IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

CASE NO. 4D23-1725

LOWER TRIBUNAL
CASE NO.: CACE-21-008572 (21)

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DANIEL DA SILVA and INDIRA LALL,

Defendants/Appellants

v.

HORIZON AT CELEBRATION POINTE HOMEOWNERS ASSOCIATION, INC.,

Plaintiff/Appellee.

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# APPELLEE'S AMENDED ANSWER BRIEF

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

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## INTRODUCTION

Appellants Daniel Da Silva and Indira Lall (hereinafter collectively, "Da Silva") have filed the instant appeal of the Final Order Following Non-Jury Trial. Da Silvas' Notice of Appeal does not designate the Order on Defendants' Motion for New Trial and Rehearing (hereinafter "Order on Rehearing") as an order being appealed, but rather attached it as the order tolling of the appellate deadline, per the requirement of Rule 9.110(d) of the Florida Rules of Appellate Procedure. Because Da Silvas' Notice of Appeal did not designate the Order on Rehearing for appeal, the time to appeal same has expired.

Appellee Horizon at Celebration Pointe Homeowners Association, Inc. (hereinafter "Association") responded herein to Da Silvas' argument regarding the Order on Rehearing, to prevent waiver of same should the Court find the order to be properly and timely appealed. The symbol "R" is a reference to the record on appeal. The symbol "Appx" is a reference to the Amended Appendix to Initial Brief of the Appellant.

## STATEMENT OF THE CASE AND FACTS

The underlying lawsuit was an action for residential lien foreclosure of the Da Silvas' property within the Association. (R. at p. 15-32). Association is a homeowners' association with powers and duties as set forth in the Declaration for Horizon at Celebration Pointe ("Declaration") (R. at p. 984-1035) and Chapter 720 of the Florida Statutes. Da Silva purchased a real property from Lennar Homes, LLC ("Lennar"), on November 30, 2018. Construction was still being completed within the Association at that time. Lennar was the developer who created and was in charge of the Association at the time of Da Silvas' purchase. Lennar employed Campbell Property Management as the property manager. Da Silva contends that they experienced a lack of maintenance in the Association's common areas due to the construction. Da Silva did not make any monthly assessment payments from January 2019 through August 2019 or proffer any documents evidencing this complaint.

Da Silva contends that on August 15, 2019, someone posted a letter at his door which credited him $727.79, which amounts to nearly eight months of unpaid assessments. The alleged credit letter also attached a purported statement of account, which includes the

assessments from the Association's ledger, but adds credits that do not appear in the Association's ledger and fails to include the late fees charged for the period displayed in the alleged statement of account. Da Silva, thereafter, made lump sum or block payments every few months, which did not include any amounts for the late fees they were incurring. In July of 2020, the Association's legal counsel began collections, including sending the statutory letters, recording of claim of lien, and filing of the underlying foreclosure lawsuit.

After a non-jury trial held on March 10, 2023 and March 13, 2023, the Court entered its Final Order Following Non-Jury Trial ("Final Order") in favor of Association. Da Silva filed their Motion for New Trial and Rehearing, thereafter amended ("Motion"), in the lower court. Contrary to Da Silvas' contention the trial court held two one-hour hearings on their motion on May 31, 2023 and June 9, 2023, and a third hearing on June 16, 2023 to clarify the terms of the trial court's ruling. The first two hearings were limited or partial evidentiary hearings, wherein the Da Silvas proffered to the trial court the exhibits attached to Da Silvas' Motion (R. at p. 1069-1116) and Amended Motion (R. at p. 1202-1248), copies of payment records

filed under a Notice of Filing (R. at p. 1155-1162), various trial evidence, and the testimony of Daniel Da Silva (R. at p. 1182-1183) (Trial court's Hearing Proceedings confirms Da Silvas' testimony was taken). The Association presented various pieces of trial evidence and both parties presented their calculations of the amounts at issue. The Record on Appeal does not contain a complete transcript of the evidence heard by the trial court on Da Silvas' Motion. The Record on Appeal only contains the excerpt of the trial court's ruling on June 9, 2023. (R. at p. 1188-1201). The Order on Rehearing, however, states in pertinent part, "[t]he Court having reviewed…***the evidence presented by the parties***…" (R. at p. 1252)(emphasis added).

The Final Order found, *inter alia*, that the Association proved by a preponderance of the evidence that it was entitled to $4,343.24 from the Da Silvas, which was the full amount documented on its ledger (R. at p. 1278) less two credits awarded by the trial court. The first credit awarded for $727.79, was based on a disputed letter from the Association's property manager that allegedly gave a courtesy credit to Da Silva. The second credit for $109.37, refunded an uncontested payment for the December 2018 assessment because of the delay in the issuance of Da Silvas' certificate of occupancy.

On June 16, 2023, the trial court entered the Order of Rehearing, which adopted all the findings from the Final Order, except for paragraph 4. (R. at p. 1252-1253, ¶2.) Paragraph 4 of the Final Order contained the trial court's findings and ruling on amounts owed to the Association. (R. at p. 1118.) The trial court replaced paragraph 4 with a ruling that still held that the Association proved by a preponderance of the evidence that it was entitled to $4,343.24 from the Da Silvas, but credited the Da Silvas for all assessments and late fees due prior to September 1, 2019, totaling $975.44. (R. at p. 1252-1253, ¶2.) The trial court's total reduction is the exact amount owed on the Association's ledger prior to September 1, 2019. (R. at p. 1273.) The trial court also ordered that most of Da Silvas' payments which were already applied to fees and costs during the period of September 1, 2021 through February 1, 2023, should instead be applied to late fees and assessments. Per the trial court's order, counsel for the parties calculated these amounts at the June 16, 2023 hearing and handwrote the changes to the proposed order. Da Silva subsequently filed the present appeal of the Final Order.

## SUMMARY OF THE ARGUMENT

The crux of the dispute in the underlying case is that Da Silva contends that they were not in default. Da Silvas' contention is based on some disputed credits. Two of those credits allegedly paid at closing is contradicted by Association's closing disclosure, ledger, and Declaration, which show that the only assessments due at closing were the prorated amount for November 30, 2018, and the full amount due for December of 2018. There is no explanation for why those specific amounts were required at closing. Da Silvas' closing statement is heavily redacted and unsupported by testimony of the person who prepared it. The trial court was correct in not giving any weight to these two disputed credits, both in the Final Order and Order on Rehearing irrespective of their appearance in the statement attached to the disputed credit letter. This inaccuracy, among others, demonstrates why the statement attached to the disputed credit letter and statement was not created by the Association.

In the Final Order, the trial court granted only the $727.79 credit from the disputed credit letter. There is no question that the credit letter only stated the credit being issued was for $727.79. Notwithstanding the Association's opposition to the legitimacy of this

document, this is the amount specifically stated. There is no mention of late fees included or waived anywhere in the document. The trial court erred on rehearing, by crediting all the late fees for the entire eight month period, without a factual basis for same. Critically, the $727.79 was never paid by Da Silva, on time or otherwise. It was merely a partial credit after the fact as an alleged courtesy. So the late fees were never expressly waived. Da Silvas' contentions of an accounting error is misplaced. The accounting error did not occur in the Association's records, it is solely a product of these alleged credit documents which the Association did not receive until after this lawsuit was filed.

Da Silvas' Amended Initial Brief makes repeated incorrect arguments that they were not in default based on the alleged credits mentioned hereinabove and some missing payments. Da Silva acknowledges that the unpaid monthly assessments caused late fees to be incurred, but they contend that their payments should have been applied to monthly assessments first and leave only the late fees as the amounts owed. Da Silva does not provide any authority as to why their payments should be applied contrary to Fla. Stat §720.3085(3)(b).

Da Silvas' contentions have a few fatal flaws. Some of the alleged missing payments were never delivered to the Association or its counsel. Because it is Da Silvas' responsibility to deliver their payments, the effect of these missing payments is no different than a payment that was never sent. Da Silvas' still owe those amounts and the fees and costs incurred in collecting them. The remaining alleged missing payments were applied by the Association's Counsel and the Association pursuant to Fla. Stat §720.3085(3)(b). Even after application of the trial court's credits, there was still a balance of assessments owed by Da Silva. Assuming *arguendo*, that the trial court's credits changed the amounts owed, it would not invalidate the Association's notices or lien. See *Pash v. Mahogany Way Homeowners Ass'n*, 310 So. 3d 430 (Fla. 4th DCA 2021).

Association contends that Da Silva waived their right to appeal the Order on Rehearing based on their failure to designate such order for appeal. Notwithstanding same, Da Silva incorrectly contend that the trial court abused its discretion by ordering counsel to carry out the ministerial duty of taking the credit amounts ruled on by the Court and recalculating the amounts owed for the Order on Rehearing. The basis of this contention is the false implication that

the trial court found the two amounts from Da Silvas' closing statement to be valid. No such ruling was made. Da Silva denied this Court the ability to conduct any meaningful review of the alleged abuse of discretion by failing to order and produce the hearing transcripts of the two limited or partial evidentiary hearings and the third hearing to clarify the trial court's ruling. Based on these issues, the Final Order should be affirmed and Da Silva should not be granted a new trial.

## STANDARD OF REVIEW

This Court reviews the trial court's interpretation of a declaration of a homeowners' association as a *de novo* review. *Valencia Reserve Homeowners Ass'n v. Boynton Beach Assocs., XIX, LLLP*, 278 So. 3d 714, 716 (Fla. 4th DCA 2019). "The constitution and by-laws of a voluntary association, when subscribed or assented to by the members, becomes a contract between each member and the association." *Waverly 1 & 2, LLC v. Waverly at Las Olas Condo. Ass'n, Inc.*, 242 So. 3d 425, 428 (Fla. 4th DCA 2018). "Issues of contract and statutory interpretation are reviewed de novo as they raise questions of law." *Valencia Reserve Homeowners Ass'n supra.*

"To the extent the trial court's final judgment of foreclosure 'is based on factual findings, we will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review.'" *Gonzalez v. Fannie Mae*, 276 So. 3d 332, 335 (Fla. 3d DCA 2018)(quotation omitted). "Findings of fact by a trial judge in a nonjury proceeding will not be set aside on review unless totally unsupported by competent and substantial evidence." *Verneret v. Foreclosure Advisors, LLC*, 45 So. 3d 889, 891 (Fla. 3d DCA 2010); See *Peacock v. Carver*, 315 So. 2d 214 (Fla. 1st DCA 1975) (final judgment of trial court reaches district court of appeal with a presumption of correctness and may not be reversed if there is competent evidence in the record to support such judgment).

"The appropriate standard of review applied to a trial court's denial of a motion for a new trial is whether the trial court abused its discretion." *Izquierdo v. Gyroscope, Inc.*, 946 So. 2d 115, 117 (Fla. 4th DCA 2007). In order for the appellate court to reach that conclusion, the evidence must be clear and obvious, and not conflicting. *Id.* at 118.

## QUESTIONS PRESENTED

I. Whether the trial court abused its discretion in making its factual findings in the Final Order Following Non-Jury trial, when there was competent and substantial evidence that demonstrated how each amount was charged and how each payment received was applied in compliance with Florida Statute and the governing documents.

II. Whether the trial court abused its discretion in denying, in part, the Da Silvas' Motion for New Trial and Rehearing when the trial court ordered Association's Counsel to carry out the ministerial duty of recalculating the final amounts owed based on the trial court's ruling.

## ARGUMENT

### I. Da Silvas' incorrect contention that the trial court's Final Order is unsupported by competent evidence is mainly based on Da Silvas' own unsupported evidence.

The trial court entered a Final Order which held that the Association fulfilled all conditions precedent to the filing of the foreclosure, and that the Association proved by a preponderance of the evidence, it was entitled to $4,343.24 from the Da Silvas (R. at p. 1118). This amount was supported by the Association's ledger (R. at

p. 1278), which show the amounts owed up and through March 1, 2023. Kelly Crittenberger testified about the ledger's contents and Da Silvas' delinquency. (Appx. at p. 34, line 10 through p. 42, line 24.) This amount was further supported by the Association's Counsel's testimony and payment chart, which contained transmittals and copies of the checks received once collections began. (Appx. at p.106, line 21 through p. 113, line 13.) Association's Counsel's chart and transmittals showed how each payment received was applied, either by the Association's Counsel or by the Association pursuant to Florida Statute § 720.3085(3)(b). (R. at p. 1332-1375.) The parties also entered into a Joint Pretrial Stipulation wherein, the Da Silvas admitted to 16 delinquent payments, and the statutory allocation of two payments showing the amounts applied by the law firm and the Association. (R. at p. 439-451.) Association, therefore, presented evidence of each assessment, late fee, and administrative fee charged, as well as every payment received and applied by the Association and its legal counsel.

A. Da Silvas incorrectly contend that two arbitrary amounts allegedly paid at closing should have been applied to their account towards future assessments, in contradiction to Association's closing documents.

Da Silva' alleged closing statement was mostly redacted except for the lines with the two amounts of the $41.76 and $105.89. The trial court admitted the Da Silvas' closing statement into evidence at Defendants' Composite Exhibit 1, over Association's objection to hearsay, improper authentication and improper composite exhibit. (Appx. at p. 62, line 15 through p. 65, line 12.) Admission to evidence, however, does not indicate how much weight it was given by the trial court.

The amounts of $41.76 and $105.89 from Da Silvas' closing statement did not have any apparent or calculable relation to the Association's assessments. The Da Silvas' deed was recorded on November 30, 2018 (R. at p. 1041). Pursuant to Section 18.15 of the Declaration of Covenants and Restrictions ("Declaration"), the Da Silvas' liability for assessments, *inter alia*, began when they accepted the deed to the property. (R. at p. 1016.)

Critically, Da Silvas' marked up closing statement was in contradiction to the Association's closing document. The Association's closing document showed exactly what amounts were due by Da Silvas at closing, which included $3.48 pro rata amount for November 30, 2018, and $105.89 for the assessment due for the

month of December 2018. (R. at p. 1037.) These two amounts were further corroborated by the Association's ledger entries for December 2018, which credit a payment of $109.37, i.e. $3.48 + $105.89. (R. at p. 1273). The Association's closing document also included an initial contribution amount due at closing of $317.67. Kelly Crittenberger testified that the initial contribution is not shown on the ledger because it does not get applied to assessments, but rather it would go to Lennar Homes, the Developer. (Appx. at p. 24, line 22 through p. 25, line 17.; p. 36, lines 21-23.)

Da Silvas also incorrectly contend that they are entitled to a credit for the disputed amounts of $41.76 and $105.89 because they appear on the most disputed documents in the trial. The alleged credit letter attached a document titled "Statement of Account." (R. at p. 1305.) The Association provided the testimony of three witnesses, including but not limited to, Karey Raubenheimer, whose name appears on the letter, who denied having possession of such a document and denied the legitimacy of the credits. Kelly Crittenberger, the Association's property manager for 26 years, demonstrated how this statement was inconsistent with the Association's documents and that it even provided inaccurate

information about, including but not limited to, the Da Silvas' closing date, running balance, and the absence of late fees. (Appx. at p. 48, line 12 through p. 53, line 13.)

In the Final Order, the trial court awarded only two credits that appear on this disputed credit letter, namely, the $727.79 allegedly credited on August 15, 2019, and the refund of the Da Silvas' payment of $109.37 for their December 2018 monthly assessment based on the delay in receiving their Certificate of Occupancy (R. at p. 1166, line 18 through p. 1167, line 22.) These two credits were not awarded due to any inaccuracy in the accounting. These credits were awarded despite the express wording of Sections 18.19 and 26.9 of the Declaration, which do not allow a waiver of assessments for non-use of the common areas (R. at p. 1017), nor do they allow a waiver of assessments due to lack of maintenance or the inconvenience of construction (R. at p. 1030), respectively.

On rehearing, the trial court had the opportunity to award the Da Silvas with the disputed $41.76 and $105.89, but instead simply deemed the Da Silvas to be current through the period prior to September 1, 2019. The trial court expressly held that it was crediting the $975.44 in assessments and late fees incurred prior to

September 1, 2019. "In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Da Silva failed to demonstrate how the trial court erred giving no credit for these disputed amounts.

B. Da Silva incorrectly contend that the $727.79 credit was an accounting error when the basis for same only appeared in a contested exhibit, and was an alleged courtesy from the property manager rather than an error in accounting.

The Association presented substantial competent evidence showing that the $727.79 credit allegedly issued on August 15, 2019, was unsupported by any Association record and was not permissible under the governing documents. The Association's witnesses included Karey Raubenheimer, the person who allegedly wrote the credit letter, Kelly Crittenberger, the Association's corporate representative and property manager, and the corporate representative of Lennar Homes, LLC, the Developer who governed the Association prior to the turnover to the homeowners. These witnesses denied: 1) having or giving authority for the $727.79 credit, 2) issuing the credit, or 3) possession of any record of the credit.

(Appx. at p. 143, line 8 through p. 146, line 4. (Raubenheimer)) (Appx. at p. 46, line 19 through 48, line 11. (Crittenberger)), (Appx. at p. 134, line 3 through p. 137, line 8. (Lennar))

The Association presented Section 26.9 of the Declaration to demonstrate that no such credit could be authorized for inconvenience due to construction. (R. at p. 1030.) The Association's meeting agenda for the turnover to the homeowners did not include any mention of a credit. (R. at p.1052.) The trial court ultimately ruled that the letter appeared to have the property manager's letterhead, therefore, despite all the testimony and evidence to the contrary, a waiver was issued by Campbell Property Management on behalf of the entity identified as "Lennar's HOA" (R. at p. 1166, lines 7-16.) The alleged credit letter informed Da Silva that they would be responsible to pay their September 2019 monthly assessment, however, they did not send another payment until November of 2019. (R. at p. 1273-1274.) Da Silva, therefore, were in default.

C. Da Silvas' erroneous contentions about additional late fees and five allegedly missing payments are unsupported by the evidence.

Da Silvas' contention that they should be credited for missing payments was unsupported by the evidence. Da Silva contended that

they should be given credit for 3 money orders, including those ending in #0086 for $115.00, #0138 for $120.00, and #0143 for $120.00. Da Silva had no evidence that these 3 money orders were ever sent or received by the Association. The trial court was correct in finding that these amounts are still owed to the Association by Da Silva, and therefore all attendant late fees and attorney's fees and costs incurred in their collection.

Additionally, the parties stipulated in the Joint Pretrial Stipulation that money orders ending in #3049 for $330.00 and #0091 for $115.00 were applied to attorney's fees and costs pursuant to Fla. Stat. § 720.3085(3)(b). (R. at p. 442-443, ¶2(e).) Therefore, these payments were not missing. Da Silvas incorrectly contend that they should not be liable for fees because they were supposedly not in default when these payments were sent. For example, Da Silva contended that the money order ending in #4164 for $770, dated July 13, 2020, should not have been applied to attorney's fees because he allegedly did not receive the Association's statutory notices. Section 720.3085(4)(b) & (5), Florida Statutes, requires that the letters be sent certified mail, return receipt requested, but does not require proof of receipt. The trial court had ample evidence to find that the

statutory letters were sent via certified mail. Da Silva disputes whether the letters were sent to their address because the United States Post Office proof of delivery shows that the letters were sent to Pompano Beach, rather than Margate. (R. at p. 1385.) However, the trial court also reviewed the post office's website which shows the cities that correspond to Da Silvas' zip code. The post office's webpage indicates that Pompano Beach is the primary city and Margate is an additional city identified for Da Silvas' zip code. (R. at p. 1057.)

The trial court also had competent evidence to conclude that Da Silvas' July 13, 2020 payment of $770 (R. at p. 1373), which equals the total of the unpaid 7 months of assessments, not including late fees, was sent just days after receipt of the Association's Counsel's July 9, 2020 letter. (R. at p. 1315, 1320, & 1384-1385.)

Based on the trial court's Order on Rehearing, if the Da Silvas are deemed to be current prior to September 1, 2019, then their subsequent delinquencies which led to the Association retaining legal counsel in July of 2020 would still subject them to the imposition of late fees, costs and attorney's fees. Da Silvas' other disputed money orders ending in #3049 for $330.00 and #0091 for $115.00 were dated September 9, 2020 and December 3, 2021, respectively. (R. at

p. 1364 & 1371.) These payments, therefore, were subject to application of fees and costs.

Critically, Da Silvas' stipulated that they failed to make timely payments for 9 months from February through October of 2019, and failed to make timely payments for 7 months from January through August of 2020. (R. at p. 442-444.) Da Silva, therefore, did not cure the late fees and attorney's fees that accrued during these periods. While it appears that the Da Silvas' sent in block payments for the monthly assessments missed, those block payments did not account for the late fees incurred because of same. Da Silvas' expectation that their block payments should be applied towards assessments first, rather than late fees, is inconsistent with Fla. Stat. § 720.3085(3)(b).

Exhibit A to the Association's Response in Opposition to Defendants' Motion for New Trial and Rehearing provided a complete breakdown of Da Silvas' payment history for the relevant period along with the application of the credits pursuant to the Court's ruling. (R. at p. 1131-1133.) This chart completely refutes Da Silvas' contention that the Court applied the credits without any regard to whether the default was cured by same. Clearly, Da Silvas' sporadic and cavalier payments caused a delinquency that went uncured.

Even assuming the trial court's ruling that Da Silvas were deemed current at the end of August 2019, Da Silva stipulated that they did not timely pay September or October 2019. Da Silvas' admission that their payments were made in arrears demonstrates that late fees were properly applied to those months. Da Silvas' payment must be applied first to those fees before application to assessments. Da Silvas' delinquency expanded when they failed to make payments from January 2020 through August 2020. Based on that delinquency, the trial court's ruling on rehearing expressly found that Da Silvas were still in default. (R. at p. 1257, ¶4.) Da Silva continuously made payments in arrears and failed to pay the late fees and legal fees associated with same.

Association applied each payment received in compliance with Chapter 720 of the Florida Statutes. Even assuming *arguendo* that the trial court's credits were deemed a result of an accounting error as Da Silva contend, it would not cure Da Silvas' delinquency. A claim of lien is not invalidated "…simply because it contains a mistake or overstatement in the amount of unpaid assessments." *Pash v. Mahogany Way Homeowners Ass'n*, 310 So. 3d 430 (Fla. 4th DCA 2021). *Pash* held that "[n]othing in section 720.3085(1)(a) suggests

that the claim must be free of error for it to serve as an otherwise valid claim of lien." *Pash* declined to apply an interpretation of the statute that would invalidate any claim of lien that contains an error in the amount of the assessments. *Id.* at 432. Consequently, the trial court correctly found that Association satisfied the requirements of Chapter 720 and foreclosed upon its lien.

## II. There was no abuse in discretion for the trial court to order Association's Counsel to carry out the ministerial duty of recalculating the final amounts owed based on the trial court's ruling.

Da Silva incorrectly contends that the trial court should have granted a new trial for purposes of having the Association's witness be subject to cross examination on a new payment history that conforms with Da Silvas' mostly rejected version of events. Da Silvas' Amended Motion sought to reargue the same credits, payments, and documents presented at trial. Contrary to Da Silvas' contentions, there is no need to do more fact finding. The trial court's recalculations were based on its rulings on the alleged closing statement and disputed credit letter which the Association denied issuing or possessing. Because the trial court already determined the amounts owed to the Association and the amounts to be credited

back, recalculation of the final amounts was a ministerial duty of the trial court.

There is no fact finding needed after damage amounts have been determined because the mathematical computation is a ministerial duty of the court. See *Five Solas, LLC v. RAM Realty Servs., LLC*, 322 So. 3d 82, 86 (Fla. 4th DCA 2021) ("Once a verdict has liquidated the damages of a date certain, computation of prejudgment interest is merely a mathematical computation"); see also *Citizens Prop. Ins. Corp. v. Nunez*, 194 So. 3d 1064, 1069 (Fla. 2d DCA 2016) (A claim becomes liquid when the verdict has the effect of fixing the amount of damages).

A. Da Silvas' incorrectly contend that the recalculation should have included the alleged monies paid at closing account which Da Silvas contend was a credit for future assessments, because the trial court made no such finding.

In the Final Order, the trial court only granted the two credits expressly stated and left out the two contested amounts from the Da Silvas' closing statement. After rehearing, the ruling regarding those two credits was replaced, but the trial court was still not persuaded that those two amounts from Da Silvas' closing statement should have become a credit that toward future assessments. It is important

to note, that the trial court's ruling was that Da Silva should be deemed current prior to September 1, 2019, not that Da Silva should have a credit balance. (R. at p. 1253.)

B. The absence of a hearing transcript from the two limited or partial evidentiary hearings and the third hearing on the ruling, prevents meaningful review of whether the trial court abused its discretion.

On appeal, this Court is limited to considering whether the trial court abused its discretion in denying a new trial. *Dewitt v. Maruhachi Ceramics of Am., Inc.*, 770 So. 2d 709, 711 (Fla. 5th DCA 2000) (To conclude that abuse of discretion has occurred, the evidence must be clear and obvious, and not conflicting). Da Silva did not direct the court reporter to transcribe the transcript of the two limited or partial evidentiary hearings or the third hearing. During the third hearing, the trial court heard from both parties, clarified its ruling and then directed counsel to calculate the new amounts. Da Silvas' counsel initialed the changes to the Order on Rehearing. (R. at p. 1252-1253.) An abuse of discretion occurs "…where no reasonable [person] would take the view the trial court adopted." *Abeid-Saba v. Carnival Corp.*, 184 So.3d 593, 602 (Fla. 3d DCA 2016). Da Silva now asks this Court to find an abuse of

discretion in the trial court's decision absent the trial court's review of the trial evidence, the testimony, and arguments presented.

Critically, the transcript of the lower court's examination of both parties' evidence pertaining to the amounts paid at closing is not included in the Record on Appeal. Neither is the transcript of the lower court's examination of Da Silvas' payment records as compared to Association's payment records, nor the lower court's ruling and rationale pertaining to the application of payments pursuant to the statute. "The absence of a hearing transcript at which the trial court made this decision prevents any meaningful review of whether the trial court abused its discretion in this regard." *Umana v. Citizens Prop. Ins. Corp.*, 282 So. 3d 933, 934-35 (Fla. 3d DCA 2019). In appellate proceedings, there is a presumption of correctness in the trial court's decision. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) (distinguished by *Benedetto v. U. S. Bank N. A.*, 181 So. 3d 564, 567 (Fla. 4th DCA 2015) because it involved a non-evidentiary hearing). "The written final judgment by the trial court could well be wrong in its reasoning, but the decision of the trial court is primarily what matters, not the reasoning used." *Applegate supra*.

## CONCLUSION

Da Silva is not entitled to a new trial in this matter. Assuming that Da Silva did not waive appeal of the Order on Rehearing, each factual issue they raised concerns a disputed document which is contradicted by the Association's records. Abuse of discretion, therefore, would have to be demonstrated by Da Silva. Notwithstanding the Association's opposition to the credits issued by the trial court, the trial court's factual findings cannot be disturbed on appeal for abuse of discretion because a reasonable person could take the view the trial court adopted. Da Silva cannot show that the trial court abused its discretion in granting the Order on Rehearing because once the trial court rendered its verdict on the damages and credits, the mathematical calculations were simply a ministerial duty of the court. The absence of hearing transcripts from the hearings on Da Silvas' Amended Motion is fatal to this Court's review of the trial evidence and testimony for any possible abuse of discretion in the trial court's findings. This Court should, therefore, affirm the trial court below.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served on February 20, 2024 via Florida Court's E-Portal to Michael Gulisano, Esq. (michael@gulisanolaw.com), counsel for Defendants/Appellants, Gulisano Law, PLLC, 1701 N. Federal Highway, Suite 4, Boca Raton, Florida 33432.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing is in compliance with the font requirements of Rule 9.045, Fla. R. App. P.

BY: */s/ Steven M. Canter*
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