

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Alberto M. Ruiz De Gamboa v. Newth Gardens Condominium
Association, Inc.

Ruiz De Gamboa · No. 4D2024-0217 · Decided June 4, 2025

SUMMARY

The Florida Fourth District Court of Appeal held that a condominium association failed to rebut the statutory presumption that it willfully failed to provide requested records within the required timeframe. The court found that speculative testimony that a scheduling letter was probably mailed did not constitute competent substantial evidence of mailing, particularly where the unit owner credibly testified that he never received it. The court reversed the judgment concerning the April 2018 records request and affirmed the judgment concerning the June 2018 request.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Forst, J.; Warner, J.; Conner, J.
JURISDICTION	Florida District Court of Appeal, Fourth District
DECIDED	June 4, 2025
DOCKET	4D2024-0217
DISPOSITION	other
PROCEDURAL POSTURE	Appeal by the condominium unit owner and cross-appeal by the condominium association from a final judgment entered after a bench trial and trial de novo following nonbinding arbitration concerning statutory condominium-records requests.
STANDARD OF REVIEW	Mixed standard: the trial court's factual findings are reviewed for competent substantial evidence, and its legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Alberto M. Ruiz De Gamboa v. Newth Gardens Condominium Association, Inc.

TOPICS

real estate

statutory interpretation

evidence

appellate procedure

remedies

PRACTICE AREAS

condominium law

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evidence

QUESTIONS PRESENTED

1. Whether the trial court erred by finding that the association mailed the scheduling letter when the association presented no competent substantial evidence that the letter was actually mailed.
2. Whether the unit owner's credible testimony that he did not receive a response required the trial court to begin with the rebuttable presumption that the association willfully failed to comply with section 718.111(12)(c), Florida Statutes (2018).
3. Whether the association rebutted the statutory presumption with competent substantial evidence that it timely provided the unit owner with an opportunity to inspect the requested records.
4. Whether the trial court's final judgment concerning the June 2018 records request should be disturbed on the association's cross-appeal.

HOLDINGS

1. The association failed to present competent substantial evidence that the scheduling letter was actually mailed. The president's testimony that he probably gave the letter to a staff member for mailing was insufficient.
2. Because the unit owner credibly testified that he did not receive a response and the association failed to prove that it timely mailed or otherwise conveyed one, the trial court should have begun with the rebuttable presumption that the association willfully failed to comply with section 718.111(12)(c), Florida Statutes (2018).
3. The association did not rebut the presumption with competent substantial evidence that it timely provided the unit owner an opportunity to inspect the requested records.
4. Ridge Groves Condominium Ass'n v. Misserville was inapposite because the facts differed materially: in Ridge Groves, the unit owner stated that he would call for an appointment, whereas here the unit owner did not promise a follow-up call and the association intended to send a scheduling letter.

KEY QUOTATIONS

“Evidence that a document was drafted is insufficient, standing alone, to establish that it was in fact mailed.”
(at 3)

“Instead, as the Unit Owner credibly testified to nonreceipt of a scheduling letter, the trial court should have begun its analysis with a presumption of the association’s willful failure to comply with section 718.111(12)(c).” (at 4)

“The association’s non-response to Unit Owner’s notification that he had not received a reply to his record inspection request dooms any argument that the non-mailing of the association’s response was inadvertent

and not “willful.”” (at 5)

FACTUAL BACKGROUND

In April 2018, the unit owner requested that the condominium association make records available for inspection. The association president testified that he drafted a letter setting an inspection appointment, but he did not personally mail it and offered only speculative testimony that a staff member probably mailed it. The unit owner testified that he never received the letter and notified the association of the nonreceipt, but the association did not respond. The trial court credited both witnesses, found that the letter had been mailed, and declined to apply the statutory presumption of willful noncompliance.

PROCEDURAL HISTORY

The unit owner requested access to condominium records in April 2018 and later initiated mandatory nonbinding arbitration after receiving no response. The arbitrator ruled for the unit owner, prompting the association to file a complaint for trial de novo. After a bench trial, the circuit court found that the association had mailed a scheduling letter, concluded that the letter was lost through no fault of the association, and entered judgment for the association. The unit owner moved for rehearing, which was denied, and appealed; the association cross-appealed as to a separate June 2018 records request.

DISPOSITION

other

CASES CITED

- Buyer's Choice Auto Sales, LLC v. Palm Beach Motors, LLC, 391 So. 3d 463, 467 (Fla. 4th DCA 2024)
- Alessio v. Ocwen Loan Servicing, LLC, 273 So. 3d 3, 5-6 (Fla. 4th DCA 2019)
- Edmonds v. U.S. Bank National Ass'n, 215 So. 3d 628, 630 (Fla. 2d DCA 2017)
- Ridge Groves Condominium Ass'n v. Misserville, 198 So. 3d 704, 705-06 (Fla. 2d DCA 2016)
- HNTB Corp. v. Milstead, 369 So. 3d 749, 755 (Fla. 3d DCA 2023)
- County Canvassing Board of Primary Elections of Hillsborough County v. Lester, 118 So. 201, 202-03 (Fla. 1928)