for unknown purposes, thereby depleting available funds;

- Failed to have an independent auditor undertake an audit of Plaintiff's accounts as required by the Condominium Bylaws. (Ex. A, Bylaws, Art. 7, §5);

- Undertook the renovation of the common area club room/recreation room including window replacement without required permits leading the City of Pompano Beach in 2022 to issue a stop work order;

- Closed the common area club room/recreation room to resident use and began using it for an office for Defendant Sagaro's various businesses contrary to the Declaration and without paying the Association rent for its use;
  Approved purchases of units in the Condominium to by Sagaro owned and/or controlled entities without the approval of a legitimate Board of Directors;

- Arranged (by Defendant Diaz) on or about November 15, 2021 for property insurance on the condominium building at the premium cost of $33,295.35, with the amount financed through First Insurance Funding Corp., but thereafter failed to repay the loan in full leading to the cancellation of the coverage, and leaving an outstanding debt owed in the name of Plaintiff for $7,174.56, plus interest, costs and legal fees;

- Made successive false filings with the Florida Division of Corporations misrepresenting the identity of Plaintiff's directors;

- Disabled the digital surveillance cameras which the Association had installed and instead used their transmitter to provide internet services for an adjacent building under Sagaro's control;

- Removed the furniture in the Condominium's common club room/recreation room following the recall of Defendants Carmona and Hernandez as purported "Association" directors;

- Allowed one of their tenants to damage the building by throwing furniture off of the third floor and dragging it down the staircase, damaging the common property;

- Allowed their tenants in units 101 and 308 to place discarded furniture on the southeast corner of the Condominium property and to overfill the building dumpsters with trash;

- Charged Plaintiff an annual fee for cleaning services of approximately $10,000 but failed to provide all but random rudimentary services;

- Purported to notice and schedule an annual meeting and election of directors for August 24, 2022 but refused to accept the candidacies of persons not affiliated with Defendants and cancelled the meeting and election during the meeting and thereafter falsely claimed both had been held.

- Caused the units under Sagaro's ownership and/or control to not pay maintenance the monthly maintenance after January 2021 despite purporting to collect maintenance from other unit owners.

- Failed to pay $4,231.85 to Delaware Elevator Co. for monthly elevator maintenance and repairs, with the amount outstanding over due [sic] since March 2023.

(A-107-110, ¶40).

On or about August 3, 2023, as the City of Pompano Beach was in the midst of serving a summons on the Association for its broken fire alarm, Sagaro resigned from the Board, and his name was removed from Association's sunbiz.org listing. (A-111, ¶43). The Board, still under Sagaro's control, then consisted of Carmona and Hernandez as Sagaro's agents, and Ms. Garafola. (A-111, ¶44).

On September 22, 2023, 19 unit owners, a majority, entered a recall agreement to remove Carmona and Hernandez as directors and replace them with unit owners Linda Anderson and Arthur Stachurski. (A-111, ¶44).

Sagaro responded by stalking, harassing and intimidating Mr. Stachurski, the recall representative, while simultaneously trying to coopt him to go along with him scheme. (A-111-112, ¶45).

The recall became effective on September 30, 2024, after the Sagaro-controlled "Board" cancelled the statutorily required meeting set for September 29, 2024 to consider the recall, and the two strawmen, Hernandez and Carmona, were replaced by Ms. Anderson

and Mr. Stachurski by operation of law. (A-112, ¶46). The current Board consists of Ms. Anderson, Mr. Stachurski and carried over director Garafola.

The Association proceed to immediately terminate Management 1 but the company continued claiming to act for Appellant. (A-112, ¶47). The Association requested its records from Management I and Carmona and Hernandez but the requests were ignored.

It later was discovered that on the eve of the recall's effective date, Carmona and Hernandez purported to schedule an annual meeting/election in the Association's name for December 4, 2023 to undo the recall. (A-112, ¶46).

On October 5, 2023, Sagaro filed a fraudulent amended annual report in the Association's name with the Division of Corporations, falsely reporting Ms. Garafola and he were the Association's directors. He falsely signed the report as "director." (A-114, ¶53). The Division was notified, Mr. Stachurski submitted a sworn statement of fact to the Division and the record was corrected. (A-114, ¶54).

On October 15, 2023, Sagaro filed another fraudulent amended annual report in the Association's name with the Division of Corporations. This time Sagaro forged Ms. Garafola's electronic

signature to falsely report that she and he were the Association's directors. The Division was notified, Ms. Garafola submitted a sworn statement of fact and the record was corrected. (A-114-115, ¶55).

In October 2023, Sagaro contracted, through an entity, to buy unit 209 from Edwin Chagas, Defendant below,[9] intending to close the sale without required Association approval. (A-115, ¶58, A-115-116, ¶59).

On November 16, 2023, Diaz broke/picked the lock on the Association's common room door and trespassed. The matter was reported to the police. (A-116).

On December 4, 2023, Sagaro held a phony Association annual meeting/election whereby he purported to "elect" Ceballos, Mauriz and Ojeda directors. (A-129-130, ¶¶125-127). Ms. Garafola, whom Sagaro claimed was the other director, did not consent and the true Board, including Ms. Garafola, had cancelled the meeting after getting wind of it.

[9]Although served, Mr. Chagas did not appear in the case. The Order Compelling Arbitration effectively stays the case against him. (A-003-006).

IV. STANDARD OF REVIEW

A trial court's "'order granting or denying a motion to compel arbitration is reviewed de novo' when it presents a pure question of law." *Dewees v. Johnson*, 329 So. 3d 765, 769 (Fla. 4th DCA 2001) (quoting *DFC Homes of Fla. v. Lawrence*, 8 So. 3d 1281, 1282 (Fla. 4th DCA 2009)). Here, the trial court made no factual findings and thus a pure question of law is presented. Accordingly, the Court's scope of review is de novo.

SUMMARY OF THE ARGUMENT

The trial court erred in granting Appellees' motions to compel arbitration and to stay the action and its Order Compelling Arbitration should be set aside.

The trial court's Order Compelling Arbitration does not comport with *Seifert*. Before arbitration can be compelled, the following questions must be answered in the positive as to prongs 1 and 2 and in the negative as to prong 3: (1) whether a valid and enforceable arbitration clause exists; (2) whether a valid arbitrable issue exists and (3) whether the right to arbitration has been waived. *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999).

First, the trial court failed to determine if there was an

agreement among the parties to submit the Association's claims to arbitration. There was no such agreement. Article XV of By-Laws authorizes limited arbitration of certain claims of an "aggrieved member" and no other claims. The By-Laws do not define "aggrieved," but it means to suffer an injury. Under Article XV, only the claims of an "aggrieved member against the Association can be arbitrated. Because the Association is the aggrieved party pursuing the claims below, they are not subject to mandatory arbitration.

Second, Appellees cannot invoke arbitration under the By-Laws as they not Association members nor condominium parcel owners as Article XV requires. Appellees are not parties to the By-Laws which is the contract by which they claim compulsory arbitration. As nonparties, Appellees have no right to arbitration.

HHPH is a defendant in one claim brought by the Association, *i.e.*, to void its deed to the Eight Units because of the forged Association property approval certificate, which rendered the deed void and HHPH's title to the units also void. Although HHPH claims to own the Eight Units, its ownership is disputed by the sworn allegations of the Verified Complaint. If these sworn allegations are not dispositive of the issue, the question of HHPH's ownership status

only can be determined through evidence obtained in an evidentiary hearing with a right to discovery provided. Such an hearing, however, is unnecessary as, is explained below, the claim against HHPH is not within the scope of Article XV even if HHPH is found to be a lawful Association member.

Pristo, Colangelo and VA Horse Farms, former unit owners, erroneously claim a right of arbitration under the By-Laws. The By-Laws and Declaration of Condominium make plain that all rights thereunder are limited to the Association and to current owners.

Nor can Appellees invoke arbitration as intended third party beneficiaries of the By-Laws, as there was no expressed intention by the contracting parties to confer that benefit upon them.

Third, the trial court erred in finding that the claims here fall within the scope of arbitration under Article XV of the By-Laws. Article XV makes plain that the scope of arbitration is limited to an aggrieved member's claims against the Association concerning construction of the By-Laws or Board of Directors' action as to its duties and responsibilities.

None of Appellant's claims against any of the Appellees fall within the scope of arbitration under Article XV as they: (1) do not

flow contractually from the construction of its By-Laws, (2) have no logical nexus to its By-Laws as the rule of decision, (3) do not rely upon the By-Laws as the basis to impose liability on Appellees and (4) do not involve Board of Directors' action involving its duties or responsibilities.

Fourth, Appellees cannot claim arbitration under the By-Laws under equitable estoppel. Appellant's claims against Appellees do not arise under the By-Laws and Appellant is not relying on the By-Laws to assert its claims against Appellees. Appellant's claims against Appellees principally are based on Florida statutory and common law and fall outside the limited scope of arbitration under Article XV.

Fifth, the trial court erred in directing the arbitrator to decide if Appellant's claims against Management 1 are arbitrable as the decision rests with the trial judge.

Finally, the Order Compelling Arbitration is in derogation of Appellant's right to a jury trial as the claims at issue are inarbitrable as a matter of law.

For all of these reasons, the trial court's May 26, 2024 Order Compelling Arbitration must be vacated and set aside.

ARGUMENT

In *Seifert v. U.S. Home Corp.* 750 So. 2d 633, 636 (Fla. 1999), the Florida Supreme Court articulated the test to determine if arbitration can be compelled:

> there are three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived.

Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999) (Wrongful death claim inarbitrable under home buyer/builder contract).[10]

During the May 13, 2024 hearing, the Association's counsel articulated the legal issues before the trial court:

> Mr. Samilow: the Seifert case clearly says that in order for there to be arbitration, they have to have an enforceable contract for it. It has to cover the subject matter that is discussed in the arbitration clause because you can't force people to arbitrate what they haven't agreed to. And the claims that you want to arbitrate have to fall within it.

(A-022, ll. 20-25, A-023, ll. 1-2). As explained below, *Seifert's* first two prongs cannot be met here. Appellees are not in privity with the

[10]The *Seifert* test applies to arbitration under Florida and federal law. 1906. *Collins LLC v. Romero*, 346 So. 3d 1262, 1264-65 (Fla. 3rd DCA 2022). *See* The Florida Arbitration Act, Chapter 682, Florida Statutes; the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

Association and the claims here are not within the scope of arbitration. The trial court thus erred in compelling arbitration.

I. THERE IS NO ENFORCEABLE AGREEMENT TO ARBITRATE THE ASSOCIATION'S CLAIMS BELOW

A. Article XV Excludes Appellant's Claims.

The Florida Arbitration Code promotes the arbitration of civil disputes. Florida Statute 682.02(1) sets forth the requirements of an agreement to arbitrate:

> An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

Fla. Stat. §682.02(1).

When a party believes claims are arbitrable, he must make a demand to the opposing party. If denied, he must move to compel arbitration. Fla. Stat. §682.03(1). Appellees skipped to second step.

The trial court must determine "whether a valid written agreement to arbitrate exists." *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999). The decision cannot be shifted to the arbitrator unless the parties have so agreed. *Airbnb, Inc. v. Doe*, 336 So. 3d 698, 703, 705-06 (Fla. 2022) (Federal Arbitration Act case).

The party seeking arbitration bears the burden to establish there is an enforceable to arbitrate the claims at issue. *Steve Owren, Inc. v. Connolly*, 877 So. 2d 918, 919-20 (Fla. 4th DCA 2004) (arbitration denied where party never signed agreement). *Accord*, *Fla. Power & Light Co. v. Road Rock, Inc.*, 920 So. 2d 201, 203 (Fla. 4th DCA 2006); *Shearson, Lehman, Hutton, Inc. v. Lifshutz*, 595 So. 2d 996, 997 (Fla. 4th DCA 1992).

To determine arbitrability, a court first must decide if the parties contractually agreed to arbitrate the issues. *Sitarik v. JFK Med. Ctr. Ltd. P'ships*, 7 So. 3d 576, 578 (4th DCA 2009). *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) ("the first task . . . is to determine whether the parties agreed to arbitrate that dispute.").

In *Beck Auto Sales, Inc. v. Asbury Jax Ford, LLC*, 249 So.3d 765, 767-68 (Fla. 1st DCA 2018), a car dealership sued a former employee and a competitor for conspiring to steal "business worth millions of dollars." There was an arbitration agreement between the dealership and the ex-employee, but the trial court denied arbitration and the First District affirmed. The court held that the arbitration agreement was limited to disputes "between the parties" and did not cover

disputes with the nonparty competitor.

Here, as in *Beck*, Appellees are not parties to the By-Laws and Appellant never agreed to arbitrate the claims at issue. Moreover, *Beck* is consistent with *Seifert*. Despite the law's preference for arbitration, "no party may be forced to submit a dispute to arbitration that the party did not intend and agree to arbitrate." *Seifert*, 750 So. 2d at 636 (citation omitted). *Accord*, *Nestler-Poletto Realty, Inc. v. Kassin*, 730 So. 2d 324, 326 (Fla. 4th DCA 1999) ("The general rule favoring arbitration does not support forcing a party into arbitration when that party did not agree to arbitrate.").

"[B]ecause arbitration provisions are contractual in nature, construction of such provisions and the contracts in which they appear remains a matter of contract interpretation." *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999). Thus, "[d]etermining whether an arbitrable issue exists requires the court to examine the plain language of the parties' arbitration agreement." *Dewees v. Johnson*, 329 So. 3d 765, 769 (Fla. 4th DCA 2021).

As this Court has held:

> Notwithstanding that arbitration is favored in the law, construction of an arbitration clause remains subject to the contract law requirement "that the court discern the

> intent of the parties from the language used in their agreement.

Citigroup, Inc. v. Amodio, 894 So. 2d 296, 298 (Fla. 4th DCA 2005).

"The intent of the parties to a contract, as manifested in the plain language of the arbitration provision and contract itself, determines whether a dispute is subject to arbitration," *see Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013), and "not the after-the-fact testimony of the parties." *Bill Heard Chevrolet Corp. v. Wilson*, 877 So. 2d 15 (Fla. 5th DCA 2004).

"[T]he language used in a contract is the best evidence of the intent and meaning of the parties." *Boat Town U.S.A., Inc. v. Mercury Marine Div. of Brunswick Corp.*, 364 So. 2d 15, 17 (Fla. 4th DCA 1978). "It is fundamental that where a contract is clear and unambiguous in its terms, the court may not give those terms any meaning beyond the plain meaning of the words contained therein." *GEICO Indem. Co. v. Walker*, 319 So. 3d 661, 665 (Fla. 4th DCA 2021).

Ambiguities are construed against the party seeking to compel arbitration. *Ocwen Fed. Bank FSB v. LVWD, Ltd.*, 766 So. 2d 248, 249 (Fla. 4th DCA 2000). Thus, "the rule of law in Florida that ambiguous

provisions dealing with arbitration will be construed against arbitrating disputes arising out of a contract or its performance." *Malone & Hyde, Inc. v. RTC Transp., Inc.*, 515 So. 2d 365, 366 (Fla. 4th 1987).

Here, Article XV's scope is exceedingly narrow. Article XV does not require the "arbitration [of] any existing or subsequent controversy arising between the parties." *See* Fla. Stat. §682.02(1). Article XV's narrow scope is evidenced by its use of the adjective "aggrieved" as a modifier to the noun "member." Aggrieved means "suffering from an infringement or denial of legal rights." Merriam-Webster, Online Dictionary. *See* Oxford Advanced American Dictionary ("suffering unfair or illegal treatment and making a complaint."); Wiktionary ("Having one's rights denied or curtailed.").

As this Court has noted, Black's Law Dictionary defines aggrieved as including "'1. (Of a person or entity) having legal rights that are adversely affected; having been harmed by an infringement of legal rights." *Stewart Agency, Inc. v. Arrigo Enters.*, 266 So. 3d 207, 213 (Fla. 4th DCA 2019) (citing *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 171 (Fla. 1st DCA 2015) and Black's Law Dictionary, (10th Ed. 2014)).

The By-Laws' drafters, presumably attorneys for the

Condominium's developer, could have defined "aggrieved members" as members. They chose instead to modify members with the adjective "aggrieved." This shows the intention to limit arbitration to claims brought by members who are "aggrieved," *i.e.*, injured. Injury connotes a corresponding need for redress of the grievance or injury.

The only party Article XV identifies as aggrieved, *i.e.*, injured, is an "aggrieved member" of the Association, indicating his legal rights have been invaded. Article XV further indicates that an aggrieved member is entitled to arbitrate his claims against the Association but only if they involve "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."

Article XV's arbitration subjects further indicate its limited scope. The phrase "[C]onstruction 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" logically cannot be the subject of a claim by the Association against a member. To the extent there is ambiguity, it is construed against arbitrability. *Ocwen Fed. Bank FSB v. LVWD, Ltd.*,

766 So. 2d at 249; *Malone & Hyde, Inc. v. RTC Transp., Inc.*, 515 So. 2d at 366.

At most, Article XV provides for one way arbitration by an aggrieved member of his claims against the Association if they concern "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." This is the only reasonable interpretation. *See Camputaro v. Neff Marine, Inc.*, 2023 U.S. Dist. LEXIS 238263 *6 (S. D. Fla. December 13, 2023) (Federal Arbitration Act). Article XV does not confer the right to arbitrate any other claims.

on its face, Article XV does not require arbitration of Appellant's claims against Appellees irrespective of whether Appellees are parties to the By-Laws, which as discussed below, they are not; the claims below are outside Article XV's scope of arbitrability. If there is ambiguity in Article XV, it must be construed against a finding of arbitrability. *Ocwen Fed. Bank FSB v. LVWD, Ltd.*, 766 So. 2d at 249.

Furthermore, even if the By-Laws' arbitration clause was applicable, it would apply only to claims of aggrieved condominium parcel owners, a category to which no Appellee belongs.

Yet, the trial court, contravening *Seifert*, never determined whether there is a binding contract between the parties requiring arbitration of the claims below. The trial court merely presupposed that Article XV is a binding agreement to arbitrate these claims.

Appellees presented no facts to the trial court to contradict the Verified Complaint's sworn allegations. Thus, on the record below, there was no proper basis for the trial court to conclude that Article XV is an enforceable agreement to arbitrate the claims below. Nonetheless, the trial court compelled arbitration, apparently swayed by Appellees' counsel argument, and thereby committed reversible error. *See Mattamy Fla. LLC v. Reserve at Loch Lake Homeowners Ass'n Inc.*, 341 So. 3d 372 (Fla. 5th DCA 2022) (upholding denial of arbitration where motion was unsupported by affidavits, failed to address the facts and was supported only by counsel's argument).

Because there is no enforceable agreement to arbitrate the claims below, the Order Compelling Arbitration should be reversed.

B. Appellees are Not Parties to the By-Laws or Intended Beneficiaries and Cannot Invoke Arbitration

1. Appellees are Not in Privity with the Association.

A contractual arbitration provision is a "personal covenant"

binding only upon "the parties to the covenant." *Federated Title Insurers v. Ward*, 538 So. 2d 890, 891 (Fla. 4th DCA 1989). Only parties to an arbitration agreement can be compelled to arbitrate. *Stalley v. Transitional Hosps. Corp. of Tampa*, 44 So. 3d 627, 629 (Fla. 2d DCA 2010) ("only the actual parties to the arbitration agreement can be compelled to arbitrate"); *Karlen v. Gulf and Western Industries*, 336 So.2d 461 (Fla. 3d DCA 1976) (same).

This Court's decision in *Sitarik v. JFK Med. Ctr. Ltd. P'ships*, 7 So. 3d 576 (Fla. 4th DCA 2009) is illustrative. An employer terminated an anesthesiologist after he reported a piece of sponge was left in a patient after surgery. The anesthesiologist sued his employer, the hospital and the involved doctors, advancing whistleblower claims. The employer was a party to a professional services agreement ("PSA") with the hospital which the anesthesiologist did not sign. The PSA had an arbitration clause but it failed to define the parties to the agreement or who were subject to arbitration. The trial court compelled arbitration, determining that a valid agreement to arbitrate existed. This Court reversed, finding that the trial court essentially put the cart before the horse as it failed to determine if the anesthesiologist was a party to the PSA. This Court further found

that the anesthesiologist was not a party to the PSA.

A similar scenario occurred here. The trial court determined, without taking evidence, that the claims below fall within Article XV's arbitration clause. Yet, the trial court failed to find, as required, that there is a binding agreement to arbitrate, meaning that Appellees are parties to the By-Laws, which they are not. Because there is no finding of consent/agreement to arbitrate among the parties to this case, the trial court's Order Compelling Arbitration cannot be upheld.

Given the forged approval certificate overlaying this case, *Palm Garden of Healthcare Holdings, LLC v. Haydu*, 209 So. 3d 636, 639-40 (Fla. 5th DCA 2017) is instructive. A suit for damages was filed on a former nursing home resident's behalf against the home. The facility sought arbitration under an agreement the resident's daughter had signed for her mother, without authorization; the daughter had informed the facility of her lack of authority. The Fifth District affirmed the denial of the facility's motion to compel, finding there was no enforceable agreement to arbitrate.

As explained, none of Appellees have standing to invoke arbitration under the By-Laws.

a. Sagaro Appellees, Carmona, Hernandez, Ceballos, Mauriz and Ojeda are not Association Members.

The Sagaro Appellees, Carmona, Hernandez, Ceballos, Mauriz and Ojeda were sued individually. They are not Association members but argue they have a contractual right to arbitration under Article XV as they represent unnamed unit owners. The record contains no evidence to support their bald assertions made through counsel.

These Appellees individually are not current lawful unit owners and Association members and thus cannot invoke arbitration under the By-Laws. The By-Laws and Condominium Declaration did not contemplate units being owned by business entities and they accord no rights to the representatives of such entities. (A-134-166, A-147, A-149-150). *See Simbabear, LLC v. Muskat*, 944 So. 2d 457, 458-59 (Fla. 4th DCA 2006).

b. HHPH is Not a Lawful Member of the Association

HHPH is the only Appellee claiming to currently own units in the Condominium, but it is not a lawful unit owner or Association member. HHPH obtained its purported title to the Eight Units in spite of the Board never being presented with HHPH's offer to purchase, as the Declaration of Condominium requires. (A-159, ¶P). HHPH's

purchase came to pass because Pristo and Colangelo forged then director Joey Habib's signature on an Association property approval certificate to further their agreement with Sagaro, and used the forged instrument to close the transaction.

The forged instrument was recorded in the Broward County Public Records as part of the deed. (A-167-179, Ex. B to Verified Complaint). Consequently, the deed is void as is HHPH's title to the Eight Units. *Weiss v. Bi 27, LLC*, 2023 Fla. App. LEXIS 8446,*8, 48 Fla. L. Weekly D 2337 (Fla. 3rd DCA Dec. 13, 2023) (forged deed; "[T]he unyielding legal principle [is] that fraud in the execution renders an instrument affecting the title to real property void.").

The Association's Declaration of Condominium does not recognize ownership transfers the Association does not approve. (A-159, ¶P). HHPH never became an Association member because of the fraud and forgery of which it was a complicit beneficiary and thereby unlawfully purported to assume rights reserved exclusively to lawful Association members. *Cabrerizo v. Fortune Int'l Realty*, 760 So. 2d 228 (Fla. 3rd DCA 2020) ("no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime.").

This evidence was presented below through the Verified Complaint's sworn allegations, which were not rebutted. The trial court needed to accept the allegations as true or hold an evidentiary hearing. *Massa v. Michael Ridard Hosp. LLC*, 306 So. 3d 1106, 1109 (Fla. 3rd DCA 2020). It did neither. Regardless, Appellant's single claim against HHPH is inarbitrable as the claim is outside the scope of arbitration under Article XV.

c. Pristo, Colangelo and VA Horse Farms Have no Rights as Former Owners

Pristo, Colangelo and VA Horse Farms are former owners and former Association members with no arbitration right. This is made plain by the By-Laws and Declaration of Condominium. They limit rights to the Association and to current members. (A-134-166, A-147, A-149-150).

Pristo, Colangelo and VA Horse Farms are not current Association members and therefore cannot invoke arbitration under Article XV. *Weiss Capital Mgmt. v. Crowder*, 964 So. 2d 865 (Fla. 4th DCA 2007) (employer claims against former employee inarbitrable under NASD arbitration code absent an agreement between employer and NASD). The By-Laws do not contemplate or authorize former

members exercising rights to arbitration when they have no present interest in the Association and the scope of Article XV clearly is limited to specified limited grievances of current members.[11]

2. Appellees are Not Third-Party Beneficiaries.

Besides not being parties to the By-laws, Appellees are not intended third-party beneficiaries of the instrument.

"'Non-parties to a contract containing an arbitration clause cannot compel parties to a contract to arbitrate unless it is determined they are intended third parties beneficiaries of the arbitration provision which was executed for their primary and direct benefit." *Morgan Stanley DW Inc. v. Halliday*, 873 So. 2d 400, 403 (Fla. 4th DCA 2004). *Accord*, *Nestler-Poletto Realty, Inc. v. Kassin*, 730 So. 2d 324, 326 (Fla. 4th DCA 1999).

"A third party is an intended beneficiary, and thus able to sue on a contract, only if the parties to the contract intended to primarily and directly benefit the third party." *Aetna Cas. & Sur. Co. v. Jelac Corp.*, 505 So. 2d 37, 38 (Fla. 4th DCA 1987).

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[11]Should the Court determine there are disputed material facts concerning arbitrability, the case should be remanded for discovery and an evidentiary hearing. *Estate of Blanchard v. Cent. Park Lodges (Tarpon Springs), Inc.*, 805 So. 2d 6, 9 (Fla. 2nd DCA 2001).

"Florida law looks to 'nature or terms of a contract' to find the parties' clear or manifest intent that it 'be for the benefit of a third party.'" *Jenne v. Church & Tower, Inc.*, 814 So. 2d 522, 524 (Fla. 4th DCA 2002) (quoting *Am. Sur. Co. of N.Y. v. Smith*, 100 Fla. 1012, 130 So. 440, 441 (Fla. 1930)). All contracting parties must have intended to benefit the third party. *Caretta Trucking, Inc. v. Cheoy Lee Shipyards Ltd.*, 647 So. 2d 1028, 1031 (Fla. 4th DCA 1994).

Here, the By-Laws indicate no intention to benefit any third-parties including Appellees by conferring upon them any rights including arbitration. In fact, the second paragraph of Article XV makes plain that only condominium parcel owners and thus members have rights thereunder. Appellees are not and cannot be intended third party beneficiaries. *Peters v. Keyes Co.*, 402 Fed. Appx. 448, 450-51 (11th Cir. 2010) (real estate broker was not third party beneficiary of buyer contract with lender) (applying Florida law).

For all of these reasons, the Order Compelling Arbitration should be reversed. *See Roberts v. Lloyd*, 685 So. 2d 102, 102 (Fla. 4th DCA 1997) ("no evidence that the parties . . . intended to primarily and directly benefit Phoenix so as to make it a third party beneficiary entitled to rely on its terms.").

II. THE ISSUES RAISED BY ASSOCIATION'S CLAIMS ARE INARBITRABLE

Article XV's arbitrable scope is:

> 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.

(A-147).

It is well-settled that "arbitration is mandatory only where the subject matter of the controversy falls within what the parties have agreed will be submitted to arbitration." *Ocwen Fed. Bank FSB v. LVWD, Ltd.*, 766 So. 2d 248, 249 (Fla. 4th DCA 2000). "[I]t is the language of the agreement that defines the scope of an arbitration agreement." *Citigroup, Inc. v. Amodio*, 894 So. 2d 296, 298 (Fla. 4th DCA 2005).

Arbitrability depends upon whether there is "a significant relationship between the claim and the agreement containing the arbitration clause." *CarePlus Health Plans, Inc. v. Interamerican Medical Center Group, LLC*, 124 So. 3d 968, 972 (Fla. 3d DCA 2013) (citing *Seifert*, 750 So. 2d at 637-38). As the Florida Supreme Court has explained:

> [A] claim has a nexus to a contract and arises from the

> terms of the contract if it emanates from an inimitable duty created by the parties' unique contractual relationship. In contrast, a claim does not have a nexus to a contract if it pertains to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public.

Jackson v. Shakespeare Found., Inc., 108 So. 3d 587, 593 (Fla. 2013).

In determining if a claim falls within an arbitration agreement's scope, the court "must look beyond the legal cause of action and examine the factual allegations of the complaint." *Fla. Envtl. Servs. v. Rentoumis*, 950 So.2d 466 (Fla. 4th DCA 2007) (citation omitted).

"'Determining whether an arbitrable issue exists requires the court to examine the plain language of the parties' arbitration agreement.'" *MacDougald Ltd. P'ship, LLP v. Rays Baseball Club, LLC*, 371 So. 3d 988, 991 (Fla. 2nd DCA 2023) (quoting *Bailey v. Women's Pelvic Health, LLC*, 309 So. 3d 698, 701 (Fla. 1st DCA 2020)).

"[T]he mere fact that the dispute would not have arisen but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one 'arising out of or relating to' the agreement." *Seifert*, 750 So. 2d at 638-39. *See Saunders v. St. Cloud 192 Pet Doc Hosp.*, LLC, 224 So. 3d 336, 338-39 (Fla. 5th DCA 2017) (reversing order compelling

arbitration of veterinarian's discrimination and negligence claims against employer as they were outside the arbitration clause's scope).

"[A]rbitration is mandatory only where the subject matter of the controversy falls within what the parties have agreed will be submitted to arbitration." *Ocwen Fed. Bank FSB v. LVWD, Ltd.*, 766 So. 2d 248, 249 (Fla. 4th DCA 2000). "[I]t is the language of the agreement that defines the scope of an arbitration agreement." *Citigroup, Inc. v. Amodio*, 894 So. 2d at 298. *See Citigroup, Inc. v. Boles*, 914 So. 2d 23, 25 (Fla. 4th DCA 2005) (affirming denial of motion to compel arbitration of tort claims).

"[F]or a tort claim to be considered 'arising out of or relating to' an agreement, it must, at a minimum, raise some issue the resolution of which requires reference to or construction of some portion of the contract itself." *Seifert*, 750 So. 2d at 638-39. If "the duty alleged to be breached is one imposed by law in recognition of public policy and is generally owed to others besides the contracting parties, then a dispute regarding such a breach is not one arising from the contract, but sounds in tort. Therefore, a contractually-imposed arbitration requirement . . . would not apply to such a claim." *Id.* On the other hand, "[i]f the contract places the parties in a unique relationship

that creates new duties not otherwise imposed by law, then a dispute regarding a breach of a contractually-imposed is one that arises from the contract." *Id.*

Tortious conduct and contractual issues unrelated to the subject of an agreement to arbitrate do not present arbitrable issues. *All-South Subcontractors, Inc. v. Amerigas Propane, Inc.*, 206 So. 3d 77, 82-83 (Fla. 1st DCA 2016).

"[A] claim does not have a nexus to a contract if it pertains to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public." *Dewees v. Johnson*, 329 So. 3d 765, 770 (Fla. 4th DCA 2021) (quoting *Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013)).

Florida Statute 718.111(1)(d), which is the principal basis of the Appellant's claims below, as alleged in the Verified Complaint, provides in relevant part that:

> As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the

> association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. . . . the theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014.

Fla. Stat. §718.111(1)(d). These statutory duties of directors, officers and agents of condominiums established to act in good faith, with ordinary care etc., are universal requirements applicable irrespective of the terms of a condominium's declaration and bylaws.

"[A] claim does not have a nexus to a contract if it pertains to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public." *Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013).

A contracting party does not rely on a contract to assert its claims when they arise from obligations that the law otherwise imposes. *Leidel v. Coinbase, Inc.*, 729 F. App'x 883, 887-88 (11th Cir.

2018) (applying Florida law). Thus, the breaches flow from the law and not from the contract. *Leidel*, 729 F. App'x at 887-88.

This Court's decision in *Dewees v. Johnson*, 329 So. 3d 765, 767-770 (Fla. 4th DCA 2021) is instructive. Dewees bought a home from a developer, and the contract provided for binding arbitration of "all post-closing claims, disputes, and controversies" between the parties." 18 months after the closing, Dewees rode her bicycle in the community to the developer's warranty office. The roadway was under construction and unlevel. "[T]he front tire on Dewees's bicycle . . . hit the roadway lip, causing her to lose control. She fell off her bicycle, and sustained injuries." In reversing the order compelling arbitration of her negligence and breach of duty claims against the developer and staying the case, this Court determined that Dewees' claims did not implicate contractual duties but involved duties the developer owed generally to the public and that there was not a significant relationship between Dewees' negligence and breach of duty claims and the purchase agreement that contained the arbitration clause. *Cf. Lennar Homes v. Wilkinsky* , 353 So.3d 654, 657 (Fla. 4th DCA 2023) (reversing denial of motion to compel arbitration of personal injury claims; arbitration clause had broad

inclusive language, absent in *Dewees*, that covered the claims which were significantly related to the contract).

Similarly, in *Brea 3-2 LLC v. Hagshama Fla. 8 Sarasota, LLC*, 327 So. 3d 926 (Fla. 3rd DCA 2021), the parties entered real property development agreements. The general partner sued a contracting party for usury. The trial court compelled arbitration and the Third District reversed. The court ruled the arbitration clause was narrow, the usury claim did not arise under the arbitration clause's scope and the alleged breached duty was imposed by law and not by contract.

Here, Appellant's claims are independent from the By-Laws and outside of the scope of any arbitrable issue. The Verified Complaint alleges Pristo and Colangelo fraudulently used a forged certificate of approval to transfer ownership of the Eight Units in the Condominium to HHPH, an entity under Appellee Sagaro's control and appointed the Sagaro Appellees to Appellant's Board of Directors without the authority to do so.

The Association alleges that notwithstanding the fraudulent nature of their appointment as directors, the Sagaro Appellees assumed duties of loyalty and fidelity to the Association. The

Association alleges they breached their duties through criminal and fraudulent acts of converting Association funds and other property, failing to pay expenses, not complying with governmental health and safety rules and failing to pay the water bills, leading to service shut off etc.

The Association alleges Diaz, Procam and Management 1, purported to act as Association's property managers without lawful authority and furthered Sagaro's illegal acts by, among other things, converting the Association's funds and other property and incurring debts in the Association's name that were not paid. The conduct falls far afield of the arbitration clause in its plain language and expressed intent.

The Association further alleges under oath that Carmona and Hernandez impersonated Association directors to aid and abet Sagaro's conversion of Association funds and other property. These actions are not contemplated by nor connected with the scope of arbitration under Article XV but inarbitrable torts.

The Association alleges Ceballos, Mauriz and Ojeda are impersonating directors of the Association as Sagaro's agents and planning to illegally approve the sale of unit 209 owned by Mr.

Chagas.

On their face, Appellant's claims against Appellees: (1) do not flow from construction of its By-Laws, (2) have no logical nexus to the By-Laws as the rule of decision, (3) are not using the By-Laws as the basis to impose liability of Appellees and (4) do not involve Board of Directors' action as to its duties or responsibilities. Instead, the Association's claims arise from Appellees acts of forgery, fraud, conversion and other tortious conduct which violate Florida statutory and common law and implicate public policy concerns about the operation of condominium associations and thereby impacts the public. *See Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013).

Moreover, the facts averred do not have a logical nexus to the Association's 60-year old By-Laws as the rule of decision nor a significant relationship to them. The issues involve statutory and common law duty breaches, *i.e.*, torts and other intentional wrongdoing. Appellees' forgery, fraud and conversion are not intertwined with the By-Laws. Appellees, as active perpetrators of fraudulent and criminal schemes in violation of Florida Statute 718.111(1)(d) and other laws, should not be able to avail themselves

of arbitration. Appellees' actions are not actions of the Association's Board of Directors, but the *ultra vires* acts of rogue directors and imposters. The duties Appellees breached are the same duties incumbent upon all persons purporting to serve as the directors or the agents of a Florida condominium.

In light of Florida law and consistent with *Dewees* and *Brea 3-2*, courts lacks discretion to rewrite an arbitration clause to broaden it to include any and all claims because the party bringing the lawsuit is a condominium association.

Appellees sought out Haven House 4 for nefarious purposes and cannot benefit from their misconduct under the pretense of exercising contractual rights to which they are not lawful parties.

Concern about such improper actions involving condominium directors, officers and managers is an area of significant public concern. Governor Ron DeSantis recently signed legislation, The 2024 Condo Rights Bill, (HB 1021) effective on July 1, 2024, see Ch. 2024-244, §§ 1-23, Laws of Fla. (2024), which updates the statutes governing condominiums to address transparency, accountability and structural safety. It imposes criminal penalties for financial and other crimes. Many areas of the legislation intersect with the issues

in this case.

It is telling that even if the By-Laws did not exist, Appellant could sue Appellees for the identical tortious conduct and statutory violations alleged in Verified Complaint and Appellees would be subject to being found liable. Ergo, this illustrates that absence of a nexus between the facts averred in the Verified Complaint and the arbitration clause of Article XV.

In their motions to compel arbitration and in their counsel's argument at the hearing, Appellees extensively relied upon the First District's decision in *Doan v. Amelia Retreat Condominium Ass'n*, 604 So. 2d 1292, 1293 (Fla. 1st DCA 1992). *Doan*, moreover, is cited in the trial court's May 26, 2024 Order Compelling Arbitration. The facts of this case, however, stand in stark contrast to *Doan.*

Doan owned several units in a condominium whose association amended its bylaws to bar leaseholds of less than 30 days. The declaration provided for amendment by super-majority vote and for members to arbitrate any controversy arising from the construction of or compliance with any provision of the declaration. Doan alleged the bylaws amendment was passed in violation of the super majority requirement. He filed suit for declaratory relief against the

association to determine the amendment's validity. The First District reversed the trial court's denial of Doan's motion to compel, finding his claim arbitrable as it pertained to the construction of the declaration, and doubts about arbitrability should have been resolved in favor of arbitration.

Here, unlike *Doan*, the Association has not challenged a provision of its Bylaws or Declaration of Condominium. It brought the action below against non-members who breached their duties as directors and officers and against others who did so by posing as its directors and agents. The Association seeks damages and injunctive and declaratory relief to address criminal and tortious acts of forgery, conversion, fraud, breach of fiduciary duty and other misconduct.

In sum, the Association's claims against Appellees are not within the scope of arbitration under Article XV. This is true even if Article XV applies to the Association's claims – which it does not.

III. APPELLEES CANNOT INVOKE EQUITABLE ESTOPPEL TO COMPEL ARBITRATION

In their motions and replies below, the Sagaro Appellees, and Appellees Diaz, Procam, Carmona, Hernandez, Ceballos, Mauriz and Ojeda assert that equitable estoppel entitles them to arbitration

under Article XV of the By-Laws as the core issues of the case below are interrelated and rest upon the Association's By-Laws.

The trial court essentially adopted Appellees' conclusory estoppel argument in its Order Compelling Arbitration, without labelling its legal conclusion as such:

> These core issues are inextricably intertwined, requiring interpretation of the Declaration to determine the scope of authority and permissible actions of the Board members. Because resolution of the core issues requires the reference to or construction of the Declaration, the claims against the Moving Defendants have a significant relationship to the Declaration.

(A-004, ¶3). The Order Compelling Arbitration does not explain how the Association's claims are intertwined with the By-Laws, but merely announces that conclusion. This tracks the conclusory assertions made by Appellees in their motions and replies below.

Equitable estoppel, however, has no application to this case. Equitable estoppel to compel arbitration is grounded in the notion that a party cannot claim the benefit of some contract provisions while simultaneously seeking to avoid the burden of other contract provisions. *Camputaro v. Neff Marine, Inc.*, 2023 U.S. Dist. LEXIS 238263, *10-11 (S. D. Fla. December 13, 2023) (applying Florida law).

Use of equitable estoppel to compel arbitration is limited to two

circumstances:

- One or more signatories to a contract with an arbitration clause engage in concerted action with a nonparty.
- A signatory to an arbitration agreement sues a nonparty and the signatory's claims arise under a contract that affords an arbitration right ***and*** the signatory is relying on the same contract to assert its claims against the nonparty.

Beck Auto Sales, Inc. v. Asbury Jax Ford, LLC, 249 So. 3d 765, 767 (Fla. 1st DCA 2018) (denying application of equitable estoppel to invoke arbitration); *Rolls-Royce PLC v. Royal Caribbean Cruises LTD.*, 960 So. 2d 768, 770-71 (Fla. 3d DCA 2007) (same)*; Paquin v. Campbell*, 378 So. 3d 686, 690-91 (Fla. 5th DCA 2024) (same).

None of the exceptions apply here. Even if they did, equitable estoppel cannot be a basis for arbitration as Appellant's claims do not fall within the scope of the By-Laws' arbitration clause. *Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d 1351, 1354 (11th Cir. 2017) ("A non-signatory . . . cannot invoke . . . [of equitable estoppel] to compel arbitration of claims that are not within the scope of the arbitration clause.") (applying Florida law).

Certain cases are instructive. In *Fla. Rds. Trucking, LLC v. Zion*

Jacksonville, LLC, 384 So. 3d 817 (Fla. 5th DCA 2024), an entity owned land endowed with an abundant sand deposit that a contractor needed for road construction. The two companies entered an agreement for sand excavation and removal which had an arbitration provision providing that "Any controversy or claim of Buyer against Seller or Seller against Buyer or its surety shall, at the option of Buyer or Buyer's surety and at any time, be resolved by arbitration pursuant to rules determined by Buyer." In a separate agreement, the contractor hired several trucking companies to haul material and debris away from the site. The property owner later sued the contractor and the trucking companies for litter and trespass, alleging they dug an enormous pit and used its property as "a dump site for mass quantities of sludge and construction debris."

The trucking companies moved to compel arbitration under the agreement between the landowner and the contractor on grounds of equitable estoppel. The trial court denied the motion and the Fifth District affirmed, ruling that the trucking companies were not parties to the contract, and the claims against the trucking companies were outside the arbitration clause's scope.

Likewise, in *It Works Mktg. v. Melaleuca, Inc.*, 2021 U.S. Dist.

LEXIS 80298, *2-10 (M. D. Fla. April 27, 2021) (applying Florida law), It Works, a beauty and health products marketer, sued competitor Melaleuca and individuals who formerly worked as its distributors. It Works alleged Melaleuca tortiously interfered with its business relationships and violated federal and state laws governing trademarks and prohibiting false advertising and trade secret theft.

The gravamen of It Works' claims was that Melaleuca hired the individual defendants while they were under contract to it to learn its confidential business information and trade secrets. Each individual defendant's contract with It works had an arbitration clause.

Aiming to bootstrap the arbitration clause in the distributor agreements between It Works and the individual defendants, Melaleuca moved to dismiss or alternatively to compel arbitration under equitable estoppel principles. The district court denied arbitration. First, It Works' claims against Melaleuca fell outside the arbitration clause's scope. Second, It Works claims principally were based on statutory law and not the distributor agreements.

Here, as in *Fla. Rds. Trucking, LLC v. Zion Jacksonville, LLC* and *It Works Mktg. v. Melaleuca, Inc.*, there is no contractual privity between the Association and Appellees. Appellant's claims principally

rely upon Appellees' violations of Florida statutory and common law, not its 60-year old By-Laws, and fall outside Article XV's scope. Thus equitable estoppel is not available. *See Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d at 1354.

As a matter of law, equitable estoppel cannot be invoked to compel arbitration of the Association's claims. For these reasons too, the trial court's Order Compelling Arbitration should be reversed.

IV. THE TRIAL COURT AND NOT THE ARBITRATOR DECIDES WHETHER APPELLANT'S CLAIMS AGAINST MANAGEMENT 1 ARE SUBJECT TO ARBITRATION

In its Order Compelling Arbitration, the trial court stayed the Association's claims against Management 1 and held that: "The Arbitrator shall determine whether Management 1, LLC is subject to the arbitration provision of the Declaration." (A-004, ¶6). The By-Laws' arbitration clause, Article XV, upon which the trial court relied, does not provide for the arbitrator to determine arbitrability.

In *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999), the Florida Supreme Court held that the trial court, not the arbitrator, determines "whether a valid written agreement to arbitrate exists." The arbitrator makes the arbitrability determination only if the parties' agreement so provides. *United States Fire Ins. Co. v. Am.*

Walks at Port St. Lucie, LLC, 386 So. 3d 575 (Fla. 4th DCA 2024) (by contract, arbitrator decides arbitrability); *Russell v. Hydroprocessing Assocs., LLC*, 324 So. 3d 549 (Fla. 1st DCA 2021) (same).

Appellee Management 1 is not a party to the By-Laws, and its alleged rendering of services does not confer an arbitration right. Management 1 attached an alleged contract with the Association to its motion that does not provide for arbitration. (A-391-397). The inconsistency alone shows Appellee has no right to arbitration.

The trial court's Order Compelling Arbitration impermissibly shifted responsibility for determining the arbitrability of the Appellant's claims against Management 1 to the arbitrator while staying the claims against this Appellee. In so doing, the trial court failed to follow controlling law under *Seifert*. Moreover, the trial court deprived Appellant of its right to seek redress of its claims in court.

The trial court's Order Compelling Arbitration should be reversed with directions to deny Management 1's motion to compel.

V. THE CLAIMS BELOW ARE INARBITRABLE AND HENCE THE ORDER COMPELLING ARBITRATION IS IN DEROGATION OF APPELLANT'S FUNDAMENTAL RIGHT TO A JURY TRIAL

The right to a jury trial is fundamental. Fla. Const. Art. I, § 22. When parties "freely contract to submit their claims to arbitration, it

is generally accepted that they do so with the understanding that the right to a jury trial is being waived." *Leslie v. Carnival Corp.*, 22 So. 3d 567, 583 (Fla. 3rd DCA 2009). As this Court has held:

> The right to a trial by jury may be waived in civil cases by litigants. *Baron Auctioneer, Inc. v. Ball*, 674 So. 2d 212, 214 (Fla. 4th DCA 1996). However, "[w]aiver of the right to a jury trial is to be strictly construed and not to be lightly inferred." *Poller v. First Va. Mortg. & Real Estate Inv. Trust*, 471 So. 2d 104, 106 (Fla. 3d DCA 1985) (citing *Boston Rug Galleries, Inc. v. William Iselin & Co.*, 212 So. 2d 58 (Fla. 4th DCA 1968)). Questions as to the right to a trial by jury should be resolved in favor of the party seeking the jury trial. *Hollywood, Inc. v. City of Hollywood*, 321 So. 2d 65, 71 (Fla. 1975); *Fox v. City of Pompano Beach*, 984 So. 2d 664, 668 (Fla. 4th DCA 2008).

Amquip Crane Rental, LLC v. Vercon Constr. Mgmt., 60 So. 3d 536 (Fla. 4th DCA 2011).

Appellant's Verified Complaint demands a jury trial. *See* F. R. Civ. P. 1.430. The fundamental jury trial right cannot lightly tossed aside when there is no legal basis to compel arbitration of claims.

As shown by the record, the Association did not agree to arbitrate its claims below against Appellees, nonmembers, and thereby knowingly waive its fundamental right to a jury trial. Even if there were an agreement to arbitrate under Article XV, Appellant's claims do not fall within the scope of arbitration.

The Order Compelling Arbitration is contrary to law and in derogation of Appellant's fundamental right to a jury trial on the legal claims asserted. It should be reversed.

CONCLUSION

The trial court's Order Compelling Arbitration contravenes controlling law under *Seifert.* The trial court failed to find an agreement to arbitrate the claims at issue. In fact, there is none. Even if there was an agreement to arbitrate these claims, they fall squarely outside the arbitrable scope of Article XV of the By-Laws.

Appellant's claims arise from Appellees' breaches of legally imposed duties under Florida common and statutory law which are not particular to the Association. They are the same duties all directors, officers and managers owe Florida condominium associations. Appellant's claims sound in common law and statutory tort and/or equity arising in tort and not in contract. Moreover, Appellant's claims do not depend upon a nexus with the By-Laws.

The draftsmen of the Association's 60-year old By-laws never intended them as cudgel for interlopers, like Appellees, who do not have a legitimate stake in the Condominium. Appellees demanded arbitration to derail the case below, thwart discovery of incriminatory

evidence and to avoid going under oath about their criminal and fraudulent activities. In other words, Appellees sought arbitration so their misconduct would not see the light of day.

The Order Compelling Arbitration deprives the Association (and its unit owners) of its day in court and its fundamental constitutional right to a jury trial while doing nothing to further public policy. In fact, it does the exact opposite, allowing Appellees to shield their egregious acts of misconduct from the scrutiny and accountability that only the court-supervised litigation process can afford.

For the foregoing reasons, the trial court's May 26, 2024 Order Compelling Arbitration is contrary to law and should be reversed.

Dated: August 14, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of Appellant's initial brief was served by the State of Florida efiling portal upon all counsel of record listed on the attached list, on August 14, 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 13,000, and this document is filed in compliance with Fla. R. App. P. 9.045 and Fla. R. App. P. 9.210.

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