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51



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners

Through: Robert A. McMillan, County Attorney

From: Stephen P. Lee, Deputy County Attorney

Date: March 19, 2004

Subject: Settlement of Vermilio v. Seminole County, Case No. 03-CA-732-16-G

RECOMMENDATION: Approve settlement of the captioned lawsuit. Attached is a proposed stipulation and final judgment which will conclude this portion of the dispute.

BACKGROUND: Plaintiff, Rodney Vermilio, is a property owner on the west side of Markham Woods Road, north of SR 434. In 1965 the County received two drainage pipe easements from the then owners of the property. Thereafter the easements were not mentioned in the public records for more than thirty (30) years due, no doubt, to the fact that the property was platted in 1978 and the plat did not mention the easements. Subsequent conveyances have all referred to the plat and not the metes and bounds description contained in the original easements. Under the Marketable Record Title Act, F.S. Section 712.01, et seq., such easement interests are extinguished if not mentioned in the instruments of conveyance or if the easement is not actually used.

Although the County has actually installed and used a drainage pipe, it is not located upon Mr. Vermilio's property, rather it is located on the adjacent property. Due to the unusual wording of the easement form itself, the rights granted in the easements have not actually been used on the Vermilio property.

This case is the second lawsuit filed regarding the drainage pipe. Plaintiffs in the other, earlier suit include Mr. Vermilio, however, the claims in that suit relate to the discharge of water on the plaintiffs' properties, not the location of the pipe or the easements authorizing the placement of the pipe on the properties. The instant case was brought by Mr. Vermilio's title company in order to clear the title to his property. Public Works has confirmed that the pipe is not actually located under Mr. Vermilio's property and that the easements in question are not necessary.

Based upon the lack of necessity for the easements and the fact that they have not been used with respect to Mr. Vermilio's property, settlement of the case is recommended. Each party will bear its own fees and costs. Board authorization to execute the stipulation is requested.

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IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 03-CA-732-16-G

RODNEY VERMILIO,

Plaintiff,

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

Defendant.

JOINT MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiff, Rodney Vermilio (“Vermilio”), and Defendant, Seminole County, a political subdivision of the State of Florida (the “County”), jointly move the Court to enter the attached Final Judgment based on the following stipulation.

STIPULATION

Vermilio is the owner of the real property identified as Lot 5, Riverside At The Springs, Plat Book 21, Pages 68 and 69 of the public records of Seminole County, Florida (the “Property”).

On January 29, 1965, Robert T. and Sarah L. Overstreet, granted an Easement For Drainage Pipe to the County, recorded in Official Records Book 530, page 658 of the public records of Seminole County, Florida (the “West Easement”).

On February 2, 1965, Abe and Phyllis Kamenoff, granted an Easement For Drainage Pipe to the County, recorded in Official Records Book 530, page 660, of the public records of Seminole County, Florida (the “East Easement”).

By virtue of the fact that Vermilio, together with his predecessors in title, have been vested with title to the Property for more than 30 years with nothing of record purporting to divest Vermilio or his predecessors of their title to the Property, nor does any document of record for that 30 year period specifically identify either the East Easement or the West Easement, nor has the County used the Property pursuant to either the East Easement or the West Easement for the purposes described in the Easements during that time, then title to the Property is free and clear of the East Easement and the West Easement and the same are extinguished as to the Property by operation of the Marketable Record Title Act, §712.01 *et seq.*, *Florida Statutes* (2002).

WHEREFORE, Vermilio and the County jointly request that the Court enter the attached Stipulated Final Judgment.

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IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR SEMINOLE COUNTY, FLORIDA

03-CA-732-16-G

RODNEY VERMILIO,

Plaintiff,

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

Defendant.

**STIPULATED FINAL JUDGMENT
AND DECLARATION**

This matter came before the Court on the parties' Joint Motion for Entry of Final Judgment, and the Court, being fully advised, hereby finds that there is no dispute as to the following material facts:

1. This is an action for declaratory relief with respect to title to Lot 5, Riverside At The Springs, Plat Book 21, pages 68 and 69 of the public records of Seminole County, Florida (the "Property").

2. On January 29, 1965, Robert T. and Sarah L. Overstreet, owned the Western portion of the Property and granted an Easement For Drainage Pipe to the County, which was recorded in Official Records Book 530, page 658 of the public records of Seminole County, Florida (the "West Easement").

3. On February 2, 1965, Abe and Phyllis Kamenoff, owned the Eastern portion of the Property and granted an Easement For Drainage Pipe to the County, which was recorded in Official Records Book 530, page 660, of the public records of Seminole County, Florida (the "East Easement").

4. On October 1, 1970, the Western portion of the Property was conveyed by a Warranty Deed recorded in the Seminole County public records at O.R. Book 802, page 500. This was the first conveyance of the Western portion of the Property after the granting of the West Easement. No specific reference to the West Easement appears in this deed nor is there any specific reference to the West Easement in the public records of Seminole County in the chain of title thereafter.

5. On October 11, 1965, the Eastern portion of the Property was conveyed by a Warranty Deed recorded in the Seminole County public records at O.R. Book 552, Page 38. This was the first conveyance of the Eastern portion of the Property after the granting of the East Easement. No specific reference to the East Easement appears in this deed, nor is there any specific reference to the East Easement in the public records of Seminole County in the chain of title thereafter.

6. Vermilio is now the current owner of the Property, including both the Eastern and Western portions.

7. By virtue of the fact that Vermilio, together with his predecessors in title, have been vested with title to the Property for more than 30 years with nothing of record purporting to divest Vermilio or his predecessors of their title to the Property, nor does any document of record for that 30 year period specifically identify either the East Easement or the West Easement, nor has the County used the Property pursuant to either the East Easement or the West Easement for the purposes described in the Easements during that time, then title to the Property is free and clear of the East Easement and the West Easement and same are extinguished as to the Property by operation of the Marketable Record Title Act , §712.01 *et seq.*, *Florida Statutes* (2002).

Accordingly, final judgment is hereby entered and it is hereby ORDERED, DECREED and ADJUDGED that:

1. As of October 1, 2000, the easement recorded in Official Records Book 530, page 658 of the public records of Seminole County was extinguished as to the Property and the County has no easement rights in or to the Property by virtue of that document.

2. As of October 11, 1995, the easement recorded in Official Records Book 530, page 660, of the public records of Seminole County was extinguished as to the Property and the County has no easement rights in or to the Property by virtue of that document.

3. Each party shall bear its own attorneys' fees and costs incurred in Case No. 03-CA-732-16-G.

4. While Case No. 03-CA-732-16-G was consolidated for the convenience of the parties and the Court with Case No. 02-CA-1069-16-W: (a) Case No. 02-CA-1069-16-W is hereby severed from Case No. 03-CA-732-16-G, and (b) the Court shall continue to exercise independent jurisdiction over Case No. 02-CA-1069-16-W to determine the issues presented therein.

DONE and ORDERED in Chambers at Seminole County, Florida this _____ day of _____, 2004.

Circuit Court Judge

Copies to:
Mark A. Brown
Stephen P. Lee