**IN THE SUPREME COURT OF FLORIDA**

**CASE NUMBERS: SC10-2292 & SC10-2336**
**Lower Tribunal Case Numbers: 5D09-1146, 07-CA-1762**

---

| | | |
|---|---|---|
| MARONDA HOMES, INC. OF FLORIDA, a Florida corporation, | vs. | LAKEVIEW RESERVE HOMEOWNERS ASSOCIATION, INC., |
| Petitioner, | | Respondent. |
| T.D. THOMSON CONSTRUCTION COMPANY, | vs. | LAKEVIEW RESERVE HOMEOWNERS ASSOCIATION, INC., |
| Petitioner, | | Respondent. |

---

ON REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

---

# RESPONDENT, LAKEVIEW RESERVE HOMEOWNERS ASSOCIATION, INC.'S, ANSWER BRIEF ON THE MERITS

---

TAYLOR & CARLS, P.A.
ROBYN SEVERS BRAUN, ESQUIRE
Florida Bar No. 154504
PATRICK C. HOWELL, ESQUIRE
Florida Bar No.: 0069299
7 Florida Park Drive, North
Suite A
Palm Coast, FL 32137
Tel: (386)446-5970
Fax: (386)446-5938
rbraun@taylor-carls.com
phowell@taylor-carls.com
Attorneys for Respondent

## TABLE OF CONTENTS

**Page Nos.**

## TABLE OF CONTENTS (cont'd)

## TABLE OF CITATIONS

**Page Nos.**

**Florida Supreme Court Cases**



**Florida Appeals Cases**

## TABLE OF CITATIONS (cont'd)

## TABLE OF CITATIONS (cont'd)

**Cases Outside of Florida**

## TABLE OF CITATIONS (cont'd)

## TABLE OF CITATIONS (cont'd)

## TABLE OF CITATIONS (cont'd)



**Florida Statutes**

## TABLE OF CITATIONS (cont'd)

**Florida Rules**



**Florida Constitution**



**Miscellaneous Sources**

## I. INTRODUCTION

The issue before this Court is simple and straightforward: Should implied warranties extend to the common areas of a subdivision, which include the roadways, detention ponds, and the drainage system? The Fifth District correctly concluded "implied warranties of fitness for a particular purpose, habitability and merchantability apply to structures in common areas of a subdivision that immediately support the residence in the form of essential services." *Lakeview Reserve Homeowners Ass'n, Inc. v. Maronda Homes, Inc.*, 48 SO. 3d 902 (Fla. 5th DCA 902, 909). The Fifth District's decision makes for good law, is easily applied to this case and future cases and is harmonious with Florida's strong public policy in protecting consumers. Furthermore, the District's decision fits well with the rule of law espoused in *Gable v. Silver*, 264 So. 2d 418 (Fla. 1972) and *Conklin v. Hurley*, 428 So. 2d 654 (Fla. 1983) so a review of the decision is unnecessary. Accordingly, this Court should affirm the decision of the Fifth District.

## II. PRELIMINARY STATEMENT

The Respondent in this cause, Lakeview Reserve Homeowners Association, Inc., will be referred to in this Answer Brief as "Association." Petitioner, Maronda Homes, Inc. of Florida, will be referred to as "Maronda" and Petitioner, T.D. Thomson Construction Company, will be referred to as "Thomson."

References to Maronda and Thomson collectively will be referred to as "Petitioners." References to the District Court's record will be cited as (R. volume #/page #).

## III. STATEMENT OF THE CASE AND FACTS

The Association submits this Statement of the Case and Facts to clarify some facts asserted by Petitioners. Petitioners fail to delineate all relevant facts regarding damages to the homeowners' lots in the community. While the Association concedes that it has not alleged that damage has yet to occur within the walls of the residences on the lots, the record does reveal evidence of damages to the lots.

Control of the Association's Board of Directors was turned over to the non-Developer lot owners, on March 27, 2003, only a couple of years after the Association was incorporated and construction on the community was complete. (R. IV/524.) Before turnover, the Lakeview community had already experienced drainage problems. (*Id*.) Approximately four to five months after the non-developer lot owners gained control of the Association's Board, the drainage defects became more prevalent and a storm drain collapsed on Lakeview Reserve Boulevard. (*Id.)* The Association retained an engineer to conduct a review of the common areas. (R. II/287, 305.) The engineer issued his report on September 11, 2006, when the community was only approximately five (5) years old. (R. III/344.) Through this review, defective

conditions were confirmed with regard to the paved streets, retention ponds bordering the lot, underground drainage pipes, and the grading of the site and lots. (*Id*.)

Multiple lot owners have experienced consistent issues with stagnant water on their lawns after a typical Florida summer afternoon shower.(R. IV/524, 539, 558, 643, 805.) The stagnant water is due to leaking pipes under the roads or has resulted from moderate to severe grade changes between lots. (R. IV/524, 558, 610-11, 643, 805; II/289.) The lots suffer from sinkholes, loss of grass, and "water bubbles" under the grass due to the drainage issues. (R. IV/610-11, 652-653, 805.) Some of the lots suffer from erosion due to the grade changes and the Association's engineer recommended the construction of retaining walls on the lots to prevent further erosion from occurring. (R. III/345, 348, 410.) Due to a sink hole caused by a failed storm drain under the roadway and lots, the driveway on at least one lot was depressed to the point that it was unusable for a period of time. (R. IV/524, 527-28.) The lots in the community were essentially flat before the construction of the homes on the lots, but after the construction of the homes by Maronda, some lots were graded lower than the neighboring lots thereby causing improper drainage and erosion. (R. IV/805.) The initial estimate to repair the defects was between $430,000 and $600,000. (R. III/352.)

## IV. STANDARD OF REVIEW

The Association concurs with Petitioners' statements that the standard of review is *de novo*.

## V. SUMMARY OF THE ARGUMENT

The Fifth District's decision in Lakeview does not directly conflict with *Port Sewall Harbor & Tennis Club Owners Association, Inc. v. First Federal Savings & Loan Association of Martin County*, 463 So. 2d 530 (Fla. 4th DCA 1985) and *Conklin v. Hurley*, 482 So. 2d 654 (Fla. 1983) so as to warrant the exercise of discretionary review. The facts in this case are substantially dissimilar to those in *Conklin*. Moreover, the holdings of the Fourth District in *Port Sewall* and the Fifth District in *Lakeview* can be interpreted in a manner that is consistent with one another. Thus, this Court improvidently granted review and should decline accepting jurisdiction.

If this Court continues to accept this case for review, it should affirm the decision of the Fifth District in *Lakeview* for several reasons. First, case law, Florida Statutes, and Florida Rules of Civil Procedure support the Association's position that it has the authority to initiate legal action on behalf of itself and as a class representative of its members for defects in the common areas of the Association. The privity argument, asserted by Petitioners, that the implied warranty should not be available because the Association did not "purchase" the common

areas is disingenuous and should fail for reasons of sound logic and common sense. Homeowners associations are usually not in a position to bargain for the transfer of common areas. To prevent homeowners' associations from filing actions for all of the members of the association is a waste of judicial resources. Accordingly, Petitioners' argument in this regard must fail.

Further, the Fifth District's decision comports with the history of this state as a leader in consumer protection. As this Court was one of the first courts to extend implied warranties to residential condominiums, the Fifth District Court is in the forefront of confirming an expansion of implied warranties to further protect homeowners. Not only have other states started to recognize the need for additional protection in the real estate market, but societal changes demand that further protection is warranted. Homeowners are not simply buying homes and/or lots. They are buying into communities with improvements that the homeowners' association, and its mandatory members, are obligated to maintain and repair. Cases in the condominium setting are instructive as they provide guidance as to sound reasoning why common areas should not be treated differently than common elements. It is a difference without a distinction.

Finally, this Court has recognized that it has the power and authority to reexamine prior decisions and to alter the rule

of law previously adopted to conform to societal changes and notions of justice and fairness. Thus, Petitioners' arguments that this Court should not second guess the legislature is flawed and should be disregarded. Accordingly, this Court should uphold the decision of the Fifth District and conclude that homeowners associations have a cause of action against developers for breach of implied warranties of the common areas of the community.

## VI. ARGUMENT

### A. The Fifth District Correctly Decided That Homeowners' Associations Have Standing To Sue For Defects In Its Common Areas.

This Court should affirm the Fifth District's finding that homeowners' associations have authority to sue for defects in its common areas as it comports with public policy. Thomson argues that an implied warranty should not be available to the Association because it did not "purchase" the property or was not otherwise in privity with Maronda.(Thomson Br. 11-16.) The Fifth District correctly rejected this argument as to rule otherwise would encourage the multiplicity of lawsuits, which is contrary to public policy and judicial economy. *Lakeview Reserve Homeowners Ass'n, Inc. v. Maronda Homes, Inc.*, 48 So. 3d 902-909 (Fla. 5th DCA 2010.)

For public policy reasons, the fact that a "purchase," in the traditional sense, did not occur between the Association and

Maronda actually provides greater support for the application of implied warranties. This Court, in *Conklin v. Hurley*, 482 So. 2d 654 (Fla. 1983), reasoned that caveat emptor should be relaxed or abandoned because the purchaser is not in an equal bargaining position with the builder-vendor and the ordinary homebuyer would be unable to detect flaws in the construction of houses. *Conklin*, 428 So. 2d at 657-58. Here, the property transfer between the Association and Maronda did not simply place the parties in unequal bargaining positions. Instead, no opportunity to bargain was allowed at all. Maronda transferred the common areas to the Association, without giving it the chance to negotiate the conveyance. (R. at I/16.) It is not logical, nor in conformance with public policy to prohibit the application of an implied warranty simply because there was not some type of purchase agreement. *See Heritage in the Hills Homeowners Ass'n v. Heritage of Auburn Hills, L.L.C.*, No. 286074, slip op. at 11-12 (Mich. Ct. App. Feb. 6, 2010). If this Court was to adopt such reasoning, developers could avoid liability for defects in common areas by inserting disclaimers into the purchase agreements of homeowners, and the association would be left without a remedy. *Id*. In fact, this is exactly what Maronda attempted to do. (R. I/66-71.) Maronda placed disclaimers of warranties in Lakeview's Declaration of Covenants, Conditions, and Restrictions ("Declaration") and argued in its first Motion

for Summary Judgment that the Association expressly waived any implied warranties due to the language in the Declaration. (*Id*.) The trial court properly denied such Motion. (R. I/182-83). Certainly, the *Conklin* court did not envision unscrupulous developers avoiding liability on a technicality.

Second, *Strathmore Gate-East at Lake St. George Homeowners Association, Inc. v. Levitt Homes, Inc.*, 537 So. 2d 657 (Fla. 2d DCA 1989), has already held that privity is not necessary for a homeowners' association to maintain a cause of action against a developer for breach of implied warranty. *Id.* at 658. In that case, the homeowners' association on behalf of itself as well as a class representative of the homeowners, filed its complaint against the developer of the neighborhood, Levitt Homes, Inc. seeking damages for defects in the common areas, including roads, landscaping, and other improvements. *Strathmore Gate-East at Lake St. George Homeowners Association, Inc. v. Levitt Homes, Inc.*, No. 85-05223-016 (Fla. Pinellas Cty. Cir. Ct.) (3rd Am. Cmplt. ¶¶9-11.) (See App. to this brief). The Association claimed that there was an implied warranty that the common areas were reasonably fit for their intended purpose and merchantable, and that the common areas were constructed in accordance with the plans and specifications approved by the appropriate governmental entity, and in accordance with good design, engineering and construction practices. *Id.* Levitt filed a

motion for judgment on the pleadings, arguing that there was a lack of privity between it and the Association. *Id.* at Def's Mem. Supp. Summ. J. 3-4. Citing *Gable v. Silver*, 258 So. 2d 11 (Fla. 4th DCA 1972), and *Drexel Properties, Inc. v. Bay Colony*, 406 So. 2d 515 (Fla. 4th DCA 1981), Levitt asserted that the Association could not be classified as an original purchaser, just as Thomson argues in its brief. *Id.* The trial judge entered a final judgment on the pleadings, in favor of Levitt. *Strathmore*, 537 So. 2d at 658. However, the Second District reversed, ruling that "as the owner of the common areas and with the responsibility of maintaining them – a status which the developer created for the benefit of the homeowners – the Association has a cause of action against the developer for any defects in the construction of the common areas." *Id*. Accordingly, the Fifth District, in *Lakeview*, just confirmed the status of law in Florida as pronounced by the Second District in *Strathmore*.

Finally, Thomson's argument is without merit as the Association filed this lawsuit on behalf of itself and its members. (R. II/287.) Section 720.303(1), Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure, give the Association standing to sue on behalf of its members as a class action. Specifically, Section 720.303(1), provides that homeowners' associations have authority to sue on behalf of its

members concerning common areas and improvements which the association is responsible for maintaining. Accordingly, this Court should affirm Lakeview's holding that homeowners' associations have authority to file suits on behalf of itself and its members for defects in the common areas.

### B. This Court Should Determine That The Fifth District's Decision Does Not Conflict With *Port Sewall* And *Conklin*.

The Association urges this Court to reconsider its acceptance of jurisdiction over the present case. In several instances, this Court has initially accepted jurisdiction pursuant to Article V, Section 3(b)(4) of the Florida Constitution, only to later dismiss the case after further consideration. *See Vega v. Indep. Fire Ins. Co.*, 666 So. 2d 897 (Fla. 1996); *Blevins v. State*, 829 So. 2d 872 (Fla. 2002); *Famiglietti v. State*, 838 So. 2d 528 (Fla. 2003). This Court improvidently granted jurisdiction as there is not actual and express direct conflict between *Port Sewall Harbor & Tennis Club Owners Association, Inc. v. First Federal Savings & Loan Association of Martin County*, 463 So. 2d 530 (Fla. 4th DCA 1985), and *Lakeview Reserve Homeowners Association, Inc. v. Maronda Homes, Inc.*, 48 So. 3d 902, 909 (Fla. 5th DCA 2010). Even if this Court finds that there is an actual and express direct conflict, it would only arise from *obitur dicta*, which this Court has previously held does not warrant discretionary review.

Accordingly, this Court should exercise its discretion by dismissing the petition for lack of conflict.

While the Fifth District certified conflict with the Fourth District's decision in *Port Sewall*, upon a thorough reading of *Port Sewall*, no such direct conflict exists. In *Port Sewall*, the Second District never held that all roads and drainage systems were automatically excluded from an implied warranty of habitability claim, as the Fifth District implies. Actually, *Port Sewall* is void of any language defining "immediately supporting improvements" or stating that roadways and drainage would never qualify as such. Rather, the Second District simply applied the rule of law announced by this Court in *Conklin*, to the specific facts presented to it by stating that the plaintiff did not properly allege that the defective roads and drainage satisfied the "immediately supporting" requirement. *Port Sewall*, 463 So. 2d at 531. Conversely, in *Lakeview*, the Fifth District applied the specific facts before it in holding that the plaintiff did properly allege that the defective roads and drainage satisfied the "immediately supporting" requirement. *Lakeview*, 48 So. 3d at 908. Thus, no conflict arises from the four corners of the Districts' decisions as required for a direct conflict. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

Further, the Second District's holding in *Port Sewall* applying *Conklin*, which is the basis for the alleged conflict, was not an essential holding of the case, but was merely dicta. The Second District's opinion specifically states that "[E]ven if implied warranty was a relevant theory of liability it could not be applied to the peculiar facts of this case," the peculiar facts consisting of a lender owning the common areas due to a mortgage foreclosure. *Port Sewall*, 463 So. 2d at 531. Thus, the application of the facts in *Conklin* to the facts in *Port Sewall* was not relevant to the decision. For the foregoing reasons, this Court should further reconsider accepting jurisdiction over the present case and exercise its discretion by dismissing the petition for review for lack of conflict.

### C. The Fifth District Correctly Found That Public Policy Requires Further Protection For Homeowners.

The Fifth District eloquently summarized its reasoning with the following quote:

> We believe this ruling is in keeping with Florida's strong public 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 discernible to the average homeowner. We also believe this is an exercise in common sense.

*Lakeview*, 48 So. 3d at 909. This Court should further uphold Florida's strong public policy of protecting consumers by affirming the Fifth District's decision.

**1. The Developing National Trend Favors Expansion of Implied Warranties.**

**a. <u>The Warranty of Habitability is Defined Inconsistently.</u>**

A survey of the application of the implied warranty of habitability and the definition of "habitability" is inconsistent throughout the fifty states. "The expansion of implied warranties has resulted in a blurring of the 'distinction, if any, between an implied warranty of habitability and implied warranty of good quality and workmanship . . . in decisional law throughout the country.'" *Davencourt at Pilgrams Landing Homeowners Ass'n v. Davencourt at Pilgrams Landing, LLC,* 221 P.3d 234, 252 (Utah 2009). However, in some states the warranties are completely separate.[1] In fact, one of the cases cited for support by Petitioners, *Board of*

[1] *See, eg. Krugh v. Laurich*, 17 Pa. D. & C. 4th 666, 671 (1991) (noting that the warranty of good workmanship is closely related, but somewhat less demanding, than the warranty of habitability); *Luker v. Arnold*, 843 S.W. 2d 108, 115 (Tex. Ct. App. 1992) (finding that the warranty of habitability is different from the warranty of good and workmanlike manner as habitability requires the house be fit for humans to inhabit, but that workmanlike manner requires a developer to act as an ordinary and prudent developer would); *Meadowbrook Condo. Ass'n v. South Burlington Realty Corp.*, 565 A.2d 238, 240 (Vt. 1989) (distinguishing between the warranty of habitability and the warranty of good workmanship).

*Directors of Bloomfield Club Recreation Association, Inc. v. The Hoffman Group*, 712 N.E.2d 330 (Ill. 1999), also recognized a distinction between a warranty of habitability and the implied warranty of workmanship. *Bloomfield*, 712 N.E.2d at 336-37.

First, we should address whether Florida has developed a distinction between the warranties and determine which warranty is at issue in this review. The most commonly available causes of action for breach of implied warranties can be placed into three groups: (1) failure to construct according to plans; (2) failing to construct in a good and workmanlike manner; and (3) failing to construct a home that is reasonably habitable. Laura Coln, *Deconstructing Warranties in the Construction Industry*, 83 Apr. Fla. B.J. 8, 14 (2009); *see also Schmeck v. Sea Oats Condo. Ass'n Inc.*, 441 So. 2d 1092, 1097 (Fla. 5th DCA 1983).

The implied warranty pled in the Association's case is as follows: that the premises, including the lots, improvements, and common property were reasonably fit for the ordinary and general purposes for which they were intended, that they were merchantable, that they were built in a good and workmanlike manner, that they were not substandard, that they were in good repair, and that they were built in accordance with the developer's approved plans and specifications and applicable building codes. (R. III/288.) This implied warranty is not necessarily akin to the warranty of habitability, although at

times, it is difficult to determine which warranty a court is analyzing. *See, e.g. Lochrane Engineering, Inc. v. Willingham Realgrowth Invest. Fund, Ltd.*, 552 So. 2d 228 (Fla. 5th DCA 1989) (initially addressing the implied warranty of habitability in *Gable*, then finding a warranty of workmanlike manner). For these reasons, it is tricky to refer to the decisions of other jurisdictions for guidance in this matter; yet, we must try.

It is important to define Florida's test for a breach of implied warranty of habitability as other states provide a different test.[2] Florida's standard for implied warranty of habitability is whether the premises meet ordinary, normal standards reasonably expected of living quarters of comparable kind and quality. *See Putnam v. Roudebush*, 352 So. 2d 908 (Fla. 2d DCA 1977); *Hesson v. Walmsley Const. Co.*, 422 So. 2d 943 (Fla. 2d DCA 1982). This does not mean that the developer must deliver a perfect house. But it does mean that major defects, as determined by the trier of fact, entitle the original buyer to damages to remedy or repair the defects. *See Drexel Properties,*

[2] *See, e.g. Nastri v. Wood Bros. Homes, Inc*. 690 P.2d 761, 764 (Ariz. 1984) (the defect need not be such that it is not a safe place to live and that it would be the height of cynicism to allow a shoddy builder to escape liability because his work is not shoddy enough); *Petersen v. Hubschman Constr. Co. Inc.*, 389 N.E. 2d 1154, 1158 (Ill. 1979)(the use of the term habitability is unfortunate because it is more akin to the language of the UCC warranty of merchantability or fitness for a particular purpose).

*Inv. v. Bay Colony*, 406 So. 2d 515, 519 (Fla. 4th DCA 1981); *David v. B & J Holding Corp.*, 349 So. 2d 676 (Fla. 3d DCA 1977). Some scholars have asserted that this Court in *Gable* equated the implied warranty of habitability as equal to that of the implied warranty of merchantability under the Uniform Commercial Code. *See Washington's New Home Implied Warranty of Habitability — Explanation and Model Statute*, 54 Wash. L. Rev. 185, 212 n.138 (1978).

**b. Despite the Inconsistency of Warranty Definitions, Courts Still Favor an Expansion of Implied Warranties.**

Maronda's assertion that virtually all of the cases outside the State of Florida have held that the implied warranty only applies to the home and "strongly impl[ies] that the warranty only relates to the livability of the home" is overly broad and erroneous. (Maronda Br. 11.) In the several cases cited by Maronda in its footnote, the courts were not faced with facts of defects that extended beyond the structure of the house.[3] Thus,

[3] *Cochran v. Keeton*, 252 So. 2d 313 (Ala. 1971) (confirmed abolishing caveat emptor in the sale of newly constructed homes); *Columbia W. Corp v. Vela*, 592 P.2d 1294 (Ariz. Ct. App. 1979) (only cracking walls in the residence; *Carpenter v. Donohoe*, 388 P.2d 399 (Colo. 1964) (only cracking walls in the residence); *Tusch Enter. v. Coffin*, 740 P.2d 1022 (Idaho 1987) (only finding that the implied warranty of habitability extends to residential dwellings purchased for income-producing purposes); *Kirk v. Ridgway*, 373 N.W.2d 491 (Iowa 1985) (only addressed peeling paint on residence); *Hardesty v. Scot-Bilt Homes, Inc.*, No. 2008-CA-000564-MR, slip op. (Ky. Ct. App. Mar. 5, 2010) (only dealt with structural conditions of residence);

as for those cases, it is uncertain as to whether those same courts would have extended an implied warranty to matters beyond the structure of the house if the facts were different. In several of the other cases cited by Maronda, the courts were confronted with lack of potable drinking water in the residence or with faulty septic tanks and/or drainfields.[4] These second

---

*Banville v. Huckins*, 407 A.2d 294 (Me. 1979) (only dealt with flooding in basement and unsuitable drinking water); *Albrecht v. Clifford*, 767 N.E.2d 42 (Mass. 2002) (defects only in fireplaces and chimneys); *Smith v. Old Warson Dev. Co.*, 479 S.W.2d 795 (Mo. 1972)(defects only in walls and floors of home); *Chandler v. Madsen*, 642 P.2d 1028 (Mont. 1982) (defects only in structural elements of residence); *Norton v. Burleaud*, 342 A.2d 629 (N.H. 1975) (only flooding in cellar and sewer backed up in home); *De Roche v. Dame*, 75 A.D.2d 384 (N.Y. App. Div. 1980) (only concerned water seepage into home, cracking walls and slab, and exterior siding); *Padula v. J.J. Deb-Cin Homes, Inc.*, 298 A.2d 529 (R.I. 1973) (basement flooding and inoperative appliances); *Waggoner v. Midwestern Dev., Inc.*, 154 N.W.2d 803 (S.D. 1967) (only confronted with water seeping into a basement); *Hollen v. Leadership Homes, Inc.*, 502 S.W.2d 837 (Tex. App. 1973) (defects only of carpet, wall, dishwasher and screen door).

[4] *Kramp v. Showcase Builders*, 422 N.E.2d 958 (Ill. App. Ct. 1981) (implied warranty extends to defects in septic system); *Loch Hill Constr. Co. v. Fricke*, 399 A.2d 883 (Md. 1979) (finding that reasonable minds would conclude that an adequate water supply is necessary to make a home habitable); *McDonald v. Mainecki*, 398 A.2d 1283 (N.J. 1979) (extended implied warranty to potable drinking water); *George v. Veach*, 313 S.E.2d 920 (N.C. Ct App. 1984) (extending implied warranty to septic tanks/sewage systems); *Lyon v. Ward*, 221 S.E.2d 727 (N.C. Ct. App. 1976) (extended implied warranty to cover water to residence); *Jeanguneat v. Jackie Hames Const. Co.*, 576 P.2d 761 (Okla. 1978) (extending implied warranty to cover water to residence); *Yepsen v. Burgess*, 525 P.2d 1019 (Or. 1974) (extending implied warranty to cover improperly constructed septic tank and drainfield); *Elderkin v. Gaster*, 447 Pa. 118 (Pa. 1972)(extending implied warranty to cover water to residence); *Rutledge v. Dodenhoff*, 175 S.E.2d 792 (S.C. 1970)

group of cases contradict Maronda's conclusion that the implied warranty stops at the front door. (Maronda Br. 5.) Instead, the cases reveal that the warranty is uniformly extended to structures outside of the residence. Further, it appears that *Port Sewall* and *San Luis Trails Association v. E.M. Harris Building Co., Inc.*, 706 S.W. 2d 65 (E.D. Mo. 1986) were the first and only cases specifically finding that an implied warranty would not be applicable to the common areas of a community association.

A survey of the forty-nine states revealed only four appellate decisions concerning implied warranties as to common lands of homeowners associations.[5] Of those four, only one, *San Luis Trails*, is in favor of the Petitioners' position. Petitioners have outlined the facts in more detail, but basically, in that case, the homeowners association alleged a breach of implied warranty as to the common private streets in the community. *San Luis Trails*, 706 S.W.2d at 67. Citing *Conklin*

---

(extending implied warranty to cover septic tank; *Luker v. Arnold*, 843 S.W.2d 108 (Tex. Ct. App. 1992) (extending warranty to cover septic system); *Gamble v. Main*, 300 S.E.2d 110 (W. Va. 1983) (extending implied warranty to cover septic system); Tavares *v. Horstman*, 542 P.2d 1275 (Wyo. 1975) (extending implied warranty to cover septic system).

[5] *Board of Directors of Bloomfield Rec. Ass'n v. The Hoffman Group*, 712 N.E.2d 330 (Ill. 1999); *Briarcliffe West Townhouse Owners Ass'n, Inc., v. Wiseman Constr. Co.*, 480 N.E.2d 833 (Ill. App. Ct 1985)*San Luis Trails Ass'n v. E.M. Harris Building Co., Inc.*, 706 S.W.2d 65 (Missouri 1986); *Redbud Coop. Corp. v. Clayton*, 700 S.W. 2d 551 (Tenn. App. Ct. 1985).

and *Port Sewell*, the Missouri Court of Appeals concluded that the implied warranty was not available because there were not any allegations that the house was deteriorating or that an improvement outside the house which is an integral part of the structure or immediately supporting the structure was damaged. *Id.* at 69. The facts in *Lakeview* are easily distinguishable from the facts in *San Luis Trails*. In this case, the record indicates that the lots were affected by the defects in the roads. The photographs attached to the Engineer's Report clearly show several inches of standing water in the "dry" detention ponds and puddles through various portions of the sidewalks in the community. (R. III/345,348,416-417,423.) The lots suffered from sinkholes and the driveway on at least one lot was depressed to the point that it was unusable for a period of time (R. IV/524, 527-28, 610-11, 652-653, 805.) Plus, the improper grading of the lots caused additional erosion damage and stagnant water. (*Id*.) Accordingly, *San Luis Trails* should not be viewed as valid support for the Petitioners' position.

Maronda misalleges that *Briarcliffe West Townhouse Owners Association, Inc., v. Wiseman Construction Company*, 480 N.E.2d 833 (Ill. App. Ct 1985) is the only appellate case that extended an implied warranty to drainage systems. (Maronda Br. 13.) The Tennessee Court of Appeals has also addressed the applicability of implied warranties of a surface water drainage system in

*Redbud Cooperative Corporation v. Clayton*, 700 S.W. 2d 551 (Tenn. App. Ct. 1985). In that case, the developers departed from the grading and drainage plan by failing to construct the proper amount of catch basins, by building walls in the community, and by failing to construct swales. *Redbud*, 700 S.W.2d at 554. These departures caused street flooding, pooling of water on lots and a collapse of the perimeter wall. *Id.* The facts did not reveal any evidence of damage to the homes. Recognizing that the developer had a duty to construct the development in strict compliance with the development plan, the court ruled that the developers breached that duty and warranty, by damaging not only the common areas, but also by interfering with the homeowners use and enjoyment of their property.[6] *Id*. at 559.

Similarly, the Illinois Appellate Court, in *Briarcliffe,* reviewed a case involving defects in the common area drainage system that caused the common areas to retain surface storm water, thereby damaging various areas of the community. *Briarcliff*, 480 N.E.2d at 834. Similar to the case at bar, the evidence showed "standing water ('from a couple of inches deep

[6] In *Redbud*, the court did analyze the facts as to the negligence claim as both negligence and breach of implied warranty causes of actions were asserted. *Redbud*, 700 S.W.2d at 559. However, the court opined that developers of planned unit communities can be held liable for construction of the development based upon breach of implied warranty and fitness of the common areas. *Id*.

top just soggy ground'), "water stood for two or three days after a rainy period," algae, dying grass, and odor, on the common areas and individual lots. *Id*.

Contrary to Petitioners' argument, *Briarcliffe* does not conflict with the later decision by the Illinois Supreme Court, in *Board of Directors of Bloomfield Recreational Association v. The Hoffman Group*, 712 N.E.2d 330 (Ill. 1999). (Maronda Br. at 13-14.) In *Bloomfield*, the court stated that the association's reliance on *Briarcliffe* was misplaced because the facts were different. *Bloomfield*, 712 N.E.2d at 336. In *Briarcliffe*, the common area defects interfered with the habitability of the owners' residences and, in *Bloomfield,* there was not any evidence that the defects in the clubhouse affected the dwelling units. *Id.* Thus, the implied warranty of habitability was not applicable in *Bloomfield*. *Id.* However, while the warranty of habitability was unavailable, the *Bloomfield* Court noted that the defects in the clubhouse may be supported by a cause of action under the implied warranty of workmanship. *Id*. This type of implied warranty is more akin to that of the Association's in this matter. In fact, the Association's Complaint clearly alleged that Maronda impliedly warranted that the premises "were reasonably fit for the ordinary and general purposes for which they were intended, that they were merchantable, that they were built in a good and workmanlike manner." (R. II/288.) The

Illinois Supreme Court strongly implied that under the warranty of workmanship, the Bloomfield clubhouse would have been covered and the Bloomfield association could have had a cause of action against the construction company. Accordingly, *Bloomfield* actually stands for the proposition that the Association's cause of action in this matter is supported by Illinois law.

In sum, of the four out of state courts faced with defects in the common areas of a homeowners association, two held that an implied warranty existed and awarded damages, and one held an implied warranty of habitability was not available for a common area clubhouse, but recognized an implied warranty for workmanship for the clubhouse. Only one refused to extend the implied warranty to the common area roads. However, in that one case, there was not any evidence of damage to any lots and, thus, it is inapplicable to the facts before this Court. Based upon the foregoing, courts are slowly, but surely expanding implied warranties for homeowners' associations. Accordingly, this Court should continue to lead with its consumer protection stance and affirm the Fifth District's opinion.

### 2. Changes in the Housing Market Since *Conklin* Requires an Extension of Implied Warranties to Common Areas.

Societal changes require a further relaxation or abandonment of caveat emptor. The first American case recognizing an implied warranty that a house should be

constructed in a workmanlike manner derived its decision from English law and sound legal reasoning. *Vanderschier v. Aaron*, 707 N.E.2d 1168 (Ohio Ct. App. 1957). The decision was confined to incomplete houses. *Id*. However, scholars criticized the distinction between incomplete homes and complete homes, arguing that a purchaser of a completed structure is not in any better position to discover latent defective conditions. *See, e.g*., Frona M. Powell & Jane P. Mallor, *The Case For An Implied Warranty of Quality in Sales of Commercial Real Estate*, 68 Wash. U.L.Q. 305, 308-309 (1990). Coming to the call of the critics, in 1964, Colorado's Supreme Court in *Carpenter v. Donohue* extended implied warranties to the construction of completed homes. Over the next decade, Idaho, South Dakota, Texas, Arkansas, Connecticut, Indiana, Kentucky, Michigan, South Carolina, Vermont, and Washington followed, in kind. *See Gable v. Silver*, 258 So. 2d 11 (Fla. 4th DCA 1972). Thereafter, Florida appeared in the forefront with its case of *Gable v. Silver* carrying the implied warranty one more step and applying it to residential condominiums.

In the decade after *Gable*, thirty-three states adopted implied warranties as to realty. *Lakeview*, 48 So. 3d at 906 n.2. Then, this Court in *Conklin*, adopted its decision that implied warranties of fitness and merchantability only extends to improvements to land and to improvements immediately supporting

the residence. Distinguishing the facts in this case with those in *Conklin*, the Fifth District correctly concluded that homeowners in Lakeview are clearly within the ambit of consumer protection expressed in *Conklin*, thereby warranting further extension of the implied warranty to the facts in this case. *Id*. at 909.

One of the questions with which this Court is faced is how has societal conditions changed since *Conklin* in 1983 which warrants the further abandonment of caveat emptor. In 1970, about one million residents lived in planned unit developments nationwide and about five-thousand homeowners associations existed. Community Associations Institute, Industry Data, http://www.caionline.org/info/research/pages/default.aspx (last visited August 1, 2011). By 1980, the numbers increased to about 5 million residents and 20,000 communities. *Id.* As of 2010, there were about 150,000-200,000 homeowners associations in the United States and over 30 million residents live in a homeowners association. *Id*. These figures show that in 1983, when *Conklin* was decided, consumers could still purchase a newly constructed home in areas without mandatory homeowners associations. However, in today's society, it is rare to purchase a new home, or any home at all, that is not in a community with a mandatory homeowners' association. Another change is that while in 1983, every state had adopted a statute governing and regulating

condominiums, it was not until 1986, that courts even recognized a new area of law dealing with homeowners associations. *Perry v. Bridgetown Comm. Ass'n*, 486 So. 2d 1230 (Miss. 1986).

Nine years after *Conklin*, in 1992, the Florida Legislature adopted its the first body of statutes governing and regulating homeowners' associations. Ch. 49, Laws of Fla. (1992). At that time, the statutes were inserted into Chapter 617, which governs not for profit corporations. *Id*. The same bill also created Section 689.26, which addressed, for the first time, developer's obligation to furnish disclosure statements regarding facilities available for use by the members. *Id*. In 1995, section 617.302 was added to state a purpose, one of which was to protect the rights of association members. Ch. 274, Laws of Fla. (1995). In 2000, Section 617.301, et. seq. was moved into its own Chapter 720. Ch. 258, Laws of Fla. (2000). Over the years, homeowners associations have become more regulated and in 2004, the Department of Business and Professional Regulation assumed regulation via mandatory arbitration and mediation through the Division of Condominiums. Ch. 353, Laws of Fla. (2004). With each legislative session, Chapter 720 is amended with provisions similar to those found in the Florida Condominium Act, providing more regulation and protection for homeowners associations, such as mandatory arbitration for recalls and election disputes, provisions regarding statutory reserves, and procedures

regarding fines and suspension of use rights. For instance, in the 2007 legislative session, section 718.116 governing collections for condominium association assessments, was almost adopted verbatim for insertion into Chapter 720. Fla. Stat. § 720.3085 (2007). While the shift has been slow, the legislature appears to recognize that the members of homeowners associations should be afforded the same protection as those living in condominium associations. It is time for the courts to provide the same protections relative to implied warranties. As this Court was one of the first courts to apply implied warranties to condominium common elements before the legislature saw the need for a statute, this Court should also find that an implied warranty as to association common areas should be upheld.

### 3. Condominium Law is Appropriate Persuasive Authority.

While Petitioners argue, and the Fifth District concluded that the cases concerning condominiums are not persuasive authority for this case, the Association respectfully disagrees. First, as there are more cases addressing implied warranties in the condominium context, there is little other authority upon which a court can base its decision. Second, in adopting implied warranties in the condominium context, this Court, as well as other jurisdictions, reviewed the law of warranties in the context of new homes to determine if an implied warranty should

be applied in the condominium context. Why, then, is the converse not true? The Illinois Appellate Court, in *Briarcliffe West Townhome Owners Association v. Wiseman Construction Company, 454 N.E. 2d 363 (Ill. App. Ct. 1983)*, said it most succinctly, "We perceive no real distinction between the buildings and the common land in the application of the public policy protecting a purchaser of a new or reasonable new home from latent defects in the building or the required amenities since the purchaser in a substantial degree must rely in either case on the expertise of the building-vendor creating the defect." *Briarcliff*, 454 N.E. 2d at 364 (citing *Redarowicz v. Ohlendorf*, 92 Ill. 2d 171,183 (Ill. 1982); see also *Berish v. Bornstein*, 437 Mass. 252, 263 (2002) (explaining that the legal differences between the purchase and ownership of a condominium unit and the purchase and ownership of a house are inconsequential when comparing the similarities of purpose underlying both transactions).

While Florida has adopted statutorily implied warranties for condominium common elements, this statute was not adopted until July 1, 1974. *Greenburg v. Johnston*, 367 So. 2d 229, 230 (Fla. 2d DCA 1979). The statutory implied warranties did not extinguish those that existed under common law. *See id*. In *Chotka v. Fedelco Growth Investors*, 383 So. 2d 1169 (Fla. 2d DCA 1980), the Second District held a developer liable for

patent construction defects in the entire condominium project and for breach of common law implied warranty for such defects. *Chotka*, 383 So. 2d at 1170. The Fourth District followed in kind and upheld an award of damages in favor of a condominium association against a developer under common law theory of implied warranty of fitness and merchantability due to defects in the common elements. *Drexel Prop, Inc. v. Bay Colony Club Condo, Inc.*, 406 So. 2d 515 (Fla. 4th DCA 1981).

Not only have Florida Courts upheld common law implied warranties in condominiums, other jurisdictions have upheld implied warranties on common property that were outside the four walls of the residential building. Comparing the implied warranty of habitability to the Uniform Commercial Code warranties of merchantability or of fitness for a particular purpose, the Supreme Court of Illinois upheld the application of an implied warranty to a common element parking garage because the garage could not be used for its intended purpose. *Board of Managers of the Village Centre Condo. Ass'n v. Wilmette Partners*, 760 N.E.2d 976 (Ill. 2001); *see also Herlihy v. Dunbar Builders Corp.* 415 N.E.2d 1224 (Ill. App. Ct. 1980) (upholding implied warranty for driveway, pedestrian ramp, and retaining wall in condominium).

The Vermont Supreme Court was urged to decline extending implied warranties to the common elements of the condominium

where the alleged defects did not affect "the reasonable and ordinary habitation of the dwelling structures themselves." *Meadowbrook Condo. Ass'n v. South Burlington Realty Corp*., 565 A.2d 238, 240 (Vt. 1989). In that case, the condominium suffered significant defects in the roads, carports, overall drainage and sewer systems. *Id*. at 239. Refusing to limit the implied warranty as requested by the developers, the court distinguished between the warranty of habitability and the warranty of good workmanship, noting that defects do not have to affect the habitability of the dwelling in order to come under the umbrella of an implied warranty. *Id.* at 240.

Washington State has determined that structural damage is not necessary to assert a breach of implied warranty claim. *Atherton Condo. Apt.-Owners Ass'n Bd. of Directors v. Blume Dev. Co*., 799 P.2d 250, 517-518 (Wash. 1990). In *Atherton*, the condominium was constructed in violation of fire resistant standards. *Id.* at 512. The developer argued that the implied warranty claim should fail because there was not any structural damage to the condominium. *Id*. at 517. However, the Washington Supreme Court explained that structural damage was not necessary to determine a breach. *Id.* Instead, the court, finding in favor of the association, determined that a breach occurred because the defects had the "potential to severely restrict the habitability of the condominiums" and that the owners has a

reasonable expectation that the condominium would comply with the fire code. *Id*. at 520-522.

Likewise, in this case, the homeowners had a reasonable expectation that the drainage system would be constructed in a manner that would provide adequate drainage, that the lots would be graded in a manner that would allow for adequate drainage and prohibit erosion, and that the roads would be suitable for ingress and egress. While the record does not show any structural damage to any residential structures, the defects could severely restrict the habitability of the residences.

Maronda represented that Washington State has determined that the implied warranty was limited to defects that rendered a home uninhabitable and does not extend to nonstructural elements. (Maronda Br. at 13.) However, that is an incorrect statement of Washington law. Maronda relied on the 1987 Washington Supreme Court case of *Stuart v. Coldwell Banker Commercial Group, Inc*., 745 P.2d. 1284 (Wash. 1987), which did hold that the implied warranty applies only to egregious defects in the structure of the home. However, *Atherton* was decided after *Stuart* and broadened the scope of the implied warranty. Now the test is whether a house is reasonably fit for its intended use as a residence. *Atherton*, at 522.[7] Accordingly, this

[7] While subsequent Washington appellate decisions have been inconsistent with their application of implied warranties, the

Court should disregard *Stuart* and apply the reasoning in *Atherton* while extending implied warranties to the common areas of planned unit developments.

### D. The Fifth District's Decision Did Not Second Guess The Legislature.

Maronda also argues that an implied warranty should not be granted because the Florida Legislature rejected a bill that would have provided statutory implied warranties to homeowners associations. (Maronda Br. 20.) While Florida Courts have supported the proposition that long term legislative inaction after a court construes a statute could amount to legislative approval of the judicial construction, *see, e.g., B & L Services, Inc. v. Coach USA*, 791 So. 2d 1138 (Fla. 1st DCA 2001), the reverse is not true, in fact, courts have cautioned against inferring legislative approval from legislative inaction. *Young v. St. Vincent's Medical Center, Inc.*, 653 So. 2d 499, 506 (Fla. 1st DCA 1995) (Mickle, J., concurring specially). Judge Mickle, concurring specially, espoused that courts should not "ascribe any discernible meaning to legislative silence." Quoting the North Carolina Supreme Court in *DiDonato v. Wortman*, 358 S.E.2d 489 (N.C. 1987), Judge Mickle asserted that it is "impossible to assert with any degree of assurance that [legislative inaction] represents (1) approval of the status quo, as opposed to, (2)

---

Washington Supreme Court has not changed its position on the matter.

inability to agree upon how to alter the status quo, (3) unawareness of the status quo, (4) indifference to the status quo, or (5) political cowardice." *Young*, 653 So. 2d at 506 (Mickle, J., concurring specially) (quoting *DiDonato v. Wortman*, 358 S.E.2d 489, 490 (N.C. 1987)).

Thus, there are numerous speculatory reasons why the proposed bill was not adopted and this Court should not theorize that the reason it was defeated was because the legislature does not approve of implied warranties for homeowners' associations' common areas. If anything, the legislative history supports a finding that implied warranties for homeowners' associations already exist.

None of the staff analysis of the defeated bill indicated that a common law warranty does not already exist between a developer and homeowners' association. Instead, a review of the Senate Staff Analysis and Economic Statement by the Regulated Industries Committee infers that implied warranties do already exist. *See* Fla. S. Comm. On Reg. Ind., CS/SB 2984 (2004) Staff Analysis 17 (April 8, 2004) (on file with comm.). The Analysis questioned what affect the proposed amendment had on implied warranties that existed before the proposed effective date of the amendment and whether the amendment would narrow the statute of limitations as "[c]urrent law does not place a definitive time limit on any implied warranties." *Id*. Therefore, it is an

equally plausible explanation that the amendment was defeated because it could have limited implied warranty causes of action that were already in existence.

Maronda is correct that in *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986), this Court dismissed public policy arguments against a rule of law that the Legislature had created that was not constitutionally infirm. *DiGuilio*, 491 So. 2d at 1137. However, when there is not a law on point enacted by the Legislature, or the case deals with altering or expanding a judicially adopted rule of law, this Court has long taken a stance of adopting a new rule of law based on public policy arguments.

This Court has a history of adopting and extending laws in the area of an implied warranty of habitability based on policy arguments where the Legislature has been inactive. With *Gable v. Silver*, this Court was amongst the very first to extend an implied warranty of habitability over first purchasers of new condominiums based upon the social policy arguments enunciated by the Fourth District Court of Appeal. *Gable,* 264 So. 2d at 418. This was in light of the Legislature's inactivity in this area, which did not adopt Section 718.203, Florida Statutes, establishing statutory warranties until two years after *Gable*.

This Court has also adopted and extended laws that were in the same field as laws previously enacted by the Legislature

when there existed a different remedy from the one provided by the Legislative action. In *West v. Caterpillar Tractor Company, Inc.*, 336 So. 2d 80 (Fla. 1976), this Court adopted a strict liability tort action upon a manufacturer for placing a product in the market knowing that it is to be used, without inspection, and which causes injury to a human, based on the principles set forth in Restatement (Second) of Torts § 402A. *West*, 336 So. 2d at 87. Noting that at the present time there was no legislative impediment to the adoption of the doctrine, this Court went ahead and adopted a strict liability tort action because it was a distinct remedy different from the legislatively created implied warranty of merchantability. *Id.*

Furthermore, this Court has held that when it has judicially adopted a rule of law, it has "the power and authority to reexamine the position [it] ha[s] taken . . . and to alter the rule [it] ha[s] adopted previously in light of current 'social and economic customs' and modern 'conceptions of right and justice,'" even after the Legislature has voted not to pass a change in the law. *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973). In *Hoffman*, this Court examined the issues arising from contributory negligence being an absolute bar to recovery, a rule of law it adopted in *Louisville and Nashville Railroad Co. v. Yniestra*, 21 Fla. 700 (1886). *Hoffman*, 280 So. 2d at 434. Although the Legislature failed to override the Governor's

veto of a bill creating a comparative negligence statute in 1943, and did nothing to address the issue over the next thirty years, this Court still adopted the doctrine of comparative negligence. *Id.* at 437-38. The Legislature's inaction failed to prevent this Court from expanding a rule of law it had previously affirmed. Accordingly, the legislature's failure to adopt implied warranties covering the common areas of homeowners' associations should not deter this Court from expanding *Conklin*. Hence, this Court should affirm the Fifth District's decision in *Lakeview*.

## VII. Conclusion

For the reasons cited herein, this Court should uphold the Fifth District Court of Appeal's decision in *Lakeview*.

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Answer Brief on the Merits has been furnished via U.S. Mail on this **10th day of August, 2011**, to the following:

Steven L. Brannock, Esquire
BRANNOCK & HUMPHRIES
100 South Ashley Drive, Suite 1130
Tampa, Florida 33602

Scott J. Johnson, Esquire
Heather Pinder Rodriguez, Esquire
HOLLAND & KNIGHT LLP
P. O. Box 1526
Orlando, Florida 32802
**Attorneys for Petitioner, Maronda Homes, Inc. of Florida**

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

Thomas R. Slaten, Jr., Esquire
Larsen & Associates, P.A.
300 S. Orange Avenue, Suite 1200
Orlando, Florida 32801
**Attorneys for Amicus Curiae for Community Associations Institute**

David K. Miller, P.A.
Keith Hetrick, Esquire
Broad & Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301

**CERTIFICATE OF SERVICE (cont'd)**

Nicholas A. Shannin, Esquire
Page, Eichenblatt, Bernbaum and Bennett, P.A.
214 East Lucerne Circle
Orlando, Florida 32801
**Counsel for Amicus Curiae Florida Home Builders Association and National Association of Home Builders**

Steven B. Lesser, Esquire
Sanjay Kurian, Esquire
Becker & Poliakoff, P.A.
12140 Carissa Commerce Court, Suite 200
Fort Meyers, FL 33966
**Counsel for Community Association Leadership Lobby, Inc.**

ROBYN S. BRAUN, ESQUIRE
Fla. Bar No. 154504
PATRICK C. HOWELL, ESQUIRE
Fla. Bar No. 0069299
TAYLOR & CARLS, P.A.
7 Florida Park Drive, North
Suite A
Palm Coast, FL 32137
(386) 446-5970 Telephone
(386) 446-5938 Fax
rbraun@taylor-carls.com
phowell@taylor-carls.com
Attorneys for Respondent

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a) (2) of the Florida Rules of Appellate Procedure.

ROBYN S. BRAUN, ESQUIRE
Fla. Bar No. 154504
PATRICK C. HOWELL, ESQUIRE
Fla. Bar No. 0069299
TAYLOR & CARLS, P.A.
7 Florida Park Drive, North
Suite A
Palm Coast, FL 32137
(386) 446-5970 Telephone
(386) 446-5938 Fax
rbraun@taylor-carls.com
phowell@taylor-carls.com
Attorneys for Respondent