

First DCA Holds that Property Owner Properly Pled a Cause of Action for Removal of Deed Restrictions

On October 19, 2022, the First DCA reversed the trial court's dismissal of Gate Venture, LLC's second amended complaint, holding that Gate Venture, LLC ("Gate Venture") sufficiently stated a cause of action for the removal of deed restrictions on its property. In 2007, the original grantor who created the restrictions ("Defendant") conveyed approximately 15.46 acres of property (the "Property") to Gate Venture's predecessor, subject to certain restrictions. The Property was limited to development of "all office uses permitted by law," which included general, professional, and medical offices.

Since 2007, the Defendant sold all its land adjacent to the Property, and numerous zoning changes had occurred. The land surrounding the Property had its zoning changed from Residential Professional Institutional ("RPI") to Community General Commercial ("CGC"), the latter of which has no limit on the amount of commercial retail and service establishments allowed within the area. Gate Venture acquired the Property from its predecessor in 2018, shortly before the COVID-19 pandemic devastated the economic feasibility of office space. Gate Venture wished to develop the Property as a multi-family community, but Defendant refused to accommodate, offering instead to lift the deed restrictions for six million dollars. Consequently, Gate Venture sued.

At the motion to dismiss hearing, the trial court recognized the financial advantage that Gate Venture was seeking, but stated its concern over using its "magic wand" to determine what is best for the Property by removing any restrictive covenants. The trial court found the deed restrictions to be clear and refused to look for subjective intent behind any of the covenants. Additionally, the trial court expressed concern over using COVID-19 as a reason for changed circumstances, stating, "[I]f that works, then basically every contract could be unwound in a heartbeat." The trial court granted the motion to dismiss with prejudice, noting that it did not see any factual disputes among the allegations.

The First DCA reviewed Florida's test for removing deed restrictions. Citing to Supreme Court precedent, the First DCA noted that "a change in the circumstances and the neighborhood materially affecting the lands will warrant the granting of relief from restrictive covenants.'" The First DCA found that the trial court refused to recognize such a cause of action, as evidenced by the trial court's discussion of a "magic wand" to cancel restrictive covenants. The First DCA further found that Gate Venture sufficiently alleged a change in circumstances, given the zoning changes and the decreased need for office space in the area.