

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR DESOTO COUNTY, FLORIDA

DAN PRESILLA, LUIS FERNANDEZ,
CHESTER PORTER, MARIA MEYER,
PARK PILIKIAN, RAQUEL KING,
AARON PORTER and TAMARA A. PORTER,

Plaintiffs,

vs.

LAKE SUZY PROPERTY OWNERS
ASSOCIATION, INC.,
a Florida corporation,

Defendant.

CASE NO.: 142007-CA-552

Inst: 200914000503 Date: 1/21/2009 Time: 4:05 PM
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Mitzie W. McGavic
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Consolidated with:

CASE NO.: 142007-CA-1070

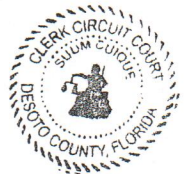
AARON PORTER and TAMARA A. PORTER,

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ASSOCIATION, INC.,
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Defendant.



FINAL JUDGMENT

This matter is before the Court on the parties' stipulation that Final Judgment may be entered based on the undisputed facts. The Court has carefully reviewed the pleadings, the briefs submitted by the parties, and is otherwise advised in the premises.

This case centers upon the present enforceability of deed restrictions that pertain to a residential subdivision located in DeSoto County, known as Lake Suzy Estates.

Simply stated, the Plaintiffs challenge the validity of the deed restrictions.¹ The Defendant advocates the validity of the deed restrictions and seeks their enforcement.

Factual Findings

Based on the stipulation of the parties, the Court finds as follows:

1. **Plaintiffs**, Dan Presilla ("Presilla"), Luis Hernandez ("Hernandez"), Chester Porter ("C. Porter"), Maria Meyer ("Meyer"), Park Pilikian ("Pilikian"), Raquel King ("King"), Aaron Porter ("A. Porter") and Tamara A. Porter ("T. Porter") own lots located within Lake Suzy Estates.²

2. **Defendant**, Lake Suzy Property Owners Association, Inc. ("LSPOA") is a Florida corporation not-for-profit that was first incorporated under the name "Lake Suzy Homeowners Association, Inc.", on April 12, 1989.

3. A **warranty deed dated July 15, 1972**, was recorded at Book 84, Page 731, Public Records of DeSoto County on September 8, 1972. The deed **conveyed property owned by Ben and Harriett Shepard to Loreda Development, Inc.**

4. **Loreda Development, Inc. next subdivided the land** referenced in Paragraph 3 **for residential development by recording the plat** for Lake Suzy Estates **on October 2, 1972**, in Plat Book 9, Page 23 of the Public Records of DeSoto County. The plat

¹ This case is primarily one for declaratory relief, but two Plaintiffs, Aaron Porter and Tamara A. Porter, in Case No. 142007-CA-1070, also seek damages for slander of title arising from the Defendant's effort to enforce the deed restrictions by recording a claim of lien against their property.

² Lake Suzy Estates is legally described as "LAKE SUZY ESTATES, as per map or plat thereof recorded in the Office of the Clerk of the Circuit Court in and for DeSoto County, Florida in Plat Book 9, Pages 23, 23A, and 23B." Presilla owns Lots 144 and 145, Block 1; C. Porter owns Lots 167 and 168, Block 1; Meyer owns Lots 14 and 15, Block 1; Pilikian owns Lot 164, Block 1; King owns Lots 148 and 149, Block 1; A. Porter and T. Porter own Lot 171, Block 1. Although the record does not identify the legal description of the lot owned by Hernandez, the Defendant admits by its Answer that Hernandez owns property in Lake Suzy Estates.

consisted of 245 residential lots. The plat contained a restriction on lot sizes and a restriction that stated that the owners of lots fronting a lake within the subdivision would be responsible for maintenance of the lake, along with certain use rights. Upon the sale of all lakefront lots, a lakefront homeowners association would be created to continue the maintenance of the lake. There were no other restrictions or references to deed restrictions, or a requirement to form a homeowners association for the purpose of enforcing deed restrictions, contained in the recorded plat.

5. On May 9, 1973, Loreda Development, Inc., recorded a Declaration of Restrictions for Lake Suzy Estates in the Official Records of DeSoto County at Book 92, Pages 598 through 608. The Declaration provided use and maintenance restrictions on the lots within Lake Suzy Estates, but it made no reference to a homeowners' or property owners' association and it did not require payment of assessments by lot owners. Enforcement of the restrictions was reserved to an Architectural Control Committee consisting of the developer and the developer's appointees. The Architectural Control Committee was empowered to modify, amend, or add to the Declaration at its sole discretion. For its term, the Declaration provided in **Part E 1.** that "[t]hese covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owners of a majority of the lots (excluding the publicly dedicated tracts) in the described property, has been recorded, agreeing to change said covenants in whole or in part."

6. On October 14, 1985, Loreda Development, Inc., recorded an amended plat for Lake Suzy Estates in Plat Book 9, Pages 65 and 65A, Public Records of DeSoto County. The amended plat was a resubdivision of a portion of Block 1 and had the effect of increasing the total lots in Lake Suzy Estates from 245 to 268. The amended plat did not refer to the Declaration of Restrictions.

7. On April 12, 1989, articles of incorporation for the Lake Suzy Homeowners Association, Inc., were filed with the Florida Secretary of State by a group of Lake Suzy residents. The Association was a not-for-profit corporation and participation in it was voluntary for Lake Suzy lot owners. On July 9, 1992, the Association's name was changed to Lake Suzy Property Owners Association, Inc. ("LSPOA") by amended articles of incorporation filed with the Florida Secretary of State. The amended articles did not affect the voluntary character of LSPOA.

8. On March 5, 1999, Loreda Development, Inc., recorded amendments to the Declaration of Restrictions in Book 425, Page 1190 through 1194 of the Public Records of DeSoto County. These amendments made no reference to a homeowners' or property owners' association and they did not require payment of assessments by lot owners to cover the cost of common grounds maintenance.

9. On July 25, 2002, the Board of Directors of LSPOA recorded a Notice of Preservation of Use Restrictions Under Marketable Record Title Act in Book 511, Pages 52 through 54 of the Public Records of DeSoto County. In the Preservation of Use Restrictions, LSPOA claimed the right to preserve the use restrictions set forth in the original Declaration of Restrictions that was recorded on May 9, 1973. Attached to the Preservation of Use Restrictions was a schedule purporting to list the names and post

office addresses of the property owners of lands located in the "Lake Suzy Community."

The schedule listed only twelve persons.

10. On June 16, 2003, Loreda Development, Inc., by and through David Shepard as principal, and in his individual capacity, executed an Assignment and Acceptance of Rights that assigned to LSPOA "any and all rights, title, interest, claims, powers, abilities, or standings which Loreda and Shepard had in any and all developmental rights or rights to act and enforce the [Declaration of Restrictions of Lake Suzy Estates] or other developer powers in relation to Lake Suzy Estates." The first recital of the Assignment acknowledged that Loreda Development, Inc., and David Shepard owned the rights set forth in the Declaration of Restrictions. Presilla, then President of LSPOA, executed the document on behalf of LSPOA. The Assignment and Acceptance of Rights was recorded on July 11, 2003, in Book 536, Pages 534 through 536, Public Records of DeSoto County.

11. On November 15, 2004, an Amendment to Amended Declaration of Restrictions of Lake Suzy Estates was recorded by LSPOA in Book 555, Pages 625 and 626, Public Records of DeSoto County. This document consisted of a new section mandating membership in LSPOA once a lot in Lake Suzy Estates is conveyed after the recording date of the Amendment. The document also stated the intent that, through this process, LSPOA would become a "homeowner's association" pursuant to Chap. 720, Florida Statutes.³ Mandatory members would thereafter be required to pay assessments

³ **PART E- Mandatory Membership**

a) It is the intention of the membership of Lake Suzy Property Owner's Association, pursuant to **PART D- General Provisions**, of said Declaration of Restrictions, to encumber all real property that is subject to said Restrictions with the requirement that upon the transfer or conveyance of such real property on any date subsequent to the recording of this Amendment in the Public Records that the owners, both legal and equitable, of said real property will be required, pursuant

imposed by LSPOA. The document noted that this amendment was "DULY ADOPTED AND PASSED by a vote of 30 affirmative votes, with 1 votes [sic] in the negative on the 8th day of November 2004."

12. On May 23, 2005, LSPOA recorded in Book 563, Pages 801 through 808, Public Records of DeSoto County a Notice of Recording Revised and Amended Declaration of Restrictions of Lake Suzy Estates. Attached to the Notice was the text of the Revised and Amended Declaration. The Notice provided that the Revised and Amended Declaration was "adopted by a majority of those members voting at a duly noticed meeting beginning at 10:00 a.m. on 5/21/05 at the DeSoto County Fire Station, South Annex." The Revised and Amended Declaration included provisions for the imposition of liens against lot owners for the collection of membership dues and fines due LSPOA for violations of the use restrictions. The mandatory membership provision of the Amendment recorded on November 15, 2004, was also carried forward in the Revised and Amended Declaration, although it was re-designated as Part D.

13. A. Porter and T. Porter, Husband and Wife, received title to their lot in Lake Suzy Estates on or about June 29, 2007. The warranty deed that conveyed title to them referenced the original recorded plat of Lake Suzy Estates, but it did not reference the Declaration of Restrictions. The Porters' grantor did warrant in the deed that the property was free of all encumbrances, "except taxes accruing subsequent to 12/31/07, reservations, restrictions and easements of record, if any."

to these Restrictions, to be members of this Association and subject to these Restrictions, as they may be amended.

- b) At such time as each and every lot and parcel that is subject to these Restrictions has been transferred or conveyed subsequent to this Amendment being recorded, the Lake Suzy Property Owner's Association shall be, on the date that the last such parcel is conveyed subsequent to the recording of this Amendment, a homeowner's association pursuant to Chapter 720, Florida Statutes."

14. A. Porter and T. Porter did not pay assessments demanded by LSPOA and on November 1, 2007, LSPOA recorded a claim of lien against them for same in the Public Records of DeSoto County at Instrument No. 20071401121.

15. LSPOA is not, and has never been, an owner of any parcel of land within Lake Suzy Estates.

16. The use restrictions contained in the original Declaration of Restrictions recorded on May 9, 1973, are not specifically referenced by book and page number in any of the successive deeds that comprise the chains of title for the Plaintiffs.

Conclusions of Law

As a preliminary matter, the Defendant contends the Plaintiffs' claims are barred by the four-year limitations period provided by § 95.11(3)(p), Fla. Stat. (2007).⁴ The Defendant reasons that the four-year period began to run with its recordation of the Notice of Preservation of Use Restrictions Under Marketable Record Title Act in the public records on July 25, 2002, because the Plaintiffs claims are based on that document. The Plaintiffs agree that the timeliness of their claims is governed by § 95.11(3)(p), but argue that the proper commencement of the limitations period is November 15, 2004, the date LSPOA recorded in the public records its Amendment to Amended Declaration of Restrictions which purported to impose mandatory association membership upon the transfer of a lot in Lake Suzy Estates.

⁴ **95.11 Limitations other than for the recovery of property.**—Actions other than for recovery of real property shall be commenced as follows:

....
(3) WITHIN FOUR YEARS.—

....
(p) Any action not specifically provided for in these statutes.

The Court concludes that the later date of November 15, 2004, is the more appropriate commencement point for the limitations period. LSPOA's earlier recordation of the Notice of Preservation of Use Restrictions Under Marketable Record Title Act merely announced its desire to preserve the status quo (*i.e.*, the vitality of the original use restrictions, as amended by the developer in 1999). The later Amendment to Amended Declaration of Restrictions purported to assert new burdens on the Plaintiffs: mandatory association membership and assessment fee liability for their transferees.⁵ It was LSPOA's efforts to impose mandatory association membership and assessments that caused the Plaintiff's to seek a declaration of their rights and obligations under the use restrictions. Since these consolidated actions were filed within the four-year limitations period,⁶ the Court finds that the Plaintiffs' claims are not barred by the statute of limitations.

The core of the controversy in this case is the parties' disagreement over the effect of Chapter 712, Florida Statutes, the Marketable Record Title Act ("MRTA"), upon the Declaration of Restrictions for Lake Suzy Estates recorded by Loreda Development, Inc., in the Public Records of DeSoto County on May 9, 1973. The Plaintiffs contend that MRTA extinguishes the use restrictions contained in the Declaration because more than 30-years has passed since it was recorded and none of the MRTA's exceptions save it from extinction. The Defendant counters that instruments recorded in the public records since 1973 preserve the vitality of the use restrictions under an exception to the MRTA.

⁵ In the case of A. Porter and T. Porter, these burdens ripened into a claim of lien for unpaid assessments recorded against them on November 1, 2007.

⁶ Case No. 2007-CA-552 was filed on July 12, 2007. Case No. 2007-CA-1070 was filed on December 17, 2007.

The MRTA was enacted in 1963 to "simplify conveyances of real property, stabilize titles and give certainty to land ownership." *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 444 (Fla. 1978). The Act's primary purpose is to "extinguish stale claims and ancient defects against the title to real property, and, accordingly, limit the period' required to be covered under any title search. *Id.* at 443 (quoting Catsman, *The Marketable Record Title Act and Uniform Title Standards*, Vol. 3, sec. 6.2, Florida Real Property Practice (1965)). Under the MRTA, " 'most defects or clouds on title beyond the period of 30 years are removed,' rendering 'marketable any estate in land recorded for thirty years or more ... free and clear of any interest arising from a title transaction, act, event, or omission, which occurred prior to the effective date of the root of title." *Id.* at 446 (quotation omitted).

The "root of title" is generally "[t]he document with which an abstract of title properly commences." *Sunshine Vistas Homeowners Ass'n v. Caruana*, 623 So. 2d 490, 491 (Fla. 1993) (quoting *Black's Law Dictionary* 1330 (6th ed. 1990)). MRTA defines "root of title" as "any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined." § 712.01(2), Fla. Stat. (2008).

The MRTA specifies that any person "vested with any estate in land of record for 30 years or more shall have a marketable record title ... free and clear of all claims except [those preserved by Section] 712.03" of the Act. § 712.02, Fla. Stat. (2008). In other words, the MRTA extinguishes any interest in property *pre-dating* the root of title unless one of the exceptions in § 712.03 applies.

Large portions of the briefs and responses filed by the parties in this case deal with whether or not one of the exceptions in § 712.03 applies to the Declaration of Restrictions recorded on May 9, 1973. That legal analysis is superfluous, however, since the Plaintiffs' root of title—the warranty deed from Ben and Harriett Shepard to Loreda Development, Inc., recorded on September 8, 1972—*pre-dates* the recording of the Declaration of Restrictions by some eight months.⁷ The Declaration of Restrictions, therefore, is unaffected by the operation of the MRTA and it is not necessary to determine the applicability of any saving exception under § 712.03. Accordingly, the Court finds as a matter of law that the Declaration of Restrictions for Lake Suzy Estates recorded in the Public Records of DeSoto County on May 9, 1973, is not extinguished by operation of Chapter 712, Florida Statutes.

This determination with regard to the effect of the MRTA, however, does not completely resolve the controversy between the parties. LSPOA additionally contends that its Amendment to Amended Declaration of Restrictions recorded on November 15, 2004, achieved a conversion of it from a voluntary to a mandatory association of lot owners. Because of this, argues LSPOA, it is authorized to assess and collect dues from lot owners who, such as A. Porter and T. Porter, acquired title after November 15, 2004. Furthermore, the Plaintiffs argue that the automatic renewal provision of the original Declaration of Restrictions⁸ was ineffective to preserve the use restrictions once 30-years had elapsed from their date of recording (*i.e.*, May 9, 2003). Finally, A. Porter and T.

⁷ Neither the plat of Lake Suzy Estates recorded on October 2, 1972, nor the Declaration of Restrictions recorded on May 9, 1973, is the root of title in this case because, although they are “title transactions” under § 712.01(3), they do not purport “to create or transfer the estate claimed....” The only instrument of record that satisfies the definition of “root of title” is the warranty deed recorded on September 8, 1972.

⁸ See Factual Findings paragraph 5, *supra*.

Porter seek damages for LSPOA's recordation of a claim of lien against their lot that is alleged to be false. These issues are addressed separately below.

Conversion from voluntary to mandatory association

The Plaintiffs rely upon the authority of *Holiday Pines Property Owners Association, Inc. v. Wetherington*, 596 So. 2d 84 (Fla. 4th DCA 1992) to argue that the Amendment to Amended Declaration of Restrictions recorded on November 15, 2004, did not lawfully convert LSPOA from a voluntary to a mandatory association. LSPOA counters that *Holiday Pines* is not determinative since it may be factually distinguished from the present case.

In *Holiday Pines*, the court reviewed a trial court's determination that certain amendments to the use restrictions of Holiday Pines, a multi-phased subdivision, were unreasonable and thus invalid and unenforceable. When each phase of Holiday Pines was platted, the developer recorded use restrictions. The restrictions for two phases reserved to the developer the right to make reasonable amendments until it no longer owned lots in the subdivision. The restrictions for two other phases provided for amendment by two-thirds of the lot owners.

There soon followed two rounds of amendments to the restrictions for all phases. The first established an Architectural Review Board empowered to approve plans and specifications for improvements to lots and provided for the formation of a voluntary homeowners' association with the right to make and amend regulations for the use of property so long as such regulations were not in conflict with the recorded use restrictions. The amendment procedure was also amended to allow the developer to

make reasonable amendments to the restrictions for all phases until it no longer owned any lots. These amendments were duly approved and recorded.

The second group of amendments added to the enforcement mechanisms of the restrictions by making membership in the homeowners' association mandatory, requiring the payment of dues to the association, allowing the collection of attorney's fees by the association for enforcing the restrictions, providing for the association to perform maintenance on lot owner's property, and allowing the creation and enforcement of liens against the lot owner's property upon failure to pay sums due the association.

After the second round of amendments several lot owners filed an action for declaratory relief. The trial court found that both sets of amendments effectuated a fundamental change in the scheme of the subdivision's development, making them unreasonable and, therefore, invalid.

On appeal, the Fourth District reiterated the test of reasonableness used to determine the enforceability of restrictive covenants:

While traditionally a reservation of the right to amend restrictions would allow the grantor to change the entire character of a subdivision, the modern view is that a reserved power to modify restrictions must be exercised in a reasonable manner so as not to destroy the general plan of development. (*citation omitted*)

Id. at 87.

Applying this test, the court found the first round of amendments reasonable and valid, but rejected the second round as unreasonable because they created a fundamental change in the scheme of the subdivision's development. The court reasoned that

[b] y creating a mandatory membership in a homeowner's association having far ranging powers of enforcement, maintenance, and rule enforcement, the restrictive covenants have

in effect changed the subdivision to a quasi-condominium development. The difference is significant. A subdivision with restrictive covenants retains to the homeowner a degree of individual control over the owner's property that is lost when mandatorily transferred to a homeowner's association. ... This is not a continuation of a scheme of development but a radical change of plans, altering the relationship of lot owners to each other and the right of individual control over one's own property.

Id. at 87-88.

LSPOA argues that the present case is distinguishable from *Holiday Pines* because the Amendment to Amended Declaration of Restrictions recorded on November 15, 2004, only created the mechanism to transform the association from voluntary to mandatory, while the objectionable amendment in *Holiday Pines* combined mandatory membership with the association's increased power of regulation, management, and authority to impose liens. In addition, the amendment in *Holiday Pines* mandated membership for all present and future lot owners, while the Amendment to Amended Declaration of Restrictions in the present case only imposed association membership upon future lot owners.

The Plaintiffs counter that the Amendment to Amended Declaration of Restrictions *does* apply, at least in part, to current lot owners since it affects any and all conveyances subsequent to the amendment's recording date. Included in this category, for example, are conveyances for estate planning purposes (*e.g.*, re-titling to a trust or adding a family member to a present owner's title with rights of survivorship), quitclaim deeds incident to divorce or to add a new spouse to the title, and transfers of property to a qualified income trust in order to qualify for Medicaid eligibility. These additional

burdens on current owners, contend the Plaintiffs, amount to an impermissible change in the scheme of development for Lake Suzy Estates to which they did not consent.

* The Court concludes that LSPOA's Amendment to Amended Declaration of Restrictions recorded on November 15, 2004, is unreasonable under the test of *Holiday Pines* in that it creates a fundamental change in the scheme of development of Lake Suzy Estates. The rationale behind the court's decision in *Holiday Pines* is a concern over the forced surrender of a certain degree of freedom when an owners' association changes from voluntary to mandatory with less than unanimous consent. It is evident from the record that the Amendment to Amended Declaration of Restrictions was a step toward increasing LSPOA's powers of regulation, management, and lien authority since it was followed on May 23, 2005, with the recordation of the Revised and Amended Declaration of Restrictions that included, for the first time, the authority to impose liens on lot owners for the collection of mandatory assessments. The present case is not distinguished from *Holiday Pines* because LSPOA chose to affect the change to a "quasi-condominium development" in a piecemeal fashion rather than all at once.⁹

* The Court notes also that the number of lot owners necessary to effectuate an amendment to the Declaration of Restrictions recorded on May 9, 1973 did not approve the Amendment to Amended Declaration of Restrictions recorded on November 15, 2004. The latter document states that the amendment was "DULY ADOPTED AND PASSED by a vote of 30 affirmative votes, with 1 votes [sic] in the negative on the 8th day of November 2004." This was plainly inadequate since the Declaration of Restrictions recorded on May 9, 1973, provides that it may be amended by "an

⁹ The same rationale applies to the Notice of Recording Revised and Amended Declaration of Restrictions of Lake Suzy Estates recorded on May 23, 2005, which reiterated the mandatory membership provision.

instrument signed by the then owners of a majority of the lots (excluding the publicly dedicated tracts) in the described property....” There are 268 lots in Lake Suzy Estates and, therefore, a valid amendment to the Declaration of Restrictions must be approved by at least 135 lot owners. This did not occur and the Amendment to Amended Declaration of Restrictions recorded on November 15, 2004, is invalid for this reason as well.

Automatic renewal provision

The original Declaration of Restrictions recorded on May 9, 1973, provided in **Part E 1.** that “[t]hese covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owners of a majority of the lots (excluding the publicly dedicated tracts) in the described property, has been recorded, agreeing to change said covenants in whole or in part.” The Plaintiffs contend that the original use restrictions are now extinguished because once they reached their 30th anniversary (*i.e.*, May 9, 2003), the effect of the MRTA interceded to render them invalid. That is, the “after which” point in time when automatic 10-year renewals would begin was never reached because the MRTA stepped in on the 30th anniversary to extinguish the use restrictions by operation of law.

Aside from the questionable metaphysical reasoning necessary to sustain their position, the Plaintiffs’ argument fails because it is premised on the operation of the MRTA in this case. It has already been shown that the MRTA did not extinguish the Declaration of Restrictions recorded on May 9, 1973, because it was pre-dated by the Plaintiffs’ root of title. Under the facts of this case the automatic renewal language of the

Declaration of Restrictions recorded on May 9, 1973, is effective to continue the vitality of the use restrictions until they are changed, "in whole or in part" by the agreement of a majority of the owners of lots in Lake Suzy Estates. See *Balzer v. Indian Lake Maintenance, Inc.*, 346 So. 2d 146 (Fla. 2d DCA 1977)(maintenance covenant in force until stated date, followed by ten-year automatic renewals unless two-thirds of lots agreed to change or abrogate it, not invalid on theory that it imposed a perpetual obligation incapable of abrogation).

Slander of title

Finally, A. Porter and T. Porter allege in their action that LSPOA's claim of lien for unpaid assessments recorded on November 1, 2007, is false and invalid since LSPOA's effort to impose mandatory association membership on lot owners who acquired title after November 14, 2004, was invalid. They claim special damages from LSPOA for attorney's fees and costs incurred to clear this cloud from their title.

To establish the elements of slander of title, the plaintiff must prove that the defendant has communicated to a third party a false statement disparaging title which has caused the plaintiff actual damage. *Residential Communities of America v. Escondido Community Association*, 645 So. 2d 149, 150 (Fla. 5th DCA 1994). Attorney's fees are recoverable as damages when litigation is necessary to clear the cloud cast upon a title in a slander of title action. *Glusman v. Lieberman*, 285 So. 2d 29 (Fla. 4th DCA 1973). If, however, a defendant acted in good faith or was otherwise privileged to communicate the false statement, then a plaintiff must prove actual malice. *Arlington Towers Condominium North, Inc. v. Arlington Towers North, Inc.*, 415 So. 2d 118, 119 (Fla. 4th DCA 1982).

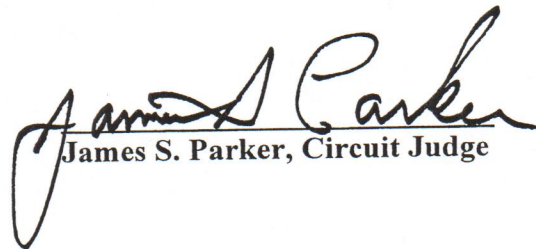
Because LSPOA's effort to convert from a voluntary to a mandatory association was invalid, the Court in this final judgment has found that LSPOA is not authorized to impose assessments without the consent of a lot owner in Lake Suzy Estates. A. Porter and T. Porter did not so consent and, therefore, the claim of lien recorded against their lot falsely disparages their title.

The Court finds, however, that the claim of lien at the time it was recorded appeared as a good faith statement of belief of a legal right. It is clear from the record that the recent history of Lake Suzy Estates is marked by the efforts of some residents to democratically change the scheme of development to include a mandatory homeowners' association. These residents mistakenly believed they had succeeded. The parties have not directed the Court to any evidence of malice on the part of LSPOA's representatives. Accordingly, the Court concludes that LSPOA did not commit slander of title against A. Porter and T. Porter when it recorded its claim of lien against them in the public records of DeSoto County. See *Residential Communities of America*, 645 So. 2d at 150 (condominium association did not commit slander of title by adopting amendment to declaration of condominium that prevented sale of unit unless buyer was 55 years of age or older without consulting original developer where association had good faith belief, albeit mistaken, that it could enact amendment without consulting developer); See also *Bonded Investment and Realty Company v. Waksman*, 437 So. 2d 162, 164 (Fla. 2d DCA 1983)(where party with option to repurchase property recorded affidavit in connection with the option, this did not constitute slander of title as the affidavit at the time it was recorded appeared as good faith statement of belief of legal right).

It is, therefore, **ORDERED AND ADJUDGED** that:


1. The Declaration of Restrictions for Lake Suzy Estates recorded on May 9, 1973, in the Official Records of DeSoto County at Book 92, Pages 598 through 608, as amended by the instrument recorded by Loreda Development, Inc., on March 5, 1999, in Book 425, Page 1190 through 1194 of the Public Records of DeSoto County, remains in full legal force and effect.
2. The Amendment to Amended Declaration of Restrictions recorded by LSPOA on November 15, 2004, in Book 555, Pages 625 and 626, Public Records of DeSoto County, is void and without legal force and effect.
3. The claim of lien recorded by LSPOA against Aaron Porter and Tamara A. Porter on November 1, 2007, in the Public Records of DeSoto County at Instrument No. 20071401121, is void and without legal force and effect.
4. Plaintiffs, Aaron Porter and Tamara A. Porter take nothing by their action for slander of title and Defendant, Lake Suzy Property Owners Association, Inc., goes hence without day.
5. The Court retains jurisdiction for the taxation of Plaintiffs' costs against Defendant.

DONE AND ORDERED in Arcadia, DeSoto County, Florida, this 21 day of January 2009.

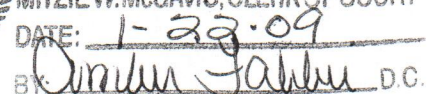

James S. Parker, Circuit Judge

Copies furnished to:

John D. Kiernan, Esq.
James W. Mallonee, Esq.

1-21-09 



I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE.
STATE OF FLORIDA COUNTY OF DESOTO
MITZIE W. MCGAVIC, CLERK OF COURT
DATE: 1-22-09
BY:  D.C.