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

CASE NO.: 4D2024-0834
L.T. No.: 50-2021-CA-003875

LA FONTANA CONDOMINIUM ASSOCIATION, INC.

Appellant.

v.

MARC GINGOLD, et al.,

Appellee(s).
_____/

APPELLANT, LA FONTANA CONDOMINUM ASSOCIATION, INC.'S, INITIAL BRIEF

ASHLEY N. LANDRUM, ESQUIRE
Florida Bar No. 111594
alandrum@florida-law.com

MARIEL WEBER, ESQUIRE
Florida Bar No. 106611
mweber@florida-law.com

Vernis & Bowling of Palm Beach, P.A.
Attorneys for Appellant
618 U.S. Highway One, Suite 200
North Palm Beach, Florida 33408
Telephone: (561) 775 – 9822

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PRELIMINARY STATEMENT/PREFACE

The Appellant, LA FONTANA CONDOMINIUM ASSOCIATION, INC., shall be referred to as "ASSOCIATION." The Appellee, MARC GINGOLD, shall be referred to individually as "GINGOLD," Appellee, Claudia B. Cardenas, shall be referred to individually as "CARDENAS," and Appellee, and Brenda Steuer, as Trustee of the Brenda Sue Steuer Revocable Trust, shall be referred to individually as "STEUER," and collectively the Appellees shall be referred to as "APPELLEES" or "PLAINTIFFS." The Co-Plaintiff in the underlying case, FRANKLIN RIDGE HOMES, LLC BRENDA STEUER TRUST SOLE MEMBER, shall be referred to as "FRANKLIN."[1] References to the record will be designated as "R." followed by the page number (i.e. R. ___) as set forth in the Record of Appeal transmitted by the Clerk of the Lower Court.

STATEMENT OF THE CASE

This is an appeal by the ASSOCIATION of an "Order on Plaintiff's Motion for Summary Judgment" (hereinafter "Order") as to GINGOLD rendered by the Lower Court on February 29, 2024.

[1]Plaintiffs' Motion for Leave to Amend Complaint by interlineation seeking to substitute "Brenda Steuer, as Trustee of the Brenda Sue Steuer Revocable Trust" as Plaintiff, in place of FRANKLIN was granted and "FRANKLIN RIDGE HOMES, LLC BRENDA STEUER TRUST SOLE MEMBER" was no longer a party to the case. (R. 632- 0645).

On June 27, 2022, PLAINTIFFS filed an Amended Complaint, which substituted "Brenda Steuer, as Trustee of the Brenda Sue Steuer Revocable Trust" as Plaintiff, in place of FRANKLIN. (R. 632 - 645). ASSOCIATION filed its Answer and Affirmative Defenses to the Amended Complaint on September 2, 2022. (R. 673 - 684). On November 16, 2022, APPELLEES filed their Motion for Summary Judgment as to all counts of the Amended Complaint. (R. 693 – 962). On May 19, 2023, the ASSOCIATION filed its Opposition to Plaintiffs' Motion for Summary Judgment (hereinafter "Motion"). (R. 1089 – 1108). On June 9, 2023, the Lower Court heard argument on the Motion. (R. 987 - 989).

On December 19, 2023, the Lower Court granted the Motion for Summary Judgment as to GINGOLD and released CARDENAS and STEUER from the proceedings. (R. 1114 - 1117). On January 2, 2024, the ASSOCIATION filed its Motion for Rehearing of the Lower Court's Order. (R. 1118- 1196). On January 16, 2024, APPELLEES filed its Response to Defendant's Motion for Reconsideration. (R. 1199 – 1207). On February 29, 2024, the Lower Court denied the ASSOCIATION's Motion for Rehearing. (R. 1208 – 1209). On March 29, 2024, the ASSOCIATION timely filed its Notice of Appeal of the Order. (R. 1231 - 1320).

STATEMENT OF THE FACTS

The Lower Court matter involves a dispute between GINGOLD, one of sixteen (16) dock space owners[2], against the ASSOCIATION. (R. 1114-1117). ASSOCIATION is a condominium association located in Boca Raton, Florida operating pursuant to Chapter 718, Florida Statutes and governed by its Declaration of Covenants and Restrictions, recorded on October 3, 1980 in the Official Records of Palm Beach County at Book 3377, Page 859, as amended and recorded on March 8, 1993 in the Official Records at Book 7615, Page 694 ("Declaration"), which led to a change in the numbering of Articles. (R. 000172 - 879).

The ASSOCIATION has a dock which contains sixteen (16) limited common element dock spaces as defined within the Declaration. (R. 737). GINGOLD is a member of the ASSOCIATION who has been assigned exclusive use rights as to a boat dock space located on the ASSOCIATION's common property. (R. 636).

Section III of the Declaration defines "Common Property" as follows:

> "…shall mean and comprise *all of the real property, improvements, and facilities of the CONDOMINIUM* other than the PRIVATE DWELLINGS as the same are hereinabove defined, and *shall include easements* through PRIVATE DWELLINGS for *conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to* PRIVATE

[2] "Dock space owner" and "slip owner" are used interchangeably.

> DWELLINGS and *COMMON PROPERTY* and easements of support in every portion of a PRIVATE DWELLING which contributes to the support of the improvements, and shall further include *all personal property held and maintained for the joint and common use and enjoyment of all the owners of all such PRIVATE DWELLINGS*." (R. 713).

Section III of the Declaration defines "Limited Common Property" as follows:

> "…Shall mean and comprise that portion of the COMMON PROPERTY consisting of a number of designated parking spaces specifically identified on Exhibit "D" attached hereto, as to each of which said parking space is a right of exclusive use may or may not be reserved as an appurtenance to a particular PRIVATE DWELLING, as hereinafter described. Additionally, *LIMITED COMMON PROPERTY shall mean and refer to the dock space is identified and described under article XXXI hereof*." (R. 713).

Regarding the dock, Article XXXXI of the Declaration is entitled "Docks" and provides in relevant part, as follows:

> "There is hereby established as *Limited Common Property sixteen (16)* ***Dock spaces containing approximately 36 lineal feet each***, as identified on sketch attached hereto as Exhibit "D" and expressly made a part hereof, the same *to constitute Limited Common Property* as provided for in the within Declaration of Condominium…" (R. 737).

Article XXXVII provides that the Developer has assigned the exclusive or nonexclusive right to use the dock spaces in perpetuity to a specified number of apartment unit owners in the Association. With respect to assessments, Article XXXIX provides:

> "La Fontana Condominium Association, Inc., ***shall assess*** *the condominium unit owner* who has been assigned the exclusive or nonexclusive right to the use of such dock space *for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space*, to the same extent, manner and degree and with the same liabilities, obligations and rights as such assessments are made with respect to the common property with the condominium and other condominium apartment owners shall not be responsible therefore." (R. 797-798). Emphasis added.

Finally, with respect to assessments, Article XXXVIII, Subsection A provides:

> All assessments levied against the owners of Private Dwellings and said Private Dwellings shall be uniform and, *unless specifically otherwise provided for in this Declaration of Condominium*, the assessments made by Association against each Private Dwelling owner and his Private Dwelling *shall be the percentages which are set forth in Exhibit "E" 4 attached hereto without increase of diminution for the existence or lack of existence of any exclusive right to use Limited Common Property which may be appurtenant to any private dwelling*." (R. 725).

In 2006, the Association adopted a 60 / 40 resolution relating to the Dock expenses, which was signed by all of the Dock Owners and the Association which was binding upon them and their successors. This 2006 Resolution was accepted. However, determination of Dock Owners fair share assessment required by Article 39 was a continuing issue.

On or about December 15, 2020, the Association passed a corporate resolution entitled "Resolution Memorializing the History and Process for the Fair Share Allocation of the Cost of Direct and Indirect Services Related to

the La Fontana Dock and Dock Space Owners and the Formulas for Reasonable Allocation to Dock Space Owners ("Resolution")." (R. 141 – 143). This Resolution set forth the history of the fair share assessment issues, and adopts a new formula to be utilized in the 2021 budget and each year thereafter, to determine the Total Dock Expense for items in the budget which directly and indirectly relate to (1) the maintenance, upkeep, repair, replacement or rehabilitation of the Dock Spaces, the seawall, the dock, and (2) related administrative, security, utilities and other services available to the Dock Users. Once the Total Dock Expense is calculated, the Resolution reaffirmed the 60/40 allocation, as established in 2006, of the Total Dock Expense, requiring the owners of a limited common element dock space to pay 40% of the Total Dock Expense while other unit owners pay 60% of the Total Dock Expense. Id.

GINGOLD alleged that the ASSOCIATION does not have authority under the Declaration and the July 1, 2007 Rules and Regulations of the Association ("Rules") to levy assessments on the individual "dock space" owners for the upkeep and maintenance of the "docks" and that these assessments are unrelated to the expenses that the individual slip owners are obligated to pay. (R. 634 - 645). GINGOLD claimed that under the ASSOCIATION's Declaration, individual dock space owners are only

responsible for the expenses associated with just the upkeep of the individual space itself, and such responsibility is limited to actual expenses realized in the upkeep of the space and not the actual “dock” that is a common element - entirely separate from the dock spaces. (R. 638 - 640).

Count I of the Amended Complaint seeks Declaratory Relief against ASSOCIATION brought on behalf of all PLAINTIFFS seeking a determination as to the ASOCCIATION’s authority under the Declaration to enact a corporate resolution charging the PLAINTIFFS for maintenance and repair of the dock and seawall pursuant to a 40/60 expense-sharing agreement. (R. 640 - 642).

Count II of the Amended Complaint is a claim for Breach of Contract against ASSOCIATION on behalf of GINGOLD and CARDENAS only, claiming that the ASSOCIATION breached its Governing Documents by charging them amounts unrelated to the repair of their individual dock space, contravening the Declaration. (R. 642 – 643).

Count III of the Amended Complaint is a claim for Breach of Contract against ASSOCIATION on behalf of STEUER, claiming that the ASSOCIATION breached its Governing Documents by charging STEUER amounts unrelated to the repair of their individual dock space, contravening the Declaration. (R. 643 – 644).

STANDARD OF REVIEW

The appeal of a Lower Court's ruling on a Final Summary Judgment is reviewed *de novo*. *See Major League Baseball v. Morsani*, 790 So.2d 1071, 1074 (Fla. 2001). (The general "standard of review governing a Trial Court's ruling on a motion for summary judgment posing a pure question of law is *de novo*"). *See Walsingham v. Dockery,* 671 So.2d 166 (Fla. 1st DCA 1996) (The standard of review of a summary judgment order is *de novo* and requires viewing the evidence in the light most favorable to the non-moving party.). *See Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla. 2000) (A Trial Court's ruling on a motion for summary judgment is subject to a *de novo* standard of review.); *Chiropractic One, Inc. v. State Farm Mut. Auto*., 92 So. 3d 871 (Fla. 5th DCA 2012). Furthermore, the Trial Court's interpretation of the Declaration is reviewed de novo. *Shores of Panama Club, LLC v. Shores of Panama Resort Cmty. Ass'n, Inc.,* 204 So. 3d 541, 543 (Fla. 1st DCA 2016) ("This court reviews both orders granting summary judgment and interpretations of condominium declarations de novo.").

SUMMARY OF THE ARGUMENT

This is an appeal of an Order which improperly analyzed provisions of the ASSOCIATION's Governing Documents, specifically its Declaration. The

Declaration is a contract, and the Lower Court erred (1) when it allowed general provisions in the Governing Documents prevail over specific provisions in its interpretation of the terms “dock” and “dock space” based on definitions contained in the July 1, 2007 Rules and Regulations (“Rules”); (2) when it improperly interpreted and relied upon the Rules as if they amended the ASSOCIATION’s Governing Documents basing its ruling on certain terms found in same while ignoring others; and (3) when it relied upon the Rules as evidence presented by GINGOLD which were hearsay without exception and unaccompanied by an affidavit attesting to their authenticity or applicability.

As such, the Lower Court erred as a matter of law when it granted GINGOLD’s Motion and must be reversed.

ARGUMENT

V. THE LOWER COURT ERRED WHEN IT APPLIED THE GENERAL PROVISION OF THE ASSOCIATION’S DECLARATION INSTEAD OF A SPECIFIC PROVISION AND MUST BE REVERSED.

A Declaration of condominium is not only a convent that runs with the land, but a contract spelling out the mutual rights and obligations of the parties, i.e. the ASSOCIATION and its members. *Pepe v. Whisper Sands Condominium Ass’n Inc.,* 351 So. 2d 755, 758 (Fla. 2d DCA 1977). With respect to the contractual interpretation of an ASSOCIATION’s Governing

Documents, a specific clause will take precedence over a general clause. *Raines v. Palm Beach Leisureville Community Ass'n*, 317 So.2d 814, 817 (Fla. 4th DCA 1975) (citing *Cypress Gardens Citrus Products, Inc. v. Bowen Bros., Inc.,* 223 So.2d 776 (Fla. 2d DCA 1969); *See, e.g., Ibis Lakes Homeowners Ass'n, Inc. v. Ibis Isle Homeowners Ass'n, Inc.*, 102 So. 3d 722, 728 (Fla. 2d DCA 2012); *Aetna Life Ins. Co. v. White,* 242 So.2d 771 (Fla. 4th DCA 1970).

GINGOLD argued that Article XXXVIII of the ASSOCIATION's Governing Documents provides that the ASSOCIATION must assess the owners uniformly for the dock slips as a common expense. However, such an interpretation is inaccurate and does not take into account Article XXXVIII as a whole. Article XXXVIII states that:

> "All assessments levied against the owners of private dwellings and said private dwellings shall be uniform and, *unless specifically otherwise provided for in this Declaration of Condominium*, the assessments made by the ASSOCIATION against each private dwelling owner and his private dwelling shall be the percentages which are set forth in Exhibit "E" attached hereto..."

It specifically provides that the process for an ASSOCIATION to assess its owners, such as GINGOLD, "unless specifically otherwise provided for in this Declaration of Condominium." (emphasis added). Article XXXIX specifically provides that the ASSOCIATION may issue a second

assessment to dock owners, such as GINGOLD, who have been assigned the exclusive or non-exclusive right to the use of such dock space for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space, in the same manner as such assessments are made with respect to common property; and that that the ASSOCIATION and other condominium apartment owners shall not be responsible therefore.

As it applies to this case, Article XXXVIII generally relates to assessments for common expenses overall. It is a general clause. While Article XXXIX specifically relates to assessments to owners who have the exclusive or non-exclusive right to use o such dock space, i.e. dock slip owners. This is a specific clause and clearly delineates additional and separate assessments for dock slip owners and the maintenance, upkeep, repair, replacement or rehabilitation of dock space associated with same, vs. assessments for all condominium apartment owners.

Article XXXIX provides:

> "La Fontana Condominium Association, Inc., ***shall assess*** *the condominium unit owner* who has been assigned the exclusive or nonexclusive right to the use of such dock space *for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space*, to the same extent, manner and degree and with the same liabilities, obligations and rights as such assessments are made with respect to the common property with the condominium and other condominium apartment owners shall not be responsible therefore." (R. 797-798).

It specifically provides that the ASSOCIATION can assess the GINGOLD for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space in the same manner in which they assess other members for the common property; i.e., by creating a budget of costs and expenses which will be continuing or nonrecurring for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space ***which is not to be borne by the ASSOCIATION or its members*** – only for dock slip owners. The law provides that "where there are general and special provisions in a contract relating to the same thing, the special provisions will govern in its construction over matters stated in general terms." *Aetna,* 242 So.2d at 773 (citations omitted).

As such, while both of the aforementioned provisions related to assessments, Article XXXIX specifically to relates assessments for dock space owners, and is therefore controlling. Therefore, the Lower Court erred when it applied the general provision, Article XXXVIII, and relied upon such an interpretation in its Order and must be reversed.

VI. THE LOWER COURT ERRED IN MODIFYING THE DECLARATION THROUGH APPLICATION OF A RULE AND MUST BE REVERSED.

Well established case law provides that the Declaration is superior and controlling over an ASSOCIATION's rules and regulations. *Parkway*

Gardens Condominium Ass'n, Inc. v. Kinser, 536 So.2d 1076 (1988) (citing *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637 (Fla. 4th DCA 1981); *Pepe,* 351 So.2d 755. Furthermore, "Provided that a Board-enacted rule does not contravene either an express provision of the declaration or a right reasonably inferable therefrom, it will be found valid, within the scope of the board's authority." *Beachwood Villas Condominium v. Poor*, 448 So.2d 1143, 1145 (Fla. 4th DCA 1984). (*emphasis added*).

In the instant case, GINGOLD argued that, because the Declaration does not define the term "dock space", the Lower Court must apply the definition found in the ASSOCIATION's Rules[3] to Article XXXIX of the Declaration. The Rules define "dock space" as follows:

> "DOCK SPACE: One of sixteen spaces, located along the dock over the submerged land leased to the ASSOCIATION, containing approximately 36 lineal feet each, referred to in the Condominium Documents, the exclusive use of which is assigned by the developer of La Fontana to exclusive users in accordance with the Condominium Documents." (R. 737)

The Lower Court improperly accepted GINGOLD's position that the "dock space" was just that, a space created by the dock, consisting solely of water, where their boat is parked. The Lower Court then applied the foregoing

[3] The July 1, 2007 Rules and Regulations of the Association. However, it is the ASSOCIATION's position that said Rules are inadmissible hearsay without an established exception, and the Court improperly relied upon same.

interpretation of “dock space” in conjunction with Article XXXIX of the Declaration, improperly allowing the Rule define the term “dock space” in a more restrictive manner than is contemplated by the Declaration. (R. 001114 – 001117).

The Lower Court specifically noted during the Motion for Summary Judgment hearing that Article XXXIX is essentially rendered meaningless if the word “water” were substituted into it for the term “dock space.” (R. 001132-001196). Indeed, there would be no need for the Declaration to have a separate Article directly addressing the ASSOCIATION’s ability to assess the dock space owners for the maintenance, upkeep, repair, replacement or rehabilitation of water; which is exactly Florida law clearly, and unequivocally provides that the Declaration takes precedence over the Rules.

In *Koplowitz v. Imperial Towers Condominium, Inc.,* 478 So.2d 504 (Fla. 4th DCA 1985), the Fourth District Court of Appeal held that the board of directors alone does not possess the inherent authority to pass additional rental restrictions beyond those provided in the Declaration of Condominium without the requisite owner approval, deeming the amendment to the rental rule in question invalid. Similarly, in *Mohnani v. La Cancha Condominium ASSOCIATION, Inc.*, 590 So.2d 36, 38 (Fla. 4th DCA 1991), the Fourth District opined that the unit owner’s right to lease an apartment unit could be

inferred from a declaration provision discussing board obligations to approve lease applications within thirty days of submission, among other items. Thus, a condominium board rule prohibiting a unit owner's lease of a unit for a two-year period after unit acquisition contravened the unit owner's inferable right to lease a unit, pursuant to the declaration. *Id.* The Fourth District held that the rule was invalid and the topic of the rule was not a legitimate subject for board rulemaking. *Id.*

The Fourth District, in *Buddin v. Golden Bay Manor, Inc.,* 585 So.2d 435 (Fla. 4th DCA 1991), relied on the *Koplowitz* and *Beachwood* precedent to a reach a similar holding in examining a cooperative association's board rental rule that was inconsistent with its proprietary lease.

> A Board's action which contravenes an express provision of the governing documents of a cooperative of which contravenes a right reasonably inferred therefrom is an *ultra vires* act and must be declared invalid. Cf. *Koplowitz v. Imperial Towers Condo. Inc.,* 478 So.2d 504 (Fla. 4th DCA 1985); *Beachwood Villas Condo. Inc. v. Poor*, 448 So.2d 1143 (Fla. 4th DCA 1984).

Id. at 437. The Fourth District reasoned that the rule conflicted with the superior governing documents and attempted to modify the proprietary lease, therefore, under *Koplowitz,* "it must fall." *Id.* The binding law established by *Koplowitz* and *Beachwood,* and a litany of other cases, means that the Lower Court could not interpret the definition of "dock space" found

in the Rules as just water; and apply that definition to Article XXXIX to render it meaningless.

As such, the Lower Court improperly modified the Declaration through application of a Rule and is making all other members, and the ASSOCIATION, liable for the maintenance, upkeep, repair, replacement or rehabilitation of the dock spaces, which is expressly prohibited by Article XXXIX. Therefore, the Order must be reversed.

VII. THE LOWER COURT ERRED IN GRANTING THE MOTION BECAUSE IT MUST GIVE EFFECT TO THE ENTIRETY OF CONTRACT AND MUST BE REVERSED.

The Lower Court erred in granting GINGOLD's Motion for Summary Judgment, and its Order must be reversed. The Declaration is a contract. *See Cohn v. The Grand Condominium*, 62 So.3d 1120 (Fla. 2011) *citing Woodside Vill. Condo. Ass'n v. Jahren,* 806 So.2d 452, 456 (Fla.2002) (quoting *Pepe v. Whispering Sands Condo. Ass'n,* 351 So.2d 755, 757 (Fla. 2d DCA 1977)). With respect to contract interpretation, the Florida Supreme Court stated that "courts should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect." *See Washington National Insurance Corporation v. Ruderman,* 117 So.3d 943 (Fla. 2013) *citing U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 877 (Fla.2007); *see also Swire Pac. Holdings v. Zurich Ins. Co.,* 845 So.2d 161, 166 (Fla.2003)

(same). ***Courts should "avoid simply concentrating on certain limited provisions to the exclusion of the totality of others.***" *Id.* at 165.

GINGOLD's argued that the definition of "dock space" found in the Rules means just the water, it simply cannot. Such an interpretation by the Lower Court is illogical. It would mean that the maintenance, upkeep, repair, replacement or rehabilitation of the dock spaces is not the responsibility of dock space owners, including GINGOLD, who have the exclusive use of his/her/their dock space(s), but rather the responsibility of all owners. The Court is required to construe the Declaration in its entirety and give effect ***not only*** Article XXXVII, ***but also to*** Article XXXIX. Importantly, the latter states the following:

> "There is hereby established as Limited Common Property sixteen (16) ***dock spaces containing approximately 36 lineal feet each***, as identified on a sketch attached hereto as Exhibit "D" and expressly made a part hereof, the same to constitute Limited Common Property as provided for in the within Declaration of Condominium…" (R. 737)

Lineal feet is a unit of measurement most commonly used for measuring the length of lumber, furniture, or other objects that have a uniform cross-sectional area. One linear foot is equal to 12 inches, or 1 foot. "[T]he actual language used in the contract is the best evidence of the intent of the parties, and the plain meaning of that language controls." *Summitbridge Credit Invs. III, LLC v. Carlyle Beach, LLC,* 218 So.3d 486, 488 (Fla. 4th DCA 2017)

(citation and internal quotation mark omitted). “[T]he court's task is to apply the parties' contract as written, not ‘rewrite’ it under the guise of judicial construction.” *City of Pompano Beach v. Beatty*, 222 So.3d 598, 600 (Fla. 4th DCA 2017).

The language of the Declaration i.e. “lineal feet” denotes that the “dock space” consists of a structure, not water. Surface area (i.e., water) is measured in square feet or square inches. If the Declaration intended the term “dock space” to consist of water, it would have used the term 36 square feet. Additionally, during the hearing on the Motion for Summary Judgment, the Lower Court indicated it make absolutely no sense for the Declaration to allow for the ASSOCIATION to assess the GINGOLD and other dock space owners separately for maintenance, ***upkeep***, ***repair***, ***replacement*** or *rehabilitation of water*. Furthermore, the Rules which the Court bases its decision further establishes that the term “dock space” is much broader than what its contained in the Order. (R. 889 – 920).

Section VIII.(B.)(4.) of the Rules provides:

> “No work, alterations, additions or removals to ***dock space***, the dock or access way, slips, ***piles, seawall or seabed under any dock space*** or the dock may be undertaken without prior written approval by the Board of Directors and then, only upon terms and conditions established or approved by the Board of Directors.”

Section VIII.(B.)(5.) of the Rules provides:

> "***The dock area is to be maintained by the users of dock space*** and any boat in the dock space is to be maintained by the user of that dock space…" (R. 907). Emphasis added.

Even taking the Rules written as a whole and in conjunction with the Declaration, "dock area" is to be ***maintained*** by dock space owners and "dock space" consists of physical components, not just water. To that end, the Rules require for dock space owners to obtain Board approval before they altered or modified any portion of their dock space, including the ***access way, slips, piles or seabed under any dock space***. If a dock space consisted only of water, and if the dock space owners were not required to maintain the dock area, the Rules would not reference the physical components of a dock space, i.e., access ways, slips or piles; and the Rules would certainly not contemplate a dock space doing any work, alterations, additions or removals to the dock space. And yet, the Rules do just that, indicating that the exclusive owners of a dock space are responsible for the maintenance of more than just water.

Notably, the definitions contained in the Rules draw a distinction between the "dock" and the "dock space" that does give meaning to Article XXXIX, without contradicting the plain language of the Declaration.

The Rules define dock as follows:

> "DOCK: The **dock structure** located on the submerged land leased to the ASSOCIATION and **attached to the sea wall** on the westerly side of the condominium property."
>
> The Rules define "dock space" as follows:
>
> "DOCK SPACE: **One of sixteen spaces**, ***located along the dock*** over the submerged land leased to the ASSOCIATION, **containing approximately 36 lineal feet each**, referred to in the Condominium Documents, the exclusive use of which is assigned by the developer of La Fontana to exclusive users in accordance with the Condominium Documents."

(R. 00919) Emphasis added. The Rules draw a distinction between the "dock" and "dock space." The dock is the ***structure*** that is ***attached to the sea wall***. The dock spaces are ***located along the structure***, i.e., built onto or attached to the dock structure, to form the sixteen spaces consisting of approximately 36 lineal feet. The "dock spaces" are not the structure attached to the seawall; they are separate items located along the dock (i.e., structure) that is attached to the seawall. The dock spaces are attached to the dock structure, not to the seawall. The dock spaces are made up of the "fingers" and the "T," which consist of approximately 36 lineal feet and exist for the sole purpose of demarcating the dock spaces. Without the "fingers" and the "T," there would be no "dock space."

Notably, during the hearing on the Motion for Summary Judgment the Lower Court made a pertinent observation that cannot be overlooked. Boat lifts are present in some of the docks spaces show in the overhead

photographs on Page 10 of the Motion for Summary Judgment. These boat lifts, which are installed by dock space owners solely to service their boats, ***are necessarily attached*** to the "fingers" and the "T." The boat lifts operate on electricity, which the ASSOCIATION necessarily had to run down to each "finger" and the "T" to each boat lift. GINGOLD's position that the "dock space" consists only of the water where the boat is parked is illogical, and not supported by the purported summary judgment evidence submitted GINGOLD.

"In construing a contract, the legal effect of its provisions should be determined from the words of the entire contract." *Sugar Cane Growers Co-op. of Fla., Inc. v. Pinnock,* 735 So.2d 530, 535 (Fla. 4th DCA 1999). Accordingly, "[w]hen the language of a contract is clear and unambiguous, courts must give effect to the contract as written and cannot engage in interpretation or construction as the plain language is the best evidence of the parties' intent." *Talbott v. First Bank Fla., FSB*, 59 So. 3d 243, 245 (Fla. 4th DCA 2011) (citation omitted); *see M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 435, 135 S. Ct. 926, 933, 190 L. Ed. 2d 809 (2015).

In the instant case, the language of Article XXXIX specifically allows the ASSOCIATION to assess dock space owners for the maintenance, upkeep, repair, replacement or rehabilitation of such dock space, in the same

manner as such assessments are made with respect to common property, i.e. equally. GINGOLD's definition of dock space negates Article XXXIX Declaration because there is no need for maintenance, upkeep, repair, replacement or rehabilitation of water. The law requires that "Courts must 'construe contracts in such a way as to give *reasonable meaning to all provisions,'* rather than leaving part of the contract useless*." Publix Super Mkts., Inc. v. Wilder Corp. of Del.,* 876 So. 2d 652, 654 (Fla. 2d DCA 2004) (quoting *Hardwick Props., Inc. v. Newbern,* 711 So. 2d 35, 40 (Fla. 1st DCA 1998)).

The Lower Court's interpretation of "dock space" is illogical and does not give a reasonable meaning to the ASSOCIATION's Governing Documents as a whole. Therefore, the Order must be reversed.

VIII. THE LOWER COURT ERRED IN RELYING UPON INADMISSABLE HEARSAY AND ITS RULING MUST BE REVERSED.

The Lower Court improperly relied upon inadmissible hearsay and the Order must be reversed. A Court cannot rely on hearsay when deciding a Motion for Summary Judgment. *Gromann v. Avatar Property & Casualty Insurance Company,* 345 So.3d 298 (Fla. 4th DCA 2022). Per § 90.803(6)(a), Florida Statutes, documentary evidence may be admitted into evidence as

business records ***if the proponent of the evidence demonstrates the following through a records custodian or other qualified person***:

> (1) the record was made at or near the time of the event;
> (2) was made by or from information transmitted by a person with knowledge;
> (3) was kept in the ordinary course of a regularly conducted business activity; and
> (4) that it was a regular practice of that business to make such a record.

Yisrael v. State, 993 So.2d 952, 956 (Fla.2008).

In reaching its ruling, the Lower Court improperly relied on the Rules attached as Exhibit "C" to the Plaintiffs' Motion for Summary Judgment. (R. 1114 – 1117). The Motion at issue did not attach any affidavits or cite to or rely upon any prior record evidence. (R. 693- 0962). No records custodian affidavit attesting to the authenticity of the Rules was ever submitted, and GINGOLD failed to satisfy the business records exception to the hearsay rule. *See Yisrael,* 993 So.2d at 956. Therefore, the Rules that the Lower Court relied upon and based its ruling were inadmissible hearsay and improper summary judgment evidence to form the basis of its ruling. Therefore, the Lower Court erred when it granted GINGOLD's Motion for Summary Judgment, and the Order must be reversed.

CONCLUSION

For the reasons as set forth more fully herein, the Lower Court erred in granting GINGOLD's Motion and improperly based its ruling on definitions of the term "dock" and "dock space" contained in the July 1, 2007 Rules and Regulations. The Lower Court failed to read the ASSOCIATION's Declaration in its entirety, and the Order must be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Patrick Dervishi, Esq.,** Shir Law Group, P.A., 2295 NW Corporate Blvd., Ste 140, Boca Raton, FL 33431, via service through Florida Portal this 6th day of August, 2024.

VERNIS & BOWLING OF PALM BEACH, P.A.
Attorneys for Appellant, *La Fontana Condominium Association, Inc.*
618 U.S. Highway One, Suite 200
North Palm Beach, Florida 33408
Telephone No. 561.775.9822
Facsimile No. 561.775.9821
Primary: alandrum@florida-law.com
Secondary: pbfiling@florida-law.com

/s/ Ashley N. Landrum
ASHLEY N. LANDRUM, ESQ.
Florida Bar No. 111594

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

WE HEREBY CERTIFY that the foregoing complies with the font requirements of Florida Rule of Appellate Procedure 9.045 and word count limit requirements Florida Rule of Appellate Procedure 9.210(a)(2) as the word count is: 5,254.

/s/ Ashley N. Landrum
ASHLEY N. LANDRUM, ESQ.
Florida Bar No. 111594