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May 10, 2019

Supreme Court of Texas
Supreme Court Building
201 W 14th Street
Suite 104
Austin, TX 78711

REF: Teal Trading & Development, LP v. Champee Springs Ranches Property Owners Association.

TO THE SUPREME COURT OF TEXAS:

Founded in 1908, the Texas Land Title Association (TLTA) is a statewide trade association representing the Texas title insurance industry and currently serving over 15,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in every Texas county, TLTA membership comprises approximately 90 percent of the title insurance agents and underwriters licensed to do business in Texas. From time to time, cases come before the Court that have significant impact on real estate commerce in Texas and which impact the ability of TLTA's members to safely insure title to real property. On those occasions, we will endeavor to share with the Court our support of those parties who advocate the sanctity of the Texas real property laws and doctrines. The TLTA has received no compensation for the preparation of this letter.

The overarching issues in this case are the effect of the 1999 Replat and whether the applicants to that Replat can later take a position contrary to its express language. TLTA members encounter, review and rely on plats, plat amendments, and replats daily in their work. Moreover, purchasers, lenders, and oil and gas examiners rely on plats as an integral part of their business. However, the Court of Appeals' opinion raises serious questions regarding who is entitled to rely on a plat, how a plat should be interpreted, and whether applicants to a plat are bound by its terms. At the heart of each of these issues is the viability of Texas' real property records system. If real property instruments filed of record cannot be trusted or relied upon, then title companies and insurers cannot effectively insure conveyances or loans secured by property, and real property purchasers, lessees, and lenders cannot be sure of what is owned, encumbered or restricted. These concerns are heightened in the case of plats, as they evidence the government's approval of the subdivision of land. TLTA therefore respectfully requests that the Court answer these questions and provide clear direction and certainty in this area of the law.

A plat is a government document consisting of "a map of specific land showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, and easements drawn to scale." *Elgin Bank v. Travis Cnty*, 906 S.W.2d 120, 121 n.1 (Tex. App.—Austin 1995, writ denied) (citing BLACK'S LAW DICTIONARY 1151 (6th ed. 1990)). Texas law requires a plat in most instances where land is subdivided for further development and sale. *See* TEX. LOCAL GOV'T CODE Ch. 212 (for cities) and Ch. 232 (for counties). To be valid and relied upon, a plat must be

approved by the relevant municipal or county governmental agency and recorded in the real property records. TEX. LOCAL GOV'T CODE § 212.004(d); TEX. LOCAL GOV'T CODE § 232.001(d); TEX. PROP. CODE § 12.002. There are no "parties" to a plat, but rather applicants seeking governmental approval of the plat. Texas' public recording system and the laws establishing it are intended to preserve the accuracy, reliability, and stability of real property records. Once an instrument is recorded, it becomes a permanent part of the chain of title to the property it affects. It constitutes "notice to all persons of [its] existence . . . and [is] subject to inspection by the public." TEX. PROP. CODE § 13.002. Because Texas law generally requires recordation of a plat when land is subdivided, and because the stability and accuracy of the public records are critical to the Texas real estate and title insurance industries, it is important that there be no room for confusion or retroactive interpretation in this area. As this Court has noted in a recent deed reformation suit, "[t]he stakes are high, as reliability of record title contributes mightily to the predictability of property ownership that is so indispensable to our legal and economic systems." *Cosgrove v. Cade*, 468 S.W.3d 32, 34 (Tex. 2015).

Here, the Court of Appeals held that "Teal Trading, as a ***non-party*** to the 1999 Replat" could not invoke the defenses of waiver, estoppel by deed, or estoppel by record because neither it nor its predecessors in interest were parties to the 1999 Replat. No. 04-16-00063-CV, 2017 Tex. App. LEXIS 6106 at *51-52 (emphasis added). The court relied on little case law to reach this conclusion and dismissed a sister court's different holding as simply "contrary to the weight of Texas authority." But more importantly, the court misunderstood none of these cases addressed plats, only deeds between grantors and grantees. Unlike a deed, a plat is a government-approved document that is an exercise of the government's regulation of the public welfare. If a plat is approved and recorded for the benefit of the public, how then can the public – necessarily "strangers" to the document – not be entitled to rely on the plat? Is the purchaser of a home outside the platted property precluded from entering the platted property despite the plat's description of a public access point simply because the purchaser did not sign the plat or buy property within the platted area? What of the family member, relation, or close friend that buys nearby property relying on the plat? Can a commercial property owner choose a location or be sure that utilities are permissible where easements for the same are indicated on the plat? These questions and others like them are the result of the new uncertainty created by the lower court's opinion.

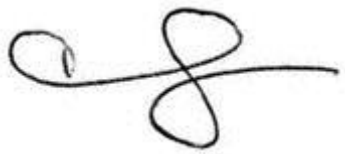
Similarly troubling is the lower court's decision to allow the Champee Springs landowners to assert the validity of and the right to enforce the Non-Access Easement, even though they previously obtained approval of the 1999 Replat which explicitly barred non-access easements unless they were dedicated to the county. The court clearly recognized the fundamental precepts of waiver, estoppel, and estoppel by deed, summarizing them as "preclude[ing] parties from taking positions contrary to those previously taken". 2017 Tex. App. LEXIS 6106 at *47. Yet, it allowed the Champee Springs landowners to do just that by arguing that the Replat did not mean what it plainly said. The court seemingly confused the legality of the Replat's preclusion of the Non-Access Easement with whether parties must be held to their prior statements in recorded documents. The title industry and their customers rely heavily on what they believe is well-settled law— that parties are bound to the rights and obligations set forth in a recorded document they signed. This applies even more so to plat applicants, who sought government approval of the plat. The court's opinion, however, disrupts this certainty. It creates ambiguity where none before existed,

undermining Texas' long-recognized interest in promoting certainty with respect to real property rights and title records.

Finally, the court's reliance on the Champee Springs landowners' current testimony to interpret the plain language of the 1999 Replat – which neither party argued was ambiguous – is contrary to black letter law. 2017 Tex. App. LEXIS 6106 at *53-57. This Court has stated numerous times that the intent of parties to a real property instrument must be ascertained from the four corners of the document and that a court must strive to harmonize all parts of the instrument and give effect to all its provisions. *See, e.g., Luckel v. White*, 819 S.W.2d 459, 461-62 (Tex. 1991) (explaining construction of an unambiguous deed); *Copeland v. Dallas*, 454 S.W.2d 279, 283 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.) (quoting 23 Am.Jur.2d, Dedication, § 26) ("A plat or map must be fairly and reasonably construed in accordance with the general rules pertaining to the construction of deeds or other instruments granting or pertaining to real property. It must be considered as a whole; all lines, figures, letters, and records used thereon must be considered. In short, no part of a plat or map is to be rejected as superfluous or meaningless, if it can be avoided."). Contrary to these instructions, the Court of Appeals accepted Dr. Wall's opinion that the 1999 Replat did not prevent enforcement of the Non-Access Easement, effectively nullifying the Replat's prohibition against the same. This result calls into question the reliability of public documents and injects uncertainty where there should be none. For example, if a plat is improperly approved and recorded, or inadvertently contains an erroneous statement, how could a third party ever know there was an error? Our recording system depends upon documents meaning what they say, without the possibility of after-the-fact testimony controverting recorded documents intended to create notice of their terms.

For these reasons, we request that in its opinion the Court specifically state the extent to which the public may rely on a recorded plat and the significance of unambiguous statements in such a plat. Title companies, title insurers, lenders, purchasers and mineral examiners need certainty as to the effect of recorded plats, who may rely on them, and to what degree. "The virtues of legal certainty and predictability are nowhere more vital than in matters of property ownership, an area of law that requires bright lines and sharp corners." *Cosgrove v. Cade*, 468 S.W.3d 32, 40 (Tex. 2015).

Sincerely,



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CERTIFICATE OF COMPLIANCE

I certify that this document contains 1525 words in the portions of the document are subject to the word limits of the Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ Aaron Day
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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, a true and correct copy of the foregoing amicus letter has been served by electronic mail to all attorneys of record.

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