

O/a 5-10-85

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF BUSINESS
REGULATION, DIVISION OF FLORIDA
LAND SALES AND CONDOMINIUMS,

Petitioner,

vs.

CASE NO. 65,814

HERMAN E. SIEGEL,

Respondent.

FILED

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APR 25 1985

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By [Signature]
Chief Deputy Clerk

TOWERS OF QUAYSIDE HOMEOWNERS'
ASSOCIATION, INC.,

Petitioner,

vs.

CASE NO. 65,834

HERMAN E. SIEGEL,

Respondent.

APPEAL FROM THE DISTRICT COURT
OF APPEAL, THIRD DISTRICT OF FLORIDA

REPLY BRIEF OF AMICI CURIAE, BUILDERS ASSOCIATION
OF SOUTH FLORIDA and THE GARDENS OF KENDALL
PROPERTY OWNERS ASSOCIATION, INC.

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PREFACE

Amici Curiae, BUILDERS ASSOCIATION OF SOUTH FLORIDA ("BUILDERS ASSOCIATION"), and THE GARDENS OF KENDALL PROPERTY OWNERS ASSOCIATION, INC. ("THE GARDENS"), jointly, respectfully submit this brief in reply to the arguments raised in Respondent's Answer Brief.

ARGUMENT

- I. AMICI CURIAE, THE GARDENS, IS NOT DEVELOPER CONTROLLED AND IS IN FACT VIRTUALLY IDENTICAL TO THE PETITIONER HOMEOWNERS ASSOCIATION.

Amici Curiae, BUILDERS ASSOCIATION and THE GARDENS, again submit a joint brief, similar to Respondent's service of one answer brief in response to three separate initial briefs, to prevent duplication of effort and expense in preparing separate briefs. Accordingly, Amici Curiae strenuously object to Respondent's erroneous implication that they are both arms of the development industry as implied in Respondent's statement that Amici Curiae "strangely, filed one brief . . ." (Respondent's Brief, at 1). BUILDERS ASSOCIATION and THE GARDENS are totally separate entities, whose only common interest in this proceeding is to assist this Court in resolution of the issues presented, and whose only connection in this proceeding is representation by the same counsel.

Amici Curiae further object to Respondent's erroneous statement that THE GARDENS is "merely another voice of the development industry." (Respondent's Brief, at 14). THE GARDENS appears

independently before this Court because its interests will be directly affected by the outcome of these proceedings.

Respondent states on page 14 of its Answer Brief:

But what is the interest of Amicus THE GARDENS? It never tells us exactly who or what it is. Further, it never tells us who controls this Association. Is it an association comprised solely of the owners of condominium units, like HOMEOWNERS' ASSOCIATION? Or, is it an association comprised of, in whole or in part, single-family homeowners, making it thereby not affected by the decision of the Third District, or the issues before this Court?

Further, who controls THE GARDENS? THE GARDENS never tells us whether or not it is under developer control, thereby making it merely another voice of the development industry.

The facts are that THE GARDENS is a "master" or "umbrella" homeowners' association whose membership is comprised solely of condominium unit owners. The Gardens of Kendall community consists of five separate condominiums, with five separate condominium associations. THE GARDENS is given the responsibility to operate and maintain the common facilities used by the condominium unit owners, which facilities consist of a recreational area, driveway and parking areas. As such, THE GARDENS is virtually identical to the Towers of Quayside community, except that the Gardens of Kendall community is fully developed and not under developer control.

II. BOTH THE ISSUES OF CONVERSION OF UNITS AT THE TOWERS OF QUAYSIDE FROM RENTAL TO CONDOMINIUM AND POSSIBLE FUTURE DEVELOPMENT UNDER NON-CONDOMINIUM FORMS OF OWNERSHIP WERE RAISED BELOW.

Amici Curiae argue that the Third District erroneously focused on the Towers of Quayside community's structure as of a particular point in time, notwithstanding that such community's structure may change depending upon future development of currently undeveloped parcels. (Amicus Brief of Builders Association of South Florida and the Gardens of Kendall Property Owners Association, Inc., at 16-19). Rather than squarely addressing the merits of that argument, Respondent suggests that no record support exists for the underlying bases of Amici Curiae's arguments. Specifically, Respondent states:

It is also argued that one of the condominiums in the Towers of Quayside was created by conversion of an existing rental building, while the other buildings were condominiums from their inception. This fact is not established by the record. It is raised in a letter written by Petitioner HOMEOWNERS' ASSOCIATION's attorney but was not supported anywhere in the record before the Third District. There is not document in the record indicating such a conversion. Instead, the record reflects only the existence of condominiums, and a development scheme contemplating solely condominiums in the future.

(Respondent's Brief, at 36). Respondent also states: "there is no documentation in the record to suggest the developer of a project similar to this one has ever changed plans in mid-stream in a way such as Petitioners and Amici suggest." (Respondent's Brief, at 35).

In response to Respondent's allegations of no record support, Amici Curiae respectfully refer this Court to Appendix A to Petitioner, HOMEOWNERS ASSOCIATION's, Brief on the Merits, which is a letter to Petitioner, DEPARTMENT OF BUSINESS REGULATION, DIVISION OF FLORIDA LAND SALES AND CONDOMINIUMS, submitted in connection with the Petition for Declaratory Statement resulting in the instant proceeding. Therein, it is expressly stated that certain rental units were converted to condominium units.

With regard to the possibility of future development under non-condominium forms of ownership, the Third District's opinion below expressly considered the issue. Siegel v. Division of Land Sales and Condominiums, etc., 453 So.2d 414, 416 n. 4 (Fla. 3d DCA 1984). It cannot be candidly argued, therefore, that these issues were not "of record".

CONCLUSION

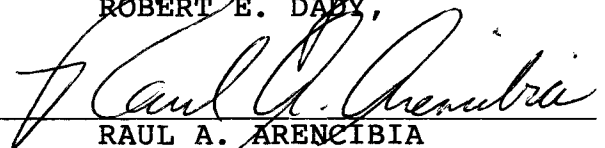
For all the forgoing reasons, and those expressed in the Petitioners' and Amici Curiae's briefs filed in this action, the Court should reverse the decision of the Third District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail on: Thomas A. Bell, Esquire and Karl M. Scheuerman, Esquire, Department of Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, 725 South Bronough Street, Tallahassee, Florida 32301; David W. Trench, Esquire and Martin A. Schwartz, Esquire, Rubin Baum Levin Constant Friedman & Bilzin, 1201 Brickell Avenue, Miami, Florida 33131; Richard E. Gentry, Esquire, Florida Home Builders Association, P.O. Box 1259, Tallahassee, Florida 32302; and Mark B. Schorr, Esquire, Becker, Poliakoff & Streitfeld, P.A., 6520 No. Andrews Avenue, P.O. Box 9057, Fort Lauderdale, Florida 33310-9057, this 23rd day of April, 1985.


RAUL A. ARENCIBIA