

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

Case No. 4D2023-3116  
L.T. No. CACE 18-008348

PARK CROSSING HOMEOWNERS  
ASSOCIATION, INC.,

Appellant/Cross-Appellee

v.

IVONNE SUAREZ, DIEGO SUAREZ,  
individually and on behalf of their son,  
GABRIEL SUAREZ,

Appellees/Cross-Appellant.

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**ANSWER BRIEF**

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## **PREFACE**

For ease of reference, Appellant, PARK CROSSING HOMEOWNERS ASSOCIATION, INC., will be referred as “Appellant or Association.” Appellees, IVONNE SUAREZ, DIEGO SUAREZ, individually and on behalf of their son, GABRIEL SUAREZ, shall be referred as “the Suarezes.”

In addition, references to the record on appeal will be marked as [R. ] followed by the page number.

**TABLE OF CONTENTS**

**TABLE OF CITATIONS.....iv**

**INTRODUCTION ..... 1**

**STATEMENT OF THE FACTS AND THE CASE..... 2**

**SUMMARY OF ARGUMENT ..... 3**

**ARGUMENT ..... 6**

**I. Standard of Review ..... 6**

**II. The Lower Court sitting in equity properly entered a reasonable injunction that balanced the equities and allowed all the parties, including Gabriel Suarez to enjoy their homes peacefully ..... 7**

**A. The prohibitory injunction is narrowly tailored to achieve continuing compliance with the Association’s governing documents..... 9**

**B. The Lower Court fashioned the remedy specific to the case and the claims presented. .... 15**

**C. The Lower Court made sufficient findings of fact to support its award of injunction in favor of the Association and against the Suarezes. .... 21**

**D. The injunction serves and benefits the Park Crossing neighbors and community. .... 29**

**E. Suarezes’ FHA alleged error is not before this Court..... 31**

<b>III. The Lower Court correctly entered a directed verdict in favor of Martha Fernandez, individually.....</b>	<b>32</b>
<b>CONCLUSION .....</b>	<b>38</b>
<b>CERTIFICATE OF COMPLIANCE.....</b>	<b>39</b>
<b>CERTIFICATE OF SERVICE.....</b>	<b>40</b>

## **TABLE OF CITATIONS**

<b>Case Name</b>	<b>Page</b>
<i>Abbey Park Homeowners Ass'n v. Bowen</i> , 508 So. 2d 554 (Fla. 4th DCA 1987) .....	11
<i>Alorda v. Sutton Place Homeowners Association, Inc.</i> , 82 So.2d 1077 (Fla. 2d DCA 2012) .....	24
<i>APS Sports Collectibles, Inc. v. Sports Time, Inc.</i> , 299 F.3d 624 (7th Cir. 2002) .....	37
<i>Ares v. Cypress Park Garden Homes I Condo. Ass'n, Inc.</i> , 696 So. 2d 885 (Fla. 2d DCA 1997) .....	12
<i>Ashear v. Sklarey</i> , 247 So. 3d 574 (Fla. 3d DCA 2018) .....	6
<i>Auto Zone Stores, Inc. v. Northeast Plaza Venture LLC</i> , 934 So.2d 670 (Fla. 2d DCA 2006) .....	25
<i>Belle Glade Chevrolet–Cadillac Buick Pontiac Oldsmobile, Inc. v. Figgie</i> , 54 So.3d 991 (Fla. 4th DCA 2010).....	25
<i>Blue Reef Holding Corp. v. Coyne</i> , 645 So.2d 1053 (Fla. 4th DCA 1994) .....	25
<i>City of Jacksonville v. Schumann</i> , 199 So. 2d 727 (Fla. 1st DCA 1967) .....	19
<i>Clark v. Bluewater Key RV Ownership Park Prop. Owners Ass'n</i> , 226 So. 3d 276 (Fla. 3d DCA 2017) .....	19
<i>Connors v. Lake Dexter Woods Homeowners Ass'n, Inc.</i> , 50 So. 3d 1212, 1213 (Fla. 2d DCA 2010).....	30

<b>Case Name</b>	<b>Page</b>
Copemann v. Briel, 2011 WL 2292113 (N.D.Fla. 2011) .....	34, 35
Credit Counseling Found., Inc. v. Hylkema, 958 So. 2d 1059 (Fla. 4th DCA 2007) .....	6
Cypress Isle at the Polo Club Condo. Assn., Inc v. Shelton, Arb. Case No. 98-4090 (July 22, 1998) .....	27
Degge v. First State Bank of Eustis, 145 Fla. 438, 199 So. 564 (1941) .....	18
Europco Management Company of America v. Smith, 572 So. 2d 963 (Fla. 1st DCA 1990) .....	25
Glazer v. Glazer, 374 F.2d 390 (5th Cir. 1967) .....	37
Goldschmidt v. Holman, 571 So. 2d 422 (Fla. 1990) .....	26
Goodell v. Goodell, 421 So. 2d 736 (Fla. 4th DCA 1982) .....	12
Green v. Century 21, 740 F.2d 460, 465 (6th Cir. 1984) .....	37
Hanks v. Hamilton, 339 So.2d 1122 (Fla. 4th DCA 1976) .....	27, 28
Hemisphere Building Co. Inc. v. Village of Richton Park, et al., 1996 WL 721132 (N.D.Ill. 1996) .....	34
Hidden Harbour Estates, Inc. v. Basso, 393 So.2d 637 (Fla. 4th DCA 1981) .....	24

<b>Case Name</b>	<b>Page</b>
<i>Hollywood Towers Condo. Ass'n, Inc. v. Hampton,</i> 40 So. 3d 784 (Fla. 4d DCA 2010) .....	25
<i>Housing Opportunities Project for Excellence, Inc. v. Key Colony No. 4, Condominium Assoc., Inc.,</i> 510 F.Supp.2d 1003 (S.D. Fla. 2007) .....	36
<i>Indian Trail Homeowners Ass'n, Inc. v. Roberts,</i> 577 So. 2d 998 (Fla. 4th DCA 1991) .....	11
<i>Johnson v. Killian,</i> 27 So. 2d 345 (Fla. 1946). .....	13
<i>Killearn Acres Homeowners Association, Inc. v. Keever,</i> 595 So.2d 1019 (Fla. 1st DCA 1992).....	25
<i>Lake Hamilton Lakeshore Owners Ass'n v. Neidlinger,</i> 182 So. 3d 738 (Fla. 2d DCA 2015) .....	19
<i>Mayor's Jewelers, Inc. v. State of Cal. Pub. Employees' Ret. Sys.,</i> 685 So. 2d 904 (Fla. 4th DCA 1996) .....	9, 10
<i>Meadowbriar Home for Children, Inc. v. Gunn,</i> 81 F.3d 521 (5th Cir. 1996) .....	35
<i>Meruelo v. Mark Andrew of Palm Beaches, Ltd.,</i> 12 So. 3d 247, 250 (Fla. 4 <sup>th</sup> DCA 2009) .....	34
<i>Mitchell v. Beach Club of Hallandale Condo. Ass'n, Inc.,</i> 17 So. 3d 1265 (Fla. 4 DCA 2009) .....	25
<i>Munao v. Homeowners Ass'n of La Buona Vita Mobile Home Park, Inc.,</i> 752 So. 2d 1272 (Fla. 4th DCA 2000) .....	12
<i>Polk Cnty. v. Mitchell,</i> 931 So.2d 922 (Fla. 2d DCA 2006) .....	13

<b>Case Name</b>	<b>Page</b>
<i>Prisco v. Forest Villas Condominium Apartments, Inc.</i> 847 So.2d 1012 (Fla. 4th DCA 2003) .....	24
<i>Roebuck v. Sills,</i> 306 So. 3d 374 (Fla. 1st DCA 2020) .....	18, 19
<i>Saadeh v. Stanton Rowing Found. Inc.,</i> 912 So. 2d 28 (Fla. 1st DCA 2005) .....	19
<i>Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer,</i> 6 F. Supp. 3d 1272, 1294 (S.D. Fla. 2014) .....	35
<i>Schroeder v. Gebhart,</i> 825 So. 2d 442 (Fla. 5th DCA 2002) .....	18
<i>State Tr. Realty, LLC v. Deutsche Bank Nat. Tr. Co. Americas,</i> 207 So. 3d 923 (Fla. 4th DCA 2016) .....	6, 28
<i>The Gardens At Pembroke Lakes Condominium Association, Inc., v. Clementi, Arb. Case No. 00-1594,</i> Summary Final Order, (Dec. 14, 2000) .....	26, 27
<i>Tibbs v. State,</i> 397 So. 2d 1120 (Fla. 1981).....	7
<i>U Shop Rite, Inc. v. Richard's Paint Mfg. Co.,</i> 369 So. 2d 1033 (Fla. 4th DCA 1979) .....	11
<i>Wicker v. Bd. of Pub. Instruction of Dade County,</i> 106 So.2d 550 (Fla.1958) .....	18

**STATUTES AND OTHER AUTHORITIES**

42 USC §3604(f)(1)..... 32

Section 720.305(1), Fla. Stat. .... 23

Section 720.303, Fla. Stat. ....25, 38

## **INTRODUCTION**

The Lower Court appropriately issued a narrow injunction against the Suarezes, based on the jury's finding of a violation and substantial evidence and testimony presented, particularly on Count II of the Association's Complaint for injunctive relief. This injunction, consistent with the Suarezes' own recommendations, is well-supported by established legal authority, including precedents from this Court. Nonetheless, the Suarezes argue the injunction is broad and perpetual although the final judgment as amended clearly details the factual basis and justification for the Lower Court's narrowly tailored injunction.

Additionally, the Lower Court appropriately granted a directed verdict on Count I of Suarezes' Counterclaim under the Fair Housing Act, which alleged discriminatory conduct purportedly when the Association intended to evict Gabriel Suarez out of his home because of his disability. Despite multiple opportunities at trial and post-trial motion practices, the Suarezes failed to provide specific evidence justifying individual liability for Martha Fernandez other than she voted with the other board members in favor of bringing a legal action against the Suarezes and raised her

complaints and those of other neighbors to the board for discussion and resolution. These limited acts are not sufficient to impose individual liability upon Martha Fernandez.

### **STATEMENT OF FACTS AND THE CASE**

The Association relies upon its Statement of Facts and the Case as contained in its Initial Brief filed with this court as part of its appeal of the order of the Lower Court granting new trial to Suarezes on their Count I of the Counterclaim (Denying or making a dwelling unavailable).

Furthermore, the Association rejects certain statements made by the Suarezes in their Initial Brief as unsupported by the record on appeal or are simply the Suarezes' interpretation or opinion. By way of example, the Association rejects the following:

- i. Martha Fernandez complained to her fellow board members about Gabriel alleging that his manifestations of autism constituted noises violating the community's governing documents.
- ii. As a result of [Martha Fernandez'] complaint, the Association brought legal action against the Suarezes.
- iii. Gabriel had a change in his medication, which made it difficult for him to go out.
- iv. Gabriel does not run around in the common areas.

- v. Martha Fernandez was the intended beneficiary of the lawsuit against the Suarezes.
- vi. The Association required additional services for Gabriel, and required soundproofing for the home as part of the relief sought in the case—these were not required or demanded and they were suggestions offered to assist the Lower Court craft a narrow injunctive relief such that the interests of all parties were fully accommodated, especially affording Gabriel an opportunity to enjoy his home as well.<sup>1</sup>

### **SUMMARY OF THE ARGUMENT**

The Lower Court correctly entered a final judgment awarding a narrowly tailored injunction in favor of the Association on its Count II of the Complaint.<sup>2</sup> This relief was supported by the jury’s verdict on Count I for declaratory relief, which found a violation of Article 10(F) of the Association’s Declaration. Moreover, the Lower Court

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<sup>1</sup> Interestingly, the Suarezes acknowledge that they were able to secure additional one-on-one companion services after trial while arguing and testifying at trial that Mr. Merino, the services coordinator, would not be able to obtain such services through state-funded programs.

<sup>2</sup> The Suarezes did not appeal the jury’s verdict finding the Suarezes in violation of Article 10(f) as part of the Association’s Count I of the Complaint. Based on well-established authorities, with many of them coming from this Court, entitlement to injunctive relief is established once a violation is proved. A trial court, sitting in equity, has the authority to fashion a remedy that would address the case before it but the remedy itself must be granted, as here, once the violation is shown.

relied on its own assessment of the evidence and witness testimony at trial, including testimony from the adjoining neighbors and other residents who stated that Gabriel Suarez unreasonably interfered with their right to peacefully enjoy their homes. These neighbors testified to specific issues, such as Gabriel's damaging personal property and frequent loud noises at various hours, particularly early in the morning when left alone and unrestrained by his father for most of the day.

The injunctive relief is warranted based on the facts of this case, as the Lower Court carefully balanced the equities and spent considerable time crafting an injunction that would allow Gabriel to enjoy his home without causing unreasonable interference to the neighbors. Not only does the Final Judgment contain all the necessary factual basis for the entry of the injunction, but Florida law is well-established that harm is presumed once a violation of an association's governing documents is demonstrated. The Association became entitled to have an injunction entered in its favor with the Lower Court having broad discretion crafting specific ways to address the specific violation.

The Suarezes attempt to reframe the Association's claim as one of common law nuisance hoping to muddy the waters and avoid the presumption of harm. Such attempt cannot prevail. Injunctive relief is routinely awarded by Florida courts to address violations on covenant enforcement actions involving homeowners associations, and this case is no different. Association's injunction is a proper remedy and to address a violation of its Declaration.

Furthermore, the Suarezes have failed to demonstrate that the Lower Court erred when it issued a directed verdict in favor of Martha Fernandez on Count I of their Counterclaim. The Suarezes were given multiple opportunities to present evidence to support individual liability for Martha Fernandez under the Fair Housing Act. The Suarezes failed to identify any such evidence other than Martha Fernandez' agreement with the other board members to initiate the lawsuit against the Suarezes and bring a simple noise complaint to the board for discussion as requested by the other adjoining neighbor to the Suarezes.

For these reasons, this court should affirm the Lower Court's final judgment for injunctive relief as well as the directed verdict in favor of Martha Fernandez.

## **ARGUMENT**

### **I. Standard of Review**

The Suarezes seek the reversal of a Final Judgment entered after a four-day bench trial where the jury found the Suarezes in violation of the Association's Declaration and the Lower Court made detailed specific findings of fact upon the evidence and testimony submitted at trial and through numerous motions and hearings after the jury verdict. "When reviewing a judgment rendered after a nonjury trial, the trial court's findings of fact come to the appellate court with a presumption of correctness and will not be disturbed unless they are clearly erroneous." *State Tr. Realty, LLC v. Deutsche Bank Nat. Tr. Co. Americas*, 207 So. 3d 923, 925 (Fla. 4th DCA 2016). As such, a trial court's findings of fact "are reviewed for competent, substantial evidence." *Ashear v. Sklarey*, 247 So. 3d 574, 577 (Fla. 3d DCA 2018).

Significantly, "it is not the function of an appellate court to reevaluate the evidence and substitute its judgment for that of the finder of fact." *Credit Counseling Found., Inc. v. Hylkema*, 958 So. 2d 1059, 1061 (Fla. 4th DCA 2007). It is not the role of an appellate court to retry a case or reweigh conflicting evidence submitted to

the trier of fact, and indeed an appellate court draws all reasonable inferences in favor of the verdict on appeal. *See Tibbs v. State*, 397 So. 2d 1120, 1123 (Fla. 1981), *aff'd sub nom. Tibbs v. Fla.*, 457 U.S. 31, 102 S. Ct. 2211, 72 L. Ed. 2d 652 (1982)

**II. The Lower Court sitting in equity properly entered a reasonable injunction that balanced the equities and allowed all the parties, including Gabriel Suarez to enjoy their homes peacefully.**

The Lower Court sat as a court of equity, taking great care to allow the parties first the opportunity to fully present their case before the jury. The parties agreed that the jury would resolve Count I of the Complaint, which sought declaratory relief. Accordingly, the jury heard testimony, reviewed evidence from both sides, and ultimately reached a clear and specific verdict finding the Suarezes in violation of Article 10(F) of the Declaration.[R. ] Relying on this verdict and the evidence and testimony, and after many motions and hearings, the Lower Court then issued a judgment in favor of the Association on Count II for injunctive relief. The Lower Court was specific in granting a “prohibitory injunction.” [R. 5729]

The record on appeal demonstrates the Lower Court’s commitment to balancing of the equities and to allow the Suarezes

a meaningful opportunity to continue caring for their son, Gabriel Suarez, while also ensuring compliance with the Association's governing documents. The Lower Court also aimed to allow the neighbors and the other homeowners to enjoy their property rights peacefully, as protected by the Association's governing documents and especially Article 10(F), which the jury and the Lower Court found as being violated by the Suarezes. After numerous hearings and ample opportunities for the Suarezes to propose specific methods for addressing the interferences and noise violations of Article 10(F), the Lower Court issued a narrow injunction. The injunction required the Suarezes to prevent further interference with the mail of the neighbors and to ensure that Gabriel Suarez, along with all other residents of the home, would adhere to the Association's Declaration. Given the nature of the noise complaints, the Lower Court adopted decibel levels from the City of Pembroke Pines ordinances and mandated the use of decibel meters to monitor compliance.

As it pertains to the noise and interference issues, the injunction is as precise and narrowly tailored as possible under the circumstances of this case. The decibel monitoring equipment and

limits, in fact, originated from suggestions by the Suarezes as the parties explored various ways to refine the language of the injunction.

**A. The prohibitory injunction is narrowly tailored to achieve continuing compliance with the Association's governing documents.**

The Suarezes argue in their initial brief that the court entered a mandatory injunction that is so broad and perpetual that it must be rejected by this court. This position is not correct and it does not reflect the Lower Court's ruling, and neither does it reflect the case and the evidence or testimony.

First and foremost, this is a prohibitory injunction, not a mandatory one. The lower court explicitly stated that it was issuing a prohibitory injunction. [R. 5729.] The Suarezes cite *Mayor's Jewelers, Inc. v. State of Cal. Pub. Employees' Ret. Sys.*, 685 So. 2d 904, 910 (Fla. 4th DCA 1996) to distinguish between prohibitory and mandatory injunctions. However, without any clear explanation or logical basis, the Suarezes assert that the Lower Court's injunction is mandatory. This position is flawed: not only does it contradict the court's express language, but it also rejects specific

findings of fact presented at trial and adopted by the Lower Court on the final judgment of injunction. [R. ]

The injunction requires the Suarezes to refrain from specific conduct, namely interfering with other homeowners' mailboxes and engaging in behavior that violates Article 10(F) of the association's Declaration, specifically prohibiting unreasonable noise coming from their home. It is illogical to classify this as a mandatory injunction, as it does not compel any affirmative action. The orders granting the injunction make it clear that the court issued a straightforward prohibitory injunction. Additionally, the authorities cited by the Suarezes regarding mandatory injunctions are either irrelevant to this case or contain general legal principles that have no bearing on the issues currently before this court.

For example, in *Mayor's Jewelers, Inc. v. State of Cal. Pub. Employees' Ret. Sys.*, 685 So. 2d 904, 910 (Fla. 4th DCA 1996), this Court dealt with specific performance of a lease agreement between a landlord and a tenant on a commercial setting. This Court held that the injunctive relief was not available to compel a commercial tenant's specific performance of a lease agreement because the trial court's inability to compel performance of commercial terms and

conditions. Importantly, the parties had a readily available remedy at law which rendered injunction improper.

Similarly, the Suarezes rely unreasonably upon *Abbey Park Homeowners Ass'n v. Bowen*, 508 So. 2d 554, 555 (Fla. 4th DCA 1987), for the proposition that any perpetual injunction is improper. In that 1987 case, this Court held that the general mandatory injunction ordering the association to maintain the common elements was unenforceable because it did not contain any time limits.

The Suarezes fail to acknowledge that this Court and related case law have evolved beyond general propositions like those in *Abbey Park*. In *Indian Trail Homeowners Ass'n, Inc. v. Roberts*, 577 So. 2d 998, 999 (Fla. 4th DCA 1991), this Court clarified that it had relied on incorrect authority in *Abbey Park*, citing *U Shop Rite, Inc. v. Richard's Paint Mfg. Co.*, 369 So. 2d 1033, 1033 (Fla. 4th DCA 1979). Perpetual injunctions are appropriate in prohibitory injunctions and are assessed on a case-specific basis. Here, a perpetual injunction is warranted, especially given the Suarezes' ongoing duty to refrain from conduct violating the Association's Declaration and the City of Pembroke Pines noise ordinances.

Importantly, in *Goodell v. Goodell*, 421 So. 2d 736, 737 (Fla. 4th DCA 1982), this Court recognized the proper existence of permanent or perpetual injunctions and acknowledged the ability and the authority of the trial court to open and modify the injunction as needed and warranted by facts.

The injunction sought by the Association is appropriate under the proper authorities discussed here. *Ares v. Cypress Park Garden Homes I Condo. Ass'n, Inc.*, 696 So. 2d 885, 887 (Fla. 2d DCA 1997), is particularly analogous here. In *Ares*, the Second District affirmed the imposition of a “perpetual” injunction “*prohibiting* the association to conduct its affairs in violation of the law and condominium documents.” *Id.* (emphasis in original). The situation in *Ares* is directly applicable here. To use the language from the *Ares* decision, the Association here is essentially seeking an injunction prohibiting the Suarezes from continuing to act in violation of the Association’s covenants and restrictions, specifically Article 10(F). *Id.*; see also *Munao v. Homeowners Ass'n of La Buona Vita Mobile Home Park, Inc.*, 752 So. 2d 1272 (Fla. 4th DCA 2000) (perpetual injunction requiring that defendant maintain the air conditioning at a particular temperature proper as “[t]he essence of

the order in this case is to prohibit the appellant from varying the temperature”).

The Suarezes attack the injunction by making general assertions rather than pointing specifically to how the language of the injunction as ultimately ordered and adopted by the Lower Court is legally improper. Nothing is confusing, ambiguous, or general from the following:

The law prefers prohibitory injunctions over mandatory injunctions. *See Johnson v. Killian*, 27 So. 2d 345 (Fla. 1946). Therefore, in accordance with the foregoing, it is hereby **ORDERED** and **ADJUDGED** that:

1. 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).
  2. Ivonne Suarez, as owner of the Townhouse, is enjoined from permitting individuals who live in or visit the Townhouse to open mailboxes that do not belong to Ivonne Suarez.
  3. The Court retains jurisdiction to enforce, modify or terminate the injunction as may be necessary.
- [R. 5729-5730]

After the parties conferred and the Suarezes rejected suggestions by the Association for various modifications to their home to secure some soundproofing, the Court agreed with the approach suggested by the Suarezes to adopt language from noise ordinances from Broward County and ultimately entered the following specific injunction against the Suarezes fashioned from the more applicable ordinance from the City of Pembroke Pines:

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](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.

[R. ]

The language of the injunction, as modified by the lower court on December 18, 2024, is narrowly tailored to address the Association's claim and is legally sound under well-established law.

**B. The Lower Court fashioned the remedy specific to the case and the claims presented.**

The Lower Court granted an injunction to balance the equities. It relied upon the jury's verdict finding a violation of Article 10(F) of the Declaration. It also relied upon the evidence and the testimony through four days of jury trial. The focus of the Suarezes' argument on appeal is the alleged error on refusing to give a (common law) nuisance instruction to the jury. In essence, the Suarezes attempt to reframe the Association's pleading by transforming Count II into a common law nuisance rather than a straightforward breach of the Association's governing documents, particularly Article 10(F) of the Declaration, which directly addresses unreasonable interference

with property enjoyment and unreasonable noise. By invoking common law nuisance, the Suarezes argue that the Association must establish ongoing and continuing acts or harm, which are not required in a covenant enforcement action by an association against a homeowner—even though the evidence, as acknowledged on the Initial Brief, were ongoing well after the filing of the action below.

The Suarezes initially argue that the Lower Court erred by granting an injunction that was not specified in the pleadings. This argument, however, inappropriately shifts the burden onto the Association. Notably, the Suarezes' argument deviates from established law, which permits courts to tailor equitable remedies based on the particular facts of each case. In this instance, the Lower Court acted within its broad discretion to fashion an appropriate remedy and responding to the specific circumstances and facts presented.

The Association is entitled to an injunction and to rely on the Lower Court's discretion to determine the proper vehicle to address the violation. In this case, the parties had extensive exchanges as directed by the Lower Court regarding potential solutions to address the harm, but ultimately, the focus remained on addressing the

Suarezes' violation of Article 10(F). Again, this violation was proven to the jury and the Lower Court. Yet, the Suarezes unfairly shift the burden to the Association knowing that the Association is simply enforcing its governing documents and want a remedy to cure the violation. The Association is not required to dictate precisely how the Suarezes must comply. The Association is, however, entitled to expect the Suarezes to address the noise and unreasonable interference.

The Suarezes' assertion that the Association is tied to the specific remedies outlined in the pleadings is misplaced. The Association seeks to enforce its governing documents, plain and simple. In its pleading, the Association clearly seeks enforcement to abate the violation and offers potential ways to achieve compliance, especially since these equitable claims and the ultimate authority to address and fashion the remedy rests with the Lower Court.

Furthermore, the interferences and the noise from the Suarezes' home were some of the issues the Association sought to address. Another concern involved disturbances related to mail interference and recurrent police activity in the community. These episodes included conflicts between Gabriel and his father, or

instances where the father called the police over various issues, including challenges in administering medication. Testimony and evidence demonstrated that Gabriel Suarez was even involuntarily committed under the Baker Act due to his father's inability to manage his behavior. Frequent police activity in the community affected all the other neighbors compelling them to even instruct their children to get inside their homes at times when Gabriel Suarez was outside interfering with mail or getting their children inside when police were called to the Suarezes' home.

A court sitting in equity has jurisdiction and broad discretion to tailor a narrow remedy (injunction) to accomplish its finding/conclusion, as well as go outside of the remedy sought. *Schroeder v. Gebhart*, 825 So. 2d 442, 446 (Fla. 5th DCA 2002); *Wicker v. Bd. of Pub. Instruction of Dade County*, 106 So.2d 550, 558 (Fla.1958) (quoting *Degge v. First State Bank of Eustis*, 145 Fla. 438, 199 So. 564, 565 (1941)) (“A court of equity “should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience”).

On this point, *Roebuck v. Sils*, 306 So. 3d 374 (Fla. 1st DCA 2020) is controlling and strikingly similar to the issues at hand. In

*Roebuck*, the plaintiff had sought damages as well as an injunction to abate the nuisance “and such further relief as the Court deems fair and equitable.” *Id.* 380. The source of the noise had been a noisy pool equipment pump and outdoor lighting. *Id.* The appellate court found that the remedy crafted by the trial court had been “with notable precision.” *Id.* There, the trial court restricted the operation of the pool pump during specific hours and did the same for the operation of the exterior lighting. *Id.*

Importantly, as here, the appellate court was clear that a common law nuisance is different from a violation of the restrictive covenant.<sup>3</sup> Specifically, the appellate court stated:

Contrary to *Roebuck's* argument, we cannot simply assume that Declaration- and common law-nuisance standards are the same. Different legal regimes can address nuisance issues differently. *See, e.g., Saadeh*, 912 So. 2d at 32 (noting that ordinance compliance doesn't, in and of itself, absolve a property owner from nuisance claims); *Neidlinger*, 182 So. 3d at 741 (recognizing that “airboat activity ... may constitute a

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<sup>3</sup> *See generally, Clark v. Bluewater Key RV Ownership Park Prop. Owners Ass'n*, 226 So. 3d 276, 283 (Fla. 3d DCA 2017) (citation omitted); but “noise can be a nuisance.” *City of Jacksonville v. Schumann*, 199 So. 2d 727, 729 (Fla. 1st DCA 1967) (involving low-flying aircraft); *Lake Hamilton Lakeshore Owners Ass'n v. Neidlinger*, 182 So. 3d 738, 741 (Fla. 2d DCA 2015) (airboats); *Saadeh v. Stanton Rowing Found. Inc.*, 912 So. 2d 28, 29, 31 (Fla. 1st DCA 2005) (recreational facility).

judicially recognized nuisance even if such activity is authorized by statute, regulation, or ordinance”).

Here, the Suarezes want this Court to hold that a court of equity is bound only by the remedy sought in the pleading. Such a position is untenable as is evident by the holding in *Roebuck*. The Association consistently asserted that the Lower Court had the authority and discretion to craft a narrowly tailored injunction to fulfill the purpose of the requested injunctive relief. Also, the Association proposed various methods to address the violation such as soundproofing or companion services at home as vehicles to ensure compliance. However, the Association is under no legal obligation to specify or designate a method. Such authority remains within the Lower Court's broad discretion to implement ways to effectively enforce the injunction and address the violation.

After months of attempting to craft a workable solution that would both balance the equities and ensure compliance with the Association's governing documents, while considering Gabriel Suarez's disability, the Lower Court developed a narrowly tailored remedy. This remedy is grounded in existing rules, regulations, and ordinances, and aims to achieve a practical solution to enforcing

compliance with Article 10(F) of the Declaration. It allows the Suarezes to enjoy their right to peaceful enjoyment of their property while also respecting their neighbors' rights and reducing unreasonable disturbances impacting the broader community.

Further, the Suarezes contend that the relief sought by the Association in its complaint—or the remedy granted by the Lower Court's injunction—has been rendered moot. They argue that they have already secured appropriate and necessary care for Gabriel Suarez, which, in their view, renders the Association's requested relief moot. This argument, however, should be rejected, as it is something that was not part of the trial or raised at trial, and is unsupported by the record on appeal. Moreover, to the extent any relief may have become moot due to actions taken after the injunction was issued, this matter concerns the ongoing enforcement of the injunction, which is within the Lower Court's jurisdiction and its authority to modify the injunction.

**C. The Lower Court made sufficient findings of fact to support its award of injunction in favor of the Association and against the Suarezes.**

In its Final Judgment, the Lower Court succinctly outlined the evidence and the testimony it received during trial. Apparently, for

the Suarezes, these findings are not sufficient but without any good explanation. The Suarezes seem to be pursuing a baseless strategy, arguing that the Association did not properly allege facts to satisfy the four elements required for an injunction.

This case is on appeal following a full trial in which the jury found that the Suarezes violated Article 10(F) of the Association's Declaration, confirming their violation of the Association's covenants and their unreasonable interference with neighbors' peaceful enjoyment and compliance with noise restrictions. The Lower Court relied upon the jury's verdict but also made independent findings based on the evidence and testimony at trial and through numerous hearings confirming the Suarezes' violations and concluding that the Association was entitled to an injunction to remedy the harm.

The law is clear: the Association only had to demonstrate the Suarezes' violation of its governing documents at the time the action was initiated. Thus, the Suarezes' continued pursuit of the argument that the Lower Court erred when it rejected the nuisance instruction is misguided and contrary to established principles. The filing an action for an injunction is the proper way to enforce a

breach and a violation of an association covenant and restriction of its governing documents. Section 720.305(1), Fla. Stat. provides that the Association can proceed in an action in equity to enforce its governing documents against the owner, a tenant, or any guest or invitees. Chapter 720, Fla. Stat. provides precisely the relief that the Association seeks in this matter.

Additionally, following the same lines as Chapter 720, Fla. Stat., Section 5.02 of the Declaration provides, among other things, that the Association shall:

F. Taking any and all actions necessary to enforce all covenants, restrictions, and easements affecting the Property and performing any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property, or in the Articles or Bylaws.

Article 14 of the Declaration specifically provides that the Association can enjoin or abate a violation by a legal proceeding and all remedies are cumulative and not exclusive. Lastly, the Association's Bylaws state that "[t]he remedies set forth above and

otherwise provided by these Bylaws or by law shall be cumulative and none shall be exclusive.”<sup>4</sup>

Therefore, it goes without saying that injunctive relief is the appropriate means by which the Association can enforce its restriction (Art. 10(F) which the jury has already found a violation. governing documents. *See e.g. Prisco v. Forest Villas Condominium Apartments, Inc.* 847 So.2d 1012 (Fla. 4th DCA 2003); *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637 (Fla. 4th DCA 1981). An injunction is proper where a clear legal right has been violated, irreparable harm has been threatened and there is a lack of an adequate remedy at law. *Alorda v. Sutton Place Homeowners Association, Inc.*, 82 So.2d 1077, 1080 (Fla. 2d DCA 2012).

Additionally, the jury found in favor of the Association on its claim for declaratory relief. Once the jury reached its conclusion

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<sup>4</sup> Suspension of Privileges; Fines. The failure of the Board to enforce the Rules, these Bylaws, the Articles, or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws or by law shall be cumulative and none shall be exclusive. However, any individual Owner must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by any Rules adopted by the Association, before that Owner may resort to a court of law for relief from any provision of the Declaration, the Articles, these Bylaws or the Rules.

based on the merits of the Association's case, the extensive testimony of multiple witnesses, and the competent evidence showing the nature of the violation, then it logically followed that harm was presumed and established.

To enjoin a violation of a restrictive covenant affecting real property, it is not required to show irreparable harm and that a judgment for damages would be inadequate. *Mitchell v. Beach Club of Hallandale Condo. Ass'n, Inc.*, 17 So. 3d 1265, 1267 (Fla. 4 DCA 2009) (when bringing an action for injunctive relief against an association, an alleged violation of chapter 718 is itself a harm for which section 718.303 authorizes injunctive relief); *Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 40 So. 3d 784, 786 (Fla. 4d DCA 2010); *Auto Zone Stores, Inc. v. Northeast Plaza Venture LLC*, 934 So.2d 670 (Fla. 2d DCA 2006); *Blue Reef Holding Corp. v. Coyne*, 645 So.2d 1053, 1055 (Fla. 4th DCA 1994). "Where a party seeks an injunction to prevent the violation of a restrictive covenant, the party establishes a prima facie case by presenting evidence showing the violation." *Killearn Acres Homeowners Association, Inc. v. Keever*, 595 So.2d 1019, 1021-1022 (Fla. 1st

DCA 1992), citing *Europco Management Company of America v. Smith*, 572 So. 2d 963 (Fla. 1st DCA 1990).

The Lower Court correctly instructed the jury on the claims of the Association after full consideration of the pleading, the Association's claims, the nature of the dispute, and the testimony and evidence. Based on all the above, the Lower Court properly instructed the jury on the declaratory relief claim, to which the parties agreed and submitted the verdict form to the jury. See *Goldschmidt v. Holman*, 571 So. 2d 422, 425 (Fla. 1990) (decisions regarding jury instructions rest within the sound discretion of the trial); see *Belle Glade Chevrolet-Cadillac Buick Pontiac Oldsmobile, Inc. v. Figgie*, 54 So.3d 991, 997 (Fla. 4th DCA 2010) (“In formulating jury instructions, the trial court is accorded broad discretion, and ‘its decision should not be reversed unless the error complained of resulted in a miscarriage of justice or the jury instructions were reasonably calculated to confuse or mislead the jury.”).

As the Association presented sufficient and competent evidence at trial to show that it has a clear legal right (within its Declaration and Chapter 720, Fla. Stat.) to enjoin the Suarezes’

violation, that irreparable harm is presumed once the jury found that a violation existed and that it lacks an adequate remedy at law, entitlement to injunctive relief is mandatory and warranted. See generally *The Gardens At Pembroke Lakes Condominium Association, Inc., v. Clementi*, Arb. Case No. 00-1594, Summary Final Order, (Dec. 14, 2000) (determining that the dispute was not moot because the dog was capable of returning to the condominium); *Cypress Isle at the Polo Club Condo. Assn., Inc v. Shelton*, Arb. Case No. 98-4090 (July 22, 1998)(case brought by association to gain entry into unit to fix plumbing, where owner had initially resisted entry with violence or threats of violence, answer of owner announcing plumbing had been fixed, but not offering access to association, did not render dispute moot, as issue of access to the unit was capable of repetition).

Inexplicably, the Suarezes ignore all the findings of fact included in the Lower Court's final judgment, as amended, as well as the jury verdict without any justification. The findings of the trial court, as the trier of fact, come to this court clothed with a presumption of correctness, and where there is substantial competent evidence to sustain the actions of the trial court, the

appellate court cannot substitute its opinion on the evidence but rather must indulge every fact and inference in support of the trial court's judgment, which is the equivalent of a jury verdict. *Hanks v. Hamilton*, 339 So.2d 1122 (Fla. 4th DCA 1976) (the trial judge sitting as the trier of the facts has the responsibility of determining the weight, credibility and sufficiency of the evidence, and these findings are clothed with a presumption of correctness);

Once again, the Suarezes advance a flawed argument because they take issue with jury's findings (verdict) as well as the Lower Court's findings of fact that a violation existed at the time that the action was commenced and during the litigation. *State Tr. Realty, LLC v. Deutsche Bank Nat. Tr. Co. Americas*, 207 So. 3d 923, 925 (Fla. 4th DCA 2016). The Lower Court and the jury witnessed firsthand a video that was played and powerfully depicted the level of disturbances coming from the Suarezes' home, the ongoing police activity, the continuing mail interferences, the neighbors' compassion towards the Suarezes and even purchasing and using noise suppression equipment. [R. 5726-5730] Importantly, the Suarezes ignore testimony from Martha Fernandez and Liorima Miller who testified of continuing noises and disturbances after the

filing of the Association's action. Lastly, although not part of the record on appeal, the Suarezes are aware of affidavits and submissions by neighbors of Gabriel Suarez' continued interferences with mail and police activity in the very early hours of the morning—having acknowledged the same to the Lower Court.

**D. The injunction serves and benefits the Park Crossing neighbors and community.**

The Suarezes argue that the Lower Court's entry of the injunction does not serve the public interest. However, the Lower Court thoroughly reviewed and incorporated into the Final Judgment the uncontroverted evidence and testimony provided by multiple witnesses, including police reports. It cannot be reasonably argued that the injunction was one-sided. On the contrary, the Lower Court took significant steps to ensure that the interests of Gabriel Suarez, as well as the Suarez family, were carefully considered and safeguarded. At the same time, the injunction protects the rights and well-being of the neighbors and the entire Park Crossing community, who have endured repeated disturbances affecting their peaceful enjoyment of their homes. The Lower Court was attentive to the community's needs while

remaining considerate of Suarez's interests. Such balancing of the equities is obvious from the language of the Final Judgment.

Other than making conclusory general statements, the Suarezes offer no valid points to show how the language of the Final Judgment or the detailed findings of fact would "allow associations to shut the doors on persons with disabilities." The terms and the conditions of the injunction in this case are justified because the facts of this case warrant them. Such narrow injunction, however, will not serve as a blanket authority for any other court to issue injunctions against other persons with disabilities unless the facts and circumstances of each case would warrant an injunction.

The Suarezes cite *Connors v. Lake Dexter Woods Homeowners Ass'n, Inc.*, 50 So. 3d 1212, 1213 (Fla. 2d DCA 2010) to alert this Court regarding "reservations" announced by the Second District Court of Appeal as to a general broad injunction that directed the guardian of the disabled person to take all steps to prevent him from being aggressive or using abusive language. However, *Connors* refutes all of the legal arguments raised by the Suarezes and holds that an injunction is proper when facts support it. The appellate

court had no authority to vacate the injunction, because it also served the interest of the community, among other things. *Id.*

**E. Suarezes' FHA alleged error is not before this Court.**

The Suarezes' appeal and cross-appeal relate to the Association's covenant enforcement action and alleged errors by the Lower Court in awarding injunctive relief, and the entry of a directed verdict in favor of Martha Fernandez. Yet, the Suarezes seek to introduce for the first time in this appeal allegations that the Lower Court's injunction violates the FHA, and then they proceed to discuss and argue the direct threat exception to a disability violation.

These assertions are unfounded. The Suarezes appear to elevate the granting of a new trial on Count I of their Counterclaim (making the dwelling unavailable allegedly because the Association sought to evict Gabriel Suarez from his home) to a proven claim before a jury, which has yet to occur. Such emphasis is not only premature but also not proper jurisdictionally before this Court. That is, the Suarezes did not, and could not, file an appeal on this issue as they were awarded a new trial.

Moreover, the Suarezes attempt to muddy the waters and alleged errors that do not exist and are not supported by the record on appeal. The Suarezes wish to use the back door and raise FHA arguments that are not before this Court. To the extent that any such issues relate to the Association's appeal, then all arguments shall be raised on the Suarezes' answer brief.

Lastly, it is clear from *Connors* that a lower court can and may issue injunctions. Here, the injunction was detailed and accommodated the Suarezes and all the interests of Gabriel Suarez and his disability. The language of the injunction was agreed to and submitted by the Suarezes and aside from the objection to the jury instruction on the issue of the nuisance no other objection was timely raised and is only raised on this appeal for the first time.

Therefore, the Association urges the court to disregard the Suarezes' claim that the injunction constitutes an FHA violation. Furthermore, the association will not address any "direct threat" affirmative defense, as it is not relevant to the issues under appeal in this case.

### **III. The Lower Court correctly entered a directed verdict in favor of Martha Fernandez.**

The Lower Court granted the Suarezes' Motion for New Trial and reversed its directed verdict on the Suarezes' Count I (Denying or Making a Dwelling Unavailable under (42 USC §3604(f)(1)). As the record on appeal is clear, the only reason for the Association's FHA discrimination claim is the alleged statement of eviction contained in the Association's pre-suit mediation demand sent to the Suarezes as part of the Association's desire to find a workable solution for all interested parties. Nothing else.

Yet, the Suarezes sued Ms. Martha Fernandez individually and the only two statements made to support that claim were that (a) Martha Fernandez voted as a board member to proceed to litigation; and (b) Martha Fernandez complained to the board about the noise coming from the Suarezes' home. The evidence and testimony at trial were insufficient to allow the case against Martha Fernandez individually simply because she happened to be the Association's board member, shared a wall with the Suarezes' home, and was directly affected by the unreasonable interferences and noises coming from the Suarezes' home and Gabriel Suarez. Ms.

Fernandez cannot be liable individually for any FHA violations simply because the evidence is lacking that Ms. Fernandez made any decisions on any actions allegedly discriminatory against Gabriel Suarez.

Importantly, in conjunction with their Motion for a New Trial on the directed verdict (Count I), the Lower Court specifically requested the Suarezes to identify the evidence and the testimony to support a direct claim against Martha Fernandez individually such that the Lower Court could reverse its directed verdict against her as well. The Suarezes failed to do so, and the directed verdict remained. Also, the lack of sufficient and competent evidence is evident in the Suarezes' Initial Brief. *Meruelo v. Mark Andrew of Palm Beaches, Ltd.*, 12 So. 3d 247, 250 (Fla. 4<sup>th</sup> DCA 2009) (directed verdict is proper when the trial court views the evidence in the light most favorable to the Suarezes and determines that the jury could not differ about any material fact such that a judgment can be entered as a matter of law). See *Hemisphere Building Co. Inc. v. Village of Richton Park, et al.*, 1996 WL 721132 (N.D.Ill. 1996); *Copemann v. Briel*, 2011 WL 2292113 (N.D.Fla. 2011).

In *Village of Richton Park*, a developer brought an action for alleged violations of the Fair Housing Act against the village, a municipal corporation, its board of trustees, and employees in their personal and official capacities after the village members voted to deny developer's application for rezoning of property. *Hemisphere Building Co. Inc.*, 1996 WL 721132 at \*1. The alleged discriminatory decision was the denial of the zoning petition, which only the village board had the authority to do. *Id.* at \*3. In granting the motion to dismiss, the Court cited *Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 531 (5th Cir. 1996) wherein it was pronounced that:

Liberally construing the complaint, the alleged conduct of Grauke and Smith does not fall within the "otherwise make unavailable or deny" purview of the Fair Housing Act. Although the "otherwise make unavailable or deny" phrase seems all-encompassing, its scope is not limitless. It is axiomatic that for an official to make a dwelling unavailable, that official must first have the authority and power to do so. In other words, the official must be in a position to directly effectuate the alleged discrimination. Plaintiff's complaint does not allege that Defendants Grauke and Smith had such authority.

*Id.*; see generally *Copemann*, (recommending dismissing the complaint filed by plaintiff against employees of the defendant alleging violations of the FHA for denial of a loan application since such employees did not have any authority to deny the loan and did not have any *personal* involvement in the denial of the loan).

The Suarezes rely upon *Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer*, 6 F. Supp. 3d 1272, 1294 (S.D. Fla. 2014), where the Southern District Court of Florida held that the president of the association could be held liable because he denied plaintiff's request for an accommodation to the no-pet restriction at the condominium. Also, in *Housing Opportunities Project for Excellence, Inc. v. Key Colony No. 4, Condominium Assoc., Inc.*, 510 F.Supp.2d 1003 (S.D. Fla. 2007) where the district court judge allowed a case to proceed against the board members and the property manager for alleged discrimination. However, the case relates to a facial challenge of an occupancy restriction (four persons per unit), which was intended to eliminate families with children from owning or occupying the unit and the intent of the board members and the property manager to implement a restriction that on its face violated the FHA laws.

All those authorities supported individual liability due to the direct personal involvement in the creation or the application of the policy which violated the federal and/or state legal rights. The Suarezes cannot claim that Ms. Fernandez denied them a request to accommodate as the jury rendered a verdict in favor of the Association finding that no reasonable accommodation request had been made. Moreover, regardless of her position as a board member, Ms. Fernandez has a clear legal right individually to complaint to the board about any violations of the rules and restrictions which affected her and did carry the message of such violation when Ms. Miller, the other adjoining neighbor to the Suarezes complained to her and requested to have her complaints discussed at a board meeting.

Furthermore, the decision to proceed and to engage counsel to deal with a violation of the governing documents of the Association rested solely with the Association's board, which is a separate legal entity and distinct from its officers and directors. See *APS Sports Collectibles, Inc. v. Sports Time, Inc.*, 299 F.3d 624 (7th Cir. 2002); see also *Glazer v. Glazer*, 374 F.2d 390 (5th Cir. 1967) (responsibilities of a board of directors are governed by the laws of

the state of incorporation and local law will be applied to determine the director's liability). Assuming, *arguendo*, that the Association has violated federal and state housing statutes, such derivative or vicarious liability flows "upward," not "downward." *Green v. Century 21*, 740 F.2d 460, 465 (6th Cir. 1984) (reversing a jury instruction in an FHA case which instructed that "all defendants must be found liable if any are" since it unfairly implied that even agents without any active participation in the alleged discrimination would be liable).

Lastly, it is undisputed that the authority to enforce the governing documents and all restrictions therein rests with the Association. See F.S. §720.303 ("A member does not have authority to act for the association by virtue of being a member."). Therefore, Ms. Fernandez cannot individually authorize any legal action to be taken by the Association, nor can she, individually, make or deny Suarezes' alleged reasonable request for accommodation.

Therefore, the Lower Court correctly entered a directed verdict in favor of Martha Fernandez on the Suarezes' Count I of the Counterclaim because Martha Fernandez, individually, did not deny or make any dwelling unavailable to the Suarezes.

## **CONCLUSION**

This Court should affirm the Lower Court's Final Judgment on the Association's Count II of its Complaint for injunctive relief and should also affirm the directed verdict in favor of Counter-Defendant Martha Fernandez, individually, on the Suarezes' Count I of the Counterclaim (Denying or Making a Dwelling Unavailable) to the Suarezes.

## **CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to Fla.R.App. 9.210, that this Answer Brief has been prepared in Bookman Old Style 14pt and is within the word count limit.

*/s/ Patrick Dervishi*  
Patrick Dervishi, Esq.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished Via E-Mail this November 5, 2024, upon:

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