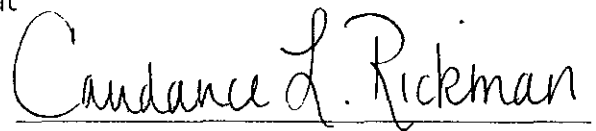


CERTIFICATE OF INTERESTED PERSONS

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 disqualification or recusal.

1. Hon. Eugene L. Fair Jr., Chancellor
2. Charles E. Greer V, Esq., Attorney for Appellees
3. Nick and Cherry Amanatidis, Appellees
4. William E. Andrews, III, Attorney for Appellant
5. Candance L. Rickman, Attorney for Appellant
6. Wesley Breland Realtor, Inc., Appellant



Candance L. Rickman
Attorney of Record for Appellant

2007-CA-01129

SCT-T Reply Brief

TABLE OF CONTENTS

Certificate of Interested Persons	2
Table of Contents	3
Table of Authorities	4
Argument	
I. Construction of Subdivision Covenants	5
II. Equitable Estoppel	7
III. Effect of <i>Res Judicata</i>	8
Conclusion	9
Certificate of Service	10

TABLE OF AUTHORITIES

Cases:

Andrews v. Lake Serene Property Owners Ass'n., 434 So.2d 1328 (Miss. 1983) . .	5
Mendrop v. Harrell, 103 So.2d 418 (Miss. 1958)	5

I. Construction of Subdivision Covenants

The Appellee directs this court's attention to two cases which the Chancellor found helpful, *Andrews v. Lake Serene Property Owner's Assoc., Inc.*, 434 So.2d 1328 (Miss. 1983) and *Mendrop v. Harrell*, 103 So.2d 418 (Miss. 1958). The law as established by these cases to interpret restrictive covenants has three facets:

- (1) The intent of the parties creating the covenants.
- (2) The ordinary sense of the language used in the covenants.
- (3) The circumstances surrounding its formulation.

Applying that law to the facts of this case results in a reversal of the Chancellor's decision and a ruling that this "reserved" parcel may be developed commercially as intended.

A. The Intent of the Developers.

The testimony shows that it was the intent of the developer of the Serene Hills subdivision to exclude the "reserved" lot from the general plan of the subdivision so that it could be used for commercial purposes. The engineer of the subdivision, who was one of the developing partners, testified that the "reserved" parcel was possibly to be used for an office for Wesley Breland or other commercial developments. (Transcript p. 106). The accountant of the subdivision, who was one of the developing partners, testified that they made the "reserved" parcel to face King Road rather than the road all the lots faced inside the subdivision. (Transcript p. 123). Wesley Breland testified that the residential lots were numbered on the plat and referred to as "numbered lots" in the covenants, which delineated the difference between the residential lots and the "reserved" parcel because it was his intention to reserve the parcel for commercial development. The

previous owner of the Amanatidis lot, Don Housley, testified that he was aware that the "reserved" parcel was intended for commercial development.

B. The Ordinary Sense of the Language of the Covenants.

The first paragraph of the covenants acknowledges that Red Oak, Inc., owned all the lots of Serene Hills subdivision as shown on the official subdivision plat, and goes on to restrict the use of the "lots" to residential purposes. The first step in construing the covenants is to refer to the plat. Upon referring to the plat, one immediately finds that the lots are clearly numbered 1 - 71, and there are two reserved parcels. Therefore, the ordinary sense of the language conveys that the numbered "lots" are restricted to residential and a reasonable person would be aware that unlike the numbered "lots", reserved parcels are intended for some other use.

Had the developers intended to restrict the entire piece of property within the legal boundaries of the Serene Hills subdivision, they would have had to use different language because the "reserved" parcels cannot be legally described as lots. They would have to be described by metes and bounds, while all the residential lots are clearly numbered and may be referred to by those numbers without further identification. It stands to reason that if you are referring to a lot in Serene Hills subdivision, then you would refer to it by number.

C. The Circumstances Surrounding It's Formulation.

Wesley Breland and Don Housley testified that directly to the east of the "reserved" parcel is an apartment complex. (Transcript p. 137 and 140): Wesley testified that in addition to the apartment complex, there are some trailers near the "reserved" parcel and they are "trashy pieces of property", which he attempted to

purchase because it made the "reserved" parcel inadequate for building residential housing. (Transcript p. 142-144). Because of these surrounding properties, it was the developers intent to exclude the "reserved" parcel from the lots they intended to use as residential.

Wesley Breland, the builder of the development, Raymond M. Dearman, the engineer of the development, and Herbert Slay, Jr. , the accountant of the development, all testified regarding the roadway of the subdivision and the nature of the "reserved" parcel. Mr. Dearman stated how the "reserved" parcel does not front the subdivision road and only fronts King Road. (Transcript p. 106). Mr. Slay stated that "reserved" parcel was drawn off in a triangular pattern and it was not a building lot. He also stated that the roadway of the subdivision was made so that the "reserved" parcel only faced King Road and not the subdivision road which everything else in the subdivision faces. Finally, Mr. Breland stated that they had wanted one entrance and exit to the subdivision for safety purposes. The "reserved" parcel is not fronting on the subdivision's roadway at all.

The circumstances at the time the covenants were formulated and today, are such that the "reserved" parcel is not a lot as described in the covenants and is really not part of the subdivision because of its character, location, surroundings and road frontage. The developers were aware that this "reserved" parcel was not suitable for residential development and made efforts to exclude it as such. Their intent should be respected by this Court and Wesley Breland Realtor, Inc. should be allowed to construct his office on the parcel as intended.

II. Equitable Estoppel

The Amanatidis' purchased their lot knowing full well the adjacent parcel was

"reserved" as Nick Amanatidis testified that he reviewed the plat of the subdivision. They also viewed the property. When you actually view the "reserved" property, there is little doubt that it is unsuitable for residential development. When considered in connection with the plat's designation of lots by number, this parcel's designation as "reserved", the covenants specific language that the "lots" are restricted to residential, and the observable location of the property on King Road and not the subdivision road, a reasonable person is put on notice that this property is not intended to be included within the subdivision as a residential lot. The Amanatidis' should not be allowed to ignore all these indications as to the nature of the adjoining parcel and then rely on the covenants to interfere with Wesley Breland Realtor, Inc.'s right to develop its property commercially. Equitable estoppel would not favor the Amanatidises, but instead favors Wesley Breland Realtor, Inc.

III. Effect of *Res Judicata*

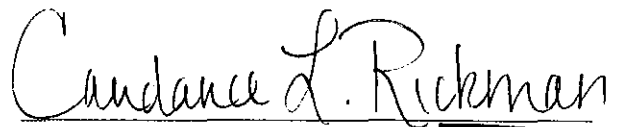
It appears that the Appellee is arguing that because the "reserved" parcel has no designated purpose indicated on the plat, the subdivision regulations and the Supervisors approval of the plat in effect causes the "reserved" parcel to be limited to residential development. The Appellant would argue that the approval of the Supervisors should be interpreted to mean just the opposite, that the reservation of the parcel is a general reservation because it was approved without any designation as to purpose. *Res Judicata* requires that the Supervisors decision be upheld, and the Supervisors approved the plat with the "reserved" parcel and therefore the Appellant should be allowed to develop the generally "reserved" parcel as he sees fit without interference from the Appellees.

Conclusion

The Chancellor erred when he determined the "reserved" parcel to be within the Serene Hilles subdivision and restricted by the subdivision's covenants. The intent of the developers was clearly to exclude this "reserved" parcel. The language of the covenants refer to the numbered "lots" of the subdivision. The circumstances surrounding the formulation of the covenants are such that this "reserved" parcel would be excluded. Therefore, the Appellant, Wesley Breland Realtor, Inc., respectfully requests that this Honorable Court would reverse the Chancellor's decision to restrict the use of it's property to residential as it is not suitable for such, and render a decision in it's favor allowing the commercial development. The Appellant prays for such other relief which in law or equity it may be entitled.

Respectfully submitted this the 16th day of June, 2008.

Wesley Breland Realtor, Inc.



Candance L. Rickman (MSB [REDACTED])

BRYAN NELSON, P.A.

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Certificate of Service

I, Candance L. Rickman, do hereby certify that I have this day caused to be transmitted, via United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellant's Reply Brief, to the following at their normal and usual business address(es):

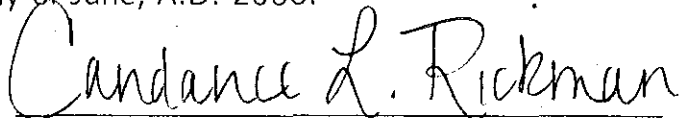
Hon. Eugene L. Fair Jr., Chancellor, Post Office Box 872, Hattiesburg, MS 39403-0872

Charles E. Greer V, Esq., GREER LAW FIRM, PLLC, 6050 U. S. Highway 49, Hattiesburg, MS 39401

William E. Andrews, III, Post Office Box 130, Purvis, MS 39475.

Wesley Breland Realtor, Inc., 6082 U.S. Hwy 49, Hattiesburg, MS 39401.

SO CERTIFIED, this the 16th day of June, A.D. 2008.


Candance L. Rickman