

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2021-CA-004438
DIVISION: CV-H

MICHAEL TOBIN, DAVID GONZALES,
CHRIS DOERR, MARTIN ELTRICH,
and JOSEPH GEBBIA, Florida individuals,

Plaintiffs,

v.

DEERWOOD IMPROVEMENT
ASSOCIATION, INC., a Florida not-for
profit corporation.

Defendant.

_____ /

FINAL SUMMARY JUDGMENT

This cause came before the Court upon Plaintiffs' ("Owners" or "Plaintiffs"), Amended Motion for Summary Judgment ("Motion for SJ"), filed on January 17, 2023. The Court having reviewed the Motion for SJ, the Response to the Motion for SJ, having reviewed summary judgment record evidence submitted by the parties, having heard argument of counsel at hearing and being otherwise fully advised in the premises, finds in favor of Plaintiffs and against Defendant as follows:

Standard

Rule 1.510, Fla. R. Civ. P. was amended in 2021 to "align Florida's summary judgment standard with that of the federal courts and of the supermajority of states that have already adopted the federal summary judgment standard." In re Amends. to Fla. Rule of Civ. Pro. 1.510, 309 So.3d 192, 192 (Fla. 2020). Rule 1.510(a) now provides:

A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

This amended rule governs the adjudication of any summary judgment motion decided on or after May 1, 2021, including pending cases. *Id.* Rule 1.510 now follows the standard articulated by the U.S. Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). That standard is set forth in Fed. R. Civ. P. 56, which provides summary judgment is appropriate when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. The court should view the evidence and any inferences that may be drawn in the light most favorable to the nonmovant. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-159 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323-24. Under the federal standard, a moving party is not required to support its motions with affidavits or other materials negating the opponent’s claim. *Id.* at 323. The burden then shifts to the nonmovant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist and that a the jury could reasonably find for that party. *Anderson*, 477 U.S. at 257.

Relevant Uncontroverted Record Facts

The Defendant, Deerwood Improvement Association, Inc. (“DIA”) is a Florida Homeowners’ Association that is governed by Chapter 720, Florida statutes. The DIA filed a

Response to the Plaintiffs' Motion for SJ and within their response filed its own Motion for Summary Judgment asserting there is no dispute of material fact. As of the date of the hearing, the Court did not reach DIA's Motion for Summary Judgment because it was not set for hearing and because the Court finds Plaintiffs' Motion for Summary Judgment dispositive.¹

Plaintiffs are all owners of homes within the DIA and governed by the Covenants and Restrictions, the Articles of Amendment to Articles of Incorporation and the Amended and Restated Bylaws. Article IV(A) of the Amended and Restated Bylaws state as follows:

A majority of the Board of Directors of the Association (the "Board") shall constitute a quorum to transact business at any meeting of the Board, **and the action of the majority present at which a quorum is present** shall constitute the action of the Board. (emphasis added).

Thus, for Board action to be At the January 24, 2022 the meeting of the board of directors of the DIA, eight (8) of the ten (10) directors were present at the meeting when a vote occurred to approved the Exclusive Purchase Option and Sale Agreement. For that vote, four (4) directors recused themselves and one (1) director abstained from voting. Thus, only three (3) directors of the eight (8) directors present voted to approve.

These uncontroverted facts derive from the Affidavit of Michael Tobin and the Deposition Transcripts of Paul Whitman, Donald Rindfleisch and Megan Aull, filed on September 6, 2022. The Court also relies on the additional record evidence in the form of the Exclusive Purchase Option and Sale Agreement, the Covenants and Restrictions, the Articles of Amendment to Articles of Incorporation and the Amended and Restated Bylaws.

¹ Many of the facts of this case, including facts that are undisputed, are omitted from this section because they are simply irrelevant to the issue this Court found dispositive.

On January 25, 2022, the President of the DIA executed and entered into the Exclusive Purchase Option and Sale Agreement, which provided for a monthly payment of \$25,000.00 to the Deerwood Country Club. Given this, the relevant issue for the Court's determination is whether the

Analysis

Organizational bylaws are treated as contracts and “[g]enerally, a trial court should rely on the plain meaning of a contractual document when the language is clear and unambiguous.” *Retreat at Port of the Islands, LLC v. Port of the Islands Resort Hotel Condo. Ass’n*, 181 So.3d 531, 532-533 (Fla. 2nd DCA 2015) quoting *McKeever v. Rushing*, 41 So.3d 920, 923 (Fla. 2d DCA 2010). Here, the provisions of Article IV(A) of the Amended and Restated Bylaws are clear and unambiguous and should be given their plain meaning. The Amended and Restated Bylaws state that “action of the majority of present at a meeting in which a quorum is present shall constitute the action of the Board [of Directors].” There was no dispute that a quorum of the directors was present at the January 24, 2022 meeting, there was no dispute that eight (8) directors were present at the meeting and there was no dispute that only three (3) of the eight (8) directors present at the meeting voted to approve the Exclusive Purchase Option and Sale Agreement – not a majority.

The DIA asserted in response that a majority vote of the quorum present at the January 24, 2022, board of directors meeting was not required. The DIA instead argued that only a majority of the non-conflicted members are needed to have valid Board action. The DIA relies on Section 617.0832, Florida Statutes, for this argument, which provides in pertinent part:

.... a conflict-of-interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, ..., who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no relationship or interest in

the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section.

The Court rejects this analysis as inconsistent with the plain language of the Amended and Restated Bylaws. The Court was provided no persuasive or controlling authority to substitute general statutory language for the express terms of the governing documents.

As three (3) directors that voted for execution of the Exclusive Purchase Option and Sale Agreement do not constitute a majority of the eight (8) directors present at the meeting, the DIA was not authorized to execute or sign the Exclusive Purchase Option and Sale Agreement. As the DIA was not authorized to execute or sign the Exclusive Purchase Option and Sale Agreement the Exclusive Purchase Option and Sale Agreement is void and invalid. *Barnett & Klein Corp. v. President of Palm Beach-A Condominium*, 426 So.2d 1074, 1075 (Fla. 4th DCA 1983) (Finding that action by a condominium board that violated the bylaws was ultra vires and invalid); *Word of Life Ministry, Inc. v. Miller*, 778 So.2d 360 (Fla. 1st DCA 2001) (Elections were void as ultra vires for failure to observe restrictions imposed by the articles of incorporation); *Buddin v. Golden Bay Manor, Inc.*, 585 So.2d 435 (Fla. 4th DCA 1991) (“A Board’s action which contravenes an express provision of the governing documents of a cooperative or which contravenes a right reasonably inferred therefrom is an ultra vires act and must be declared invalid.”).

The Amended Complaint alleged four counts (Count I: Permanent Injunctive Relief; Count II: Breach of Contract; Count III: Breach of Fiduciary Duty; Count IV: Declaratory Judgment). As the Amended and Restated Bylaws constitute a contract, the DIA breached this contract when it executed the Exclusive Purchase Option and Sale Agreement without authority. The Court finds additionally that Fla. Stat. 720.305 provides this Court the ability to grant legal or equitable relief to remedy any failure of an association to comply with Chapter 720 or the governing documents and a declaratory judgment finding the board vote for the Exclusive Purchase Option and Sale

Agreement was not in conformity with the Amended and Restated Bylaws and as such the Exclusive Purchase Option and Sale Agreement was invalid. As the Court finds the issue of whether the DIA acted without the authority of the Amended and Restated Bylaws dispositive of all issues in this case, the Court finds no need to address the other legal or equitable issues raised.

ORDERED:

1. That Plaintiffs' Amended Motion for Summary Judgment is GRANTED.
2. The DIA's entry and execution of the Exclusive Purchase Option and Sale Agreement was contrary to the minimum requirements of its own Amended and Restated Bylaws and was therefore ultra vires.
3. The DIA's execution of the Exclusive Purchase Option and Sale Agreement was a breach of the Amended and Restated Bylaws.
4. The Court enters this Declaration and Declaratory Relief that the Exclusive Purchase Option and Sale Agreement is invalid and void.

DONE AND ORDERED in Chambers at Duval County, Jacksonville, Florida this 31st day of October, 2023.



G.L. Feltel, Jr.
CIRCUIT JUDGE

Copies to:

D. Brad Hughes, Esq.
Leonard T. Hackett, Esq.