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CASE NO. 2019-CA-01407

IN THE SUPREME COURT OF MISSISSIPPI

Bob Marthouse, Stewart Nutting, Gary Becker and Diamondhead Country Club and Property Owners Association, Inc.
APPELLANTS

V.

Committee for Contractual Compliance, Inc., Joseph Floyd and Patrick McCrossen
APPELLEES

City of Diamondhead, Mississippi
INTERVENOR

Appeal from the Chancery Court of Hancock County, Mississippi
Cause Number 23CH1:18-cv-0654-CB

BRIEF OF APPELLEES

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Bob Marthouse, Appellant
2. Stewart Nutting, Appellant
3. Gary Becker, Appellant
4. David C. Goff, Attorney for Bob Marthouse, Stewart Nutting, and Gary Becker, Appellants
5. Diamondhead Country Club and Property Owners Association, Inc., Appellant
6. August N. Rechtien, Attorney for Diamondhead Country Club and Property Owners Association, Inc., Appellant
7. Committee for Contractual Compliance, Inc., Appellee
8. Joseph Floyd, Appellee
9. Patrick McCrossen, Appellee
10. Michael D. Haas, Jr., Attorney for Appellees
11. Caroline E. Haas, Attorney for Appellees
12. City of Diamondhead, Mississippi, Intervenor
13. Derek R. Cusick, Attorney for City of Diamondhead, Mississippi, Intervenor
14. Honorable Carter Bise, Chancellor

/s/ Michael D. Haas, Jr.
Michael D. Haas, Jr. (MSB # 5091)

/s/ Caroline E. Haas
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STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition in the Court Below

The nature of this case is a direct joint appeal (R. 226)[1] of the Judgment (R. 217) of the Chancery Court of Hancock County, Mississippi ("Chancery Court"), which found that the amendment clauses of the *Declarations of Restrictions, Easements, Covenants, Agreements, Liens and Charges* ("Covenants") that currently affect the owners of certain real property located in Diamondhead, Mississippi are not unreasonable and denied Appellants' request to modify the Covenants' amendment clauses from the consent of 85% of the lot owners to a majority of 60% of votes cast in person or by proxy.

As discussed in the Appellants' Brief (p. 6), the Covenants will begin to expire, by their terms, on dates certain beginning June 17, 2020. (R. 48-50). The expiration of the Covenants will result in a dramatic, albeit foreseeable, change in the way that the Diamondhead Country Club and Property Owner's Association, Inc. ("DPOA") operates and manages its amenities and facilities. However, rather than appealing to the property owners, who are also members of the DPOA, to amend or renew the Covenants (Ex. 1, p. 3, ¶ 5), for over three years the DPOA has instead sought intervention by the courts.

On June 17, 2016, the DPOA filed a *Petition for Declaratory Judgment* (Supp. R. 2), which sought for the court to delete the expiration terms of the Covenants. (Supp. R. 13). As in this matter, no property owners subject to the Covenants were joined as parties. More than two years

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[1] The Appellees will use the following abbreviations in referencing the documents in this brief: "R." followed by the page number of the document will refer to the documents numbered by the trial court clerk in preparing the Record. "Supp. R." followed by the page number of the document will refer to the documents numbered by the trial court clerk in preparing the supplemental record. "T." followed by the page number(s) and line number(s) designations will refer to the Transcript of the trial. "Ex." followed by the number or letter will refer to the Exhibits admitted or marked for identification at trial; the page number of Exhibits will be to the page numbers indicated at the upper right-hand corner of the Exhibits.

after filing the *Petition*, the DPOA filed a *Motion for Voluntary Dismissal* pursuant to Miss.R.Civ.Pro. 41(a)(2) and the parties, being nearly identical to the parties involved in this litigation, agreed to a *Stipulation of Dismissal* (Supp. R. 71) effective October 26, 2018.

Simultaneously with the conclusion of the first lawsuit, three members of the DPOA Board of Directors (Ex. 1, p. 3, ¶ 7) including its President, namely Bob Marthouse, Stewart Nutting and Gary Becker ("Plaintiffs"), filed a *Complaint* (R. 16) on October 19, 2018 naming the DPOA as the sole Defendant. On November 7, 2018, the DPOA filed its *Answer to Complaint* (R. 52) wherein it agreed with all factual allegations of the *Complaint* and agreed that the Plaintiffs were entitled to the relief requested. [2] On November 9, 2018, the City of Diamondhead, Mississippi filed its *Motion for Leave to Intervene* (R. 57). On November 13, 2018, the Committee for Contractual Covenants Compliance, Inc. and property owners Patrick McCrossen and Joseph Floyd filed their *Motions to Intervene as Defendants and for Expansion of Time to Answer* (R. 60; R. 73; and R. 76). The *Motions to Intervene* included Defendants' affirmative defenses. On November 29, 2018, the Chancery Court entered an agreed *Order Granting Motion to Intervene* (R. 79) allowing the City of Diamondhead, Mississippi to intervene as an interested party. On January 8, 2019, the Chancery Court entered *Agreed Orders* (R. 81; R. 83; R. 85) allowing the Committee for Contractual Covenants Compliance, Inc., Patrick McCrossen and Joseph Floyd ("Defendants") to intervene as Defendants and expanding the time to file an Answer. On January 22, 2019, the Defendants filed their *Answers to Complaint*. (R. 87; R. 95; R. 99). Thereafter, the parties engaged in discovery.

On July 1, 2019, the Plaintiffs filed their *Motion for Declaratory Judgment* (R. 138), which was largely a restatement of their *Complaint*. The trial court set the hearing of the *Complaint* and

[2] The DPOA did not appear through counsel until June 21, 2019. (R. 125).

the *Motion for Declaratory Judgment* for July 22, 2019. (R. 5). On July 18, 2019, the Defendants filed their *Response and Opposition to Motion for Declaratory Judgment* (R. 204) along with a brief in support of same (R. 207).

The parties tried the case on July 22, 2019 before the Honorable Carter Bise ("Chancellor"). (T. 1). At trial, the DPOA joined in the Plaintiffs' *Motion for Declaratory Judgment*. (T. 8: 21-24). In addition, Diamondhead resident and DPOA member Mario Feola, through counsel, made a special appearance at the trial and objected to the hearing on the grounds that indispensable parties had not been properly joined or duly noticed. (T. 14:24–15:12). At the conclusion of the trial, the Chancery Court announced its bench ruling denying Plaintiffs' request for declaratory relief on multiple grounds. (T. 49:1–51:16). On August 7, 2019, the Chancery Court entered its *Judgment* resolving all issues, which is the subject of this appeal. (R. 217).

B. Statement of the Facts

The community of Diamondhead has been developed by Purcell Co., Inc. ("Purcell"), formerly Diamondhead Corporation and Diamondhead Properties, Inc., since the 1970s. The first declaration of covenants for Phase 1 (R. 21-47) were drafted and duly recorded by Purcell in the land records of the Chancery Clerk of Hancock County, Mississippi on June 18, 1970. As Purcell completed additional phases and units, it drafted and recorded another Declaration of Covenants applicable to that phase or unit. (R. 177-179; Supp. R. 56-57). For the most part, these subsequent declarations incorporated many of the same terms as the Phase 1 Covenants. (R. 139). Today there are approximately 6,949 lots that are subject to covenants. (R. 138).

Prior to recording the Phase 1 Covenants, Purcell incorporated the DPOA as a non-profit corporation by Resolution dated June 2, 1970. (R. 147). At the time, the DPOA managed the Diamondhead development's common facilities and areas. (R. 148). In addition, the Covenants

authorized the DPOA to charge and collect dues and assessments from the owners and purchasers of lots subject to the Covenants, who became mandatory members of the non-profit corporation. (R. 43, ¶ XV).

For the majority of its existence, Diamondhead has been an unincorporated area of Hancock County, Mississippi. Thus, Purcell also included in the Covenants zoning and architectural standards for the community, which remain in effect today. (R. 22-37, ¶ IV). In the wake of Hurricane Katrina, however, the desire to become a city was ignited and the community of Diamondhead received its Charter in early 2012. Thereafter, the DPOA conveyed its roads and other public works assets to the City of Diamondhead. On October 15, 2012, the City of Diamondhead adopted its zoning ordinance.

The Plaintiffs only contest the reasonableness of one term within the various covenants, that dealing with the amendment process. With few exceptions, the process for amending the Covenants is similar to the following:

> XXI
> AMENDMENTS
>
> Any and all of the provisions of these restrictions, conditions, easements, covenants, liens and charges may be annulled, amended or modified at any time by the consent of the owner or owners of record of eighty-five percent (85%) of the lots in Diamondhead, Phase 1. (R. 45).

The variations of the amendment processes for the different phases and units are shown on the *Diamondhead Chart of Covenant Expiration Dates* (R. 48-50), which was submitted by the Plaintiffs.

In addition to the foregoing facts, the parties stipulated to facts that narrowed the issues before the trial court. (Ex. 1). These stipulated facts were also read into the record at trial by

counsel for the Plaintiffs. (T. 11:14 – 14:14). Appellees incorporate the stipulated facts as if fully copied herein.

SUMMARY OF THE ARGUMENT

The construction and interpretation of restrictive covenants "are the same as those applicable to any contract or covenant." *Carter v. Pace*, 86 So. 2d 360, 362 (Miss. 1956). Historically, the Mississippi Supreme Court has disfavored restrictive covenants. "Such covenants are subject more or less to a strict construction and[,] in the case of ambiguity, construction is usually most strongly against the person seeking the restriction and in favor of the person being restricted." *Kemp v. Lake Serene Property Owners Ass'n, Inc.*, 256 So. 2d 924, 926 (Miss. 1971).

In recent years, the Mississippi Supreme Court has recognized that a declaration of covenants "gives rise to review in law or in equity by any lot owner" and that such "[r]eview by the court must be guided by the intent stated in the declaration of purpose and judged by a test of reasonableness." *Perry v. Bridgetown Community Ass'n, Inc.*, 486 So. 2d 1230, 1234 (Miss. 1986) (internal citation omitted). This review power, however, "**does not** provide the trial court with the authority to rewrite entire provisions the court may deem unreasonable" and, in the event that the chancellor determines that a term is unreasonable, "the court should **strike it** […]." *Griffin v. Tall Timbers Develop., Inc.*, 681 So. 2d 546, 554 (Miss. 1996) (emphasis added). The Supreme Court went further stating that "[t]he power of the chancellor **to substitute his own judgment** for that found in the original covenant, or […] to **alter** the substance of a writing, **is not reflected** in the case law of this or any other jurisdiction […]." *Id.* at 555 (emphasis added).

This limitation on the court's intervention in otherwise valid contracts reinforces the principle that "[t]he right of persons to contract is fundamental to our jurisprudence and absent mutual mistake, fraud and/or illegality, the courts do not have the authority to modify, add to, or subtract from the terms of a contract validly executed between two parties." *Wallace v. United Mississippi Bank*, 726 So. 2d 578, 584 (Miss. 1998) (quoting *First Nat'l Bank of Vicksburg v.*

Caruthers, 443 So. 2d 861, 864 (Miss. 1983)). This restriction also aligns with the premise that "[c]ourts do not have the power to make contracts where none exist, nor to modify, add to, or subtract from the terms of one in existence." *Griffin,* 681 So. 2d at 555 (quoting *Glantz Contracting Co. v. General Elec. Co.*, 379 So. 2d 912, 916 (Miss. 1980)).

The Plaintiffs and the DPOA asked the lower court to determine that the amendment provisions of the restrictive covenants are unreasonable and to "amend all the amendment clauses in the various sets of covenants to allow amendment by a majority of 60% of votes cast in person or by proxy," which courts do not have the authority to do. The Chancellor was not persuaded by the Appellants' argument that the terms are unreasonable and denied the requested relief. The Chancery Court also denied the relief on equitable grounds. For the reasons detailed below, the Appellees request that this Court affirm the Judgment of the Chancery Court of Hancock County, Mississippi and assess all costs of this appeal to the Appellants.

ARGUMENT

A. Standard of Review

"An appellate court employs a limited standard of review in chancery matters." *Gaw v. Seldon*, 85 So. 3d 312, 316 (Miss. Ct. App. 2012). "The findings of the chancery court will not be disturbed when supported by substantial evidence unless the court abused its discretion, applied an erroneous legal standard, was manifestly wrong, or committed clear error." *Singh v. Cypress Lake Prop. Owners Ass'n*, 192 So. 3d 373, 376 (Miss. Ct. App. 2016) (quoting *Pittman v. Lakeover Homeowners' Ass'n*, 909 So. 2d 1227, 1229 (Miss. Ct. App. 2005)). "Where the chancellor makes no specific findings, this Court proceeds on the assumption that the chancellor resolved all fact issues in favor of the appellee." *Ruff v. Estate of Ruff*, 989 So. 2d 366, 369 (Miss. 2008) (citing *City of Picayune v. Southern Reg'l Corp.*, 916 So. 2d 510, 519 (Miss. 2005) (internal citations omitted). However, "[q]uestions concerning the construction of contracts are questions of law that are committed to the court rather than questions of fact committed to the fact[-]finder. Appellate courts review questions of law *de novo*." *Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc.*, 857 So. 2d 748, 751-52 (Miss. 2003) (internal citations omitted).

B. Issues

1. Whether the Chancery Court was in error in finding that the amendment provision in the Diamondhead Covenants is not unreasonable.

The lower court did not err when it found that the Covenants' amendment provisions requiring the consent of 85% of lot owners are not unreasonable. Requiring the consent of 85% of the lot owners in each subdivision was not unreasonable at the time the Covenants were drafted and it is not unreasonable today. In addition, the requirement of the consent of 85% of lot owners to amend the Covenants did not shock the conscience of the Chancery Court. (R. 219).

The Chancellor correctly noted that the Covenants were drafted by Purcell, the developer of Diamondhead. (T. 25:17-27; R. 219, ¶ IV). It can be reasonably inferred that Purcell drafted the 85% requirement so it could maintain control over the lots both while it was in the process of selling them and even after they were sold. So long as Purcell owned at least 15% of the lots within any give phase or unit, it could veto any proposed amendments that it did not want.

The amendment provisions protect not only the investment of the developer, but also the investments of the individual purchasers of the lots, who had actual or constructive knowledge of the provisions. (T. 25:3-16). The purchasers rest assured knowing that their obligations stemming from the Covenants could not be changed by their mere non-participation in a vote since amending the Covenants requires their affirmative consent.

Requiring the consent of the owners of 85% of the lots to modify the Covenants is a reasonably high burden for such a broad power, as determined by the Chancellor. Particularly given the fact that the community's zoning and architectural restrictions (R. 22-37) and even the obligation to pay dues and assessments to the DPOA (R. 43) are all solely provided for in the Covenants. If a mere 60% of votes cast, in person or by proxy, could amend or even delete these terms, as suggested by the Appellants, the results would be "extremely detrimental (even disastrous) to the Diamondhead community," particularly given the fact that only 27.8% of DPOA members seem to participate in annual member meetings. (Ex. 1, p. 3, ¶ 9). [3]

Finally, the DPOA acknowledged that it has not attempted to obtain the consent of 85% of lot owners to make any amendments. (Ex. 1, p. 3, ¶ 5). Neither the Covenants nor the lower court's *Judgment* prevents the DPOA from obtaining the consent of the lot owners to adopt any proposed amendments, however the court should not change the contract that the property owners

[3] Using the DPOA's figures, the Chancellor found that 744 out of 4,759 members could amend the covenants affecting approximately 6,949 lots. (R. 230, ¶ III).

and the developer made. The amendment provisions allow amendment in a way that is not unreasonable, just difficult, as it should be. For these reasons, the Chancellor determined that the Covenants' amendment provisions are not unreasonable.

At trial and in their Brief, Appellants assert that the amendment threshold is somehow contrary to the DPOA's Charter of Incorporation, which contemplates a perpetual existence. (Appellants' Brief, pp. 4-6). They further argue that allowing the Covenants to expire, which many of them will by their terms, would be contrary to the intent and stated purpose of the DPOA. (Appellants' Brief, p. 9). Ignoring the fact that this lawsuit is about the amendment provisions not the expiration terms, the DPOA's existence as a corporation is in no way affected by the existence of the Covenants. As the Appellants acknowledge in their Brief, the DPOA "does not cease to exist" after the Covenants expire. (p. 6). In addition, the expiration of the Covenants does not prohibit the DPOA from fulfilling its purposes as set forth in its Charter (R. 150) and Bylaws (R. 181). It will continue to exist as a civic improvement organization and will be able to manage the common facilities that it owns. (R. 150). The potential effects of the expiration of the Covenants on the DPOA are irrelevant to the issue of whether the amendment provisions are unreasonable and lacks merit.

In addition, the Plaintiffs assert that the Covenants are in conflict with the City of Diamondhead's zoning ordinance and claim that is a reason that the Covenants need to be amended. (R. 18; R. 139; T. 18:3-12). They have not, however, identified a single example of that alleged conflict. Any inconsistency between the Covenants and the city's zoning ordinance does not indicate that the amendment provisions are unreasonable. Presumably, property owners must comply with both entities' requirements, or request variances. Regardless, this alleged conflict in no way demonstrates that the amendment terms are unreasonable and is without merit.

The Chancellor did not err in determining that the amendment terms are not unreasonable and denying Plaintiffs' requested relief. This determination was based on substantial evidence indicating that they are reasonable. Further, in making his determination, the Chancellor did not abuse his discretion, apply an erroneous legal standard, was not manifestly wrong, and did not commit clear error. For those reasons, the Court should affirm the Chancery Court's *Judgment*.

2. **Whether the Chancery Court committed reversable error by failing to amend the amendment provision of the Covenants as requested.**

The Chancery Court did not err when it declined to amend the amendment provisions in the Covenants because such relief was not available to the Chancellor. As has been repeatedly confirmed by the Mississippi Supreme Court, courts do not have "the authority to rewrite entire provisions the court may deem unreasonable[…]." *Griffin*, 681 So. 2d at 554. A chancellor may not "substitute his own judgment for that found in the original covenant, or […] alter the substance of a writing[…]." *Id.* at 555. To put it bluntly, the Plaintiffs requested relief that is not recognized under Mississippi law and to have done so would have been reversible error. *See Pittman*, 909 So. 2d at 1229. If the Chancellor had determined that the amendment provisions are unreasonable, which he did not, "the court should strike it […]." *Griffin*, 681 So. 2d at 555.

Since the Chancellor did not err in determining that the amendment terms are not unreasonable, he further did not err by not amending them. In addition, the Chancery Court does not have the authority to grant the Plaintiffs' relief and did not err in denying same.

3. **Whether the Chancery Court committed reversible error in finding that, based on the fact that the Diamondhead POA has previously acted upon and enforced its Covenants, the Diamondhead POA is estopped from claiming that the Covenants, or any part thereof, are unreasonable.**

4. **Whether the Chancery Court committed reversible error in making a finding on estoppel which issue was not before the Court.**

The Appellants assign reversible error to the Chancellor's granting relief on the grounds of estoppel, which was neither requested nor pled by any party. Defendants concede that they did not raise estoppel as an affirmative defense and that the issue of estoppel was not presented to the Chancery Court at trial. Appellees agree that the Chancellor's finding of estoppel was beyond the scope of the pleadings and the proof at trial, however, the Appellants did not object to or challenge this finding during trial or in post-trial motions. Therefore, these issues are not properly before this Court and are barred from its review.

For this Court to consider an issue, a party must first present its claimed error to the court below. When a party fails to do so, it is barred from raising that issue on appeal. *Taylor v. Taylor*, 201 So. 3d 420, 420 (Miss. 2016). "It is a long-established rule in this state that a question not raised in the trial court will not be considered on appeal." *Id.* at 421 (internal citations omitted).

Appellants failed to object to the Chancellor's finding of estoppel at the time that he issued his bench ruling or request a rehearing. They further failed to file a timely Miss.R.Civ.Pro. 59 motion within ten days after the date of entry of the *Judgment*. Appellants could have done that, suggesting to the Chancellor that the issue of estoppel was not properly before the court and that his finding of estoppel was beyond the scope of relief sought by any party, but they did not. By not giving the Chancellor an opportunity to address their concerns and potentially remove the estoppel grounds, Appellants forfeited their right of appellate review of those issues.

The Court should find that Appellants are barred from raising the estoppel issues since they did not present same to the trial court for correction and should affirm the Chancellor's *Judgment*.

5. **Whether the Chancery Court committed reversible error in finding the at the Diamondhead POA was required to give due process notice to and join all of the Diamondhead lot owners in the action.**

The Chancery Court did not err when it denied Plaintiffs' request because they failed to join any lot owners or give them due process notice of the action that would, if successful, significantly and irreparably change their rights and obligations dealing with their real property. Such an action, if permitted, would unconstitutionally deprive the Diamondhead property owners of their substantive and procedural due process right of access to the judicial system to protect valuable property rights, as conferred under § 2 of the Fourteenth Amendment of the United States Constitution and Article 3, Section 14 of the Constitution of the State of Mississippi.

The Mississippi Supreme Court has held that "parties whose rights are to be affected are entitled to be heard [….] Furthermore, they must be notified in a manner and at a time that is meaningful." *Aldridge v. Aldridge*, 527 So. 2d 96, 98 (Miss. 1988) (internal citations omitted). The DPOA's unsigned, undated and factually insufficient "notice" allegedly mailed to all of its members (R. 266-267; Appellant's Record Excerpt 3, p. 16), does not advise them that their valuable property rights will be affected by the lawsuit, that they have the right to intervene or seek legal counsel, and does not even include the citation of the case. Without the joinder of all property owners pursuant to Miss.R.Civ.Pro. 4, they and their successors in interest would be subject to significantly modified covenants without having been made parties to the action that modified them.

In their *Brief*, Appellants identify cases wherein the joinder of every affected property owner was not mandatory. (pp. 15-16). However, these lawsuits all involve property owners who were not in a blatantly collaborative relationship with their property owners' association, as is the case here. [4] Further, all of the cases cited by the Appellants dealt with restraint, not expansion of

[4] In its "notice" (Appellants' Record Excerpt 3, p. 16), the DPOA states that it "authorized the filing of [the] *Complaint* […]". In addition, the DPOA has paid or has agreed to pay Plaintiffs' attorney's fees and/or court costs. (Ex. 1, p. 3, ¶ 6). Finally, the Plaintiffs are officers and/or directors on the DPOA's board. (Ex. 1, p. 3, ¶ 7).

the covenants. There has never been a case, at least in Mississippi, which is factually analogous to this one. Therefore, this case is distinguished from those other cases.

The law in Mississippi favors the free and unobstructed use of real property. *Goode v. Village of Woodgreen Homeowners Ass'n*, 662 So. 2d 1064 (Miss. 1995); *City of Gulfport v. Wilson*, 603 So. 2d 295, 299 (Miss. 1992); *Kinchen v. Layton*, 457 So. 2d 343, 345 (Miss. 1984). In addition, the Supreme Court has stated that "[g]enerally, courts do not look with favor on restrictive covenants." *Kemp*, 256 So. 2d at 926. In light of these tenets, the judicial expansion of restrictive covenants should require more than what was actually done in this case.

The Chancellor was rightfully concerned about the potential implications of granting the Plaintiffs' request without the meaningful participation of those property owners who would have to bear the burden of his decision. Such a determination, if in error, erred on the side of protecting those whose voices were not asked to be heard. This Court should affirm that decision and should affirm the Chancellor's *Judgment*.

CONCLUSION

The lower court did not err on any of the issues properly raised by the Appellants. The Chancellor's conclusion that the amendment provisions are not unreasonable was supported by substantial evidence presented by the parties, was not an abuse of discretion, was not based on an erroneous legal standard, was not manifestly wrong, and was not clear error. Furthermore, the lower court did not err by denying the Plaintiffs' requested relief of judicial amendment of the Covenants since such relief is not recognized under the laws of this state, which only permits the striking of unreasonable terms. Appellants' assignment of error based on the Chancellor's finding of estoppel, which went beyond the scope of the pleadings and proof at trial, was forfeited since it was not timely objected to by the Appellants or any other party and is not subject to appellate

review. Finally, the Chancellor did not err by finding that judicially amending the Covenants would deprive the affected property owners of their substantive and procedural due process rights and denying the Plaintiffs' relief due to their non-joinder of indispensable parties.

For the reasons stated above, the Appellees request that this Court affirm the *Judgment* of the Chancery Court of Hancock County, Mississippi and assess all costs of this appeal to the Appellants.

RESPECTFULLY SUBMITTED, this the 18th day of February 2020.

Committee for Contractual Covenants Compliance, Inc., Patrick McCrossen and Joseph Floyd, Appellees

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CERTIFICATE OF SERVICE

I represent the Appellees in this matter and certify that I have on this the 18th day of February 2020, electronically filed the foregoing *Brief of the Appellees* with the Clerk of this Court. I further certify that I have served a copy of the *Brief of the Appellees* via electronic mail and/or U.S. Mail, postage prepaid, on the following persons at the stated addresses:

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Gulfport, MS 39502

This the 18th day of February 2020.

/s/ Michael D. Haas, Jr.
Michael D. Haas, Jr., MS Bar No. 5091