

FLORIDA THIRD DISTRICT COURT OF APPEAL

Angelica Avila, et al. v. Biscayne 21 Condominium, Inc., etc., et al.

No. 3D23-1616 (Fla. 3d DCA July 10, 2025) · No. 3D23-1616 · Decided July 10, 2025

SUMMARY

The Florida Third District Court of Appeal held that changing a condominium declaration’s termination-vote threshold from unanimity to 80% altered unit owners’ voting rights and therefore required unanimous approval under the declaration. The court also held that the declaration lacked sufficient Kaufman language to automatically incorporate the amended statutory termination threshold. It reversed the denial of a temporary injunction, remanded for entry of the injunction, and certified a question of great public importance.

CASE DETAILS

COURT	Florida Third District Court of Appeal
WRITING FOR THE COURT	Bokor, J.; Fernandez, J.; Lobree, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	July 10, 2025
DOCKET	3D23-1616
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a non-final order denying the unit owners' motion for a temporary injunction.
STANDARD OF REVIEW	The denial or grant of an injunction is reviewed for abuse of discretion to the extent it rests on factual findings; legal conclusions and interpretation of statutory and contractual provisions are reviewed de novo. Because the trial court's decision turned solely on the absence of a substantial likelihood of success, the court limited its analysis to that element.
PRECEDENTIAL VALUE	Published; precedential Florida Third District Court of Appeal opinion, with a certified question of great public importance.
PARTIES	Angelica Avila, et al., Franah Vazir-Marino v. Biscayne 21 Condominium, Inc., TRD Biscayne, LLC

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QUESTIONS PRESENTED

1. Whether changing the condominium-termination voting threshold from unanimous approval to 80 percent altered the unit owners' voting rights and therefore required unanimous approval under the declaration's amendment provisions.
2. Whether the declaration contained language under *Kaufman v. Shere* that automatically incorporated later amendments to the Condominium Act, including the statutory 80-percent termination threshold, despite conflicting express contractual provisions.
3. Whether the unit owners demonstrated a substantial likelihood of success on the merits sufficient to warrant a temporary injunction.

HOLDINGS

1. An amendment changing the termination threshold from unanimous approval to an 80-percent vote alters the unit owners' voting rights because it eliminates their contractually granted effective veto over termination. Under the declaration, the amendment therefore required unanimous approval and could not be adopted by a simple majority.
2. The declaration did not contain *Kaufman* language automatically incorporating later statutory amendments into the declaration. Its general recital submitting the property to condominium ownership under the Condominium Act, as amended, did not override the specific and unambiguous contractual provisions requiring unanimity for termination and for amendments altering voting rights.
3. The unit owners demonstrated a substantial likelihood of success on the merits and were entitled to a temporary injunction. The trial court therefore erred in denying the injunction.

KEY QUOTATIONS

“By requiring a unanimous vote for termination, the declaration originally gave every unit owner an effective veto over any termination plan, which would be lost if the amendments at issue here were enforced.” (10)

“We therefore conclude that the trial court erred in determining that the declaration permitted amendment of the voting threshold from unanimity to an 80% vote share by a simple majority vote.” (16)

“Absent Kaufman language, an amendment to the Condominium Act will not have retroactive application to a condominium’s Declaration if it impairs contractual obligations.” (19)

FACTUAL BACKGROUND

Biscayne 21's 1974 condominium declaration required unanimous agreement of the unit owners and institutional mortgagees to terminate the condominium and required unanimous approval for amendments altering unit-owner voting rights. After TRD Biscayne purchased a substantial number of units and took control of the association's

board, the association approved amendments replacing the unanimity requirement with an 80-percent threshold and changing the declaration's reference to the Condominium Act. The association then approved a termination plan and conveyed the former condominium property to TRD Biscayne, while Avila and other owners objected and sought injunctive relief.

PROCEDURAL HISTORY

The unit owners challenged amendments to the condominium declaration that replaced a unanimous-consent requirement for termination with an 80-percent threshold and then challenged the resulting plan of termination. The Circuit Court for Miami-Dade County denied a temporary injunction, concluding that the amendment did not alter voting rights and could be approved by a majority vote. The Third District Court of Appeal reversed and remanded for entry of a temporary injunction and certified a question of great public importance.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order denying the temporary injunction and remand for entry of a temporary injunction.

CASES CITED

- Fla. Dep't of Health v. Florigrown, LLC, 317 So. 3d 1101, 1110 (Fla. 2021)
- Quirch Foods LLC v. Broce, 314 So. 3d 327, 337 (Fla. 3d DCA 2020)
- City of Jacksonville v. Naegle Outdoor Advert. Co., 634 So. 2d 750, 753 (Fla. 1st DCA 1994)
- First Equitable Realty III, Ltd. v. Grandview Palace Condo. Ass'n, Inc., 329 So. 3d 167, 170 (Fla. 3d DCA 2021)
- Woodside Vill. Condo. Ass'n, Inc. v. Jahren, 806 So. 2d 452, 456 (Fla. 2002)
- McLlenan v. Cypress Chase N. Condo. No. 4 Ass'n, Inc., 387 So. 3d 321, 325 (Fla. 4th DCA 2024)
- Ham v. Portfolio Recovery Assocs., LLC, 308 So. 3d 942, 946 (Fla. 2020)
- Conage v. United States, 346 So. 3d 594, 598-99 (Fla. 2022)
- Silver Shells Corp. v. St. Maarten at Silver Shells Condo. Ass'n, Inc., 169 So. 3d 197, 203 (Fla. 1st DCA 2015)
- Famiglio v. Famiglio, 279 So. 3d 736, 740 (Fla. 2d DCA 2019)
- Tropicana Condo. Ass'n, Inc. v. Tropical Condo., LLC, 208 So. 3d 755, 758-59 (Fla. 3d DCA 2016)
- State v. Carrier, 240 So. 3d 852, 857 (Fla. 2d DCA 2018)
- Florida Fish & Wildlife Conservation Commission v. Hahr, 326 So. 3d 1165, 1170 (Fla. 1st DCA 2021)
- Latiolais v. Huntington Ingalls, Inc., 951 F.3d 286, 293 (5th Cir. 2020)
- Hinely v. Fla. Motorcycle Training, Inc., 70 So. 3d 620, 624 (Fla. 1st DCA 2011)
- Certain Underwriters at Lloyds of London v. Pero Fam. Farm Food Co., No. 20-12711, 2023 WL 2855844, at *6 (11th Cir. Apr. 10, 2023)

- Prop. Registration Champions, LLC v. Mulberry, 373 So. 3d 675, 681 (Fla. 5th DCA 2023)
- Lake Arrowhead Chalets Timeshare Owners Ass’n v. Lake Arrowhead Chalets Owners Ass’n, 59 Cal. Rptr. 2d 875, 877 (Cal. Ct. App. 1996)
- Reynolds v. Sims, 377 U.S. 533, 555 (1964)
- Voinovich v. Quilter, 507 U.S. 146, 153-54 (1993)
- Whetstone v. Hossfeld Mfg. Co., 457 N.W.2d 380, 383-84 (Minn. 1990)
- Kaufman v. Shere, 347 So. 2d 627, 628 (Fla. 3d DCA 1977)
- Cohn v. Grand Condo. Ass’n, Inc., 62 So. 3d 1120, 1121-22 (Fla. 2011)
- Pardes v. Pardes, 335 So. 3d 1241, 1251 (Fla. 3d DCA 2022)
- Papunen v. Bay Nat’l Title Co., 271 So. 3d 1108, 1111 (Fla. 3d DCA 2019)
- State v. Rife, 789 So. 2d 288, 292 (Fla. 2001)

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