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Client Alert: Community Associations: Self-Help or Injunctive Relief

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Based on a recent opinion from the Second District Court of Appeals, Community Associations should consider self-help/abatement rights to cure violations before filing a lawsuit for injunctive relief.

On April 13, 2022, the Second District Court of Appeal decided *Mauriello v. Prop. Owners Ass'n of Lake Parker Estates, Inc.*, 337 So. 3d 484 (Fla. 2d DCA 2022). In *Mauriello*, the association sought an injunction against property owners to remedy a violation of the Association's declaration of covenants for failing to maintain their lawn and landscaping. At the trial court, the property owners unsuccessfully argued the association was not entitled to an injunction because it had an adequate remedy at law, citing to the declaration provision allowing the association itself to remedy the violation and assess the cost of the remediation to the property owners. Subsequently, the property owners sold the property, and the new owners remedied the violation. The new owners' remediation of the violation mooted the main issue in the litigation. The association dismissed the case as moot and requested prevailing party attorney's fees against the property owners based on the violation remediation after filing litigation. The trial court awarded the association prevailing party attorney's fees, and the property owners appealed. The Second District Court of Appeals reversed, holding that the association did not prevail in its action to enjoin property owners from violating the lawn and landscaping maintenance requirements when the association failed to first exercise the self-help/abatement rights, as set forth in its declaration of covenants.

In doing so, the Second District Court of Appeal extended its holding in *Alorda v. Sutton Place Homeowners Ass'n.*, 82 So.3d 1077 (Fla. 2d DCA), which held an association is not entitled to an injunction requiring an owner to obtain insurance where the association had the right to obtain insurance and recover the cost of the insurance from the owner. In *Mauriello*, the Second District Court of Appeal determined that the association had failed to state a cause of action for an injunction. Injunctive relief requires, in part, the plaintiff not have an adequate remedy at law, meaning, "[i]f monetary damages would fully compensate a loss," then there is an adequate remedy at law. *Amelio v. Marilyn Pines Unit II Condo. Ass'n, Inc.*, 173 So. 3d 1037, 1040 (Fla. 2d DCA 2015). In *Mauriello*, the association sought an injunction. However, because the declaration of covenants in *Mauriello* stated the association may perform the maintenance at issue and seek payment from the owners, the Court held that the association's right to cure the violation at the owner's expense and seek payment was an adequate remedy at law; therefore, the association would not be entitled to an injunction.

The *Mauriello* and *Alorda* decisions effectively require the use of self-help/abatement rights set forth in restrictive covenants before the filing of a lawsuit for injunctive relief. However, the exercise of such rights can be problematic, potentially giving rise to breaches of the peace, liability for negligence in the course of performing self-help/abatement, and potential collection/reimbursement issues. Many restrictive covenants establish specific notices and timelines that must be followed before the community association can exercise self-help/abatement rights and, to the extent applicable, impose a lien on the unit owner's property for the cost of abatement. In addition, some governing documents restrict the self-help option to only specific types of violations.

Based on the *Mauriello* and *Alorda* decisions, community associations and other parties seeking to enforce declarations of covenants, which contain self-help/abatement rights, should first attempt to exercise such rights before seeking injunctive relief from a court or other tribunal of competent jurisdiction. If an association were to bring suit for injunction and the Court dismissed it for failure to state a cause of action, the association would be at risk of an adverse award of attorney's fees and costs if chapters 718, 719, 720, or other statutory or contractual prevailing party attorney's fee and costs provisions apply.

Not all violations of declaration of covenants are subject to self-help/abatement. Examples include noise violations, eviction of tenants, etc. Community associations should consider consulting with counsel before determining if self-help/abatement rights are applicable.

As such, community associations and others holding self-help/abatement rights should proceed carefully on a case-by-case basis in determining whether to seek self-help/abatement or file suit. If exigent circumstances do not exist, we recommend a community association consider attempting to have the property owner remedy the violation or engage in pre-suit mediation before proceeding to self-help/abatement rights. As a result of the *Mauriello* and *Alorda* decisions, community associations should review their violation policies and consult with counsel before filing a lawsuit or attempting self-help/abatement.

Should you have questions or comments, please feel free to contact us.