

IN THE CIRCUIT COURT OF THE
16TH JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

CASE NO.: 10 CA 334P

JAMES BELLIZZI,

Plaintiff,

v.

ISLAMORADA, VILLAGE OF
ISLANDS, FLORIDA, a Florida
municipal corporation,

Defendant.

**DEFENDANT, ISLAMORADA'S, ANSWER AND DEFENSES
TO AMENDED COMPLAINT**

Defendant, ISLAMORADA, VILLAGE OF ISLANDS, by and through its undersigned counsel and pursuant to the Florida Rules of Civil Procedure, hereby files its Answer and Defenses to Plaintiffs' Amended Verified Complaint dated November 18, 2010 ("Complaint"), and states as follows:

ANSWER

1. The Defendant denies the allegations in paragraph 1 and demands strict proof of all allegations.
2. The Defendant is without knowledge of the allegations in paragraphs 2, 3, 4, 5, and 6 (including subparagraphs A, B, C, D, and E and all exhibits), denies all allegations, and demands strict proof of all allegations.
3. The Defendant admits paragraph 7.
4. The Defendant is without knowledge of the allegations in paragraphs 8 and 9, denies all allegations, and demands strict proof of all allegations.
5. The Defendant admits paragraph 10.

6. The Defendant is without knowledge of the allegations in paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, denies all allegations, and demands strict proof of all allegations.

7. As to paragraph 29, the Defendant admits that Porto Salvo Drive, Palermo Drive, and portions of Venetian Boulevard are dedicated to the public, but denies the remaining allegations and demands strict proof of all allegations.

8. The Defendant denies the allegations in paragraphs 30 and 31 and demands strict proof of all allegations.

9. The Defendant is without knowledge of the allegations in paragraphs 32 and 33, denies all allegations, and demands strict proof of all allegations.

10. As to paragraph 34, the Defendant admits that the public records reflect a quit claim deed from City National Bank to Monroe County which conveys certain roads and that the conveyance is reflected in a County Resolution, but denies the remaining allegations and demands strict proof of all allegations.

11. The Defendant is without knowledge of the allegations in paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58, denies all allegations, and demands strict proof of all allegations.

12. As to paragraph 59, the Defendant admits that it is a municipal corporation, but denies the remaining allegations, and demands strict proof of all allegations.

13. As to paragraph 60, the Defendant asserts that the Road Transfer Agreement between Monroe County speaks for itself, denies all remaining allegations, and demands strict proof of all allegations.

14. The Defendant denies the allegations in paragraphs 61, 62, 63, 64, 65, 66, 67, and 68 and demands strict proof of all allegations.

15. The Defendant is without knowledge of the allegations in paragraph 69, denies all allegations, and demands strict proof of all allegations

16. The Defendant denies the allegations in paragraph 70 and demands strict proof of all claims.

17. As to paragraph 71, the Defendant adopts and incorporates by reference its responses to paragraphs 1 through 70 above.

18. The Defendant denies the allegations in paragraphs 72, 73, 74, 75, 76, and 77, and demands strict proof of all allegations.

19. As to paragraphs 78, 79, 80, 81, 82, 83, 84, and 85, the Court has abated the Plaintiffs' claims by its Orders dated September 7, 2010, and February 28, 2011, and responses at this time are not required by operation of law.

20. As to paragraph 86, the Defendant adopts and incorporates by reference its responses to paragraphs 1 through 70 above.

21. The Defendant denies the allegations in paragraphs 87, 88, 89, 90, 91, and 92, and demands strict proof of all allegations.

22. The Defendant denies each allegation, assertion, claim, demand, paragraph, un-numbered paragraph, subparagraph, statement, prayer, and request, including each framed in any "Wherefore" provision, which is not specifically admitted herein, denies that Plaintiffs are entitled to any remedy, and demands strict proof of all facts and all conclusions of law.

DEFENSES

23. The Plaintiffs have failed to satisfy all conditions precedent to the initiation of this action. Without limitation, the Plaintiffs have failed to join indispensable parties, including the adjoining lot owners, the Venetian Shores Homeowners' Association, Inc., the "developers" as referenced in paragraph 12 of the Complaint, Tirrell, Bruni, Inc., and those individuals and entities that will be affected by the requested relief. Moreover, Plaintiffs have failed to attach or identify the documents which purport to vest the Plaintiffs with the rights they claim.

24. The Plaintiffs have failed to state a cause of action. The Plaintiffs have failed to allege a right which would give rise to a fee simple ownership of the property at issue or a right which would give rise to any interests other than use the property at issue. Without limitation, while the Complaint seeks to challenge the Defendant's alleged rights, the Complaint fails to establish Plaintiffs' alleged affirmative rights in fee simple ownership.

25. The doctrine of repugnancy bars the Plaintiffs' claims. The language of the documents at issue, including the Declaration Concerning Restrictions and Improvements, the applicable plats, and the applicable deeds control over the allegations asserted by the Plaintiffs. According to the applicable text and language, none of the plats or deeds at issue convey the rights at issue to the Plaintiffs. To the contrary, the applicable the text and language in the Declaration Concerning Restrictions and Improvements referenced in paragraph 21 of the Complaint and in the deeds referenced in paragraphs 30, 34, 35, 41, 42, and 45 of the Complaint control over the Plaintiff's contrary allegations.

26. The Plaintiffs lack standing. The Plaintiffs do not hold the requisite property rights to support their claims nor any rights supporting any potential vesting or reversion of property rights or interests. Instead, the Defendant or parties which are not joined in this proceeding hold the requisite property rights and interests.

27. The Plaintiffs' claims are time barred. The applicable statutes of limitation, including, without limitation, sections 95.11 and 95.361, Florida Statutes, elapsed before the Plaintiffs filed suit. For the same reasons, the Plaintiffs' claims are barred by laches and sections 95.11(6) and 95.361(4), Florida Statutes. The Plaintiffs delayed the filing of suit, and the Defendant changed position, without limitation, by maintaining and repairing the property at issue using public funds and by exercising dominion and control, while Plaintiffs rested on their alleged rights.

28. The Plaintiffs claims are barred by operation of law, including the applicable Florida Statutes. Without limitation, sections 95.361, 335.02, 335.0415, 336.02, 336.08, and 337.29, Florida Statutes, operate to deprive the Plaintiffs of the interests and rights they claim. Instead, all right, title, easement, and appurtenances are vested in the Defendant. The Defendant and its predecessors have maintained or repaired the property at issue continuously and uninterruptedly, including during the time period since the conclusion of the Roadway Litigation referenced below, and have fulfilled all common law and statutory prerequisites supporting the public nature and dedication of the property at issue.

29. The Plaintiffs claims are barred by operation of law, including section 95.361(1), Florida Statutes, because the property at issue was constructed by a governmental agency that was the Defendant's predecessor in interest or, alternatively, by an entity that functioned as the agent, instrumentality, or equivalent of the governmental agency that was the Defendant's predecessor in interest.

30. The Plaintiffs' claims involve the same subject matters, rights, and interests that were previously litigated among the parties' predecessors in interest in Case No. 85-20019-CA-17 ("Roadway Litigation"). As a result, the Plaintiffs' claims are barred by res judicata or, alternatively, the Plaintiffs are barred from re-litigating certain factual and legal issues which were resolved between the parties in the Roadway Litigation, including, without limitation, that the Defendant's predecessors in interest assumed maintenance responsibility for the property at issue. In the alternative, the resolution of the Roadway Litigation operated as easement and public dedication or otherwise operated as the trigger for the running of the limitations periods contemplated under section 95.361(4), Florida Statutes.

31. The Plaintiffs' claims are barred because the Plaintiffs lack clean hands and have engaged in inequitable conduct. Without limitation, the Plaintiffs purchased without any expectation of fee simple ownership of the subject property or of any rights other than use. Nonetheless, the Plaintiffs now seek to change position, ignore the results of the Roadway Litigation, gain a windfall, and disturb the historic public nature of the property at issue. Moreover, the Plaintiffs failed to assert their alleged rights in a timely manner after the conclusion of the Roadway Litigation and have otherwise failed to maintain the property at issue, offered to pay taxes for the property at issue, or otherwise treat the property at issue as property owned in fee simple.

32. The Plaintiffs' claims are barred by estoppel. The Plaintiffs purchased and possessed their lots without any expectation of fee simple ownership of the subject property or of any rights other than use. The Defendant and its predecessor then maintained and repaired the subject property and provided benefits to the Plaintiffs through such efforts. Such efforts were accepted by the Plaintiffs and provided notice of the public nature of the property at issue. Based on the circumstances, including the Plaintiffs' failure to assert their alleged rights in a timely manner after

the conclusion of the Roadway Litigation, failure to maintain the property at issue, failure to offer to pay taxes for the property at issue, and failure to treat the property at issue as property owned in fee simple, it would be inequitable to allow the Plaintiffs to have accepted the benefits of the public nature of the property at issue but take an inconsistent position now.

33. The Plaintiffs' claims are barred by waiver. The Plaintiffs purchased and possessed their lots without any expectation of fee simple ownership of the subject property or of any rights other than use. Moreover, the Plaintiffs have failed to maintain the property at issue, failed to offer to pay taxes for the property at issue, and otherwise failed to treat the property at issue as property owned in fee simple. By allowing the Defendant to have maintained and repaired the property at issue without objection despite opportunities to do so, the Plaintiffs waived the right to challenge the public nature of the property at issue.

34. The Defendant's claims are superior to those of the Plaintiffs by virtue of deeds and documents reflected in the public records which are incorporated herein by reference.

35. The Defendant's claims are superior to those of the Plaintiff by virtue of adverse possession and by an express or implied public easement. The Defendant or its predecessors have exercised open and notorious dominion and control over the property at issue since approximately 1964 and certainly since the conclusion of the Roadway Litigation.

36. The Defendant reserves the right to assert defenses to Count II seeking to Quiet Title and to Count III seeking inverse condemnation once the Court's abatement Orders dated September 7, 2010, and February 28, 2011, have been vacated.

37. The Complaint fails to state a valid claim for attorneys' fees and fails to allege any contractual, statutory, or procedural basis for an award of attorneys' fees. Plaintiffs' request for an award of attorneys' fees should be stricken.

WHEREFORE, the Defendant, ISLAMORADA, VILLAGE OF ISLANDS, requests entry of judgment in its favor, entry of an order allowing it to go hence without day, costs, and such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed on this ___ day of March 2011 to **James S. Lupino, Esq., Dustin T. Nichols, Esq.**, Attorneys for the Plaintiff, Hershoff, Lupino & Yagel, LLP, 90130 Old Highway, Tavernier, FL 33070.

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