IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

THE JOCKEY CLUB CONDOMINIUM APARTMENTS, INC., and JOCKEY CLUB CONDOMINIUM APARTMENTS, UNIT NO. II., INC.

Plaintiffs/Counter-Defendants,
vs.
APEIRON MIAMI, LLC, Defendant and
JOCKEY CLUB III ASSOCIATION, INC.,

Defendant/Counter-Plaintiff
Vs.
JOCKEY CLUB MAINTENANCE ASSOCIATION, INC.,
Third Party Defendant
_____/

Complex Business Litigation Division

Case No. 16-5957 CA 40

THE JOCKEY CLUB CONDOMINIUM APARTMENTS, INC., and JOCKEY CLUB CONDOMINIUM APARTMENTS, UNIT NO. II, INC., each individually and as members of JOCKEY CLUB MAINTENANCE ASSOCIATION, INC.,

Plaintiffs

Vs
APEIRON MIAMI, L.L.C., and
JOCKEY CLUB III ASSOCIATION, INC.,
Defendants
_____/

CASE NO. 16-13168

ORDER ON APEIRON MIAMI, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT AS TO THRESHOLD ISSUE
And
PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

THESE MATTERS came before the Court on the above motions for summary judgment, and the Court having reviewed the file, motions, memoranda, no further argument being necessary on these specific matters, and being otherwise fully advised in the premises the Court proceeds pursuant to CBL §4.4 and it is

ORDERED and **ADJUDGED** as follows:

Apeiron has moved for summary judgment on its Fourth Defense that "it holds marketable record title, free and clear of …the 1977 Agreement" and on its Counterclaim for declaratory relief which asks the Court declare the 1977 Agreement extinguished by operation of the MRTA; the ad damnum clause paragraph C against both Defendants because MRTA extinguished any covenant that might have arisen from the 1977 Agreement, and against Jockey I on Apeiron's Ninth Defense and Counterclaim ad damnum clause paragraph d because Jockey I lacks standing to assert any rights under the 1977 Agreement.

To begin, Jockey Club I was never a party to the 1977 Agreement and thus has no standing here to enforce any of the Agreement's terms. Based thereon, Apeiron's motion as to Jockey I on that issue is **GRANTED**.

Next, the adage a rose by any other name…does not apply here. The plaintiffs urged the Court to view the Agreement entered into in 1977 as a title transaction, then changed their minds and argued that it is a personal contract. However called, Plaintiffs assert that the Agreement acts as a restriction on the use of the land and prohibits the successors and assigns of the developer, including present owner Apeiron, from constructing any additional residential buildings on the Property or using a portion of the property for anything other than additional Jockey II parking. Thus these "restrictions" affect Apeiron's property rights. .

As discussed in the Order addressing the 1977 Agreement, the Agreement was a personal contract. As such, the recording of the Agreement constitutes nothing more than a potential claim to be reviewed by a title agent. MRTA cuts off all "claims" against title to property, whether those claims arise from title transactions or other "acts," "events" or "omissions". Fla. Stat. 712.02,

712.04. Marketable record title is "free and clear of all claims except the matters set forth as exceptions to marketability in §712.03." Plaintiffs meet none of the exceptions.

The root of title in this action dates back to 1978. Recall that the 1977 Agreement, sans attachments, was recorded in 1979. The filing of the Agreement post root relates back to its execution. Inasmuch as Plaintiff now asserts that the Agreement is not a covenant running with the land, but merely an Agreement, the claim does not arise out of a title transaction subsequent to the root. The MRTA exception Plaintiff relies on provides in pertinent part:

> (4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

Plaintiffs do not dispute that the 1977 Agreement was recorded outside Apeiron's root of title. Thus its claims arise from the 1977 Agreement, not the recording of it (sans exhibits). MRTA applies to recorded and unrecorded interests. §712.04.

It is particularly important to note that the 1977 Agreement, without exhibits, failed to put anyone on notice of, or sufficiently identify, the location and property boundaries allegedly controlled by the Agreement. Therefore Plaintiffs claims must fail.

MRTA has thus extinguished the 1977 Agreement and Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiffs' Cross-Motion is **DENIED**.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 02/04/17.

JOHN W. THORNTON
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Thornton's staff.

cc: Counsel / Parties of record
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