IN THE SUPREME COURT OF FLORIDA

BREVARD COUNTY MOSQUITO CONTROL DISTRICT, a special taxing district and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioners,

vs.

MICHAEL BLASKY and ANITA BLASKY,

Respondents.
_____/

CASE NO:

PETITIONER'S JURISDICTIONAL BRIEF

On the Review from the District Court of Appeal, Fifth District

State of Florida

Case No: 5D03-2934

BREVARD COUNTY ATTORNEY'S OFFICE
2725 Judge Fran Jamieson Way
Building C
Viera, Florida 32940

Scott L. Knox
County Attorney
Fla. Bar Number: 211291

Eden Bentley
Assistant County Attorney
Fla. Bar Number: 370908
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Constitutional Provisions and Statutes

Court Rules

STATEMENT OF THE CASE AND FACTS

This case involves a mosquito control impoundment built in 1955, over 50 years ago, pursuant to a written 10 year easement/ license granted to the Mosquito Control District over a 1/4 section of land in 1954. Respondents acquired a portion of the land subject to the 10 year license in 1978 with full knowledge of the impoundment, but did not object to Petitioner's use of the impoundment until 1998–some 20 years later. This cause comes before this Honorable Court following the Fifth District Court of Appeal decision upholding a trial court ruling that inverse condemnation occurred, upon which rehearing was denied on June 23, 2004.

In 1954, an unrecorded blanket easement/license was granted to Petitioner over a quarter section of land which included the 27 acres at issue and the remainder of the 40 acres described in Respondent's deed. The document was entitled "easement" and used the terms license, licensor or licensee within the body of the document. The license authorized the entry into the marsh, the flooding of submerged lands, and the construction of dikes, dams and a canal around the marsh. In 1955, pursuant to the easement/license, Petitioner constructed a system of impoundments comprised of dikes, dams and a canal to control mosquitoes. The berm impounded portions of the licensed area, including the 27 acres at issue

and Sykes Creek. Since construction, Petitioner has annually regulated water levels in the impounded marshy areas thereby reducing mosquito breeding grounds. The easement/license expired in 1964 after 10 years of use. In 1989, new pumps were installed at Hall Road as part of a mitigation project. Petitioner has continued to use, occupy and maintain the impounded area between 1964 and the present.

In 1978, Respondent, a real estate broker, bought the property with full knowledge of Petitioner's berm, ditch, impoundment and flooding activities and, as specifically noted on page one of the Fifth District decision, Respondent "fully supported mosquito control in the area". Also, Respondents admit the land is marshy and that they have a boat dock and bridge.

At trial, James Hunt, Mosquito Control Director, testified that Petitioner had never treated the impoundment as if Petitioner owned the fee simple interest, it was believed that there was a right to occupy the property in a non-exclusive manner based on occupancy of the property since 1955.

In 1994, Petitioner sent letters of inquiry to Respondents and others pursuant to a committee recommendation to obtain either the underlying legal title or recordable formal easements for the impoundment areas. In response, Respondents issued a letter claiming to have "granted permission" to the use of the property by the Petitioner. It was not until 1998 that Respondents objected to

Petitioner's use of the 27 acres, by writing a letter stating Respondents had revoked their 1994 permission to Petitioner's use of the impounded 27 acres. Petitioner did not change its impoundment activities on the 27 acres and this lawsuit followed.

SUMMARY OF ARGUMENT

The district court's decision conflicts with the decisions in multiple Florida Supreme Court cases and cases in other district courts. First, the four year statute of limitations should apply to bar an inverse condemnation action filed 20 years after Respondents purchased the land with actual knowledge of the mosquito impoundment on their property. Second, the construction of a mosquito impound dikes, dams and a canal under a 10 year written license and the subsequent use of that impound for 50 years creates an irrevocable license. Alternatively, after the expiration of the license, the 30 year acquiescence of a succession of property owners who did not object to the unabated public use and maintenance of the mosquito impound on the 27 acres constitutes dedication of the land for the governmental use.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point

of law. Art. V, §3(b)(3), Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv).

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *SARASOTA WELFARE HOME V. CITY OF SARASOTA*, 666 SO.2D 171 (FLA. 2D DCA 1995).

In *Sarasota Welfare Home v. City of Sarasota*, 666 So.2d 171 (Fla. 2d DCA 1995), the court held the four year statute of limitations applied to inverse condemnation and could bar a claim filed more than four years after the discovery of the use and occupancy of the land by the public. In the case at bar, the Fifth District Court of Appeal found no basis for applying the four year statute of limitations to an inverse condemnation claim filed 20 years after the Respondent's discovered the use and occupancy of their land for a mosquito impoundment. Thus, the decision in the case at bar conflicts with the decision of this court in *Sarasota Welfare Home.*

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *DANCE V. TATUM*, 629 SO.2D 127 (FLA. 1993) AND *SEABOARD V. DORSEY*, 149 SO. 127 (FLA. 1930).

In *Dance v. Tatum*, 629 So.2d 127 (Fla. 1993) and *Seaboard v. Dorsey*, 149 So.2d 127 (Fla. 1930), the Florida Supreme Court held that 1] a revocable oral license granting permission to use a property in a certain way becomes irrevocable if, in reliance on the license, large sums have been expended or heavy obligations incurred for the permanent improvement of the property in furtherance of the use permitted under the license and 2] a successor in interest with notice of the license is burdened with the irrevocable license. In the case at bar, a written license for a 10 year term was given over a section of land and a 700 acre impoundment, including a dike and canal, was built over several parcels including the parcel at issue. Because of the impoundments, mosquitoes were controlled, which benefitted all landowners in Merritt Island including Respondents' predecessors. Further, the impoundments allowed for the development of once undevelopable land. In direct conflict with *Dance*, where the construction of a borrow pit and drainage system in reliance on the license were sufficient to make the license irrevocable, the district court held that construction of a 700 acre dike system and

canal were not acts of reliance sufficient to make the license irrevocable.[1] Because the facts in the present case are even more compelling than the facts in *Dance*, Petitioner's license should have been held to be irrevocable.

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN *CITY OF MIAMI V. EASTERN REALTY, INC.*, 202 SO.2D 760 (FLA. 3D DCA 1967).

On the law of dedication by acquiescence, the Fifth District's decision in this case is in direct conflict with the Third District's decision in *City of Miami v. Eastern Realty, Inc.*, 202 So.2d 760 (Fla. 3d DCA 1967). In *City of Miami*, the Third District held that maintenance of a private park by the city for twenty years was a dedication by acquiescence despite the existence of the owner's express intent not to dedicate the park recited on the recorded plat showing the private park. See *City of Miami*, 202 So. 2d at 768.

In diametric opposition to *City of Miami,* in the case at bar, despite the Fifth

---

[1] As justification for its decision, the district court pointed to the Petitioners efforts to obtain paper title in the 1990's as proof that the Petitioner did not have title to the property. First, the fee title is irrelevant where an irrevocable license encumbers that title. Second, the attempt to obtain a written recordable document formally vesting the underlying fee title in the Petitioner does not eliminate the burden of the irrevocable license since an attempt to clarify title issues or avoid the cost of litigation does not amount to a disclaimer of the irrevocable license. *See, e.g., MacNamara v. Kissimmee River Valley Sportsmans' Association and the Board of Trustees of the Internal Improvement Trust Fund*, 648 So.2d 155, 161 (Fla. 2d DCA 1994).

District's judicial acknowledgment that 1] the Mosquito Control District maintained the mosquito impound for 30 years after the expiration of the written easement/license in 1994 without objection by Respondent's or their predecessors in interest[2] and 2] that the Respondent's "fully supported mosquito control in the area"[3] for the 16 years between 1978 and 1994, the court concluded that there was no dedication because "No evidence, written or oral, was introduced to show that any previous title holders intended to dedicate the land to the public."[4]

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the Petitioners' argument.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

---

[2] At page 3 of the opinion the following statement appears: "The District says that Mr. and Mrs. Blasky and their predecessors were silent between 1964 and 1994, while the impoundment was maintained by it. Mr. and Mrs. Blasky say that there was no evidence introduced at trial to show that the silence was intended as a dedication."

[3] Opinion at page 1.

[4] Opinion at page 3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been furnished to Edward C. Tietig, Esq., 1326 Malabar Road, S.E., Suite 1, Palm Bay, Florida 32907 this ____ day of July, 2004.

OFFICE OF THE COUNTY ATTORNEY
2725 Judge Fran Jamieson Way
Building C, 3rd Floor
Viera, Florida 32940
(321) 633-2090 – Phone – (321) 633-2096 – Fax

BY:_____
Scott L. Knox, County Attorney
Fla. Bar No: 211291

BY:_____
Eden Bentley, Assistant County Attorney
Fla. Bar No. 370908

IN THE SUPREME COURT OF FLORIDA

BREVARD COUNTY MOSQUITO CONTROL DISTRICT, a special taxing district and BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida,

Petitioners,

vs.

MICHAEL BLASKY and ANITA BLASKY,

Respondents.
_____/

CASE NO:

PETITIONER'S APPENDIX

On the Review from the District Court of Appeal, Fifth District

State of Florida

Case No: 5D03-2934

BREVARD COUNTY ATTORNEY'S OFFICE
2725 Judge Fran Jamieson Way
Building C
Viera, Florida 32940

Scott L. Knox
County Attorney
Fla. Bar Number: 211291

Eden Bentley
Assistant County Attorney
Fla. Bar Number: 370908
Attorney for Appellant

PETITIONER'S APPENDIX

1. Conformed copy of Fifth District Court of Appeals Order Denying Appellant's Motion for Rehearing, Motion for Rehearing En Banc and Motion for Certification dated June 23, 2004.

2. Copy of Fifth District Court of Appeals Opinion dated April 30, 2004