*Huck v. Kenmare Commons Homes Ass'n, Inc.*, No. 1D20-3318, 2023 WL 4613062, 48 Fla. L. Weekly D1428 (Fla. 1st DCA July 19, 2023).

**Florida First DCA Holds that Street Parking Limitation was Not Covenant that Ran with the Land but Instead a Personal Promise of Developer**

Homeowners routinely had a caregiver visit their home, who would park in front of their home on a public road that ran through the neighborhood. The homeowners' Home Owner's Association (HOA) and neighbors sued to stop the street-parking based on a parking limitation in the neighborhood's recorded covenants and restrictions. The trial court determined that the homeowners had violated the parking limitation and ordered them and their guests to stop parking on the public street. The homeowners appealed the trial court's determination. The First DCA held that the parking limitation was not a covenant that ran with the land but instead was an unenforceable personal promise of the developer.

In May of 1991, the original developer of the neighborhood recorded its declaration of covenants and restrictions. The developer believed it was subjecting the real property it owned in the neighborhood to its covenants and restrictions. Despite their intent, the developer had transferred all ownership interests in the land's roadways to the City just a month prior. Nonetheless, Article VIII of the developer's declaration states: "[n]o cars shall be parked on the street for sustained, permanent or regular periods of time." However, the First DCA found that the property intended by the developer to be subject to the declaration ultimately did not include the roadways owned by the City because they were not owned by the developer. As such, because restrictive covenants concerning real property are not personal contracts and the homeowners were not parties to the covenants, the First DCA found that the promise of not parking on the streets could only be made by and enforced against the developer, not the homeowners.

On the other hand, the restriction could be enforced against the homeowners if it was deemed that the covenant "runs with the land." If such a determination was made, it would mean that the homeowners could become liable for promises made by former property owners. To create such a covenant, the following conditions must exist: (1) the existence of a covenant that touches and involves the land; (2) an intention that the covenant run with the land; and (3) notice of the restriction on the part of the party against whom enforcement is sought. The First DCA found that the first condition did not exist, as the restriction had nothing to do with the homeowners' use of their own property.

The First DCA did consider the argument that the restriction on parking did affect the homeowners' use of their property because it would limit how many visitors they could have over at one time. However, the First DCA rejected this because the connection was too "tenuous and indirect." For a covenant to run with the land, the use of the land must be a primary deliberation of the promise and the promise must anticipate a degree of longevity in the particular use. Accordingly, the First DCA reversed the trial court's judgment and remanded for the trial court to dismiss the complaint with prejudice, holding that the no-parking promise was personal to and enforceable against only the developer.