

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

NUMBER 2 CONDOMINIUM CASE NO. 502024CA002299XXXAMB
ASSOCIATION - PALM GREENS Circuit Civil Division: AH
AT VILLA DELRAY, INC., etc. et al.

Plaintiffs,

v.

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

Defendants,

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

Counter-Plaintiffs,

v.

NUMBER 2 CONDOMINIUM
ASSOCIATION - PALM GREENS AT
VILLA DEL RAY, INC., etc., et al.,

Counter-Defendants.

PALM GREENS AT VILLA DEL RAY, etc.,
et al.,

Third Party Plaintiffs,

v.

BECKER & POLIAKOFF, etc., et al.,
Third Party Defendants.

**ORDER GRANTING DEFENDANTS', COUNTER-PLAINTIFFS' AND
THIRD PARTY PLAINTIFFS' MOTION FOR TEMPORARY
INJUNCTION**

THIS CAUSE having come before the Court on June 14, 2024 with all parties present and represented by counsel of record, and the Court being fully advised in the premises, the Court finds as follows:

STATEMENT OF THE CASE

The Defendants, Counter-Plaintiffs and Third Party-Plaintiffs (“DCTPP”) filed their First Amended and Verified Counter-Complaint and Third Party-Complaint on June 9, 2024. (DIN: 37 and 79) (“DCTPP Complaint”).

The claims made in the DCTPP Complaint essentially sound in fraud based upon alleged financial and business improprieties by the Counter-Defendants and Third Party-Defendants (“CDTPD”) regarding a condominium development known as Number 1 Condominium Association - Palm Greens at Villa Delray, Inc. (“Number 1 Association”), Number 2 Condominium Association - Palm Greens at Villa Delray, Inc. (“Number 2 Association”) and Palm Greens At Villa Del Ray Recreation Condominium Association, Inc. (“Recreation Association”). Such claims by DCTPP primarily seek injunctive relief and the ordering of equitable relief to create immediate records access for purposes of allowing the conducting of a forensic audit.

In connection with their verified pleading (DIN: 79), DCTPP filed thirteen

declarations pursuant to Florida Statute section 92.525. (DIN: 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 80, 81 and 82.) The declarations contain various forms of testimonial and documentary evidence. The DCTPP also filed a motion for a temporary injunction and for an order directing CDTPD to cease and desist preventing full access to their records for purposes of permitting a forensic audit. (Hereinafter "Request for Injunction and Forensic Audit.")

The CDTPD failed to submit counter-affidavits in response to any of the foregoing evidence or arguments reflected by the above-referenced submissions. Further, the CDTPD did not file any opposition papers of any kind to the Request for Injunction and Forensic Audit. Moreover, CDTPD did not file any supplemental materials or a proposed order following the hearing on these matters. Individual Counter-Defendants Sandra Klimas ("Klimas"), Todd Marrazzo ("Marrazzo") and Anthony DiGennaro ("DiGennaro") did file an opposition objecting to the request for access to ***individual parties' banking and financial records*** based upon arguments of standing and privacy. These three Individual CDTPD ***did not*** object to the forensic audit request of Number 2 Association as prayed for in the Counter-Complaint and Third Party Complaint.

As a result of the failure by all CDTPD to submit any counter-affidavits or proof of any kind in opposition to the declarations submitted in support of the Request for Injunction and Forensic Audit, the Court finds that DCTPP have established a *prima facie* case supporting the existence of the following facts regarding the burden of producing evidence and presumptions or inferences derived from the unrebutted introduction of competent, admissible evidence. Nationstar Mortg., LLC v. U.N. Kee Wing, 210 So. 3d 216, 219 n.1 (Fla. 5th DCA 2017)

A. Evidence of Factors Involving the Association Board Election

The DCTPP have submitted unrebutted *prima facie* evidence that Plaintiff Number 2 Association (through its former Chairman Robert Thom) participated in disseminating a candidate information sheet in connection with its January 31, 2024 condominium election of Number 2 Association that contained misrepresentations. The evidence submitted by the DCTPP is in the form of

sworn deposition testimony by Marge Fattori who developed and disseminated the candidate information sheet, according to her deposition testimony, based on information provided by Thom. (DIN: 27, Exhibits 3 and 4.). Fattori did admit in her deposition that she could point to no evidence to support the statements in on her candidate information sheet that the “*Rec Board Association documents have been altered without a public vote . . .*”

Further, with respect to the subject condominium election, the DCTPP submitted un rebutted *prima facie* evidence that Third Party Defendant Becker & Poliakoff, P.A. disseminated and failed to correct an incorrect email address used for electronic voting regarding the January 31, 2024, election. The evidence reflects that this was done in connection with one of Becker & Poliakoff's affiliates known as Becker Ballot. (DIN: 27, Exhibit 1.) The CDTPD failed to submit counter-affidavits showing that this incorrect email address was corrected. These facts could have significant impacts on the underlying litigation of the legitimacy of the association board election.

DCTPP also submitted un rebutted *prima facie* evidence suggesting Becker & Poliakoff and Becker Ballot possibly permitted residents to cast multiple votes for the same candidates. (DIN: 25, Exhibit 5).

B. Evidence of Financial Irregularities of the Association Board

The DCTPP submitted un rebutted *prima facie* evidence that Klimas stated over a million dollars had been “*diverted*” from the operations and reserve funds of Number 2 Association during her stewardship as its President.. (DIN: 25, 26, 30, 31, 32, 33, 34 and 35.). There is no accounting of these funds.

The DCTPP submitted un rebutted *prima facie* evidence that Klimas announced that \$440,909.00 was “*lost*” and Number 2 Association never sought to recover back this money from its insurers. (DIN: 25 Exhibit 3)

The DCTPP have submitted un rebutted *prima facie* evidence that CDTPD have been attempting for at least three years to stop paying the monthly dues of approximately \$43,000.00 to the Recreation Association (DIN: 25, Exhibit 1 and

Exhibit 3A.) During the pendency of the CDTPD motion they have failed to pay monthly dues to the Recreation Association in the amount of approximately \$43,000.00. Currently, Number 2 Association is indebted to the Recreation Association in the amount of \$169,212.00 as of June 9, 2024. (DIN: 82, Exhibit.)

The DCTPP have submitted un rebutted *prima facie* evidence that \$87,354.00 in additional losses at Number 2 Association are unaccounted for regarding a special assessment issued under Klimas' stewardship in 2021. (DIN: 82, Exhibit 2.)

The DCTPP have submitted un rebutted *prima facie* evidence that \$326,713.00 was unaccounted for from Number 2 Association with respect to a 2023 monthly assessment of residents. (DIN 82, Exhibit 3). The log shows a deficiency of \$326,713.00 without explanation.

The DCTPP have submitted un rebutted *prima facie* evidence that \$320,605.88 was withdrawn from Number 2 Association during a 17-day period at the end of 2023 without explanation. The withdrawals were not accounted for on the Number 2 Association books. (DIN: 82, Exhibit 4.)

All of the aforesaid evidence has been un rebutted by the CDTPD and raise significant doubts about the financial health of the Association. This as a result may have a detrimental effect on the citizens of the Associations.

C. Evidence of the Board's Failure to Address Public Safety and Welfare of Facilities

In addition to election and financial irregularities, the DCTPP submitted un rebutted *prima facie* evidence that CDTPD may have intentionally interfered with important life, safety maintenance and repair work necessary for the public's safety and welfare regarding the multi-acre facilities and properties owned and managed by DCTPP (i.e. the motion for injunction to stop termite repair work in the Recreation Association clubhouse.) The DCTPP submitted un rebutted *prima facie* evidence that the termite treatment and repair work is vital to the safety of the Palm Greens citizenry. The DCTPP submitted four

declarations (one by Andrew Allocco, P.E. two others by Mr. Arthur Robins) as well as photographs (including Mr. Robins' supervision of in-house repairs to two termite damaged-staircases) demonstrating that the termite tenting and repair work done by the Recreation Association's acting Board of Directors does not constitute irreparable injury. The declaration demonstrate that the failure to perform such work may very well cause irreparable injury. The reports of expert witnesses and photographs would suggest that the termite tenting was a necessary action and failure to do so could have resulted in greater injury or loss.

With the foregoing expert testimony submitted by the DCTPP remaining unrebutted by competent counter affidavits, and considering all of the photographic and documentary evidence submitted and referenced hereinabove, the Court concludes that DCTPP have established a *prima facie* case supporting their requested relief in the Request for Injunction and Forensic Audit.

LAW AND ANALYSIS

In order for a plaintiff to establish a right to injunctive relief, the plaintiff must establish (1) a likelihood of irreparable harm; (2) unavailability of an adequate legal remedy; (3) a substantial likelihood of succeeding on the merits; and (4) considerations of the public interest support the entry of the injunction. Masters Freight, Inc. v. Servco, Inc., 915 So. 2d 666, 666 (Fla. 2d DCA 2005). The Court is precluded from issuing injunctive relief in this instance unless and until each of the foregoing elements are proven with competent, substantial evidence. SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC, 78 So.3d 709, 711 (Fla. 1st DCA 2012). The movant must prove each element of an injunction with competent, substantial evidence, which would then enable the Court to issue "[c]lear, definite, and unequivocally sufficient factual findings [that] must support each of the four conclusions necessary to justify entry of a preliminary injunction." City of Jacksonville v. Naegele Outdoor Advert. Co., 634 So.2d 750, 754 (Fla. 1st DCA 1994).

The Court addresses in turn each of these elements with an emphasis on the legal principle that parties failing or refusing to rebut *prima facie* evidentiary

showings have essentially conceded the case for injunctive relief. Red-Eyed Jack, Inc. v. City of Daytona Beach, 165 F. Supp. 2d 1322, 1330 (M.D. Fla. 2001); Smith v. Greg's Crane Service, Inc., 576 So. 2d 814, 819 n.4 (Fla. 4th DCA 1991)

A. Motion for Temporary Injunction as to Board Members

1. Likelihood of Irreparable Harm

The Court concludes that in the absence of an order of injunction prohibiting the CDTPD from interfering with life, safety work regarding the Recreation Association facilities, there is a likelihood that CDTPD will continue with attempts to interfere with such life, safety work. The Court's conclusion in this regard is based upon the un rebutted testimony of Mr. Robins that Klimas has for many years actively interfered with life, safety work (DIN: 25) as well as the innumerable requests by CDTPD, that this Court freeze money due to the Recreation Association and that this Court stop life, safety work from being done. Because of this likelihood, the Court further finds that there is a substantial likelihood of irreparable harm in the event injunctive relief is not issued by the Court to permit the Recreation Association's currently acting Board of Directors to have the unobstructed ability to do the necessary life, safety work.

The Court further finds that in the absence of an order of injunction prohibiting the CDTPD from withholding approximately \$43,000.00 per month that they admit is due to the Recreation Association there is a substantial likelihood that the CDTPD will either refuse to pay the Recreation Association these required monies or will become financially unable to pay the Recreation Association. Such withholding of monies from the Recreation Association that Counter-Defendants admit is owed to the Recreation Association creates a substantial likelihood that critical life, safety work will be delayed and therefore a substantial likelihood that thousands of residents of the Palm Greens facilities will be exposed to the risk of death or serious bodily injury. The Court makes these findings with an emphasis on the reality that the expert Declarations of Andrew Allocco, P.E., and the fact Declarations of Arthur Robins, are

unrebutted in this matter and make out a *prima facie* case of such risks which this Court is not permitted to ignore at this stage of the proceedings and after carefully considering the evidentiary record before it. See Red-Eyed Jack, Inc., 165 F. Supp. 2d at 1330.

2. Inadequacy Of Remedy At Law

The Court further finds as a matter of law that Counter/Third Party-Plaintiffs have no adequate remedy at law to mitigate the risks of death or serious bodily injury to community residents. The photographic evidence fully supports that if staircases collapse death or serious injury to many residents could occur. Because it is unrebutted, for the purposes of this motion, the Court is required to accept as true the testimony of Robins that Klimas has been interfering with life, safety work based upon her belief that "nobody would use that staircase to exit during a fire." Damages at law will not compensate for the risk of irreparable physical injury resulting from the failure to do what is standard life, safety repairs, and injunctive relief is called for.

3. Substantial Likelihood Of Success On The Merits

Regarding the third element, the Court finds that the unrebutted evidence submitted by the DCTPP, at this point, establishes a strong argument for the likelihood of success on the merits. This finding is made without further comment on what the evidence might establish at a trial, but only for the purpose of ruling on the present motion.

4. Considerations Of Public Interest

The considerations of the public interest support the entry of the injunction prayed for by DCTPP because protecting thousands of citizens and properly maintaining multi-acre facilities is superior to avoiding doing such work and exposing citizens to risk of injury or death. In this regard, the Court further finds (a) that the acting Board of Directors of the Recreation Association has a fiduciary duty to assure that all life, safety work is done and (b) that each

member of the acting Board of Directors is not performing an unlawful act by assuring the safety of residents of Palm Greens but instead are either *de jure* or *de facto* members of the Board of Directors acting appropriately pursuant to well settled law. Cannella v. Auto-Owners Ins.Co., 801 So. 2d 94, 99 (Fla. 2001).

B. Motion for a Forensic Audit

In their Request for Injunction and Forensic Audit, DCTPP also seek an order preventing Counter-Defendants and Third Party-Defendants from restricting full access to all records of DCTPP for the purposes of permitting a forensic audit. The Court notes that this request for forensic audit was never opposed in writing.

1. Likelihood of Irreparable Harm

Lastly on the issue of forensic access, the likelihood of irreparable harm is clearly satisfied because the statutory violations referenced above are *prima facie* evidence of irreparable injury, *Roberts v. State*, No. 6D23-1028 (Fla. Dist. Ct. App. May 5, 2023), and because the financial condition of Number 2 Association is inextricably linked to the ability to perform the necessary life, safety work regarding the Recreation Association's facilities utilized by thousands of citizens.

2. Inadequate Remedy at Law

With respect to the inadequacy of remedy at law and public interest elements of injunctive relief for forensic audit access, the Court finds that there is no other remedy at law considering that Florida Statute section 718.111 (12) (c) 1. a. clearly is the Florida Legislature's remedy provided to condominium owners in like situations of potential financial malfeasance.

3. Likelihood of Success on the Merits

The Florida Condominium Act, Florida Statute section 718.111 (12) (c)

1. a., expressly provides that any and all records of condominium associations are open to inspection by any member thereof within 10 days of his request. The Declarations of members of the Class, including Melvin Clapman, Mary LePage, Beth Saffer, Roberta Minerva, Jeanette Robichaud and Naomi Motta each confirm their prior requests to review all of the records in order to inspect the Number 2 Association's source documentation. The members have complied with Florida Statute section 718.111 (12) (c) 1. a. DCTPP have established a likelihood of success regarding their right to access all books and records of their condominium association, Number 2 Association. The Court finds that at least one member of the DCTPP to be a member of the Number 2 Association.

4. Considerations of Public Interest

Similarly, the public interest is not furthered by denying condominium owners the right to timely inspect all books and records of their association within ten days of a request as the Florida Legislature has so found by making this right statutory in nature. Fla. Stat. s 718.111 (12) (c) 1. a.

WHEREFORE, based upon the above-described findings of fact and conclusions of law, the Court issues the following injunctive relief in favor of DCTPP:

A. Counter-Defendants Klimas, DiGennaro, Marrazzo, Number 2 Association, and their agents and those persons acting in concert with them or on their behalf are restrained and enjoined from interfering with maintenance work or other life, safety work recommended by qualified contractors or personnel to be done to facilities owned or managed by the Recreation Association;

B. Counter-Defendants Klimas, DiGennaro, Marrazzo, Number 2 Association, and their agents, and those persons acting in concert with them or on their behalf are restrained and enjoined from attempting take control over,

divert, seize, transfer or otherwise exercise dominion or control over any assets (whether bank assets or real estate assets) owned by the Recreation Association or that the Recreation Association has a rightful interest in;

C. Counter-Defendants Klimas, DiGennaro, Marrazzo, Number 2 Association, and their agents, and those persons acting in concert with them or on their behalf are restrained and enjoined from taking any actions that might prevent forensic auditors duly retained by DCTPP from having immediate and unobstructed access to all books and records in possession, custody or control of Number 2 Association for purposes of performing a full forensic audit regarding the affairs of Number 2 Association. **This order of access does not include access to the individual records of Klimas, DiGennaro or Marrazzo without further order of this Court.**

D. Counter-Defendants Klimas, DiGennaro, Marrazzo, Number 2 Association, and their agents, and those persons acting in concert with them or on their behalf are restrained and enjoined from taking any actions that might prevent the currently constituted Board of Directors of the Recreation Association from performing their ***required fiduciary duties*** in accordance with Florida law regarding the requisite fiduciary actions of *de jure* and *de facto* members of a Board of Directors. *(The relief issued in connection with this subparagraph shall be null and void in the event a court of competent jurisdiction formally rejects, after notice and opportunity to be heard, the evidence of improprieties associated with the January 31, 2024 condominium election as set forth in this Order and as thus far unrebutted by Counter-Defendants Klimas, DiGennaro, Marrazzo and Number 2 Association.)*

E. The Court orders that the currently constituted Board of Directors of the Recreation Association shall act ***solely in the interests of the residents as a fiduciary*** in the execution of any duties and responsibilities during the time of this injunction until the conclusion of the suit on the merits.

F. The foregoing injunction shall not take effect unless and until all parties in this action have an opportunity to present evidence regarding the proper amount of an injunction bond in this matter, which the Court orders the

parties to submit on or before September 27, 2024, and unless and until any bond ordered by this Court is actually posted to the Court's satisfaction. Richard v. Behavioral Healthcare Options, Inc., 647 So.2d 976, 978 (Fla. 2d DCA 1994).

ORDERED AND ADJUDGED that the Defendants', Counter Plaintiffs' and Third Party Plaintiffs' Motion for Temporary Injunctive Relief is GRANTED as stated above.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida.



502024CA002299XXXAMB 09/10/2024
Reid P. Scott
Judge

ANTHONY DIGENNARO	No Address Available	No E-mail Address Available
ARTHUR ROBINS	No Address Available	No E-mail Address Available
BECKER & POLIAKOFF	No Address Available	No E-mail Address Available
BECKER BALLOT	No Address Available	No E-mail Address Available
BRIAN J. MORAN	111 N ORANGE AVENUE SUITE 900 ORLANDO, FL 32802	BMORAN@MORANKIDD.COM eservice@morankidd.com
DOUGLAS E. EDE	8551 WEST SUNRISE BLVD SUITE 304 FORT LAUDERDALE, FL 33322	DEDE@RUMBERGER.COM
DOUGLAS E. EDE	80 SOUTHWEST 8TH STREET BRICKELL CITY	DEDE@RUMBERGER.COM dedesecy@rumberger.com ede@douglassede.com

	TOWER SUITE 3000 MIAMI, FL 33130	
EL'AD D. BOTWIN	301 W ATLANTIC AVENUE DELRAY BEACH, FL 33444	BOTWINLAWFIRM@GMAIL.COM elad@botwinlawfirm.com ebotwin@smgqlaw.com
ELAD BOTWIN	No Address Available	ebotwin@smgqlaw.com
GUSTAVO D. LAGE	201 ALHAMBRA CIR STE 1201 CORAL GABLES, FL 33134	GLAGE@SMGQLAW.COM lrodriguez@smgqlaw.com vcorrias@smgqlaw.com
HARRY A. PAYTON	2 S BISCAYNE BOULEVARD SUITE 2200 MIAMI, FL 33131	PAYTON@PAYTON-LAW.COM smorejon@payton-law.com smohorcic@payton-law.com
HOWARD J. PERL	1 E BROWARD BLVD STE 1800 FT LAUDERDALE, FL 33301	HPERL@BECKERLAWYERS.COM ecuellar@beckerlawyers.com courtmail@beckerlawyers.com
J CHRIS BRISTOW	303 BANYAN BLVD SUITE 400 WEST PALM BEACH, FL 33401	JCBRISTOW@LAWCLC.COM cbristow@lawclc.com lwaldron@lawclc.com smcdonald@lawclc.com czaguirre@lawclc.com
KEVIN PATRICK YOMBOR	100 SE 3RD AVENUE SUITE 1500 FORT LAUDERDALE, FL 33301	kyombor@kaufmandolowich.com tbell@kaufmandolowich.com kyombor@kdvlaw.comkaufmandolowich.com
LABEED CHOUDHRY	No Address Available	labeed.choudhry@kaufmandolowich.com sfranchi@kaufmandolowich.com
LORA TROWELL	No Address Available	ltrowell@rumberger.com
LOREN M. KORKIN	80 SOUTHWEST 8TH STR MIAMI, FL 33130	LKORKIN@RUMBERGER.COM
LOREN M. KORKIN	No Address Available	lkorkin@rumberger.com lkorkinsecy@rumberger.com docketingmiami@rumberger.com

MARGE FATTORI	No Address Available	No E-mail Address Available
NUMBE 2 CONDOMINIUM ASSOCIATION PALM GREENS AT VILLA DEL RAY INC	No Address Available	No E-mail Address Available
ROB THOM	No Address Available	No E-mail Address Available
RYAN CLANCY	1826 PONCE DE LEON CORAL GABLES, FL 33134	RYAN@BUSINESS-ESQ.COM info@business-esq.com yamila@business-esq.com
SUNDAY JAEGER	No Address Available	sjaeger@beckerlawyers.com

NOT A CERTIFIED COPY