

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

IVONNE SUAREZ, et al.,
Appellants,

CASE NO.: 4D2024-0170
L.T.CACE-18-008348

v.

PARK CROSSING HOMEOWNERS'
ASSOCIATION, INC., et al.,
Appellees.

_____ /

SUPPLEMENTAL JURISDICTIONAL STATEMENT

COMES NOW, Appellants, IVONNE SUAREZ, and DIEGO SUAREZ, individually and on behalf of their son, GABRIEL SUAREZ, by and through the undersigned counsel, hereby file this brief statement explaining the basis of this Court's subject matter jurisdiction over this appeal.

1. This court has subject matter jurisdiction over the instant appeal as an appealable nonfinal order modifying an injunction under Fla. R. App. P. 9.030(b)(1)(B) and 9.130(3)(B) ("Appeals to the district courts of appeal of nonfinal orders are limited to those that: . . . (B)

- grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions.”).
2. It is relevant to this court’s jurisdiction to have the full picture of the procedural posture occurring in both this appeal as well as the appeal from the same lower case currently being brought by the Park Crossing Homeowners’ Association (“Park Crossing”).
 3. On April 16, 2018, Park Crossing filed a complaint against the Suarez family for declaratory and injunctive relief.
 4. On May 29, 2018, the Suarez family counterclaimed against Park Crossing and Martha Fernandez for their violations of the Fair Housing Act.
 5. Trial continued for five days in this case, from September 12, 2022, through September 16, 2022, with the following results: (1) a jury verdict in favor of Park Crossing on their declaratory relief count, (2) a request by the judge for the parties to agree on the injunctive relief language themselves, and (3) an order from the judge directing a verdict against the Suarez family on their FHA claim.
 6. Almost immediately, on September 30th, the Suarez family filed a motion for new trial on their FHA claim. Over a year later, on November 27, 2023, the lower court granted the their motion.

However, Park Crossing then filed a motion for rehearing on this order, and then, without waiting for the lower court to rule, appealed the order. This Court notified the parties and the lower tribunal that it could not take the appeal until the outstanding issues below were resolved. After receiving further briefing, the lower court ruled on Park Crossing's motion for rehearing, amending its previous order granting a new trial so as to just apply to Park Crossing, and not to Martha Fernandez as well.

7. While these events occurred, Park Crossing also took action right after trial—filing a motion to compel final judgment on October 11, 2022. A year later, on October 18, 2023, the lower court granted their motion, but without providing final relief—

[I]t is hereby ORDERED and ADJUDGED that: The parties confer to see if they can agree on the wording of the injunction that would prevent noise from the Townhouse from being heard by neighbors in their townhouses. The parties should confer and file the agreed upon wording within 20 days of this order. If not, the parties shall set a short hearing as soon as possible where the Court will hear from the parties, their objections to the following language: Ivonne Suarez, as owner of the Townhouse, shall prohibit noises from inside her Townhouse that are loud enough to be heard by people in adjoining townhouses as well as the townhouses across the street. See *Polk Cnty. v. Mitchell*, 931 So.2d 922, 926 (2 DCA 2006).

This order merely gives further direction to the parties to resolve the question of injunctive relief on their own. There was still additional court labor before the cause could be terminated.

8. After additional briefing by the parties, on December 18th, the lower court issued its final order on Park Crossing's requested injunctive relief. While this order was titled as an amended final order, its substance provided for the only final judicial action by the lower court as to Park Crossing's injunctive relief count:

The Court therefore amends the October 18, 2023 Order as follows:

The October 18, 2023 Order shall remain unchanged except the Court hereby replaces the paragraph number 1. after the ORDERED and ADJUDGED language with the following language:

1. Within 30 days of this Order, Ivonne Suarez shall ensure that anyone in her Townhouse shall maintain sound decibel limits from the property line of her Townhouse as follows: From 7:00 a.m. to 10 p.m. of the same day, the ambient noise levels of no more than 66 dBa and from 10:00 p.m. until 7:00 a.m. of the next day, ambient noise levels of no more than 60 dBa. Unless the parties agree otherwise in writing, the decibels shall be measured from a wall-based decibel meter(s) placed just outside the Townhouse's property line on a wall (or walls) adjoining the Townhouse. Unless the parties agree in writing to the specific decibel meter(s), the decibel meter(s) shall measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in the American National Standards Institute Publication 51.41971, or the latest version thereof. (see

https://codelibrary.amlegal.com/codes/pembrokepines/latest/pembrokepines_fl/0-0-0-67635) The Plaintiff shall be responsible for placing and maintaining the wall-based decibel meter(s). The decibel meters shall be regularly checked for proper calibration at least once a year (or per the manufacturer's recommendation whichever is more frequent). Ivonne Suarez shall pay for one of the decibel meters. Plaintiff shall pay for any additional decibel meters. Plaintiff shall ensure that the decibel meter(s) can be read by either Plaintiff or Defendants. This reading can at present be done through the free downloadable application of Tuya Smart. Plaintiff will not be responsible for providing internet access that may be necessary for Defendants to access Tuya Smart.

This order marked the end of this cause as it was before the lower court.

9. At present, there are two issues on appeal before this Court—Park Crossing’s newly ripe challenge to the lower court’s grant of a new trial on the FHA claim and the Suarezes’ challenge to the lower court’s injunction.
10. As previously stated, this court has subject matter jurisdiction over the Suarezes’ challenge to the lower court’s injunctive relief order as an appealable nonfinal order modifying an injunction under Fla. R. App. P. 9.030(b)(1)(B) and 9.130(3)(B) (“Appeals to the district courts of appeal of nonfinal orders are limited to those that:

. . . (B) grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions.”).

11. The final judicial action on the injunctive relief in this case did not occur by the “Order Granting Motion for Final Judgment on Injunction,” issued on October 18, 2023, but instead terminated with the court’s December “Order Amending the October 18, 2023, Order Granting Plaintiff’s Motion for Entry of Final Judgment on Injunction.”

12. The October order, as excerpted above, was not yet appealable because it explicitly held a space open for additional judicial action. It was not until the lower court amended this order in December that it terminated the need for future judicial action.

13. The December order, though actually providing final action, was technically a modification of the October injunctive order.

WHEREFORE, Appellants, by and through the undersigned, respectfully submit this supplemental statement as to the basis for this Court’s subject-matter jurisdiction.

Respectfully submitted the 8th day of February 2024.

By: /s/ Leigh C. Markowitz
Leigh C. Markowitz, Esq.
Fla. Bar No.: 1017900

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 8, 2024, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal which will send notice of electronic filing to all parties and counsel of record to include Guy M. Shir, at gshir@shirlawgroup.com, and Patrick Dervishi, at pdervishi@shirlawgroup.com.

Respectfully submitted,

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