HEARING DATE: December 5, 2025 at 10:00 a.m.
Assigned to Business Calendar (Stern, J.)

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

BOYANG SONG
TRAVIS MCCUNE,
Plaintiffs,

v.

EVAN LEMOINE, in his capacity as former President of The 903 Condominium Owner's Association, Inc., and STEPHEN RODIO, in his capacity as former Secretary of The 903 Condominium Owner's Association, Inc. and MATTHEW SIMKO in his capacity as President of The 903 Condominium Owner's Association, Inc., and THE 903 CONDOMINIUM OWNER'S ASSOCIATION, INC.,
Defendants.

C.A. No.: PC-2023-02781

OBJECTION OF DEFENDANTS TO PLAINTIFFS' RENEWED MOTION FOR MANDATORY INJUNCTION FOLLOWING REMAND FROM SUPREME COURT

Now come the defendants, Evan Lemoine, in his capacity as Former President of The 903 Condominium Owner's Association, Inc., Stephen Rodio, in his capacity as Former Secretary of The 903 Condominium Owner's Association, Inc., Matthew Simko, in his capacity as President of The 903 Condominium Owner's Association, Inc., and The 903 Condominium Owner's Association, Inc., (hereinafter "Defendants"), by and through undersigned counsel, and hereby object to plaintiffs' renewed motion for mandatory injunction following remand from the Supreme Court. As grounds for this objection, Defendants state that this matter is now moot, and therefore,

the plaintiffs cannot be granted the requested injunctive relief. In further support of this objection, the Defendants refer this Honorable Court to the attached supporting exhibits and state as follows:

I. PERTINENT FACTUAL BACKGROUND / PROCEDURAL HISTORY

The plaintiffs, Boyang Song and Travis McCune (hereinafter "Plaintiffs"), have filed a renewed motion for the issuance of an immediate mandatory injunction compelling the current President of The 903 Condominium Owner's Association, Inc., Matthew Simko, to issue notice of special meeting in the form requested by the Plaintiffs following a denial of their initial motion. Plaintiffs initially filed this motion on August 29, 2025, which was **considered and denied** by this Honorable Court without prejudice on **September 16, 2025** with an Order entering on September 30, 2025. (*See* Order dated September 30, 2025 attached hereto as **Exhibit A**.) A mere ***five (5) weeks*** after this Court's denial of Plaintiffs' initial motion, the Plaintiffs filed the subject renewed motion seeking the exact same relief. In their renewed motion, Plaintiffs mistakenly assert that the Court's denial was "in light of a then-pending motion to join Matthew Simko, in his capacity as current President of the Association," as a defendant to this action.[1] (*See* Plaintiffs' Renewed Motion for Mandatory Injunction Following Remand From Supreme Court, ¶13.) Plaintiffs also assert that based on the Supreme Court's opinion they should be granted the requested injunctive relief. *Id.* at ¶¶14, 20. However, Plaintiffs' reading of the Supreme Court's opinion is incorrect. As noted by the Supreme Court, "**mootness should be a consideration on remand**." (*See* **Exhibit B**, Rhode Island Supreme Court Opinion dated May 19, 2025, p. 12, FN 2.) (Emphasis added). Plaintiffs once again frivolously seek injunctive relief which cannot be granted as the matters at issue in this litigation are now moot.

[1] Plaintiffs do not allege any wrongdoing by Matthew Simko but assert that he should be compelled to issue a notice of special meeting in the form requested by the Plaintiffs solely because he is the current President of Association. *Id.* at ¶¶14, 20.

II. ARGUMENT

A. The Plaintiffs Are Not Entitled To The Requested Injunctive Relief

As a preliminary matter, the Supreme Court did **not** mandate that an injunction be issued in favor of the Plaintiffs, nor was this matter remanded for that purpose. In fact, the Supreme Court found that proceedings as to *only* Count II (Punitive Damages and Attorneys Fees R.I.G.L. §34-36.1-4.17) of the Plaintiffs' Verified Complaint were warranted on remand and limited the case to the *narrow* issue of damages. The Supreme Court further noted that Plaintiff's' counsel "acknowledged at oral argument that a damages figure **would likely be nominal, and the defendants may have immunity from damages under the association's by-laws."** (*See* Exhibit B, pp. 13-14.) (Emphasis added). Of significance, the Supreme Court found that the trial court's decision should have concluded when the trial court found that the special-meeting notice prepared by the Executive Board was insufficient and *only* vacated the portion of the trial court's decision which the Supreme Court deemed to be an "advisory opinion" related to the validity of the Plaintiffs' motions contained within the meeting notice proposed by the Plaintiffs. (*See* Exhibit B, pp. 11, 14.) Despite Plaintiffs' unfounded arguments to the contrary, *all other findings* reflected in the trial court decision, including this Court's finding that there was "***no credible evidence"*** of willful misconduct and/or gross negligence, are valid and enforceable. (*See* Decision of the Superior Court dated July 19, 2023 attached as **Exhibit C**, pp. 3-4.) (Emphasis added). In light of the Supreme Court's decision, the Plaintiffs' claim for mandatory injunction may not be considered on remand and/or the Plaintiffs should not have been permitted to file an Amended Complaint that includes Count I (Injunctive Relief – R.I.G.L. §34-36.1-4.17). Indeed, this Court just *recently* considered and denied Plaintiffs' motion for mandatory injunction following remand from the Supreme Court. (*See* Exhibit A.)

Moreover, the Plaintiffs are not entitled to the requested injunctive relief since this matter at issue, which is the subject of Count I (Injunctive Relief – R.I.G.L. §34-36.1-4.17) of the Plaintiffs' Amended Complaint, is now moot. First, the current President of the Association, the Executive Board of the Association, and/or the Former President and Former Secretary, cannot be compelled to send out notice of special meeting in light of the most recent amendments to the relevant section of the Rhode Island Condominium Act (hereinafter "Act") which went into effect recently on June 24, 2025. *See* R.I. Gen. Laws §34-36.1-3.08(a). Section 3.08 of the Act now states, in relevant part, as follows:

> Special meetings requested by unit owners of at least twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association must be called by the executive board ***if the stated purpose is to propose an amendment of the declaration or bylaws, reject the budget, remove a director or officer and elect a replacement, or for any other purpose of which the unit owners are entitled to vote***, except for the general election of board members which is to take place at the annual meeting. R.I. Gen. Laws §34-36.1-3.08(a) (Emphasis added).

The 2025 Amendment to R.I. Gen. Laws §34-36.1-3.08(a) is applicable and out-come determinative in this matter. Pursuant to the Act, a special meeting must only be called if the stated purpose is to propose an amendment to the declaration or by-laws, removal of an officer, rejection of the budget, or other purpose for which the unit owners are entitled to vote. *See* R.I. Gen. Laws §34-36.1-3.08(a). Here, the by-laws of the Association restrict unit owners' right to vote to very limited actions, which do not include the power to call the special meeting for the stated purposes requested by the Plaintiffs in the notice at issue. (*See* **Exhibit D**, Bylaws Art. II, §2.) If the Court were to grant the requested injunctive relief, it would force the current President of the Association and/or the Executive Board to violate the Act by permitting the unit owners to exercise powers that they do not have under the by-laws. Therefore, a special meeting in the form requested by the Plaintiffs cannot be called as it would exceed the powers granted to unit owners under the by-laws

of the Association in violation of the Act, as amended. *See* R.I. Gen. Laws §34-36.1-3.08(a).

In addition, the Plaintiffs have not only failed to allege facts sufficient to demonstrate that they are entitled to the requested injunctive relief under Section 3.08 of the Act, as amended, the Plaintiffs have also failed to allege in their Amended Complaint and otherwise demonstrate that this Court should apply the version of Section 3.08 of the Act in effect at the time of Plaintiffs' Petition in May 2023.

Finally, as noted by the Supreme Court, the Executive Board of the Association has since adopted the Plaintiffs' desired gas formula, and therefore, "**mootness should be a consideration on remand**." (*See* **Exhibit B**, p. 12, FN 2.) Since the desired course of action has been adopted – the allocation of common gas expenses by percentage of ownership interest – the matters at issue, which is the subject of the Plaintiffs' Amended Complaint, have been resolved and these issues are now moot, and therefore, Plaintiffs' renewed motion for mandatory injunction should be denied and dismissed.

III. CONCLUSION

The Plaintiffs **cannot** under these circumstances be granted the requested injunctive relief, and therefore, their continued relentless pursuit of a mandatory injunction in this litigation is unnecessary and frivolous. This Honorable Court recently considered and denied Plaintiffs' misplaced motion for mandatory injunction following remand from the Supreme Court on September 16, 2025. The subject renewed motion is nothing more than waste of time and judicial resources and an example of Plaintiffs' counsel's continued excessive billing on this case. Plaintiffs' continued demand for a mandatory injunction has also created a roadblock in any efforts to resolve this matter, since the Plaintiffs will not agree to participate in mediation unless the issue is resolved. Defendants maintain that the current President of the Association, Matther Simko,

cannot issue a notice of special meeting in the form requested by the Plaintiffs, as the matters at issue in this litigation are now moot, and the issuance of any such notice would be in violation of the Act, as amended.

For the above stated reasons, the Defendants respectfully request this Honorable Court to deny and dismiss the Plaintiffs' renewed motion for mandatory injunction, and enter an order in favor of the Defendants, along with any other relief which this Court deems just and proper.

Respectfully submitted,

The Defendants,
By their Attorneys,

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Dated: December 1, 2025

CERTIFICATE OF SERVICE

I, Brandon P. Ruggieri, hereby certify that, on this this 1st day of December 2025, I filed and served this document through the electronic filing system with notice to the following parties:

Charles D. Blackman, Esq.
LEVY & BLACKMAN LLP
469 Angell Street, Suite 2
Providence, RI 02906
cblackman@levyblackman.com

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Electronic Filing System.

Brandon P. Ruggieri
_____
Brandon P. Ruggieri

EXHIBIT A

Case Number: PC-2023-02781
Filed in Providence/Bristol County Superior Court
Submitted: 9/18/2025 2:20 PM
Envelope: 5313216
Reviewer: Maureen D.

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC

BOYANG SONG TRAVIS MCCUNE Plaintiffs	:	
v.	:	PC-2023-2781
EVAN LEMOINE, in his capacity as former President of The 903 Condominium Owner's Association, Inc., and STEPHEN RODIO, in his capacity as former Secretary of The 903 Condominium Owner's Association, Inc., and MATTHEW SIMKO, in his capacity as President of The 903 Condominium Owner's Association, Inc., and THE 903 CONDOMINIUM OWNER'S ASSOCIATION, INC. Defendants.	:	

ORDER

This matter came before the Honorable Brian P. Stern on September 16, 2025, upon Plaintiffs' Motion to Amend, Plaintiffs' Motion to Compel, Plaintiffs' Motion for Mandatory Injunction Following Remand from Supreme Court, and Defendants' Motion for Protective Order and to Stay Discovery. After hearing and consideration thereof, it is hereby

ORDERED

that:

1. Plaintiffs' Motion to Amend is granted.

2. Plaintiffs' Motion to Compel is granted. Defendants shall respond to Plaintiffs' Amended First Request for Production of Documents dated July 17, 2023 within 40 days of this Order, and shall provide a privilege log in accordance with Rule 26(b)(5) with respect to any and all documents not produced on the basis of any privilege.

3. Defendants' Motion for Protective Order and to Stay Discovery is denied.

4. Plaintiffs' Motion for Mandatory Injunction Following remand from Supreme Court is denied without prejudice.

ORDER:

Brian P. Stern
Associate Justice

Stern, J.

ENTER:

/s/ Carin Miley
Senior Deputy Clerk I

September 30, 2025

Presented by:

/s/ Charles D. Blackman

Charles D. Blackman (#5522)
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CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of September, 2025, I caused this document to be served through the RI Judiciary's electronic filing system upon:

Luana DiSarra Scavone
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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Charles D. Blackman

EXHIBIT B

May 19, 2025

Supreme Court

No. 2024-34-Appeal.
(PC 23-2781)

Boyang Song et al. :

v. :

Evan Lemoine, in his capacity as President of The 903 Condominium Owner's Association, Inc., et al. :

Supreme Court

No. 2024-34-Appeal.
(PC 23-2781)

Boyang Song et al. :

v. :

Evan Lemoine, in his capacity as President of The 903 Condominium Owner's Association, Inc., et al. :

Present: Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.

O P I N I O N

Justice Lynch Prata, for the Court. The plaintiffs, Boyang Song (Song) and Travis McCune (McCune) (collectively, plaintiffs), appeal from a Superior Court judgment in favor of the defendants, Evan Lemoine (Lemoine), in his capacity as President of The 903 Condominium Owner's Association, Inc., and Stephen Rodio (Rodio), in his capacity as Secretary of The 903 Condominium Owner's Association, Inc. (collectively, defendants).[1] The plaintiffs are owners of a unit at The 903 condominium complex (the complex) and brought this action against the defendants, the president and secretary of the association's board (the board), after

[1] On February 14, 2025, we granted the motion by the Community Associations Institute (CAI) to file an amicus curiae brief pursuant to Article I, Rule 16(h) of the Supreme Court Rules of Appellate Procedure. We thank the CAI for presenting the Court with an informative brief.

the defendants failed to include the plaintiffs' specific agenda items in a special-meeting petition. The Superior Court consolidated the plaintiffs' motion for a preliminary injunction with a trial on the merits. After a three-day nonjury trial, the Superior Court found in the defendants' favor. For the reasons set forth herein, we vacate the part of the judgment of the Superior Court finding in favor of the defendants.

Facts and Travel

The complex is a 330-unit condominium space located in Providence, Rhode Island. The complex is affixed with one gas meter that tracks consumption for every unit in the facility. Each unit contains one "submeter" or "timer" that determines individual usage based on the amount of time a boiler is activated. In turn, the association receives one gas bill and invoices the charges to the complex owners based on the timer readings in their units. By the spring of 2023, accurate readings became increasingly problematic to attain because of timer failures and difficulty repairing faulty timers. The board undertook an effort to address the malfunctioning timers by investigating an alternative method of measurement.

Ultimately, the board pivoted from a usage-based billing formula to the "ratio utility billing system," which accounts for occupancy and square footage. The plaintiffs submit that the multi-factored, occupancy-based formula conflicts with the complex's governing documents and the Rhode Island Condominium Act (the act).

On April 5, 2023, plaintiffs filed a petition to call a special meeting of the board to "increase [b]oard to [o]wner transparency on the decisions, process, and plans on the gas metering and billing that has resulted in high estimates for gas bills." Lemoine responded via email on April 11, 2023, that a special meeting was unnecessary because plaintiffs could raise their concerns at an open forum at the next meeting of the complex's unit owner's association (the association) on April 25, 2023. He further stated that the board had already provided the answers sought in the petition and that high estimates could be blamed on rising gas prices. On May 19, 2023, the regional property manager for the association signed an agreement for gas billing with a third-party company.

Unsatisfied with the board's response and the new contract, plaintiffs, along with twenty-five other unit owners, submitted another petition requesting a special meeting to address four "motions." The petition met the requisite signature mandate set forth in the complex's bylaws (bylaws) and attached a proposed form of notice and agenda. The petition sought votes on four matters; specifically, it stated:

> "FIRST MOTION: To prohibit the Executive Board from using any formula for assessing gas expense that conflicts with the declaration of condominium, as amended, or with the Rhode Island Condominium Act.
>
> "SECOND MOTION: To direct the Executive Board to obtain and provide every unit owner with cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium within 60 days after the Special Meeting.

> "THIRD MOTION: To direct the Executive Board to call a second special meeting of the Association not less than 30 days or more that [*sic*] 60 days after the Executive Board provides cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium at which the Association may vote whether to perform the necessary repairs.
>
> "FOURTH MOTION: To adjourn the Special Meeting."

The proposed notice provided that the four motions were "anticipated to be acted upon at the Special Meeting." The proposed agenda restated the four motions. According to plaintiffs, the purpose of the special meeting was to allow the unit owners to "democratically" establish a plan for gas billing. The plaintiffs aver that they were "preparing for a 'proxy fight'" at the meeting due to the association's historic "trouble assembling a quorum." The board reviewed the proposed notice and determined that it "was not proper because it was too narrow," with the board favoring more broad discussions. Lemoine then mailed all unit owners a notice on June 8, 2023, notifying each of a special meeting on June 20, 2023. The notice stated:

> "Please be advised that in accordance with Article [2], Section 5 of the [b]ylaws, a special meeting of the [a]ssociation will be held for the purpose of discussing and entertaining motions relating to the methods by which utilities that are billed to the association in bulk from providers are apportioned and billed to individual units."

Unhappy with the "completely defective" notice, plaintiffs filed a complaint in Superior Court and moved for a temporary restraining order and preliminary injunction to prevent the meeting. The verified complaint, signed by McCune, did not advance claims against the board or association; rather, Lemoine and Rodio were the sole defendants. The verified complaint includes two causes of action for: (1) injunctive relief under G.L. 1956 § 34-36.1-4.17; and (2) punitive damages and attorneys' fees pursuant to § 34-36.1-4.17.

On June 15, 2023, following an *ex parte* hearing, a justice of the Superior Court granted plaintiffs' motion for a temporary restraining order, preventing the June 20, 2023 special meeting. The defendants filed an emergency motion to reconsider the temporary restraining order. The plaintiffs then submitted a motion to consolidate the preliminary injunction proceeding with a trial on the merits, to which defendants objected. On June 23, 2023, the Superior Court granted plaintiffs' motion and scheduled the matter for a trial on count I, severing count II, a claim for punitive damages and attorneys' fees, for hearing at a later date.

During the trial, the trial justice requested that the parties submit supplemental briefing addressing the meaning of "purpose" (as used in Article 2, § 5 of the bylaws) and "items on the agenda," from § 34-36.1-3.08. The defendants submitted their answer to the verified complaint on July 12, 2023, and asserted counterclaims

pursuant to § 34-36.1-3.20. The plaintiffs filed a motion to dismiss the counterclaims the following day.

Thereafter, the Superior Court issued a decision on count I of the verified complaint. The trial justice determined that a conflict existed between "purpose" as defined in the bylaws and "items on the agenda" from the statute. He ultimately concluded that "items on the agenda" had a more specific definition and that the statute must prevail to govern the dispute. The trial justice found that notice of the special meeting sent by the board was insufficient because it merely provided the purpose of the meeting and did not contain an agenda with specific items.

However, the analysis did not end there. The Superior Court went on to determine that plaintiffs' special-meeting notice was improper because it did not set forth valid transactable business within the association's authority. The trial justice concluded his decision by noting that the association had other remedies available to it, including removing board members and amending the bylaws to require cost estimates for future projects. He rejected plaintiffs' attempt to "micromanage" the board with a special-meeting notice containing items the association lacked power to vote on. Consequently, the trial justice found for defendants as to count I of the verified complaint. An order to this effect entered on July 25, 2023.

Almost three months later, defendants filed a motion for entry of final judgment pursuant to Rule 58 of the Superior Court Rules of Civil Procedure. The

defendants asserted that plaintiffs' remaining claim, which sought punitive damages and attorneys' fees, was predicated on plaintiffs' success on count I and now requires judgment in defendants' favor due to the favorable outcome on count I. The plaintiffs took issue with the motion, noting that defendants' counterclaims had not been adjudicated and that defendants improperly sought to bar plaintiffs from appealing the trial justice's decision. After dismissing defendants' counterclaims, the trial justice entered judgment in defendants' favor on all counts of plaintiffs' complaint, and in favor of plaintiffs on defendants' counterclaims. The plaintiffs then filed a timely notice of appeal.

Standard of Review

"A judgment in a nonjury case will be reversed on appeal when it can be shown that the trial justice misapplied the law, misconceived or overlooked the material evidence or made factual findings that were clearly wrong." *Cathay Cathay, Inc. v. Vindalu, LLC*, 962 A.2d 740, 745 (R.I. 2009) (quoting *Town of West Greenwich v. A. Cardi Realty Associates*, 786 A.2d 354, 357-58 (R.I. 2001)). "Otherwise, we are deferential to the trial justice's findings of fact and give them great weight." *Id.* "We will, however, review pure questions of law that have been presented on appeal on a *de novo* basis." *Id.* Likewise, "[t]he issuance and measure of injunctive relief rest in the sound discretion of the trial justice." *Knudsen v. DeJean*, 311 A.3d 102, 109 (R.I. 2024) (quoting *Martin v. Wilson*, 246 A.3d 916,

923-24 (R.I. 2021)). "On review, the decision of the trial court made in the exercise of a discretionary power should not be disturbed unless it clearly appears that such discretion has been improperly exercised or that there has been an abuse thereof." *Id.* (quoting *Martin*, 246 A.3d at 924).

Discussion

The plaintiffs first argue that the trial justice failed to enforce § 34-36.1-3.08 by declining to order defendants to reissue the special-meeting notice with plaintiffs' motions. The plaintiffs label the trial justice's conclusions "an advisory opinion" that resulted in a declaratory judgment that neither party sought. The plaintiffs also submit that the Superior Court mischaracterized plaintiffs' motions and demands as "actual actions."

Next, plaintiffs contend that their various motions were simply an "item of business" that would facilitate solutions for the gas metering issue. The plaintiffs further submit that any issues with phraseology of the motions should have been dealt with by means of amendments during the meeting and not disallowance of a special meeting. According to plaintiffs, the re-written special-meeting notice was improper because it did not apprise unit owners of the items to be addressed at the meeting.

Moreover, plaintiffs declare that, had defendants and the Superior Court read pertinent sections of Robert's Rules of Order (Robert's Rules) together, plaintiffs'

proposed meeting notice would have sufficiently informed the unit owners of the motions that would be addressed at the meeting. The plaintiffs continue that the Superior Court's ruling on the validity of the motions was premature because no action had been taken.

Additionally, plaintiffs submit that both defendants and the trial justice incorrectly concluded that a detailed form of notice was not permitted. The notice, they argue, should have been sufficiently detailed to allow unit owners to determine whether they wanted to attend the meeting or designate a proxy to vote on their behalf. The plaintiffs aver that the trial justice's analysis of the word "conduct" from the bylaws was "hypertechnical" and that he improperly disregarded Robert's Rules.

In retort, defendants argue that the trial justice did not err in reaching his conclusion because the board has broad discretion to manage the affairs of the complex. The defendants point to both the act and the complex's governing documents to support their position that the board retains the authority to do anything so long as it is not prohibited by the act. The defendants continue that the trial justice properly evaluated the viability of plaintiffs' four motions because each did not comply with the act. The defendants advance that the motions did not present transactable business that would entitle unit owners to vote on the motions.

The defendants conclude by emphasizing that the board acted in good faith and that plaintiffs obstructed democracy by preventing the special meeting from

taking place. Finally, defendants caution against expanding the Superior Court's decision to allow the unit owners to determine the exact wording of a meeting notice.

"When the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *In re J.T.*, 252 A.3d 1276, 1280 (R.I. 2021) (brackets omitted) (quoting *Crenshaw v. State*, 227 A.3d 67, 71 (R.I. 2020)). "Furthermore, 'in effectuating the Legislature's intent,' this Court reviews and considers 'the statutory meaning most consistent with the statute's policies or obvious purposes.'" *Id.* (quoting *Providence Teachers' Union Local 958, AFT, AFL-CIO v. Hemond*, 227 A.3d 486, 494 (R.I. 2020)).

In 1982 the General Assembly adopted Rhode Island's version of the Uniform Condominium Act, which applied to any condominium created in Rhode Island after July 1, 1982. *See* § 34-36.1-1.02(a)(1). The act "as a whole contains a strong consumer protection flavor * * *." *America Condominium Association, Inc. v. IDC, Inc.*, 844 A.2d 117, 128 (R.I. 2004) (quoting *One Pacific Towers Homeowner's Association v. HAL Real Estate Investments, Inc.*, 61 P.3d 1094, 1100 (Wash. 2002)). "[W]hen the administration of a condominium complex is at issue, 'the condominium statutes and the declaration control the relationship between the parties.'" *Town Houses at Bonnet Shores Condominium Association v. Langlois*, 45

A.3d 577, 582 (R.I. 2012) (brackets omitted) (quoting *Artesani v. Glenwood Park Condominium Association*, 750 A.2d 961, 963 (R.I. 2000)).

Relevant to this dispute, § 34-36.1-3.08 provides that "[s]pecial meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association." Additionally, notice of that meeting "must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer." Section 34-36.1-3.08. This is exactly what plaintiffs attempted to do with the proposed meeting notice attached to the petition.

Rather than use the proposed notice, the board sent its own notice. The trial justice correctly determined that the sent notice did not meet the statutory requirements. The defendants did not appeal that determination; hence, we need not address that portion of the decision. However, the matter before the Court is the propriety of the trial justice's analysis of the merits of plaintiffs' motions contained within the meeting notice proposed by plaintiffs. The plaintiffs label the trial justice's decision on the validity of the motions an "advisory opinion" that should have concluded when the trial justice found that the special-meeting notice prepared by the board was insufficient. We agree.

The declaration states that the bylaws provide the relevant governance provisions, and Article 2, § 5 of the bylaws states: "The President shall call a special meeting of the [a]ssociation upon a petition signed and presented to the Secretary by at least twenty (20) [u]nit [o]wners." The plaintiffs satisfied their obligation to obtain the requisite number of signatures. The proposed notice stated the time and place of the meeting and included an agenda, all in compliance with § 34-36.1-3.08. The purpose of the meeting was to discuss the specific issues as listed allowing the unit owners to determine whether or not to attend the meeting, vote on plaintiffs' positions, or even propose their own solution. The intent of the act is to promote consumer protection. *See America Condominium Association, Inc.*, 844 A.2d at 128. The act requires a liberal judicial interpretation with a preference towards ensuring that association members have a say in how their organization is run. *See id.* It is imperative that lay unit owners have the ability to draft a petition without fear of strict judicial scrutiny over imperfect language.[2] Refusing to issue the notice of the special meeting, which comports with the bylaws and the act, runs afoul of that intent. These unit owners were entitled to the meeting they sought.

The plaintiffs' claim centered on the board's own rendition of the meeting notice sent to unit owners, not the notice submitted by plaintiffs. In evaluating each

[2] The defendants' counsel represented at oral argument that the board has since adopted plaintiffs' desired gas meter formula. Therefore, mootness should be a consideration on remand.

item on plaintiffs' agenda individually, it is clear that the trial justice overstepped by granting relief not sought by the parties because "[u]nder the general principles of the adversary system, a party should not be granted relief that it did not request." *Providence Journal Company v. Convention Center Authority*, 824 A.2d 1246, 1248 (R.I. 2003); *see also Mill Road Realty Associates, LLC v. Town of Foster*, 326 A.3d 1085, 1088-89 (R.I. 2024) (taking exception to a trial justice's *sua sponte* ruling on an issue not addressed by the parties); *Bruce Brayman Builders, Inc. v. Lamphere*, 109 A.3d 395, 398-99 (R.I. 2015) (determining that the trial justice should have informed the parties before considering an issue not raised by either); *Catucci v. Pacheo*, 866 A.2d 509, 515 (R.I. 2005) ("[W]hen a trial justice considers and rules on an issue *sua sponte*, the parties must be afforded notice of the issue and allowed an opportunity to present evidence and argue against it.").

The plaintiffs further appeal from the judgment in the defendants' favor on the plaintiffs' request for attorneys' fees and punitive damages pursuant to § 34-36.1-4.17. The provision awards punitive damages for "willful failure to comply with [the act]." Section 34-36.1-4.17. The trial justice entered judgment on count II after the trial because the plaintiffs conceded that that claim hinged on the success of count I. Because the trial pertained to only count I of the complaint with the damages claim severed, the plaintiffs have a right to be heard on this issue. However, we note that counsel acknowledged at oral argument that a damages figure

would likely be nominal, and the defendants may have immunity from damages under the association's bylaws. Nevertheless, proceedings on count II are warranted as a result of this decision.[3]

Conclusion

For the reasons set forth herein, we vacate the part of the judgment of the Superior Court finding in favor of the defendants, and this matter is remanded for further proceedings consistent with this opinion. The papers may be returned to the Superior Court.

[3] At the conclusion of their brief, the plaintiffs request that we reassign this matter to a different trial justice. We decline to take this extraordinary step. There is nothing in the record to suggest the trial justice displayed a bias that would inhibit his judgment on the matter in further proceedings.

EXHIBIT C

STATE OF RHODE ISLAND

PROVIDENCE, SC.		**SUPERIOR COURT**
BOYANG SONG; and TRAVIS MCCUNE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2023-02781**
	:	
EVAN LEMOINE, in his capacity as President of The 903 Condominium Owner's Association, Inc.; and STEPHEN RODIO, in his capacity as Secretary of The 903 Condominium Owner's Association, Inc.,	:	
	:	
***Defendants*.**	:	

DECISION

STERN, J. Before the Court is Plaintiffs Boyang Song (Song) and Travis McCune's (McCune) (collectively, Plaintiffs) Application for Preliminary Injunction, which was consolidated and advanced with a trial on the merits as to Count I of the Verified Complaint pursuant to Rule 65(a)(2) of the Superior Court Rules of Civil Procedure.[1] At the close of their case, Defendants Evan Lemoine (Lemoine) and Stephen Rodio (Rodio) (collectively, Defendants) moved for

[1] The Court notes that Defendants did not file a responsive pleading in this matter until July 12, 2023. *See* Docket, PC-2023-02781. Whether the Court may consolidate a hearing for a preliminary injunction with a trial on the merits without responsive pleadings is an issue that has not been specifically raised in Rhode Island. Rhode Island looks to federal jurisprudence "for guidance or interpretation of our own rules of civil procedure, especially when the state rule and federal rule are substantially similar." *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 21 (R.I. 2018). When faced with this issue, federal courts assume that "except to the extent they were admitted during the course of these proceedings, all of the defendants controvert and deny the material allegations . . . ." *Wyoming Outdoor Coordinating Council v. Butz*, 359 F. Supp. 1178, 1185 (D. Wyo. 1973), *overruled on other grounds*, 474 F.2d 1244 (10th Cir. 1973); *see also Jarmon v. Batory*, No. Civ. A. 94-0284, 1994 WL 313067, at *2 (E.D. Pa. June 29, 1994). Thus, "no further answer or responsive pleading need be served and filed by any of the defendants." *Butz*, 359 F. Supp. at 1185. The Court is satisfied that it was within its authority to consolidate Plaintiffs' Application for Preliminary Injunction with a trial on the merits and assumes that Defendants "controvert and deny the material allegations" of the Verified Complaint. *See id.*

Judgment as a Matter of Law. The parties also submitted supplemental legal briefing. Jurisdiction is pursuant to Rules 52 and 65 of the Superior Court Rules of Civil Procedure.

I

Findings of Fact and Travel

Plaintiffs are owners of a condominium unit in The 903 Condominium. (Verified Compl. ¶ 1.) Plaintiffs are members of The 903 Condominium Owner's Association, Inc. (the Association), a domestic not-for-profit corporation organized and established pursuant to the Rhode Island Condominium Act, G.L. 1956 chapter 36.1 of title 34 (the Act). *See id.*; R.I. Dep't of State Corporation Database ID No. 000688835. Lemoine is the Association's President and Rodio is its Secretary. (Verified Compl. ¶¶ 2-3; Defs.' Ex. A (Stephen Rodio Aff.) ¶ 1.)

The Association's bylaws (the Bylaws) provide that the President of the Association "shall call a special meeting of the Association upon a petition signed and presented to the Secretary by at least twenty (20) [u]nit [o]wners. The notice of any special meeting shall state the time, place and purpose thereof." (Pls.' Ex. 1 (Bylaws) art. 2, § 5.) Article 2, § 5 of the Bylaws also states that "[n]o business shall be transacted at a special meeting except as stated in the notice." *Id.*

On April 5, 2023, Plaintiffs presented a petition calling for a special meeting, which was signed by twenty-five condominium unit owners. (Pls.' Exs. 7, 8.) Plaintiffs wanted to call a special meeting to discuss changes to gas metering and allocation of common expenses. *See* Pls.' Exs. 8, 9. *See generally* Pls.' Ex. 10. However, on April 11, 2023, Lemoine stated in an e-mail that a special meeting was not necessary because there would be an open forum at the Association's next regular meeting where Plaintiffs could raise their concerns. *See* Pls.' Ex. 8. Additionally, Lemoine averred that the Executive Board of the Association (the Board) had already provided answers to "substantially all of the information sought in the special meeting request." *Id.*

Counsel for Plaintiffs dispatched a letter dated May 18, 2023 addressed to Lemoine. *See generally* Pls.' Ex. 9. In the letter, counsel for Plaintiffs stated that the Board's apparent decision to change The 903 Condominium's gas metering system and use a different formula for allocating common expenses conflicts with the Act.[2] *Id.* at 2. On May 23, 2023, Plaintiffs presented another petition (the Petition) signed by twenty-six condominium unit owners. (Pls.' Ex. 2 (Petition).) The Petition calls for a vote on three substantive motions[3]:

> "FIRST MOTION: To prohibit the Executive Board from using any formula for assessing gas expense that conflicts with the declaration of condominium, as amended, or with the Rhode Island Condominium Act.
>
> "SECOND MOTION: To direct the Executive Board to obtain and provide every unit owner with cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium within 60 days after the Special Meeting.
>
> "THIRD MOTION: To direct the Executive Board to call a second special meeting of the Association not less than 30 days or more that [*sic*] 60 days after the Executive Board provides cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium at which the Association may vote whether to perform the necessary repairs." *Id.* at 2.

Plaintiffs aver that the Petition was sent by certified mail on May 26, 2023 and delivered on May 30, 2023. (Verified Compl. ¶ 9.) The Petition included a notice and agenda that was intended to be distributed to other condominium unit owners. *Id.* ¶ 10; *see* Petition 4-5. However, Plaintiffs allege that Lemoine "did not want to call the meeting and did not want the items of

[2] Specifically, counsel for Plaintiffs argued that under G.L. 1956 § 34-36.1-3.07(a), the Board is required to maintain the existing gas metering system as a common element. (Pls.' Ex. 9, at 1-2.) Moreover, he stated that § 34-36.1-2.07 provides that common expenses may only be assessed based on the formula set forth in the Second Amended and Restated Declaration of The 903 Condominium (the Declaration). *See id.* He argued that the proposed changes to gas metering and allocation of common expenses differ from the formula in the Declaration, from which the Board cannot deviate without unanimous consent. (Pls.' Ex. 9, at 2.)

[3] The fourth motion in the Petition is a motion to adjourn the meeting. (Pls.' Ex. 2 (Petition) 2.)

business to be presented to the Association for a vote," and that Defendants ignored the Petition for more than two and a half weeks. (Verified Compl. ¶¶ 10-11.) The Court was not presented with credible evidence to support this allegation. When the Petition was submitted, Rodio reviewed the Act, Bylaws, and *Roberts Rules of Order* to draft a Notice of Special Meeting (the Notice). On June 8, 2023, Lemoine caused the Notice to be mailed and set a special meeting date of June 20, 2023. *See* Pls.' Ex. 3 (Notice). The Notice did not include the Plaintiffs' prepared notice and agenda and instead provided that "a special meeting . . . will be held for the purpose of discussing and entertaining motions relating to the methods by which utilities that are billed to the association in bulk from providers are apportioned and billed to individual units." *Id.*

Plaintiffs posit that Defendants "intentionally omitted the agenda items of business requested to be voted upon" to conceal information from Association members and to preclude the items of business requested by the Petition. (Verified Compl. ¶¶ 13-14.) The Court was not presented with credible evidence to support this allegation. They also submit that Defendants failed to comport with procedures set forth in the Act and the Bylaws. *See id.* ¶¶ 6-11. They further allege that the Notice is facially defective because it does not fully and accurately set forth the items of business to be conducted at the special meeting. *See id.* ¶¶ 13-15. Finally, they state that the Notice did not provide sufficient time prior to the special meeting. *See id.* ¶ 15. Plaintiffs aver that the Notice was received on June 12, 2023. *Id.* ¶ 12. Thus, the Notice afforded fewer than the required ten days' time before the special meeting. *See id.*

On June 14, 2023, Plaintiffs filed a Verified Complaint sounding in (1) injunctive relief; and (2) punitive damages and attorney's fees. *Id.* at 5-7. On the same date, Plaintiffs filed a Motion for a Temporary Restraining Order to enjoin the special meeting and to compel Lemoine to re-issue a notice for the special meeting. Docket, PC-2023-02781. On June 15, 2023, Plaintiffs'

Motion for a Temporary Restraining Order was granted only as to enjoining the scheduled special meeting. *See* Temporary Restraining Order ¶ 1 (June 15, 2023) (Cruise, J.) The matter was referred to the Court for further proceedings. *Id.* ¶ 2. On June 23, 2023, the Court entered an Order consolidating and advancing Plaintiffs' Application for Preliminary Injunction with a full trial on the merits as to Count I of the Verified Complaint. *See* Order (June 23, 2023). Trial was held on June 26, June 28, and June 30, 2023. On June 28, 2023, the Court entered an Order requesting supplemental legal briefing, which the parties submitted on July 7, 2023. *See* Docket, PC-2023-02781. The Court's Decision follows.

II

Standard of Review

Pursuant to Rule 65(a)(2), Plaintiffs' Application for Preliminary Injunction has been consolidated and advanced with a full trial on the merits as to Count I of the Verified Complaint. *See* Rule 65(a)(2). Rule 52(a) of the Superior Court Rules of Civil Procedure provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon[.]" Super. R. Civ. P. 52(a). In a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). This means that the trial justice "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." *Id*. (internal quotations omitted).

"When a case is tried without a jury, 'the task of determining credibility of witnesses is peculiarly the function of the trial justice[.]'" *Jotorok Group, Inc. v. Computer Enterprises, Inc.*, No. PC01-3237, 2005 WL 2981658, at *4 (R.I. Super. Nov. 4, 2005) (quoting *State v. Sparks*, 667 A.2d 1250, 1251 (R.I. 1995)) (further citation omitted). The factual determinations and credibility

assessments of a trial justice traditionally are accorded a great deference because it is "the judicial officer who . . . actually observe[s] the human drama that is part and parcel of every trial and who has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *In re Dissolution of Anderson, Zangari & Bossian*, 888 A.2d 973, 975 (R.I. 2006).

Our Supreme Court has recognized that a trial justice's analysis of the evidence and findings in the bench trial setting "'need not be exhaustive,"' stating that, "'if the decision reasonably indicates that [the trial justice] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses[,] it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law.'" *Notarantonio v. Notarantonio*, 941 A.2d 138, 144-45 (R.I. 2008) (quoting *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005)). "'Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" *Hilley v. Lawrence*, 972 A.2d 643, 651 (R.I. 2009) (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)) (internal citation omitted).

III

Analysis

As an initial matter, the Court must consider whether Plaintiffs have asserted a proper cause of action in their Verified Complaint. Our Supreme Court has held that "[a]n injunction is a remedy, not a cause of action." *Long v. Dell, Inc.*, 93 A.2d 988, 1004 (R.I. 2014). Without an underlying cause of action, a plaintiff "has no right to seek the remedy of injunctive relief." *Id.* It is also self-evident that damages—compensatory or punitive—are a type of remedy. *See FUD's, Inc. v. State*, 727 A.2d 692, 696-97 (R.I. 1999). However, it is long-standing policy in Rhode

Island not to dispose of cases "on arcane or technical grounds." *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992). Our Supreme Court has held that a pleading must merely "provide the opposing party with 'fair and adequate notice of the type of claim being asserted.'" *Gardner v. Baird*, 871 A.2d 949, 953 (R.I. 2005) (quoting *Haley*, 611 A.2d at 848). The Court is satisfied that Plaintiffs have provided fair and adequate notice of the underlying issue, that being whether the Notice was satisfactory as a matter of law. *See* Verified Compl. ¶¶ 20-22, 24, 26, 28. Thus, the Court must determine whether the Notice complies with the Bylaws and the Act.[4]

A

"Purpose" vs. "Items on the Agenda"

The predominant issue here is one of contractual and statutory interpretation. The Bylaws provide in pertinent part that "[t]he notice of any special meeting shall state the time, place, and *purpose* thereof." (Bylaws art. 2, § 5) (emphasis added). On the other hand, § 34-36.1-3.08 states that "[t]he notice of any meeting must state the time and place of the meeting and the *items on the agenda*, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer." Section 34-36.1-3.08 (emphasis

[4] At trial, the parties referred extensively to *Robert's Rules of Order* and their applicability to this dispute. *E.g.*, Pls.' Exs. 13-15; Defs.' Ex. I. The Bylaws provide that "[t]he then most current edition of Robert's Rules of Order shall govern the *conduct* of all meetings of the Association and the Executive Board when not in conflict with the Declaration, these Bylaws or the Act." (Pls.' Ex. 1 (Bylaws) art. 2, § 10) (emphasis added). "Conduct" is defined as "[p]ersonal behavior, whether by action or inaction, verbal or nonverbal; the manner in which a person behaves; collectively, a person's deeds." *Black's Law Dictionary* 369 (11th ed. 2019); *see also The Random House Dictionary of the English Language* 426 (2d ed. 1987) (defining "conduct" as "direction or management; execution"). Pursuant to the Bylaws' clear and unambiguous language, the Court finds that *Robert's Rules of Order* apply to meetings once they are convened, but not beforehand. The Court further notes that the Bylaws include a separate provision on special meeting notices that does not reference *Robert's Rules of Order*. (Bylaws art. 2, § 5.) Because *Robert's Rules of Order* are not applicable, the Court need not consider them further.

added). The Court must consider whether the terms "purpose" and "items on the agenda" conflict.[5] If they do, then the Act controls. (Bylaws art. 7, § 2.)

Plaintiffs argue that "purpose" and "items on the agenda" have the same essential meaning: "to give notice to unit owners of what business will be conducted and be voted on at the meeting . . . ." (Pls.' Supp'l Mem. 3.) Similarly, Defendants also state that "purpose" and "items on the agenda" have similar meanings, and that the ultimate objective "is to provide fair notice and fairly inform the public of the reason, subject and/or general topic to be discussed and nature of business to be acted upon." *See* Defs.' Supp'l Mem. 5. The Court agrees that "purpose" and "items on the agenda" are similar and that they have the same essence or objective. However, simply because the terms are *similar* does not mean that they are *identical*. On the contrary, the Court finds that they are sufficiently distinct such that they are not interchangeable.

1

The Meaning of "Purpose" in Article 2, § 5 of the Bylaws

The Court first turns to the meaning of "purpose" as found in Article 2, § 5 of the Bylaws. Our Supreme Court has previously held that "[t]he bylaws of a corporation 'have all the force of contracts as between the corporation and its members and as between the members themselves.'" *Adams v. Christies, Inc.*, 880 A.2d 774, 783 (R.I. 2014) (quoting 18A Am. Jur. 2d *Corporations* § 270, at 145 (2004)). The Court's primary task when interpreting contracts "is to attempt to ascertain the intent of the parties." *Woonsocket Teachers' Guild, Local 951 v. School Committee of City of Woonsocket*, 117 R.I. 373, 376, 367 A.2d 203, 205 (1976). "'[T]he intention of the parties must govern if that intention can be clearly inferred from' the terms and express language of the contract." *Morgan v. Bicknell*, 268 A.3d 1180, 1184 (R.I. 2022) (quoting *Woonsocket*

[5] This Decision does not address the existence of a conflict relating to regular meetings.

Teachers' Guild, 117 R.I. at 376, 367 A.2d at 205). Whether an ambiguity exists is a question of law. *See National Refrigeration, Inc. v. Standen Contracting Company, Inc.*, 942 A.2d 968, 971-72 (R.I. 2008); *Andrukiewicz v. Andrukiewicz*, 860 A.2d 235, 238 (R.I. 2004). When considering whether an ambiguity exists, "the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning." *Rubery v. The Downing Corp.*, 760 A.2d 945, 947 (R.I. 2000). If a contract's terms are unambiguous, "the task of judicial construction is at an end and the agreement must be applied as written." *W.P. Associates v. Forcier, Inc.*, 637 A.2d 353, 356 (R.I. 1994). Contractual language is ambiguous if it is "reasonably susceptible of different constructions." *Paul v. Paul*, 986 A.2d 989, 993 (R.I. 2010).

The Court finds that the relevant language in Article 2, § 5 of the Bylaws is clear and unambiguous. "The question of ambiguity focuses upon "whether the language has only one reasonable meaning when construed . . . *in an ordinary common sense manner*." *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58, 63 (R.I. 2005) (emphasis in original) (internal quotation marks omitted). After reviewing Article 2, § 5 of the Bylaws, the Court finds one common-sense meaning of "purpose" and that under the Bylaws, a special meeting notice need only describe the general reason as to why a special meeting was called.[6] The Court's interpretation is supported by the dictionary definition of "purpose," which is "[a]n objective, goal, or end[.]" *Black's Law Dictionary* 1493 (11th ed. 2019); *see also The Random House Dictionary*

[6] The Court notes that Plaintiffs' interpretation of "purpose" is more specific and relies on *Robert's Rules of Order* as support. *See* Pls.' Supp'l Mem. 1-2. Section 9:13 of *Robert's Rules of Order* provides that a special meeting notice must state the "time, place, and purpose of the meeting, clearly and specifically describing the subject matter of the motions or items of business to be brought up . . . ." *Robert's Rules of Order* § 9:13 (12th ed. 2020). However, the Court declines to adopt this definition for multiple reasons. As stated previously, *Robert's Rules of Order* have no bearing here. *See* Bylaws art. 2, §§ 5, 10. Additionally, Plaintiffs concede that "a 'purpose' *may be general or specific*." (Pls.' Supp'l Mem. 1) (emphasis added). The Court finds that the term "purpose" has a more general meaning. *See also* Defs.' Supp'l Mem. 1.

of the English Language 1570 (2d ed. 1987) (defining "purpose" as "the reason for which something exists or is done, made, used, etc."). The Court declines to strain this definition further, as "'the court should refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity . . . where none is present.'" *Family Dollar Stores of Rhode Island, Inc. v. Araujo*, 272 A.2d 582, 588 (R.I. 2022) (quoting *Young v. Warwick Rollermagic Skating Center, Inc.*, 973 A.2d 553, 559 (R.I. 2009)) (internal quotations marks omitted).

2

The Meaning of "Items on the Agenda" in § 34-36.1-3.08

Next, the Court examines the meaning of "items on the agenda" as found in § 34-36.1-3.08. When construing statutes, the Court's "ultimate goal is to give effect to the General Assembly's intent." *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001). If the statutory language is clear, the Court "must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Whittemore v. Thmopson*, 139 A.2d 530, 540 (R.I. 2016) (internal quotation marks omitted). "The Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the Court will give effect to every word, clause or sentence, whenever possible." *Commerce Park Realty, LLC v. HR2-A Corp.*, 253 A.3d 868, 874 (R.I. 2021) (quoting *State v. Clark*, 974 A.2d 558, 571 (R.I. 2009)) (brackets omitted) (internal citations omitted). The Court must "consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Sorenson v. Colibri Corp.*, 650 A.2d 125, 128 (R.I. 1994).

Our Supreme Court regards the Act as a consumer protection statute. *America Condominium Association, Inc. v. IDC, Inc.*, 844 A.2d 117, 128 (R.I. 2004). The Act "essentially incorporated the language contained in the Uniform Condominium Act . . . [,]" which was

itself created because "'there was a perceived need for additional consumer protection.'" *Id.* at 127-28 (quoting *One Pacific Towers Homeowner's Association v. HAL Real Estate Investments, Inc.*, 61 P.3d 1094, 1100 (Wash. 2002)). Through a consumer protection lens, the Court finds that the Act's requirement to notify condominium unit owners of "items on the agenda" means that unit owners must be provided fair notice of the business to be conducted and actions to be taken at a special meeting. This interpretation is consistent with the definitions of "item" ("[a] piece of a whole") and "agenda" ("[a] list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration"). *Black's Law Dictionary* 78, 996; *see also The Random House Dictionary of the English Language* 38, 1016. Moreover, interpreting the statute as a requirement to give fair notice aligns with the Legislature's intent to protect condominium unit owners' interests. *See America Condominium Association, Inc.*, 844 A.2d at 127-28.

The Court also finds that its interpretation of § 34-36.1-3.08 shares common ground with our Supreme Court's interpretation of the Open Meetings Act. *See* § 42-46-6. Under the Open Meetings Act, public bodies must give written notice of their regularly scheduled meetings, and any supplemental notices "shall include the date the notice was posted; the date, time, and place of the meeting; and a statement specifying the nature of the business to be discussed." Section 42-46-6(a)-(b). Our Supreme Court has held that "the content of a notice providing 'the nature of the business to be discussed' is a flexible standard based on the totality of the circumstances." *Pontarelli v. Rhode Island Board Council on Elementary and Secondary Education*, 151 A.3d 301, 306 (R.I. 2016) (quoting *Anolik v. Zoning Board of Review of Newport*, 64 A.3d 1171, 1175 (R.I. 2013)). There are no "specific guidelines, or 'magic words'" necessary to satisfy the statute. *Anolik*, 64 A.3d at 1175 (quoting *Tanner v. Town Council of East Greenwich*, 880 A.2d 784, 797

(R.I. 2005)). However, a public body "must provide 'fair notice' of what will be discussed at a meeting." *Pontarelli*, 151 A.3d at 306 (quoting *Anolik*, 64 A.3d at 1175).

For example, in *Pontarelli*, our Supreme Court held that a public meeting notice informing the public that "'[a]pproval of RIDE's Executive Pay Plan' was on the agenda for the council meeting" was insufficient because the notice did not state that multiple plans would be considered, or that the additional pay plans would apply to retrospective fiscal years dating back to 2012. *Id.* at 306. Additionally, an enclosed document intended to inform the public of multiple pay plans was not available on the Secretary of State's website. *Id.* Based on these factors, our Supreme Court held that "based on the totality of circumstances . . . adequate public notice was lacking." *Id.* In *Tanner*, a town council meeting notice with a sole agenda item stated as "Interviews for Potential Board and Commission Appointments," followed by the names of potential appointees, did not give fair notice that the town council would be voting on the appointments. *See Tanner*, 880 A.2d at 789, 798-99. Our Supreme Court found that "the notice implies that the town council would not vote on the appointments, but rather conduct interviews . . . ." *Id.* at 798. Thus, the town council failed to provide fair notice in violation of the Open Meetings Act. *See id.* at 799.

Furthermore, as stated above, the Court must presume that the Legislature "intended each word or provision of a statute to express a significant meaning." *Commerce Park Realty, LLC*, 253 A.3d at 874. As a result, the Court cannot conclude that "items on the agenda" is synonymous with "purpose" or that it imposes the same standard. If the Legislature wished to give additional deference, it would have made the statutory language less specific. Moreover, the Court notes that the Act is supplemented by, *inter alia*, "[t]he principles of law and equity, including the law of corporations and unincorporated associations . . . ." Section 34-36.1-1.08. In the context of corporate meetings, a special meeting notice "must state the business to be transacted *or* describe

the purpose for which the meeting is called . . . ." 5 *Fletcher Cyclopedia of the Law of Corporations* § 2009, at 76 (2019) (emphasis added). The use of the word "or" further persuades the Court that "purpose" and "items on the agenda" have similar, but distinct meanings. *Cf. The Random House Dictionary of the English Language* 1360 (defining "or" as a conjunction that is "used to connect words, phrases or clauses representing alternatives").

For reasons stated above, the Court holds that "purpose" and "items on the agenda" have different meanings. The Court also finds that the terms conflict because Defendants cannot set forth the "items on the agenda" by merely stating the purpose of, or the reason for calling, a special meeting.[7] Because "purpose" and "items on the agenda" conflict, the term found in the Act controls as to what the Notice must contain. *See* Bylaws art. 7, § 2.

B

The Notice Fails to Set Forth the "Items on the Agenda"

Because the Court finds that the Act controls, the Court must determine whether the Notice sufficiently states the "items on the agenda" for the special meeting. *See id.* The Court holds that the Notice fails in this regard because it does not set forth an agenda at all, but merely condenses Plaintiffs' proposed motions into a single sentence. *See* Notice. The Court notes that the Petition cogently articulates three substantive motions and specifically requests that they be subject to a vote. *See* Petition 2. However, the Notice does not provide the number of motions or their text. In addition, the Notice does not state that the motions may be subject to a vote. *Cf. Tanner v. Town*

[7] As stated previously, the Court need not consider *Robert's Rules of Order*. *See* Bylaws art. 2, §§ 5, 10. Even if the Court were to consider *Robert's Rules of Order*, the Court would similarly find that they conflict with the Rhode Island Condominium Act (the Act). *See Robert's Rules of Order* § 9:16 (12th ed. 2020).

Council of East Greenwich, 880 A.2d 784, 798-99 (R.I. 2005). For those reasons, the Court finds that Defendants' blithely drafted Notice fails to set forth the "items on the agenda."

C

The Petition is Improper

Even though the Notice fails to set forth the "items on the agenda," the Court finds that the Petition is improper *ab initio*. The Court addresses each of the Petition's substantive motions in turn. The Court again notes that § 34-36.1-1.08 allows consideration of other legal principles to supplement its interpretation and application of the Act. Section 34-36.1-1.08.

1

The First Motion

The Court first addresses the first motion in the Petition, which aims "[t]o prohibit the Executive Board from using any formula for assessing gas expense that conflicts with the declaration of condominium, as amended, or with the Rhode Island Condominium Act." (Petition 2.) This motion is, in essence, merely a reiteration of the Board's existing obligation to comply with the Bylaws, the Second Amended and Restated Declaration of The 903 Condominium (the Declaration), and the Act. The Court finds that this motion is lacking in substance because the Board is already obligated to abide by the governing documents and the Act. *Cf.* 2 *Fletcher Cyclopedia of the Law of Corporations* §§ 510-511, at 642-43. The motion is akin to stating that the Board must hold an annual meeting on the second Saturday of January each year, or that no vote shall be held without a quorum of sixty percent of unit owners entitled to vote. *See* Bylaws art. 2, §§ 3, 6. Such things are obvious because they are already part of the governing documents. *Id.* Plaintiffs' first motion brings no transactable business but rather seeks to reinforce a fact that is already self-evident. Consequently, the Court finds that the motion is improper.

The Second Motion

The Court next turns to the second motion in the Petition, which would "direct the Executive Board to obtain and provide every unit owner with cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium within 60 days after the Special Meeting." (Petition 2.) The Court finds that this motion is also improper because the Board cannot be compelled to produce cost estimates.

Much like the Bylaws, the Declaration is "akin to a contractual agreement." *Heath Management Co. v. Rhode Island Department of Environmental Management*, No. PC-05-3232, 2006 WL 1321274, at *7 (R.I. Super. Ct. May 15, 2006) (Vogel, J.) More precisely, a condominium declaration "is the instrument that 'defines the rights as among the condominium owners, the condominium association, and the developer.'" *Id.* (quoting Patrick Rohan & Melvin Reskin, *Real Estate Transactions: Condominium Law and Practice* § 3.02 (2006)). Thus, the Court finds it appropriate to use contract interpretation principles to determine whether Plaintiffs may compel the Board to furnish cost estimates for repairing or replacing its gas metering system. *Cf. Adams*, 880 A.2d at 783 (quoting 18A Am. Jur. 2d *Corporations* § 270, at 145). Except in instances of fraud or duress—which are not alleged here—contractual terms are applied as written. *Rodrigues v. DePasquale Building and Realty Co.*, 926 A.2d 616, 624 (R.I. 2007). The Court may not rewrite an otherwise unambiguous contract by adding nonexistent terms. *Pearson v. Pearson*, 11 A.3d 103, 109 (R.I. 2011) (citing *Perez v. Aetna Life Insurance Co.*, 150 F.3d 550, 557 (6th Cir. 1998); *Morrisseau v. Fayette*, 164 Vt. 358, 670 A.2d 820, 826 (1995)).

The Court first notes that the Board is bound by its governing documents and may not act beyond the powers conferred therein. 2 *Fletcher Cyclopedia of the Law of Corporations* §§ 510-

511, at 642-43. Unauthorized acts are *ultra vires* and therefore invalid. *In re Advisory Opinion to the Governor*, 627 A.2d 1246, 1248 (R.I. 1993); *see also Schaefer v. Eastman Community Association*, 150 N.H. 187, 190, 836 A.2d 752, 755 (2003). Moreover, the Board cannot be vested with the authority to act *ultra vires*. 2 *Fletcher Cyclopedia of the Law of Corporations* § 511, at 643. Second, the Court finds that the Board has broad discretion to manage the Association's affairs. In corporate settings, "shareholders 'hire' agents, i.e., directors or officers, to run the firm on their behalf." 5 *Fletcher Cyclopedia of the Law of Corporations* § 2096.10, at 514. Directors are vested with authority "to manage the corporate business and affairs for the shareholders, who elect them, and *the authority of the directors is absolute when they act within the law, and questions of policy and internal management are . . . left wholly to their decision*." 5 *Fletcher Cyclopedia of the Law of Corporations* § 2100, at 546-47 (emphasis added).

Pursuant to these principles, the Court finds that the second motion is improper. After reviewing the Bylaws and Declaration, no terms exist therein stating that the Board must furnish cost estimates upon demand. Thus, no motion and subsequent vote—no matter how overwhelming—could lawfully compel Board to do so. The Court further declines to read such a term into the governing documents, which are otherwise unambiguous. *See Pearson*, 11 A.3d at 109. In addition, the second motion infringes on the Board's broad discretion to manage the affairs of the Association. *See* 5 *Fletcher Cyclopedia of the Law of Corporations* § 2100, at 546-47.

If Plaintiffs are not satisfied with the Board's governance, there are remedies at their disposal. For instance, they may amend the Bylaws or Declaration so that the Board is required under those documents to procure and disseminate cost estimates for future projects. Alternatively, they may remove members of the Board who do not meet their expectations. However, Plaintiffs may not micromanage the Board by demanding conduct that is (1) not required by the governing

documents, and (2) within the Board's broad discretion to perform (or not perform). Consequently, the Court holds that Plaintiffs' second motion is improper.

3

The Third Motion

Finally, the Court examines the third substantive motion, which compels the Board "to call a second special meeting of the Association not less than 30 days or more that [*sic*] 60 days after the Executive Board provides cost estimates for repairing and/or replacing the gas metering and submetering infrastructure of the condominium . . . ." (Petition 2.) The Court also finds this motion to be improper because the gravamen of the motion is directly contradicted by Article 2, § 5 of the Bylaws, which provides that special meetings may only be called after a petition is signed by twenty unit owners and presented to the Secretary of the Association. (Bylaws art. 2, § 5.) Under the plain language of the Bylaws, the Board may not call a special meeting *sua sponte*. Because Plaintiffs' third motion compels the Board to act *ultra vires*, it is improper.

IV

Conclusion

Based on the foregoing, the Court finds for Defendants as to Count I of the Verified Complaint. Although the Notice fails to set forth the "items on the agenda," the Petition fails to bring proper motions. To achieve their desired relief, Plaintiffs may amend the Association's governing documents or recall members of the Board whose governance they find objectionable. Counsel shall prepare and submit the appropriate order for entry.

EXHIBIT D

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THE 903 CONDOMINIUM ASSOCIATION

BYLAWS

These Bylaws shall govern the administration, use, operation, maintenance and occupation of the property located at 1000 Providence Place, Providence, Rhode Island, known as The 903 Condominium.

ARTICLE 1: INTRODUCTORY PROVISION

Section 1. Name. The name of the Unit Owners' Association shall be "The 903 Condominium Association" and under that name all business shall be carried out by the Executive Board so far as legal and practicable.

Section 2. Applicability. These Bylaws ("Bylaws") shall relate solely to the buildings within THE 903 CONDOMINIUM, located at 1000 Providence Place, Providence, Rhode Island (the"Property"), more fully described in the Second Amended and Restated Declaration of Condominium of THE 903 CONDOMINIUM, dated March 21,2006, and the plat and plans attached thereto (collectively the "Declaration") recorded in the Office of the Recorder of Deeds of the City of Providence as the same may be amended from time to time.

Section 3. Definitions. The capitalized terms used herein without definition shall have the same definitions as such terms have in the Declaration and the Rhode Island Condominium Act of 1982, R.I.G.L. 34-36.1 et. seq. (the "Act"). Unless otherwise provided in the Act, in the event of inconsistencies in definitions between the Act and the Declaration, the Declaration shall control.

Section 4. Compliance. Pursuant to the provisions of the Act, every Unit Owner and all persons entitled to occupy a Unit shall comply with these Bylaws.

Section 5. Incorporation of Statutory Law. Except as expressly provided herein, in the Declaration, or in the Act, the provisions of applicable statutes of the State of Rhode Island shall govern the Association.

ARTICLE 2: UNIT OWNERS ASSOCIATION

Section 1. Office. The office of the Condominium, the Association, and the Executive Board shall be located at such place as may be designated from time to time by the Executive Board.

Section 2. Composition. The Association shall consist of all of the Unit Owners acting as a group in accordance with the Act pursuant to the Declaration.

For all purposes the Association shall act merely as an agent for the Unit Owners as a group. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, including collecting for arranging payment of all individual real estate taxes that may be assessed against each individual Unit as a result of the tax treaty with the City of Providence, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Association by the Act and the Declaration. Except as to those matters which the Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Executive Board or its designee.

Section 3. Meetings. Annual meetings of the Association shall be held on the second Saturday of January each year. At such annual meetings the Executive Board shall be elected by closed ballot of the Unit Owners. The Association shall also hold its Budget Meeting on the first Monday of December of each year.

Section 4. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Unit Owners as may be designated by the Executive Board.

Section 5. Special Meetings. The President shall call a special meeting of the Association upon a petition signed and presented to the Secretary by at least twenty (20) Unit Owners. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 6. Quorum. Sixty percent (60%) of the Unit Owners entitled to vote shall constitute a quorum for transactions of any business of the annual meeting or any other meetings of the Association.

Section 7. Notice of Meetings. The Secretary shall mail or hand deliver to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners as required by section 34-36.1-3.08 of the Act.

Section 8. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Unit Owners of a majority of the votes who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting was called.

Section 9. Voting. The vote to which each Unit Owner is entitled shall be the vote assigned to his Unit in the Declaration. A majority vote of the Unit Owners present in person or by proxy is required to adopt decisions at any meeting of the Association.

Section 10. Conduct of Meetings. The then most current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association and the Executive Board when not in conflict with the Declaration, these Bylaws or the Act.