

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA**

**HAROLD COFFIELD and
WINDSONG PLACE, LLC,**

Petitioners/Plaintiffs,

v.

CASE NO.: SC 09-1070

L.T.: 1D08-3260

CITY OF JACKSONVILLE,

Respondent/Defendant,

_____/

PETITIONERS' JURISDICTIONAL BRIEF

**ON APPEAL FROM THE
FIRST DISTRICT COURT OF APPEALS**

Submitted by:

Jeb T. Branham
Fla. Bar No. 0296030
333 1st Street North, Suite 305
Jacksonville Beach, Florida 32250
Telephone: (904) 241-4200
Facsimile: (904) 241-4600

ATTORNEY FOR PETITIONERS

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
Introduction	1
Factual Background	2
Argument & Citation of Authority	3
The Opinion conflicts with other decisions by applying a <i>de novo</i> standard of review instead of competent substantial evidence	3
The Opinion conflicts with other decisions that hold a contract purchaser of real property is the beneficial owner	7
Conclusion	10

TABLE OF AUTHORITIES

<u>CASE LAW</u>	<u>PAGE</u>
<i>Abraham-Youri v. United States</i> , 36 Fed Cl. 482, 486 (1996)	8
<i>Brevard Co. v. Stack</i> . 932 So. 2d 1258 (Fla. 5DCA 2006)	6
<i>Demosthenes v. Girard</i> , 955 So. 2d 1189, 1191 (Fla. 3DCA 2007)	8, 10
<i>Equity Resources, Inc. v. County of Leon</i> , 643 So. 2d 1112, 1117 (Fla. 1DCA 1994)	4, 5
<i>Estate of Sweet v. First Nat'l Bank of Clearwater</i> , 254 So. 2d 562, 563 (Fla. 2DCA 1971)	9
<i>FCCI Ins. Co. v. Cayce's Excavation, Inc.</i> , 901 So. 2d 248, 251 (Fla. 2005)	5
<i>Fieldhouse v. Tam Invest. Co.</i> , 959 So. 2d 1214, 1216 (Fla. 4DCA 2007)	6
<i>Hull v. Maryland Cas. Co.</i> , 79 So. 2d 517, 518 (Fla. 1954).....	8
<i>Menchise v. Liberty Mut. Ins. Co.</i> , 932 So. 2d 1131 (Fla. 2DCA 2006)	6
<i>Palazzolo v. Rhode Island</i> , 533 U.S. 606, 627 (2001)	9
<i>Schwartz v. American Home Assur. Co.</i> , 360 So. 2d 383. (Fla. 1978)	5
<i>Schwartz v. Hughes Supply, Inc.</i> , 537 So. 2d 190, 191 (Fla. 2DCA 1989)	6

Florida Rules:

FLA. APP. P. 9.030(a)(2)(A)(iv)	1
---------------------------------------	---

Florida Statutes:

Fla. Stat § 70.001 <i>et seq.</i>	1, 2, 3,4,5,6
---	---------------

Introduction

This Court has discretionary jurisdiction over this matter because the Opinion of the First District Court of Appeals expressly and directly conflicts with decisions of this Court and other district courts of appeal. *See* FLA. APP. P. 9.030(a)(2)(A)(iv). The Opinion reversed the trial court's finding of liability in favor of Petitioners under the Bert J. Harris Property Rights Protection Act. Fla. Stat. § 70.001 *et seq.*

The Act provides for separate trials on liability and damages. Fla. Stat. § 70.001(6)(a)-(b). In the liability phase, the circuit court determines whether an existing use of real property or a vested right to a specific use of real property existed and, if so, whether the governmental entity inordinately burdened either an existing use or a vested right. Fla. Stat. § 70.001(6)(a). The Opinion holds all these trial court determinations of liability that all ultimately involve the reasonableness of a property owner's conduct "are conclusions of law." (Opinion, p. 9, attached hereto as Exhibit A.) The Opinion also holds Petitioners' conduct was unreasonable as a matter of law because they did not try to abandon the contract to purchase the property when they first learned about the mere possibility of unfavorable government regulation affecting their property. These holdings expressly and directly conflict with long-established precedent of this Court and other district courts that hold issues of reasonableness are factual, not legal, and

contract purchasers are treated like owners under the doctrine of equitable conversion.

Factual Background

In January 2006, Petitioners (collectively “Coffield”) contracted to purchase a parcel of property in Jacksonville, Florida (the “Property”) adjacent to a public road named Windsong Place for the purpose of developing it into a subdivision of eight single family homes. In February 2006, the homeowners’ association (the “HOA”) for the subdivision across the street from Coffield’s Property applied for COJ to abandon Windsong Place as a public road. In March and again in May 2006, COJ sent documents to Coffield that he (and the trial court) viewed as assurance Coffield could develop the Property despite the possibility COJ might abandon the road. Coffield closed on the Property in June 2006. COJ did not enact the ordinance that abandoned the public road until August 2006. After enactment, COJ applied the ordinance as taking away Coffield's access to Windsong Place, resulting in the loss of Coffield's ability to develop seven single family, water access lots. Coffield's claim against COJ under the Bert Harris Act arose from COJ's enactment of the ordinance and application of it to the Property to take away access to the formerly public road.

The lower court conducted a bench trial pursuant to Fla. Stat. § 70.001(6)(a) to determine whether COJ’s actions inordinately burdened an existing use of the

Property or a vested right to a specific use. The trial court entered an order finding the enactment of Ordinance 2006-407-E and COJ's application of that Ordinance to Coffield's property inordinately burdened both existing uses and vested rights to specific uses of the Property. (Opinion, pp. 6-7.) In finding liability for Petitioners, the trial judge described COJ's actions as "offensive conduct" that "cried out" for a damages remedy.

Argument & Citation of Authority

- **The Opinion conflicts with other decisions by applying a *de novo* standard of review instead of competent substantial evidence.**

In the liability phase of a Bert Harris Act trial, "the circuit court shall determine whether an existing use of the real property or a vested right to a specific use of real property existed and, if so, whether . . . the governmental entity . . . The governmental entity [has] inordinately burdened the real property." Fla. Stat. § 70.001(6)(a). An "existing use" can be either an "actual, present use or activity on the real property" or "reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property." Fla. Stat. § 70.001(3)(b). The existence of vested rights is determined by "applying the principles of equitable estoppel or substantive due process" Fla. Stat. § 70.001(3)(a). Equitable estoppel in this context involves questions of a property

owner's good faith, detrimental reliance on some act or omission of the government. *Equity Resources, Inc. v. County of Leon*, 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994). To determine whether a government entity imposed an inordinate burden, the circuit court determines whether “an action of . . . [a] governmental entit[y] has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment backed expectation for the existing use of the real property or a vested right to a specific use of the real property . . .” *See* Fla. Stat. § 70.001(3)(e).

Thus, in the liability phase the circuit court determines some or all of the following: (1) what the land is actually being used for; (2) whether the property has reasonably foreseeable, nonspeculative possible future land uses that increase the property’s market value over the value for just its current use; (3) whether the property owner gained rights by detrimentally relying on an act or omission of the government; and (4) if the circuit court determines one or more of the three forms existing uses and vested rights exists, it then determines whether the government action at issue prevented the landowner from obtaining a reasonable, investment backed expectation for either a vested right or an existing use. The Opinion erroneously held all four of these liability determinations the statute requires the circuit court to make "are conclusions of law" subject to *de novo* review. (Opinion, p. 9.)

The circuit court's determination of whether an existing use, a vested right to a specific use, and an inordinate burden exist must be fact issues because they all exclusively involve factual determinations. To determine existing uses, the circuit court must determine the actual, present uses of a property, what land uses surround the property, the property's market value before and after the governmental act in question, and whether the possible future uses of the property are reasonably foreseeable. *See* Fla. Stat. § 70.001(3)(b). These are all fact questions. *See Schwartz v. American Home Ass. Co.*, 360 So. 2d 383, 385 (Fla. 1978) (reasonable foreseeability under the circumstances is a fact issue).

To determine whether vested rights exist, the trial court must examine representations made by the government, the plaintiff's reliance on the representations, the reasonableness of the reliance, and any detriment caused by the reliance. *See* Fla. Stat. § 70.001(3)(a) (vested rights are determined by applying principles of equitable estoppel); *Equity Resources, Inc.*, 643 So. 2d at 1117. Again, all these are fact questions. *FCCI Ins. Co. v. Cayce's Excavation, Inc.*, 901 So. 2d 248, 251 (Fla. 2005) ("whether the reliance was 'reasonable' involves the resolution of factual issues" for promissory estoppel claim).

To determine whether the government imposed an inordinate burden, the trial court must examine the particulars of the plaintiff's investment in the property to determine whether a reasonable, non-speculative expectation existed. *See* Fla.

Stat. § 70.001(3)(e). Again, this is a fact issue. *Fieldhouse v. Tam Invest. Co.*, 959 So. 2d 1214, 1216 (Fla. 4th DCA 2007) (reasonable foreseeability “is a question for the trier of fact”); *Menchise v. Liberty Mut. Ins. Co.*, 932 So. 2d 1130, 1132 (Fla. 2nd DCA 2006) (“considerations of reasonable diligence . . . [are] traditional issues of fact”); *Schwartz v. Hughes Supply, Inc.*, 537 So. 2d 190, 191 (Fla. 2nd DCA 1989) (reasonableness of conduct is a fact issue).

The Opinion's ruling that all issues determined by the circuit court in the liability phase are legal questions also expressly and directly conflicts with the decision of the Fifth District Court of Appeals rendered in the Bert Harris Act case of *Brevard Co. v. Stack*. 932 So. 2d 1258 (Fla. 5th DCA 2006). In *Stack*, the trial court granted a summary judgment in favor of the property owner on a Bert Harris claim. *Id.* at 1259. The County appealed, in part, because "the trial court failed to make findings required by the Act." *Id.* at 1260. The Fifth District reversed the summary judgment and remanded due to the trial court's failure to make the findings required by Fla. Stat. § 70.001(6)(a). *Id.* at 1262. Reversing and remanding a summary judgment with directions to make "findings" can be nothing other than directions to make factual findings. Thus, the Fifth District has ruled the liability phase of a Bert Harris claim requires the circuit court to resolve fact issues, consistent with the Bert Harris Act's statutory language and long-standing, numerous precedents of this Court and other District Courts.

The determinations of existing uses, vested rights, and inordinate burdens are the factual inquiries that lead to the legal conclusion that a plaintiff is entitled to damages. The underpinnings of the right to damages are not legal conclusions. Indeed, even the Opinion itself implicitly acknowledges the liability determination depends on the resolution of fact issues because it devotes much of its dicta to marshalling selected facts in a manner designed to rebut the trial court's finding that Coffield acted reasonably. It strains logic and reason to argue determinations of reasonableness of conduct, market value, and current uses of property are anything but factual issues subject to review on appeal under the competent substantial evidence standard. The Opinion has turned some of the most traditional fact issues into “conclusions of law” for Bert Harris Act cases, all without any analysis and in conflict with decisions of this Court and other District Courts.

- **The Opinion conflicts with other decisions that hold a contract purchaser of real property is the beneficial owner.**

The Opinion's denial of relief to Coffield relied on a window of time between February 16, 2006, when Coffield first learned of the HOA's application for COJ to abandon Windsong Place, and March 25 or 26, 2006, when Coffield's \$25,000 became absolutely non-refundable. (Opinion, pp. 13-14, 20-22) The Opinion's rationale for reversing the trial court's verdict boils down to an argument that Coffield should have abandoned his development and tried to get his deposit back as soon as he learned about the mere possibility the road might not be

public in the future. (*Id.* at p. 21.) (“[a]ny expectation Mr. Coffield had of developing the property in this fashion was not objectively reasonable, once he discovered that an application had been filed to close the only roadway which would provide access to the proposed lots”). By going forward, the Opinion argues, Coffield assumed the risk COJ would kill his development by giving the public road to the property owners on the other side of the street. (Opinion, pp. 20-21) (citing *Abraham-Youri v. United States*, 36 Fed Cl. 482, 486 (1996)). In other words, once Coffield learned COJ might take action to kill his otherwise permissible development, Coffield should have helped COJ out by trying to kill the development himself.

Coffield's contract was a regular land sale contract enforceable by either party by specific performance. The Opinion's imputation to Coffield of a duty to try to get out of his contract conflicts with long-established precedents of this Court and other District Courts that hold a specifically performable contract to convey title establishes the purchaser as the "beneficial owner" of real property. *Hull v. Maryland Cas. Co.*, 79 So. 2d 517, 518 (Fla. 1954) (“By ordinary common-law principles, the doctrine of equitable conversion becomes operative upon entry of an agreement to convey title to realty. The vendee immediately becomes the beneficial owner, and the vendor retains only naked legal title as security for payment of the purchase price.”); *Demosthenes v. Girard*, 955 So. 2d 1189, 1191

(Fla. 3rd DCA 2007); *Estate of Sweet v. First Nat'l Bank of Clearwater*, 254 So. 2d 562, 563 (Fla. 2d DCA 1971).

In other words, from an equitable standpoint, Coffield stood in the shoes of the prior owners of the Property. Putting the Property under contract did not open a window for COJ to strip the Property of its development rights by destroying its road access without any threat of incurring liability. COJ should not have been allowed to treat Coffield any differently than the prior owners of the Property. *See generally Palazzolo v. Rhode Island*, 533 U.S. 606, 626-28 (2001) (holding pre-purchase knowledge of adverse regulations is never dispositive of the existence of reasonable, investment-backed expectations in an inverse condemnation claims because it allows the very government action at issue to defeat the claim). Despite this, the Opinion allowed COJ to strip the Property of its development potential without any liability merely because Coffield was a contract purchaser at the time the HOA first asked COJ to abandon Windsong Place.

Put in terms of the Bert Harris Act, the reasonableness of Coffield's expectations for the Property should not be affected by his status as the contract purchaser. The panel's imposition on Coffield of a duty to get out of the contract or proceed at his own risk ignored the long-established doctrine of equitable conversion. This Court should review this case to resolve the conflict between the Opinion's holding that a contract purchaser's knowledge of the mere possibility of

the enactment of future, post-closing legislation adverse to his property rights defeats a Bert Harris claim as a matter of law and the precedents establishing the doctrine of equitable conversion that hold a contract purchaser stands in the shoes of the title holder. *Hull*, 70 So. 2d 517 (Fla. 1954); *Demosthenes*, 955 So. 2d at 1191 (Fla. 3rd DCA 2007).

Conclusion

This Court should accept this case for review to determine the appropriate standard of review for determinations made by the trial court in the liability phase of a Bert Harris Act trial and whether a Bert Harris Act claimant's knowledge, while a contract purchaser, of the mere possibility of adverse regulation precludes his claim.

CERTIFICATES OF SERVICE & COMPLIANCE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing was furnished by U.S. Mail on this ____ day of June, 2009, to Dylan Reingold, Deputy General Counsel, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202.

THE UNDERSIGNED HEREBY CERTIFIES that the foregoing Appellee's Jurisdictional Brief complies with Fla.R.App.P. 9.210(a) and that it is written in Times New Roman 14 point font.

By: _____
Jeb T. Branham, Esq., Fla. Bar No. 0296030
333 1st Street North, Suite 305
Jacksonville Beach, Florida 32250
Telephone: (904) 241-4200
Facsimile: (904) 241-4600

ATTORNEY FOR PETITIONERS