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Manuel Farach

Florida Department of Health v. Tropiflora, LLC, Case No. 1D17-2796 (Fla. 1st DCA 2019).
A claimant's failure to exhaust administrative remedies does not fall within the narrow class of reasons for which prohibition will issue.

Keystone Airpark Authority v. Pipeline Contractors, Inc., Case No. 1D17-2897 (Fla. 1st DCA 2019).
Consequential damages are not based on foreseeability, but instead are based on the damaged party's relationship with third parties. The following is certified as a question of great public importance:

> WHERE A CONTRACT EXPRESSLY REQUIRES A PARTY TO INSPECT, MONITOR, AND OBSERVE CONSTRUCTION WORK AND TO DETERMINE THE SUITABILITY OF MATERIALS USED IN THE CONSTRUCTION, BUT THE PARTY FAILS TO DO SO AND INFERIOR MATERIALS ARE USED, ARE THE COSTS TO REPAIR DAMAGE CAUSED BY THE USE OF THE IMPROPER MATERIALS GENERAL, SPECIAL, OR CONSEQUENTIAL DAMAGES?

Eastwood Shores Property Owners Association, Inc. v. Department Of Economic Opportunity, Case No. 2D17-3467 (Fla. 2d DCA 2019).
Although the issue has been resolved by the 2018 amendment to the Marketable Record Title Act (M.R.T.A.), condominium associations may be considered "homeowner's associations" capable of employing the prior M.R.T.A. covenant revitalization provisions (Florida Statutes sections 720.403-.407).

Mercantil Bank, N.A. v. Pazmino, Case No. 4D18-1168 (Fla. 4th DCA 2019).
A party that fails to conduct a foreclosure sale on a prior foreclosure judgment is not entitled to "revive" the prior judgment by filing a new suit.

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2796

FLORIDA DEPARTMENT OF HEALTH,

Petitioner,

v.

TROPIFLORA, LLC, as Agent for MARIJ AGRICULTURAL, INC. and DENNIS and LINDA CATHCART, d/b/a TROPIFLORA NURSERY,

Respondents.

Petition for Writ of Prohibition–Original Jurisdiction

January 25, 2019

PER CURIAM.

The Florida Department of Health ("the Department") petitions this Court for a writ of prohibition to bar further proceedings in the trial court because TropiFlora failed to exhaust administrative remedies. For the reasons that follow, the petition is denied.

I.

TropiFlora filed an application with the Department to be the exclusive low-THC cannabis dispensing organization for the

Southwest Florida region under section 381.986, Florida Statutes (2014). Upon receipt of the application, the Department notified TropiFlora it had failed to submit certified financial statements required by section 381.986(5)(b)5., Florida Statutes. Although given a time period to cure the alleged deficiency, TropiFlora did not. The Department subsequently notified TropiFlora that its application was denied and provided a "Notice of Rights" as required by chapter 120, Florida Statutes, advising TropiFlora of its ability to challenge the denial. TropiFlora filed a petition under the Administrative Procedures Act (APA), which was consolidated with proceedings of other challengers for the Southwest region license. However, just prior to final hearing, TropiFlora voluntarily dismissed its administrative petition and abandoned the chapter 120 administrative process.

Thereafter, TropiFlora filed a complaint for declaratory judgment in circuit court seeking an order stating its entitlement to a license. In response, the Department filed a motion to dismiss the complaint, alleging TropiFlora failed to exhaust administrative remedies. Later, the Department also filed a motion for summary judgment on the same grounds. Without ruling on the arguments raised by the Department in various motions, the trial judge scheduled a trial date and allowed ongoing discovery. In the interim, the legislature passed Senate Bill 8-A during a special session and the bill was signed into law as chapter 2017-232, Laws of Florida (amending section 381.986, Florida Statutes). The new law directed the Department to license as "medical marijuana treatment centers" ten applicants who meet certain requirements. TropiFlora filed a motion for temporary injunction seeking to enjoin the Department from issuing any medical marijuana licenses under the 2017 law. The Department filed a motion for judgment on the pleadings again asserting that TropiFlora failed to exhaust administrative remedies. Despite the trial judge's advising that a hearing would occur to address all pending matters, the motions filed by the Department raising jurisdictional arguments remain outstanding. Unable to obtain a ruling on its motions and facing ongoing discovery, the Department filed this petition for writ of prohibition.

II.

Prohibition relief is not available under these facts. "Only where a tribunal purports to exercise jurisdiction over a case falling within a class of cases it is forbidden to consider is it appropriate for a higher court to grant the extraordinary writ of prohibition." *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 468 (Fla. 1st DCA 2011). The claims Tropiflora has asserted—those for declaratory judgment and a writ of mandamus—are not "within a class of cases" the trial court "is forbidden to consider." Indeed, as the Department acknowledges in its brief, the failure-to-exhaust defense—if successful—would not deprive the trial court of subject-matter jurisdiction. *See Dep't of Health v. Curry*, 722 So. 2d 874, 878 (Fla. 1st DCA 1998) ("The doctrine which requires the exhaustion of administrative remedies is based upon considerations of policy, rather than of jurisdiction."); *see also Wilson v. County of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004) ("[F]ailure to exhaust administrative remedies is an affirmative defense. . . ."); *Bankers Ins. Co. v. Florida Residential Prop. & Cas. Joint Underwriting Ass'n*, 689 So. 2d 1127, 1129-30 (Fla. 1st DCA 1997) (affirming denial of temporary injunction "[b]ecause adequate administrative remedies are in place," without questioning trial court's subject-matter jurisdiction); *but see City of Sunny Isles Beach v. Publix Super Markets, Inc.*, 996 So. 2d 238, 239 (Fla. 3d DCA 2008) (granting writ of prohibition because respondent "had not exhausted its administrative remedies before filing its declaratory judgment action").

Likewise, the writ of prohibition "is very narrow in scope and operation and must be employed with caution and utilized only in emergency cases to prevent an impending injury where there is no other appropriate and adequate legal remedy." *Mandico v. Taos Const., Inc.*, 605 So. 2d 850, 854 (Fla. 1992). Here, there has been no showing that other appropriate and adequate legal remedies are unavailable. If the trial court should dismiss based on the failure-to-exhaust defense and does not, the Department can remedy that error on direct review. *See Curry*, 722 So. 2d at 875

(direct appeal reviewing denial of motion to dismiss for failure to exhaust). And to the extent the Department argues prohibition is necessary to preclude entry of an injunction or unwarranted depositions of high-ranking government officials, those, too, can be remedied without prohibition. *See* Fla. R. App. P. 9.130(a)(3)b. (authorizing interlocutory appeal of injunction orders); *Florida Office of Ins. Regulation v. Florida Dep't. of Fin. Services*, 159 So. 3d 945, 947 (Fla. 1st DCA 2015) (granting certiorari and quashing order permitting Insurance Commissioner's deposition); *Univ. of W. Florida Bd. of Trustees v. Habegger*, 125 So. 3d 323, 324 (Fla. 1st DCA 2013) (granting certiorari and quashing order permitting university president's deposition).

The writ of prohibition is authorized only in very narrow circumstances, and the circumstances here do not justify the relief requested. Accordingly, the petition for writ of prohibition is DENIED.

LEWIS, WINSOR, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

W. Robert Vezina, III, Eduardo S. Lombard, and Megan S. Reynolds of Vezina, Lawrence & Piscitelli, P.A., Tallahassee, for Petitioner.

Steven R. Andrews, Brian O. Finnerty, and Ryan J. Andrews of the Law Offices of Steven R. Andrews, P.A., Tallahassee, for Respondents.

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2897

KEYSTONE AIRPARK AUTHORITY,

Appellant,

v.

PIPELINE CONTRACTORS, INC., a Florida corporation; THE HANOVER INSURANCE COMPANY, a New Hampshire corporation; and PASSERO ASSOCIATES, LLC, a Florida limited liability company,

Appellees.

On appeal from the Circuit Court for Clay County.
Don H. Lester, Judge.

January 25, 2019

WOLF, J.

On consideration of appellee's motion for clarification and appellant's response, this Court grants the motion, withdraws the opinion filed on November 27, 2018, and substitutes the following opinion in its place.

Keystone Airpark Authority, appellant, challenges a partial final summary judgment entered in favor of Passero Associates,

LLC, appellee. The Airpark argues the trial court erred in determining that the damages it sought to repair an airplane hangar and taxiways that deteriorated after Passero allegedly failed to meet its obligations under a construction contract were consequential damages, which were excluded by the parties' contract. We affirm but certify a question of great public importance.

FACTS

The Airpark brought causes of action against Passero, an engineering firm, for breach of contract and negligence. The Airpark entered into an agreement with a contractor to construct airplane hangars and taxiways, and it contracted separately with Passero to provide engineering services that included "part-time resident engineering and inspection, [and] material testing." Specifically, the contract required Passero to "inspect," "observe" and "monitor" the construction work to ensure compliance with the plans and to ascertain the need for correction or rejection of the work, including determining the suitability of materials used by the contractor:

> Observe the work to determine conformance to the contract documents and to ascertain the need for correction or rejection of the work.
>
> . . . .
>
> Arrange for, conduct, or witness field, laboratory or shop tests of construction materials as required by the plans and specifications.
>
> Determine the suitability of materials on the site, and brought to the site, to be used in construction.
>
> Interpret the contract plans and specifications and monitor the construction activities to maintain compliance with the intent.
>
> Prepare and submit inspection reports of construction activity and problems encountered . . . .

. . . .

> [M]onitor[] periodic construction activities on the project and document[] their observations in a formal project record . . . .

The Airpark alleged that the contractor used substandard material for stabilization underneath the structures, which Passero failed to detect, causing the concrete hangar slabs and asphalt taxiways to prematurely deteriorate. The Airpark sought to recover from Passero the cost to remove, repair, and replace the hangars, taxiways, and underlying subgrade. It sought the same relief from the contractor.

Passero moved for summary judgment, arguing the damages the Airpark sought to recover were not a direct result of Passero's alleged failure to perform under the contract. Instead, Passero argued the need for repair resulted from a combination of Passero's alleged failure to perform construction inspection services under the contract and the contractor preparing the subgrade improperly. Thus, Passero argued the repair costs were not direct or general damages, but instead were consequential damages, which were excluded by a provision in the parties' contract that stated, "Passero shall have no liability for indirect, special, incidental, punitive, or consequential damages of any kind." Passero argued the only direct or general damages that the Airpark could seek to recover against Passero were the costs of the services provided by Passero. The trial court agreed and entered partial final summary judgment in favor of Passero.

ANALYSIS

The Airpark argues the cost of repair to the hangars and taxiways constitutes general damages and not consequential damages because those damages were foreseeable. It relies on an English case from 1854 called *Hadley v. Baxendale*, 9 Exch. 341, 156 Eng. Rep. 145 (1854), which defined the general measure of damages as those damages "arising naturally . . . from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract." However, if there were "special circumstances" that were "communicated by the plaintiffs to the

defendants, and thus known to both parties," the plaintiff could recover for "injury which would ordinarily follow from a breach of contract under these special circumstances." *Id.*

Here, the Airpark argues it was foreseeable that Passero's failure to perform under the contract could have resulted in construction defects going undetected, which could later require repair. It reasons these damages arose naturally from the breach of its contract with Passero and did not involve special circumstances about which it would have been required to give Passero actual notice. Thus, the Airpark argues these damages are general and not special or consequential.

Foreseeability is not at issue here. Passero does not dispute it was foreseeable that if it failed to perform its duties under the contract, that could result in the need for repairs. It is thus necessary for us to explore the definition of general, special, and consequential damages and how the question of foreseeability affects the nature of the damages incurred in this case.

"General damages are 'those damages which naturally and necessarily flow or result from the injuries alleged. . . .'" *Hardwick Properties, Inc. v. Newbern*, 711 So. 2d 35, 39 (Fla. 1st DCA 1998) (quoting *Hutchison v. Tompkins,* 259 So. 2d 129, 132 (Fla. 1972)). General damages "'may fairly and reasonably be considered as arising in the usual course of events from the breach of contract itself.'" *Id.* (quoting *Fla. E. Coast Ry. v. Beaver St. Fisheries, Inc.,* 537 So. 2d 1065, 1068 (Fla. 1st DCA 1989)). Stated differently, "[g]eneral damages are commonly defined as those damages which are the *direct*, natural, logical and *necessary* consequences of the injury." *Fla. Power Corp. v. Zenith Indus. Co.*, 377 So. 2d 203, 205 (Fla. 2d DCA 1979) (emphasis added).

"In contrast, special damages are not likely to occur in the usual course of events, but 'may reasonably be supposed to have been in contemplation of the parties at the time they made the contract.'" *Hardwick*, 711 So. 2d at 40 (quoting *Fla. E. Coast Ry.,* 537 So. 2d at 1068). They "consist of items of loss which are peculiar to the party against whom the breach was committed and would not be expected to occur regularly to others in similar

circumstances." *Id.* (citing *Johnson v. Monsanto Co.,* 303 N.W.2d 86 (N.D. 1981)). "In other words, 'general damages are awarded only if injury were foreseeable to a reasonable man and . . . special damages are awarded only if actual notice were given to the carrier of the possibility of injury. Damage is foreseeable by the carrier if it is the proximate and *usual consequence* of the carrier's action.'" *Fla. E. Coast Ry.*, 537 So. 2d at 1068 (quoting *Hector Martinez & Co. v. S. Pac. Transp. Co.*, 606 F.2d 106, 109 (5th Cir. 1979)).

"[C]onsequential damages '*do not arise within the scope of the immediate buyer-seller transaction*, but rather stem from losses incurred by the non-breaching party in its dealings, *often with third parties*, which were a proximate result of the breach, and which were *reasonably foreseeable* by the breaching party at the time of contracting.'" *Hardwick*, 711 So. 2d at 40 (emphasis added) (quoting *Petroleo Brasileiro, S.A., Petrobras v. Ameropan Oil Corp.,* 372 F. Supp. 503, 508 (E.D.N.Y. 1974)). "The consequential nature of loss . . . is *not based on the damages being unforeseeable* by the parties. What makes a loss consequential is that it stems from relationships with third parties, while still reasonably foreseeable at the time of contracting." *Bartram, LLC v. Landmark Am. Ins. Co.*, 864 F. Supp. 2d 1229, 1240 (N.D. Fla. 2012) (emphasis added) (citing *Hardwick Properties, Inc. v. Newbern*, 711 So. 2d at 40).

We agree with the Airpark that the damages in this case were not special damages. The contract required Passero to inspect, observe and monitor the construction work, including determining the suitability of materials used by the contractor, and to report any problems. It cannot be said that repairs stemming from improperly inspected and monitored construction work are unlikely to occur in the usual course of business. The damages in this case were not particular to the Airpark and did not involve special circumstances for which the Airpark would have been required to give Passero actual notice. Instead, these types of damages would be expected to occur to other parties in similar circumstances. Thus, they were not special damages.

However, the cost of repair here did not constitute general damages, either, because the damages were not the direct or

necessary consequence of Passero's alleged failure to properly inspect, observe, monitor, and report problems with the construction work. The contractor could have completed the job correctly without Passero performing its duties under the contract. Thus, the need for repair did not arise within the scope of the immediate transaction between Passero and the Airpark. Instead, the need for repair stemmed from loss incurred by the Airpark in its dealings with a third party – the contractor. While these damages "were reasonably foreseeable," they are consequential and not general or direct damages.

The parties agree there is no case law directly on point involving damages stemming from the failure to inspect and monitor construction work; however, we find this case is analogous to others that have found the cost to repair or replace property damaged following deficient inspections or other services constituted consequential damages. *See Urling v. Helms Exterminators, Inc.,* 468 So. 2d 451, 454 (Fla. 1st DCA 1985) (finding the cost to repair extensive termite damage to a home purchased after a termite inspection company erroneously certified that the home was free of damage constituted consequential damages, whereas the cost of the termite inspection constituted actual damages); *Rollins, Inc. v. Heller*, 454 So. 2d 580, 585 (Fla. 3d DCA 1984) (finding where a home was burglarized following the installation of a deficient security system, the actual damages constituted the cost of the defective system, not the value of the items stolen during the burglary). *See also Mosteller Mansion, LLC v. Mactec Eng'g & Consulting of Georgia, Inc.*, 661 S.E.2d 788, n.2 (N.C. Ct. App. 2008) (finding a builder's claim for damages to repair and recondition soil after an engineering firm erroneously conducted soil testing were consequential and indirect damages because they "do not flow directly and immediately from any action of" the engineering firm); *Fed. Reserve Bank of Richmond v. Wright*, 392 F. Supp. 1126, 1131 (E.D. Va. 1975) (finding a property owner's cost to correct structural defects that resulted from defective plans prepared by an architect constituted indirect damages); *McCloskey & Co., Inc. v. Wright*, 363 F. Supp. 223, 226 n. 1, 230 (E.D. Va. 1973) (finding the cost to repair a leaking roof caused by an architect's defective plans constituted consequential or incidental damages); *Richmond Redevelopment & Hous. Auth. v.*

Laburnum Const. Corp., 80 S.E.2d 574, 579-80 (1954), *superseded by statute on other grounds* (finding damages caused by the explosion of a faulty gas line were consequential).

We acknowledge the case at hand is distinguishable because here, the contract between the Airpark and Passero expressly required Passero to inspect, observe, and monitor the construction work and to determine the suitability of the materials used by the contractor. Thus, we certify the following question as one of great public importance:

> WHERE A CONTRACT EXPRESSLY REQUIRES A PARTY TO INSPECT, MONITOR, AND OBSERVE CONSTRUCTION WORK AND TO DETERMINE THE SUITABILITY OF MATERIALS USED IN THE CONSTRUCTION, BUT THE PARTY FAILS TO DO SO AND INFERIOR MATERIALS ARE USED, ARE THE COSTS TO REPAIR DAMAGE CAUSED BY THE USE OF THE IMPROPER MATERIALS GENERAL, SPECIAL, OR CONSEQUENTIAL DAMAGES?

Finally, we reject the Airpark's argument that all limitations on liability for special or consequential damages in contracts involving professional service corporations such as Passero should be declared void pursuant to public policy. There is no public policy that would prohibit sophisticated parties such as Passero and the Airpark, which is a governmental entity, from negotiating a contract that limits liability for consequential damages. Thus, we AFFIRM but CERTIFY a question of great public importance.

LEWIS, J., concurs; ROWE, J., concurs in part and dissents in part with opinion.

ROWE, J., concurring in part, and dissenting in part.

I concur in affirmance of the partial final summary judgment appealed. However, I dissent from the decision to certify a question to the supreme court.

James J. Taylor Jr. and Katelyn J. Taylor of Taylor Law Firm, P.A., Keystone Heights, for Appellant.

Curtis L. Brown and Mark T. Snelson of Wright, Fulford, Moorhead & Brown, P.A., Altamonte Springs, for Passero Associates, LLC, Appellee.

John E. Oramas of Oramas & Associates, P.A., Miami, Amici Curiae in support of Appellee, Passero Associates, LLC.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

EASTWOOD SHORES PROPERTY OWNERS ASSOCIATION, INC., Appellant, v. DEPARTMENT OF ECONOMIC OPPORTUNITY, Appellee.	)	Case No. 2D17-3467

Opinion filed January 25, 2019.

Appeal from the Department of Economic Opportunity.

Tiffany A. Grant of Cianfrone, Nikoloff, Grant & Greenburg, P.A., Dunedin, for Appellant.

Peter L. Penrod, General Counsel, and Ross Marshman, Jon F. Morris, and Christina A. Shideler, Assistant General Counsels, Tallahassee, for Appellee.

BLACK, Judge.

In this appeal from a final agency order, Eastwood Shores Property Owners Association, Inc., challenges the Department of Economic Opportunity's

determination that the Association is not entitled to revive its declaration of covenants and restrictions pursuant to the covenant revitalization statutes, §§ 720.403-.407, Fla. Stat. (2016), because it is not a "homeowners' association" as defined by the Marketable Record Titles to Real Property Act (MRTA), §§ 712.01-.11, Fla. Stat. (2016). We reverse.

I. Background

In April 1979, Eastwood Shores Condominiums recorded its declaration of covenants and restrictions in the public record of Pinellas County. The Association is the Florida not-for-profit corporation which maintains and operates various properties and improvements within Eastwood Shores, as stated in Eastwood Shores' declaration and in the Association's articles of incorporation. The Association is comprised of unit owners in Eastwood Shores.

By operation of MRTA, specifically section 712.02, Eastwood Shores' declaration of restrictions and covenants ceased to govern one or more of the units within the community in 2009.[1] Pursuant to the covenant revitalization statutes, the Association sought approval from the Department of Economic Opportunity (the Department) of a proposal to revive Eastwood Shores' declaration, submitting the documents required by section 720.406.

[1]The units for which the declaration of covenants and restrictions are no longer governing are those in which the "muniments of title," the deeds, do not reference the declaration of covenants and restrictions. See § 712.03(1) (providing that MRTA does not extinguish "easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title").

The Department denied the proposed revival, finding that "the parcels in the Association are classified as condominiums," that chapter 720 does not apply to the Association, and that therefore the Association may not revive the declaration of covenants and restrictions under the covenant revitalization statutes. The Association sought review of the Department's decision.

Following an administrative hearing, the hearing officer recommended that the Department affirm the denial of the Association's proposal to revive its declaration of covenants and restrictions, finding that the Association did not dispute that it is governed by chapter 718, Florida Statutes (2016), Florida's Condominium Act; that chapter 720, Florida Statutes (2016), Florida's Homeowners' Association Act, does not apply to the Association through application of section 720.302;[2] that the Association "does not fall within the definition of 'homeowners' association' as defined by MRTA" such that section 712.11 of MRTA applies; and that, therefore, the Association is not entitled to seek revival of its declaration under chapter 720.

The Department adopted the recommended order and issued its final order. It is that order which we review.

II. Analysis

The issue before us is whether the Association, whose members are unit owners within a condominium community, is a "homeowners' association" as defined by MRTA and is therefore entitled to revive its declaration of covenants and restrictions

[2]Section 720.302(4) provides, in pertinent part: "This chapter does not apply to any association that is subject to regulation under chapter 718 . . . except to the extent that a provision of chapter 718 . . . is expressly incorporated into this chapter for the purpose of regulating homeowners' associations."

pursuant to sections 720.403-.407. The issue presented is one of statutory interpretation, and our review is de novo. Lutheran Servs. Fla., Inc. v. Dep't of Children & Families, 199 So. 3d 286, 288 (Fla. 2d DCA 2015) ("An appellate court may set aside an agency action where the court finds that the agency erroneously interpreted a provision of law and a correct interpretation compels a particular result." (citing Metro. Dade Cty. v. Dep't of Envtl. Prot., 714 So. 2d 512, 515 (Fla. 3d DCA 1998))); see also § 120.68(7)(d), Fla. Stat. (2016).

The Association does not dispute that it is governed by chapter 718 or that section 720.302(4) unambiguously states that chapter 720 applies to associations regulated by chapter 718 only when a provision of chapter 718 has been "expressly incorporated into [chapter 720] for the purpose of regulating homeowners' associations."[3] The Association maintains, however, that it is eligible to seek revival of its declaration pursuant to the covenant revitalization sections of chapter 720 by virtue of a specific provision in MRTA, section 712.11.[4]

MRTA provides for marketable record title to estates in land "free and clear of all claims" except as to those exclusions expressly set forth. § 712.02.

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[3]Interestingly, although the Association's declaration of covenants is titled "Declaration of Covenants and Restrictions for Eastwood Shores Condominiums," the declaration does not reference chapter 718 or its predecessor, chapter 711. Nonetheless, the Association appears to have conceded that although the Association was created in 1979 as a chapter 720 association, it is governed by chapter 718.

[4]The Association alternatively argues that MRTA is unconstitutional as applied to it. Because the constitutional issue was not sufficiently raised below and our resolution based on the plain language of the applicable statutes renders it unnecessary, we do not address the Association's constitutional question. See In re Holder, 945 So. 2d 1130, 1133 (Fla. 2006) ("[W]e avoid considering a constitutional question when the case can be decided on nonconstitutional grounds.").

However, MRTA also recognizes that covenants and restrictions can be revived: "[a] homeowners' association not otherwise subject to chapter 720[, the Homeowners' Association chapter,] may use the procedures set forth in [sections] 720.403-720.407 to revive covenants that have lapsed under the terms of [MRTA]." § 712.11. MRTA defines a homeowners' association as (1) "a homeowners' association as defined in [section] 720.301, or [(2)] an association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels." § 712.01(4). There is no dispute that MRTA effectively terminated the declaration as to certain units within Eastwood Shores. Whether MRTA also permits revival of the declaration is at issue. In that respect, the Association does not contend that it is a homeowners' association as defined in section 720.301; only the latter definition of homeowners' association in section 712.01(4) is at issue.[5] Thus, in order for the Association to be eligible to seek revival of Eastwood Shores' declaration of covenants and restrictions, the Association must be comprised of owners of residential real property which is subject to exclusive ownership.

MRTA does not define "parcel owner"; it does, however, define a "parcel" as "real property which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restrictions of a homeowners'

[5]Had the Association argued that it meets the definition of a homeowners' association as provided by section 720.301, reversal would still be required. Section 720.301(9) defines a "homeowners' association" or "association" as "a Florida corporation responsible for the operation of a community . . . in which the voting membership is made up of parcel owners . . . and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel." For the reasons discussed later in this opinion, the Association is comprised of parcel owners as defined in chapter 720.

association." § 712.01(5).[6] There is no dispute that Eastwood Shores is a residential community. Section 718.103, the definitions section of Florida's Condominium Act, defines a condominium "unit" as "a part of the condominium property which is subject to exclusive ownership." § 718.103(27), Fla. Stat. (2016).[7] A condominium unit within Eastwood Shores is therefore—by definition—a residential property subject to exclusive ownership. And because Eastwood Shores' declaration of covenants provides that "[e]very person or entity who is a record fee simple Owner of a Unit . . . shall be a member of the Association," that "[m]embership shall be appurtenant to, and may not

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[6]We recognize that the recent amendments to MRTA, effective October 1, 2018, render much of this opinion inapplicable moving forward. See ch. 2018-55, §§ 2, 5-6, Laws of Fla. (2018). The amendments include replacing the term "homeowners' association" with "property owners' association," and defining "property owners' association" to include "an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels." § 712.01(5), Fla. Stat. (2018); ch. 2018-55, § 2. The amendments also eliminate the exclusive ownership requirement in the definition of parcel, instead defining parcel as "any real property that is subject to any covenant or restriction of a property owners' association." § 712.01(3), Fla. Stat. (2018); ch. 2018-55, § 2; see also §§ 720.3032, Fla. Stat. (2018) (providing that "[a]ny property owners' association desiring to preserve covenants from potential termination after 30 years by operation of chapter 712 may record in the official records of each county in which the community is located a notice specifying . . . [t]he names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community"), .403(3) ("[Part III of this chapter] is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is not limited to residential communities."). We also note that there is no prohibition against successive proposals to revive a declaration of covenants; that is, an association or an organizing committee of parcel owners may seek to revive a declaration of covenants under the 2018 amendments to MRTA regardless of the outcome of prior attempts to revive the declaration.

[7]"Condominium property," in turn, is defined as "the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium." § 718.103(13).

be separated from, ownership of any Unit," and that the Association is authorized to enforce the covenants and restrictions of Eastwood Shores, the Association is a homeowners' association as defined in section 712.01.

Although "[e]ach unit owner owns a proportionate undivided share of the common elements appurtenant to the unit" that he owns, Ocean Trail Unit Owners Ass'n v. Mead, 650 So. 2d 4, 7 (Fla. 1994) (citing § 718.103(10), (24), Fla. Stat. (1987)), the ownership of an undivided share of the common elements does not change that the unit is subject to exclusive ownership and that the association is comprised of unit owners, see § 718.103(2) (defining "association" to include "any entity responsible for the operation of common elements owned in undivided shares by unit owners"). The Association is an association of owners of "real property which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restriction of [the] association." See § 712.01(4), (5). That unit owners have nonexclusive ownership of appurtenant condominium property—the common elements—in addition to exclusive ownership of their units does not remove an association made up of those unit owners from the definition of homeowners' association under chapter 712.[8] There is no requirement in the definitions of homeowners' association or parcel in section 712.01 that parcel owners only own the property which renders them subject to the definitions. Reading the statutes in such a way as to exclude from MRTA's definition of a homeowners' association an association

[8]"Appurtenances are things belonging to another thing as principal and which pass as incident to the principal thing." Blok Builders, LLC v. Katryniok, 245 So. 3d 779, 783 n.1 (Fla. 4th DCA 2018) (quoting Chackal v. Staples, 991 So. 2d 949, 955 (Fla. 4th DCA 2008)). A proportionate undivided interest in the common elements pass as incident to the unit, which may be exclusively owned.

made up of owners of residential property subject to exclusive ownership because those owners also have nonexclusive property ownership interests requires the addition of words, and in this case the addition of a requirement, to the statutes.[9] The courts are not at liberty to add language to statutes. Gordon v. Fishman, 253 So. 3d 1218, 1221 (Fla. 2d DCA 2018).

Our reading of MRTA is reinforced by the language of the covenant revitalization statutes themselves. Section 720.404 provides that "[p]arcel owners in a community are eligible to seek approval from the [Department] to revive a declaration of covenants" if the statutory requirements are met. Section 720.405 states that "[t]he proposal to revive a declaration of covenants . . . under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration." §

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[9]Exclusive ownership is not synonymous with ownership in fee simple. Jointly owned land and undivided interests in land may be held in fee. See In re Estate of Cleeves, 509 So. 2d 1256, 1258 (Fla. 2d DCA 1987) ("[S]everal types of estates or interests, joint or several, may exist in the same fee. A tenancy in common is one such type of joint interest or concurrent ownership that may exist in a fee." (citation omitted)); Restatement (First) of Property §§ 14, 48 (Am. Law. Inst. 1936); see also Bank One, Dayton, N.A. v. Sunshine Meadows Condo. Ass'n, 641 So. 2d 1333, 1335 (Fla. 1994) ("The declaration provided that the fee simple title to each condominium parcel would include both the unit and an undivided interest in the common elements, that any attempt to separate title to a unit from the common elements appurtenant to that unit would be 'null and void,' and that the common elements shall remain undivided so long as the condominium exists."); Daytona Dev. Corp. v. Bergquist, 308 So. 2d 548, 549 (Fla. 2d DCA 1975) (affirming order "adjudg[ing] appellees to be the owners in fee simple of an undivided interest in the Recreation Unit to the extent of their ownership in the common elements of Harbour Club Condominium No. 2"); Tower House Condo., Inc. v. Millman, 410 So. 2d 926, 930 (Fla. 3d DCA 1981) ("Because a unit owner's undivided share in the parking area is appurtenant to the unit, Section 718.106(2)(a), Florida Statutes, supra, and part of the fee simple, Article V, Declaration of Condominium, supra, the parking area itself is necessarily appurtenant to the unit, even if regulated by the Association.").

720.405(1). Chapter 720 defines "parcel owner" as "the record owner of legal title to a parcel." § 720.301(12). And "parcel" is defined as

> a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration:
>
> (a) Which is capable of separate conveyance; and
>
> (b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated:
>
> 1. By the governing documents to be a member of an association that serves the community; and
>
> 2. To pay to the homeowners' association assessments that, if not paid, may result in a lien.

§ 720.301(11).

By the express language of sections 720.404 and 720.405, eligibility for revival is not determined by the definition of association. The parcel owners are eligible to seek revival of the declaration of covenants and restrictions. And a condominium unit is a parcel under the definition of section 720.301(11): the condominium unit is capable of conveyance separately from the whole of the condominium property in the same way that a chapter 720 parcel is separately conveyed from the whole of the community, compare § 718.103(13) (defining "condominium property"), with § 720.301(3) (defining "community"); the unit owners must be members of the association, per the declaration of covenants and restrictions, see §§ 718.103(2), .111(1)(a); and the failure to pay association assessments may result in a lien on the unit, see §§ 718.103(1), .116(5).[10]

[10]A "condominium parcel" is the "unit, together with the undivided share in the common elements appurtenant to the unit." § 718.103(12). "Common elements" are those "portions of the condominium property not included in the units." § 718.103(8). When the unit is conveyed, its appurtenant percentage share of the common elements is simply conveyed with it. §§ 718.103(11), (12), .104, .107(1). Whether the common elements, or the appurtenant undivided share in them, are capable of separate conveyance is not at issue. Cf. § 718.107(2) ("The share in the

Therefore, had the unit owners formed an organizing committee and prepared and submitted the necessary documents to the Department, see § 720.405, the Department would have been unable to deny the proposed revival on the basis that the organizing committee is not eligible to seek revival because it is not subject to chapter 720.

Finally, we agree with the Association that the purposes served by covenant revitalization in residential communities governed by chapter 720 are no less applicable to condominium properties and communities:

> Preserv[ing] existing residential communities, promot[ing] available and affordable housing, protect[ing] structural and aesthetic elements of the[] residential community, and, as applicable, maintain[ing] roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the residential community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

§ 720.403(1).

Because the Department erroneously interpreted the applicable sections of MRTA and chapters 718 and 720, we reverse the order determining that the Association does not qualify as a "homeowners' association" and therefore is not entitled to revive its declaration of covenants. On remand the Department shall review the substance of the Association's proposed revived declaration and supporting documents in accordance with the covenant revitalization statutes.

Reversed and remanded.

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common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.").

BADALAMENTI, J., Concurs.

LaROSE, Chief Judge, Dissents with opinion.

LaROSE, Chief Judge, Dissenting.

I respectfully dissent. The Association was not a "homeowners' association" entitled to use sections 720.403-.407 to revive its lapsed declaration of covenants under MRTA, section 712.11. I would affirm.

We address a narrow issue: whether the Association is a "homeowners' association" comprised of "parcel owners" entitled to revive its declaration of covenants under chapter 712. The Association argues that it is a "homeowners' association" whose members own condominium units that are "parcels" under MRTA. The Department, in contrast, contends that the Association is not a chapter 712 "homeowners' association" because its parcels are comprised of both condominium units and undivided ownership in common elements;[11] thus the parcels are not exclusively owned as required by section 712.01(4).

My disagreement with the majority is one of statutory construction. "The interpretation of a statute is an issue of law that we review de novo." City of Oldsmar v. Trinh, 210 So. 3d 191, 205 (Fla. 2d DCA 2016) (citation omitted). When construing a statute, we first look to the statute's plain language for legislative intent. State v. Burris, 875 So. 2d 408, 410 (Fla. 2004). When the statute's plain language is clear and unambiguous, we look no further. Id. "[T]he statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to

[11]The parties refer to the portions of the condominium property not included in the units as the "common area." "Common area" is a term used in chapter 720 for homeowner associations. See § 720.301(2). However, because the parties agree that chapter 718 applies, "common elements" is the appropriate term. See § 718.103(8) (" 'Common elements' means the portions of the condominium property not included in the units.").

legislative intent." Id. (citing Lee Cty. Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002)). "If the legislature did not intend the results mandated by the statute's plain language, then the appropriate remedy is for it to amend the statute." Whitney Bank v. Grant, 223 So. 3d 476, 479 (Fla. 1st DCA 2017) (quoting Overstreet v. State, 629 So. 2d 125, 126 (Fla. 1993)).

Section 712.11 provides that "[a] homeowners' association not otherwise subject to chapter 720 may use the procedures set forth in [sections] 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter." Section 712.01(4) defines "homeowners' association," in part, as "an association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels."[12] Section 712.01(5) defines "parcel" as "real property which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restriction of a homeowners' association." (Emphasis added.) Section 712.01(5) unambiguously, and indisputably, requires the "parcel" to be "subject to exclusive ownership." A person has exclusive ownership when the person has "[o]wnership free from any kind of legal or equitable interest in any one else," or a fee simple title to property. See Exclusive Ownership, Black's Law Dictionary (6th ed. 1990); see also City of Miami v. Osborne, 55 So. 2d 120, 122 (Fla. 1951) ("A fee simple

[12]As the majority recognizes, section 712.01(4) also defines "homeowners' association" as "a homeowners' association as defined in [section] 720.301." The Association does not argue on appeal that it was a homeowners' association as defined by section 720.301(9). I see no need for the majority to conclude in footnote 5 that the Association might have been successful on that argument had it made it. See Manatee Cty. Sch. Bd. v. NationsRent, Inc., 989 So. 2d 23, 25 (Fla. 2d DCA 2008) (explaining that it is inappropriate "to depart from our role as a neutral tribunal and to become an advocate by developing arguments that" an appellant chose not to make).

title assumes that all claims against the lands have been cleared."); Exclusive Ownership, Black's Law Dictionary (10th ed. 2014) ("See fee simple."); Fee Simple, Black's Law Dictionary (10th ed. 2014).

The Association's members own their respective condominium units in fee simple and each unit is subject to exclusive ownership. See § 718.103(27) (defining a condominium "unit" as "a part of the condominium property which is subject to exclusive ownership"). But each member also owns an undivided interest in the condominium's common elements, which the members may use and enjoy. See § 718.103(12), (28). Thus, a member's ownership in the common elements is not free from any kind of legal or equitable interest in any one else.

Moreover, the members cannot convey the ownership in their condominium units separate from their undivided interest in the common elements. See Vill. of Doral Place Ass'n v. RU4 Real, Inc., 22 So. 3d 627, 630 (Fla. 3d DCA 2009) ("Under the plain language of section 718.107, a separate sale of a condominium's common elements is prohibited."). In point of fact, the members own an indivisible and hybrid property interest consisting of exclusive ownership of a condominium unit and a nonexclusive interest in the common elements. See Iezzi Family Ltd. P'ship v. Edgewater Beach Owners Ass'n, Inc., No. 1D16-5878, 2018 WL 3638341, at *2 n.1 (Fla. 1st DCA Aug. 1, 2018) ("The condominium is a hybrid estate in property law whereby an individual obtains fee simple ownership of a unit and shares with other unit owners an undivided interest in the common elements." (quoting Rogers & Ford Constr. Corp. v. Carlandia Corp., 626 So. 2d 1350, 1352 (Fla. 1993))).

The majority ignores the hybrid nature of the condominium parcel. Rather, the majority's cabined analysis rests on the unit owners having exclusive ownership of their respective units. Section 712.11 applies to associations of owners who own real property "subject to exclusive ownership." See § 712.01(4), (5). I cannot agree that section 712.01 extends to an association whose members own an indivisible and hybrid property interest in the units and the common elements. See § 718.103(12), (28); Rogers & Ford Constr. Corp., 626 So. 2d at 1352.

The Association's claim that it was established "in 1979 in such a manner that it would be considered a [c]hapter 720 homeowners['] association" does not compel a conclusion that it is a chapter 712 "homeowners' association," especially given that it concedes it is subject to chapter 718. The Association's comparison of its members' interest in the common elements to hypothetical joint tenants' interest in a lot is also unavailing because it ignores the fact that the members' interest is nonexclusive.

Further, the Association has failed to demonstrate that the statute's plain language would lead to an unreasonable result or a result clearly contrary to legislative intent. The Association argues that the statute's plain language would lead to an absurd result because it would leave the Association without recourse to prevent or cure the extinguishing effects of MRTA. The Association overstates its plight. There is a way to prevent the extinguishment: referencing the declaration of covenants in the condominium deeds. See § 712.03(1) (stating that MRTA shall not extinguish "easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title"); Gary A. Poliakoff & Donna D. Berger, The Reinstatement of Covenants, Conditions, and Restrictions

Extinguished by the Marketable Record Title Act, 79 Fla. B.J. 14, 15 n.4 (2005) (noting that generally MRTA does not extinguish a condominium association's declaration of covenants because condominium deeds reference the declaration, and thus, the declaration "is considered part of the 'root of title' "); see, e.g., Sunshine Vistas Homeowners Ass'n v. Caruana, 623 So. 2d 490, 491-92 (Fla. 1993) (holding that the thirty-one-year-old restriction was preserved when the muniments in the chain of title identified the recorded restriction).

Finally, the Association has not presented, and I have not found, any indication that the legislature intended for section 712.11 to apply to condominium associations.[13] If the legislature wishes to apply section 712.11 to facts like those in this case, "it certainly has the capacity to do so with clarity and specificity."[14] See Clark v. Bluewater Key RV Ownership Park, 197 So. 3d 59, 60, 62 (Fla. 3d DCA 2012) (adopting en haec verba the trial court's order). "[W]e will not expand the statute to include

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[13]To the contrary, the House of Representatives Staff Analysis noted that the law prior to section 712.11 did not permit nonmandatory homeowner associations to revitalize covenants under chapter 720, and then explained that section 712.11 "would allow homeowners' associations that are not regulated by [chapter 720] to utilize the covenant revitalization procedures available to mandatory homeowners' associations." Fla. H.R. Comm. on Cts. HB 433 (2007), Staff Analysis (Mar. 7, 2007), available at http://www.leg.state.fl.us/data/session/2007/ House/bills/analysis/pdf/h0433a.CTS.pdf. The legislature was concerned that nonmandatory homeowners' associations would not be able to revitalize their covenants. It made no mention of condominium associations when discussing covenant revitalization.

[14]In fact, the legislature amended MRTA during the pendency of this appeal to "expand[] the effect of MRTA laws on preservation and revitalization of covenants or restrictions to cover commercial associations." Fla. H.R. Comm. on Civ. Justs. & Claims Subcomm. HB 617 (2018), Staff Analysis (Feb. 1, 2018), available at https://www.flsenate.gov/Session/Bill/2018/617/Analyses/ h0617e.JDC.PDF; see also ch. 2018-55, §§ 2, 5-6, Laws of Fla. (2018).

language the [l]egislature did not enact." See Brindise v. U.S. Bank Nat'l Ass'n, 183 So. 3d 1215, 1219 (Fla. 2d DCA 2016).

I would affirm the Department's final order.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MERCANTIL BANK, N.A.,
Appellant,

v.

JAVIER PAZMINO and **JP INDUSTRIAL PARTS, INC.** d/b/a **JP FORKLIFTS,**
Appellees.

No. 4D18-1168

[January 23, 2019]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; David A. Haimes, Judge; L.T. Case No. 17-17488 (08).

Victor K. Rones of the Law Offices of Victor K. Rones, P.A., North Miami Beach, for appellant.

Daniel M. Herrera and Gary M. Singer of the Law Firm of Gary M. Singer, P.A., Fort Lauderdale, for appellees.

PER CURIAM.

In this foreclosure-related action, Mercantil Bank, N.A., appeals the trial court's order dismissing with prejudice its 2017 action to reestablish a 2011 final foreclosure judgment and granting motion for judgment on the pleadings. We affirm, because the bank did not obtain a money judgment in the underlying foreclosure action and, after entry of the 2011 final judgment of foreclosure determining only the amount of damages, the bank did not initiate a deficiency proceeding since it did not sell the foreclosed property. Thus, the trial court correctly barred the bank from bringing an action that effectively sought to amend the relief awarded in the 2011 foreclosure judgment, which was not a money judgment.

In March 2011, the trial court entered a final default judgment of foreclosure and damages in favor of Mercantil Bank and against the borrowers, Javier Pazmino and JP Industrial Parts, Inc. The court's order determined that the bank had suffered damages in the amount of $97,183.85, and thus held a lien on the proceeds of any foreclosure sale of the property. The court retained jurisdiction to enter further orders,

including deficiency judgments.

For some unexplained reason, there was no sale of the property, but in May 2017, the bank moved for entry of an amended final judgment based on an affidavit of non-payment for deficiency indebtedness, which appears to have been an attempt to obtain a money judgment. The affidavit stated that the amount due to the bank as of May 2017 was $130,342.66. However, the trial court denied the motion for entry of an amended final judgment.

Rather than proceeding with the prior case and challenging the court's denial, the bank commenced a new action in September 2017, purportedly to reestablish the 2011 final judgment. The bank alleged that the 2011 judgment remained unpaid, and demanded a new judgment to satisfy the original cause of action.

After filing their Answer and Affirmative Defenses, the borrowers moved for judgment on the pleadings and argued that the bank had failed to state a cause of action and was attempting to enforce, amend, or change a null judgment from a prior action. The bank responded that its action was permitted as a new suit to secure satisfaction of the 2011 judgment.

After a hearing on the borrowers' motion, the trial court entered a final order granting judgment on the pleadings and dismissing with prejudice the bank's new action.

On appeal, the bank argues that its new action was permitted under common law and was not an attempt to amend the prior judgment. The borrowers maintain that the bank's new action was improper because the bank had not obtained a money judgment in the foreclosure action and it failed to sell the foreclosed property. We agree with the borrowers.

We review a judgment on the pleadings de novo. *United Inv. & Dev. Corp. v. Langton*, 952 So. 2d 1260, 1260-61 (Fla. 4th DCA 2007).

A judgment "constitutes a cause of action upon which a new and independent action may be based." *Crane v. Nuta*, 26 So. 2d 670, 671 (Fla. 1946). "If a limitations period has almost run on a judgment, a judgment creditor can start the limitation period anew by bringing an action on the judgment to obtain a new judgment." *Burshan v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 805 So. 2d 835, 841 (Fla. 4th DCA 2001) (internal quotation marks omitted). However, "[e]xcept as provided by Rules 1.530 and 1.540, Florida Rules of Civil Procedure, the trial court has no authority to alter, modify or vacate an order or judgment." *Shelby Mut. Ins. Co. of*

Shelby, Ohio v. Pearson, 236 So. 2d 1, 3 (Fla. 1970).

"It is well-settled that 'to collect money owed on a note, a mortgagee may pursue its legal and equitable remedies simultaneously, until the debt is satisfied.' " *Schneider v. First Am. Bank*, 252 So. 3d 264, 265 (Fla. 4th DCA 2018) (quoting *Royal Palm Corp. Ctr. Ass'n v. PNC Bank, NA*, 89 So. 3d 923, 929 (Fla. 4th DCA 2012)). This allows the mortgagee to bring an action at law on the note simultaneously with an equitable foreclosure action, which may result in the trial court entering a final judgment of foreclosure that allows immediate execution of the damages award. *Id.* at 265. However, because a mortgagee may not simultaneously execute on the money judgment and foreclose on the property, a final judgment of foreclosure allowing for the immediate execution of the damages award must withhold the setting of the foreclosure sale until the mortgagee certifies that the money judgment has not been satisfied. *Id.*

Here, the bank obtained only a foreclosure judgment, which limited its remedy to one in equity. The record does not support a finding that the bank originally sought and obtained a money judgment; the 2011 final judgment of foreclosure did not order immediate execution of the damages award. Accordingly, because the bank failed to obtain a money judgment and subsequently failed to sell the property and seek a deficiency judgment based on the foreclosure judgment it obtained, the bank was not authorized to bring a new independent action that effectively sought to reestablish the foreclosure judgment as a money judgment. For these reasons, we affirm the trial court's order dismissing with prejudice the bank's 2017 action to enforce or reestablish the original final judgment, which was never converted to a money judgment, and entering judgment on the pleadings.

Affirmed.

TAYLOR, CIKLIN and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.