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 MOTION FOR SUMMARY JUDGMENT AS TO THE 1977 AGREEMENT

THESE MATTERS came before the Court on the above motion 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:

The 1977 Agreement is not a restrictive covenant running with the land. It is a personal contract between the original developer and Jockey II, restricting the use of real property that it was already entitled to develop, entered into in exchange for Jockey II's support for the proposed development of Jockey III. The recorded Agreement at issue does not carry the same weight as would a deed or contract to purchase. It was a brokered Agreement entered into over forty (40) years ago, by a now non-existent developer and a condominium board long since replaced by faded memories, for support in the developers zoning and development process.

> The focus here has been on Paragraph 4, which provided that the "…Club does herein agree that it will not at any time in the future seek additional permission for the construction of additional living units on any of the real property presently embodied within the lands described on Exhibit A, including any additional real property that might be added to said lands by filling in any of the contiguous bay bottom areas."

It is undisputed that the above-referenced Exhibit A was not recorded. The Court must interpret the Agreement as a whole without resort to extrinsic evidence. The failure to attach Exhibit A at the time of recording the Agreement is fatal to Plaintiff's claim. Plaintiff's reliance on the unrecorded referenced Exhibit A entitled "site plan titled 'Scheme 24; Phase III The Jockey Club'" had no specific legal description of the property. The failure to attach the Exhibit(s) to the recorded Agreement created an insufficiency in the Agreement. Plaintiff attempts to create an issue with the unauthenticated, late-discovered Exhibit A, which was not recorded with the Agreement, to bolster its position that the parties intended this to be a covenant running with the land. It is, at best, a negative covenant in a personal contract – imposing restrictions on the developer. Intent at this juncture, as to what the then missing Exhibit A may have described and given notice of, cannot bind a remote purchaser when the property at issue is insufficiently

described[1]. There is no dispute Apeiron was a remote purchaser. The motion for summary judgment as to the 1977 Agreement is GRANTED.

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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[1] *See Moore v Stevens*, 106 So. 901, 903 (Fla. 1925).