

ROBERT L. KAYE
MICHAEL S. BENDER
JEFFREY A. REMBAUM
DEBORAH S. SUGARMAN
ANDREW B. BLACK
GERARD S. COLLINS
KERSTIN HENZE
EVELYN M. GREENSTONE
JEFFREY D. GREEN
EMILY E. GANNON
DANIELLE M. ZILO
MICHAEL J. VILLAROSA
JONATHON J. ROHACEK
KATHRYN A. DESIRE
LISA A. MAGILL, OF COUNSEL



MAIN OFFICE:
1200 PARK CENTRAL BLVD SOUTH
POMPANO BEACH, FL 33064
TEL. (954) 928-0680
FAX (954) 772-0319
(800) 974-0680

WITH AN ADDITIONAL OFFICE
IN PALM BEACH GARDENS

KBRLegal.Com

December 14, 2016

VIA FAX #(954) 781-3748
and E-mail: Larry@shendell-law.com;
Tamar@shendell-law.com.
Tamar Shendell, Esq.
Larry Shendell, Esq.
Shendell & Associates, P.A.
5340 N. Federal Highway
Suite 201
Lighthouse Point, FL 33064

**RE: Palm-Aire Country Club Condominium Association, No. 2, Inc.
Demand for Turnover of Documents, Information and Control**

Dear Mr. Shendell and Ms. Shendell:

As you are aware, the Fourth District Court of Appeal issued the attached opinion this morning, which correctly overturned the temporary injunction entered by Judge Haury on April 15, 2016, and conclusively determined that M&M Property Management, LLC ("M&M") shall "continue to operate in service of the [Board of Directors of Palm-Aire Country Club Condominium Association, No. 2, Inc. ("PACC2")] elected on March 2, 2016."

As a result of this opinion, it is clear and unambiguous that the individuals you claim to be representing as a "majority of the Board", have been improperly acting as the Board of PACC2, and have not been, nor are authorized to take any action whatsoever on behalf of PACC2 in any capacity.

At this time, the valid Board of Directors of PACC2 elected on March 2, 2016 demands that the individuals that you claim to be representing immediately produce a full accounting of all expenditures made during this time period and the following documents to

M&M:

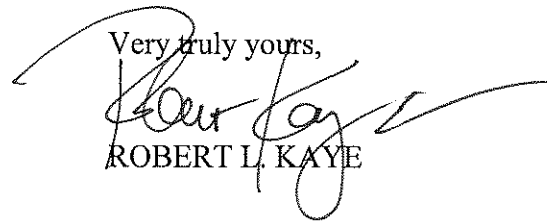
1. **Signature Cards:** Signature cards for each and every banking institution with which PACC2 has a banking relationship. Please also provide copies of any and all requests to financial institutions with which PACC2 maintains a relationship for change of signatories made since March 2, 2016.
2. **Bank Accounts:** Bank statements, notices and any and all correspondence received from or made to financial institutions affiliated with PACC2 since March 2, 2016. Additionally, please provide each and every bank account number, operating account ledgers, copies of cancelled checks and deposit slips.
3. **Contracts and other Agreements:** Correspondence, agreements and contracts from March 2, 2016 to date with financial institutions and vendors, including attorneys and insurance agents, relevant to PACC2.
4. **Credit Cards:** Any and all PACC2 credit cards (actual cards to be returned to the Board) that in any way obligate PACC2 for payment. Additionally, provide copies of any and all credit card applications, statements and associated records and receipts.
5. **Payments to James Martin:** Records regarding all monies paid by PACC2 to James Martin since March 2, 2016.
6. **Estoppels:** All estoppels prepared by or on behalf of PACC2 from March 2, 2016, through present.
7. **Invoices:** Any and all paid and unpaid invoices from contractors/vendors, including attorneys and accountants from March 2, 2016 to date.
8. **Personnel/Human Resources:** All information regarding personnel decisions and expenditures made since March 2, 2016 to date.
9. **PACC2 Owners with Unpaid Maintenance:** Current delinquency list and ledgers for all files in collection.
10. **Sales and Leasing:** Up-to-date, current list of all unit sales and leasing applications approved, denied or in process since March 2, 2016 and copies of all applications, approvals and denials.
11. **Contractor/Vendor Proposals:** Any and all proposals or contracts received since March 2, 2016, signed and unsigned.
12. **Insurance:** PACC2' insurance carrier policies, insurance agent name and complete contact information.
13. **PACC2 Financial Statements:** PACC2 complete financial statements from March 2, 2016 through the present.
14. **Legal Correspondence:** All Shendell & Associates, P.A., correspondence and agreements, including representation agreements and billing invoices since March 2, 2016 through the present. Additionally, all reports demonstrating matters purportedly being handled by Shendell & Associates, P.A., on behalf of PACC2.
15. **Keys to Bulletin Boards and Building Roofs:** All original keys to bulletin

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- boards and building roofs.
16. **Ledgers, Reports:** Ledgers (current and up to date) for each and every unit at PACC2, correspondence logs for each and every unit at PACC2, AR reports, delinquency reports, bank account reconciliation reports for all PACC2 bank accounts or other accounts with financial institutions.
 17. **Website:** Disconnect and discontinue the PACC2 website being purportedly operated on behalf of PACC2

Should you not voluntarily produce this information to M&M immediately, PACC2 will immediately seek redress in court. Obviously, no valid Board meeting can occur by your clients under these circumstances.

Please advise your clients to be guided accordingly.

Very truly yours,

ROBERT L. KAYE

RLK/css

Enclosures: Fourth District Court of Appeal opinion dated December 14, 2016

cc: Tamar Shendell, Esq. (Via email at tamar@shendell-law.com)
Larry Shendell, Esq. (Via email at Larry@shendell-law.com)
M&M Property Management Company
Board of Directors (Palm-Aire Country Club No. 2)

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

M&M PROPERTY MANAGEMENT, LLC,
Appellant,

v.

**PALM-AIRE COUNTRY CLUB CONDOMINIUM ASSOCIATION NO. 2,
INC.,**
Appellee.

No. 4D16-1448

[December 14, 2016]

Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; William W. Haury, Judge; L.T. Case No. CACE16004720(13).

Bartosz A. Ostrzenski of Ostrzenski & Stricklin, P.A., Boca Raton, and Gerard S. Collins and Jeffrey D. Green of Kaye Bender Rembaum, P.L., Pompano Beach, for appellant.

Tamar Duffner Shendell of Shendell & Associates, P.A., Lighthouse Point, for appellee.

FORST, J.

Against the backdrop of the aphorism that “all politics is local,” we address a trial court decision with respect to a challenge to a condominium association’s board of directors election. As discussed below, we reverse the temporary injunction entered against Appellant M&M Property Management, LLC, allowing it to continue to operate in service of the board elected on March 2.

Background

On February 29, 2016, the then-Board of Directors of the Appellee condominium association attempted to postpone the annual board election scheduled for March 2, 2016. Although there is some ambiguity as to what exactly occurred at the February 29 meeting, the record could support the conclusion that the Board voted 6-3 in favor of

postponement.¹ However, there is no indication that the actual voting members of the association ever voted to postpone the election. An election was nonetheless ostensibly held on March 2, at which a new board was elected.

The dispute at issue between Appellee (in the form of the first board) and Appellant M&M stems from the latter's refusal to recognize the continued authority of the first board. In seeking an injunction, Appellee claimed that the election was fraudulent because of the vote to postpone and, therefore, that the Board which existed on February 29, 2016, continued to exist and should have been recognized by M&M. Appellee alleged that it was harmed by being cut out of daily operations of the association and by being removed from the association's bank accounts. The trial court granted a preliminary injunction requested by Appellee and ordered M&M to recognize the pre-March 2 "election" Board and provide it the access and control over the association that it sought. M&M challenges that preliminary injunction on appeal.

Analysis

Whether Appellee has demonstrated a substantial likelihood of success on the merits depends on the legal issue of whether the vote to postpone the election was effective. As such, we review this case *de novo*. *Telemundo Media, LLC v. Mintz*, 194 So. 3d 434, 435 (Fla. 3d DCA 2016).

It is well-established that a temporary injunction lies when the following requirements are proved by the party seeking the injunction: "(1) it will suffer irreparable harm unless the injunction is entered, (2) there is no adequate remedy at law, (3) *there is a substantial likelihood that the party will succeed on the merits*, and (4) that considerations of the public interest support the entry of the injunction." *Concerned Citizens for Judicial Fairness, Inc. v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014) (emphasis added).

The Florida Administrative Code provides that "[i]n order to adopt different voting and election procedures in its bylaws . . . an association must obtain the affirmative vote of a majority of the *total voting interests* . . ." Fla. Admin. Code R. 61B-23.0021(1)(c) (emphasis added). The relevant bylaws here state that directors "shall" be elected at a meeting which "shall be held on the first Wednesday in March of each year." March 2 was the first Wednesday in March during 2016. To the extent that Rule

¹ We do not intend this statement to be interpreted as any finding that this vote in fact did or did not occur, should the issue be relevant in further proceedings.

61B-23.0021(1)(c) applies to the postponement here, it commands that the vote to postpone be taken by all of the relevant voting interests, not just the Board, because that change would itself be the adoption of different voting procedures than the rule provides. That was not done. As such, Appellee failed to show it had a “substantial likelihood” of prevailing because it did not provide authority circumventing application of Rule 61B-23.0021(1)(c) to this scenario, nor any other authority supporting the Board’s ability to postpone the election.²

Conclusion

We therefore reverse because Appellee failed to demonstrate the third requirement of a temporary injunction; namely, that it had a substantial likelihood of succeeding on the merits. In this case, the bylaws set the annual meeting and election date and Appellee did not provide any authority permitting a postponement based solely on a majority vote of the Board.

Reversed.

CIKLIN, C.J. and KLINGENSMITH, J., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

² We emphasize that the burden in this case was on Appellee to provide authority that would support not applying Rule 61B-23.0021(c)(1). This opinion should not be read as holding anything with regard to the actual application of that rule beyond the simple recognition that its language would seem to indicate that it may apply in this situation. The nuances and exact application of the rule are not the concern of this Court at this time.