

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT**

APPELLATE CASE NO.: 3D2025-1494

ANDREW J. KOMISKE,

Appellant,

vs.

TROPICAL BAY PROPERTY OWNERS ASSOCIATION, INC.,

Appellee.

L.T. Court Case No. 2024-CA-000245

ANDREW J. KOMISKE'S REPLY BRIEF ON THE MERITTS

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ARGUMENT

I. MRTA EXTINGUISHED THE ORIGINAL RESTRICTIONS RECORDED IN 1967

Appellee's reliance on *Sunshine Vistas Homeowners Ass'n v. Caruana*, 623 So. 2d 490 (Fla. 1993) is misplaced. Appellee argues that MRTA did not extinguish the original Declaration of Restrictions (recorded in 1967), because the 1967 restrictions expressly reference the Tropical Bay Third Addition Plat (recorded in 1964). But in *Caruana*, the Florida Supreme Court held that a muniment of title that makes "reference to a plat preserves the restrictions in the plat." *Id.* So. 2d at 492 (emphasis added). Here, the Plat at issue was recorded in 1964 and contains no restrictions. Although the muniments of title from the root of title reference the Plat (recorded in 1964), neither the Plat nor muniments of title reference the 1967 Declaration of Restrictions. Accordingly, the 1967 restrictions were not preserved by the muniments from the root of title in Komiske's chain of title.

II. MRTA EXTINGUISHED THE 1997 AMENDED DEED RESTRICTIONS

Appellee argues that the 1997 Amended Deed Restrictions fall within the preservation exception contained in section 712.03(4). AB

at 29. But that section provides a MRTA exception for: “[e]states, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.”

Id. Conspicuously absent from section 712.03(4) is the term “use restrictions.” As the Fifth District explained when it rejected this argument:

Finally, the landowners contend that an exception exists which prevents MRTA from applying to the restrictions recorded after the root of title. They cite section 712.03(4) Fla. Stat. (2001), which exempts “estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.” They rely on the definition of title transaction appearing in section 712.01(3) which is “any recorded instrument or court proceeding which affects title to any estate or interest in land and which describes the land sufficiently to identify its location and boundaries.” Since they claim the amended restrictions and the amendment to restrictions meet this definition, MRTA does not extinguish them. First, we do not believe the legislature intended that a covenant or restriction be considered an estate, interest, claim, or charge affecting title. In subsection 712.03(2), the legislature distinguished between “estates, interests, claims or charges” and “covenants or restrictions.” Further, even if restrictions fall within subsection 712.03(4), we believe that to be a “title transaction,” the instrument must not only affect title but must also be within the chain of title of the property involved. In other words, mortgages, judgment liens, etc. *which appear in the chain of title* after the root of title are not extinguished by MRTA. Otherwise, wild deeds could create problems sought to be eliminated by MRTA.

Berger v. Riverwind Parking, LLP, 842 So. 2d 918, 921–22 (Fla. 5th DCA 2003).

III. THE 1997 AMENDED DEED RESTRICTIONS WERE NOT NEW RESTRICTIONS THAT COULD EXIST INDEPENDENT OF THE ORIGINAL RESTRICTIONS

Appellee admits that the “Amended Deed Restrictions were adopted pursuant to the amendment provisions contained in the original declaration governing the subdivision.” AB at 39. Appellee also concedes that the Amended Deed Restrictions were adopted after the thirty-year period for the 1967 Declaration of Restrictions lapsed. AB at 3. The 1967 Declaration of Restrictions did not contemplate an association or otherwise provide for an association to enforce the restrictions; however, amendments to the 1967 Declaration of Restrictions could be made by majority vote.

Appellee’s position is that a majority vote of the homeowners—after the Declaration of Restrictions were extinguished by MRTA—was sufficient to create “a new covenant” that imposed a mandatory homeowner’s association on the entire neighborhood. This position is belied by Appellee’s admission that the 1997 Amendment was to the 1967 Declaration of Restrictions and the Amendment procedure followed the procedure set forth in the

1967 Declaration of Restrictions. The 1997 is not a “new” covenant. It is an amendment of the 1967 Declaration of Restrictions. Therefore, the 1997 Amendment is extinguished by MRTA.

CONCLUSION

Based on the foregoing arguments and authority, it is respectfully requested that the Final Judgment be reversed and remanded with directions to the trial court to grant Komiske’s motion for summary judgment and enter a final judgment adjudicating his rights consistent with the Court’s opinion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Appellant's Reply Brief complies with the word count limitation of Rule 9.210, Florida Rules of Appellate Procedure, in that it contains 1156 words (including words in headings, footnotes, and quotations), according to the word-processing system used to prepare this document. This document also complies with the line spacing, type size, and typeface requirements of Rule 9.045, Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Initial Brief has been electronically filed via the Florida Courts E-Filing Portal on this 15th day of June, 2026, which will serve an electronic copy to the following counsel of record:

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