IN THE SUPREME COURT OF THE STATE OF FLORIDA

MARONDA HOMES, INC. OF FLORIDA and T.D. THOMSON CONSTRUCTION COMPANY,

Petitioners,

vs. **Case No. SC10-2292 & SC10-2336**

Lower Tribunal Cases:
LAKEVIEW RESERVE HOMEOWNERS ASSOCIATION, INC. 5D09-1146, 07-CA-1762

Respondent
_____ /

BRIEF OF AMICI CURIAE FLORIDA HOME BUILDERS ASSOCIATION NATIONAL ASSOCIATION OF HOME BUILDERS

Keith Hetrick
Florida Bar No. 0564168
Broad and Cassel
Tallahassee, FL 32301
Tel 850-681-6810; Fax 850-681-9792

Nicholas A. Shannin
Florida Bar No. 009570
Page Eichenblatt Bernbaum and Bennett, P.A.
214 East Lucerne Circle
Orlando, FL 32801
Tel 407-386-1900; Fax 407-386-1901

David K. Miller, P. A.
Florida Bar No. 213128
Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, FL 32301
Tel 850-681-6810; Fax 850-681-9792

Counsel for Florida Home Builders Association and National Association of Home Builders

June 20, 2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

State and Federal Constitutions

Other Authorities

STATEMENT IDENTIFYING AMICI AND THEIR INTEREST IN CASE

Florida Home Builders Association (FHBA) and National Association of Home Builders (NAHB) are non-profit professional and trade associations whose mission is to enhance the climate for housing and the building industry; promote home ownership; foster a healthy, efficient housing industry; and promote policies that will keep safe, decent, and affordable housing a national priority. NAHB's members include more than 800 state and local building associations representing approximately 160,000 members in all fifty (50) states. FHBA is an NAHB affiliate, representing 27 local building associations and approximately 7,000 members in Florida's home building and remodeling industry.

This case involves an issue of widespread importance to the home building industry, whether the implied warranty of home habitability (for health and safety of the home itself) extends to defects in subdivision roads and drainage facilities that are separate parcels owned by the subdivision homeowners' association.

NAHB and FHBA support the Petitioners' arguments for reversal of the decision below, which creates uncertainty and unpredictability over developers' rights and duties. Amici are uniquely qualified to represent the building and development industry in this case, and assist the Court with knowledge of practical and policy issues relating to the case. FHBA appeared as an amicus in the Court below, and both Associations have appeared before this Court in prior cases.

SUMMARY OF THE ARGUMENT

The Court below extended the implied warranty of home habitability to roads and drainage facilities, which are not homes or facilities that immediately support a home. This implied warranty is limited to home habitability (health and safety of the home itself). Roads and drainage areas are owned by an association, not individual homeowners; and defects in these structures generally have no direct effect on home habitability. These structures are designed by professional engineers, and inspected and approved by government authorities. Imposing a new implied warranty beyond what government regulations require would allow Courts to improvise ad hoc technical standards, in areas that government bodies with expertise can regulate better. No change in the transactions or the socio-economic environment justifies this change in the common law.

The Court should not impose the severe measure of an implied warranty to make developers into insurers against defects in common areas that meet regulations and do not directly affect health and safety of the home, because:

(1) Buyers have adequate private remedies and government protection, including new remedies since the home habitability warranty was adopted in 1972;

(2) The new implied warranty is unfair to the developer, who is not an insurer of work designed, supervised and approved by professional engineers;

(3) The new implied warranty is vague and difficult to judicially administer.

ARGUMENT AND CITATIONS OF AUTHORITY

THE COURT SHOULD DECLINE TO IMPOSE A NEW IMPLIED WARRANTY ON DEVELOPERS BEYOND THE EXISTING IMPLIED WARRANTY OF HABITABILITY FOR HOMES

INTRODUCTION

> The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence.
>
> *Hernandez v. Garwood*, 390 So. 2d 357, 359 n. 11 (Fla. 1980) quoting Cardozo, *The Nature of the Judicial Process* 141 (1921).
>
> Public policy is a very unruly horse**,** and once you get astride it you never know where it will carry you.
>
> *Atlantic C. L. R. Co. v. Beazley*, 45 So. 761, 786 (Fla. 1907); *Turner v. Anderson*, 704 So. 2d 748, 750 (Fla. 4th DCA 1998); *Brown & Root v. Ring Power Corp.*, 450 So. 2d 1245, 1248 (Fla. 5th DCA 1984).

The decision below, *Lakeview Reserve Homeowners Ass'n v. Maronda Homes, Inc.*, 48 So. 3d 902 (Fla. 5th DCA 2010), exemplifies the "vague and unregulated benevolence" and the "unruly horse" that these wise principles warn against. It announces a new rule of law that subdivision developers are liable to homeowners' associations in contract, based on an implied warranty of habitability (merchantability and fitness) for subdivision roadways, drainage systems, retention ponds, and underground pipes. *Id*. at 904, 909.

"Habitability" means "The condition of a building in which inhabitants can live free of serious defects that might harm health and safety." *Black's Law Dictionary* p. 779 (9th ed. 2009). A warranty of "habitability" therefore means a warranty that a "building" in which "inhabitants live" does not have "serious defects" that "might [cause] harm" to "health and safety." "Habitability" does not describe roads or drainage facilities, which are not habitable buildings.

The difference between the habitability of a home and common area defects is fundamental and clear. Many public policies – *e.g.*, privacy from governmental search - secure an owner's rights to use and enjoyment of the home, but do not extend to open common areas. The Court below described its ruling as "elegant in its simplicity" because, in its view, these features provide "services essential to the habitability of the home." *Id*. at 908-09. But it is not clear that defects in these facilities generally, or in this case, affect "habitability" of the homes themselves. The Court below did not cite evidence that individual homeowners suffered actual injury to "habitability," *i.e.*, human health and safety in the home.

The Court below acknowledged its decision departs from settled common law rules governing land sales, and recognized acknowledged conflict with a case that squarely rejected such an implied warranty claim. *Id*. at 904, citing *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. S. & L. Ass'n*, 463 So. 2d 530 (Fla. 4th DCA 1985) (implied warranty did not extend to roads and

drainage facilities that are not homes or facilities that immediately support living in homes, like wells or septic tanks). Petitioners correctly contend the decision below also conflicts with *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983) (no warranty as to seawall).

Conklin and *Port Sewall* apply the common law principle that Courts do not rewrite private contracts to superimpose judicial notions of fairness. *See Home Dev. Co. v. Bursani*, 178 So. 2d 113, 117 (Fla. 1965) (noting the "well settled rule that 'courts may not rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the parties from the apparent hardship of an improvident bargain'").

Constitutional principles support this rule as well. Under the separation of powers, legislative bodies (acting prospectively) are primarily responsible for policymaking to adjust the burdens and benefits of economic life. Where the State (or a local government regulating land development) enacts regulations and administratively inspects and approves the development, Courts generally do not superimpose additional regulation. These legislative acts presumptively preempt the area. *See Bankston v. Brennan*, 507 So. 2d 1385, 1387 (Fla. 1987) ("of the three branches of government, the judiciary is the least capable of receiving public input and resolving broad policy questions based on a societal consensus").

Legislative bodies are constitutionally prohibited from enacting regulations that retroactively alter the terms of existing private contracts. Art. I, § 10, U.S. Const.; Art. I, § 10, Fla. Const.; *Yamaha Parts Dist., Inc. v. Ehrman*, 316 So. 2d 557, 559 (Fla. 1975) ("Virtually no degree of contract impairment has been tolerated in this state," citing cases). Since the legislative branch cannot constitutionally adjust the burdens and benefits of existing contracts, *a fortiori*, Courts should generally refrain from doing so as well.

The decision below offers no principled reason to abrogate these rules. Judicially imposing an implied warranty as a matter of public policy is particularly problematic in this case, because case precedent had denied this cause of action. The parties presumably contracted in reliance on settled law, and cannot now adjust the purchase price to take any new warranty into account.

PRINCIPLED BASIS TO REJECT CHANGE IN COMMON LAW

The public (especially businesses) must trust the stability of common law. Courts do not promiscuously change the common law whenever new Justices are enrobed (as political bodies may do). The proponent of a change in the common law should have a heavy burden to show that changed social or economic conditions require change in the law which clearly outweighs the need for stability. *See generally U.S. v. Dempsey*, 635 So. 2d 961, 964 (Fla. 1994) (citing, as basis to change common law, "changes in our social and economic customs," the need to

"keep pace with changes in our society" and explaining that "the common law may be altered when the reason for the rule of law has ceased to exist, or the change is demanded by public necessity or required to vindicate fundamental rights"). This case presents no change in the economic or social environment, nor any essential protection of fundamental rights. Sellers and buyers have reached acceptable transactions concerning subdivision common area facilities, subject to regulatory oversight, for generations, without courts imposing any implied warranty.

Amici would suggest that any principled consideration of the issue should apply at least the following factors:

1. Whether existing private remedies and regulations are inadequate, considering whether the parties' bargaining power is so grossly unequal that buyers cannot effectively protect themselves, or seek an effective remedy; [1]

2. Whether imposing an implied duty that was not part of the parties' bargain unfairly disturbs the seller's reasonable expectations; and

3. Whether imposing an implied duty will create unpredictable results and difficulty in judicial administration, and is better dealt with by legislation.

Also, a proponent's burden to justify a new common law implied warranty

[1] *Casa Clara Condo. Ass'n v. Charley Toppino & Sons, Inc.*, 620 So. 2d 1244, 1247 (Fla. 1993), analyzed homeowners' common law and statutory remedies, ability to inspect before purchasing, and power to bargain over price, as reasons to deny a tort remedy. Similar analysis would deny a new implied warranty here.

should be particularly heavy if the common law and legislative bodies have addressed the issue but rejected this cause of action, as in this case.

The Court below appeared to act based only on "vague and unregulated benevolence" and did not analyze these factors, which weigh heavily against creating any new implied common law warranty.

I. ADEQUACY OF EXISTING PRIVATE REMEDIES AND PUBLIC REGULATIONS

The Courts originated an implied warranty of habitability for condominium unit buyers in *Gable v. Silver*, 258 So. 2d 11 (Fla. 4th DCA 1972), *adopted and cert. dism.*, 264 So. 2d 418 (1972), because the law then provided little protection for buyers. Since 1972, statutory and common law have changed to provide home buyers substantial new protections. Potential private remedies for homeowners now include all the following, many of which were adopted after *Gable* in 1972:

1. Action to enforce contract, *e.g.*, for breach of express warranty;

2. Action to rescind contract (*e.g.*, based on unconscionability);

3. Action for fraud or negligent misrepresentation;

4. Action for negligence (breach of legal duty, including duty imposed by local land development requirements, or state regulations, *e.g.*, ch. 373 Part IV, Fla. Stat., governing water management and storage, adopted in 1972);

5. Action for breach of implied warranty of habitability under *Gable*, if a serious defect directly impacts the habitability of the home;

6. Action under *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985), for breach of duty to disclose known facts that materially affect the value of property which are not readily observable and are not known to the buyer, *id*. at 629;

7. Action under *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999), for professional negligence by an engineer even if not in privity with the consumer. Design professionals have a duty to prepare plans and specifications that meet regulations. *Edward J. Seibert, A.I.A., etc., P.A. v. Bayport B. & C. T. Club Ass'n*, 573 So. 2d 889 (Fla. 2d DCA 1991);

8. Action under the Homeowners Association law, ch. 720, Fla. Stat., adopted in 1992, to balance parcel owners' and developers' process and remedial rights. *See* Fla. Stat. § 720.303(1) (fiduciary duty of association officers and directors to members); Fla. Stat. § 720.303(2)-(5) (parcel owners' rights to access association meetings and records); Fla. Stat. § 720.3035(4) (parcel owners' rights regarding architectural or construction improvements in covenants and restrictions); Fla. Stat. § 720.304 (owners' rights to assemble and to avoid SLAPP suits); Fla. Stat. § 720.305 (remedies); Fla. Stat. § 720.307(3) (developer disclosures on turnover of the association); Fla. Stat. ch. 720 Part II (disclosures to prospective home buyers);

9. Action under Deceptive and Unfair Trade Practices Act (DUTPA), Ch. 501 Part II, Fla. Stat., adopted in 1973, and expanded in 1993 to include real property sales;[2]

10. Action for implied warranty of conformity with restrictive covenants under *Robinson v. Palm Coast Constr. Co*., 611 So. 2d 1351 **(**Fla. 5th DCA 1993);

11. Action under ch. 558, Fla. Stat., adopted in 2003, for remedies for construction defect claims.

12. In addition, purchasers may engage a home inspector licensed by the state under Ch. 468, Part XV, Fla. Stat., adopted in 2007, who may advise them on any matters or features that may affect home habitability.

Since 1972, the Legislature has actively rebalanced buyers' and developers' rights and duties. To procedurally facilitate actions, the Legislature provided for homeowner's association standing to sue in Fla. Stat. § 720.303(1). In 2007, this Court amended Fla. R. Civ. P. 1.221 to recognize homeowner association standing to sue, in cases involving common property issues.

---

[2] Some early cases held DUTPA did not cover real estate transactions, but DUTPA was amended in 1993 to eliminate a restrictive definition and broaden the definition of "trade or commerce" in Fla. Stat. § 501.203(8), to include the sale of "any property, whether tangible or intangible." Later cases hold DUTPA applies to real estate transactions. *E.g., Fendrich v. RBF, L.L.C.*, 842 So. 2d 1076, 1079 n. 2 (Fla. 4th DCA 2003*).*

Also, there is no reason to believe that public enforcement by local and State authorities that enact and enforce land use, subdivision, transportation, environmental and flood control regulations, is inadequate, so the Courts must improvise new standards that the political branches did not enact. Homeowners and homeowner associations are not impotent politically, so there is no basis to believe the local and state political processes are inadequate to protect these constituencies.

Importantly, the Legislature declined to enact an implied warranty for subdivision common area features. *Cf.* 2004 SB 2984 at § 11, pp. 38-40 (creating provision for such warranty in ch. 720). This provision did not survive in later versions of the bill as enacted. If the Legislature did not see a need for this warranty and rejected it, why should the Court substitute its judgment?

Developers have been selling subdivision lots with road and drainage infrastructure for generations, subject to regulation, without implied warranties on these features. The Court below reasoned that in times past, judicial noninterference was justified because "buyers [of homes] could still inspect the land, and early building construction and land development was relatively simple." 48 So. 3d at 904. This assumes without any basis that road and drainage facilities were substantially simpler and easily inspected by buyers in the mid-1980s when *Port Sewell* and *Conklin* were decided. If these facilities are more complex today,

this is likely the result of greater government regulation of these facilities, with more expert inspections (which may include preconstruction design approval, and inspections of work-in-progress milestones, as-built structures, and post-construction operation for storm water facilities, *e.g.*, Fla. Stat. § 373.423), which gives buyers greater, not less, protection.

Current laws, including greater regulation, disclosures required by *Johnson v. Davis* and Ch. 720, and the availability of home inspectors have rebalanced the parties' traditional bargaining powers in buyers' favor. No recent change in socio-economic life is adverse to buyers, to justify changing the common law. Those who propose a new common law rights should have to explain why these increased common law and statutory remedies and protections are now inadequate, and a new implied warranty (a severe change akin to strict liability) is now needed.

The Court may judicially notice prevailing economic conditions over the last several years, which are likely to continue in the foreseeable future, that home sales are in a persistent buyer's market, giving buyers greater bargaining power. *See* New York Times, Tuesday, May 31, 2011 (p. A1, article entitled "House Prices Are Set to Hit Another Low"; p. A3, citing "sharp decline in housing prices since 2006").[3] Buyers have opportunities to shop around among many homes on

[3] Courts may judicially notice economic conditions. *E.g.*, *Gryzmish v. Krim*, 170 So. 717 (1936) (notice of real estate price changes after mid-20's bubble burst).

the market, buy a lot in an established subdivision with proven roads and drainage systems, or to bargain to pay less for a home in a newer subdivision. If the contract is not unconscionable, *i.e.*, it is fairly bargained, not oppressive to the buyer, or both, why should the Courts interpose an implied warranty?

II. UNFAIRNESS TO DEVELOPER-SELLER

When a Court creates a new cause of action, it implicitly decides that the party on whom liability is imposed should, in fairness, have anticipated this potential liability and acted to avoid it. The unlucky developer in this case had no warning or reason to expect the common law was about to change. It cannot now adjust its sale price, or take other measures to avoid a new indefinite liability.

The Court below cited as justification that its decision is "in keeping with Florida's strong policy of protecting consumers in a situation where they must rely on the expertise of the builder/developer" for proper construction of these complex structures, where they are in an inferior position to inspect the work and to correct the defects in the construction phase and where the defects are not readily ascertainable to the average homeowner." 48 So. 3d at 909. But previously the Courts and Legislature rejected this warranty. The Court's rationale, if applied in every case, would simply have future Courts impose their own standards of fairness in each case, without regard to what the parties bargained, or the law in existence at the time of the contract.

A developer is not an insurer. Indeed, the developer must rely on the expertise of professional engineers in designing and inspecting roads and drainage facilities. This feature distinguishes roads and drainage facilities from the homes themselves, which are normally built by trades under the supervision and control of a licensed general contractor. All parties, including the developer, rely on the professional expertise of the design engineer and the permitting agency to inspect and approve these common facilities. For facilities designed, supervised, inspected and approved by professional engineers, the developer should not have to assume the risk if the engineers' work is faulty. Involvement of a professional engineer allows consumers a direct cause of action (without privity) against the engineer for professional negligence. It is not fair to make the developer an insurer of the engineers' work, under an implied warranty imposed later by change in the law that the developer had no reason to anticipate.

III. DIFFICULTY OF JUDICIAL ADMINISTRATION

The Fifth District reasoned that roads are essential for ingress and egress, and thus relate to "habitability" of a home. 48 So. 3d at 907, n. 3. However, there is no finding that a road directly affected the health and safety of a home. Potholes or cracks in a road do not normally affect the habitability of the home itself.

In any case, there is no clear standard for the Courts to impose. For asphalt roads, is a particular thickness or mix warranted? Are dirt or gravel roads

sufficient? Is the warranty for a particular result – *e.g.*, that roads will never have potholes, or not have potholes for a specific time period after construction? What number or dimension of potholes is a breach of the warranty? The developer is not an insurer that materials are best available, or will last forever, or are of a particular composition or thickness beyond what the regulations specify; or that potholes will never appear; or that no maintenance is needed.

For drainage facilities, similar problems arise. Does the developer warrant a certain volume of water containment or rate of inflow or outflow; or a certain mesh screen to keep drainpipes from clogging? Does it insure a particular hydrological result, *e.g.*, that a 100 year windstorm will not raise water to within a certain distance of a house? Does it matter whether the homeowners' association maintained or used the facilities in a proper manner to avoid or mitigate damage?

The Court below distinguished other common facilities (security system, sprinklers, landscaping and recreational amenities) as non-essential, meaning not rendering a home unfit for habitability. 48 So. 3d at 908. Under this standard, road and drainage facility defects are not shown to render the homes themselves unfit for habitability, so no basis is shown to make up warranties for these either.

Finally, is it a defense that the facilities were approved as complying with State and local regulations? Or is this irrelevant, because the Court requires all subdivisions to meet some unknown uniform standard, to be announced later?

The decision below allows judges and juries to improvise ad hoc what the implied warranty is. Judges and juries are ill-equipped to decide these difficult technical issues, and will not likely do so in any uniform or predictable way. This adds unnecessarily to the already substantial risks and burdens of this industry. Developers need to have predictable costs and liabilities in order to price homes efficiently in a competitive market, which they cannot do if the common law is an unpredictable "unruly horse" that Florida cases have warned against.

Respondent below argued these subdivision common facilities are like a condominium common area, for which an implied warranty was statutorily adopted in Ch. 718, Fla. Stat. However, condominiums provide common facilities under one roof that serve residential functions. *Cf. Putnam v. Roudebush*, 352 So. 2d 908, 910 (Fla. 2d DCA 1977) (air conditioning is integral part of condominium and essential for habitability, but noting that a subjective "personal satisfaction" test is not a proper standard for a warranty). By contrast, unlike air conditioning defects, defects in separate common area facilities on separate parcels that are not used for homes do not normally affect the habitability of any homes.

The Legislature is a better forum to comprehensively decide if a warranty is needed; and if so, what specific terms should be warranted, and how the parties' interests should be balanced. For example, can a seller disclaim or limit the implied warranty, and if so, by what terms? *Cf*. Fla. Stat. § 672.316 (disclaimer in UCC

provision for sale of goods).[4] Is the seller entitled to prompt notice and opportunity to cure any defect? *Cf.* Fla. Stat. Ch. 558 and § 672.607(3) (UCC). Can remote buyers invoke the implied warranty, and if so, over what time period? *Cf. West v. Caterpillar Tractor Co.*, 336 So. 2d 80 (Fla. 1976) (for persons not in privity, strict liability in tort supplants implied warranty). Is the developer liable even if it satisfied all regulations and did not know of any defect? *Cf.* Fla. Stat. § 553.84 (remedy for Building Code violation). Can the developer reduce liability based on relative fault, *e.g.*, by the design professional or the association (post-turnover), as in negligence cases? *Cf. ITT-Nesbitt, Inc. v. Valle's Steak House, Inc.*, 395 So. 2d 217, 220 (Fla. 4th DCA 1981) (comparative fault instruction in breach of warranty case). Is the only remedy to repair or replace the defect even if that is wasteful excess, unjustly enriching the subdivision which benefited from years of use? *Cf. Grossman Holdings, Ltd. v. Hourihan,* 414 So. 2d 1037 (Fla. 1982) (seller liable for defect can pay for the diminution in value of structure).

In deciding only issues that the parties present in this one case, the Court cannot hear from all affected parties or formulate a comprehensive policy that is fair to all concerned. The Legislature is a better forum to make such policy.

---

[4] Other jurisdictions allow the parties freedom of contract to define their respective rights, and honor adequate disclaimers of implied warranties for habitability. *See* Schneier, *Builder-Vendor May Disclaim Implied Warranties, Replaced With Its Own Limited Express Warranty*, 32 No. 3 Construction Litigation Reporter 15 (Mar. 2011) (majority rule allows disclaimer).

CONCLUSION

Amici FHBA and NAHB urge the Court to reverse the decision below and decline to extend the implied warranty of home habitability to roads and drainage facilities located on common areas of the subdivision.

Respectfully submitted,

Keith Hetrick
Florida Bar No. 0564168
Broad and Cassel
Tallahassee, FL 32301
Tel 850-681-6810; Fax 850-681-9792

Nicholas A. Shannin
Florida Bar No. 009570
Page Eichenblatt Bernbaum
and Bennett, P.A.
214 East Lucerne Circle
Orlando, FL 32801
Tel 407-386-1900; Fax 407-386-1901

David K. Miller, P. A.
Florida Bar No. 213128
Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, FL 32301
Tel 850-681-6810; Fax 850-681-9792

Counsel for Florida Home Builders Association and National Association of Home Builders

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via first class U.S. mail on this 20th day of June, 2011, to:

Stephen W. Pickert
Anthony R. Kovalcik
Moye, O'Brien, O'Rourke,
Pickert & Dillon, LLP
800 South Orlando Avenue
Maitland, Florida 32751
Counsel for Petitioner
T.D. Thomson Construction Company

Robyn S. Braun
Patrick C. Howell
Taylor & Carls, P.A.
150 N. Westmonte Drive
Altamonte Springs, Florida 32714
Counsel for Lakeview Reserve
Homeowners Association, Inc.

Thomas R. Slaten, Jr.
John C. Palmerini
Larsen & Associates, P.A.,
300 S. Orange Ave., Suite 1200
Orlando, Florida 32801
Counsel for Community Associations
Institute, Mid Florida Chapter

Scott Johnson
Heather Pinder Rodriguez
Holland & Knight LLP
P.O. Box 1526
Orlando, Florida 32802
and
Steven L. Brannock
Brannock & Humphries
100 South Ashley Drive, Suite 1130
Tampa, Florida 33602
Counsel for Petitioner
Maronda Homes, Inc.

_____
Attorney

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____

Attorney