

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

CASE NO.: 2025 CA 000524

FLAGLER SQUARE-JAX, INC.,

Plaintiff,



vs.

RODERICK JAMES PALMER, TRUSTEE OF  
THE 2051 MOODY BLVD. LAND TRUST  
AGREEMENT DATED FEBRUARY 7, 2025,

Defendant.

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SANDRA C. UPCHURCH

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DATE TAKEN: January 14, 2026

TIME: 2:31 PM to 3:28 PM

PLACE: Kim C. Hammond Justice Center  
1769 East Moody Boulevard  
Bunnell, Florida

REPORTED BY: MELISSA SCHROEDER, RPR  
Court Reporter and Notary Public

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APPEARANCES:

On Behalf of the Plaintiff:  
FRANK, WEINBERG & BLACK, P.L.  
BY: DAVID W. BLACK, ESQUIRE  
BY: LEANNE B. WAGNER, ESQUIRE  
7805 Southwest 6th Court  
Plantation, Florida 33324  
(954) 474-8000  
dblack@fwblaw.net  
lwagner@fwblaw.net

On Behalf of the Defendant:  
LIBERTY COUNSEL  
BY: AVERY B. HILL, ESQUIRE  
BY: HORATIO MIHET, ESQUIRE  
Post Office Box 540774  
Orlando, Florida 32854  
(800) 671-1776  
hillaver94@gmail.com  
hmihet@lc.org

ALSO PRESENT:  
Donald Rosenthal

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CERTIFICATE OF REPORTER

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1 P R O C E E D I N G S

2 THE COURT: All right. Let's go ahead and get  
3 started. This is Case Number 2025-CA-524, in the  
4 matter of Flagler Square-Jax, Inc., versus  
5 Roderick James Palmer. This is a motion for a  
6 temporary injunction. I've read through some of  
7 the paperwork that's been filed in this case -- or  
8 the pleadings that have been filed, and it looks  
9 like this is an issue with a business development  
10 where the allegations are that there is a use of  
11 one of the units that does not comport with --  
12 allegedly does not comport with what the  
13 development's rules or whatever would provide for.

14 That's this case, correct?

15 MR. HILL: Correct, Your Honor.

16 MR. BLACK: Yes, Your Honor.

17 THE COURT: Okay. All right. So let's go  
18 ahead and get started and let's get your  
19 appearances on the record, if we could, please.

20 Counsel for the Petitioner or Plaintiff in  
21 this case?

22 MR. BLACK: Your Honor, good afternoon. I'm  
23 David Black. This is my colleague, Leanne Wagner.  
24 And I'm also here with Donald Rosenthal, who's a  
25 representative of the Plaintiff.

1 THE COURT: Okay. And counsel for the  
2 defendant -- is it an individual defendant,  
3 Roderick Palmer?

4 MR. HILL: Yes, as trustee. And my name is  
5 Avery Hill on behalf of Liberty Counsel,  
6 representing the trustee, Roderick James Palmer.

7 MR. MIHET: And good afternoon, Your Honor.  
8 Horatio Mihet, also for the same party.

9 THE COURT: Okay. How do you spell your last  
10 name?

11 MR. MIHET: M-I-H-E-T.

12 THE COURT: M-I-H-A-T? Mihat. Okay.

13 MR. MIHET: -E-T. E as in elephant.

14 THE COURT: Mihet. Okay. Got it.

15 All right. Let's go ahead and get started.  
16 This is a motion for a temporary injunction  
17 requested by your client, Mr. Black and Ms. Wagner,  
18 correct?

19 MR. BLACK: Yes.

20 THE COURT: Okay. Let's go ahead and get  
21 started. We do have two hours set aside for  
22 today's hearing.

23 MR. BLACK: Do you prefer us to stay here or  
24 go up there?

25 THE COURT: Whatever makes you more

1 comfortable. I gave up on -- I know that I like to  
2 either sit -- I like to do different things. So  
3 you do whatever makes you comfortable.

4 MR. BLACK: I'll start here, and we'll see how  
5 that goes. Thank you.

6 Just one question before I start. Do you want  
7 me to go through the entire motion and the  
8 background or try to focus on -- given that you've  
9 probably read everything --

10 THE COURT: I've read everything, so I'm  
11 prepared.

12 MR. BLACK: Okay.

13 THE COURT: So we just have to decide if what  
14 you say is happening is happening, and if it's a  
15 violation, if it's a problem, if it's a -- you  
16 know, what's going on. So...

17 MR. BLACK: Very well. Thank you. And I did  
18 bring a paper copy just in case of those documents  
19 that we had e-filed with the different exhibits,  
20 besides the pleadings that are referenced, per your  
21 instructions at 2:30 on Monday. So I have copies  
22 of things that I'll refer to. If you want them in  
23 front of you --

24 THE COURT: Okay. Are they in the court file?

25 MR. BLACK: Yes.

1 THE COURT: If they're in the court file, I  
2 don't need copies of anything. If it's case law or  
3 something like that, I might need that up here, but  
4 other than -- if it's in the court file, I try and  
5 rely on the electronic version of things just to  
6 save trees.

7 MR. BLACK: Very well. And thank you.

8 THE COURT: Uh-huh.

9 MR. BLACK: And then I will proceed.

10 THE COURT: And the environment and to prevent  
11 global warming, just saying.

12 MR. BLACK: Your Honor, it's our motion for a  
13 temporary injunction, and there's really possibly  
14 just three things that are really needed to be  
15 focused on here. The issue is, is there a valid  
16 recorded declaration that runs with the land, does  
17 the declaration preclude the use of a place of  
18 public assembly, which includes, by definition, a  
19 church, and is the defendant operating as a church  
20 in violation of the declaration, and if they are,  
21 then we're entitled to an injunction to stop this  
22 use at this commercial property.

23 There's other arguments that I believe I'll  
24 get to that the defendant is going to make  
25 regarding religious freedoms and things of that

1 nature, which have nothing to do with this. This  
2 is not a case about religion; it's a case about  
3 enforcing a declaration at a commercial property.

4 THE COURT: Okay. Let me just ask one basic  
5 question because I didn't see -- hold on one  
6 minute.

7 What I don't know is does the -- do the  
8 defendants agree that this is a church?

9 MR. HILL: That it is a church?

10 THE COURT: Yes.

11 MR. HILL: Yes, Your Honor.

12 THE COURT: Okay. All right. I don't know if  
13 that helps you at all.

14 MR. BLACK: I think it does. It proves the  
15 third point.

16 THE COURT: Okay.

17 MR. BLACK: So this is a commercial property  
18 that has three units. My client owns Unit 2. They  
19 purchased recently Unit 1 in August of '25, and  
20 they'd begun operating as a church there.

21 There exists a recorded declaration, which  
22 applies to the entirety of the property. There's  
23 three different units. And the reason you have a  
24 declaration is because you have different owners.

25 They purchased it from the owners called



1 Young & Pate, purchased Unit 1. We own the other  
2 units. We own the remainder of Flagler Square. So  
3 there's a declaration that controls the entire  
4 shopping center by which all parties are bound, of  
5 which we're one and they are now as well because  
6 they bought Unit Number 1.

7 The declaration provides for a covenant that  
8 runs with the land, which we all know from going  
9 back to law school, that controls, and that  
10 controls regardless of who's in possession, whether  
11 there's a tenant, a subsequent tenant, et cetera.  
12 And the reason you have that is because you have an  
13 integrated use of these commercial properties that  
14 have certain restrictions within it. And it's a  
15 binding document upon everybody, the entire  
16 association. This has been a recorded dec for  
17 four years now, prior to the --

18 THE COURT: For how many years?

19 MR. BLACK: Since January 31st of '22.

20 THE COURT: Okay. I thought you said 40. You  
21 said 4?

22 MR. BLACK: I'm sorry. 4 years.

23 THE COURT: Okay. Okay.

24 MR. BLACK: And in chronology, this  
25 declaration was recorded in 2022. They purchased

1 the property at the end of July, beginning of  
2 August of last year when the declaration was  
3 already in place. Okay. And as I'll get to, they  
4 were not only on constructive knowledge because  
5 it's a recorded declaration, but they're on actual  
6 knowledge of the declaration and the potential  
7 violation before they went ahead and chose to  
8 purchase the property.

9 Let me define for you what the declaration  
10 says. One of the tenants of my client and the  
11 property, we own Unit 2, is Dollar Tree Stores, a  
12 national tenant. And as you're probably aware from  
13 other cases, national tenants are very particular  
14 in what they will allow or not allow when they  
15 lease property in shopping centers from commercial  
16 landlords. They're very concerned with things such  
17 as visibility, parking, other construction,  
18 co-tenancies, other operations. Those are things  
19 that are found within almost every national  
20 commercial landlord/tenant lease. That applies in  
21 this particular case.

22 So in the declaration, we cited it  
23 particularly, Section 10.12 of the declaration says  
24 "Unit 2, Dollar Tree Lease," my client's lease with  
25 Dollar Tree, it says "So long as Unit 2 operates as

1 a Dollar Tree Store, all other unit owners shall  
2 not, without first obtaining the unit owner to  
3 written consent, permit any other unit owner to  
4 operate or lease any portion of any other unit  
5 within the condominium as follows," and it has a  
6 list of restrictions, which specifically refers to  
7 Exhibit 9, which comes directly from the lease  
8 agreement.

9 So my client's lease with Dollar Tree has a  
10 list of specific provisions that are not allowed  
11 within the shopping center. That list of  
12 restrictions is incorporated explicitly by  
13 attachment, Exhibit 9 to the dec, into the  
14 declaration.

15 Number 19 of that list is there cannot be a  
16 banquet hall, auditorium, or other place of public  
17 assembly. That's a specific, explicit preclusion.  
18 And by example of other things that cannot be there  
19 based upon my client's lease with Dollar Tree would  
20 be a flea market, a bar, a carnival and amusement  
21 park, a facility for the sale of used vehicles, a  
22 skating rink, a theater of any kind. There's all  
23 these different uses that Dollar Tree would not  
24 have leased the property from my client if they  
25 were allowed. So those uses that are precluded,

1 specifically prohibited are incorporated into the  
2 declaration. And it's a covenant that runs with  
3 the land.

4 So then the next question is: Is the church a  
5 place of public assembly? Well, by all common  
6 sense and by definition, it is a place of public  
7 assembly. And, in fact, the City of Flagler Beach,  
8 in their parking requirements, explicitly  
9 acknowledges that a church is a place of public  
10 assembly. When they give the example of what is  
11 permitted or not permitted in terms of the parking  
12 uses, and it says "places of public assembly, such  
13 as a church." So a church in the City of Flagler  
14 Beach by its own definition is a place of public  
15 assembly.

16 So those are really the three elements: Is  
17 there a declaration, does the declaration preclude  
18 this use, and is their use actually a use as a  
19 place of public assembly?

20 And as counsel acknowledged to you, they are a  
21 church, which, by the definition in the City of  
22 Flagler Beach and frankly anywhere, is a place of  
23 public assembly. That's really the end of the  
24 story. Those are the only issues in the case.

25 What I want to just point out to the Court is

1 it's not just that they were on knowledge of the  
2 declaration, they were on constructive knowledge --  
3 and I can tell you, for what it's worth, larger  
4 commercial tenants will never enter into a lease  
5 without reading a declaration because it controls  
6 the entirety of the commercial property. Dollar  
7 Tree would not have entered into a lease without  
8 reading the declaration. They did, and the  
9 declaration incorporated this specific use.

10 So they were on constructive knowledge as a  
11 matter of law, but more so, they were on actual  
12 knowledge. They were specifically told before they  
13 ever bought the property that they could not use it  
14 as a church. And the chronology, and I'll just  
15 touch on it briefly, is they bought it from the  
16 prior owner, which was Young & Pate, and the prior  
17 owner allowed them a preoccupancy agreement in  
18 March, March 17th, to allow them to use it before  
19 they ended up buying the property.

20 They went in there five days later, and they  
21 had a fundraising event with 400 people. And the  
22 attorney for the prior owner wrote them a letter  
23 saying, "What made you think you could do this?"  
24 And I did file that. His letter of Attorney  
25 Mark Turner wrote to them saying, you know,

1 "There's a declaration that does this. You're  
2 arguably violating that declaration by doing this."  
3 Well, he had also previously told him in an  
4 e-mail that "I understood you had a public  
5 gathering of approximately 400 people who attended  
6 this fundraising event. As you have been made  
7 fully aware, there exists certain use restrictions  
8 impacting the property, and one of those prohibits  
9 public assembly gathering, which is arguably what  
10 took place this past weekend. On behalf of my  
11 client, this e-mail is to advise the buyer not to  
12 have any further such gatherings."  
13 So it's not just my client that is saying to  
14 this Court and to them that this is an explicit  
15 violation of the declaration; the previous owner  
16 told them that before they ever completed their  
17 purchase of the property at the end of July,  
18 August 1st.  
19 When we found out about that fundraising event  
20 that occurred on March 22nd, we wrote a letter to  
21 the then owner, Young & Pate, and we sent it to  
22 them, asserting that there is a default of the  
23 declaration by Young & Pate even allowing this.  
24 And that was sent to the attorney, Mark Turner, by  
25 myself.

1           On April 11th, two weeks after they held that  
2 fundraising event, Mr. Turner wrote a letter to the  
3 defendant and specifically enclosed my client -- my  
4 letter on behalf of my client, saying, "You can't  
5 do there what you are doing. You held a public  
6 assembly within the property. You haven't even  
7 bought it yet." So we told them that. And we put  
8 them explicitly on notice. And they were put on  
9 notice directly through Mr. Turner sending a copy  
10 of that letter in April, yet they did nothing to  
11 address that. No response by them, no contact by  
12 them, no seeking of permission, no looking at the  
13 dec, perhaps. They didn't do anything. All they  
14 did was they went ahead and they purchased the  
15 property the end of July, beginning of August,  
16 knowing full well that they were in violation of  
17 the declaration.

18           Declaration's explicit. Declaration says you  
19 can't be a place of public assembly. The code of  
20 the City of Flagler Beach says a church is a place  
21 of public assembly. And they went ahead and they  
22 acted, frankly, with impunity in operating as a  
23 church. So that's really the end of the issue.  
24 There is no other real issue that needs to be  
25 addressed.

1           But what I want to make clear is why this  
2 isn't just an esoteric-type argument. It's a  
3 practical, legitimate argument that my client has  
4 concerns with because the reason you have that  
5 provision within the Dollar Tree lease that we're  
6 bound by -- my client has a lease with Dollar Tree.  
7 We have an obligation to enforce their lease and  
8 not allow places of public assembly within the  
9 shopping center because they could -- Dollar Tree  
10 could potentially argue that we're in breach of the  
11 lease by allowing this to occur. Dollar Tree sales  
12 could be reduced, and they could come and seek rent  
13 relief. Dollar Tree could allege you're allowing  
14 this to occur within the shopping center, you have  
15 to go oppose it or we're going to terminate the  
16 lease. These are legitimate ramifications to my  
17 client.

18           So this isn't just some lawsuit where we feel  
19 like doing this and stopping them. There's a  
20 legitimate reason, because we have a contractual  
21 obligation to Dollar Tree. The reason behind why  
22 you don't want public assemblies and tenants don't  
23 want public assemblies in a shopping center is  
24 the -- one impact is parking. It's a huge amount  
25 of parking that gets impacted when the church is in



1 session, and I'm going to get to that in a second.

2 Number two is you have what's called a dark  
3 hole.

4 THE COURT: A dark --

5 MR. BLACK: A dark hole.

6 THE COURT: Hole. Okay.

7 MR. BLACK: So a shopping center, and this is  
8 really common sense, wants foot traffic. It needs  
9 foot traffic. You have anchor tenants such as  
10 Publix and Aldi that brings people to the shopping  
11 center that then feeds the other businesses within  
12 a shopping center: The hair salons, the nail  
13 salons, whatever they may be. If you have a dark  
14 hole, then nobody is coming to the shopping center  
15 other than when they're operating and those people  
16 go there, and in this case, theoretically, just  
17 Sunday mornings. That's not good for a shopping  
18 center. That's not what the Dollar Tree lease  
19 allows for.

20 So you have an impact, a burden on parking,  
21 you have the dark hole, and then you also have --  
22 the effect is, and as I mentioned a moment ago,  
23 that Dollar Tree can theoretically claim there's a  
24 breach of their lease and ultimately seek a remedy  
25 that could include termination. And so that's a

1 potential legitimate problem. And then replacing  
2 Dollar Tree.

3 If you have this church operating there in  
4 violation of the declaration as a place of public  
5 assembly, you have no ability to lease to another  
6 national tenant. You're not going to be able to  
7 lease the Dollar Tree space to a national tenant  
8 when you have this problem where you have another  
9 tenant in another unit -- not a tenant, a unit  
10 owner, violating the declaration.

11 The third aspect to it is, and it's referenced  
12 in our pleadings, only Phase 1 of the shopping  
13 center has been developed. There's -- Phase 2 is  
14 pending. So there's not going to be enough parking  
15 when we proceed with the development of Phase 2,  
16 which is going to require a certain amount of  
17 parking, of which now there's plenty but for them.  
18 And there's not going to be enough when you try to  
19 go build square footage that's going to have a  
20 certain parking requirement to meet with the city,  
21 and we're going to fall below that because of all  
22 this parking that's being devoted to a church.

23 And churches typically require a ratio of six  
24 parking spaces to a thousand. Most retail tenants  
25 require four to a thousand. Medical tends to

1           require more. So because of the amount of parking  
2           spaces that they're going to use up, it's going to  
3           have the practical effect of using up all the  
4           available parking for the shopping center,  
5           including the potential for Phase 2.

6           By example, after they bought it -- and  
7           they've never come to us to seek permission as we  
8           sit here today. But after they bought it, they put  
9           in a permit application to do construction within  
10          their premises, and they asked, you know, what's  
11          the capacity. They have 18,000 square feet.

12          The City of Flagler Beach wrote back to them  
13          and said, "Well, based upon your square footage and  
14          your main auditorium and your other areas, you have  
15          a max capacity of 2,401 people." 2,401 people that  
16          could theoretically be there at any time.

17          THE COURT: How many?

18          MR. BLACK: 2,401. And that's -- that's not  
19          my number. That's in the letter from the City of  
20          Flagler Beach, which we filed as -- as one of those  
21          documents. And I have a copy here if Your Honor  
22          would like to see it.

23          So they have 18,000 square feet. They have a  
24          max capacity of 2,401. I'm just going to segue for  
25          a moment into the parking aspect because it's -- it

1 shows the practical impact, which isn't -- again,  
2 the main reason is all you have to do is look at  
3 the dec, see that there's a preclusion, see that --  
4 they acknowledge they're a church, so they fit  
5 within the public assembly, and they're in  
6 violation by those three factors.

7 But just from a practical standpoint, once  
8 they started conducting services there in October,  
9 November, as part of the declaration, the sworn  
10 statement that was filed by Mr. Gourlay on their  
11 behalf, they said, "Well, you know, we've gone out  
12 there and we put up parking cones and we have  
13 parking attendants out there. We're dealing with  
14 this. Don't worry about it." And I'm  
15 paraphrasing.

16 First of all, they don't own the common area  
17 of the shopping center. That's not theirs to  
18 control. They shouldn't be putting the tenants out  
19 there. They shouldn't be putting cones out there  
20 thinking they're going to control where their  
21 people park because what if it causes an accident?  
22 Who do you think they're going to sue? They're  
23 going to sue the association and they're going to  
24 sue the different unit owners. They shouldn't deal  
25 with anything on their own unilaterally in parking.

1           But what I found was really significant in  
2           their sworn statement -- theirs, not mine -- they  
3           said, "Look, we've measured the number of parking  
4           spaces that are being utilized. There's no problem  
5           here."

6           So they said -- this is theirs -- that when  
7           they did these four services from October 12th of  
8           '25 to November 16 of '25, they counted the  
9           available spaces, and it went from 162 to 159 to  
10          109 to 108.

11          Their argument that they're making to the  
12          Court of the declaration is, "Yeah, whatever  
13          Black's talking about, there's no problem with  
14          parking. Look at all these spaces."

15          Well, the reality is there's 315 spaces in the  
16          entirety of the shopping center. So if I take  
17          their numbers, they're using 207 and 208 parking  
18          spaces right away in their church services. They  
19          gave us four dates. They gave us the number of  
20          available spaces. So if you take the number of  
21          available from the total of 315, you're left with  
22          them or whoever else on a Sunday morning at 9:00 or  
23          10:00 -- it could be, obviously, they're maybe  
24          taking a few spaces -- 207, 208 of the parking  
25          spaces are being utilized by them.

1           So this is a real legitimate issue, which  
2           isn't the core reason why you should grant this  
3           motion, but it's the practical effect that has  
4           occurred. This is when they're just getting  
5           started. Their fundraising event before they even  
6           bought the property had 400 people there. I don't  
7           know how many cars they came in. If four people  
8           came in a car, that would be a hundred. If two  
9           people, that would be two hundred cars that came to  
10          the lot. What if people came by themselves?

11          Before they even bought it, they abused the  
12          parking and -- which is the reason why you don't  
13          want a place of public assembly, and now that  
14          they're conducting services there, they're doing it  
15          as well.

16          So there is practical consequences of why we  
17          first filed an action for declaratory relief and  
18          injunctive relief and why we also, in September,  
19          filed a motion for temporary injunction, so that we  
20          didn't sit back and have them go do whatever they  
21          were going to do and then say, "Well, you  
22          sandbagged us. Why did you wait? Why did you wait  
23          while we went and pulled the permit and we did  
24          improvements?"

25          We filed for the injunction right away. Right

1 after they bought the property, we filed a lawsuit  
2 and we filed this motion for injunctive relief to  
3 stop what they've done.

4 What they've done instead is they've just  
5 brazenly gone ahead and done whatever they wanted.  
6 So while my client's relying upon a recorded  
7 declaration that incorporates provisions of a lease  
8 with Dollar Tree that says what you cannot do, what  
9 nobody can do within this shopping center, they're  
10 doing.

11 They didn't come to us to get permission.  
12 They don't have permission. They wouldn't get  
13 permission. They didn't seek declaratory relief.  
14 They didn't in any way try to address this, being  
15 aware in April that we had told them explicitly  
16 that there was a problem with their use as a  
17 church, because they got the letter that we wrote  
18 to the prior owner's attorney that was sent along  
19 to them besides the attorney's e-mail communication  
20 saying, "What are you doing?"

21 So they've just brazenly gone ahead with this,  
22 which is why we're coming to the Court and saying  
23 we satisfied the elements for injunctive relief.  
24 This does need to be stopped.

25 So I'm sitting here and I'm relying upon the

1 law and the fact that they admit and acknowledge  
2 they're a church. There's only three things you  
3 need to decide: Is there a recorded dec, does the  
4 dec preclude a place of public assembly, among  
5 other things, and is a church a place of public  
6 assembly, which it is, including specifically by  
7 the City of Flagler Beach. And as Mr. Hill  
8 acknowledges, they are obviously operating as a  
9 church.

10 So I'll be happy to entertain any questions  
11 you have at this time, Your Honor.

12 THE COURT: Okay. I think I -- I don't think  
13 I have any questions at this time, but let's go  
14 ahead and move over to defense counsel.

15 MR. HILL: Thank you, Your Honor.

16 THE COURT: Uh-huh.

17 MR. HILL: What Plaintiff provided you at the  
18 tail end of their argument were the elements for  
19 declaratory judgment in this case, what would it  
20 mean if a restrictive covenant was violated. But  
21 right now, we're arguing about the extraordinary  
22 remedy of a temporary injunction to shut the doors  
23 of a church before ruling on that complaint.

24 In 2020, the Florida legislature passed  
25 Florida Statute 712.065. This is a statute you can



1 hang your hat on. It's to extinguish any  
2 discriminatory restrictions on property. In this  
3 case, we are dealing with a discriminatory  
4 restriction, one that's religiously discriminatory.

5 Now, Plaintiff, aside from even that statute,  
6 which has made the provision they're referencing  
7 void ab initio, it did not exist before this  
8 proceeding, it doesn't exist now, but even if it  
9 did exist, we're still talking about temporary  
10 injunctive relief. There needs to be some harm  
11 that they're requesting now that needs to be  
12 prevented until we move forward to litigation.

13 THE COURT: What makes it a void ab initio?

14 MR. HILL: So Florida Statute 712.065  
15 extinguishes all discriminatory restrictions in any  
16 property restrictions, including covenants that run  
17 with the land, like in this one.

18 THE COURT: So your allegation is that the way  
19 that it was worded is discriminatory? It's not  
20 discriminatory unless you prove to me that it's  
21 discriminatory. Just saying that a public assembly  
22 can't happen is not in and of itself  
23 discriminatory, correct?

24 MR. HILL: That's correct, ma'am. And there's  
25 a few reasons that this provision is

1 discriminatory.

2 THE COURT: Okay. But, I mean, a bunch of  
3 horseback riders could meet there, talk about their  
4 equestrian endeavors, and that would be as much a  
5 public assembly as any other group meeting there,  
6 right?

7 MR. HILL: That's correct, ma'am. And it  
8 would still be unlawful, because that's not the  
9 only public policy that this particular restriction  
10 violates. It also violates the Condominium Act  
11 itself. That's Florida Statute 718.123. This is a  
12 violation on any categorical prohibitions to  
13 assembly in the common areas of property, like in  
14 this case, which involves parking spaces.

15 Now to switch back briefly, because I do  
16 believe it's dispositive for this motion, we need  
17 to have some current irreparable harm. And the  
18 point that's stated irreparable harm in this case  
19 is speculative parking concerns. I wrote down all  
20 the times he references the possibility of future  
21 harm. That's not what a temporary injunction is  
22 meant to prevent.

23 Is there a current harm that the property is  
24 facing? It certainly isn't parking. We've already  
25 discussed George Gourlay -- Pastor Gourlay's

1 declaration. It has photographs for this Court to  
2 see that there is not parking congestion on the one  
3 day of the week at the one hour they have church  
4 services. In fact, there's plenty of parking. And  
5 the parking being used is an undivided interest  
6 among all the tenants, as is stated in the  
7 declaration provided by the Plaintiff.

8 Thus, Plaintiff is requesting that this Court  
9 enjoin a church from speech, which is unlawful  
10 prior restraint, assembly, and religious services  
11 over an injury that does not yet exist. It's an  
12 injury that would require building out the church  
13 to 2,400 occupants, which is not possible.

14 That's a fire inspector's report of possible  
15 individuals that could fit shoulder to shoulder  
16 inside the building. Despite the fact that the  
17 Plaintiff provided this Court a floor plan with  
18 564 maximum seats, the congregants need to sit on  
19 seats. We can't fit 2,400 congregants in the  
20 building, especially as it's been split up for  
21 child care and day care, et cetera.

22 So these temporary injunctions, the one being  
23 sought by the Plaintiff here, is an extraordinary  
24 remedy. They're reserved for ruling on slam-dunk  
25 cases. If this was a case that needed a temporary

1 injunction, the Plaintiff would have spelled out  
2 all the elements. He wouldn't have just given a  
3 rendition of the elements for temporary injunctive  
4 relief; he would have threaded together the  
5 exhibits provided to you to explain different  
6 elements that are required for declaratory relief  
7 in this case.

8 We're not talking about whether there's a  
9 valid declaration, whether there's a place of  
10 public assembly, or whether the church violated  
11 that restriction. What we're talking about are the  
12 elements for injunctive relief. There needs to be  
13 unequivocal sufficient factual findings that  
14 support each of the four elements for relief, the  
15 first of which is that they're likely to succeed on  
16 the merits.

17 They spent their entire argument to you,  
18 Your Honor, arguing about whether they can succeed  
19 on the merits without referencing any of the other  
20 elements for injunctive relief. To meet those  
21 elements, there needed to be facts that proved  
22 there was a current irreparable harm, that the  
23 public interest needed to have this injunction in  
24 place, and that there was no adequate lawful or  
25 legal remedy that could otherwise support any

1 injuries they may face during the course of this  
2 litigation. And they really did not do that.

3 Now, we talked a lot about the facts as the  
4 Plaintiff wants you to hear them, but there are  
5 some key facts that make it so they can't succeed  
6 on the merits and can't receive temporary  
7 injunctive relief, and I just want to run through  
8 them quickly.

9 First, as the Plaintiff mentioned,  
10 Coastal Family Church, the beneficiary of the trust  
11 in this case that Roderick Palmer represents, has  
12 been holding services in this property for several  
13 months. Despite holding those services there for  
14 one hour one day each week, there have been no  
15 complaints from any tenants about congestive  
16 parking. There is no evidence before this Court  
17 that there have been any threat of any tenant to  
18 violate the lease.

19 Plaintiff here has instead and writes multiple  
20 times to a dispositive nature in this proceeding to  
21 their own detriment that the harms that they fear  
22 are future speculative harms. Temporary injunctive  
23 relief cannot be granted.

24 If our party defaulted on the pleadings for  
25 this TRO and this Court granted one for those

1 speculative harms, it would still be reversible.  
2 There are no current harms in this case.

3 Additionally, the discrimination that we're  
4 referencing when we talk about discriminatory  
5 restrictive covenants, we reference the  
6 Supreme Court's ruling in Village of Arlington  
7 Heights. What this Court's looking for when  
8 interpreting the discriminatory nature of a  
9 covenant is not some overt statement that we hate  
10 churches or churches aren't allowed in our  
11 property.

12 Now, our job has been made a little bit easier  
13 by the fact that, in the pleadings, they literally  
14 do use the statements that churches are black holes  
15 in shopping centers, that a church would be the  
16 worst possible unit -- use of Unit 1, that churches  
17 will negatively impact the entire value of the  
18 shopping center.

19 And Plaintiffs most recent filings changed  
20 "church" to "public assembly," despite the same  
21 statements in the exhibits using "church"  
22 previously, that places of public assemblies are  
23 dark holes in the center of commercial properties,  
24 and that no tenant would lease a condominium that  
25 allowed public assembly, which you can read as

1 "church" from the exhibits that were previously  
2 provided.

3 These subtleties are discrimination. They're  
4 all that's required for this Court to say that  
5 there is discrimination associated with this  
6 covenant. Therefore, it's been rendered void by  
7 Florida law.

8 Further, the Plaintiff contends that Dollar  
9 Tree Stores' property restrictions, the ones at  
10 issue, prohibit religious services, but that's not  
11 what the restriction says. And it's hard to parse  
12 this out because the Plaintiff assumes for this  
13 Court that public assembly means religious services  
14 or that it means church services, but it doesn't.

15 The Plaintiff is the drafter of this  
16 declaration. They stated it themselves. But  
17 public assembly is not defined in the contract. So  
18 now we have to step back to Contract 101. We have  
19 articles in the declaration that say any word  
20 that's undefined should be defined using the  
21 Condominium Act, but public assembly is, again, not  
22 defined there.

23 Public assembly, if it were to mean church  
24 services, would render the restriction unlawful.  
25 So just by contract interpretation, we can't assume

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that public assembly means church services. So where do we turn to for a definition?

Contract referendum requires that we interpret this ambiguous phrase against the drafter in this case, which would allow Coastal Family Church to practice their faith in this center. And we certainly can't interpret the phrase to mean something unlawful. So it cannot mean religious services. Nothing in the declaration says it's religious services.

Instead what the Plaintiff has attached to their complaint is an equation used for calculating parking spaces for churches, which is four seats for every one parking space. Even if we were to do the math in this case using the evidence they provided, 564 seats are currently in the church. That's all that can fit. There's actually many less seats in there, but 564 is the maximum number of seats. We'd only need 141 parking spaces to have this legally in Flagler County under that definition. But that doesn't define the phrase "public assembly." We're talking about two entirely separate matters.

And Dollar Tree Stores' prohibited uses, so far Plaintiff has honed in on just one in a string



1 cite of restrictions. Just public assembly, that's  
2 what they want us to focus on, but that same  
3 restriction restricts a number of other uses of the  
4 property. Dollar Tree does not allow consignment  
5 shops, sports or health clubs, banquet halls, the  
6 sale of used goods, flea markets, as was mentioned,  
7 and they want to focus the property on commercial  
8 retail jobs.

9 So who are the tenants that are currently in  
10 this very small strip mall? There's only a few  
11 tenants. Junque in the Trunk, that's the name of  
12 one of the stores. It's a consignment shop. It  
13 equally violates the restriction, equally violates  
14 the restriction as they presume Coastal Family  
15 Church does. Coastal Family Church, we believe, we  
16 argue doesn't violate the restriction because  
17 public assembly cannot mean religious services, but  
18 in arguendo, there's an equal violation.

19 There's an antique mall where there used to be  
20 a Fitness One, a gym, that violates the  
21 restriction. There's an attorney's office that  
22 would violate the restriction. The anchor tenant  
23 is a tax collector's office for the State of  
24 Florida, not a retail shop in any way. So it would  
25 violate the restriction. And it just so happens

1 that there's a fraternal order of men that meet one  
2 hour a week and talk about their shared values.  
3 They assemble, a Fraternal Order of Police, but  
4 they're allowed to do so because the Fraternal  
5 Order of Police is there holding public assembly,  
6 renting their facility for public assembly and  
7 other individuals, and they, too, violate the  
8 restriction.

9 So given those facts -- ten facts that are  
10 dispositive individually in this case, there is no  
11 argument that could be made that there's a  
12 likelihood of success on these facts for a  
13 temporary injunction for the Plaintiff in this  
14 case.

15 Now, the statutory aspects of this case come  
16 into play, the void ab initio. We already  
17 discussed Florida Statute 712.065. It extinguishes  
18 discriminatory restrictions. But if instead the  
19 Plaintiff argues this is just -- despite all of our  
20 pleadings, we don't mean there's a ban on religious  
21 services; we just mean there's a ban on public  
22 assembly, that's where the Condominium Act kicks  
23 in, because it similarly scrutinizes those same  
24 restrictions against public assembly. So it runs  
25 headlong into another void public policy.

1           And if you turn to tab C, and I certainly  
2           don't expect you to read -- I'll read anything I  
3           reference, but just for the record, in Docket Item  
4           Number 30 in this case, on page 69, Article 22 of  
5           the declaration states "The provisions of this  
6           declaration of condominium shall be liberally  
7           construed to effectuate its purposes of creating a  
8           uniform plan for the operation of a nonresidential  
9           condominium declaration with the laws made and  
10          provided for in the Condominium Act."

11          If there's any argument as to how we should be  
12          defining terms or how the terms should be applied  
13          to tenants, the declaration that the Plaintiff  
14          references subjects itself to the authority of the  
15          Condominium Act, which has its own peaceable  
16          assembly laws, and they ban categorical limitations  
17          on peaceable assembly.

18          Now, under tab A in the binder, again Docket  
19          Item Number 30, on page 4, we can read that the  
20          only harm in this case that's referenced in the  
21          complaint is as follows, this is reading from the  
22          Plaintiff's complaint, "By utilizing Unit 1 as a  
23          place of public assembly, the defendant is  
24          adversely affecting the members of the association  
25          and will be overwhelming the 315 available parking

1 spaces in the plaza due to increased traffic to the  
2 plaza."

3 The only harm referenced in this case is one  
4 regarding the common elements, the parking spaces.  
5 And they ask this Court to enforce an injunction  
6 that prohibits public assembly that impacts those  
7 common elements, but the Condominium Act says they  
8 cannot do that. It's categorically prohibited.  
9 They cannot enforce that regulation.

10 Now, Plaintiff, in his most recent pleadings,  
11 he argues that, in fact, the Condominium Act,  
12 718.123, what it means to tell us is that only  
13 public assembly is protected in the parking lot,  
14 that we're only talking about protections in  
15 condominiums in common elements, not the use of  
16 common elements, but in common elements. That  
17 would lead to absurd results that this Court should  
18 not buy into. It would lead to the fact that the  
19 church could flip its unit into a Christian  
20 bookstore and hold religious services literally in  
21 the parking lot, in the common element and be  
22 perfectly protected. That's the Plaintiff's  
23 argument. But if they decide, use the common  
24 element for parking to allow for that assembly in  
25 the building, the Condominium Act would not protect

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them.

That absurdity is not the intention of the Condominium Act. Reading the language, the use of common elements for public assembly is protected. That would protect the parking in this case. That is the only harm alleged in the complaint.

Now, even if this Court were to say these Florida Statutes, I'm not going to make a ruling regarding the fact that this restriction is void based on public policy, it's clear still that the Plaintiff is truly seeking a prohibition on religious services or an injunction, even more generally, that simply impacts religious service, the religious service of Coastal Family Church. And that would, too, be prohibited as a substantially burden action of the state against Coastal Family Church. It would substantially burden their religious activity.

Now, Florida implemented the Religious Freedom Restoration Act, Florida Statute 760, a number of subsections there, that specifically protect against interfering with religious freedom. Now, state action here, we might say we're talking about private actors, but if this Court were to issue that declaratory judgment here or, in this case,

1 the temporary injunctive relief, you issuing that,  
2 Your Honor, would be a state action. And there's  
3 Supreme Court case law on this that's cited by the  
4 defendant here, Shelley verse Kraemer, the most  
5 famous of those, that says issuing a temporary  
6 injunction or an injunction on any enforcement of a  
7 restrictive covenant from the bench by a judge is  
8 state action enough to be picked up by  
9 constitutional implications and restrictions like  
10 Florida RFRA. And even here, RLUIPA, the Religious  
11 Land Use and Individualized Persons Protection Act  
12 as well, that prohibits religious -- any  
13 interference with land use for religious purposes.

14 Now, absent all these codified protections,  
15 the clearest law in the land from the Supreme Court  
16 down to every DCA in Florida is that you can't  
17 arbitrarily restrict certain uses of property.  
18 Condominium associations cannot choose to enforce  
19 the restrictions against some clients and not  
20 against others. In this case, that's exactly what  
21 we have, a list of individuals who are allowed to  
22 use the condominium or if they only decide to sue  
23 the church. That shows the discrimination. That's  
24 also arbitrary enforcement of that restriction.

25 So that's all likelihood of success on the

1 merits. And I just want to run through these other  
2 three elements briefly. The argument seems to be  
3 with likelihood of success on the merits,  
4 especially since the Plaintiff did not even mention  
5 the other elements that are required for temporary  
6 injunctive relief.

7 But switching to irreparable harm, the  
8 Plaintiff admits its fears or perspective over and  
9 over and over again in the files and in their  
10 argument. That alone is dispositive on its own.

11 As to the adequate remedy of law, if this  
12 Court disagrees with everything we've said up to  
13 this point, there still are adequate remedies that  
14 can solve any problem that could occur from this  
15 point up until we litigate this case to the fullest  
16 extent, and that is there's monetary relief that  
17 can substitute any damages that Plaintiff may face  
18 during this time.

19 Now, in Plaintiff's most recent pleadings,  
20 they say, "Of course, there's no adequate remedy of  
21 law. What else can we do but sue?" That's not  
22 what this element is meant to focus the Court's  
23 attention on. That is an element, the way it's  
24 been described by the Plaintiff, that this Court  
25 should focus on when seeking permanent injunction,

1 but when it comes to temporary injunction, this  
2 Court's only focus is whether money is enough to  
3 cure any harm that can be faced while pending  
4 litigation. And in this case, there is many cases  
5 that cite to the fact that established businesses  
6 that have an established rate of profit, as the  
7 Plaintiff does, we can calculate any damage that  
8 might occur in the meantime if their business is  
9 impacted.

10 Now, they said up here during argument that  
11 there is a possibility that Dollar Tree Stores'  
12 lease could be impacted. Again, future speculative  
13 harm. But if we get into a lease is being broken  
14 as well, that's even easier for this Court to find  
15 monetary relief. If a lease is violated or if a  
16 lease is broken, we literally have a contract we  
17 can use to calculate monetary relief. So there is  
18 an adequate remedy of law in this case as well.

19 And, finally, the most insurmountable element  
20 in this case is public interest. And here,  
21 Mr. Palmer and Coastal Family Church have argued  
22 that the public interest in this case is that  
23 congregants would be impacted if their church was  
24 shut down pending this litigation.

25 There are, as noted, many members of this



1 church that find Coastal Family Church to be their  
2 community, their spiritual home. It's not easy for  
3 Christians to find a place to call home -- call  
4 their spiritual home. And if this church is just  
5 shut down, they can't just take a break from church  
6 until we're done litigating. That's their church  
7 home. Their First Amendment free exercise rights  
8 would be violated, as would Coastal Family  
9 Church's, and so would Mr. Palmer's.

10 There's no evidence in the record that any  
11 public interest other than the church's is even  
12 considered at all in this case. All we have is  
13 that the public interest of the congregants would  
14 be negatively impacted in this case.

15 So to conclude, you can hang your hat on  
16 Florida Statute 712.065. It extinguishes this  
17 discriminatory covenant. It's cut out of the lease  
18 and out of the declaration entirely. It does not  
19 exist. It's discriminatory. We can tell it's  
20 discriminatory from the filings. So it can't be  
21 enforced. The provisions of the Condominium Act  
22 and other Florida law and just contract  
23 interpretation generally, public assembly can't  
24 mean religious services. That would be unlawful.  
25 So we cannot enforce this restrictive covenant.

1           Ultimately, if this case were so clear to  
2 warrant temporary injunctive relief, Plaintiff's  
3 motion would have done more than echo the elements  
4 of temporary injunctive relief in their filing and  
5 there would be evidence to support each element of  
6 temporary injunctive relief. There simply is not.  
7 This Court has no evidence to rule on except for  
8 the declaration, which is void, and the evidence  
9 provided by Defendant in this case.

10           And barring any questions, that's all I have.

11           THE COURT: No, I don't have any.

12           Response to the argument you just heard, sir?

13           MR. BLACK: Yes. Thank you, Your Honor.

14           THE COURT: Specifically, I'd like you to  
15 address the speculative perspective nature of the  
16 alleged harm.

17           MR. BLACK: Well, it's not speculative because  
18 it's real and legitimate because you have the  
19 Dollar Tree lease that's referenced in the  
20 declaration that has a specific preclusion that  
21 they're already violating. There's a direct,  
22 immediate, existing violation of the Dollar Tree  
23 lease by them right now by what they did.

24           And it's not speculative to say that  
25 Dollar Tree may enforce that against us at some

1 point in time. And it's not speculative to say --  
2 you know, he says there's going to be a remedy --  
3 we would have a remedy against the trust. What  
4 remedy are we going to have against this trust that  
5 was created just to own this piece of property?

6 So you have a real issue with respect to  
7 Dollar Tree. You have a real issue with respect to  
8 all the other tenants in the shopping center that  
9 are already in there operating and are subject to  
10 the dec, those tenants which came after the dec was  
11 recorded. And you have a real impact right now on  
12 the planned Phase 2 development, whose parking  
13 ratios are directly impacted by them. So it's not  
14 speculative at all.

15 What he's trying to do, with respect to  
16 Mr. Hill, is divert this Court. I was waiting for  
17 the argument to be: The dec doesn't say what we  
18 say it says, the dec doesn't mean that, the dec has  
19 been misinterpreted, the dec wasn't recorded, the  
20 dec isn't legitimate, something that would say that  
21 we were wrong on those three key elements. What  
22 the dec says, precluding a place of public assembly  
23 and that they were a church.

24 There was no argument made with respect to any  
25 of those core issues. So you get to the issue of

1 they're clearly in violation of the dec by  
2 acknowledgment that they're operating as a church.

3 One of very last things that was said is,  
4 "Well, how do you know that a church is a place of  
5 public assembly?" It's in the City of Flagler  
6 Beach code. I'm going to read to you  
7 Section 3.06.04, the parking requirements.

8 "Off-street parking space requirements: Place of  
9 public assemblies such as auditoriums, churches,  
10 theaters, and recreational facilities, one space  
11 for each four seats."

12 So the City of Flagler Beach, by its  
13 definition, defines a church as a place of public  
14 assembly.

15 The declaration, which refers to the  
16 Dollar Tree lease, specifically says you can't have  
17 a place of public assembly. And it gives other  
18 examples which are similar to in here where it says  
19 you can't have a theater. That's one of the other  
20 restrictions in the Dollar Tree lease that's in the  
21 dec, Number 21, a theater of any kind. They go  
22 hand in hand. Recreational facilities in both.  
23 They go hand in hand.

24 So they're not in any way suggesting to you  
25 that we're wrong that they're not a church. With

1 due respect, I believe they're trying to distract  
2 the Court with citations to statutes that aren't  
3 even applicable, and I want to point those out.  
4 And I did in my response, but I want to be very  
5 clear about this. When they reference -- and I'm  
6 surprised they're arguing this -- 712.065, it  
7 specifically refers to the rights of a natural  
8 person. By law, a trust is not a natural person.  
9 They're here as a trust. So they don't even have  
10 the benefits of discriminatory restrictions on the  
11 day as a natural person. 712.065, which was  
12 recently enacted and has no applicable case law, no  
13 case law at all, applies to natural persons, not a  
14 trust.

15 They refer to the condominium statute. The  
16 condominium statute specifically deals with the  
17 right for public assembly, free speech within the  
18 common elements, the main areas. This is not a  
19 case about the common elements. It's about what  
20 they're operating as within their premises as a  
21 church. The impact is upon the other tenants and  
22 upon the common elements. This is not a case where  
23 the condominium, the board creates a rule that says  
24 people that live in the condominium can't go out  
25 into the common areas or the common rooms and have

1 meetings and assemblies and services and whatever  
2 they want to have in that condominium in those  
3 common areas. That's the explicit language in the  
4 statute.

5 That statute that they cite, and we pointed  
6 this out, only applies to the common areas and the  
7 common elements. That's not what their violation  
8 is. Their violation is within the premises where  
9 they're operating as a church, which is a place of  
10 public assembly.

11 Now, the suggestion that this is at all about  
12 religious discrimination is irrelevant. No place  
13 of public assembly could operate in that Unit 1,  
14 period. That's the preclusion that exists.

15 THE COURT: Is that argument or is that a law,  
16 void ab initio, as they -- as they would like me to  
17 believe?

18 MR. BLACK: No, it's not void ab initio  
19 because the statute they cite doesn't apply. It  
20 applies to natural persons. And in contrast, and  
21 I'm going to get to the distinction because they're  
22 arguing housing cases and I'm going to point that  
23 out in one second, but there's case law that's  
24 cited in our response that enforces commercial  
25 declarations. And there's recent case law, the

1           Pantry, Inc., versus Mijax Manager, LLC, out of the  
2           Fifth DCA from 2020 that talks about how you  
3           enforce a commercial declaration. And there's only  
4           the three elements, and I've already talked about  
5           them: The existence of a covenant that touches and  
6           involves the land, an intention that the covenant  
7           run with the land, and notice of the restriction on  
8           the part of the party against whom enforcement is  
9           sought. Those are the elements. It's right in the  
10          declaration. It's a recorded declaration. They're  
11          on constructive notice and they're on actual  
12          notice. That's out of the Fifth DCA.

13                 There's a famous case called Winn-Dixie Stores  
14          versus Dolgencorp out of the Fourth from 2007 that  
15          also enforces a commercial declaration.

16                 This is not a case about religion and it's not  
17          a case about housing. It's a case about enforcing  
18          a commercial declaration. And I really want to  
19          point out, I'm really surprised they argued -- they  
20          argued the Supreme Court case Shelley versus  
21          Kraemer. That's a housing discrimination case from  
22          1948. Okay. Shelley v. Kraemer came out, and you  
23          can figure out the time when it came out and what  
24          existed in this country, and they said you can't  
25          use -- you can't racially discriminate in housing.

1 Shelley v. Kraemer, 77 years since, has never been  
2 extended to commercial property. And the case that  
3 says it's (inaudible) is the Loren v. Sasser  
4 case --

5 THE COURT: The case that says what? I'm  
6 sorry.

7 MR. BLACK: The Loren v. Sasser case, which we  
8 cited, says the Shelley case has never been  
9 extended beyond housing. So the case they argue  
10 and say, "Well, you have this case out there," it's  
11 a racial discrimination housing case from 1948.

12 That's not what this is. And there's no  
13 applicability of the Shelley case or the progeny  
14 that in any way has ever touched on commercial  
15 matters.

16 So they argue Shelley that's not applicable.  
17 They argue a condominium statute that applies to  
18 the common areas and common elements. That's  
19 another distraction. They argue the 712.065 that  
20 applies to natural persons of which they're not.  
21 All of which is a distraction away from the fact  
22 that there's a declaration that says they can't  
23 operate as a place of public assembly, which they  
24 don't deny that they are.

25 And what I want to just also make a point of



1 is, by the way, when he mentioned that there are  
2 other tenants in there and he mentioned Junque in  
3 the Trunk and the Fraternal Order of Police, both  
4 of those leases predate the declaration. So they  
5 can't be bound by a declaration when they leased  
6 prior to. We pointed that out in our response.

7 THE COURT: So are all of the tenants that are  
8 there arguably in violation of the declaration,  
9 were all of them there prior to the declaration  
10 being put in place, like the gym or the -- there  
11 were several others that he said.

12 MR. BLACK: No. The only one that's in  
13 violation is the church. The ones that --

14 THE COURT: So all of the other tenants that  
15 he mentioned that were violating the current  
16 declaration -- he mentioned a gym. He mentioned an  
17 antique store. He mentioned Junque in the Trunk.  
18 He mentioned a few others. Do all of those leases  
19 predate the declaration?

20 MR. BLACK: Yes. Yes. And the Junque in the  
21 Trunk is a retail consignment store, appropriate  
22 for a shopping center. Its lease predates the  
23 declaration.

24 THE COURT: Okay.

25 MR. BLACK: Same thing with the Fraternal

1 Order of Police, which, by the way, as we point  
2 out, it's a 1200-square-foot space that has bingo  
3 once a week and meetings. 1200 square feet.  
4 That's the equivalent of going to a shopping center  
5 to a nail salon or a hair salon, not 18,000 square  
6 feet.

7 THE COURT: So the Fraternal Order of Police  
8 lease also predates the declaration?

9 MR. BLACK: It does.

10 THE COURT: Okay.

11 MR. BLACK: It does. And they're not going to  
12 dispute that. And I can file a copy of it if the  
13 Court wants it.

14 THE COURT: So you're telling me right now  
15 that any tenant right now who would fall under the  
16 parameters of the current declaration, they all  
17 predate that declaration?

18 MR. BLACK: There is no other violation.

19 THE COURT: Okay.

20 MR. BLACK: The ones that he's referring to  
21 predate it.

22 THE COURT: Okay.

23 MR. BLACK: The only violation is them. And  
24 what he -- he actually made the argument that I  
25 wanted to close with because I thought to myself,

1 he pointed out all the different restrictions that  
2 are in the dec based upon the Dollar Tree lease.  
3 And I can run through some of them again, but it  
4 gives you the example when they talk about a  
5 lingerie bar, a go-go bar, a carnival or an  
6 amusement park, a theater of any kind, a massage  
7 parlor, which excludes like a massage entity, but  
8 the other type of massage parlors that we know  
9 about. All of those things are restrictions in the  
10 declaration per the Dollar Tree lease.

11 Just think hypothetically if this were  
12 reversed. If they already owned their unit and my  
13 client turned around in Unit 2, subject to the dec,  
14 and had open space and leased to those type of  
15 uses. Suppose we ended up leasing to a store that  
16 would sell drug paraphernalia, marijuana, an adult  
17 bookstore. How about a strip club? It's zoned for  
18 that. Dec doesn't allow it, but it's zoned for  
19 that. They would be the first ones running in here  
20 holding up the dec and going "This is a commercial  
21 declaration that says you can't do that. And  
22 you're leasing to a strip joint next door to my  
23 church, and we don't want that in there." They  
24 would be the first ones to stand on this  
25 declaration and say, "This Court needs to enforce

1           it." That's where we are now.

2           Succinctly, just to finish, unless Your Honor  
3           has other questions for me, there's a recorded  
4           declaration. They've brazenly not followed it.  
5           They admit they aren't following it. They're  
6           giving you every excuse in the book as to why they  
7           don't have to follow it.

8           The parking is the result, the sequelae, the  
9           impact of what they're doing. The dark hole on the  
10          visibility of the shopping center and the  
11          attractiveness to other tenants is a result of what  
12          they're doing. The impact on Phase 2 will be a  
13          result of what they're doing. The problem with  
14          Dollar Tree would be a result of what they're  
15          doing. Those are the results that will come about.

16          But the problem is the initial aspect that  
17          they're violating the declaration. Nothing they've  
18          said justifies violating the declaration. They  
19          have to abide by it. They knew it before they came  
20          in it's a recorded dec. All our side is saying is  
21          they shouldn't be operating there.

22          THE COURT: So you're saying that their harm  
23          is their very existence itself, not the  
24          ramifications -- or not the consequences of it?  
25          It's not the fact that Dollar Tree or -- was it

1 Dollar Tree?

2 MR. BLACK: Yeah.

3 THE COURT: It's not the fact that Dollar Tree  
4 may terminate their lease? It's not the fact that  
5 parking may or may not be available? It's just a  
6 flat-out violation; that's the harm?

7 MR. BLACK: It's a flat-out violation.

8 THE COURT: And that's the harm?

9 MR. BLACK: Yes. And sometimes you can't see  
10 the ripple effects right away because you don't  
11 know which tenants aren't getting business or  
12 people that pull up to the shopping center don't  
13 see parking and go away or the breakfast restaurant  
14 that struggled with customers because of them. You  
15 don't see those quite right away, but it doesn't  
16 justify or give credence to what they're doing.

17 It would be like me coming in, on my  
18 hypothetical, and putting in a strip joint, and  
19 they're coming in for declaratory relief, and go  
20 "What's the impact? You're still operating as a  
21 church and members are still coming. Why do you  
22 care that there's a strip joint next to you when  
23 you're operating as a place of public assembly, a  
24 church?"

25 The harm is the violation of the declaration

1           that needs to be stopped.

2           THE COURT: All right.

3           MR. BLACK: Thank you, Your Honor.

4           THE COURT: These are fascinating arguments.

5           I appreciate them very much. I'm going to -- I  
6           want to go back and reread -- I've heard enough.

7           I'm going to go back and reread everything for  
8           a second and third time and just to make sure that  
9           I have a real good hold of the facts. And I will  
10          issue an injunction or not an injunction as soon as  
11          I can.

12          MR. BLACK: Very well. Thank you.

13          One last question, do you want -- I know for  
14          the future about paper, but do you want the copies  
15          that I printed of the documents supporting the  
16          argument? They've already been filed  
17          electronically.

18          THE COURT: If you have a hard copy, I've got  
19          all these hard copies, I might as well take more.

20          MR. BLACK: It's just the ones to direct -- to  
21          find easier.

22          THE COURT: In the future, I really am pretty  
23          good on the -- on reading everything online, just  
24          because it's better for --

25          MR. BLACK: The environment?

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THE COURT: -- the world.

MR. BLACK: Yeah.

THE COURT: All right. Thank you to all of  
you. I appreciate it. Thank you.

MR. BLACK: Thank you, Your Honor.

MS. WAGNER: Thank you, Your Honor.

(Proceedings were concluded at 3:28 PM.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA    )  
                                  )  
COUNTY OF ST. JOHNS)

I, Melissa Schroeder, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 1st day of February, 2026, in St. Johns County, Florida.

*Melissa Schroeder*  
\_\_\_\_\_  
Melissa Schroeder,  
Registered Professional Reporter