IN THE
SUPREME COURT OF FLORIDA

CASE NO. 79,981

DCA CASE NO. 91-2203

CIRCUIT COURT CASE NO. 91-12671-CA-28

SUNSHINE VISTAS HOMEOWNERS' ASSOCIATION,
a Florida not-for-profit corporation,

Petitioner/Appellant,

vs.

LOUIS CARUANA, et al.,

Respondents/Appellees.

AMICUS CURIAE BRIEF, FOR AND ON BEHALF OF ATTORNEYS' TITLE INSURANCE FUND, INC.

R. Norwood Gay, III
General Counsel
Attorneys' Title Insurance Fund, Inc.
Post Office Box 628600
Orlando, Florida 32862-8600
(407) 240-3863

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Attorneys' Title Insurance Fund, Inc., adopts the Statement of the Case and Facts contained in Petitioner's, Sunshine Vistas Homeowners' Association's, brief on the merits filed on July 24, 1992.

SUMMARY OF ARGUMENT

The opinion of the district court — that use restrictions appearing on a plat recorded prior to a root of title are eliminated if not verbatim set forth in the root deed and subsequent deeds — is not supported by any legal authority and should be reversed. The holding conflicts with prior decisions of this Court and with the specific provisions of the Florida Marketable Title Act (the "Act"). Such departure from established rule of law creates undesirable uncertainty in Florida land titles.

This Court has in the past held that restrictions on a plat are enforceable against property conveyed by deed which describes the property by reference to such plat. The Marketable Record Title Act, which preserves use restrictions disclosed by or inherent in these muniments of title, applies to the platted use restrictions of the plat of Sunshine Vistas. Even if such restrictions could be deemed eliminated by virtue of the fact that they were created prior to appellees' root of title, the restrictions are in fact imposed by the root of title and reimposed

by the deed following the root deed, and are, therefore, preserved under the terms of the Act.

ARGUMENT

THE MARKETABLE RECORD TITLE ACT DOES NOT HAVE THE EFFECT OF EXTINGUISHING A PLAT RESTRICTION WHICH WAS CREATED PRIOR TO THE ROOT OF TITLE WHERE THE MUNIMENTS OF TITLE IN THE CHAIN OF TITLE DESCRIBED THE PROPERTY BY ITS LEGAL DESCRIPTION WHICH MAKES SPECIFIC REFERENCE TO THE PLAT AND THE MUNIMENTS OF TITLE STATE THAT THE CONVEYANCE IS GIVEN SUBJECT TO COVENANTS AND RESTRICTIONS OF RECORD:

A. If lands described in a deed are conveyed by reference to a plat, all matters on the plat, including use restrictions, are to be regarded as if copied into the deed itself.

Over one hundred years ago this Court had occasion to construe the legal description in a deed which made reference to a map, and held as follows:

> Where one deed refers to another or to a map or plan of a survey for a description, the deed, map, or plan referred to becomes as much a part of the instrument making the reference as if actually copied into it.

Andreu v. Watkins, 26 Fla. 390, 7 So. 876, 880 (1890) (emphasis added).

Forty-four years later, this Court reiterated the principle of incorporation by reference in Khan v. Delaware Securities Corporation, 114 Fla. 32, 153 So. 308 (1934), where the issue was the establishment of a boundary line. More recently, in a case aptly involving a suit to cancel restrictions appearing on a plat, this Court overruled appellants' argument that the restrictions on the plat never became effective because they were not repeated verbatim in their deeds. This Court held instead that

the restrictions appearing on the plat sprang into existence "by the grant of one or more lots according to the plat and by reference thereto..." Wahrendorff v. Moore, 93 So.2d 720, 722 (1957).

The various district courts of appeal have followed without reservation or limitation this Court's holdings to the effect that the matters shown on a plat are incorporated into deeds that convey property by reference to the plat. See, e.g., Mexico Beach Corporation v. St. Joe Paper Company, 97 So.2d 708 (Fla. 1st DCA 1957); Spencer v. Wiegart, 117 So.2d 221 (Fla. 2d DCA 1960); Lawyers' Title Guaranty Fund v. Milgo Electronics, 318 So.2d 416 (Fla. 3d DCA 1975); and Zwakhals v. Senft, 206 So.2d 62 (Fla. 4th DCA 1968).

The uncontroverted rule of law as set down by the courts and as relied on by real property attorneys, title insurers, buyers and lenders in this state is that all matters shown on a plat —— be it lot dimensions, locations of monuments or even use restrictions —— are copied into and are made a part of every deed conveying land with reference to such plat.

B. A deed conveying lands by reference to a specific plat effectively imposes, or reimposes, any use restrictions appearing on such plat, as provided by the Florida Marketable Record Title Act.

The Florida Marketable Record Title Act (the "Act") serves the salutary public purpose of eliminating stale claims and ancient defects from land titles. Resolution of the certified question requires that the discussion focus, not on the interests

eliminated by the Act, but rather, on the rights and interests preserved by the Act.

Sec. 712.03 (1), Fla. Stat., excepts from operation of the Act the following rights:

> (1) 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, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of Subsection (5). (Emphasis added).

The court below held that use restrictions appearing on a plat were eliminated by the Act simply because the plat was behind the root of title, and because the deeds in the chain of title, while making reference to the recorded plat, did not disclose the restriction with the specificity purportedly required by Sec. 712.03 (1), Fla. Stat. This conclusion is erroneous, because, as discussed above, the restrictions on the plat are as a matter of law copied into every deed conveying property with reference to the plat. Furthermore, the court below failed to consider whether the platted restrictions were imposed and reimposed by deeds beginning with the root of title and deeds recorded after the root, when the property conveyed is described by reference to the plat of Sunshine Vistas. It is hereby submitted

that the Court has already answered this question in the affirmative when it stated the following:

> [T]he mere filing of the plat containing the restrictive covenants does not in and of itself subject the land to the restrictions of the covenants so long as the title to the property remains in the subdivider. However, upon a severance of title by the grant of one or more lots according to the plat and by reference thereto, the restriction then springs into existence and becomes binding as between the subdivider and his purchasers and as between the purchasers inter sese.

Wahrendorff, supra 722. (Emphasis supplied.) If the language in the deed prior to the root of title imposes the restrictions, the same language in the root of title and in subsequent deeds should impose the restrictions.

CONCLUSION

The short-term self-interest of Attorneys' Title Insurance Fund, Inc., would dictate that it support the decision of the district court in this case. After all, any decision which would eliminate restrictions as encumbrances on title could only reduce exposure that The Fund would sustain with respect to its insureds.

The Fund, acting on behalf of its 5,800 Florida Bar licensed attorney agents, has a higher interest in this cause than the mere avoidance of liability, and that interest is in the preservation of the stability and certainty in land titles.

Based on the clear and unambiguous pronouncements in the cases cited throughout this brief, the real property practitioners in this state adopted the position that a deed which "describes

property conveyed by reference to a recorded plat...is taken subject to every particular shown on the plat." Uniform Title Standard §11.6. Relying upon the principle of incorporation by reference in the reported cases, and further relying upon the heretofore plain meaning of Sec. 712.03 (1), Fla. Stat., Fund Title Note 28.03.01 implicitly recognizes the principle that restrictions appearing on the face of the plat would not be eliminated by the Marketable Record Title Act where deeds subsequent to the root refer to the plat. The opinion of the district court, which is devoid of any citation to authority, does violence to the rule of law accepted by real property attorneys in this state.

For the reasons set forth above, Attorneys' Title Insurance Fund, Inc., as Amicus Curiae, requests that this Court answer the certified question in the negative, reverse the decision of the district court and remand the action for further proceedings consistent with its judgment.

Respectfully submitted,

ATTORNEYS' TITLE INSURANCE
FUND, INC.
Post Office Box 628600
Orlando, Florida 32862-8600
(407) 273-2063

By _____
R. NORWOOD GAY, III
Florida Bar No. 091772

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail upon John K. Subin, Weaver, Miller, Weissler, Alhadeff & Sitterson, 50 West Flagler Street, Suite 2200, Miami, Florida 33130, Attorneys for Appellants, and Angela C. Flowers, Blackwell & Walker, 1400 Amerifirst Bldg., One Southeast Third Avenue, Miami, Florida 33131, Attorneys for the Appellees, this 31 day of July, 1992.

R. Norwood Gay, III