Superior Court of New Jersey
Appellate Division
Docket No. A-000965-24

RIALTO-CAPITAL CONDOMINIUM ASSOCIATION, INC.,

PLAINTIFF-RESPONDENT,

v. CIVIL ACTION

PETER COATES,

DEFENDANT-APPELLANT.

On appeal from a final judgment entered in the Superior Court of New Jersey, Chancery Division, Hudson County, HUD-C-113-24
Mary K. Costello, P.J.Ch.

BRIEF OF APPELLANT

Hegge & Confusione, LLC
309 Fellowship Road, Suite 200
Mount Laurel, NJ 08054
Mailing address: P.O. Box 366, Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)
Of Counsel and on the Brief

BRIEF FILED ON MARCH 7, 2025

Table of Contents

Table of Judgments, Orders, and Rulings

Table of Appendix (A1-138)

Table of Authorities

Page(s)

State Cases

State Statutes

Other Authorities

Procedural History[1]

Plaintiff Rialto Capital Condominium Association manages the affairs of the condominium, including the maintenance, repair, and replacement of its exterior facades and related elements. A1-10, A104. Defendant Peter Coates owns unit 613 in the condominium, which features a large outdoor terrace. A1-10 A103-132.

In August 2014, the plaintiff condominium association filed a Verified Complaint and Order to Show Cause against the defendant. A1. The plaintiff requested that the Chancery court issue preliminary and permanent injunctive relief to prevent the defendant from interfering with construction crew access to the unit's terrace and to permit the plaintiff to erect a permanent, affixed wooden barrier. A1, 96. The defendant opposed the plaintiff's request. A103-132.

The Chancery court held oral argument on October 16, 2024, then issued a decision granting permanent injunctive relief to the plaintiff against the defendant and closing the case. A133. Defendant now appeals. A136.

[1] References to transcripts are as follows:

1T 9/26/24 (motion)

Statement of Facts

This dispute centers on façade repairs to the condominium building's exterior that a contractor, Structural Preservation Systems, is performing on the Association's behalf and with which the Association charges the defendant, an owner and resident of one of the units in the building, is interfering. A1-10.

The Association's Demand for a Permanent Injunction

The Association submitted a Complaint verified by the President of the Board of Trustees for the Association (A8) and on that basis asked the Chancery judge to issue a permanent injunction restraining Mr. Coates from:

> A. interfering with or preventing the Association's accessing and utilizing the terrace (the ""Terrace"") adjoining Defendant's Unit at the Rialto-Capital Condominium (the ""Condominium"") as may be necessary in the sole determination of the Association's contractors or professionals for purposes of performing repairs to the facade and other common elements of the Condominium (the ""Facade Project""); and
>
> B. interfering with or preventing the Association's installation and use of an appropriate physical barrier to restrict access to the Terrace by any person, including Defendant, as may be necessary in the sole determination of the Association's contractors or professionals for purposes of performing the Facade Project and/or ensuring the safety of any person(s)… [A96]

The Association stated that the façade repairs are necessary to address water infiltration issues within the building (A1-10, A103-132), asserting the following facts in its Verified Complaint:

- The façade project primarily entails "repairing cracks, reinforcing structural angles and corners damaged by water intrusion over time, waterproofing window heads, repainting bricks and terracotta, and repairing coping stone, cove joints and other building elements."
- The repairs require the use of scaffolding and related construction equipment by the contractor, Structural.
- Structural "requires the use of the terrace adjacent to Mr. Coates' Unit at the Condominium, which is a necessary point of transit for workers and equipment." (at the subsequent oral argument, the Association's counsel said that Mr. Coates' terrace is "a crucial transit point" for the workers' equipment, 1T5-11).
- The repairs "cannot be addressed without Structural's continued presence on" Mr. Coates' terrace. "Specifically, Structural must place a protective covering on the Terrace to prevent damage to property in the area, and must actively restrict access to the Terrace so that no person - including Mr. Coates - is injured from anything that may fall onto the Terrace as the facade work proceeds above."
- Mr. Coates' terrace "will be in use for the duration of the Facade Repair Project," which is expected to take "approximately three years to complete." (A1-10).

The Association said that the permanent, three-year injunction was needed to prevent Mr. Coates from interfering with and obstructing the contractor's work, with the plaintiff affirming further in its Complaint,

- "Defendant's continued actions have prevented the Association from carrying out critical repairs to the facade of the Condominium building that are necessary to resolve longstanding water infiltration into numerous units at the Condominium."
- "Absent the injunctive relief Plaintiff seeks here, the Association will be unable to complete this critical project that has been expressly mandated by Jersey City construction officials, and which the Association is required to perform under its governing documents and New Jersey law."
- Mr. Coates' actions "actively threaten the safety" of the contractor's employees. [A5-8].

The Association told the Chancery judge that it had the right to access and use the terrace for the project under the Association's Master Deed and By- Laws, which "authorized and empowered" the Association "to administer the affairs of the Condominium and to maintain, repair and replace the Common Elements and other property controlled by the Association, which include the exterior facades and

related elements of the Condominium building." A1-10. The plaintiff alleges in its Complaint,

> Defendant is the owner of Unit 613 at the Condominium, and as such is a member of the Association subject to all provisions of the Association's Master Deed, By-Laws, and Rules and Regulations.
>
> As part of its duties to maintain and repair the common elements of the Condominium, the Association has recently commenced an extensive program of repairs to the exterior facades and associated elements of the Condominium (the ""Facade Project""). The Facade Project is being performed at the directive of the Jersey City Division of the Construction Code Official in order to comply with the newly-adopted Structural and Facade Ordinance (Ord. 21- 054), which mandates routine structural and facade inspections and any repairs or modifications necessary to ensure the long-term safety of the Condominium. The Facade Project is urgent and vital to resolve extensive, active water infiltration issues affecting "numerous residents of the Condominium, and to address both structural and aesthetic issues with the building exterior. In this regard, the Association is working with its contractors and the Facade and Structural Inspector for Jersey City to guarantee the safety of the residents, employees and guests of the Condominium.
>
> The work constituting the Facade Project primarily includes repairing cracks, reinforcing structural angles and corners damaged by water intrusion over time, waterproofing window heads, repainting bricks and terracotta, and repairing coping stone, cove joints and other building elements. The work is being primarily performed by the Association's contractor Structural Preservation Systems, LLC (""Structural""), and requires the use of scaffolding and related construction equipment. The project is expected to take approximately three years to complete, and to cost between $30,000,000 and $40,000,000. [A1-10]

The Association contends that the terrace adjoining Mr. Coates' condominium is a "Limited Common Element" that "remain[s] under the control of the Association and [is] owned collectively by all members of the Association. … In addition, the

Association's Master Deed and By-Laws explicitly confirm that the Association has the irrevocable right to access any Unit when it is necessary or in connection with the maintenance or repair of any common elements... the Master Deed also confirms that Defendant must comply with all 'laws, statutes, rules and regulations, resolutions, ordinances, or other judicial, legislative of executive 'law' of governmental authorities having jurisdiction over the Condominium.'" A1-10. The Association contends that it also has a right to use the terrace under New Jersey Condominium law and Jersey City regulations (A1-10), and that the following factors supported issuance of the permanent injunction:[2]

> First, the Association has not delayed in bringing this action. To the contrary, the Facade Project has only recently begun, and Plaintiff expeditiously sought the assistance of the Court when it became apparent that Mr. Coates refused to cooperate or to cease his improper conduct.
>
> Second, the Association has engaged in no misconduct with respect to this issue. The Association has simply acted diligently, responsibly, and in good faith to protect the health and safety of everyone at the Condominium, and to discharge its legal responsibilities to its members and the community.
>
> And finally, framing the requested relief is a straightforward exercise that will present no difficulty to the Court. The Association has crafted its proposed injunction with precision and as narrowly as possible under the circumstances. There is nothing unique or challenging about the order that Plaintiff has requested.

[2] The plaintiff requested a preliminary and permanent injunction, but the judge issued a permanent injunction below and closed the case.

The Defendant's Opposition

Mr. Coates filed a Certification with exhibits opposing the plaintiff's demand for the three-year, permanent injunction. A103-13.

Mr. Coates explained the events that led to the dispute. On July 15, 2024, Blink home cameras alerted the defendant to construction workers moving around his terrace, opening deck boxes, and using one of his ladders. He observed the workers positioning the ladder against the fence, enabling additional workers to climb over the defendant's fence onto his terrace, and carrying large pieces of wood to place a barrier over the defendant's living room door. A1-10, A103-132

Mr. Coates went outside and told the workers to leave; then he called the police. Officers arrived and informed the workers not to return until the matter was resolved in court or between the parties' attorneys. A1-10, A103-132. On that same day, Mr. Coates sent letters and emails to the Association and building management, "You are illegally directing construction personnel to continue trespassing, vandalism of the property, invasion of privacy, breach of contract, breach of quiet enjoyment, and violations of state and federal law. You are forbidden at this time, and you may not allow or direct any person to enter my terrace or cover my terrace door or my ability to enter or exit my apartment onto my terrace." (A116). The next day, Mr. Coates sent follow-up letters and emails advising, "No person will be allowed access to my unit 613 terrace. The attached photos show over $100,000 of

Coates owned landscaping that will continue to be maintained by me daily as required by me as owner of the unit and terrace 613. There has been no documentation presented to describe proposed work for facade near or above unit 613 nor any insurance proof of coverage for injury or damages to persons or property on unit 613 terrace, nor assurance of financial responsibility for injuries or damages to any property or person or landscaping on unit 613 terrace. No party presented any documents or proposal to perform work on or around unit 613 terrace. No party presented any documents or proposal to protect the landscaping on terrace 613. I will not permit access nor covering any doorway or any windows for unit 613." A112; A1-10, A103-132.

On July 17, Mr. Coates spoke with two structural engineers involved in the project, Mike Fluroso and Christian Ferri, who assured him that the workers would not place wooden barriers across his living room door until the matter was finalized in court or resolved between the parties' attorneys, as directed by the Jersey City police officers. A103-132. However, later that same morning, Mr. Coates' home cameras alerted him to movement on his terrace again. He saw three construction workers drilling into a wall near his living room door while holding a large piece of wood. A1-10, A103-132.

When Mr. Coates opened his living room door, the construction workers began laughing. Then they pushed the door against Mr. Coates' body while grabbing

his forearm and striking him. The workers pushed so hard against the door, while Mr. Coates' foot, leg, body, head, and arm were pinned between the door and the vertical frame, that they broke Mr. Coates' arm and bent the 9-foot heavy glass door. Mr. Coates filed a criminal charge against these workers (which remains pending). A110; A1-10 A103-132.

In opposing the injunction the plaintiff demanded, Mr. Coates argued that there was no need for a permanent injunction because he was not interfering with the repairs, as the plaintiff claimed. The "construction crew lifted the drop scaffolding and equipment by crane and cherry picker onto terraces 613 and 614 on July 16, 2024." A103a. After the construction workers broke his arm, Mr. Coates had "no contact with the daily façade construction work or workers. Coates and the 318 other condo unit occupants would have no intention of placing their body parts outside windows or standing underneath moving scaffolding as it travels up and down the sides of the buildings for brick re-pointing repairs. There exists no legal reason to enjoin Coates by Court order from venturing onto his terrace while workers make repairs on the building façade. Coates does not intend to water his plants on his terrace during the hours that workers are chipping away at the loose mortar," Mr. Coates affirmed. A103a-b.

Mr. Coates explained to the judge that he "seeks to water and care for the exclusively owned landscaping on the exclusively owned and deeded terrace by

exiting his living room door during the morning and evening hours when construction persons are not working." A103b. None of his actions were "preventing construction crews from traveling up and down the side of the building on moving scaffolding platforms. The platforms are docked at the top of each building from 5 pm to 9 am. The crews ride up an elevator and climb over the edge of the building to mount the platforms Monday through Friday at 9 am, noon and 5 pm." A103c. Mr. Coates affirmed further,

> 8. The Plaintiff has not and will not experience loss of equities or experience hardships by denial of the application for injunction. Plaintiff page 95 exhibit C photo clearly shows that defendant moved the entirety of the trees and furniture in May 2024 to the same distance from the building as the neighboring terrace of unit 614 and has no intent to prevent construction crews from presumably placing plywood on the terrace. Ex Plaint p 95 Ex C.
>
> 9. There exists no public interest safety danger that would require an injunction preventing Coates from watering his plants. Coates waters the plants when construction persons are not working on the façade of the building. The entire 1.2 acre footprint of the two buildings has walkable areas below the areas where façade work is happening. At night, when the workers dock the scaffolding at the roofs, the 319 residents open their windows and look outside, and walk freely below areas 100 feet below the scaffolding. [A103c][3]

[3] Despite the plaintiff's claim of an urgent need to protect him, Mr. Coates affirmed that different units were subject to different restrictions depending on who lived in them. A103c. "The current President of the RC and signatory on the Plaintiff's Complaint, Gerard Mattera, resides in and owns unit 411 with a private terrace … and has no restrictions or injunction on his terrace use. The terrace is below the same type of scaffolding traveling up and down the President's side of the building." A103c.

The Motion Hearing

The judge heard oral argument but did not conduct an evidentiary hearing.

The plaintiff argued that the façade repairs were mandated by the New Jersey Civil Division of the Construction Code Official Ordinance No. 21-054, which requires structural and facade inspections, repairs, and modifications to ensure safety of the condominium. The plaintiff argued that the facade repairs are necessary because of the water infiltration issues. 1T5. The plaintiff stressed that the project required scaffolding and construction equipment, and that Mr. Coates' terrace was a crucial transit point for the equipment. 1T5-11.

The plaintiff argued that its right to the permanent injunction was established by its Master Deed and bylaws, which grant the Association the authority to use and limit access to the terrace for the repair project. 1T11-12. Counsel for the plaintiff told the judge that Mr. Coates does not own the terrace but has only a limited right to use it (which Mr. Coates vehemently denied, affirming that the terrace was his property and submitting evidence that he paid the insurance for it, A105). Counsel said that the defendant had no right to prevent the crews from going onto the terrace and using it as they deemed needed for the three-year project. 1T11-12.

In opposing the injunctive relief the Association demanded, the defendant emphasized that there was no evidence demonstrating he had taken any actions that interfered with the repair work. The crew accessed the work areas via a building

elevator and operated during specific hours. No irreparable harm would occur if Mr. Coates continued to water his plants and maintain his terrace landscaping during non-construction hours, which Mr. Coates affirmed was all he was doing and would continue to do. Mr. Coates noted that he had relocated his trees and furniture on his terrace to ensure they did not obstruct the crew's work. There were no safety concerns either, as the defendant watered his plants and used the terrace only when construction work was not taking place. All building residents could move freely at night with the scaffolding docked. 1T17-19.

There was no mandate from Jersey City that compelled the Association to perform the work either. Mr. Coates, a board member for five years, was well-acquainted with the water infiltration issues that led to the repair work. He explained that the Association initiated the construction project in 2012 to address leaks on its own initiative, not because of some legal, external mandate (the Association began the repair project after recovering $20 million for the work from a construction company and subcontractors who had caused the water infiltration issues). 1T17-19.

The Chancery Judge's Decision to Issue a Permanent Injunction

The judge said that the plaintiff had demonstrated irreparable harm, as contractors refused to continue work without an order preventing the defendant's interference. The judge said that ownership of the terrace is irrelevant to whether

the injunction should issue, and that the balance of hardships favored the Association, as the harm to the Association and other unit owners outweighed the inconvenience to the defendant. The judge ruled that the Association is empowered and obligated by the governing documents to perform the necessary work, and the defendant must cooperate with any restrictions and access that the Association and its contractor deem necessary for the three-year project. A133-34.

ARGUMENT

The Chancery Judge erred by issuing a permanent injunction without making the necessary findings of fact supported by sufficient evidence, and by failing to conduct the evidentiary hearing required to properly resolve the disputed issues of material fact upon which the plaintiff's claimed legal right to the permanent injunction depends (A133).

The only evidence the Association submitted to the chancery judge was its Verified Complaint, and the Complaint was verified only by the President of the Board. The plaintiff did not submit an affidavit or evidence from the contractor or its crews performing the work. Nobody from the contracting crew affirmed that its use of Mr. Coates' terrace was necessary to the three-year project as the plaintiff claimed or affirmed what actions Mr. Coates was taking that were interfering with or obstructing the crew's work – and to what extent they were doing so. No evidence from the contractor or its crew contradicted Mr. Coates' affirmations that he was not

interfering with the work and that his only intent is to water his plants and care for and enjoy his terrace when the crews are not doing their work on it.

Without an affidavit or evidence from the contractor or crew performing the work, the chancery judge's conclusions lack the evidence required to support them.[4] The judge said that the plaintiff had shown irreparable harm because the contractors refused to continue their work without an order preventing the defendant's interference. Yet, no affidavit (nor any testimony, since an evidentiary hearing was not held) from the contractor affirmed this was true.

Indeed, most of the argument presented by the plaintiff's counsel in demanding the injunction, which the judge credited in issuing it, was not based on evidence needed to support the facts claimed. For instance, the plaintiff's counsel argued during the oral argument, "the use of the terrace, as the Association is advised by its contractor is not just to put a scaffold up there. They need to put down some -- and I'm -- I'm a lay person -- so they need to put down some equipment to protect the property. They need to put other equipment up because there's going to be work that's been done above that. And also a large part of this which we didn't talk about is -- is that there's a safety issue both for the employees, the residents and Mr. Coates

[4] The appeal court reviews a trial court's factual findings to ensure they are supported by the reasonably credible evidence presented to the lower court, Balducci v. Cige, 240 N.J. 574, 595 (2020). The interpretation of the law and the legal consequences that flow from established facts are not entitled to deference, Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

himself where they need to put equipment using that terrace in order to ensure that those safety concerns are met." 1T9-10. No affidavit from the contractor established that this was true. Plaintiff's counsel told the judge, "Structural will not perform any further work on that section of the building because of the interference that Mr. Coates has continued unfortunately to -- to interject… He's yelled at, screamed at, harassed employees of the contractor." 1T10. The judge credited this conclusion that counsel urged, but the evidence needed to support it – from the contractor -- was not submitted below. The judge said that ownership of the terrace (which is a hotly disputed issue between the parties, as discussed below) is "irrelevant" and the wooden barrier the plaintiff demanded "unnecessary." Insufficient evidence supports these conclusions without affidavits from the contractor or its crews.

Moreover, the judge did not hold an evidentiary hearing before issuing the permanent, three-year long injunction, which our courts have consistently ruled is reversible error, see, e.g., Options v. Lawson, 287 N.J. Super. 209 (App. Div. 1996) (the absence of an adequate evidential hearing and detailed findings of fact to support a permanent injunction necessitated the reversal and remand of the permanent order pending a full plenary hearing; defendants' due process rights were violated because the trial judge issued a permanent injunction without conducting a full plenary hearing, which would have allowed the defendants to present evidence and cross-examine witnesses); Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387 (App. Div.

2006) (in deciding whether to grant a permanent injunction, the trial court must make findings of fact based on evidence presented at trial and then evaluate the appropriateness of such relief through a balancing of equities); Paternoster v. Shuster, 296 N.J. Super. 544 (App. Div. 1997) (affidavits alone are insufficient to substantiate a judgment for a permanent restraining order; oral testimony should be presented at a final hearing; it was erroneous to grant a permanent injunction summarily without a plenary hearing). The judge failed to apply governing law providing that to obtain a *permanent* injunction, "at that stage of the case, the court must make findings of fact based on the evidence presented at trial and then determine whether the applicant has established the liability of the other party, the need for injunctive relief, and the appropriateness of such relief on a balancing of equities" (citing Verna v. Links at Valleybrook Neighborhood Ass'n, Inc., 371 N.J. Super. 77, 89 (App. Div. 2004); Sheppard v. Twp. of Frankford, 261 N.J. Super. 5, 9–11 (App. Div. 1992); Restatement (Second) of Torts § 936 (1979)).

The evidentiary hearing was needed to properly resolve contested issues of material fact upon which the plaintiff's legal right to the injunction hinged. For instance, the Association claimed that the terrace was a "Limited Common Element" that was owned jointly by all Association members, but Mr. Coates affirmed that he, not the Association, owned the terrace, stating, "Plaintiff is incorrect as to ownership and control of the terrace. The Master deed does not state that RC terraces nor limited

common elements are owned collectively by all members of the association." Who owns the terrace is a material issue because if Mr. Coates owns it (as he affirms and the insurance coverage indicates), the Association's right to a three-year right of access to and use of the defendant's private property, over his objection, is doubtful – particularly without an evidentiary hearing having been held to balance the relative rights and equities.

The evidentiary hearing was also required to determine the actions that Mr. Coates had taken, whether they interfered with or obstructed the work the crews were performing, and to what extent they did so. As stressed, not a single affidavit from the contractor or its crew affirmed what Mr. Coates was doing and how it was obstructing the crews' work. The judge said that the Association established irreparable harm because the contractors "refused to continue their work without an order preventing the defendant's interference," but no evidence established this was so.

The Association tried maneuvering around the ownership and other factual disputes by arguing that it had the right – contractually and statutorily -- to force Mr. Coates to abide by whatever restrictions the Association or its contractor deemed was needed to perform the façade repair project. The judge followed suit, stating that the Association was entitled to the permanent injunction because the

Association had a contractual and statutory right to perform the repairs and to compel the defendant to allow the use and access demanded. 1T14.

However, the filings the Association placed before the chancery court do not establish the contractual or statutory rights the Association claims.

To support its contractual claim of right, the Association argues that the terrace is a "Limited Common Element" that "remain[s] under the control of the Association and [is] owned collectively by all members of the Association." A1-10 (Ver. Compl. at para. 7). But Mr. Coates affirms that he owns the terrace, so the ownership question remains material to the Association's claim of right here.

The Association cites Section 5.02 of the Master Deed as providing that "Limited Common Elements" are "Portions of the Common Elements set aside and reserved for the restricted use of certain Units to the exclusion of the other Units," and includes but is not limited to "Patios, Terraces and Balconies." But Limited Common Elements remain "portions of the Common Elements," and "Common Elements" are defined as being owned in common by all unit owners – which Mr. Coates affirmed is not so with regard to the terrace. The definition of "Common Elements" under the Master Deed incorporates the definition set forth in N.J.S.A. 46:8B-3(d), moreover, which provides that "Common elements" means:

> (i) the land described in the master deed;
>
> (ii) as to any improvement, the foundations, structural and bearing parts, supports, main walls, roofs, basements, halls, corridors,

> lobbies, stairways, elevators, entrances, exits and other means of access, excluding any specifically reserved or limited to a particular unit or group of units;
>
> (iii) yards, gardens, walkways, parking areas and driveways, excluding any specifically reserved or limited to a particular unit or group of units;
>
> (iv) portions of the land or any improvement or appurtenance reserved exclusively for the management, operation or maintenance of the common elements or of the condominium property;
>
> (v) installations of all central services and utilities;
>
> (vi) all apparatus and installations existing or intended for common use;
>
> (vii) all other elements of any improvement necessary or convenient to the existence, management, operation, maintenance and safety of the condominium property or normally in common use; and
>
> (viii) such other elements and facilities as are designated in the master deed as common elements. [N.J.S.A. 46:8B-3]

Since Mr. Coates affirms that he owns the terrace, this again raises the disputed ownership issue that the judge failed to address.

The same problem exists with Section 2.19 of the Master Deed, providing that "Limited Common Elements" has the same meaning as "Limited Common Elements" in N.J.S.A. 46:8B-3(k), which in turn provides that "Limited Common Elements" "means those common elements which are for the use of one or more specified units to the exclusion of other units." Again, whether Mr. Coates legally owns the terrace or it is a limited common element only "for the use of" Mr. Coates' unit was not determined by the judge – and cannot be properly determined without

an evidentiary hearing followed by findings of fact resolving who owns the terrace and, if Mr. Coates does not legally own it, the contours of his right of "use" under N.J.S.A. 46:8B-3(k). Only then can the Association's right to the permanent injunction be determined.

The remaining contractual provisions upon which the Association relies do not provide it with the legal right to the three-year permanent injunction either. Section 8.02 of the Master Deed assigns to the Association maintenance obligations for the Common Elements, raising the disputed ownership issue again.

Moreover, an obligation to perform maintenance does not grant the Association a right to invade – for three years - a unit owner's private property or restrict his right of use even if he does not own the property (as N.J.S.A. 46:8B-3(k) cited above provides).

Section 5.11 (H) of the Bylaws permits "Access to Units. To enter or cause to be entered any Unit (both the Owners Unit and the tenant's Unit) with notice at a reasonable hour when deemed necessary for or in connection with the operation, maintenance, repair or renewal of any Common Elements, or to prevent damage to the Common Elements or any Units, or in emergencies provided that such entry and work is to be done with as little inconvenience as possible to the Owners and occupants of such Units. Each Owner is deemed to have granted such rights of entry to both that Owner's Unit and the tenant's Unit by accepting and recording the deed

to their Unit." Again, the Association's right under this provision depends on whether the terrace is part of the "Common Elements," and a limited right of entry does not support the three-year permanent injunction the judge granted in this case. The same problem plagues the Association's reliance on Section 8.04 of the Master Deed, which provides, "Unit Access. The Association has the irrevocable right, to be exercised by the Board or managing or other Association agent, to access each unit during reasonable hours to inspect, maintain, repair or replace any Common Element therein or accessible therefrom or for making emergency inspections or repairs therein necessary to prevent damage to the Common Elements or another Unit."

New Jersey law does not give the Association the right to the three-year permanent injunction either. N.J.S.A. 46:8B-15 (b) provides, "The association shall have *access to* each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units" (emphasis added). That does not provide the Association here with the right to a three-year permanent injunction over what Mr. Coates affirms is his property or, at the very least, property to which he has a right of use, -- all without compensation of any sort. See also Siller v. Hartz Mountain Associates, 93 N.J. 370 (1983); N.J.S.A. 46:8B-16

(association may enforce compliance with bylaws and rules through fines, assessments, or legal actions, but these actions are generally related to common elements and the overall operation of the condominium, not individual unit encroachments). An association must act reasonably and in good faith in its dealings with unit owners, moreover, Thanasoulis v. Winston Towers 200 Ass'n, Inc., 110 N.J. 650 (1988). The Association cited Jersey City Ordinance No. 21-054, which requires façade inspection and repairs as needed. But the ordinance does not provide that an association may use a unit owner's private property for three-plus years over the unit owner's objection and without any compensation or redress to the owner (which is what the permanent injunction below provides).

The plaintiff must prove that it has the legal right to take the actions over the defendant's objection to them. Only then can a judge compel the defendant to obey a permanent injunction. The judge did not determine any of these issues.

The judge disregarded other factors that a court must consider before issuing a permanent injunction as well, including (1) the character of the interest to be protected; (2) the relative adequacy of the injunction to the plaintiff as compared with other remedies; and (5) the comparison of hardship to plaintiff if relief is denied, and hardship to defendant if relief is granted, Paternoster, supra, 296 N.J. Super. 556. For example, the judge enjoined Mr. Coates from interfering with or preventing the Association from "accessing and utilizing the Terrace," but Mr. Coates affirmed in

his opposition that there was no need to issue a permanent injunction because he was not interfering with the construction repairs. Mr. Coates noted that the "construction crew lifted the drop scaffolding and equipment by crane and cherry picker onto terraces 613 and 614 on July 16, 2024." A103a. "Coates has no contact with the daily façade construction work or workers. Coates and the 318 other condo unit occupants would have no intention of placing their body parts outside windows or standing underneath moving scaffolding as it travels up and down the sides of the buildings for brick re-pointing repairs. There exists no legal reason to enjoin Coates by Court order from venturing onto his terrace while workers make repairs on the building façade. Coates does not intend to water his plants on his terrace during the hours that workers are chipping away at the loose mortar," Mr. Coates affirmed below. AA103a-b (as detailed further in the Statement of Facts above, incorporated here by reference).

The motion transcript does not even confirm that the chancery judge applied the correct legal standard in deciding whether to issue the permanent injunction. As noted above, to issue a permanent, not merely preliminary, injunction, a court "must make findings of fact based on the evidence presented at trial and then determine whether the applicant has established the liability of the other party, the need for injunctive relief, and the appropriateness of such relief on a balancing of equities" (citing Verna, supra, 371 N.J. Super. 89; Sheppard, supra, 261 N.J. Super. 9–11;

Restatement (Second) of Torts § 936 (1979)). However, the discussion at the motion oral argument below sometimes references standards for whether to issue a preliminary injunction, *e.g.*, 1T12 ("there's the safety aspect. If this equipment is not able to be put there then you are placing life and limb at jeopardy. Not just for Mr. Coates but for contractors, guests, people who are underneath the building. This is done in order to protect them. We think that that's the epitome of irreparable harm, trying to protect someone's life. And, we think that that Crowe factor has been met. In terms of the entitlement to relief and or likelihood of success on the merits, the governing documents say what they say.")

All this demonstrates that the chancery judge committed reversible error by issuing a permanent injunction against the defendant without an evidentiary hearing and without properly assessing and determining the factual and legal questions on which the plaintiff's right to the permanent injunction depended, warranting reversal here on appeal, we submit.

Conclusion

The Court should vacate in its entirety the Chancery Court's October 16, 2024 Order granting permanent injunctive relief against the defendant.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant

Dated: March 7, 2025

Rialto-Capital Condominium Association, Inc., Plaintiff/Respondent, vs. Peter Coates, Defendant/Appellant.	Superior Court of New Jersey Appellate Division Docket No. A-000965-24 **On Appeal From Final Judgment** Superior Court of New Jersey Chancery Division Hudson County Docket No. HUD-C-113-24 Hon. Mary K. Costello, P.J.Ch.

BRIEF AND APPENDIX OF RESPONDENT RIALTO-CAPITAL CONDOMINIUM ASSOCIATION, INC.

BUCKALEW FRIZZELL & CREVINA LLP
Heritage Plaza I
55 Harristown Road, Suite 205
Glen Rock, New Jersey 07452
(201) 612-5200
Attorneys for Plaintiff/Respondent

On the Brief:

John R. Middleton, Jr., Esq. (049601996)
JMiddleton@lawnj.com

Mary Ellen Liberatore, Esq. (036382005)
MELiberatore@lawnj.com

BRIEF FILED APRIL 9, 2025

TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF APPENDIX

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Plaintiff Rialto-Capital Condominium Association, Inc. (hereinafter "Plaintiff") brought this action and filed its Order to Show Cause against Defendant Peter Coates (hereinafter "Defendant") to prevent him from continuing to interfere with the Association's ability to perform urgent repair work at the Rialto-Capitol Condominium (the "Condominium") that is essential to guarantee the safety of the building, its residents, employees and guests.

Defendant's continued actions prevented the Association from carrying out critical repairs to the facade of the Condominium building (the "Facade Repair Project") that are necessary to resolve longstanding water infiltration into numerous units at the Condominium. Moreover, the record below unequivocally established that absent the injunctive relief Plaintiff sought in this action the Association will be unable to complete this critical project that has been expressly mandated by Jersey City construction officials, and which the Association is required to perform under its governing documents and New Jersey law.

After carefully considering the evidence and the applicable legal authority, the Chancery judge agreed with Plaintiff's assessment and entered an order enjoining Defendant's unlawful conduct, thereby permitting the repair work to proceed and protecting the safety of the Condominium and all who live, visit and work there.

Notwithstanding the overwhelming factual and legal support for the injunction issued by the lower court, Defendant now asserts on this appeal that the ruling should be vacated in its entirety for three principal reasons: first, he claims that the decision lacks the necessary evidentiary support; second, he argues the Chancery judge erred

by opting in her discretion not to conduct an evidentiary hearing; and third, he attacks the sufficiency of the Chancery judge's legal analysis and written opinion. However, none of these alleged deficiencies actually exists or provides any basis for disturbing the lower court's decision.

For one thing, there can be no real dispute that the lower court's factual conclusions are amply supported by the credible evidence offered by Plaintiff. Even a cursory examination of the record confirms that Defendant's assertions to the contrary are simply not true.

Moreover, the Chancery judge did not abuse her discretion by opting not to conduct an evidentiary hearing. Defendant had multiple opportunities to request such a hearing yet failed to do so, even though he was well aware that the Chancery Court would be considering Plaintiff's application for permanent injunctive relief. And even if there had been any error in this regard it had no bearing on the lower court's decision, as there were no material factual issues in dispute.

And finally, both the factual record and explicit reasoning underlying the Chancery judge's decision confirm that her conclusions were correct and appropriate under the applicable law.

Plaintiff therefore respectfully submits that the Chancery Court's ruling should be affirmed.

PROCEDURAL HISTORY

Plaintiff filed its Verified Complaint and Order to Show Cause in this action on or around August 14, 2024 (Da1 - Da95; Pa1- Pa6).[1] The Association in its application requested that the Court enter an Order (a) declaring that Defendant is unlawfully interfering with the Association's performance of its obligation under its governing documents, the Condominium Act, and the directives of Jersey City construction officials to expeditiously perform the Facade Repair Project; (b) preliminarily and permanently enjoining Defendant from interfering with or preventing the Association's accessing and utilizing the terrace adjacent to Defendant's Unit at the Condominium (the "Terrace") as may be necessary in the sole determination of the Association's contractors or professionals for purposes of performing the Facade Project; (c) preliminarily and permanently enjoining Defendant from interfering with or preventing the Association's installation and use of an appropriate physical barrier to restrict access to the Terrace by any person, including Defendant, as may be necessary in the sole determination of the Association's contractors or professionals for purposes of performing the Facade Project and/or ensuring the safety of any person(s); and (d) granting such other relief as the Court may deem equitable, necessary and just (Da6 - Da7).

The Chancery Court issued its Order to Show Cause on or around August 15, 2024 (Pa1 - Pa6). In paragraph 9 of her Order the Chancery Judge made clear that she would "entertain argument, but not testimony, on the return date . . . unless the

[1]Da = defendant/appellant's appendix. Pa = plaintiff/respondent's appendix.

Court and parties are advised to the contrary no later than 3 days before the return date." (Pa5). Notwithstanding this admonition, and even though the Order to Show Cause expressly confirmed that the court would consider Plaintiff's request for both preliminary and permanent injunctive relief, Defendant at no time during the lower court proceedings objected to the Chancery Judge's management of the matter nor requested that she conduct an evidentiary hearing.

The parties appeared before the Chancery Court at the return date of the Order to Show Cause on September 26, 2024; Defendant, an attorney, represented himself pro se (T20-25).[2] The judge heard argument from Plaintiff's counsel, and sworn statements and argument from Defendant (T3-15; T8 - T23). At the conclusion of the proceedings, the judge advised the parties that while she was declining to read her ruling into the record, she would "sign an order with her decision and that there [would] be a statement of reasons that should satisfy everyone." (T23-14).

The Chancery Court eventually issued its decision on October 16, 2024 (Da133 - Da134). While the judge rejected Plaintiff's request to install a physical lock that could be utilized to prevent access to Defendant's terrace, she permanently enjoined Defendant from "interfering with or preventing [Plaintiff's] accessing and utilizing [Defendant's terrace] . . . at the [Condominium] . . . as may be necessary in the sole determination of [Plaintiff's] contractors or professionals for purposes of performing repairs to the facade and other common elements of the Condominium . . . during

[2]T = transcript of September 26, 2024.

work hours, Monday to Friday, between 8AM and 5PM." (Da134).[3]

In light of its ruling, on or around October 22, 2024 the Chancery Court entered an administrative Order deeming the matter "no longer an active case" and noting that the October 16, 2024 Order "disposes of all claims." (Da135).

This appeal followed.

STATEMENT OF FACTS

Plaintiff is a duly organized not-for-profit corporation existing under the laws of the State of New Jersey. Pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1, et seq., and Plaintiff's Certificate of Incorporation, Master Deed (§2.03, §5.01, and §8.02) and By-Laws (§5.11(A)), Plaintiff is authorized and empowered to administer the affairs of the Condominium and to maintain, repair and replace the Common Elements and other property controlled by Plaintiff, which include the exterior facades and related elements of the Condominium building (Da1 - Da2; Da18; Da23; Da33 - Da34; Da71 - Da72).

Defendant is the owner of Unit 613 at the Condominium, and as such is a member of the Association subject to all provisions of its Master Deed, By-Laws, and Rules and Regulations (Da2).

---

[3]Defendant's characterization of the Chancery judge's Order as "a three year injunction"is woefully misleading and inaccurate (Db15; Db20; Db21). The lower court's ruling does not bar Defendant from accessing the Terrace at all times; rather he is only prohibited from doing so "during work hours, Monday to Friday, between 8AM and 5PM." (Da134). As explained, infra, this ruling balances the interests of the parties, is consistent with their respective rights and obligations under the applicable governing documents, and is an appropriate exercise of the Chancery judge's equitable powers.

As part of its duties to maintain and repair the common elements of the Condominium, Plaintiff has recently commenced an extensive program of repairs to the exterior facades and associated elements of the Condominium (the "Facade Project"). The Facade Project is being performed at the directive of the Jersey City Division of the Construction Code Official in order to comply with the newly-adopted Structural and Facade Ordinance, which mandates routine structural and facade inspections and any repairs or modifications necessary to ensure the long-term safety of the Condominium. See Jersey City Ord. 21-054 codified in the Code of Ordinances of Jersey City, New Jersey, §254-45(F) and (G). The Facade Project is urgent and vital to resolve extensive, active water infiltration issues affecting numerous residents of the Condominium, and to address both structural and aesthetic issues with the building exterior. In this regard, Plaintiff is working with its contractors and the Facade and Structural Inspector for Jersey City to guarantee the safety of the residents, employees and guests of the Condominium (Da2 - Da3).

The work constituting the Facade Project primarily includes repairing cracks, reinforcing structural angles and corners damaged by water intrusion over time, waterproofing window heads, repointing bricks and terra cotta, and repairing coping stone, cove joints and other building elements. The work is being primarily performed by Plaintiff's contractor Structural Preservation Systems, LLC ("Structural"), and requires the use of scaffolding and related construction equipment. The project is expected to take approximately three years to complete, and to cost between $30,000,000 and $40,000,000 (Da3).

In order to perform the Facade Project, Structural requires use of the terrace adjacent to Defendant's Unit at the Condominium (the "Terrace"), which is a necessary point of transit for workers and equipment (Da95). Moreover, unit owners living above Defendant have been experiencing leaks and mold buildup over time, and these problems cannot be addressed without Structural's continued presence on the Terrace. Specifically, Structural must place a protective covering on the Terrace to prevent damage to property in the area, and must actively restrict access to the Terrace so that no person – including Defendant – is injured from anything that may fall onto the Terrace as the facade work proceeds above. Structural has advised Plaintiff that the Terrace will be in use for the duration of the Facade Repair Project (Da3 - Da4).

Plaintiff's governing documents unequivocally establish its right to both use and restrict access to the Terrace for purposes of the Facade Project. Plaintiff's Master Deed (§5.02, §6.03) and makes clear that terraces at the Condominium are Limited Common Elements that remain under the control of the Association and are owned collectively by all members of the Association (Da4; Da24; Da26). In addition, Plaintiff's Master Deed (§8.04) and By-Laws (§5.11(H)) explicitly confirm that it has the irrevocable right to access any Unit when it is necessary or in connection with the maintenance or repair of any common elements (Da4; Da34; Da74). The Master Deed (§6.09) also confirms that Defendant must comply with all "laws, statutes, rules and regulations, resolutions, ordinances, or other judicial,

legislative of executive 'law' of governmental authorities having jurisdiction over the Condominium" (Da4; Da27).

Accordingly, Plaintiff and its management team have communicated with Defendant through written notices, meetings and negotiations to explain the necessity of Structural's using the Terrace, and the need to prevent access to the Terrace in order to protect the safety of Defendant, other residents and guests, and employees of the contractor while the work is being performed. Plaintiff has also assured Defendant that it is prepared to make arrangements to make sure that the various plants that Defendant currently maintains on the Terrace will be watered during the Facade Project. However, Defendant has simply refused to cooperate, and has instead actively and intentionally obstructed the performance of the Facade Project by repeatedly ignoring the Association's attempts to communicate, threatening and harassing Condominium staff and management, and even screaming and intimidating Structural employees who were attempting to place a barrier on the Terrace door in order to ensure the safety of Defendant and others (Da4 - Da5).

Defendant has thereby unlawfully interfered with Plaintiff's performance of its obligations to repair and maintain the common elements, and is preventing Plaintiff from complying with the specific directives of City construction officials and New Jersey law (Da5).

Defendant's actions not only jeopardize his own safety but also actively threaten the safety of the contractor's employees and other unit owners who will continue to suffer ongoing water infiltration until the Facade Project is completed.

Defendant's conduct has intentionally and unlawfully interfered with Plaintiff's performance of its obligations under its governing documents and New Jersey law, necessitating the injunction issued by the Chancery Court (Da5 - Da6).

STANDARD OF REVIEW

The standard of review of an order granting injunctive relief is abuse of discretion. N. Bergen Mun. Utils. Auth. v. I.B.T.C.W.H.A. Local 125, 474 N.J.Super. 583, 590 (App. Div. 2023); Rinaldo v. RLR Investment, LLC, 387 N.J.Super. 387, 395 (App. Div. 2006). This is a narrow inquiry that requires consideration of the lower court's explanation as well as the legal grounds on which the decision is based. An abuse of discretion has occurred when a decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis". Flagg v. Essex Cnty Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigration and Naturalization Services, 779 F.2d 1260, 1265 (7th Cir. 1985); see also Customers Bank v. Reitnour Inv. Props., LP, 453 N.J.Super. 338, 348 (App. Div. 2018). When examining a trial court's exercise of discretionary authority, a reviewing court should reverse "only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

ARGUMENT

POINT I

THE CHANCERY COURT JUDGE'S FACTUAL CONCLUSIONS WERE REASONABLY SUPPORTED BY THE RECORD.

Defendant's assertion that "the chancery judge's conclusions lack the evidence required to support them" is demonstrably untrue, and provides no basis on which to disturb the lower court's ruling (Db14).[4]

This Court may not overturn the trial court's factual findings unless it concludes that they are "manifestly unsupported by the reasonably credible evidence in the record." Balducci v. Cige, 240 N.J. 574, 595 (2020)(internal citations omitted). Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review; an appellate court should not disturb the factual findings and legal conclusions of the trial judge' unless it is convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice. Greipenberg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). In that context, an appellate court therefore considers whether, on the contrary, there is substantial evidence in support of the trial judge's findings and conclusions. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011).

This is indisputably the case here, as the evidence presented by Plaintiff provides more than the requisite factual support for the lower court's decision. Specifically,

---

[4]Db = Defendant's Amended Brief filed March 7, 2025.

the record shows that:

(1) The Facade Project has been mandated by Jersey City officials and is urgently necessary to resolve extensive, active water infiltration affecting numerous residents at the Condominium, and to address structural and aesthetic issues with the building exterior (Da2);

(2) In order to perform the Facade Project, Plaintiff's contractor Structural requires the use of the Terrace (Da3);

(3) Unit owners living above Defendant have been experiencing leaks and mold buildup over time that cannot be addressed without Structural's continued presence on the Terrace for reasons including placing a protective covering on the Terrace to prevent damage to property in the area (Da3);

(4) Plaintiff and Structural must actively restrict access to the Terrace so that no person (including, but not limited to, Defendant) is injured by anything that may fall onto the Terrace as the facade work proceeds above (Da3 - Da4);

(5) Structural has advised Plaintiff that the Terrace will be in use for the duration of the Facade Project (Da4);

(6) Whether the Terrace is deemed to be part of Defendant' Unit or a Limited Common Element, the Association's governing documents authorize the Association to enter the Terrace for these purposes (Da4);

(7) Defendant has simply refused to cooperate, and has instead actively and

intentionally obstructed the performance of the Facade Project by repeatedly ignoring the Association's attempts to communicate, threatening and harassing Condominium staff and management, and even screaming at and intimidating Structural employees who were attempting to place a barrier on the Terrace door in order to ensure the safety of Defendant and others (Da5);

(8) Defendant has thereby unlawfully interfered with the Association's performance of its obligations to repair and maintain the common elements, and is preventing the Association from complying with the specific directives of City construction officials and New Jersey law (Da6);

(9) Defendant's actions not only jeopardize his own safety but also actively threaten the safety of the contractor's employees and other Unit owners who will continue to suffer ongoing water infiltration until the Facade Project is completed (Da5).

Defendant attempts to sidestep this inconvenient reality by arguing disingenuously that the lower court's factual findings should be set aside in their entirety because Plaintiff did not provide any certification from its contractor (Db13). However, no such certification was required, as the lower court considered and relied upon the written testimony of Plaintiff by way of the President of its Board of Trustees (who verified Plaintiff's Complaint) (Da8). Defendant not only failed to challenge the sufficiency of this evidence before the Chancery judge, but also can point to nothing in the record on appeal that even suggests that the lower court could

not reasonably credit Plaintiff's sworn representations.

Accordingly, the Chancery judge's factual findings were not "manifestly unsupported" by the evidence, and provide no grounds for vacating her ruling.

POINT II

THE CHANCERY COURT DID NOT ABUSE ITS DISCRETION BY OPTING NOT TO CONDUCT AN EVIDENTIARY HEARING.

Defendant's contention that the trial court's decision should be vacated because it opted not to hold an evidentiary hearing is incorrect. Most importantly, despite having had multiple opportunities to do so, and with full knowledge that the Chancery Court would be considering Plaintiff's application for permanent injunctive relief, Defendant neither requested any hearing nor ever raised the question with the Chancery judge. Accordingly, Defendant not only waived any right to a hearing that he may otherwise have asserted, but also forfeited his ability even to raise the issue on this appeal.

Moreover, even if the lower court's decision not to conduct an evidentiary hearing could be deemed at all erroneous, there would remain no reason to reverse the Chancery judge's ruling because there were no material factual issues in dispute that required any hearing to resolve.

A. Defendant Waived Any Right to An Evidentiary Hearing.

It is indisputable that Defendant acquiesced in the Chancery judge's decision not to conduct an evidentiary hearing in this matter and consented to its disposition in a summary manner.

First, the Chancery Court's August 15, 2024 Order to Show Cause made explicitly clear that Plaintiff was seeking both preliminary and permanent injunctive relief on the scheduled return date (Pa1 - Pa6).

Moreover, the Order to Show Cause further advised Defendant in paragraph 9 that while it was the Court's original intention to conduct argument but not hear testimony on the return date, it also expressly indicated that could be modified should the Court or the parties were to advise otherwise up to three days before the return date (Pa5).

And upon hearing argument on the return date, the Chancery Judge explained in no uncertain terms that she intended to promptly "sign an order with [her] decision and [that] there [would] be a statement or reasons that should satisfy everyone." (T23-14).

Notwithstanding this notice, Defendant – who as an attorney knew full well the consequences of his remaining silent on the question – declined to request any evidentiary hearing at any time before, during, or after the Chancery Court heard Plaintiff's application. Nor did Defendant raise any objection or ask the lower court to reconsider its decision in the nearly three weeks between the judge's ruling and her order declaring the matter inactive and concluded.

Accordingly, Defendant cannot now claim that it was error for the Chancery Court not to conduct a hearing when he unequivocally waived his right to seek one.

B. No Evidentiary Hearing Was Required Because There Are No Disputed Issues of Material Facts.

Defendant on this appeal identifies two alleged disputed factual questions that he submits necessitated an evidentiary hearing in this matter. First, he claims that a hearing was required to resolve whether his Terrace was a "Limited Common Element" or part of his unit pursuant to Plaintiff Association's governing documents (Db16 - Db20). Second, he asserts that a hearing was necessary to determine whether his actions interfered with the Facade Project (Db17; Db22 - DB23). Defendant is wrong on both counts.

As an initial matter, the legal status of Defendant's Terrace is not a factual question. Rather it is a question of law reserved for the trial judge that would not have been determined at any evidentiary hearing in any event. See Belmont Condominium Association, Inc. v. Geibel, 432 N.J.Super. 52, 86 (App. Div. 2013); Highpoint at Lakewood Condominium Association, Inc. v. Township of Lakewood, 442 N.J.Super. 123, 133 (App. Div. 2015).

Furthermore, the record makes crystal clear that the legal status of Defendant's Terrace (as the Chancery judge noted in her Opinion and Order) is "irrelevant" (Da134). Plaintiff's governing documents confirm that it is legally permitted to access and use the Terrace for purposes of performing the Facade Project, and may also physically restrict access to the Terrace while the work is proceeding.

Section 5.02 of Plaintiff's Master Deed states explicitly that terraces at the Condominium are Limited Common Elements (Da24). Plaintiff contends that this

provision settles any question regarding the legal status of the Terrace, which Plaintiff is thus entitled to access and secure for purposes of maintenance and repair of the common elements pursuant to sections 8.04 of Plaintiff's Master Deed and section 5.11(H) of Plaintiff's By-Laws (Da34; Da74) .

And while Plaintiff's Master Deed somewhat-confusingly also states in section 4.01(B)(7) that "[a]ny . . . terraces that directly serve no more than one Unit" are considered part of the Unit and therefore are the property of the associated owner (Da23), there was no need for the Chancery judge to resolve this arguable ambiguity on Plaintiff's application for injunctive relief: even if the Terrace were deemed to be part of Defendant's unit, the Association's Master Deed (§§8.04 and 9.04) and By-Laws (§5.11(H)) provide that Plaintiff enjoys the irrevocable right to enter any unit when it is necessary for purposes of making repairs to the common elements, as is the case here (Da34; Da37; Da74).

Finally, no hearing was necessary to confirm the details of Defendant's conduct with respect to the Facade Project. Defendant had ample opportunity to (and did) present all evidence he believed relevant to this question – including not only his written submission but statements under oath at argument on the return date (T3-15).[5] The Chancery judge considered all of Defendant's evidence in rendering her decision, which as explained above was based on reasonable factual conclusions from the record (many of which Defendant has never disputed) and is therefore binding on this

[5] In fact, if any party was prejudiced it was Plaintiff, which did not have any opportunity to cross-examine Defendant's statements under oath at argument.

appeal. See Gnall v. Gnall, 222 N.J. 414, 428 (2015); see also Point I, supra.

There was nothing "manifestly unjust" in the Chancery Court Judge's exercising her discretion by determining that no hearing was necessary for her to sufficiently evaluate and resolve the factual and legal issues before her. See Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011).

Under these circumstances, the Chancery judge did not abuse her discretion by proceeding as she did, and this Court should defer to her determination. See Krause v. Dor, 2016 WL 6994330 at *4 (App. Div. November 30, 2016) ("We defer to the motion judge's determination as to whether to schedule a plenary hearing"); see also Concerned Citizens of Borough of Wildwood Crest v. Pantalone, 185 N.J.Super. 37, 48 (1982) (affirming lower court's resolving order to show cause summarily and finding no prejudice to appellant where "the parties had ample opportunity to be heard on the merits" and "it was not suggested at oral argument . . . that an evidential hearing was required to establish any facts").[6]

---

[6]Defendant's suggestion that he is entitled to a hearing as matter of law is not accurate (Db15 - Db16). None of the decisions he relies upon stands for that proposition, and all of that authority is readily distinguishable from the case at hand: Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387 (App. Div. 2006) turned on contested facts that could only be determined after trial; Options v. Lawson, 287 N.J. Super. 209 (App. Div. 1996) was an abortion-related case of "extreme gravity" because it weighed the propriety of "imposing injunctions against expressive conduct" (id. at 218); and Paternoster v. Shuster, 296 N.J. Super. 544 (1997) was remanded to the motion judge for a hearing because he failed to make any attempt to balance the relevant legal factors or to make specific factual findings in violation of Rule 4:52-4.

C. Any Error Arising From the Chancery Court's Opting Not To Conduct An Evidentiary Hearing Was Harmless.

Rule 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." New Jersey appellate courts should generally decline to consider issues – such as Defendant's claim to have been entitled to an evidentiary hearing as a matter of law – that were not raised below when the opportunity for presentation was available. Generally, unless an issue (even a constitutional issue) goes to the jurisdiction of the trial court or concerns matters of substantial public interest, the appellate court will ordinarily not consider it. J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021); State v. Jones, 232 N.J. 308, 321 (2018); State v. Lawless, 214 N.J. 594, 605 n.2 (2013); State v. Robinson, 200 N.J. 1, 20-22 (2009).[7] The only exception to this general rule is where the appellate court determines that the question at hand constituted "plain error" under Rule 2:10-2, i.e. "of such a nature as to have been clearly capable of producing an unjust result."

Relief under the plain error rule in civil cases is discretionary and "should be sparingly employed." Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999) (quoting

---

[7] See also Savage-Keough v. John Keough, 373 N.J. Super. 198, 209 (App. Div. 2004) ("Unless the question on appeal goes to the trial court's jurisdiction or the matter is of great public interest, issues not raised before the trial court are not considered on appeal."); North Haledon Fire Co. v. Borough of North Haledon, 425 N.J. Super. 615, 631 (App. Div. 2012) ("An issue not raised below will not be considered on appeal.").

Ford v. Reichert, 23 N.J. 429, 435 (1957). The Supreme Court has noted that even in a criminal case plain error review "is a 'high bar,' requiring reversal only where the possibility of an injustice is 'real' and 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" State v. Alessi, 240 N.J. 501, 527 (2020) (quoting State v. Santamaria, 236 N.J. 390, 404 (2019) and State v. Macon, 57 N.J. 325, 336 (1971)).

Under this black letter law, even if this Court were somehow to conclude that the Chancery Court's management of this case constituted an abuse of discretion, that error was harmless because there were no material factual disputes that required any evidentiary hearing to resolve. As a result, any failure to conduct such a hearing does not come close to constituting plain error reviewable by this Court.

POINT III

THE CHANCERY COURT'S WRITTEN OPINION AND RULING WERE LEGALLY SOUND.

Defendant's suggestion that the Chancery judge's ruling was somehow legally deficient or incomplete is incorrect. Rule 4:52-4 requires simply that "[e]very restraining order shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail . . . the act or acts sought to be restrained . . . " The permanent injunction issued in the Chancery Court tracks precisely these requirements (Da133 - Da134).

While the Chancery Court Judge did not expressly mention all of the factors

identified in Paternoster v. Shuster, 296 N.J. Super. 544 (App. Div. 1997)[8] (and mistakenly referenced Crowe instead of Paternoster), Plaintiff nevertheless respectfully submits that to set aside her decision on that grounds would in these particular circumstances elevate form over substance and manifest an unjust, impractical and inequitable outcome. Notwithstanding Defendant's naked assertion to the contrary (Db22), Judge Costello in her opinion expressly addressed the core elements of Paternoster by evaluating the interests that Plaintiff sought to protect, balancing the parties' respective hardships (and finding that Plaintiff had established irreparable harm), describing Plaintiff's legal right to an injunction, and confirming the necessity and propriety of injunctive relief under the circumstances (Da133 - Da134). Her conclusions are overwhelmingly supported by the factual record, and Defendant has offered no plausible reason to set them aside. This Court should decline to do so.

---

[8]Those nonexclusive factors include: (1) the character of the interest to be protected; (2) the relative adequacy of the injunction to the plaintiff as compared with other remedies; (3) the unreasonable delay in bringing suit; (4) any related misconduct by plaintiff; (5) the comparison of hardship to the plaintiff if relief is denied, and hardship to defendant if relief is granted; (6) the interests of others, including the public; and (7) the practicality of framing the order or judgment. Paternoster v. Shuster, 296 N.J.Super. at 556.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court affirm the ruling of the Chancery Court in its entirety.

Respectfully submitted,

BUCKALEW FRIZZELL & CREVINA LLP
Attorneys for Plaintiff

By: *John R. Middleton, Jr.*
John R. Middleton, Jr.

DATED: April 9, 2025

Superior Court of New Jersey
Appellate Division
Docket No. A-000965-24

RIALTO-CAPITAL CONDOMINIUM ASSOCIATION, INC.,

PLAINTIFF-RESPONDENT,

v. CIVIL ACTION

PETER COATES,

DEFENDANT-APPELLANT.

On appeal from a final judgment
entered in the Superior Court
of New Jersey, Chancery Division,
Hudson County, HUD-C-113-24
Mary K. Costello, P.J.Ch.

REPLY BRIEF

Hegge & Confusione, LLC
309 Fellowship Road, Suite 200
Mount Laurel, NJ 08054
Mailing address: P.O. Box 366, Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com

Michael Confusione (Atty I.D. No. 049501995)
Of Counsel and on the Brief

BRIEF FILED ON APRIL 16, 2025

Table of Contents

Table of Authorities

ARGUMENT

The Chancery Judge erred by issuing a permanent injunction without making the necessary findings of fact supported by sufficient evidence, and by failing to conduct the evidentiary hearing required to properly resolve the disputed issues of material fact upon which the plaintiff's claimed legal right to the permanent injunction depends (A133).

The respondent's recitation of the standard of review overlooks that legal mistakes by the lower court are always reviewed *de novo*, Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019). The primary basis on which the appellant seeks relief here is the chancery court's legal error in issuing a three-year permanent injunction against the appellant without conducting an evidentiary hearing, followed by findings of fact and conclusions of law.

Even accepting the facts asserted by the plaintiff as true and momentarily overlooking the complete absence of affidavits from the contractor or its workers who claim that Mr. Coates is "interfering" with their work, Mr. Coates contested the material facts presented by the plaintiff. Coates asserted that the terrace is his property, not the plaintiff's or that of the condominium owners in general, and he stated that he had not interfered in any way with the work the HOA's contractors were performing. Coates' submissions required the chancery judge to hold an evidentiary hearing and then make findings of fact regarding those significant

contested issues before determining whether it was legally and equitably warranted to grant the plaintiff's request for the three-year permanent injunction.

The chancery judge herself recognized that the plaintiff's material contentions were only "allegations" at the time of the oral argument below, stating, "There have been several attempts *reportedly* by the plaintiff to communicate with Mr. Coates about the need for using his terrace and *it is alleged*, *although I don't see this to be true in the papers but I'll certainly listen to Mr. Middleton's presentation*. *It is alleged that* Mr. Coates refuses to cooperate and has even gone so far as to intentionally obstruct the performance of the work. *I will leave Mr. Middleton to his argument. But, I want to acknowledge Mr. Coates' position that I gathered from his three submissions*." 1T5-6 (emphasis added). Failing to conduct an evidentiary hearing to evaluate the evidence and establish the facts was reversible error.

To avoid the chancery judge's error, the plaintiff argues in its Opposition Brief here that the *pro se* Mr. Coates "waived" his right to an evidentiary hearing. It was not Mr. Coates' burden to demand one. This was the plaintiff's lawsuit; the plaintiff demanded that the court issue a three-year injunction against Mr. Coates -- a substantial impact on his private property rights. The evidentiary hearing was required to be held unless the parties' submissions showed there were no factual

disputes, which in this case they did not (as detailed in the Appellant's Brief and noted again above).

Nothing shows that Mr. Coates agreed that the judge could rule on the plaintiff's demand for a permanent (not merely preliminary) injunction without an evidentiary hearing. The proceeding consisted of only a legal argument by counsel for the plaintiff, the party with the burden, and Mr. Coates in opposition (1T3:18), with the judge noting she would "hear the argument. " The transcript shows that the judge closed arguments before either party could address anything about an evidentiary hearing. While Mr. Coates was still presenting his position, the judge interrupted and said, "I really have to conclude this. Time does not permit me to read my decision into the record. I will sign an order with my decision and there will be a statement of reasons attached that should satisfy everyone. Thank you for your presentations. But, I do have to conclude this. We are off the record." 1T23:10-20.

The Respondent also argues (Opp. Brief at 17) that failing to hold an evidentiary hearing is not reversible error since it would have made no difference. It certainly would have. If the judge had reviewed the evidence and found that Coates owns the terrace, that would impact the Association's claim of a legal right to the injunctive relief it demands (as detailed in the Appellant's Brief, at pages 17-21). At the very least, finding that Mr. Coates owns the terrace would inform the

equitable consideration of whether the chancery court should issue an injunction that limits his use of his own property. Moreover, the judge said the Association established irreparable harm because the contractors "refused to continue their work without an order preventing the defendant's interference." Mr. Coates vehemently denied having interfered with their work in any manner (and there was no affidavit from the contractor anyway, as noted); resolving this contested issue also would have impacted the judge's decision on whether the plaintiff had established its right to the permanent injunction it was demanding (and the length of it as well).

Even setting aside the judge's error in failing to hold the evidentiary hearing, the plaintiff did not provide sufficient evidence to support the findings required for the three-year permanent injunction. The plaintiff now argues that its Complaint, verified by the HOA President, was adequate to support the permanent injunction. However, the Complaint was based on an unidentified individual accusing Mr. Coates of yelling and taking other actions that "interfered with" the contractors' work. Moreover, the Complaint was premised on Mr. Coates' alleged failure to cooperate with the HOA and unspecified events on unknown dates involving unknown entities or persons. The plaintiff uses the term "interference" as an accusation against Coates without defining how anything Coates said or did had, in fact, interfered with the contractors' work. The HOA and its counsel loaded the

Complaint with a plethora of accusations, not a single one noting the time, date, or persons involved in the claimed acts of interference.

Most importantly, as stressed in the Appellant's Brief, the plaintiff did not present a single affidavit or evidence of any kind from the contractor or its workers that affirmed the claims the HOA made and upon which its demand hinged. As Mr. Coates told the judge during the argument, "who is it that says that I in any way obstructed?" 1T20:10-15. The only affirmation of any sort came from the HOA President, and he could not confirm any of the claimed facts because he did not witness the alleged yelling, or any other actions attributed to Mr. Coates. He also could not explain what specific work of the contractors was interfered with by those actions or words, or on what dates and times the interference occurred, etc. All the plaintiff presented was a complaint verified by a person with no first-hand knowledge of the alleged facts, and legal argument from its counsel.[1] That is

[1] Plaintiff's counsel also made misrepresentations to the chancery judge, Mr. Coates notes. Counsel told the judge that Mr. Coates "talked with the Association and as I understand it agreed almost in principle to the proposal that I made in my reply brief but then when it was presented to Mr. Coates he disappeared and reneged on what he said that he was willing to do." 1T10-11. Mr. Coates never "disappeared." To the contrary, the plaintiff's counsel communicated multiple times by letter and telephone with Mr. Coates' lawyer (John Cardile, Esquire) during August 2024 to try to resolve the issue. Plaintiff's counsel did not advise the chancery judge of those communications and instead claimed that Mr. Coates had "disappeared."

insufficient evidence to uphold a three-year permanent injunction against a condominium unit owner limiting his access to and use of his property.

Conclusion

The Court should vacate the Chancery Court's October 16, 2024 Order granting permanent injunctive relief against the defendant.

Respectfully submitted,

/s/ Michael Confusione
Hegge & Confusione, LLC
Counsel for Appellant

Dated: April 16, 2025