THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

ANGELICA AVILA, NICOLAS BELLO, MARIA BEATRIZ GUTIERREZ, FRANAH VAZIR-MARINO, ROBERT H. MURPHY, JEFFREY ULMAN, SHARI ULMAN, LAZARO FRAGA, JACQUELINE FRAGA, and GEORGE GARCIA, Appellants, v. BISCAYNE 21 CONDOMINIUM, INC., a Florida not-for-profit corporation, and TRD BISCAYNE, LLC, a Delaware limited liability company, Appellees,	CASE NO. 3D23-1616 L.T. CASE NO. 23-16774-CA-43

UNOPPOSED MOTION OF THE RELATED GROUP, FORTUNE INTERNATIONAL EQUITY, DEZER DEVELOPMENT, AND 13TH FLOOR MANAGER FOR LEAVE TO APPEAR AS *AMICI CURIAE* IN SUPPORT OF APPELLEES' MOTION FOR REHEARING, REHEARING *EN BANC*, AND CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE

The Related Group, Fortune International Equity Corporation, Dezer Development LLC, and 13th Floor Manager, LLC (collectively, "Developers"), under Florida Rules of Appellate Procedure 9.300 and 9.370, respectfully move for leave to appear as *amici curiae* and further respectfully request that the Court accept as filed the attached Brief of *Amici Curiae* in support of Appellees' Motion for

Rehearing, Rehearing *En Banc*, and Certification of Questions of Great Public Importance. *See Demars v. Vill. of Sandalwood Lakes Homeowners Ass'n, Inc.*, 625 So. 2d 1219, 1220 (Fla. 4th DCA 1993) (permitting the filing of an amicus brief on consideration of a motion for rehearing).

1. This case came before this Court on an emergency appeal by Appellants from a nonfinal order denying temporary injunctive relief. The trial court concluded that Appellants failed to carry their burden to establish a likelihood of success on the merits of their claims. Those claims arose from the passage and implementation of a termination plan under Florida's Condominium Act following amendments to the Biscayne 21 Condominium Association's ("Association") 1974 Declaration ("1974 Declaration"). Appellants alleged that: (a) the Association improperly passed the termination plan with less than a 100% vote, in violation of the 1974 Declaration and the applicable version of the Condominium Act; and (b) the amendments to the 1974 Declaration improperly lowered the voter threshold for termination under provisions that purportedly require

100% approval for amendments that alter the voting rights of unit owners.

2. In concluding that Appellants had shown a substantial likelihood of success on the merits, and thus reversing and remanding for entry of a temporary injunction, this Court departed from well-settled precedent governing the construction and interpretation of Florida contracts (such as the 1974 Declaration), misconstrued the facts of the case, and receded from the long-standing practice established under *Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d 1977) to incorporate future amendments to the Condominium Act into condominium declarations. In short, the Court painted with too broad a brush such that the policy implications and potential impact of the Court's Opinion undoubtedly will have material adverse effects.

3. The Developers are uniquely positioned to be heard as *amici curiae*. The Developers comprise three prominent developers and one of the largest real estate investment firms in Florida. For decades, the Developers have engaged in significant redevelopment efforts—including for aging condominiums—to enhance communities

and enrich the lives of residents of their buildings and their neighbors, especially in South Florida. Through such redevelopment, the Developers create jobs, revitalize communities, provide safe housing, increase the tax base, and invest billions of dollars into local economies.

4. To continue to do so, the Developers must be able to rely on consistent and sound interpretation of contracts—including condominium declarations with *Kaufman* language. Without that ability, redevelopment in the State will be profoundly and adversely affected, leaving the Developers, condominium owners, and condominium associations with little to no recourse and likely leading to a flood of litigation regarding the contours and enforceability of *Kaufman* amendments and condominium declarations more generally. From a public policy perspective, the deleterious effects of this disruption extend well beyond this case, accelerating the decline of aging condominiums throughout Florida, and impacting their redevelopment, the housing market, the tax base, and the broader economy.

5. This Court's Opinion injects uncertainty and thus an obstacle for the Developers that threatens to stifle current and future redevelopment in this State. The Developers are in the business of acquiring condominium units (predominantly after requests from condominium associations for bulk purchase bids), terminating existing condominiums, and constructing new and modern condominium projects in place of aging ones that typically have not been properly maintained. Currently, the Developers each own a majority of units in condominiums throughout Florida that incorporate declarations, voting rights, and voting thresholds similar to those at issue. If this Court's Opinion stands, the Developers' interests in those condominiums unquestionably will be harmed, such that the Developers have a substantial interest in the outcome of this appeal. The Developers will further not have the certainty necessary to enter into new purchase agreements with Associations whose members widely, but not unanimously, desire termination.

6. To that end, the Developers can assist the Court in addressing far-reaching public policy implications and concerns of the Opinion as well as the resulting effects on general contract

construction and interpretation in Florida. The Developers regularly navigate the complexities of Florida's condominium law and appreciate the distinctions between various declarations on which rulings are based. In fact, an affiliate of Fortune International Equity Corporation was a defendant in the case primarily relied on by the Court in rendering its Opinion (*Tropicana Condo. Association, Inc. v. Tropical Condo., LLC, et al.*, 208 So. 3d 755 (Fla. 3d DCA 2016)), so the Developers understand the full magnitude of the Opinion. They therefore seek an opportunity to advocate for Appellees as *amici curiae* and to provide clarity and guidance to the Court in achieving a just outcome.

7. All parties to this appeal have informed the undersigned that they do not object to the Developers' participation in this appeal as *amici curiae*.

WHEREFORE, the Developers respectfully move the Court for leave to appear as *amici curiae* and also respectfully request that the Court accept as filed its attached Brief of *Amici Curiae*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 8, 2024, a true and copy of this motion has been furnished by the Florida Courts e-Filing Portal under Rule 2.516(b)(1) of the Florida Rules of Judicial Administration to the following parties:

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IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA
CASE NO. 3D23-1616

ANGELICA AVILA, NICOLAS BELLO, MARIA BEATRIZ GUTIERREZ, FRANAH VAZIR-MARINO, ROBERT H. MURPHY, JEFFREY ULMAN, SHARI ULMAN, LAZARO FRAGA, JACQUELINE FRAGA, and GEORGE GARCIA,

Appellants,

v.

BISCAYNE 21 CONDOMINIUM, INC., a Florida not-for-profit corporation, and TRD BISCAYNE, LLC, a Delaware limited liability company,

Appellees.

BRIEF OF *AMICI CURIAE* THE RELATED GROUP, FORTUNE INTERNATIONAL EQUITY, DEZER DEVELOPMENT, AND 13TH FLOOR MANAGER IN SUPPORT OF APPELLEES' MOTION FOR REHEARING, REHEARING *EN BANC*, AND CERTIFICATION OF QUESTION OF GREAT PUBLIC IMPORTANCE

ON APPEAL FROM A NON-FINAL ORDER ENTERED IN THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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STATEMENT OF INTEREST

The Developers are uniquely positioned to be heard as *amici curiae*. The Developers comprise three prominent developers and one of the largest real estate investment firms in Florida. For decades, the Developers have engaged in significant redevelopment efforts—including for aging condominiums—to enhance communities and enrich the lives of residents of their buildings and their neighbors, especially in South Florida. Through such redevelopment, the Developers create jobs, revitalize communities, provide safe housing, increase the tax base, and invest billions of dollars into local economies.

To continue to do so, the Developers must be able to rely on consistent and sound interpretation of contracts—including condominium declarations with *Kaufman* language. Without that ability, redevelopment in the State will be profoundly and adversely affected, leaving the Developers, condominium owners, and condominium associations with little to no recourse and likely leading to a flood of litigation over the contours and enforceability of *Kaufman* amendments and condominium declarations more generally. From a public policy perspective, the deleterious effects of

this disruption extend well beyond this case, accelerating the decline of aging condominiums throughout Florida, and impacting their redevelopment, the housing market, the tax base, and the broader economy.

This Court's Opinion injects uncertainty and thus an obstacle for the Developers that threatens to stifle current and future redevelopment in this State. The Developers are in the business of acquiring condominium units (predominantly after requests from condominium associations for bulk purchase bids), terminating existing condominiums, and constructing new and modern condominium projects in place of aging ones that typically have not been properly maintained. The Developers each own a majority of units in condominiums throughout Florida that incorporate declarations, voting rights, and voting thresholds similar to those at issue. If this Court's Opinion stands, the Developers' interests in those condominiums unquestionably will be harmed, such that the Developers have a substantial interest in the outcome of this appeal. The Developers will further not have the certainty necessary to enter into new purchase agreements with Associations whose members widely, but not unanimously, desire termination.

SUMMARY OF ARGUMENT

Words have meaning, which courts decipher from the context in which the words appear. But this Court's Opinion reflects a departure from contextualist precedent for a revisionist approach, upending established principles of Florida jurisprudence and putting the future of condominium redevelopment in the State at risk.

The Developers principally request that the Court revisit its analysis of the 1974 Biscayne 21 Condominium Declaration ("1974 Declaration") and apply a contextualist analysis to the term "voting rights" as used in the 1974 Declaration's amendment provision. Such an analysis will establish that the 1974 Declaration's termination provision was amendable by a simple-majority vote. That conclusion will, in turn, establish that Appellants lack a substantial likelihood of success below.

The Developers further urge that the Court exercise judicial restraint and go no further in its analysis. The Developers join Appellees and all other amici in concluding that the Court erred in its footnote 2 analyses of *Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d DCA 1977), but a correct interpretation of the 1974 Declaration's amendment provision will moot all *Kaufman* issues in this appeal.

Recent amendments to the Declaration (explained below) were undeniably intended to effectuate Biscayne 21's statutory termination, so a correct interpretation of the 1974 Declaration as allowing those amendments will render any *Kaufman* analyses advisory.

As currently written, the Opinion creates uncertainty and implicates policy concerns, which, if left unaddressed, would prove detrimental to every relevant constituency, including developers, condominium unit owners, and condominium associations. To prevent the inevitable harms stemming from the Opinion, addressed below, the Court should grant Appellees' motion and either recede from its findings on rehearing, grant rehearing *en banc*, or certify questions of public importance to the Florida Supreme Court.

ARGUMENT

I. The Opinion Misapplies Long-Standing Principles of Contract Interpretation in Misconstruing the Applicable Terms of and Amendments to the Declaration.

The Developers join Appellees and all other *amici* in requesting rehearing. The Court's current Opinion departs from more than a century of precedent requiring that all contracts—including

condominium declarations—be interpreted based on a cohesive reading of all their parts and an appreciation for the context in which the contract was formed. *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))).[1]

Principally, the Opinion reflects an oversight or misappreciation of key distinctions between voting *rights* and voting *thresholds* in the 1974 Declaration. This conflation, in turn, led to an oversight or misappreciation of key distinctions between the 1974 Declaration here and the declaration at issue in *Tropicana Condominium Association, Inc. v. Tropical Condominium, LLC*, 208 So. 3d 755 (Fla. 3rd DCA 2016).

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[1] *See also, e.g.*, *U.S. Rubber Products v. Clark*, 200 So. 385, 388 (Fla. 1941) ("It is a primary rule that, in construing contracts or instruments, we must seek the intention of the parties at the time of executing them. The intent of the parties with respect to any feature of the contract must be determined from an examination of the whole of the contract, and not of disjointed parts of it. It is not enough to look to an isolated phrase or paragraph of the contract in an effort to determine its true meaning." (collecting cases)).

The 1974 Declaration had a single provision addressing declaration amendments. That provision established a simple-majority voting threshold for most types of amendments but required "approval of one hundred (100%) percent of the Owners" for an amendment altering "voting rights." (A. 317.) It is undisputed that "voting rights" was defined in the 1974 Declaration's integrated Bylaws to mean the right "to cast one vote for each Condominium Unit" (i.e., Owners with multiple units could cast multiple corresponding votes). (A. 210.) This definition did *not*, however, encompass voting thresholds—that is, the quantum of Owner votes collectively required to take a particular action, such as amending the Declaration—and neither Appellants nor the Court identified any textual basis for ascribing different meanings to these same words ("voting rights") throughout the 1974 Declaration and the documents it expressly integrated through Article III(E). For that reason, there was no textual basis for treating an amendment to the 1974 Declaration's termination voting *threshold* (which was originally 100%) as an amendment to Owners' voting *rights* (which remained one vote per unit).

In contrast, the declaration in *Tropicana*—the principal precedent on which this Court's Opinion turns—contained both an express unanimous-consent threshold for terminating the condominium (§ 14.1) *and*, critically, an express unanimous-consent threshold for amending the declaration to reduce the termination threshold (§ 14.5). In *Tropicana*, this Court stressed that two-tiered textual basis for requiring unanimous consent to alter the termination, including in the following footnote explaining that the unanimous-consent threshold for amending the termination provision undisputedly had not been met:

> Section 14.5 of the Declaration provides: "This § 14 cannot be amended without the consent of all Unit Owners and of all record owners of institutional Mortgages upon the Units." The termination provision is in section 14.1 of the Declaration, which provides: "The Condominium may be terminated at any time by the written consent of all of the Owners of Units in the Condominium and all Institutional Mortgages holding Mortgages on Condominium Parcels." The record reflects that the Association did not obtain approvals of mortgage holders of units.

Tropicana, 208 So. 3d at 757 n.2. So not only did this Court's conclusion in *Tropicana* ***not*** require ascribing different meanings to the same term throughout a single set of integrated documents (as the Court's interpretation of the term "voting rights" in the 1974

Declaration requires here), there was an express, dual-layer textual basis for the Court's conclusion that unanimous consent was required for both exercising *and* amending the *Tropicana* declaration's termination provision.

A full and fair reading of the 1974 Declaration here thus dictates a different outcome from *Tropicana*. The drafters of the *Tropicana* declaration chose to couple its 100% termination threshold with a 100% threshold for amending the declaration's termination provision. This Court appropriately gave that choice full force and effect, reasoning that the *combined* effect of both thresholds amounted to an individualized right to "veto" undesired termination efforts. *Id.* at 758. But here, the drafters of the 1974 Declaration chose ***not*** to extend a unanimous-consent requirement to amendments of the termination provision, and that choice, too, must be respected. Freedom of contract requires respect for contractual nuances, including honoring the original parties' decisions not only on what the contract requires, but also on what will be required for its modification.

It is not for the Court to substitute its own judgment for that of the 1974 Declaration's drafters. *See, e.g.*, *Rogers v. State*, No. 3D22-

2047, 2024 WL 1080046, at *1 (Fla. 3d DCA Mar. 13, 2024) ("Courts may not rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." (citation omitted)); *see also, e.g.*, *Fernandez v. Homestar at Miller Cove, Inc.*, 935 So. 2d 547, 551 (Fla. 3d DCA 2006) ("[A] court is powerless to rewrite the contract to make it more reasonable or advantageous for one of the contracting parties." (citation omitted)). Just as the *Tropicana* unit owners were entitled to rely on the plain language of its two-tiered unanimous-consent threshold for terminating their condominium, so too were the Biscayne 21 Owners entitled to rely on the plain language of the 1974 Declaration's amendment provision to reduce their condominium's termination threshold. The Court's expansive interpretation of the term "voting rights" (which includes voting thresholds) conflicts with the 1974 Declaration's express definition of that term (which does not), judicially stripping Appellees of contractual amendment rights at a time when reliance on those rights was most needed. *See State v. Poole*, 297 So. 3d. 487, 507 (Fla. 2020) ("[R]eliance interests are 'at their acme in cases involving property and contract rights.'" (citation omitted)).

II. The Court's misconstruction of the 1974 Declaration resulted in an unnecessary and incorrect *Kaufman* analysis.

If the Court had interpreted the 1974 Declaration and its integrated bylaws as a whole,[2] and if the Court had not departed from longstanding precedent requiring cohesive interpretations of common contractual terms,[3] the Court's lengthy substantive footnote on *Kaufman* would have been unnecessary. *Op.* at 4 n.2 (discussing *Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d DCA 1977)).

A correct conclusion that the 1974 Declaration allowed for amendment of its termination provision with less than unanimous consent would have left only one remaining question: Was the Florida Condominium Act's statutory termination provision intentionally incorporated into the Declaration's amendments in 2022?

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[2] *See, e.g.*, *Providence Square Ass'n, Inc. v. Biancardi*, 507 So. 2d 1366, 1371 (Fla. 1987) ("[T]he general rule in actions at law based on contracts and other written instruments is that ordinarily the writing itself must stand as the only exposition of the parties' intent."); *Residences at Bath Club Condo. Ass'n, Inc. v. Bath Club Entm't, LLC*, 355 So. 3d 990, 996 (Fla. 3d DCA 2023) (recognizing that courts must examine the whole contract to discern intent).

[3] *See, e.g.*, *Coral Gables Police Benevolent Ass'n v. Just*, 179 So. 2d 390, 392–93 (Fla. 3d DCA 1965) (providing that "clauses in a contract . . . must be given an interpretation which will reconcile them if possible").

The answer, of course, is yes. Under bedrock principles of contractual interpretation, the effect of an amendment to a condominium declaration is measured by the intent of the parties *at the time of the amendment*. *See, e.g.*, *Orlando Orange Groves Co. v. Hale*, 161 So. 284, 294 (Fla. 1935) ("It is elementary that the main principle in the construction of a contract is to arrive at the intention of the parties, deduced from consideration of the whole instrument, *in the light of the object to be gained*, *the situation of the parties*, the information in their possession, and the practices existing *at the time the contract was made*." (emphasis added)).

No one could credibly dispute that the intent of both amendments in 2022—the August 4, 2022 "Termination Amendment" (which reduced the textual threshold for termination) (A. 346, 349) and the April 18, 2022 "*Kaufman* amendment" (which amended the Declaration's reference to Florida's Condominium Act to track exactly the language of the reference in the *Kaufman* declaration) (A. 352)—was to effectuate the termination of Biscayne 21. The amendments occurred when more than 90% of unit owners had closed on purchase agreements with Appellee TRD Biscayne (A. 219), both passed with more than 90% unit owner

approval (A. 352, 615), and, within about one month of the amendments, more than 95% of the unit owners approved a plan of termination (A. 356, 608).

So if the Court had appropriately applied a contextualist approach to interpreting the 1974 Declaration's amendment provision, the remainder of this case would have been easily resolved. The necessarily resulting conclusion that the termination provision was amendable by a simple majority would have tacitly confirmed that the 2022 Amendments were valid, as was the statutory plan of termination that followed.[4] A correct construction of the 1974 amendment provision would thus have more than sufficed to confirm that Appellants lack "a substantial likelihood of success"—the only ultimate issue presented by this appeal from a denial of a temporary injunction. *Op.* at 1.

But because the Court misconstrued the 1974 Declaration's amendment provision, it seems to have gone on, in footnote 2 of its

[4] The Opinion never engages Appellees' accurate observation that Appellants waived any challenge to the *Kaufman* Amendment. *See* Appellees' Joint Answer Br. at 17–18. Regardless, correctly construing the 1974 Declaration's threshold for amending its termination provision would confirm the 2022 Amendments' validity by implication.

Opinion, to consider three issues that should have never arisen: (1) whether *Kaufman's* rationale extends to the language of the 1974 Declaration; (2) if so, whether there is tension between the 1974 Declaration's termination provision and the statutory plan of termination that *Kaufman* language would have incorporated into the Declaration; and (3) if so, how that tension should be resolved.

This exercise proved needlessly problematic in at least two respects. First, it necessarily involves discerning how the 1974 Declaration's parties would have intended *Kaufman* concepts to apply *fifty* years ago—before *Kaufman* was even decided in 1977. The far better, less-speculative approach would have been to let the undisputed intent behind the less-than-two-year-old 2022 Amendments speak for themselves, particularly the *Kaufman* Amendment designed to absolve any doubt behind *Kaufman's* applicability and the availability of the statutory plan of termination.

Second, and more problematically, *Kaufman* analyses routinely lead to contractual-impairment or other constitutional questions. *See, e.g.*, *Tropicana*, 208 So. 3d at 756–59 (conducting a contractual-impairment analysis because the declaration "lacked '*Kaufman*' language"). They also often require analyses of the Florida

Condominium Act that can have broad impacts, including on the entire condominium redevelopment industry.

In this vein, the sweeping language used by the Court in footnote 2 unnecessarily injects wide-reaching and extraordinarily impactful statutory and constitutional concepts into an interlocutory appeal resolvable from the text of the declaration specific to this case. For example, in suggesting that the "as amended" language insufficiently invokes *Kaufman* when included in a declaration's "mere recital," the Court indirectly introduced questions about the constitutionality of applying Condominium Act amendments to *any* such declarations. *See Op.* at 4–5 n.2. And in broadly interpreting section 718.117(3), Florida Statutes, as setting a contractually raisable "floor" on termination thresholds, *see id.*, the Court introduces a host of unaddressed uncertainties: What if a better reading of a declaration's text is that the parties, as is typical, intended for the statutory plan of termination to function as an *alternative* procedure? Or what if the parties to a declaration had already agreed to a termination threshold *lower* than that provided for in section 718.117(3) (in which case, how could section 718.117(3)'s 80% threshold be a "floor"), or even agreed to a

termination procedure that could not be blocked by objections from 5% of the voting interests (as section 718.117(3) allows)? These are just a few of the serious and inevitably dispute-creating flaws in a substantive footnote that should have never been written because a correct interpretation of the 1974 Declaration's amendment provision would have obviated the footnote's need.

The Developers thus respectfully suggest that the Court exercise judicial restraint, revisit its decision on the distinction between voting thresholds and voting rights under the 1974 Declaration, and resolve this appeal on that issue alone. The Court's existing analyses paint with a broader brush than freedom of contract allows and will impede the lawful termination of myriad existing condominiums. But the resulting detrimental impacts, addressed more fully below, can easily be avoided with a narrow analysis that focuses only on the text of the declaration at issue.

III. Public policy considerations support receding from the findings set forth in the Opinion.

An immediate and serious consequence of the Opinion will be the stifling of redevelopment efforts in Florida. If the Court upholds its findings, the Developers will be forced, at a minimum, to

reconsider plans for condominium redevelopment throughout the State or, more likely, face significant redevelopment obstacles at a loss of billions of dollars to the State.

For context, Florida has more than 1.5 million condominium units, with 565,942 units (or about 37%), located in Broward and Miami-Dade counties alone.[5] In February 2024, sales of townhouses and condominiums generated $3.5 billion in sales in Florida,[6] including $708.9 million in Miami-Dade County[7] and $364.7 million in Broward County.[8] With continued redevelopment efforts, these numbers will continue to increase.

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[5] Florida Condominium Data & Statistics, COMMUNITY ASSOCIATIONS INSTITUTE, https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/Florida%20Condominium%20Data.pdf (last visited Apr. 7, 2024).

[6] *Monthly Market Detail – February 2024, Townhouses and Condos, Florida,* FLORIDA REALTORS, (Mar. 21, 2024), https://www.floridarealtors.org/sites/default/files/2024-03/February-2024-Fla-condo-data-detail.pdf

[7] *Monthly Market Detail – February 2024, Townhouses and Condos, Florida,* MIAMI REALTORS (March 21, 2024), https://www.miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2024/03/Miami-Dade-County_Townhouses-and-Condos_2024-02_Summary.pdf

[8] *Monthly Market Detail – February 2024, Townhouses and Condos, Florida,* MIAMI REALTORS (March 21, 2024), https://www.miamirealtors.com/wp-content/uploads/bsk-pdf-manager/2024/03/Broward-County_Townhouses-and-Condos_2024-02_Summary.pdf

Approximately 75% of units in condominium associations in Florida with twenty to forty-nine units were built prior to 1990, and approximately 59% of units in condominium associations with fifty or more units were built prior to 1990.[9] Given the age and attendant decline of most of those condominiums, it is imperative from both a health and safety and an economic perspective that redevelopment efforts continue. Providing Florida's more than 22 million residents newer, safer, more efficient housing options serves the public interest and makes financial sense for both the private and public sectors.

These interests are why the Florida Legislature has amended the Condominium Act to address the increasing numbers of condominiums in the State, as well as aging condominiums. In 2007, on the heels of rampant foreclosure fraud and a real estate crisis, the Legislature amended the Condominium Act to provide for termination of condominiums through a statutory termination process. *See* § 718.117(3), Fla. Stat. (2007). Now, with a vote of eighty 80% with no more than 5% of the total voting interests objecting, an association may terminate the condominium form of ownership through a

[9] Florida Condominium Data & Statistics, *supra* n.1.

termination plan. With the 2007 amendment, the Legislature moved away from the requirements in the original statute—under which the 1974 Declaration was recorded—where an association needed a unanimous vote to terminate a condominium unless otherwise provided for in a declaration's termination provision (as it might be amended). The 2007 amendment therefore permitted developers to execute buyouts by partnering with unit owners who either wanted or needed to sell their units without the fear of resistance by a small number of unit owners holding out and preventing termination.

The Developers have employed the buyout model and statutory termination process as standard operating procedure for nearly two decades, typically to the benefit of unit owners who receive above-market prices for their units.[10] To effectuate this model and process, the Developers rely on declarations incorporating the Condominium Act, either as initially recorded or through valid amendments. Until now, such reliance was a foregone conclusion. The Opinion, however, calls into question the Developers' ability to rely on the

[10] *See* Robyn A. Friedman, *Towering Uncertainty*, FLORIDA TREND (Oct. 17, 2023), https://www.floridatrend.com/article/38053/towering-uncertainty.

governing condominium documents and any amendments, thus putting the entire redevelopment industry in peril. Taken to its logical end, the Opinion will render redevelopment such an inefficient, expensive, and time-consuming proposition that the Developers will be forced to substantially reduce or cease their condominium-redevelopment efforts in the State, with the ripple effects harming the housing market, the economy, and every major industry.

From a public policy perspective, the substantial deleterious effects of this disruption on redevelopment range well beyond this case—making it far more difficult to alleviate problems resulting from aging condominiums—while also causing a downturn in the housing market and economy. If the Court recedes from its findings, however, continued redevelopment efforts will provide significant benefits and promote the public policy of the State. § 718.117(1)(b), Fla. Stat. ("[I]t is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of

alienation thereof that owners have in the condominium property before and after termination.").[11]

A. Proper Construction of Declarations and Amendments Will Provide Unit Owners with Termination Options, Regardless of Financial Circumstance.

Allowing continued amendment to and proper interpretation of declarations, including altering voting thresholds and adding *Kaufman* language, will prevent the injustice of minority-interest condominium owners forcing less affluent condominium owners out while contesting termination. As a result of deferred maintenance, many condominiums face large special assessments that burden owners, making termination a favorable option for those who cannot afford the assessments. By interfering with redevelopment, more affluent condominium owners can block condominium terminations to the detriment of the less affluent owners who cannot pay the reserve requirements recently mandated under the Florida Condo Safety Act. Such requirements present extraordinary financial

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[11] The Florida Legislature has acknowledged that protecting the interests of developers, unit owners, and condominium associations constitutes sound public policy. *See* § 718.702(3), Fla. Stat. (2010) ("[I]t is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.").

burdens for condominium owners, especially for limited or fixed-income unit owners in older buildings, to the tune of tens if not hundreds of thousands of dollars.[12]

Effectively, the Opinion provides the means for wealthier condominium owners to place less well-off owners in a financial chokehold. The Opinion essentially negates the Developers' ability to acquire and redevelop condominiums with high termination thresholds and locks owners into making expensive repairs they cannot afford. The measures taken by the Legislature in enacting the Florida Condo Safety Act indicate a preference for safe exits for *all* condominium unit owners rather than protections for intransigent minorities seeking financial windfalls at their neighbors' expense.

Preventing redevelopment unless a developer can meet a unanimous vote threshold for termination therefore rewards holdout owners for obstructionist activity while punishing less affluent owners for attempting to realize maximize value from their condominiums. Against the backdrop of a housing affordability crisis

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[12] *See* Roger Valdez, *How Will Florida Condo Safety Law Impact Housing?*, FORBES (Jan. 5, 2023), https://www.forbes.com/sites/rogervaldez/2023/01/05/will-florida-condo-safety-law-cause-financial-collapse/?sh=1c72a37946ad.

(especially for limited or fixed-income owners), rising insurance costs,[13] inflation, and substantial assessments to meet reserve requirements, less affluent owners will overwhelmingly suffer. With financing options limited, their only alternatives may be a "fire sale" or foreclosure. Keeping the door open for redevelopment by acknowledging and upholding the proper interpretation of declarations, including any amendments, avoids this inequitable distribution of power and prevents a stranglehold by wealthier minority-interest owners at the expense of those of more limited means.

B. Redevelopment Provides Economic Benefits to Both Individuals and the Community At Large.

Providing an avenue for redevelopment will also create work—and thus jobs—in multiple sectors, including design, engineering, construction, electrical, plumbing, heating and cooling, and landscaping. Removing the Opinion's roadblocks to redevelopment will benefit individuals working in these sectors. As most of these

[13] As of 2020, Florida is the most expensive state for homeowners insurance premiums, with no signs of lowering. *See Facts + Statistics: Homeowners and renters insurance,* INSURANCE INFORMATION INSTITUTE, https://www.iii.org/fact-statistic/facts-statistics-homeowners-and-renters-insurance (last visited Apr. 7, 2024).

sectors have yet to fully recover from substantial Covid-related losses, interfering with redevelopment would prove devastating.

Further, with redevelopment comes an increase to the ad valorem tax base. Increased tax revenues inure to the benefit of municipalities and provide the means to improve infrastructure, schools, and outdoor spaces. The injection of funds into these communities benefits everyone, as redevelopment fosters a sense of community and shared interests, and it promotes connectivity in areas that may have become isolated through years of neglect. Enabling redevelopment without the impediment of uncertain contractual hurdles will therefore help both old and new communities to thrive.

Similarly, redevelopment promotes vibrancy and revitalizes communities that might otherwise fall into disrepair or disrepute. The redevelopment of communities encourages everyone from new homebuyers to retirees to buy in areas they might not have considered. In contrast, aging condominiums with large outstanding assessments and a long list of repairs will discourage buyers, especially first-time and fixed-income buyers. Alleviating these concerns by allowing for proper termination of older condominiums

and the development of new condominiums affords greater housing options to a larger segment of the population.

C. Redevelopment of Aging Condominiums Provides Safer, More Efficient Housing Options.

Beyond that, redevelopment of aging condominiums will provide increased safety protections and address current safety concerns—issues highlighted by the tragic Champlain Towers South collapse. The collapse was one of the deadliest structural disasters in American history, with ninety-eight people killed and many others injured.[14] Given the gravity of the collapse and the implications for Florida's aging condominiums, the U.S. Department of Commerce deployed a team from the National Institute of Standards and Technology (NIST) to conduct a full technical investigation of the collapse under the National Construction Safety Team Act, with its final report expected in 2025.[15] The NIST investigation seeks to determine the technical cause of the collapse and, if indicated, to

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[14] Disaster Assistance: Information on the 2021 Condominium Collapse in Surfside, Florida, U.S. GOV'T ACCOUNTABILITY OFFICE, (Feb. 6, 2024), https://www.gao.gov/products/gao-24-106558.

[15] *Disaster & Failure Studies, Champlain Towers South Collapse*, U.S. DEP'T OF COMMERCE NAT'L INST. OF STANDARDS AND TECH., (Apr. 5, 2022), https://www.nist.gov/disaster-failure-studies/champlain-towers-south-collapse-ncst-investigation/background.

recommend changes to building codes, standards and practices, or other appropriate actions to improve the structural safety of buildings.

For now, what we do know is that years of neglect risks severe disaster in older condominiums, like Champlain Towers South. To better regulate neglect and prevent disasters, building codes, standards, and practices of today employ more stringent safety requirements than those of the past and are constantly evolving to better protect the public. For instance, in its Fiscal Year 2022-2023 Annual Report, the Florida Building Commission reported that buildings built to requirements of the new Florida Building Code experienced less severe wind damage than older buildings not built to the Code.[16]

Indeed, results from a Federal Emergency Management Agency (FEMA) study on the benefits of adopting hazard-resistant building codes provide a direct correlation between adherence to updated

[16] *Florida Building Commission Annual Report FY 2022-2023*, FLORIDA BUILDING COMMISSION, (June 2023), https://floridabuilding.org/fbc/Commission/FBC_0623/Commission/FBC_Annual_Report_to_the_Florida_Legislature.pdf.

building codes and loss avoidance.[17] As of November 2020, the study found that about 51% of the 18.1 million post-2000 buildings modeled showed that Average Annualized Losses Avoided (AALA) from flood, wind, and seismic activity totaled $1.6 billion by adopting more hazard-resistant building codes.[18] Florida achieved an AALA of more than $1 billion, with losses avoided totaling more than $267 million in Miami-Dade County and more than $154 million in Broward County.[19] Projecting forward, the study concluded that the cumulative savings for new buildings constructed in conformity to updated hazard-resistant building codes would be $132 billion.[20] The overarching conclusion: adopting and enforcing hazard-resistant building codes avoids losses and saves money—and most importantly

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[17] *Building Codes Save: A Nationwide Study*, FEDERAL EMERGENCY MANAGEMENT AGENCY, (Nov. 2020), https://www.fema.gov/sites/default/files/2020-11/fema_building-codes-save_study.pdf (basing its analysis on the use of International Codes, which are model building codes developed and maintained by the International Code Council and used as a basis for state and local building codes to establish minimum requirements to protect life safety and reduce property damage).

[18] *Id.*

[19] *Id.*

[20] *Id.*

protects people—while allowing communities to increase public safety and community resilience.[21]

New construction involves better design, superior materials, and improved construction means and methods. New construction also replaces building materials that have deteriorated over the years because of exposure to weather, salt, and other adverse environmental conditions with new, undamaged materials.

By encouraging rather than restricting redevelopment, the Developers can provide safer and more efficient dwellings with better protection against deterioration, decay, corrosion, and natural disasters—including the tropical weather events and flooding ubiquitous in South Florida—while also preventing loss of life from structural instability. Conversely, limiting the Developers' ability to redevelop condominiums in desperate need of repair that fail to adhere to current standards can and will lead to catastrophic results. Florida condominium owners should not be forced to risk their lives to remain in dangerous condominiums or have significant obstacles placed in their path to exit potentially life-threatening properties.

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[21] *Id.*

Should the Court continue its current trajectory, many owners will face such a fate.

CONCLUSION

Words matter. Context matters. Precedent matters. Respectfully, the Court's Opinion disregards all three. The Opinion's immediate impact will reverberate across the State and across industries. Unit owners, condominium associations, the Developers, architects, engineers, construction trades, and local governments all will suffer immeasurable harm if this Opinion remains. For these reasons, the Developers respectfully request that the Court grant Appellees' Motion for Rehearing, Rehearing *En Banc*, and Certification of Questions of Great Public Importance.

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CERTIFICATE OF SERVICE

I certify that on April 8, 2024, a true and correct copy of this Brief of Amicus Curiae has been furnished by the Florida Courts e-Filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1) to these parties:

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Rules 9.045(b) and (e), 9.210(a) and (b), and 9.370(b) of the Florida Rules of Appellate Procedure, this Brief has been prepared in Bookman Old Style, 14-point font, and the word count is 4,983.

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