

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

Case No. **4D2024-2633**

L.T. No. 50-2024-CA-002299XXXXAMB

**NUMBER 2 CONDOMINIUM ASSOCIATION –
PALM GREENS AT VILLA DEL RAY, INC., SANDRA KLIMAS,
TODD MARRAZZO, and ANTHONY DIGENNARO,**

Appellants,

v.

**PALM GREENS AT VILLA DEL RAY RECREATION
CONDOMINIUM ASSOCIATION, INC., et al.**

Appellees.

Appeal from the Fifteenth Judicial Circuit of Florida in and for Palm Beach
County

ANSWER BRIEF OF APPELLEES

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Rule 1.610(d), Fl. R. Civ. P. 37

Rule 1.610, Fl. R. Civ. P. 43

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Fla. Const., Art. XI, § 3 52

Fla. Const., Art. XI, § 5 52

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Committee Notes, 1977 Amen., Rule 9.130, Fl. R. App. P. 48

PRELIMINARY STATEMENT

This case involves an appeal from of the Trial Court’s Order Denying Plaintiff’s Emergency Motion for Temporary Injunctive Relief (the “Order”) entered by the Honorable Reid. P. Scott of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. Appellees are Palm Greens at Villa Del Ray Recreation Condominium Association, Inc. (“Recreation Association”), Al Musaffi, Madeline Welsing, Linda Brier, Carol Hager, and Arthur Robins (collectively, “Appellees”).¹

After having strategically noticed their Motion for Temporary Injunction for a non-evidentiary hearing and presenting no evidence in support of their Motion or in rebuttal to Appellees’ Opposition, Appellants now appeal an Order denying same in raising a flurry of inherently conflicting arguments, which have both been waived by Appellants and are without merit, had they been preserved for review. For example, Appellants’ claim that the trial court deprived them of due process because the hearing was not converted to an evidentiary hearing was waived through their actions below and unavailing

¹ Appellant’s Appendix is referred to as “A.____,” followed by the page number of the appendix. Appellants’ Initial Brief is referred to as “IB. ____.”

because conversion of the hearing without adequate notice would have violated *Appellees'* due process rights under well-settled law.

Moreover, the allegations of a verified complaint alone are insufficient to support a motion for injunctive relief, except when the motion is heard at an uncontested *ex parte* hearing. In any event, Appellants failed to show irreparable injury and thus are not entitled to injunctive relief. Indeed, the only purported harm they complained of are (a) alleged economic damages; (b) baseless speculation about future events; and (c) the consequences of their own conduct, none of which rises to the level of irreparable harm.

Appellants also notably made a strategic decision not to appeal the trial court's Order Granting Appellees' Cross-Motion for Injunction, which is fatal to this appeal because the issues decided therein are directly "interrelated" to the Order now on appeal, as found by the trial court.

The trial court's Order Denying Appellants' Motion must be affirmed.

STATEMENT OF THE CASE AND FACTS

The Palm Greens Community and the Parties' Disputes

This case revolves around disputes arising from the troubled tenure of Appellant Sandra Klimas (“Klimas”) as a director for Number 2 Association and her colleagues (collectively, the “Appellants”) at Palm Greens. Palm Greens is a half-century-old retirement community that is made up of three separate entities, known as Number 1 Association, Number 2 Association, and the Recreation Association. A.212-213,216. The Recreation Association owns and manages Palm Greens’ common facilities. A.742(¶3). The Recreation Association’s Board of Directors is made up of an equal number of representatives from both Number 1 Association and Number 2 Association. A.27.

During Appellants’ stewardship, by Appellants’ own admissions, hundreds of thousands of dollars were inexplicably misplaced, and the required reserves for the operation of a condominium association was revealed to be short by more than \$4 million. A.743-746(¶¶3-7); A.786; A.790-791; A.807-866; A.785. It is alleged that, when certain Board Members of the Number 1 Association, Number 2 Association, and the Recreation Association,

as well as Palm Greens homeowners raised concerns about ongoing theft and mismanagement and began taking action, Appellants implemented an unlawful scheme that was intended to allow Appellants to gain control to the Recreation Association. Specifically, two Number 2 Association Board Members that had been sued by the Number 1 Association and Recreation Association in a separate matter withdrew from the Board in December of 2023, based on which Appellants, as alleged, orchestrated a fraudulent election, which fraudulent election results would, according to Appellants, automatically appoint Appellants Klimas and DiGennaro to fill the two vacant seats. A.742-752; A.794; A.807-866; A.184(¶19); A.185(§I); A.36-37(¶¶61-62); A.590(23:21-23).

In connection with the election, Appellees proved, *inter alia*, that Appellants circulated a candidate information sheet that contained false accusations against Appellee Arthur Robins (“Robins”). Robins then lost the election due to the accusation which was later admitted by Third-Party Defendant and then-candidate, Marge Fattori, under oath, to have been fraudulent. Moreover, the email address Third-Party Defendant, Becker & Poliakoff, P.A. (“Becker”), provided for electronic voting turned out to be non-operational. Becker ran Becker

Ballot, who conducted the election in question, and is Appellees' counsel of record below and in this appeal. A.748-749(¶10); A.798-803; A.816-841.

According to Appellees, the purpose of Appellants' ruse was to put an end to any litigation against Appellants for their mismanagement and diversion of funds through manipulated voting powers, deprive the Recreation Board of its funds—more specifically, to gain control over more than \$500,000 in Recreation Board reserves—and halt the monthly payments of \$42,303.00 due to the Recreation Board. Given that the January 31, 2024, election was challenged as having been fraudulent, the Recreation Association did not seat Klimas and DiGennaro, who purported to have been elected as Number 2 Association's President and Vice President respectively, but, rather, continued to protect the members of the Palm Greens community and prevent further theft by Appellants. A.184(¶19); A.185(§I); A.36-37(¶¶61-62); A.748-749(¶10).

Moreover, during this time, the Recreation Association conducted significant necessary remedial and maintenance work, which included repairs that Appellants objected to and which, according to expert opinion, had they not been conducted, could have

caused serious bodily harm or death to Palm Greens community members. By way of example, in objecting to necessary termite extermination at Palm Greens' clubhouse, Appellants stated that such work was unnecessary because the "clubhouse is scheduled to be demolished in the first quarter of 2026." A.180-181(¶6); A.744-752(¶¶5-8,11-14); A.543-545.

The Trial Court Proceedings

On March 12, 2024, Appellants brought suit against Appellees for declaratory, temporary and permanent injunctive relief and for the appointment of a receiver. A.25-178. On April 3, 2024, Defendants to that action, along with a Class of Counter-Plaintiffs and Third-Party Plaintiffs, counter-sued Appellants and Third-Party Defendants for temporary and permanent injunctive relief, conspiracy to breach fiduciary duties, and aiding and abetting breach of fiduciary duties. A.196-256.

On March 13, 2024, Appellants filed an "Emergency Motion for Preliminary Injunction." A.179-186. On April 3, 2024, Appellees opposed Appellants' Motion for injunctive relief, filing therewith eleven declarations, chronicling Appellants' conduct and mismanagement of funds. A.261-278; A.734-866. Appellees also filed

its expert Andrew Allocco’s declaration who found, *inter alia*, that damages to the decades-old structures Appellees were repairing—and which repairs Appellants were seeking to block—“might cause a collapse with major injury or death,” if not repaired. A.725-733. On April 3, 2024, Appellees brought a Motion for Preliminary Injunction and for a Forensic Audit. On April 12, 2024, Appellants noticed their Motion for a non-evidentiary hearing, A.258.

The Hearing on Motions for Preliminary Injunction

On June 14, 2024, the trial court held a hearing noticed by Appellants on the parties’ cross-motions for injunctive relief. A.568-635. Appellants did not object to the admissibility of Appellees’ evidence. *Id.* While also briefly indicating, for the first time towards the end of the hearing, that Appellant Klimas was present and would give testimony if so required by the court, Appellants insisted that their Motion pertained “strictly [to] a document interpretation issue” and required no admission of evidence, other than the bylaws attached to their Complaint. A.592(25:15-17); IB:26; A.605(35:8-18); A.604-606; IB:16. Appellants did not explain how Klimas’ testimony could materially support their positions or rebut Appellees’ evidence and positions. *Id.* Appellees objected to the conversion of the non-

evidentiary hearing to an evidentiary hearing without adequate notice. A.607(40:10-16).

The Trial Court's Findings

The Trial Court denied Appellants' Motion for Preliminary Injunction and granted Appellees' Cross-Motion for Preliminary Injunction. A.539-548. In denying Appellants' Motion, the trial court found, *inter alia*, that Appellants failed to prove irreparable harm absent an injunction. The Trial Court found that “[c]ourts have held reversible error in the issuing of a temporary injunction, after a contested hearing, where the record reflects that the only submitted evidence in support of injunctive relief is a verified complaint and arguments of counsel.” A.541-542 (citing *Holland M. Ware Charitable Found. v. Tamez Pine Straw LLC*, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022); *Olson v. Olson*, 260 So. 3d 367, 369 (Fla. 4th DCA 2018)). The Trial Court, further, found that Appellants failed to show how the acts they complain of would result in irreparable harm. A.543. The Trial Court, in fact, found that to the contrary, the failure “to perform such work may very well cause irreparable injury.” *Id.*

Furthermore, the Trial Court reasoned that “there is an adequate remedy at law should individuals partake in actions that

wasted financial resources of the Associations,” A.544, and held that “Orders granting injunctions to prevent an alleged dissipation of corporate assets have been reversed in favor of a money judgment should such dissipation ultimately be proven.” A.544 (emphasis in original) (citing *Hiles v. Auto Bahn Federation, Inc.*, 498 So. 2d 997, 999 (Fla. 4th DCA 1987); *Mary Dee's, Inc. v. Tartamella*, 492 So.2d 815, 816 (Fla. 4th DCA 1986)).

Finally, the Trial Court also found that “[t]he Plaintiffs failed to rebut Defendants’ expert witness’ reports to the effect that Plaintiffs’ desire to stop maintenance work to the Recreation Association facilities would threaten the safety and welfare of thousands of Residents,” A.544, that “these actions are consistent with stopping the safety work by preventing the known work from being done and by depleting the Recreation Association's access to capital for it to perform more work as needed,” A.545, and that Appellees’ expert, “Andrew Allocco in his declaration stated the failure to perform timely maintenance on the many acres of Recreation Association facilities is likely to lead to ‘substantial risk not only of partial or entire building collapses’ but also of injury to elderly residents traversing the Palm Greens facilities.” *Id.*

The Scope of this Appeal

On October 8, 2024, Appellants appealed the Order Denying their Motion for Preliminary Injunction. A.10. Though the trial court found that the issues raised in the parties' competing motions for injunctive relief are "interrelated," A.608(41:7-9), Appellants did not appeal the Order Granting Appellees' Motion for Preliminary Injunction or include in their Appendix those records relevant to the trial court's decision on Appellees' successful Cross-Motion. A.10.

On September 20, 2024, Appellants filed a Motion for "Rehearing or Reconsideration" of the Order Denying their Motion for Preliminary Injunction, raising therein new arguments, which Appellees opposed. A.637-704; A.704-724.

SUMMARY OF THE ARGUMENT

Appellants conflate the burden of proof for showing their entitlement to an injunction at an uncontested *ex parte* hearing with the burden that applies at noticed and contested injunction proceedings. As this Court held, *e.g.*, in *Orkin Extermination Co., Inc. v. Tfrank*, 766 So. 2d 318 (Fla. 4th DCA 2000), a trial court will not abuse its discretion in "finding that submission of the verified complaint alone [is] insufficient to justify granting a temporary

injunction,” when the proceeding is contested and not an *ex parte* proceeding. *Id.*, at 319. Worse, while Appellants, for the first time on appeal, raise an unsupportable hearsay objection, it is, in fact, Appellants’ Verified Complaint that fails to even meet the indicia of reliability of a proper affidavit and thus could not have been considered as evidence supporting Appellants’ claims.

Apparently having recognized their shortcomings, Appellants also insist that the trial court was required to convert the injunction hearing they noticed as a *non-evidentiary* hearing to an evidentiary hearing. But Appellants’ mid-hearing change in their approach by vaguely referencing the presence of a witness was too little, too late. The eleventh-hour conversion would have violated Appellees’ due process rights. *See, e.g., Jones v. Jones*, 761 So. 2d 478, 480 (Fla. 5th DCA 2000). Moreover, this argument was effectively waived by Appellants’ repeated insistence that no additional evidence should be considered, alongside their chronic inability to articulate *how* live testimony could have entitled them to relief. Finally, Appellants’ lack of urgency was on full display when Appellants stated they were “more than happy” to further delay matters and re-set the hearing they had set as a non-evidentiary hearing months ago. A.605(38:14-

15). The lack of urgency alone defies any showing of irreparable harm. *See, e.g., Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (collecting cases).

Furthermore, each of Appellants' conclusory claims of irreparable injury—amounting to economic damages and rank speculation—has been held not to amount to irreparable injury. *See, e.g., State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 475 (Fla. 1st DCA 2018) (alleged “economic harm does not constitute irreparable injury”); *Donoho v. Allen-Rosner*, 254 So. 3d 472, 474 (Fla. 4th DCA 2018) (“Irreparable injury will never be found where the injury complained of is ‘doubtful, eventual or contingent.’”) (citation omitted). Nor could an alleged injury that is triggered by Appellants' unclean hands possibly amount to irreparable injury. *See, generally, Bradley v. Health Coal., Inc.*, 687 So. 2d 329, 334 (Fla. 3d DCA 1997).

Since each of the foregoing arguments Appellants raise on appeal fails, Appellants seem to infer that a presumption of irreparable injury applies when an alleged violation of condominium association bylaws has been shown. However, no Florida court has ever applied the presumption rule in this context, which rule only

applies to commercial cases and only where legitimate business interests have been pleaded and proven, *TransUnion Risk & Alternative Data Sols., Inc. v. Reilly*, 181 So. 3d 548, 550 (Fla. 4th DCA 2015). Appellants have not presented a constitutional violation that could be deemed *per se* prejudicial, and even if they had, it would not automatically be deemed to amount to irreparable harm. Compare, e.g., *Siegel v. LePore*, 234 F.3d 1163, 1177–78 (11th Cir. 2000) (collecting cases). Aside from the inapplicability of the presumption rule, this implied argument was also not preserved for appellate review, and any such presumption, had it existed, was rebutted.

For the first time on appeal, Appellants challenge the admissibility of Appellees' evidence. This argument, *albeit* waived, is unmeritorious as affidavits and declarations are generally considered in injunction proceedings and deemed admissible. See, e.g., *Bee Line Entm't Partners v. State*, 791 So. 2d 1197, 1205–06 (Fla. 5th DCA 2001) (affidavits are considered at injunction proceedings); *Neely v. Office of Planning & Budget*, No. 1:18-CV-2998-SCJ-CCB, 2020 WL 13682091, at *2 (N.D. Ga. July 21, 2020) (declaration admissible where movant elected not to depose or call the declarant); *State v.*

Belvin, 986 So. 2d 516, 524–25 & 526 (Fla. 2008) (strategically not cross-examining a declarant waives hearsay objection and noting that an expert declaration is, in any event, not testimonial).

Appellants also fail to disclose to this Court the reality that the trial court simultaneously granted Appellees’ Cross-Motion for Injunction, which Order Appellants did not appeal. This is fatal to this appeal for the reasons argued in section IV, *infra*.

STANDARD OF REVIEW

“A trial court's ruling on a motion for a temporary injunction is clothed with a presumption of correctness, subject to reversal only for an abuse of discretion.” *Orkin Extermination Co., Inc. v. Tfank*, 766 So. 2d 318, 319 (Fla. 4th DCA 2000). “A temporary injunction is an extraordinary remedy which ‘should be granted sparingly and only after the moving party has alleged and *proven* facts entitling it to relief.” *Id.* (citing *Contemporary Interiors, Inc. v. Four Marks, Inc.*, 384 So.2d 734, 735 (Fla. 4th DCA 1980)).

“The standard of review of trial court orders on requests for temporary injunctions is a hybrid.” *E.I. DuPont De Nemours & Co. v. Bassett*, 947 So. 2d 1195, 1196 (Fla. 4th DCA 2007). “To the extent the trial court's order is based on factual findings, [the reviewing

court] will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review.” *Id.*

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS MOTION FOR INJUNCTIVE RELIEF AS THEY FAILED TO MEET THEIR BURDEN OF PROOF TO SHOW THEY WOULD SUFFER IRREPARABLE INJURY.

A. The Trial Court Correctly Found that Appellants Could Not Rely Solely on their Verified Complaint to Support their Motion for Injunctive Relief.

There is no dispute that Appellants relied solely on the allegations of their Verified Complaint and the Bylaws attached thereto to support their Motion for Preliminary Injunction, and did not respond in any way shape or form to the numerous declarations and authenticated records Appellees submitted in the injunction proceedings below. Moreover, Appellants knowingly noticed the injunction hearing as a non-evidentiary hearing. A.258. On appeal, Appellants continue to reiterate their mistaken belief that they were not required to present evidence of irreparable injury or rebut Appellees’ evidence on the basis that the trial court merely needed to interpret certain Bylaws and accept their related allegations as true to find that Appellants proved irreparable injury and other elements

required to grant injunctive relief. *See, e.g.*, IB:12-13,16 (repeatedly arguing that they “reiterated” the “allegations” of their Complaint in their Motion for Preliminary Injunction and at the hearing); IB:26 (arguing that “[n]o additional evidence was needed”); IB:27 (conceding that “Appellants’ counsel predicated the bulk of his argument at the hearing on these points,” *i.e.*, that no admission of evidence was warranted).

Appellants conflate their burden of proof with the standard that applies to *uncontested ex parte* proceedings. *See, Orkin Extermination*, 766 So. 2d at 319 (finding “no abuse of discretion in the trial court's finding that submission of the verified complaint alone was insufficient to justify granting a temporary injunction” and distinguishing the burden that applies to noticed and contested injunction proceedings from *ex parte* temporary injunction proceedings). *See also*, A.541-542 (trial court order, citing, *e.g.*, to *Holland M. Ware Charitable Found.*, 343 So. 3d at 1289 (finding that, where the motion for temporary injunction was contested, “verified allegations and counsel's arguments [are] inadequate to establish the necessary proof for entitlement to injunctive relief”) (citing *Olson v. Olson*, 260 So. 3d 367, 369 (Fla. 4th DCA 2018)).

Contrary to Appellants' inference, their failure to notice the injunction hearing as an evidentiary hearing does not rescue them from their shortcomings, but, rather, at most, further *supports* the trial court's findings. *See, e.g.*, section II, *infra* (discussing why the trial court could not have converted the injunction hearing to a non-evidentiary hearing without notice based on Appellants' oblique mid-hearing inference that Klimas was ready to testify).

Though the Trial Court's findings about Appellants' mistaken reliance solely on their allegations and Bylaws, alone, support the conclusion that Appellants' Motion was properly denied, this conclusion is further buttressed after breaking down the positions Appellants are inferring on appeal (*see*, sections IB-E, *infra*); their failure to even preserve their arguments below (*see*, sections II and III, *infra*); and their failure to present all pertinent facts to *this* Court (*see*, section IV, *infra*).

B. Appellants' Claims of Economic Damages, Unsubstantiated Conjectures, and Purported Concerns Caused by their Own Misconduct Fail, as a Matter of Law, to Amount to Irreparable Injury.

Even if we presumed that Appellants had properly supported their Motion, their claims of irreparable injury are still insufficient as

a matter of law. Appellants’ assertions of harm can be broken down into three categories: (a) economic damages; (b) rank speculation of future events; and (c) circumstances created by Appellants’ own misconduct. All three categories of claimed injury have been held to be insufficient, as a matter of law, to amount to irreparable injury:²

First, Florida “case law is clear that economic harm does not constitute irreparable injury.” *State, Dep’t of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 475 (Fla. 1st DCA 2018). Thus, those claims of injury related to alleged economic harm, *see, e.g.*, A.32(¶34); A.33(¶¶35-36); A.36-37(¶¶59-61), must be filtered out.

Next, Appellants’ claims of “merely conjectural or hypothetical ... threat of future injury” do not give “rise to cognizable injury.” *Siegel*, 234 F.3d at 1177 (citation omitted). *See*, A.182 (claiming that, absent an injunction, the Association and Recreation Board “will be compromised in its ability to act in the best interests of the membership;” that “confusion and doubt will be created;” that

² This is why Appellees address in section IC-E, *infra*, the alternative argument that Appellants appear to be inferring on appeal, in an abundance of caution: that an alleged violation of condominium association bylaws gives rise to a presumption of irreparable injury, which is contrary to longstanding Florida law and Supreme Court precedent.

“illegal” contracts will be incurred; and that the Recreation Association is “sending out false, inflammatory and libelous emails”); A.33 (claiming that there is a “likelihood” that the Recreation Association Board will be deadlocked); A.184 (complaining about purportedly “frivolous lawsuits” being filed, which, if not a claim of economic damages, amounts to unsubstantiated conjectures and is the true reason of Appellants’ unlawful machinations).

Appellants miss the mark. “Irreparable injury will **never** be found where the injury complained of is ‘doubtful, eventual or contingent.’” *Donoho*, 254 So. 3d at 474 (emphasis added) (quoting *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So. 2d 372, 373 (Fla. 1st DCA 1986)); *Florida Ass'n of Realtors v. Orange Cnty.*, 350 So. 3d 115, 130 (Fla. 5th DCA 2022) (same); *Logan v. Logan*, No. 2D2023-1798, 2024 WL 4862931, at *4 (Fla. 2d DCA Nov. 22, 2024) (same); *Biscayne Park, LLC v. Wal-Mart Stores E., LP*, 34 So. 3d 24, 26 (Fla. 3d DCA 2010) (same).

In *Goldberger v. Regency Highland Condo. Ass'n, Inc.*, 383 So. 2d 1173, 1174–75 (Fla. 4th DCA 1980), this Court rejected a condominium association’s “guesstimate” that the association's inability to have immediate access to the contested funds would

result in a budgetary shortfall which, in turn, would necessitate a special assessment,” finding that this “does not measure up to irreparable injury.” *Id.*, at 1174–75.

Appellants also protest that persons who Appellees allege have been fraudulently elected are not “able to fulfill their right to serve on the Recreation Association Board,” citing to *State ex rel. Siegenorf v. Stone*, 266 So. 2d 345, 346 (Fla. 1972), IB:29-30. Not only was *Stone* not decided in the context of injunctive relief, but it involved the Court’s rejection of “[l]iteral and ‘total compliance’ with statutory language which reaches hypersensitive levels and which strains the quality of justice,” holding that such “is not required to fairly and substantially meet the statutory requirements to qualify as a candidate for public office,” *id.*, 266 So. 2d at 346. Here, Appellants are not complaining about “total compliance” in connection with qualifications for public office, nor does this case involve government operations “with due regard to law and due process” and such acts which are “presumptively correct,” *id.*

Similarly, Appellants’ citation to *Escobar v. Olortegui*, 662 So. 2d 1361 (Fla. 4th DCA 1995)—also not an injunction matter—for the proposition that “a statute's protection would be illusory if petitioner

had to wait to appeal until the end of the case,” IB:30, is fundamentally misplaced. *Escobar* involved a court’s violation of a claimant’s constitutional right of access to the courts,³ *Escobar*, 662 So. 2d at 1363 (finding that petitioner was “denied that right by the trial court's [unsupportable] order”). Again, Appellants did not and cannot allege a *per se* prejudicial constitutional violation.

Finally, Appellants’ reliance on *Cohn v. Grand Condo. Ass’n, Inc.*, 62 So. 3d 1120 (Fla. 2011), in obliquely suggesting that they raised a constitutional violation, is equally unavailing. *Cohn* involved the challenge of laws impairing the obligations of contract, which laws “are constitutionally prohibited” as a matter of law. *Id.*, 62 So. 3d at 1122 (collecting cases). Again, no such constitutional violation was presented in this case.

The remainder of Appellants’ alleged concerns is based on circumstances created by their **own conduct** of improperly withholding monthly payments due to the Recreation Association, A.36-37(¶¶59-61) (boldly asserting that Appellants are “concerned

³ See, generally, *T.A. Enterprises, Inc. v. Olarte, Inc.*, 931 So. 2d 1016, 1018 (Fla. 4th DCA 2006) (discussing a litigant’s “constitutional right of access to the courts”).

that if [they] withhold[] such monthly payment [due to the Recreation Association] during the pendency of this action, [Appellees] will send a demand for accelerated payment” as provided for in the bylaws).⁴ Of course, aside from the fact that these claims of harm are also monetary in nature and thus not a valid claim of irreparable harm, Appellants’ own misconduct precludes a finding of irreparable harm under the doctrine of unclean hands. *See, generally, Bradley*, 687 So. 2d at 334 (equitable defense of unclean hands is available in an injunction matter) (collecting cases).

In other words, even if Appellants had presented evidence supporting their claims, they would not have been entitled to injunctive relief.

C. The Court Should Decline Appellants’ Implied Invitation to Rewrite Florida’s Statutory Presumption Rule.

Appellants’ position as to their burden of showing irreparable injury ultimately amounts to an inference that a statutory

⁴ Notably, this dispute has not only meanwhile been mooted because Appellants have since been ordered to make the payments to the Recreation Association that they have been improperly withholding, which facts Appellants conveniently omit. However, more importantly to this appeal, it is now clear that Appellants’ own misconduct caused these circumstances based on which they feigned irreparable injury.

presumption of irreparable injury applies to the case at bar. Put differently, Appellants essentially posit between the lines that courts should automatically presume irreparable injury resulting from an alleged violation of condominium association bylaws.

The problem with Appellants' position is that, under Florida law, the rebuttable statutory presumption rule only applies to commercial cases involving "legitimate business interests." *See*, n. 5, *infra*. As such, the presumption rule is typically applied to restrictive

covenants, such as non-disclosure and non-compete clauses.⁵ It has no applicability to a condominium association’s bylaws and has never been held to apply under those circumstances, which is why Appellants are unable to cite to any cases supporting their inference.

Importantly, courts have declined to expand the presumption rule where no binding precedent on point exists. *See, e.g., Castellano Cosmetic Surgery Ctr., P.A. v. Rashae Doyle, P.A.*, No. 8:21-CV-1088-KKM-CPT, 2021 WL 3188432, at *8 (M.D. Fla. July 28, 2021) (holding

⁵ *See, TransUnion Risk & Alternative Data Sols., Inc. v. Reilly*, 181 So. 3d 548, 550 (Fla. 4th DCA 2015) (holding that the rebuttable presumption applied to a “contractually specified restraint [that] is reasonably necessary to protect [a] legitimate business interest” and that, “to benefit from the presumption of irreparable injury, the party seeking to enforce a covenant not to compete must show that the covenant protects a legitimate business interest”) (citing *Walsh v. Paw Trucking, Inc.*, 942 So.2d 446, 448 (Fla. 2d DCA 2006)); *Vital Pharm., Inc. v. Alfieri*, 23 F.4th 1282, 1292 (11th Cir. 2022) (same); *Proudfoot Consulting Co. v. Gordon*, 576 F.3d 1223, 1231 (11th Cir. 2009) (claimant must show “legitimate business interest[s]”); *Blue-Grace Logistics LLC v. Fahey*, 340 F.R.D. 460, 467 (M.D. Fla. 2022) (same, reluctantly applying the Florida rebuttable statutory presumption of injury under commercial law, and citing, e.g., *Fam. Heritage Life v. Combined Ins. Co.*, 319 So. 3d 680, 685 (Fla. 3d DCA 2021)); and *see, Egan v. St. Anthony's Med. Ctr.*, 291 S.W.3d 751, 760 (Mo. Ct. App. 2009) (holding that “because a hospital's bylaws are not contractual ..., violations of hospital bylaws [that]... ‘do not result in material prejudice to the physician or otherwise undermine the result reached by the hospital’ do not fall below the standard of substantial compliance or warrant equitable relief”) (collecting cases).

that, “[b]ecause there is no express presumption of irreparable harm in FUTSA and no binding caselaw to suggest that the presumption applies regardless of the statutory text, the Court will not create a presumption of irreparable harm”). Indeed, the Supreme Court cautioned that “a ‘presumption’ of irreparable harm is ‘contrary to traditional equitable principles.’” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545, 107 S.Ct. 1396 (1987).

Similarly, courts across the nation have flatly rejected a sweeping presumption rule, even where bylaws were shown to have been violated or were found to be invalid or unlawful. *See, e.g., Elite Rodeo Ass'n v. Prof'l Rodeo Cowboys Ass'n, Inc.*, 159 F. Supp. 3d 738, 748 (N.D. Tex. 2016) (in rejecting movant’s conjectures about alleged irreparable injury, denying motion for preliminary injunction against bylaws on the grounds that “[a] preliminary injunction cannot be granted based on speculation”); *Perley for Benefit of Tapscan, Inc. v. Tapscan, Inc.*, 646 So. 2d 585, 587, 588 (Ala. 1994) (affirming lower court’s finding that movant failed to show irreparable injury even if amendment to bylaws was allegedly illegal); *Blum v. Latter*, 163 So. 2d 189, 194 (La. Ct. App. 1964) (despite expressly holding bylaw to be invalid, holding that because “the plaintiffs have failed to show

any danger of irreparable injury, the injunctive relief prayed is not here appropriate”); and *see, Yu v. Queen's Med. Ctr.*, No. CV 19-00258 JMS-KJM, 2020 WL 355205, at *6 (D. Haw. Jan. 21, 2020) (“certainly not every violation of the Bylaws necessarily” results in injury, as would “a constitutional due process violation”).

Here, Appellants have not identified a constitutional right or a violation thereof that could even arguably be deemed *per se* prejudicial; *compare, e.g., Florida Ass'n of Realtors*, 350 So. 3d at 130 (finding that “a continuing constitutional violation, in and of itself, constitutes irreparable harm”). Many courts have even rejected such a hard and fast rationale. *See, e.g., Siegel*, 234 F.3d at 1177–78 (citing *Ne. Florida Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990) (“No authority from the Supreme Court or the Eleventh Circuit has been cited to us for the proposition that the irreparable injury needed for a preliminary injunction can properly be presumed from a substantially likely equal protection violation.”); *Cunningham v. Adams*, 808 F.2d 815, 821–22 (11th Cir.1987) (finding no abuse of discretion in lower court's rejection of the plaintiff's argument that “irreparable injury will be presumed where there has been a violation

of substantive constitutional rights”); *Hohe v. Casey*, 868 F.2d 69, 73 (3d Cir.1989) (“Constitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a preliminary injunction.”)).

Furthermore, the proposed presumption rule could not possibly be sanctioned where the opposing parties have proven—by overwhelming and unrefuted evidence—that Appellants were planning to utilize the injunction they sought as a means to halt critical life safety measures Appellees were undertaking for the benefit of the retirement community. A.725-733; A.746-782; A.854-855; A.857-858.

In sum, this Court should decline to write new law that would dangerously expand Florida’s presumption rule, but even if it applied, for the sake of argument, Appellants’ arguments would nevertheless fail for at least two reasons: (a) Appellees rebutted such a hypothetical presumption; and (b) Appellants’ effectively waived their position. *See*, discussion at sections ID & IE, *infra*.

D. Even if Statutory Presumption Applied, *Arguendo*, Appellees Rebutted Same.

Though the presumption rule does not apply to the case at bar, *see*, section IC, *supra*, Appellees’ overwhelming uncontested evidence rebutted such a presumption. *See, Proudfoot Consulting*, 576 F.3d at 1231 (noting that Florida’s statutory “presumption, however, is rebuttable”); *Don King Productions, Inc. v. Chavez*, 717 So. 2d 1094, 1095 (Fla. 4th DCA 1998) (finding that “there was evidence that all of the proceeds of the fight would be available to satisfy any damages claims, thus rebutting the presumption of irreparable injury”).

The record evidence shows, for example, that the January 2024 election was not only fraudulent, but it was implemented by Appellants for the purpose of taking control over the Recreation Association for purposes of putting an end to the litigation into Appellants’ misconduct, which is all but admitted to by Appellants. A.185(§I); A.36-37(¶¶61-62); A.748-749(¶10); A.590(23:21-23). *Compare, e.g., Castellano Cosmetic*, 2021 WL 3188432, at *8 n.4 (holding that, “[e]ven if the Court did recognize a presumption of irreparable harm in this case, [defendant] has rebutted it,” citing to evidence negating plaintiff’s concerns). This eviscerates Appellants’

insistence that the only material issue here is an issue of the interpretation of bylaws and bars a showing of injury under the doctrine of unclean hands.

Additionally, like in *Castellano Cosmetic Surgery Ctr.*, the presumption, had it applied, would have been rebutted by Appellants' delays in seeking injunctive relief alone. 2021 WL 3188432, at *8 n.4. See, section IF, *infra*.

E. Even if Statutory Presumption Applied, *Arguendo*, Appellants Waived this Argument.

Arguments not properly preserved in trial court proceedings are deemed abandoned or waived for appellate purposes. In *12550 Biscayne Condo. Ass'n, Inc. v. NRD Investments, LLC.*, 336 So. 3d 750 (Fla. 3d DCA 2021), rejecting appellant's claim of presumptive unconscionability, finding it "was briefly mentioned but not argued or explained" by appellant below. *Id.*, at 756. "Merely referring to an authority without expressly arguing to the lower court the principle that flows from it is inadequate to preserve the issue for review if the argument was not considered by the trial court." *Id.* (citing *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985) ("[i]n order to be preserved for further review by a higher court, an issue must be presented to the

lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.”); *Sunset Harbour Condo. Assoc. v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) (same)).

Appellants did not even suggest below that a presumption of irreparable injury should apply, let alone “refer[] to an authority” in support thereof. Rather, Appellants obliquely make this inference for the first time on appeal. The reality is that the argument raised below must be identical to the argument raised on appeal. *See, State v. Williams*, 260 So. 3d 472, 474 (Fla. 1st DCA 2018) (finding that since “the argument raised on appeal is not the same as the one raised to support the objection below, the State did not preserve this issue for appellate review”); *Rodriguez v. State*, 609 So.2d 493, 499 (Fla. 1992) (“the specific legal ground upon which a claim is based must be raised at trial and a claim different than that raised below will not be heard on appeal.”).

Therefore, the presumption does not apply and the record evidence rebuts any presumption of irreparable injury, Appellants’ contention is without merit.

F. Appellants’ Delays in Seeking Injunctive Relief Negate Any Claim of Irreparable Harm.

First, Appellants concede that, despite an alleged violation of bylaws having already occurred in late 2023, Appellants “didn't pursue the matter at that time,” positing that Appellants knew “that the regular election was coming up the next month.” A.581-582(14:23–15:2); *see also*, A.31(¶23) (Appellants conceding that they elected to wait for several “weeks” to take action, though it amounts to more than a month). In evaluating this admission, two possible scenarios exist: (a) either Appellants concede that there was a lack of urgency, or (b) it lends credence to Appellees’ allegation that Appellants were already planning to manipulate the outcome of the election, involving their plan to “automatically” fill the vacant seats through a rigged election and put an end to the litigation against them.

Second, Appellants do not explain the further delay of over a month after the election in seeking injunctive relief. Appellants’ initial strategic delay in their effort to seek redress from the courts, followed by the inexplicable additional delay in moving for injunctive relief, militates against a finding of irreparable harm under well-established

Florida law. *See, e.g., Blue-Grace Logistics LLC v. Fahey*, 340 F.R.D. 460, 469 (M.D. Fla. 2022) (claimants’ “these litigation choices—and the delay that they caused—rebut the presumption of irreparable harm”); *Wreal, LLC, Inc.*, 840 F.3d at 1248 (“[a] delay in seeking a preliminary injunction of even only a few months ... militates against a finding of irreparable harm. ... [A] party's failure to act with speed or urgency in moving for a preliminary injunction necessarily undermines a finding of irreparable harm.”) (collecting cases); *Diversified Sols., Inc. v. Ohwook! Productions, Inc.*, No. 21-10039-CIV, 2021 WL 1601834, at *2 (S.D. Fla. Apr. 23, 2021) (“courts typically decline to grant preliminary injunctions in the face of unexplained delays of more than two months.”) (citation omitted); *Pals Group, Inc. v. Quiskeya Trading Corp.*, No. 16-23905-CIV, 2017 WL 532299, at *6 (S.D. Fla. Feb. 9, 2017) (“Plaintiff’s delay is by itself sufficient grounds to deny its request for an injunction”); *Car Body Lab Inc., v. Lithia Motors, Inc.*, No. 21-CV-21484, 2021 WL 2652774, at **9, 10 (S.D. Fla. June 21, 2021) (“unexplained delays of a few months negate any claim of irreparable harm on a preliminary injunction motion” because “a plaintiff concerned about a harm truly believed to be irreparable would and should act swiftly to protect itself”)

(citation omitted); *Gidatex, S.r.L. v. Campaniello Imports, Ltd.*, 13 F. Supp. 2d 417, 419 (S.D.N.Y. 1998) (“While delay ‘may not warrant the denial of ultimate relief, it may, standing alone, preclude the granting of preliminary injunctive relief, because the failure to act sooner undercuts the sense of urgency’” and noting that, “[i]n some circumstances, even a relatively brief delay may be too long”). Therefore, Appellants cannot show any claim for irreparable harm, requiring this Court affirm the finding below.

II. Appellees’ Due Process Rights Would Have Been Violated, Had the Trial Court Converted the Non-Evidentiary Hearing to an Evidentiary Hearing Without Notice.

Appellants argue that the Trial Court should have converted the injunction hearing to an evidentiary hearing, reasoning that Appellant Klimas was present and ready to testify. IB:27-29. This contention is unsupportable for several reasons.

First, by noticing the injunction hearing as a non-evidentiary hearing Appellants necessarily waived their right to present evidence at that hearing, given that converting the hearing to a non-evidentiary hearing without adequate notice to Appellees would have violated *Appellees’* due process rights. A.258. *See, Jones*, 761 So. 2d at 480 (holding that non-movant’s due process rights were implicated

because the “hearing [on the motion for temporary injunction] was not noticed as an evidentiary hearing” and that “[a]ny evidence presented by [movant]” at variance with “what she initially pled would have been improper for lack of notice”) (citing *Margulies v. Margulies*, 528 So. 2d 957, 959 (Fla. 3d DCA 1988)); *Messing v. Nieradka*, 230 So. 3d 962, 965 (Fla. 2d DCA 2017) (“the taking of evidence at a hearing not noticed as an evidentiary hearing ... is the epitome of a due process violation”).

In *Klein v. Estate of Klein*, 295 So. 3d 793 (Fla. 4th DCA 2020), this Court held that appellant’s alleged right to an evidentiary hearing was “waived or invited” where the hearing was set as non-evidentiary hearing and appellant did not object to this procedure “until the hearing was well under way.” *Id.*, at 803. *See also, Portales v. Another Beautiful Corp.*, 121 So. 3d 562, 563 (Fla. 3d DCA 2012) (“By the appellant's failure to timely object to the procedure she now contends to be irregular, she is deemed to have waived the objection by acquiescence.”).

Appellants’ vague eleventh-hour suggestion mid-hearing that, “[i]f [the court] want[s] to continue this hearing, [Appellants are] am more than happy” was also impermissible. A.605(38:14-15). At most,

this statement proves two damning facts: (a) there was obviously no urgency in Appellants' Motion—Appellants were “more than happy” to cause additional delays; and (b) Appellants were well-aware that they did not set the hearing as an evidentiary hearing—both of which are fatal to their positions.

Second, Appellants also waived their right to an evidentiary hearing in continually insisting the taking of additional evidence was not warranted and the only issue to be decided was a legal issue.⁶ IB:12-13,16,26; A.592(25:15-16). At no point did Appellants explain *how* Appellant Klimas' testimony could have purportedly filled the fatal gaps in their Motion. It is patently obvious that Appellants only briefly alluded to Klimas' presence at the hearing for purposes of raising this issue on appeal. *See, generally, Hammond v. DSY Developers, LLC*, 951 So. 2d 985, 988 (Fla. 3d DCA 2007) (“[a] party may waive any rights to which he or she is legally entitled, by actions

⁶ Confusingly, Appellants cite to *1800 Atl. Condo. Ass'n, Inc. v. 1800 Atl. Developers*, 569 So. 2d 885, 886 (Fla. 3d DCA 1990), in which the court held that “the facts material to the trial court's ruling were undisputed,” that “the hearing proceeded upon that basis,” and that “[t]he trial court acted within the bounds of sound discretion....” This case, at most, supports Appellees' position that the facts were indeed undisputed and correctly decided at the hearing that movant noticed as a non-evidentiary hearing.

or conduct warranting an inference that a known right has been relinquished.”) (citation omitted); *see also, Frengut v. Zgoplus.com, Inc.*, 778 So. 2d 432 (Fla. 4th DCA 2001) (suggesting the movant’s own conduct in effectively agreeing to the procedure through its own acts is relevant in considering a challenge to a ruling on a motion for “temporary injunction solely on the basis of a verified complaint at a noticed hearing”) (citing *Orkin*, 766 So.2d 318).

Third, Appellants did not and cannot present any authority for the proposition that an absolute right to an evidentiary hearing exists in injunction proceedings, even where the movant fails to notice the hearing as such. To the contrary, it is well-recognized that injunction hearings are often considered “a less-than-full hearing” which is why an order granting or denying injunction are generally “not binding at trial on the merits.” *Arch Southeast Communications, Inc. v. Abraham Communications, Inc.*, 702 So.2d 556, 558 (Fla. 2d DCA 1997), *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830 (1981). In light of the fact that “[a] preliminary injunction does not decide the merits of the case unless (1) the hearing is specially set for that purpose, (2) the parties have had a full opportunity to present their cases” it follows that an evidentiary hearing is not mandated. *Ladner*

v. Plaza Del Prado Condo. Ass'n, Inc., 423 So. 2d 927, 929 (Fla. 3d DCA 1982) (citation omitted), It further follows that denying a motion for temporary injunction without conducting an evidentiary hearing is not, in and of itself, reversible error. Appellants failed to meet their burden below and then waived any arguable right to an evidentiary hearing by noticing the hearing as a non-evidentiary hearing.⁷

Fourth, Appellants later moved for rehearing/reconsideration of the Order, which fails to preserve this argument on appeal for at least two reasons. As an initial matter, the trial court lost jurisdiction over said motion when Appellants filed their Notice of Appeal, and thus, this new argument—which was untimely since it was not expressly raised at the injunction hearing—is not properly before this Court. *See, Cabrera v. State*, 623 So. 2d 825, 826 (Fla. 2d DCA 1993)

⁷ In fact, Florida Rules make clear that an evidentiary hearing is only mandated in determining the amount of bond in connection with injunction proceedings. *See, SeaEscape, Ltd., Inc. v. Maximum Mktg. Exposure, Inc.*, 568 So. 2d 952, 955 (Fla. 3d DCA 1990) (citing Rule 1.610(d), Florida Rules of Civil Procedure). Tellingly, each case Appellants cited in their Motion for Rehearing involved an order *granting* a motion for injunction, A.640-641, which type of order must naturally be based on substantial, competent evidence. Where a movant fails to meet his burden to present substantial, competent evidence, the denial thereof could not possibly be based on evidence that does not exist or was never presented in the first place.

("[appellant's] action in filing a notice of appeal divests the trial court of jurisdiction in this matter and is an effective abandonment of the motion for rehearing); *In re One (1) 1979 Chevrolet Blazer Bearing Florida Tag No. WFF-202, VIN No. CKL 189202370*, 436 So. 2d 1087, 1088 (Fla. 3d DCA 1983) ("rehearing motion was effectively abandoned, and the trial court lost jurisdiction of the case" after appellant filed a notice of appeal).

Furthermore, the rehearing motion, at most, reinforces the fact that Appellants' due process argument is specious, thus confirming that, when they briefly alluded to Klimas' presence at the injunction hearing, they had nothing to offer that could have changed the outcome of the hearing. Aside from the telling fact that Appellants still shied away from submitting their positions under oath with their rehearing motion, A.641-644, Appellants also fail to explain why they did not present such evidence in the injunction proceedings in the first place.

If the matters raised in the motion [challenging an order granting or denying injunction] ... could have been raised during the contested hearing to determine the initial request for the injunction, a trial court does not abuse its discretion in denying the motion." *TJ*

Mgmt. Grp., L.L.C. v. Zidon, 990 So. 2d 623, 626 (Fla. Dist. Ct. App. 2008) (citing *Pecora v. Pecora*, 697 So.2d 1267, 1269 n. 3 (Fla. 5th DCA 1997)). Analogously, “an appeal from a trial court's order denying a motion [challenging an order on injunction], constitute[s] ‘an improper attempt ... to evade a court order and gain [reconsideration] of the issues’” *McCahill v. Braishfield Assocs., Inc.*, 661 So. 2d 399, 400 (Fla. Dist. Ct. App. 1995) (citing *Shadow Lakes Woods, Inc. v. Schneider*, 414 So.2d 3, 4 (Fla. 5th DCA 1982)).⁸ And see, *Harambam Congregation, Inc. v. Simcha Connection, Inc.*, 84 So. 3d 1113, 1114, 1117 (Fla. 3d DCA 2012) (discussing mootness doctrine when evidence is considered with motion to dissolve injunction and even finding that the hearing on motion to dissolve need not be an evidentiary hearing for mootness doctrine to apply, thereby rejecting the argument that “an evidentiary hearing is a necessary element in rendering the defendants' arguments moot”).

⁸ While these cases involved motions to dissolve an injunction, the same rationale applies to a motion for rehearing of an order denying motion for injunction. An unsuccessful movant does not get multiple bites at the apple when he/she/it should have presented evidence and arguments previously available in the original proceedings.

Moreover, none of the unsubstantiated and untimely positions Appellants self-servingly⁹ raised in that motion would justify injunctive relief in their favor. While Appellants are essentially representing that they are now ready to litigate the underlying minutia of the case on the merits after they waived their opportunity to present evidence in injunction proceedings, “even if Plaintiffs establish a likelihood of success on the merits [(they did not)], the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper,” because “[a] showing of irreparable injury is ‘the sine qua non of injunctive relief.’” *Siegel*, 234 F.3d at 1176 (collecting cases). Therefore, Appellants’ failure to notice the hearing as evidentiary despite the mentioned need shows a clear lack of urgency.

III. Appellants’ Untimely Evidentiary Objection Is Futile.

A. Appellants Waived Their Hearsay Objection.

⁹ By way of example, Appellants assert that Klimas “never stated” certain words, A.641-642, but there is no dispute that significant funds mysteriously disappeared during Klimas’ tenure and Appellants have admitted thereto. A.744-745(¶5); A.791; A.807-809(¶4); A.861(¶5); A.865(¶4). Appellants’ unsworn post-hearing arguments are self-serving because the conjecture that Klimas “never stated” certain paraphrased words does not refute the alleged conduct of Appellants.

While also unsupportable on the merits (*see* section IIIB, *infra*), Appellants’ evidentiary objection to Appellees’ evidence cannot be raised for the first time on appeal,¹⁰ when Appellants could have—but failed to—timely raise it below. The only statement about “hearsay” Appellants’ counsel made below was a fleeting remark during oral argument that Appellees’ counterclaims of “theft or diversion ... [are] hearsay on hearsay.” A.618(51:19-20). At no point during the injunction proceedings did Appellants make an express objection to Appellees’ evidence, and the only Order on appeal is the Order Denying Appellants’ Motion for Temporary Injunction, A.10. *See, Brown v. Dep’t of Health & Rehab. Services*, 582 So. 2d 113, 114 (Fla. 3d DCA 1991) (deeming hearsay objection waived, noting that “[i]n order to preserve an alleged error for appellate review, a timely and specific objection must be made” below). To the contrary, Appellants’ arguments amounted to an acceptance of the

¹⁰ Again, for the reasons stated in section II, *supra*, this new argument is not properly preserved through Appellants’ motion for rehearing filed after the trial court lost jurisdiction over the matter and when Appellants could have raised it during the injunction proceedings.

admissibility thereof. *See, e.g.*, A.606(39:4)-607(40:2) (arguing about the relevance of the “affidavits,” not their admissibility).

For the same reasons, and because the hearing was neither a noticed evidentiary hearing nor a trial proceeding, Appellants’ assertion that Appellees’ evidence needed to be formally admitted into evidence at the hearing is without merit. *Compare also, e.g., Serifsoy v. City of Lake Worth*, 789 So. 2d 1173, 1174 (Fla. 4th DCA 2001) (only “where factual assertions in affidavits filed by the parties ... could not be reconciled, the trial court was required ‘to hold a limited evidentiary hearing’”) (citation omitted); *Royal Caribbean Cruises Ltd. v. Ooi*, 386 So. 3d 218, 221 (Fla. 3d DCA 2023) (“no evidentiary hearing is required if the affidavits do not create a factual dispute” and thus could be considered as filed with the court without being formally admitted at an evidentiary hearing).

Finally, the waiver is reinforced by the fact that Appellants did not appeal the Trial Court’s findings in granting Appellees’ Cross-Motion, which are based on the same declarations Appellees submitted in opposition to Appellants’ Motion, which findings must not only be presumed to be correct for appellate purposes but, the failure to appeal this related matter also operates as a waiver.

B. Even Absent Waiver, Appellants' Hearsay Objections Are Unwarranted.

Even if Appellants had properly preserved their hearsay objection, it would still be unavailing. “Affidavits and other hearsay materials are often received in preliminary injunction proceedings. The dispositive question is ... whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding.” *Bee Line Entm't Partners*, 791 So. 2d at 1205–06 (citing *Asseo v. Pan American Grain Co., Inc.*, 805 F.2d 23, 26 (1st Cir.1986)). See also, *Curling v. Raffensperger*, 493 F. Supp. 3d 1264, 1272 (N.D. Ga. 2020) (holding that, “[a]t the preliminary injunction stage, a district court ‘need not find that the evidence positively guarantees a final verdict in plaintiff’s favor,’ and may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction”) (citing, e.g., *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)).

Some Florida statutes expressly permit the admission of affidavits at certain types of injunction hearings “even though it would not be competent evidence at an adjudicatory hearing....” *Dep't*

of Children & Families v. Manners, 328 So. 3d 1044, 1047 (Fla. 5th DCA 2021). Similarly, the fact that affidavits are expressly deemed admissible in *ex parte* injunction proceedings under Florida Rule of Civil Procedure 1.610 shows that affidavits and declarations are not *per se* inadmissible in injunction proceedings.

Furthermore, expert declarations are routinely relied upon in ruling on a motion for temporary injunction. *See, e.g., State v. Gainesville Woman Care, LLC*, 278 So. 3d 216, 221 (Fla. 1st DCA 2019) (relying on expert declarations in issuing temporary injunction); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 17 (2008) (considering declarations from experts in injunction proceedings). Similarly, affidavits are considered, if not generally required, in summary judgment proceedings, and deemed admissible unless they are “based entirely upon speculation, surmise and conjecture.” *Gonzalez v. Citizens Prop. Ins. Corp.*, 273 So. 3d 1031, 1037 (Fla. 3d DCA 2019).

While “[a] verified complaint may serve the same purpose as an affidavit,” *Ballinger*, 51 So. 3d at 529, for that to be the case, the verified complaint **must** be made based on “personal knowledge,” as such personal knowledge **must** be “affirmatively” shown.” *Id.*

Moreover, an allegation made based on “information and belief is insufficient to entitle the verifying party to relief because the verification is qualified in nature.” *Id.* (citing, e.g., *Barton v. Circuit Court of Nineteenth Judicial Circuit*, 659 So. 2d 1262, 1263 (Fla. 4th DCA 1995) (holding that, unlike live testimony or declarations made “under penalty of perjury,” a verification not expressly made on personal knowledge “is insufficient because it is qualified, not positive.”)). Appellants’ verification is not expressly made on “personal knowledge;” A.42; to the contrary, Appellants repeatedly state that their allegations are made “[u]pon information and belief,” A.32(¶32); A.33(¶37); A.181(¶7)—rendering those allegations qualified in nature and inadmissible.

Additionally, a verified complaint which does not address facts raised in an affidavit is not considered a valid equivalent to a counter-affidavit. *See, Cent. Bank & Tr. Co. v. Davis*, 102 So. 2d 600, 603–04 (Fla. 1958) (finding that, “when the Chancellor took into consideration the allegations of the complaint as against the specific factual statements in the depositions and affidavits[,] there was nothing in the complaint to form an issue on the factual matters set forth in the depositions and affidavits”). None of Appellants’

inadmissible allegations address Appellees' showing of unclean hands.

Appellees in this case went out of their way to obtain competent expert opinion to prove why Appellees and Palm Greens residents alike would suffer irreparable injury in the event Appellants' Motion for Injunction were to be granted and Appellees' Cross-Motion for Injunction were to be denied. "An expert's affidavit or declaration is 'not hearsay because it is a sworn statement made by an expert witness capable of cross examination at trial.'" *In re Pearlman*, 460 B.R. 306, 320 (Bankr. M.D. Fla. 2011). Here, Appellants never elected to depose Appellees' expert, Mr. Allocco, never moved to exclude him, and never otherwise argued below—or in this appeal, for that matter—that Mr. Allocco is not qualified or why his opinions are not reliable. Appellants also never put forth a rebuttal expert to dispute Mr. Allocco's opinion.

As such, the case Appellants cite, *Fortune v. Fortune*, 61 So. 3d 441 (Fla. 2d DCA 2011) (IB:27-28), is inapposite. *Fortune* did not involve injunction proceedings noticed by movant as a non-evidentiary hearing. Moreover, the admission of the affidavit was deemed prejudicial because the opponent was precluded from calling

and cross-examining the witness. *Id.*, at 445. In complete contrast to *Fortune*, Appellants elected not to call any of the witnesses that submitted declarations in opposition to Appellants' Motion, and continue to falsely insist, rather, that the Motion "was not factually contested." IB:28. Appellants cannot have it both ways and notice the hearing as a non-evidentiary hearing, then complain of their election not to cross-examine the opposing witnesses.

Appellants contend they lacked an opportunity to depose the declarants between the filing of their declarations on April 3, 2024, and the June 14 hearing, not to mention by the time they filed their Motion for Rehearing months later. *Compare, e.g., Neely*, 2020 WL 13682091, at *2 (declining to strike declarations where movant made a strategic decision not to depose declarants); *State v. Belvin*, 986 So. 2d 516, 526 (Fla. 2008) (Wells, J., concurring, in part) (party "waived any objection to [the affidavit] by not subpoenaing the technician;" distinguishing, *dicta*, general discovery deposition from deposition taken for purposes of cross-examining declarant about a specific declaration (*see also, id.*, at 524–25); and finding that an expert's declaration is not testimonial in any event).

In short, Appellants fail to identify reversible error, had the hearsay objection been preserved.

IV. Appellants Intentionally Omit “Interrelated” Issues.

Another fatal fallacy in Appellants’ positions is that they are asking this Court, as they did below, to view certain contractual provisions in a complete vacuum. Appellants conveniently omit and thereby attempt to deprive the Court of a full review of a related Order, which typically would “come[] to the appellate court with a presumption of correctness,” *Gold Coast Chem. Corp. v. Goldberg*, 668 So. 2d 326, 327 (Fla. 4th DCA 1996), had it been appealed.

Appellants fail to disclose to this Court that Appellees cross-moved for injunctive relief and prevailed. Appellants did **not** appeal that Order, A.10, nor have they included the Order and related filings in their Appendix or on appeal.¹¹

Appellants’ decision not to appeal the parallel Order granting injunctive relief is catastrophic to their arguments on appeal because the trial court expressly found that the Cross-Motions are

¹¹ See, e.g., *Committee Notes, 1977 Amen., Rule 9.130, Fl. R. App. P.* (providing that appellant in an appeal from a non-final order must provide all “relevant portions of the record” with the Appendix).

“interrelated,” A.608(41:7-9), and these overlapping issues are now the law of the case. *See, e.g., Marine Midland Bank Central v. Cote*, 384 So.2d 658, 659 (Fla. 5th DCA 1980) (“The parties have the right to appeal any matter by which they may be aggrieved and their failure to do so acts as an acceptance of the propriety of the matter. If no appeal is taken on one point but the case is appealed on another point, then the first point becomes “law of the case” and upon a reversal that law of the case remains as correct and cannot be revisited.”).

Among other things, Appellees demonstrated Appellants’ unclean hands—a valid defense to Appellants’ action for injunctive relief. A.266-268. In not having appealed the Order Granting injunctive relief to Appellees, Appellants effectively concede that the Order is “supported by competent, substantial evidence,” and “this Court will not substitute its judgment for that of the trial court on questions of fact” in any event. *Windom v. State*, 886 So. 2d 915, 921 (Fla. 2004).

Moreover, courts are cautious not to issue decisions which could lead to absurd and inconsistent results, as would be the case in reviewing only the Order on appeal in a vacuum without

consideration of the Trial Court’s Order simultaneously granting the “interrelated” Cross-Motion. *See, generally, Lawnwood Med. Ctr., Inc. v. Rouse*, 394 So. 3d 51, 55–56 (Fla. 4th DCA 2024) (all relevant issues must be considered to avoid “absurd, unjust, and inconsistent results”); *Days Inns Acquisition Corp. v. Hutchinson*, 707 So. 2d 747, 751 (Fla. 4th DCA 1997) (same, applying the rationale, *inter alia*, to injunctions); *cf., S. Florida Apartment Ass’n, Inc. v. Dansyear*, 347 So. 2d 710, 711 (Fla. 3d DCA 1977) (holding that “[i]t is the responsibility and duty of the appellant to provide the appellate court with a record sufficient to review the matter assigned as error. ... This court, accordingly, has no alternative but to assume that the trial court ruled correctly and affirm the decision below.”) (citing *Reicheck v. Florida Bond and Mortgage Co.*, 237 So.2d 83 (Fla.4th DCA 1970)). The unappealed Order notably also moots many of Appellants’ claims of injury.

Additionally, by not challenging the evidentiary basis of the findings supporting the unappealed Order, Appellants concede that the procedure was proper and the evidence submitted by Appellees is admissible, substantial, and competent.

V. Appellants' Remaining Arguments Are Equally Without Merit.

A. Appellants' Attempts to Show the Absence of an Adequate Remedy at Law

The trial court correctly found that, to the extent Appellants assert economic damages, a money judgment would be an adequate remedy of law which is consistent with the maxim that economic damages do not amount to irreparable harm. (A. 20). Appellants also argue on appeal that they lack an adequate remedy at law for allegedly being prevented from serving on the board, IB:20. However, an adequate remedy at law exists in the form of the ongoing challenge to the election alleged to be fraudulent. *See, e.g.*, A.208, A.214, A.236, A.244, A.267, A.600(21-24) (formal challenge to election is ongoing). Indeed, Appellants' counsel,¹² admitted to the "process" of

¹² Importantly, unrebutted evidence before the trial court confirmed that both the Appellants and their lawyers at Becker & Poliakoff were engaged in an unusual and troubling process of continually interfering with life safety work in the Palm Greens community. This included blocking repairs to a set of fire staircases as well as interfering over many years with other extensive life safety work throughout large buildings in the community. Expert testimony confirmed the substantial dangers resulting from this ongoing interference, which was a significant factor with respect to the trial court's decision in denying injunctive relief. A.180-181; A.845; A.725-733; A.543-545.

challenging the election, A.587(20:7-8), thereby conceding the availability of an adequate remedy at law.

B. Appellants' Attempts to Show that an Injunction is in the Best Interest of the Public

Appellants posit the best interest of the public is served in contravening the purportedly “unilateral decisions of persons who disagree for personal reasons with the results of the election.” IB:20 However, the only persons the evidence shows harbor “personal reasons” for rigging the election are Appellants, who are complaining about lawsuits against them for failing to perform life safety work, mismanagement, theft of funds, and for attempting to access Recreation Association’s funds to conceal the disappearance of funds at Number 2 Association. A.185(§I); A.36-37(¶¶61-62); A.748-749(¶10); A.590(23:21-23).

Appellants’ reliance on *Coal. to Reduce Class Size v. Harris*, No. 02-CA-1490, 2002 WL 1809005, (Fla. Cir. Ct. July 17, 2002) (IB:31) is unpersuasive. *Harris* involved the constitutional right to “amending the Constitution by citizen initiative” under Article XI, § 3, and Article XI, § 5, Florida Constitution. Article XI, Section 3, Florida Constitution. *Id.*, at *1. In comparison, Appellants have no

constitutional right to serve on a condominium association board, especially after an allegedly fraudulent election and for purposes of manipulating legal actions against them.

To the contrary, Appellees proved—as found by the Trial Court and which decision cannot be disturbed through this appeal—that the issuance of the injunction Appellants sought would **disserve** public interests, in part based on Appellants’ own admissions, including that funds for potentially life-saving repairs should be withheld on the basis that a new clubhouse is planned to be opened in 2026. A.180-181(¶6); *see also*, A.20-21 (trial court relying on Appellees’ unchallenged expert testimony in issuing its findings). *Compare, e.g., VME Group Int’l, LLC v. Grand Condo. Ass’n, Inc.*, 305 So. 3d 30, 32 (Fla. 3d DCA 2019) (where remedial action was “*significantly underway*, and is designed to protect against catastrophic loss, an issuance of an injunction halting the project would contravene the public interest”) (emphasis in original). And *see*, A.725-733; A.746-782; A.854-855; A.857-858 (evidence that Appellants intended to use the junction they sought to put an end to the important life safety work Appellees were undertaking).

Therefore, accepting Appellants' conclusory public interest claims on appeal as true would conflict with the trial court's findings in the interrelated unappealed Injunctive Order that Appellants did not appeal.

C. Appellants' Attempt to Challenge the Business Judgment Rule

Without much elaboration, Appellants also argue that the business judgment rule does not shield Appellees' actions. IB, at 25-26 n.1. Even presuming that Appellants' attempt to challenge the business judgment rule was raised, let alone adequately litigated by Appellants before the Trial Court (it was not and thus waived for purposes of this appeal), Appellants do not address the reasonableness of Appellees' action relative to the unreasonableness of their actions, as the overwhelming evidence established, which inquiry is relevant in the condominium association context. *See, Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010) (discussing test of reasonableness in the condominium association context); *see also, Tiffany Plaza Condo. Ass'n v. Spencer*, 416 So.2d 823, 826 (Fla. 2d DCA 1982) (stating that courts will not interfere with an association's decision to exercise its

authority in a reasonable manner); *P.S. Farrington v. Casa Solana Condo. Ass'n*, 517 So.2d 70, 72 (Fla. 3d DCA 1987) (applying the business judgment rule to the condominium association board's decision to approve a special assessment); *Garcia v. Crescent Plaza Condo. Ass'n*, 813 So.2d 975 (Fla. 2d DCA 2002) (applying the business judgment rule to the association's decision to lease a portion of the common element parking spots).

Consequently, while Appellants are free to present this argument at a trial or in summary judgment proceedings, it is doubtful that they are likely to succeed on the merits, and irrespective of any likelihood of success, it would not excuse their failure to show irreparable injury in the injunction proceedings. Therefore, this Court should affirm the Trial Court's Order Denying Appellants' Motion.

CONCLUSION

For the foregoing reasons, Appellee respectfully requests this Court affirm the Trial Court's Order Denying Appellants' Emergency Motion for Preliminary Injunction and any further relief this Court deems just and proper.

Dated: December 23, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 23d day of December, 2024, a true and correct copy of the foregoing has been served via electronic mail, through the Court’s E-Filing Portal, upon the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirement of Rule 9.210, Fl. R. App. P., and complies with the word count requirement of Rule 9.045, Fl. R. App. P., because it contains 10,675 words, excluding portions which are exempt from the Rule.

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