IN THE SUPREME COURT OF THE VIRGIN ISLANDS

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. Appellant/Plaintiff,	)	**SCT-CIV-2022-0002** Re: St-2018-CV-00768
	)	Consolidated Cases
v.	)	SCT-CIV-2022-002
	)	SCT-CIV-2022-0024
THE NEIGHBORHOOD ASSOCIATION, INC. Appellee/Defendant.	)	

On Appeal from the Superior Court of the Virgin Islands

Civil Action No. 2018-CV-00768
(Honorable Renee Gumbs-Carty)

APPELLEE'S BRIEF

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JURISDICTION

Appellee-Defendant, The Neighborhood Association, Inc. (hereinafter sometimes "NA"), concurs with the statement of Appellant, Great Bay Condominium Owners Association, Inc. (hereinafter sometimes "GBCOA") that the Superior Court has subject matter jurisdiction over the civil action pending under the caption Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc. Civil No. ST-2018-CV-768, under Title 4 V.I.C. §76(a). The Superior Court issued a TRO on November 12, 2021, and an order extending the TRO on December 16, 2021, followed by an opinion and order granting a preliminary injunction issued April 11, 2022. NA concurs with the position stated by Appellant that the extension of the TRO transformed that order into an appealable preliminary injunction. GBCOA filed its notice of appeal on January 14, 2022, which was timely, initiating the appeal designated SCT-CIV-2022-0002. GBCOA then filed what was styled an "amended notice of appeal" on April 26, 2022, with a separate appeal number of SCT-CIV-2022-0024, to appeal the issuance of the preliminary injunction. While NA considered the second notice of appeal unnecessary, it is not disputed that it was a timely appeal of the issuance of the preliminary injunction. By order of May 20, 2022, this Court granted GBCOA's motion to consolidate its two appeals, and to file a single brief on the issues under both.

RELATED CASES AND PROCEEDINGS

There are no related cases or proceedings, save the separate action filed by GBCOA against NA in the Superior Court under civil number ST-2019-CV-690.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellee notes that Appellant has failed to comply with the requirements of VI Rules of Appellate Procedure 22(a)(3). Appellant's brief does not include any reference to the pages of the appendix or specific documentation in the proceedings at which each issue on appeal was raised, objected to, and ruled upon, as required by Rule 22. Appellant has identified the following as the issues it seeks to challenge on this appeal:

1. Whether the Superior Court erred in granting Appellee's Motion for TRO and Preliminary Injunction in the absence of any counterclaim for injunctive relief or any other affirmative relief in Appellee's pleading.

2. Whether the Superior Court abused its discretion in granting a preliminary injunction to Appellant (sic) without stating the findings of fact and conclusions of law that support its actions.

STANDARD OF REVIEW

Appellee, NA, concurs in the standard of review as summarized in Appellant's brief at p. 3. In brief, the standard of review of the Superior Court's grant of a preliminary injunction is abuse of discretion. *Petrus v. Queen Charlotte Hotel Corp*., 56 V.I. 548, 554 (2012). An abuse of discretion is shown only when the lower court's decision is based upon a clearly erroneous finding of fact, an error of law, or

an improper application of the law to the facts. A factual determination is clearly erroneous only if it is completely devoid of evidentiary support or bears no rational relationship to the supporting evidentiary data. *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.,* 68 V.I. 584, 592 (2018).

STATEMENT OF THE CASE

This action was filed by GBCOA, a large condominium association representing the owners of all condominium interests in the Ritz Carlton Hotel complex, on December 5, 2018, against NA, a far smaller condominium association which represented the owners of a limited portion of the GBCOA membership, seeking various forms of equitable relief against NA. The complaint seeks a declaratory judgment that NA is the owner of a unit ("CU-1") at the condominium property, cancellation of a deed delivered by NA to GBCOA for unit CU-1, a judgment quieting title to Unit CU-1 in NA, attorneys fees and other relief. NA conducted fact discovery which GBCOA refused to answer, leading to a motion to compel responses, and then an order requiring GBCOA compliance. When GBCOA failed to provide full and responsive discovery, as ordered, NA filed a motion for sanctions, including dismissal, for GBCOA's violation of the order. That motion remains pending.

While the matter was pending, in November, 2021, GBCOA suddenly issued invoices to NA's individual members, demanding that they pay the disputed

assessments for CU-1, whose ownership was the subject of the pending suit. The GBCOA invoices demanded payment by November 22, 2021, failing which serious consequences were threatened against the NA owners. On November 12, 2021, NA filed a motion for a temporary restraining order against GBCOA, to enjoin enforcement of its unilateral invoices and threatened sanctions. The motion was supported by a detailed affidavit, numerous exhibits, and an affirmation of counsel on notice to GBCOA of the filing (App. 1-124). The Superior Court granted the requested TRO on November 12 (App. 125-128), and denied a motion to dissolve the TRO filed November 15 (App.691-692) . Hearings were held over a period of days, on November 16 (App. 513-538), November 19 (App. 599-690), December 8, 9 and 13, 2021 (App. 730-977, 997-1267, and 1286-1468). On December 13, 2021, the lower court ordered the TRO extended as a preliminary injunction until a decision on the merits on the ownership of CU-1 was made. (App 1451-1452). A written order confirming that ruling was entered December 15, 2021. (App. 1470-1471). That was followed by a formal opinion granting a preliminary injunction entered April 11, 2022. (App. 1558-1588). This appeal followed. No motion for a stay was filed in the lower court or with this court.

While a bond was not required by the court when the TRO was entered, and the court denied GBCOA's motion to dissolve that restraint, as it concluded there was no risk of any material cost to GBCOA in the order (App. 691-692), when the

preliminary injunction was issued, a bond was required by order of January 5, 2022, in amount determined to cover any reasonably foreseeable costs to GBCOA if it were later found wrongfully enjoined, and that bond was posted on January 11, 2022. See App. 1513-1515 and 1517).[1]

At present, fact discovery continues in the lower court.

STATEMENT OF THE FACTS

The instant matter concerns a dispute over ownership of a commercial condominium unit at the Ritz-Carlton Club, St. Thomas, designated "CU-1". GBCOA is the condominium association representing all owners of condominium units and interval interests at the St. Thomas Ritz Carlton, with some 1,260 members. NA is a non-profit corporation, constituting a smaller condominium association consisting only of the 288 owners of interval ownership interests in two buildings at the resort, Buildings G and H. GBCOA assesses all of its owners, including those who are members of NA, with common charges for their respective interests in the condominium property based on the units in which they own an interest. NA was established in 2005 to manage the food and beverage operation of a commercial unit (CU-1), originally intended to serve the suite interest owners in Buildings G and H,

[1] Appellant's Statement of the Facts and the Case notes that the court denied a request for a bond when it denied the motion to dissolve the TRO, (Appellant's Brief, p. 16) but fails to state that the Court did require a bond when the preliminary injunction was issued, and that bond was timely posted. (App 1513-1515 and 1517)

who did not have full kitchens in their units. NA owned and operated CU-1 for the years after its formation, until September, 2017.

As the Superior Court found in its opinion on the grant of a preliminary injunction to NA, "from 2006 through 2016, only NA members were responsible for common area charges associated with this lounge; *ie*, only 288 members of the 1,260 were responsible. These charges were assessed by Great Bay to NA and in turn, NA issued individual assessments for these charges to its members. These CU-1 common charge assessments were in addition to the individual assessments each condominium owner is subject to by Ritz-Carlton for their suites." (Opinion, App. 1561).

"On September 20, 2017, NA conveyed a condominium deed to Great Bay for Commercial Unit -1. This deed conveyance …embodied the transfer of CU-1…to Great Bay. Great Bay refused to accept the deed and denied any conveyance or obligations to pay the maintenance fees and expenses associated with CU-1. Great Bay has demanded that NA continue, despite the deed conveyance, to pay all expenses associated with the restaurant/lounge." (App. at 1559). Prior to and during this action, Great Bay assessed NA for the CU-1 maintenance fees for the years 2017, 2018 and 2019. Those amounts remained unpaid. Then on October 22, 2021, while the underlying action remains pending as to the validity of the deed and its conveyance, Great Bay disseminated invoices in excess of $1 million levied directly against NA members for the amounts owed for the years 2017 through 2021 triggering the request

for the temporary restraining order and preliminary injunction." (App. at 1559-1560). As the trial court explained, "[t]he underlying issue here is whether the conveyance of the Condominium Deed dated September 20, 2017, from NA to Great Bay is considered a valid conveyance, thus determining whether the October 22, 2021 invoices assessed to each NA member was a proper assessment. Despite an absence of a ruling on the underlying action, coupled with Great Bay's outright rejection of the deed conveyance and continued accrual of maintenance fees, Great Bay unilaterally proceeded to issue, on October 22, 2021, invoices to all 288 NA members demanding payment for all common charges assessed from September 2017 through October 2021. NA alleges their conveyance of the deed to Great Bay on September 20, 2017, relieved NA members of the duty to pay common area charges on the building for those years and consequently Great Bay, as the owner, is entirely responsible for the maintenance of the lounge and the outstanding costs." (Id at 1562-1563).

Both entities – GBCOA and NA – were formed under a Declaration of Condominium pursuant to Chapter 33, Title 28, of the Virgin Islands Code. (Id at 1561). The Fourth Amendment to the Declaration provides in part that "an Owner of a Commercial Unit may also convey a Commercial Unit…to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance." (Id at 1570, and App. P. 81). NA contends in the litigation that this provision entitled it to deliver the deed

to CU-1, undeniably a commercial unit, to GBCOA, the "Association", without any requirement for GB's consent. GB responded that the term "Association" in the declaration referred to NA. The Superior Court found GBCOA's interpretation illogical and concluded it would "undermine" the "plain reading of the Declaration." (App. at 1571). The court went on to detail its reasons for this finding in the opinion. (Id.) The court also rejected GBCOA's argument that NA owners would be responsible for assessments for CU-1, "regardless of who owns CU-1." (id at 1575). The court rejected the GBCOA interpretation of the Condominium Declaration as imposing a duty on NA members to pay the CU-1 assessments "in perpetuity". (Id at 1576). Indeed, GBCOA's treasurer testified that even if a "rich person purchased the Grand Palazzo Club to operate a restaurant…NA suite owners would still be responsible for the common assessments." (Id). The court found this "interpretation of the Declaration" overlooks the language of the Fifth Amendment to the Declaration which signals to the Court that the responsibility for these assessments is inextricably tied to ownership of the commercial unit." (Id.)

The court also cited 28 VI Code Sec. 909 as support for NA's position on the merits, where the code states that "[t]he common profits of property shall be distributed among, and *the common expenses shall be charged to, the apartment owners* according to the percentage of the undivided interest in the common areas and facilities." (Id at 1577). (emphasis added). Thus, Virgin Islands law expressly provides that the

obligation to pay common charges is upon the apartment owner, and not upon some previous owner, much less, as here, upon persons who were never the actual owners of the unit, but only members of the association that owned the unit until 2017.

GBCOA filed the current suit asking the Superior Court to cancel or declare the deed to CU-1 void or invalid, and for related relief, including a declaratory judgment that it was not the owner of CU-1, but that NA remained the owner, and an order quieting title to CU-1 in NA. NA answered on January 7, 2019, denying the material allegations and asserting that it had conveyed title to Unit CU-1 to the plaintiff, and that none of the alleged deficiencies complained of had merit, so that the purported rejection of the deed by GBCOA was "null and void". NA further alleged in its answer to the complaint that while it was responsible for costs and expenses of operation and ownership of CU-1 during the period of its ownership, that it was not responsible for such costs for any period following the termination of its ownership. (Answer at p. 6 & 7).[2] NA also alleged in its answer that GBCOA's purported rejection of the deed was invalid because it had no discretion to do so under the applicable condominium documents, "as the Declaration expressly stated that such consent by GBCOA was not required." (NA's answer at p 8). In addition to other denials and affirmative

[2] Although NA advised GBCOA in writing that the joint appendix must contain the complaint and the answer, counsel does not find those pleadings in the appendix. Nevertheless, they are included in the Superior Court's docket entries and should be undisputed.

statements, NA raised numerous equitable defenses, including equitable estoppel and laches. (NA's answer at 10).

While the action was pending, including the motion for sanctions against GBCOA, with no adjudication that the NA deed was invalid, GBCOA after four years suddenly on October 22, 2021 improperly issued invoices directly to all NA members for almost a million dollars (gross), demanding that they pay these allegedly delinquent dues for CU-1, although none of NA's members owned or had ever owned CU-1, and that record title to that commercial unit remained, as it was when the suit was commenced, in Great Bay itself. The Great Bay invoice to NA members demanded payment by November 22, 2021, failing which they were threatened with being "*locked out*" of their own residential condominiums for "non-payment" of dues, even though the dues GBCOA sought were unrelated to the members individual residential condominiums.[3]

[3] In its "statement of the case and facts", GBCOA contends that it became aware that a lawyer – not admitted to the Virgin Islands Bar, not appearing in this case as counsel for any party, and not called as a witness – while serving as "outside counsel to Marriott Vacation Club Trust Owners Association (MVC TOA), described as the "largest and most significant owner of Residence Interests in Two Bedroom Suites, at some time in September, 2019, had written a letter expressing the opinion that NA suite owners would have an obligation to pay "assessments to support CU-1 regardless …" of who "owns it". That letter was not admitted into evidence at the hearing on the preliminary injunction, as it was plainly hearsay at best. The document was merely an exhibit to an affidavit of counsel, and the references in the brief to the Joint Appendix are not to the hearing transcripts, but only to this self-serving affidavit of Plaintiff's counsel – who similarly was not a witness in the hearing below. In fact, the unsworn lawyer's letter was not legally

NA members also were sent a notice issued by the Ritz-Carlton Club, St. Thomas which manages the billing and collections for Great Bay, formally notifying all owners that failure to pay their assessments as invoiced within the time stated, will result in us being "*locked out*" of our units in case of "*delinquent balances*" after 10 days, which expressly states that under the Condominium Documents they claim the right to "*lock-out*" Members from all of the Ritz-Carlton Destination Clubs, including their home club in St. Thomas" – in which NA members have rights of membership – and specifies that this "*lock out*" "includes no access to "*reserved allocation*" – contractual calendar days of occupancy that rotate annually as defined in the Declarations of the condominium - or "*space available*" – discounted unreserved days available that an owner can purchase based on availability - reservations at any Destination club." The notice on page 2 of this memo specifically warns that *"If you do not timely make payment of all amounts due and owing for common charges, the "lock out" will be implemented and shall remain in place until all amounts due and owing, including interest and late charges, are paid in full."*

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relevant to the motion before the court, and GBCOA does not even refer to it in its arguments on appeal. There is no good faith reason for its mention in the "statement of the case and facts", and it is properly to be accorded no weight whatever. (Appellant's Brief, p. 14). Similarly, there is no legal relevance to the statement that the "Developer" paid "its invoice for the CU-1 assessments without objection", as the majority of the NA members did strongly object to the GBCOA assessment. (Appellant's brief, p. 15).

This imminent threat, to occur within ten days of the filing of the motion, was certainly one of irreparable harm. (App. 745-752, Opinion at App. 1578-1581).

Some NA members had weeks rented and under contract. NA Great Bay's threatened actions, if not restrained, would leave those NA owners, with no recourse.

NA called on GBCOA to withdraw its invoices to NA individual members for years of retroactive billings for CU-1, with the associated threat of lock out from their residences, but GBCOA refused to do so. NA then filed the subject motion for TRO and preliminary injunction, asking the court to enjoin the threatened actions of GBCOA: The motion filed November 12, 2021, sought a temporary restraining order enjoining Great Bay from engaging in the conduct complained of, including issuing or taking any steps to enforce or collect any invoice for dues or common charges for CU-1 to NA or to any member of NA, or to take any steps to obstruct, impair or preclude full use and occupancy by NA members of their residences at the Ritz-Carlton for a period of fourteen (14) days, and thereafter if the Court should so order.

The motion was supported by an affidavit of NA's president, relevant documents, and a legal memorandum, as well as an affirmation of counsel confirming notice to GBCOA of the intended filing. The court granted the TRO On November 12, thereby protecting the NA members from GBCOA's threatened punitive enforcement measures to collect common charges they did not owe.

Hearings were held over a number of days, and the court heard the testimony of witnesses for both parties. The judge then orally ordered the TRO extended as a preliminary injunction, until the case was decided on the merits. That oral order was followed by a formal opinion and order granting a preliminary injunction on April11, 2022.

The original appeal followed the oral ruling of December 16, and a second appeal, consolidated with the first, was filed after the court's memorandum opinion was issued.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN GRANTING A PRELIMINARY INJUNCTION.

A. The Superior Court Did not Err in Granting Injunctive Relief in the Absence of an affirmative claim for relief in Appellee's pleading.

Appellant effectively contends that a defendant may not seek or obtain a TRO or preliminary injunction to preserve the status quo while a case is pending, Yet it cites not a single case from any jurisdiction so holding. GBCOA relies at length on the Court's opinion in *Caribbean Healthways, Inc. v. James,* 55 V.I. 691, (2011), but that opinion is plainly not on point. The statement that a "claim cannot be raised for the first time on a summary judgment motion", related to the fact that Plaintiff sought to present a defense to an injunction granted to the defendant, on the basis of an argument first raised in a motion – not included in their complaint – of a different

legal right of ownership. The Court did not find the injunction in favor of the defendant invalid on that basis. Instead, it held the lower court had issued an injunction that was broader than required to protect the defendant from the threatened harm – that it was "overbroad" in enjoining placement of trailers in areas where they would not interfere with the defendant's rights. (Id). Manifestly, that holding does not signify that the Superior Court abuses its discretion when it protects a defendant from misconduct on the part of a plaintiff that would cause irreparable harm while the case is pending. unless the defendant first files an affirmative claim in a pleading against the Plaintiff. The other cases and authority cited refer to cases where a plaintiff has made a claim, but seeks unrelated injunctive relief.

For example, GBCOA cites *3RC & Co., Inc. v. Boynes Trucking Sytems, Inc.,* 63 V.I. 544, 559 (2015) for the proposition that the purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." Here, GBCOA's threatening demand upon NA members effectively assumes that GBCOA's position will prevail when the merits are decided. That is so because, as a matter of statutory law, the duty to pay common charges and assessments for condominiums, is upon the owner. 28 V.I.C. Sec. 909. GBCOA disregards the fundamental principle that the Superior court cited for granting this interim relief – without it, NA's members would be blackmailed into paying massive sums to the Plaintiff or face being locked out of their residences, when the very

premise of the GBCOA demand was that it was not the owner of CU-1, as its complaint claims and NA's answer denies. If GBCOA's complaint lacks merit, as NA contends, and the Superior Court expressly found convincing in its memorandum opinion, then plainly GBCOA is not entitled to coerce NA members into payment of almost One Million Dollars on threat of lock out from their own residences, because that obligation, as a matter of Virgin Islands statutory law, is upon the owner of the condominium. (Id)

Similarly, the citation to *Enrietto v. Rogers Townsend & Thomas, PC*, 49 VI 311, 317 (2007) offers no support to GBCOA's claims on appeal. GBCOA cites this case as if it held that an injunction "must adjudicate some of the relief sought in the complaint" (Brief at p. 28). This is not the holding of *Enrietto*. There, a court granted a motion to disqualify two condominium board of directors members from participating in the board's litigation related decisions. The board members appealed and the Supreme Court held that was not an injunction under Title 4 VIC sec. 33(b)(1) and it was not an appealable order under the collateral order exception to the final judgment rule. The court cited a Third Circuit rule to determine whether an interlocutory order is injunctive and therefore, subject to immediate appeal. The test was whether the order was "directed to a party", enforceable by contempt, and "designed to accord or protect some or all of the substantive relief sought by a complaint in more than a temporary fashion." Here, the relief sought by GBCOA in

its complaint is a declaration that it is not the owner of CU-1, that NA remains the owner of that unit, and that the recorded deed for the unit is invalid. That GBCOA elected to proceed as if it had prevailed in that claim, and to force NA members to pay years of common charges for the unit whose title and ownership GBCOA put directly at issue, was part of the reason the trial judge exercised her discretion to enjoin that action. The irreparable harm that was plainly foreseeable without this injunctive relief, including potential lockout from people's residences if they failed to pay the demanded ransom, was related to the GBCOA claims and the NA denials of those claims. But *Enrietto* does not hold, and nothing in its language implies, that the specific relief granted in the TRO or preliminary injunction, must be in favor of the plaintiff, or that it must literally track the specific relief demanded in the complaint. The very purpose of the rule is to avoid interlocutory review of injunctive orders, where that would "swallow the final-judgment rule." Indeed, if GBCOA's position on *Enrietto* were correct, it would appear that the appeal would be improper and should be dismissed as premature, because if the trial judge's order is not an injunction, it is not subject to interlocutory appeal.

GBCOA's argument that NA cannot be granted an injunction because it "cannot obtain actual success on the merits", when it has "not asserted any claims", is patently wrong. Plainly, a defendant obtains success on the merits when it prevails against the plaintiff's claims. Here, NA has affirmatively alleged in its answer and

moving papers which expressly denied GBCOA's claim that the deed granting title to CU-1 to GBCOA was somehow invalid, despite the express authorization to make that conveyance without GBCOA's consent, in the parties very founding documents. (Fourth Amendment to Declaration, App. P. 1570 and p. 81). NA alleged in its answer that "during the period of its ownership of Commercial Unit CU-1 it was responsible for costs and expenses of the operation and ownership of Commercial Unit CU-1", but denied that it was "responsible for such costs or expenses for any period following the termination of its ownership." (Answer at para 41) It also alleged denied "that it [was] obligated to pay membership dues or assessments to GBCOA related to ownership of the Commercial Unit CU-1 for any period subsequent to the termination of its ownership, when title was conveyed to GBCOA by delivery of deed on September 26, 2017", and it denied "that it [was] obligated to pay membership dues or assessments for Unit CU-1 that had not been duly assessed to such unit, prior to the termination of its ownership." (Id at para. 41). Further, NA affirmatively stated that the Declaration expressly stated that …consent by GBCOA [to "delivery of the deed to Unit CU-1"] was not required." (NA Answer, para. 57). NA also affirmatively stated in its answer that GBCOA "had no legal authority to refuse delivery of the deed or to 'disclaim' the transfer of title, as the Declaration expressly stated that consent to transfer of title to the Commercial Unit by GBCOA was not required." (Id at para. 63). NA also affirmatively alleged

that GBCOA's claims were "in violation of its own Declaration of Condominium, which governs and dictates its powers, rights and obligations, concerning the transfer of CU-1 and other matters related to this action, and Plaintiff is without authority to impose conditions of consent or other conditions upon Defendant's right to transfer title of Unit CU-1 to Plaintiff." (App. at 1570, and P. 81). See NA Answer; Affirmative Defense #6, at p. 10). In summary, the pleadings clearly put at issue the ownership and obligation to pay assessments or common charges or maintenance for CU-1, from the date of the deed from NA to GBCOA. The issuance of bills with punitive measures threatened in case of non-payment, in midst of the litigation over that issue, was properly a subject for the Superior Court's exercise of its equitable jurisdiction to issue injunctive protection until the relevant issues are decided.

GBCOA also cites[4] *Cruzan Tires v. Government of the Virgin Islands*, 68 V.I. 241 (2018), in which the Superior Court denied a motion for a TRO and a preliminary injunction where a plaintiff had been awarded a contract to supply tires and other items by the Government, and filed an action for debt related to that contract. The court said the plaintiff did make a showing of likelihood of success on the merits, but not of irreparable harm, as a claim of debt, by definition, can be remedied with an award of money. It noted that if the plaintiff had intended to file

[4] The correct citation is *Cruzan Tires v. Government of the Virgin Islands*, 68 V.I. 241 (2018), not "Tires v. Gov't of Virgin Islands, as stated in the GBCOA brief at pp. 19 and the table of authorities.

a suit for a bid protest, its failure to plead that claim or to identify the relief sought compelled the court to conclude it was not likely to success on "that claim". From this, GBCOA infers that NA cannot show a likelihood of success on the merits in its dispute with GBCOA, because NA did not affirmative sue GBCOA with a counterclaim. Cruzan Tires does not stand for that proposition, nor does any other case cited by GBCOA. NA has shown a likelihood of success on the merits of the claims before the court, as the judge detailed in her extensive opinion, and that includes the merits of the basic claim before the court – is the NA deed to GBCOA valid, as the Condominium Declaration indicates, and if GBCOA is the lawful owner of CU-1, may it still conduct itself as if it were not and force NA's members to pay the common charges for that unit in perpetuity. The Superior Court in *Cruzan Tires* properly exercised its discretion to enjoin the wrongful conduct while the case is heard. The NA answer to the complaint clearly puts that ownership and the related rights and obligations at issue in this case, and the decision on the merits is properly for the trial court. In the interim, the preliminary injunction to preserve the status quo and protect NA's members from the threat of irreparable harm was well justified.

B. The Main Purpose of a Preliminary Injunction is to Maintain the Status Quo.

As this Court recognized in *Gourmet Gallery Crown Bay, Inc. et al v. Crown Bay Marina, L.P.,* 68 V.I. 584 (2018), quoting with approval the holding of the Third

Circuit in *Kos Pharms. Inc. v. Andrx Corp*., 369 F.3d 700, 708 (3rd Cir. 2004), the main purpose of a preliminary injunction is "to maintain the status quo, defined as "the last, peaceable, non-contested status of the parties." As the Superior court's opinion here found, the evidence established that the status quo for these parties was the pendency of the unpaid common charges for the years prior to the shocking invoices challenged in this motion, from 2017 to and including 2021, while GBCOA held the account of the disputed common charges after NA ceased payment following delivery and recording of the deed to the commercial unit to GBCOA. The suggestion that a defendant lacks the legal authority to invoke the assistance of the court to maintain the status quo, unless it first files an affirmative claim in the suit against the plaintiff, finds no support in the law – cited here or omitted. This preliminary injunction simply maintains the status quo, as it was designed to do, while the Court decides the merits of the dispute. The obligation to pay common charges for this unit, by statute, is upon the owner of the condominium unit. GBCOA is the owner of record. It wishes to have the recorded deed in its favor declared void. That has not happened to date in the litigation. Thus, the status quo is that GBCOA as the owner of record of the unit is the party obligated to pay any common charges for the unit. It cannot unilaterally implement punitive collection procedures to force NA members to pay those common charges, without awaiting a judicial determination on its disputed claim of right to void the deed in its favor.

The factual and legal analysis conducted to date by the Superior Court, as detailed in its opinion, strongly suggests that the defendant, NA, will and should prevail on the merits. Until that determination is made, the preliminary injunction as issued, properly maintains the status quo.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY GRANTING A PRELIMINARY INJUNCTION WITHOUT COMPLYING WITH RULES 52 AND 65.

Plaintiff boldly claims the Superior Court failed to comply with Rule 52(a), requiring a statement of findings and conclusions, despite a clear record that the judge did so. This occurred both in the TRO and at the conclusion of the hearing, and then again, in the formal opinion granting the preliminary injunction. The complete disregard of the actual record on this point is confounding. (See Appellant's brief, p. 27.."[h]ere, the Superior Court made no findings of fact or conclusions of law in granting a preliminary injunction to NA." (citing its appendix at p. 1470, 1451 and 1452). This suggests that the Appellant's brief was written as if the court had not granted its motion to consolidate the two appeals, as it wholly disregards the extensive opinion written by the Superior Court Judge, and included in the appendix. (See App 1558-1588). That extensive opinion was, in fact, the sole basis for the filing of the second appeal. That opinion sets forth detailed findings of fact and conclusions of law to which GBCOA offers absolutely no substantive objection. There is no argument presented that the court's memorandum opinion,

including findings and conclusions, errs in determining that "NA has shown a reasonable probability of success on the merits", (App 1564-1578).[5] No objection is made to the Court's finding that "irreparable harm to NA members is likely if injunctive relief is denied." (Id at 1579-1585). There is no objection in GBCOA's brief to the Court's finding that "Great Bay will not be harmed if injunction is granted." (Id at 1586-1589). Further, the brief offers no objection to the determination that the public has a significant interest in the associations "complying with the Virgin Islands Condominium Act, their respective declarations, and all amendments, and their own governing and organizational documents." Also, the public's interest in "ensuring that rights of condominium association members are not undermined" is not challenged by GBCOA. Likewise, the Court's determination that it should take into consideration "the apparent inequity in the mandate of an

[5] In a single paragraph in the portion of its brief arguing that NA could not be granted a preliminary injunction because it had not filed a complaint or counterclaim, it cites in passing *Streibich v. Underwood*, 74 V.I. 488, 500 (2021). That case held, in part, that "[w]ithout actual success on the merits there can be no [permanent] injunction." GBCOA goes on to reason that NA could not obtain "actual success on the merits" because it had "not asserted any claims." This position is totally at odds with all common understanding of litigation. Clearly, a defendant has achieved actual success on the merits when it prevails in defeating a plaintiff's claim. Furthermore, the GBCOA brief ignores the trial judge's exhaustive findings of fact and legal conclusions in this case, demonstrating the reasons why NA had shown it was likely to prevail on the merits. (App. 1558-1588).

association to pay assessments in perpetuity for a property it may neither own nor has access to", is not challenged in the Appellant's brief. (Id at 1589-90.)

In summary, the Superior Court found, based upon its findings of fact, that all four factors weigh in favor of granting injunctive relief. The trial court's conclusion is not even mentioned in the GBCOA brief on appeal, much less shown to be erroneous. Instead, the brief makes the incongruous claim that the trial court failed to make any findings or conclusions, as required by the applicable rules. That contention disregards the actual record and is plainly wrong.[6] It also disregards the court's finding that the defendant had introduced sufficient evidence to satisfy the four factors required for a preliminary injunction, indicating she would issue a written opinion more fully expressing her reasoning. (see App. 181-183 Findings in TRO, and 1451-1452, oral finding at conclusion of hearings). It is a simply a sign of disrespect for the trial court to file such a brief and ignore her actual findings and conclusions.

Further, not only did the Superior Court make detailed findings and conclusions, but they were well supported in the evidentiary record, as its extensive written opinion demonstrates. (App 1558-1588)

[6] The appellant may not belatedly offer an objection to the Superior Court's rulings and opinions that is not contained in its principal brief. It certainly may not do so for the first time in any reply brief as any issued raised for the first time in a reply brief is deemed waived. *Perez v. The Ritz Carlton (Virgin Islands), Inc.,* 59 V.I. 522 (2013).

V.I. R.Civ. P. 52(a)(2) requires that in granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its actions. The rule states that this is to be done "similarly" to the requirement of findings and conclusions "in general" under Rule 52(a)(1). That rule does not specify that the findings and conclusions must be issued immediately, with the court's decision. Rather, rule 52(a)(1)(A) states that the findings and conclusions "may be stated on the record after the close of the evidence or may appear in an opinion or memorandum or decision filed the court." No fixed deadline for this appears in the rule. Here, the Court's written opinion, containing detailed findings and conclusions, was issued and is included in the appendix before this Court. It follows that the findings and conclusions were not unlawful or procedurally improper under Rule 52.

V.I. R.Civ.P. 65 requires that a TRO or an injunction must state the reasons it was issued, state its terms specifically, and describe in reasonable detail the act or acts restrained or required. Here, the original TRO undeniably met the requirements of Rule 65. (See App. 181-183). The later preliminary injunction was supported by a formal memorandum opinion containing all the required findings and conclusions, and a fully adequate description of the acts restrained. (App. 1558-1588). The objection on appeal on this basis is manifestly without merit.

GBCOA cites in support of its allegation that the trial court violated the requirements of Rules 52 and 65, the case of *Wessinger v. Wessinger*, 56 V.I. 481 (2012). That case is inapposite. The court in *Wessinger* was found to have issued an order that was effectively an interlocutory injunction, without making any findings or any conclusions of law at all. In the words of the Supreme Court, the Superior Court "failed to state its findings and conclusions when it issued its August 26, 2011 Order and otherwise failed to provide the reasoning necessary to allow this Court to conduct any meaningful review of the Order". This required a remand for further proceedings. Here, in contrast, while the court's earliest findings after the evidentiary hearing, were brief (App. 1451-1452), it followed those oral findings with a formal opinion of some 31 pages, containing extensive and detailed findings of fact and conclusions of law. That opinion in part of the record before this court on this appeal. (App. 1558-1588). That certainly satisfies the reference in *Wessinger* to "otherwise" "provid[ing] the reasoning necessary to allow this Court to conduct..meaningful review of the Order."

III. CONCLUSION

Simply put, the Superior Court properly found that NA had proven it was likely to succeed on the merits in the case, that it's members would suffer irreparable harm in GBCOA was not enjoined from the implementation of its scheme to force them to pay some One Million Dollars in assessments upon threat of being locked

out of the use of their own residences, that GBCOA, in contrast, would suffer no harm from the injunction, and the public interest favored the interlocutory relief afforded. Ample credible evidence supports the Superior Court's findings as outlined in the court's opinion. At a minimum, the findings of fact were not clearly erroneous, the legal conclusions were not in error, and the issuance of the preliminary injunction was not an abuse of discretion.

Accordingly, The Neighborhood Association, Inc. respectfully requests that this Court affirm the Superior Court's orders in the underlying matter, and dismiss the instant appeal.

DATED: June 27, 2022

/s/ Maria Tankenson Hodge_____

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CERTIFICATE OF BAR MEMBERSHIP

I HEREBY CERTIFY that I am a member in good standing with the Bar of the Supreme Court of the Virgin Islands.

__/s/ Maria Tankenson Hodge_____

CERTIFICATE OF COMPLAINCE

I hereby certify that the length of this brief complies with V.I.R. App. P. 22(f). The word count for this brief is 6,839 words.

/s/ Maria T. Hodge____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2022, I caused a true and correct copy of the foregoing ***to be transmitted electronically to the following persons:***

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