

**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 INITIAL BRIEF ON THE MERITTS

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STATEMENT OF THE CASE AND FACTS

The underlying dispute concerned (a) whether the Marketable Record Title Act (“MRTA”) extinguished deed restrictions that predated the root of title, (b) whether the amended restrictions recorded after the root of title date could exist independently from the original restrictions, and (c) whether Tropical Bay POA had standing to enforce any restrictions. Because the material facts were not in dispute, both parties moved for summary judgment. The trial court denied Appellant’s motion for summary judgment, granted Appellee’s motion and rendered a Final Judgment. This appeal followed.

The Parties

Appellant is Andrew Komiske (“Komiske”), the owner of Lot 6 and Lot 7, Block 12, of the Tropical Bay Subdivision, Third Addition (“Lots 6 and 7”) according to the plat thereof as recorded in Plat Book 5, Page 81, Public Records of Monroe County, Florida. (R. 486).

Appellee is Tropical Bay Property Owner’s Association Inc., a nonprofit entity incorporated on May 25, 1971. (R. 405-409).

Root of Title Date for Lots 6 and 7

The trial court took judicial notice of the deeds in chain of title to Lots 6 and 7. (R. 354-374). Based on the recorded deeds, the parties do not dispute the root of title date to the chain of title for Lots 6 and 7 is the warranty deed from H.G. Landers and Oleta F. Landers to William C. Beckmann and Dortha C. Beckmann dated March 15, 1978. (R. 482 ¶ 17).

Declaration of Restrictions

The original restrictions that applied to Lots 6 and 7 were the Declaration of Restrictions recorded on March 14, 1967, by the developers of Tropical Bay Third Addition—who were the common grantors of the individual lots therein. (R. 727-731). The Declaration of Restrictions restricted the use of the lots in the following ways:

- limited the use of the lots to single-family residential use;
- prohibited trailers and other mobile structures from being placed on any lot for residential purposes;
- prohibited detached garages and carports;
- required all building to be one-story concrete block structures, built on a concrete foundation, to a height of no more than 15 feet tall from the foundation to the peak of the roof;

- prohibited flat roofs except for attached garages and carports;
- specified a minimum ground floor area of 1000 sq/ft of which 750 must be livable space;
- Established setbacks from the front of the lot to be between 25 to 30 feet and the side of the lot at 7.5 feet;
- mandated that sewage shall be disposed of only by septic or central sewage disposal plant;
- required the lots to be kept clear of debris and not be used for storage of lobster traps, and other unsightly articles;
- prohibited raising, breeding or keeping animals, livestock, poultry and insects except for common pets for domestic purposes.

Notably, the Declaration of Restrictions did not reserve to the developer the right to amend or enforce the restrictions; nor did it provide for or contemplate the establishment of an association to enforce the restrictions, collect dues, or levy fines. Instead, the enforcement of the restrictions “shall be by a suit in equity, which it is hereby agreed may be maintain by any owner or owners of land in the said subdivision.” (R. 729). By its own terms, the Declaration of Restrictions run with the land and shall be binding on the present owners for said lots and all persons claiming by, through, or under them for a period of thirty (30) years from [March 14, 1967].” (R. 729). The Declaration further states that after the expiration of the thirty

year period, “said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by persons then owning a numerical majority of said lots, agreeing to change said covenants or restrictions in whole or in part, shall have been recorded in the public records of Monroe County, Florida.” (R. 429).

Amended Deed Restrictions

On June 26, 1997, after the thirty-year period for the 1967 Declaration of Restrictions lapsed, Tropical Bay POA recorded a document purporting to be a Certificate of Amendment and Amended Deed Restrictions for Tropical Bay Subdivision Third Addition. (R. 412-470). Except for the addition of a restriction of short-term rentals within the community, the use restrictions basically mirror the use restrictions imposed by the 1967 Declaration of Covenants. The glaring difference between the 1967 restrictions recorded by the common grantors to the lots in the Third Addition and the 1997 amended restrictions recorded by Tropical Bay POA is that the amended restrictions purport to require every lot owner within Tropical Bay Third Addition to become a member of Tropical Bay POA which shall

be appurtenant to and may not be separated from ownership of a lot (R. 416), compel all lot owners to pay annual assessments and special assessments to Tropical Bay POA whether or not it shall be so expressed in their deed (R. 417), require owners to seek approval of Tropical Bay POA before erecting or altering a building on their lot (R. 416), and authorize Tropical Bay POA to enforce the amended restrictions by maintaining a suit in law or equity. (R. 419).

Incorporation of Tropical Bay POA

In 1971—four years after the Declaration of Restrictions were recorded— a few owners in Tropical Bay organized to form Tropical Bay POA and offered membership to “[a]ny person who shall own or have any interest, whether of fee, mortgage, leasehold or otherwise in real property located in Tropical Bay Estates.” (R. 407). A person owning, leasing or having any other interest in real property in Tropical Bay Estates desiring to become a member of Tropical Bay POA must “request membership in writing” and “pay[] any qualification fees and dues required of members at the time of admission.” (R. 407).

Eight years after the incorporation of Tropical Bay POA

(November 18, 1979), Tropical Bay POA filed its bylaws, providing:

[t]he purpose of this organization shall be (1) to join together in a voluntary effort to maintain and inspire in all property owners a sincere desire to preserve the natural beauty of Tropical Bay Estates and to perpetuate its present high standards; (2) to serve as a forum at which any property owner of Tropical Bay Estates may be heard on any subject of mutual concern relating to the use and maintenance of any and all real property situated in Tropical Bay Estates (3) to enforce the provisions of the deed restrictions as required; and (4) to represent a majority of the owners of Tropical Bay Estates in contacts with other organizations.

(R. 877-881). Five years later (December 1, 1984), Tropical Bay

POA amended its bylaws to state:

[t]he corporation has the power to enter into contracts for the benefit of the property within Tropical Bay subdivision. In order to obtain the necessary funds to meet the corporate obligations the corporation is empowered to establish reasonable dues and fees which may be a charge against the property owners. The amount of any increase in dues or any additional fees shall be established by the Board of Directors and approved by the affirmative vote of 51% of the properties entitled to vote at any meeting of property owners where the subject matter is on the agenda.

(R. 885).

Operative Pleadings

The operative complaint is the amended complaint filed August 16, 2024. (R. 342-349). The operative answer is the answer to the amended complaint filed September 6, 2024 (R. 473-485).

The amended complaint seeks a judgment declaring the following:

- a. That Tropical Bay POA is a voluntary membership association;
- b. That Komiske is not a member of Tropical Bay POA;
- c. That any deed restrictions that may have previously been in effect have been extinguished by MRTA;
- d. That there are currently no deed restrictions enforceable against Komiske, and any fine imposed by Tropical Bay POA must be removed;
- e. That all dues paid by Komiske to Tropical Bay POA since his purchase of Lots 6 and 7 must be returned.

Motions for Summary Judgment and the Trial Court's Ruling

Because the facts were not being genuinely disputed, both parties moved for summary judgment. Ultimately, the trial court concluded the Amended Deed Restrictions were a new, full set of restrictive covenants that can exist independently from the Declarations of Restrictions recorded in 1967 ("Original

Restrictions”). The trial court entered a Final Judgment against Komiske and in favor of Tropical Bay POA, This appeal followed.

STANDARD OF REVIEW

“An order in a declaratory judgment action is generally accorded a presumption of correctness on appellate review. However, to the extent that the decision rests on a question of law, the order is subject to full, or de novo, review on appeal.” Pacheco v. Jinete, 393 So. 3d 1274, 1277 (Fla. 3d DCA 2024), quoting, Reform Party of Fla. v. Black, 885 So. 2d 303, 310 (Fla. 2004) (internal citation omitted).

SUMMARY OF THE ARGUMENT

This Court should reverse the Final Judgment in favor of Tropical Bay POA and direct the lower court to enter judgment in favor of Komiske. In the underlying action, Komiske sought a declaration that MRTA extinguished the Declaration of Restrictions recorded outside the root of title of his chain of title and that there are no deed restrictions enforceable against him with respect to Lots 6 and 7. In addition, Komiske sought a declaration that membership in Tropical Bay POA is voluntary, he is not a member of Tropical Bay POA, and that any dues collected from him by Tropical Bay POA must be refunded.

MRTA provides that any person (alone or together with predecessors) vested with any estate in land of record for 30 years or more, shall have marketable record title, free and clear of all claims, except those set forth as exceptions in section 712.03. Fla. Stat. § 712.02. Subject to the exception in section 712.03, a marketable title is free and clear of all covenants and restrictions that depend upon any title transaction that occurred before the effective date of the root of title. Fla. Stat. § 712.04. Section 712.03 provides that marketable record title will not affect or extinguish use restrictions disclosed by muniments of title on which said estate is based beginning with the root of title, provided that in the muniments of title creating the use restrictions that pre-date the root of title are preserved “by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such use restrictions created before the root of title as identified by the official records book and page or instrument number.” Fla. Stat. § 712.03(1).

Here, Tropical Bay POA concedes that the root of title in Komiske’s chain of title for Lots 6 and 7 is a warranty deed recorded

on March 30, 1978. (R. 482 ¶17). That deed refers generally to “conditions, restrictions, reservations, limitations, and easements of record.” (R. 495). It does not preserve any restrictions that pre-date the indenture by specifically identifying by the book and page number in the legal description of the muniment of title or plat containing the use restrictions; nor does it include an affirmative statement to preserve restrictions created before the root of title. The other deeds in the root of title for Komiske’s chain of title also fail to preserve any restrictions pre-dating the root of title. (R. 388-397). As such, the Declaration of Restrictions recorded on March 14, 1967, have been extinguished by MRTA.

The trial court, however, concluded:

Beginning with Plaintiff’s root of title (March 15, 1978 Deed from Landers to Beckmann), and moving forward in time, the record reflects that the Beckmanns signed the Amended Deed Restrictions on March 11, 1997 which were recorded June 26, 1997. Although the Deed Restrictions contain the term “Amended”, and refer to the Original Restrictions recorded in 1967, the “Amended Deed Restrictions” are actually a new, full set of restrictive covenants. In that sense, they can exist independently of the Original Restrictions. In addition, the specific property owned by the Beckmanns (Lots 6 & 7, Block 12, the property currently owned by Plaintiff) is specifically referred to in the 1997 Restrictions, which the Beckmanns signed, ratifying and agreeing to them. This distinguishes

this case from the Matissek case cited by Plaintiff in its motion (Matissek v. Waller, 51 So. 3d 625 (Fla.2d DCA 2011)).

(R. 1147-48).

Contrary to the trial court's analysis, the rationale for the Matissek Court's conclusion that amendments to the original restrictions could not exist independently of the original restrictions was because:

the 1977 amended restrictions, just like the 1971 restrictions, do not provide an exception under section 712.03 that would prevent HLEI's interest in the property from being extinguished under section 712.04. The 1977 amendments address revisions to the 1971 restrictions and do not concern a chain of title to any property, let alone the Matisseks' property. Thus, the amendments are not considered to be "muniments of title," and subsection 712.03(1) is inapplicable. Similarly, the 1977 amendments do not apply under subsection 712.03(4) because the amendments are not "title transactions" as defined in section 712.01(3), and the legislature did not intend that a covenant or restriction be considered an estate, interest, claim, or charge affecting title. *See Berger*, 842 So.2d at 922 (noting the legislature's purposeful distinction between "estates, interests, claims or charges" and "covenants or restrictions" in subsection 712.03(2)).

We also find that the 1977 amended restrictions in this case were recorded outside of the chain of title of the Matisseks' property[.]

Matissek, 51 So. 3d at 629–30. Here, the 1997 Amendments recorded by the Tropical Bay POA cannot “stand alone” for the same reasons the amendments in Matissek could not exist independently of the original restrictions.

What’s more, Tropical Bay POA:

does not contest the fact that the association was a voluntary membership association from its inception until the Amended Deed Restrictions were recorded on June 26, 1997, and the [Articles of Incorporation] explicitly state that the association was voluntary. Furthermore, [Tropical Bay POA] points out the fact that the Declaration of Restrictions makes no mention at all of a property owners’ association, much less a mandatory one.

(R. 716). The restrictions recorded by Tropical Bay POA are not a muniment of title, nor are they recorded within Komiske’s chain of title. Instead, the Beckmanns, predecessors in title of Lots 6 and 7, “affixed their signatures hereto hereby adopting, ratifying, and agreeing to the Amendment of these Covenants.” (R. 457, 458). That the Beckmanns adopted, ratified and agreed to the “Amendment of these Covenants” shows that these are not new restrictions that can exist independently of the original restrictions. The Beckmanns were not “Grantors” and Tropical Bay POA was not a “Grantee” of the

restrictions. If Tropical Bay POA followed the statutory procedure of revitalizing restrictions, the association would be deemed to be and shall be indexed as a grantee in a title transaction and the owners would be deemed to be and shall be indexed as “grantors” in the title transaction.” 720.407(3). In sum, the Amended Deed Restrictions were extinguished by MRTA and cannot stand independently of the Original Restrictions that were also extinguished.

ARGUMENT

I. KOMISKE’S TITLE TO LOTS 6 AND 7 IS FREE AND CLEAR OF THE RESTRICTIONS CONTAINED IN THE DECLARATION OF RESTRICTIONS RECORDED IN 1967 AND THE AMENDED DEED RESTRICTIONS RECORDED IN 1997.

“MRTA was enacted in 1963 to simplify and facilitate land transactions, and specifically provides that its provisions are to be construed liberally.” Blanton v. City of Pinellas Park, 887 So. 2d 1224, 1227 (Fla. 2004). A few years after the legislature enacted MRTA, the First District offered a cogent overview of how the various provisions of MRTA operate to fulfill its stated purpose.

[t]he purpose of Chapter 712, Florida Statutes, F.S.A., the Marketable Record Title Act, is to render marketable any estate in land recorded for thirty years or more and to make same free and clear of any interest arising from a title transaction, act, event, or omission, which occurred

prior to the effective date of the root of title. 'Root of title' is defined as the Last title transaction recorded at least thirty years. All interest arising prior to root of title is declared null and void unless such interest falls within one of those classes specifically excepted. By legislative declaration this act is to be liberally construed to effect the purpose of simplifying and facilitating land title transactions by allowing persons to rely upon a deed recorded for a period of thirty years or more.

Whaley v. Wotring, 225 So. 2d 177, 181 (Fla. 1st DCA 1969).

Although MRTA generally operates to extinguish old claims, it “is also a recording act in that it provides for a simple and easy method by which the owner of an existing old interest may preserve it[.]” City of Miami v. St. Joe Paper Co., 364 So. 2d 439, 442 (Fla. 1978). Under MRTA,

[a]ny person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction or any portion of a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof

St. Joe Paper Co., 364 So. 2d at 442.

To ensure that the recorded notice provides *constructive* notice of the interest in land or covenant or restriction that has been preserved under MRTA's recording act, the notice must contain a

complete description of all land affected by such notice, in particular terms and not general terms, and the notice must be indexed as though the claimant were the grantee in the deed and the purported owner were the grantor. Fla. Stat. § 712.06(1)(c) and (2).

Because MRTA provides for an easy method for the owner of an old claim to preserve it, the Florida Supreme Court provided a cautionary rebuke: “if he fails to take the step of filing the notice as provided, he has only himself to blame if his interest is extinguished.” St. Joe Paper Co., 364 So. 2d at 442.

In this case, two recorded instruments in the Official Records purport to contain use restrictions that apply to Lots 6 and 7. The first instrument is the Declaration of Restrictions for Tropical Bay Third Addition, *i.e.*, the “Original Restrictions.” The second is the Amended Deed Restrictions for Tropical Bay Third Addition. When viewed through the lens of MRTA, the picture is clear: MRTA extinguished the restrictions in both instruments.

A. MRTA Extinguished the Declaration of Restrictions Recorded on March 14, 1967.

The effective date of the root of title for Lots 6 and 7 is March 30, 1978. The Declaration of Restriction recorded March 14, 1967 is

prior to the effective date of the root of title. Because the Declaration of Restrictions is more than 30 years old, and predates the effective date of the root of title to Lots 6 and 7, MRTA renders the Declaration of Restrictions null and void—unless an exception to marketability under Fla. Stat. § 712.03 applies.

The three exceptions to marketability that *potentially* could apply to the facts of this case are the exceptions described in sections 712.03(1), 712.03(2) and 712.03(4). But as the analysis below demonstrates, the restrictions were extinguished by MRTA because the exceptions did not apply.

1. The exception described in section 712.03(1) does not apply

Section 712.03(1) provides an exception to marketability for:

Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, provided that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number[.]

This exception does not preserve the Declaration of Restrictions because beginning with the root of title, none of the muniments of title upon which Komiske's estate in Lot 6 and 7 is based preserves the Declaration of Restrictions by (a) identifying in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name where the restrictions are recorded; or by (b) an affirmative statement in a muniment of title that the restrictions created before the root of title as identified by the official records book and page or instrument number will be preserved. Instead, the muniments of title beginning with the root of title contain a general reference to restrictions of record or no reference to restrictions at all. A general reference to restrictions of record is insufficient to preserve restrictions that pre-date the root of title.

What's more, section 712.03(1) does not apply to the Amended Deed Restrictions, recorded in 1997, because these instruments are not muniments of title, much less muniments of title upon which Komiske bases his estate.

Muniments of title are deeds, wills, and court judgments through which a particular land title passes and upon which its validity depends. Muniments of title need not be

recorded to be valid notwithstanding that the recording statutes give good faith purchasers certain rights over the rights of persons claiming under unrecorded muniments of title. Muniments of title do more than merely “affect” title; they must carry title and be a vital link in the chain of title.

Cunningham v. Haley, 501 So. 2d 649, 652 (Fla. 5th DCA 1986).

2. The exception provided by section 712.03(2) does not apply

Section 712.03(2) provides for the preservation of restrictions by recording a notice in compliance with MRTA’s recording act. No such notice was recorded in the public records before March 15, 1997—the date the Declaration of Restrictions became null and void by operation of MRTA.

3. The exception described in section 712.03(4) does not apply

Section 712.03(4) provides for an exception to marketability 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.* A covenant or restriction is not an estate, interest, claim, or charge. Moreover, a recorded instrument containing a covenants or restrictions is not, in and of itself, a “title transaction.” As the Fifth District explained:

[W]e 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, 922 (Fla. 5th DCA 2003) (italics in original). As further evidence that the legislature does not view a declaration of restrictions as meeting the definition of a “title transaction” under MRTA, the statute relating to revitalizing covenants states: “[f]or purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction” when a association records a revived declaration of covenants under section 720.407(3). There would be no need for this legal fiction if restrictions were already considered “title transactions.”

The marketability exception provided by section 712.03(4) does not apply to the Amended Deed Restrictions because the Amended Deed Restrictions are not an estate, claim, interest, or charge. Nor

does the Amended Deed Restrictions meet the definition of “title transaction and is recording is outside of Komiske’s chain of title. For these reasons, the Amended Deed Restrictions were extinguished by MRTA.

B. The Amended Restrictions are Not New Covenants that Can Exist Independent of the Original Restrictions.

The trial court implicitly acknowledged that MRTA extinguished the Original Restrictions, but it erred when it construed the Amended Deed Restrictions as a “new, full set of restrictive covenants that exist independently of the Original Restrictions.” (R. 1202).

First, the plain language of the instrument—Amended Deed Restrictions—reveals that the intent was to amend the Original Restrictions. Indeed, the owners who signed the Amendment “affixed their signatures hereto adopting, ratifying and agreeing to the Amendment of these Covenants.” (R. 421-470). It is clear that the signatories were under the impression that they were still bound by the Original Restrictive because the Certificate of Amendment indicates that the “proposed amendments received sufficient affirmative votes to pass the amendment as required by Article XI of the previously recorded amendments and that as a result of the

foregoing proper notice having been given, said amendments are duly adopted as the deed restrictions of Tropical Bay Subdivision, Third Addition. (R. 412) (underline added). That the Amended Deed Restrictions also references the legal description for the entire tract comprising Tropic Bay Third Addition and purports to “impos[e] said Restrictions upon each and every lot, part, or parcel of said land” shows that the signatories were intending to amend the Original Restrictions and bind all the lots in the Third Addition. (R. 414).

In construing the Amended Deed Restrictions as “a new, full set of restrictive covenants that exist independently of the Original Restrictions” (R. 1204), the trial court placed undue emphasis on the *non-material* fact showing that “the Amended Deed Restrictions were adopted, ratified and agreed to by [Komiske’s] predecessor in title, William and Dortehea Beckmann, who owned Lots 6 & 7 at the time that the Amended Deed Restrictions were recorded, as evidence by the notarized sworn statement with Amended Deed Restrictions.” (R. 1204). Contrary to the trial court’s conclusion, the Amended Deed Restrictions were dead on arrival—the Beckmanns’ adoption of dead restrictions did not revive them into live covenants that would run that with their land. This is because the Beckmanns, along with the

other property owners who signed the Amendment, were agreeing to the “Amendment of these Covenants.” Because the covenants that the property owners were agreeing to amend were already extinguished, their adoption and ratification of the “Amendment to these Covenants” was a nullity.

1. The Amended Deed Restrictions are Not Enforceable because they were not imposed by a common grantor or otherwise included in a “title transaction” that would place them in the chain of title for Lots 6 and 7.

The Amended Deed Restrictions cannot be construed as “a new, full set of restrictive covenants that exist independently of the Original Restrictions” (R. 1204), because the Original Restrictions were imposed by a common grantor of all the lots in Tropical Bay Third Addition. This allows the restrictions to be in the chain of title for each subsequent grantee. Here, the Amended Deed Restrictions—recorded by Tropical Bay POA (as grantor) are outside the chain for Lots 6 and 7. Moreover, the Amended Deed Restrictions are not a title transaction. Simply put, the validity of the Amended Deed Restrictions is dependent on the continued validity of the Declaration of Restrictions.

II. TROPICAL BAY POA DOES NOT HAVE STANDING TO ENFORCE DEED RESTRICTIONS AGAINST KOMISKE

When Tropical Bay POA was incorporated in 1971, it was a property owner's association where membership was voluntary. It was formed after the common grantor recorded the Declaration of Restrictions; the association is not within the chain of title with the lot owners. Nor was the association assigned the right to enforce the Declaration of Restrictions, collect dues, or otherwise represent itself as the mandatory homeowner's association for Tropical Bay Third Addition. The original Declaration of Restrictions never contemplated an association.

Starting in the 1980s and culminating with the Amended Deed Restrictions, Tropical Bay POA appears to have assumed power by pure fiat. There is no evidence in the record showing where it derived its power to enforce any covenants or transform a community into a mandatory homeowner's association community, and then take the mantle of running the association. Thus, even if the Amended Deed Restrictions were valid, they still wouldn't be enforceable by Tropical Bay POA.

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 Initial Brief complies with the word count limitation of Rule 9.210, Florida Rules of Appellate Procedure, in that it contains 5499 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 26th day of November, 2025, which will serve an electronic copy to the following counsel of record:

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