

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2025-CA-007457-O

DIVISION 43 – BUSINESS COURT

METROWEST MASTER
ASSOCIATION, INC.,

Plaintiff,

v.

TRADEWINDS, A METROWEST
CONDOMINIUM ASSOCIATION, INC.

Defendant.

**REPLY TO DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiff, MetroWest Master Association, Inc., (“Plaintiff”) by and through undersigned counsel, hereby files its Reply to the Defendant’s Response to Plaintiff’s Motion for Preliminary Injunction (“Defendant’s Response”) against Defendant Tradewinds, a MetroWest Condominium Association, Inc. (the “Tradewinds” or the “Defendant”) and in support thereof states:

1. Ignore the clear language of the Amended and Restated Master Declaration of Protective Covenants and Restrictions for Metrowest (“Master Declaration”). Ignore the findings and recommendations of the independent auditor.

Ignore the City of Orlando code enforcement liens against Defendant. Ignore the fact that a majority of the owners of the Tradewinds have attempted to have the Tradewinds Board of Directors recalled. In fact, just ignore all of the evidence in this case and listen to what we say instead. This sums up Defendant's argument.

2. Through a combination of excuses, misdirection, finger pointing and non-sequiturs, Defendant attempts to divert the attention of this Court away from basic facts, basic documents, basic contractual interpretation and basic principles of association law. In so doing, Defendant yet again completely misses the fundamental premise of this case. This is a simple case of a contractual relationship that exists between the parties, as laid out specifically in the Master Declaration, which also constitutes a covenant that runs with all of the land within MetroWest. No amount of gaslighting and "look over here" posturing by Defendant will change that simple premise and Defendant offers nothing else to this Court but exactly that.

Lacking any evidence or persuasive argument, Defendant even spends pages in its Response challenging the technical form of the Verification filed by Plaintiff herein, choosing for obvious reasons to focus on technical litigation minutiae rather than the clear mandate of the Master Declaration. Plaintiff has simply amended the Verification to cure the alleged technical defect, so that issue is now moot.

3. Plaintiff replies to the Defendant's Response in a simple point by point manner below:

Point 1. Plaintiff Demonstrates Substantial Likelihood of Success on the Merits.

In spite of Defendant's efforts to muddy the waters, this is a simple case. The Parties are bound by the plain and unambiguous language of Section 3.4.1 of the Master Declaration, which provides a specific requirement that Plaintiff conduct an annual election and a specific remedy in the event Defendant fails to do so. It is a fact that Defendant did not conduct an election in 2024; Defendant does not challenge that.

Therefore, the issue comes down to enforcing the plain and unambiguous provisions of Section 3.4.1 of the Master Declaration. Defendant has not offered a single credible legal source in support of its position that Section 3.4.1 is unenforceable, instead essentially relies on the professional experience of Defense counsel as being somehow persuasive to this Court. Defendant offers no facts or credible legal argument that would overcome the strong legal presumption of validity as to the Master Declaration.

Florida courts have found that restrictive covenants found in the declaration of condominium run with the land and are *presumed valid* unless wholly arbitrary in their application, in violation of public policy, or they abrogate some fundamental constitutional right. *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 640-641 (Fla. 4th DCA 1981) (citing *White Egret Condominium, Inc. v. Franklin*, 379 So.2d 346 (Fla. 1979)). In this matter, the Master Declaration is the declaration at issue and

is likewise presumed to be valid and enforceable unless proven to meet one of the above factors.

Plaintiff has a substantial likelihood of success on the merits herein due to the plain, unambiguous language set forth in the Master Declaration and the settled Florida law with regard to enforceability. Defendant has not offered a single credible factual or legal challenge to fundamental issues of contractual enforcement, nor has Defendant offered any evidence to carry its burden of proving Section 3.4.1 of the Master Declaration to be enforceable.

Point 2. Defendant argues that Tradewinds is financially stable.

Asking the Court to plunge down the proverbial rabbit hole, Defendant launches into an incredibly detailed explanation as to just how *well* the Tradewinds is doing financially. It is important to note that financial distress is NOT a prerequisite to Plaintiff enforcing the provisions of Section 3.4.1 of the Master Declaration. Nowhere in that section is financial condition of the Community Association found or discussed. Plaintiff does not have any obligation to show financial distress or insolvency as an element of this case. This Court does not have to find insolvency as a condition to entering the relief sought herein; if Defendant failed to conduct an election in 2024 the remedy is clear and it is not dependent on financial well-being.

The only reason Plaintiff has even raised financial well-being is due to

Defendant's misplaced and unsupported argument that Plaintiff has acted *arbitrarily* in exercising its clear legal right to appoint an interim board for Tradewinds. Defendant claims that Plaintiff acted arbitrarily, Plaintiff merely demonstrates to this Court that it had numerous and ample sound reasons to step in and enforce its mandate under the Master Declaration.

But since we are now down Defendant's rabbit hole, let's just take a quick peek at what Defendant said and what the actual evidence shows:

(i) Reserve accounts: Defendant goes into tedious detail about how much money it has in its reserve accounts and the increase to its income. If so, why did it illegally borrow over \$500,000 from those reserve accounts during the past 2 years and still have an ever growing negative operating balance? Why did it ignore the recommendation of its own auditor to restore these accounts and instead increase the borrowing? The auditor stated in the 2023 audit:

2. The Association has a low operating cash balance, a negative operating fund balance, and shows a liability to the reserve fund of almost \$500,000. In order to correct the above, consideration should be given to passing a special assessment or increasing the maintenance assessment.

Sitting on all of those riches, why did Defendant not just pay the liability? Interesting.

(ii) Code Enforcement Liens: Defendant defiantly shouts (in bold font in its supporting affidavit). "This matter was handled in November 2024!!" Is that so? Why is it that the liens were not paid off until **August 21, 2025, after this lawsuit**

was filed? A look at the receipts filed by Defendant shows the payment date. Defendant claims that it is awash in cash, yet, *chooses* to leave unpaid liens on its property for almost a year and only acts once it realizes it has to explain itself to this Court? It is now established fact that, at the time Plaintiff acted to appoint an interim board for Tradewinds, Defendant had unpaid code enforcement liens on its property. Arbitrary? Hmmm.

(iii) The Construction Contract: Defendant fails to explain the signing of an \$11 million+ construction contract for the needed restoration of the property and making a non-refundable deposit in excess of \$1.7 million, with no plan or ability to pay for the project. Defendant shrugs this off claiming that it has numerous ways to pay for this, including assessments and bank loans. Is that so? Why then has neither of those two things happened in the 9 months since the contract was signed? One would think that Defendant would have selected from among the many banks lining up to do business with Defendant and actually commenced the project before the buildings fall down. Why have they not just done that? The simple truth is that every single bank has turned Defendant down for such a loan and the Defendant has no current actual plan to get this project done.

(iv) Here are the simple facts that have now been established, all of which existed on the day that Plaintiff exercised its rights under Section 3.4.1 of the Master Declaration:

(1) Defendant illegally borrowed funds from its reserve accounts (in violation of its own Declaration) and actually increased that borrowing in spite of its own auditor recommending that these loans be paid. This is not refuted by Defendant.

(2) Defendant had multiple unpaid code enforcement liens against it at the time Plaintiff appointed the interim board. This is now an established fact.

(3) Defendant has entered into a large construction contract with no present ability to execute on it.

(4) A majority of the owners of the Tradewinds have tried to recall the present board within the last several months. This is not refuted by Defendant.

As stated, Plaintiff is not required to prove ANY of the above facts to prevail herein. These matters are only raised to demonstrate, and demonstrate unequivocally, that Plaintiff had more than ample reason, as the Master Association charged with the duty to oversee all of MetroWest, to enforce its rights under the Master Declaration and there is nothing remotely arbitrary about its actions.

Point 3. Defendant claims Plaintiff seeks to overturn a valid election and ignore the rights of the Tradewinds owners.

This argument by Defendant again ignores the basic facts of this case. Plaintiff has never sought to overturn an election, quite the opposite. Plaintiff has acted because the **Tradewinds failed to conduct an annual election**. As to Defendant's argument that Plaintiff's actions are against the will of the owners, Plaintiff refers

the Court back to the fact that a majority of the Tradewinds owners want the current Tradewinds board removed. It is indeed Defendant who is disregarding the will of the Tradewinds owners. Public policy supports contractual rights. The appointment of an interim board by the Plaintiff does not violate public policy but is in support of owners' rights in MetroWest. Public policy supports the efforts of the Master Association to enforce a Master Declaration that is the central governing document for one of the largest communities in Central Florida. Public policy supports the efforts of the Master Association to require Tradewinds to conduct a valid election.

Point 4. Defendant claims this action is moot because Defendant is about to conduct an election.

This argument is yet another non-sequitur. Enforcement of the provisions of the Master Declaration is not dependent on what might happen in the future. Apparently, Defendant asks this Court to grant it the right to violate the Master Declaration and then allow it to "run out the clock" on enforcement by seeking to delay the litigation past November, 2025. Even if this Court were to act one day prior to a scheduled election, that nevertheless would be the correct ruling in this case. This is a fundamental matter of enforceability of a Master Declaration that governs the entirety of MetroWest. If Tradewinds is allowed to simply disregard the provisions of a Master Declaration, a document they acknowledge to be supreme in every respect to their own governing documents, the entire framework of association law and enforceability would fall into jeopardy. There are no time limits set forth in

Section 3.4.1, the rights and remedy are clear and unequivocal, Plaintiff has the absolute right to appoint an interim board for Tradewinds, even if for only one day.

Secondly, are we to believe that Defendant, who has not held an election in years, is suddenly going to have one this year? And even if it does, will the current board find more “technical” reasons to declare this election invalid? The fact that there is a planned election in November is even greater reason why the interim board should be appointed, if nothing else to ensure a full and fair election, something the current board has failed to accomplish in years.

CONCLUSION

Defendant’s Response ignores or demonstrates its failure to understand the central issue herein. Section 3.4.1 of the Master Declaration provides a specific obligation on the part of the Defendant and a specific remedy in the event that obligation is not met. All of the ancillary issues raised and argued by Defendant are neither relevant nor persuasive.

Defendant has failed to carry its burden of proving that Plaintiff acted arbitrarily in its enforcement actions and in fact there is overwhelming evidence that Plaintiff, as the body responsible for overseeing the property values, safety and well-being of approximately 28,000 MetroWest residents, acted prudently and precisely within its established role for the community.

As the Plaintiff has demonstrated herein and its pleadings in this matter, it has

a substantial likelihood of success on the merits. The Master Declaration and pleadings clearly demonstrate how enforcement in this matter is in the public interest. Plaintiff's request for injunctive relief is not moot, even if the Tradewinds plans to hold an election, because the real issue before this Court is enforceability of the Master Declaration.

WHEREFORE, Plaintiff respectfully requests this Court grant the relief sought in its Motion for Preliminary Injunction.

CERTIFICATE OF SERVICE

I, James S. Byrd, hereby certify that on the 25th day of September, 2025, a true and correct copy of the foregoing was filed with the Clerk of Orange County by using the Court's e-Filing Portal system, which will furnish a copy electronically to all parties registered with the e-Filing Portal.

/s/ James S. Byrd

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