

Third District Court of Appeal Upholds Carlton Fields Client Apeiron's Real Property and Development Rights

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Apeiron Miami LLC's development and real property rights have been vindicated again, this time in a June 3 decision issued by Florida's Third District Court of Appeal. The appellate win follows years of contentious litigation between Apeiron and property owner associations Jockey Club Condominium Apartments Inc. (Jockey I) and Jockey Club Condominium Apartments Unit No. 2 Inc. (Jockey II). "This is a decisive and significant victory for Apeiron and an important decision upholding basic development and property rights," said Carlton Fields Shareholder Chris Smart, lead attorney for Apeiron in the litigation. "Plaintiffs — such as Jockey I and Jockey II — who are not owners of real property cannot exert control over the owner's property and do not have a say in its development." In 2016, adjacent property owner associations Jockey I and Jockey II brought suit seeking to stop Apeiron's development of its property — 14 acres on Biscayne Bay — and to preclude Apeiron from even maintaining its own property. Jockey I and Jockey II argued that a 1977 agreement entered into by the original developer was a covenant running with the land or otherwise binding on Apeiron and precluded further development of the property. The associations also argued that a second agreement, entered into in 1995, gave them an easement to maintain Apeiron's property for their benefit at their expense to the exclusion of Apeiron. Prior to trial in 2017, Miami-Dade Circuit Judge John Thornton granted Apeiron summary judgment finding that the 1977 agreement was not a covenant running with the land and that it was not otherwise binding on Apeiron as a mere successor-in-title to the original developer. Then, after a five-day trial and granting Apeiron's motion for rehearing, Judge Thornton also entered a final judgment finding that the "stop-gap" easement granted to Jockey I and Jockey II pursuant to the 1995 agreement did not preclude Apeiron from developing or maintaining its property. In fact, the court found, most of the property originally subject to the easement — including the tennis courts and spa facilities — had been successfully removed from the easement by a prior owner. Notwithstanding this clear and devastating loss,

Jockey I and Jockey II persisted with a lengthy appeal of Judge Thornton’s well-reasoned summary judgment orders and final judgment. On appeal, they argued that Judge Thornton had improperly granted Apeiron’s summary judgment motions and rehearing motion after trial, which resulted in the final judgment. On June 3, 2020, the Third District Court of Appeal issued a written opinion affirming Judge Thornton’s rulings across the board. The opinion finds that the 1977 agreement was not a covenant running with the land or otherwise binding on Apeiron as a mere successor-in-title. It also finds that the trial court did not abuse its discretion in granting rehearing and ruling that Apeiron is entitled, without the consent of Jockey I and Jockey II, to develop and maintain its property. The opinion also confirmed that the “stop-gap” easement granted to Jockey I and Jockey II pursuant to the original developer’s 1995 agreement was drastically reduced in its scope and significance when a prior owner of the property successfully removed the tennis courts, spa facilities, and other property from the easement. On June 5, 2020, the appellate court granted Apeiron’s motion for appellate attorneys’ fees with respect to the 1995 agreement. “Apeiron is deeply gratified for Carlton Fields’ tireless work that vindicated Apeiron’s right to maintain the property and, more importantly, Apeiron’s right to develop the property,” said Mark Heise, who serves as receiver for Apeiron. Along with Smart, Carlton Fields Shareholders Dane R. Blunt, Scott D. Feather, and Joseph H. Lang Jr. also represented Apeiron in the litigation and the appeal.

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