

**IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA**

CASE NO. 3D23-2116

L.T. Case No. 2022-011625-CA-01

PAJ INVESTMENT GROUP, LLC.,

Appellant,

vs.

**EL LAGO N.W. 7TH CONDOMINIUM
ASSOCIATION, INC.,**

Appellee.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

To arrive at the result urged upon the Court by the Appellee, the Court must conclude that Frederick Mezey, a developer of properties in Miami-Dade County, particularly properties surrounding the PAJ parcel at issue here, created an easement with no purpose. The Court must further conclude that Mr. Mezey, in the business of developing real properties such as El Lago, purchased the Dominant Parcel at issue here for no purpose.¹

The clear, well-integrated language of the easements at issue, the facts as agreed to by the parties or found by the trial court and simple logic compel a contrary result. Mr. Mezey created easements appurtenant through one property he owned or controlled for the benefit of a landlocked property and other adjacent properties that he also owned or controlled, in order to enable the development of the parcel found to be the Dominant parcel by the trial court. It was a simple, straightforward plan, consistent with a development goal.

¹ “Another reasonable inference is that [Mr. Mezey] never meant to develop the submerged land.” Answer Brief, P. 28.

1. THE EASEMENTS MUST BE VIEWED AS A WHOLE, THROUGH THE PRISM OF THE UNDISPUTED RECORD FACTS, IN ACCORDANCE WITH THE LEGAL PRESUMPTION FAVORING EASEMENTS APPURTENANT

a. Appellee Neglects to Address The Salient Facts

Appellee correctly recites that this Court must give heed to the record evidence developed in the trial court.² It then studiously avoids that very obligation. Appellee neglects to address a series of interrelated record facts uniformly establishing the creation of easements appurtenant.

The Parties agree that Frederick Mezey was a real estate developer in Miami-Dade County. [A. 168:6-9] They further agree that he was the direct or indirect owner of the PAJ parcel, the El Lago parcel and the easements themselves. [R 119-126; A. 149:22-150:6; 187:21-188:18] It is undisputed that Mr. Mezey owned other parcels adjacent to the parcels at issue here. [A. 167:18-168:20]

The trial court found that the PAJ parcel is a Dominant Estate [R 119-126 at Para. 1], which only has meaning in the context of an easement appurtenant. The Record establishes that the easements were the only means of access to the Dominant Estate. [R 119-126

² Answer Brief, p. 11.

at para. 3] The trial court determined that this access was the purpose of the Easements and that they could have no other. [R 119-126 at Para. 6; A. 14:12-16]

The Easements run from the nearest public street to the very border of the Dominant Estate [A. 451], confirming that they were to serve that estate.

The trial court found that the utilities referenced in the Easements were the utilities that would be required for the Dominant Estate. [R 119-126 at Para. 6] That is the only purpose found in this Record for a utility easement. Appellee never identified a need for the Easements, and, in any event, never utilized the Easements for its utilities or for any other purpose identified in the Easements.

Appellant made open and intended use of the Easements for more than a decade. [R 119-126 at Para. 9; A. 252:16-253:12] They were utilized as a right-of-way across the Servient Estate to provide access to and from the Dominant Estate by Appellant's representatives and agents. Appellant's use was even assisted by Appellee, which provided access to Appellant to enter the Easements through a gate erected by Appellee.

Appellee did not utilize the Easements for any of the purposes delineated in those recorded documents.

The El Lago Condominium documents clearly reflect that the unit owners took their units subject to the Easements and to the title to “filled-in lands.” [A. 374-375, 399] The only land to be filled in here is the PAJ property.

Finally, the Easements were 50 and 52 feet wide. [A. 363, 368] A width necessary to provide reasonable vehicular access to and from the Dominant Estate. A width far wider than that required solely for the placement of utilities.

Viewing the facts in the light most favorable to Appellants as the appellate court must³, the Record clearly demonstrates a plan by a developer to provide access to properties that he owned and controlled, across other properties that he owned and controlled, to allow full development of all of the related properties. Easements Appurtenant.

³ See *Infra*, Section 3.

b. Appellee Neglects to Address Pivotal Language in the Easements Themselves.

Appellee correctly recites that “The nature of an easement depends on its purpose and its purpose is evidenced by the terms of the instrument of grant...”⁴. Appellee then confines its discussion solely to those terms which support its strained interpretation. It ignores key terms of the Easements integral to the creation of the easements appurtenant that were manifestly intended here.⁵

The most instructive language in the Easements for purposes of this appeal, language which Appellee was demonstrably obligated to address, was the following: “...the free and full rights of ingress and egress over and across said lands and other lands of the Grantor to and from said right-of-way easement...” [A. 364, 369] The Grantee, and importantly, its successors, assigns, agents or representatives were given the right to travel **across** the Servient

⁴ Answer Brief, p. 14.

⁵ It is also the case that in construing an easement, as in construing a contract, courts must give reasonable meaning to all of the provisions rather than leaving parts of the easement useless or inexplicable. See discussion and cases cited at P. 33 of the Initial Brief.

Estate in order to have “right of way” access to the **lands of the Grantor, including its other lands.**

These easements were key to the development of the properties assembled by Mr. Mezey. They provided access without which no development of the Dominant Estate or his other properties would be possible. Consistent with this obvious objective was the fact that these easements were non-exclusive and assignable, to be available to successor developers, and were perpetual, so that there would always be access to whatever properties were developed.

An easement that is not exclusive, perpetual, and provides a benefit to an adjacent parcel is, by its nature, an easement appurtenant. *See Devino v. 2436 East Las Olas, LLC*, 306 So. 3d 118 (Fla. 4th DCA 2020) (holding a written easement was appurtenant, rather than in gross, because it was perpetual, non-exclusive and benefited an adjacent parcel).

Mr. Mezey created Easements that were 50 and 52 feet wide, to accommodate vehicular traffic to subsequent developments, and ran from the public road to the edge of the Dominant Estate, to

ensure access to all necessary utilities and, most importantly, access from the public road to the Dominant Estate.⁶

Finally, all of the uses permitted in the Easements were consistent with development/construction activities on the Dominant Estate. They accommodated all of the needs for both the construction and use of whatever development took place. They included the requirement that following whatever activities were required to allow this anticipated development, the property to be restored to “good and proper condition.”

c. Appellee’s Proposed Easement Disregards Florida Law Favoring Easements Appurtenant

Appellee studiously avoids any discussion in its Brief about the presumption in favor of easements appurtenant, over easements in gross, under settled Florida law. An easement must not be presumed to be personal and in gross if it may fairly be construed an appurtenant to another estate. *See Palm Beach County v. Cove*

⁶ Appellee devotes significant portions of its brief to the scope and use of the Easements. The scope and use of the Easements were irrelevant to Appellant’s claim for relief, and need not be addressed here. The trial court was only asked to determine and only determined the nature of the written easements, appurtenant or in gross.

Club Invs., 743 So. 2d 379, 388 (Fla. 1999) (“if doubt exists regarding the real nature, an easement is presumed to be appurtenant and not in gross”).

d. Appellee’s Proposed Easement Makes No Sense

Without intending to be harsh or unkind, the easements which Appellee seeks to have this Court affirm make no sense. They are easements without use or purpose.

These were not easements dashed off as an afterthought. The grantor went to the expense of creating “Deeds of Easement.” These are indentures, executed with all the formality of a deed and subsequently recorded in the official records of the county. As noted, they were expressly non-exclusive and assignable and expressly perpetual. As presented and argued by Appellant, they served an obvious commercial, long-term purpose.

The Easements were not needed or ever used by Appellee for any of the purposes recited in the documents. Appellee owned a fully-developed, residential building with all necessary utilities. It had no need for a utility easement. It had direct access to the public road on which it was located.

If not used as intended by the Appellant, the easements found by the trial court have no use. Appellee has not addressed this inevitable, peculiar conclusion and has not even suggested a use to which these easements could be put. Under Appellee's strained interpretation, they are nullities. A result clearly never intended by the developer of these related properties.

2. APPELLEE'S CASE LAW IS INAPPOSITE, INVOLVING FACTS UNRELATED TO THE FACTS HERE.

Many of the cases addressed by the Appellee as to the nature of the easements focus on their scope, which is not at issue here.⁷ The cases relied upon to support their argument that the easements are in gross, rather than appurtenant, are factually distinct and are necessarily supportive of Appellant's position here.

Division of Administration, *Dept. of Transp. v. Ely*, 351 So. 2d 66 (Fla. 3rd DCA 1977), *Dunes of Seagrove Owners Ass'n, Inc.*, 180 So. 3rd 1209 (Fla. 1st DCA 2015), *North Dade Water Co. v. Florida Turnpike Authority*, 114 So. 2d 458 (Fla. 3rd DCA 1959) and *City of Orlando, supra*, present stark factual contrasts to the instant case.

⁷ See, for example, the extensive discussion of *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127 (Fla. 5th DCA 2005) Answer Brief, P. 15-18.

They all involve activities to be performed by the grantee on the property on which the easement was granted, the Servient Estate. They did not involve a use of one parcel of property for the benefit of another parcel, as here. In contrast to the trial court's finding here that the PAJ parcel was a dominant estate, in these cases there was no dominant estate. In contrast to the trial court's finding here that the Easements here were utilities easements for the benefit of the adjacent PAJ property, the estate benefitting in Appellee's cases was the estate for which and on which the services were being provided.

3. APPELLEE MISCONSTRUES THE STANDARD OF REVIEW

Appellee correctly identifies but misconstrues the standard of review. Appellee moved the Trial Court for a "directed verdict" at the close of Appellant's presentation of evidence at the non-jury trial. A "directed verdict" does not exist in a non-jury context. The Trial Court nevertheless granted the motion and entered a "directed verdict," which was necessarily an involuntary dismissal pursuant to Rule 1.420(b). [A. 296: 8-9]

A trial court can neither weigh the evidence nor consider credibility of the witnesses when ruling on a motion for involuntary dismissal. Instead, the trial court must determine whether the

nonmoving party established a prima facie entitlement to relief. See *Fla. R. Civ. P. 1.420(b); HSBC Bank USA v. Fla. Kalanit 770 LLC*, 299 So. 3d 450, 452 (Fla. 3d DCA 2020) (“[I]t is firmly established in Florida that a defendant’s motion for involuntary dismissal must be denied if the plaintiff has presented competent substantial evidence (even if conflicting) that establishes a prima facie case when considered in a light most favorable to the plaintiff.”).

On appeal, the standard of review for an involuntary dismissal under Rule 1.420(b) is *de novo*, as Appellee correctly identified. But when an appellate court reviews the grant of a motion for involuntary dismissal, it must view all inferences of fact in a light most favorable to the nonmoving party (here, Appellant). See *Fla. Kalanit 770 LLC*, 299 So. 3d at 452; *Deutsche Bank Nat’l Tr. Co. v. De Brito*, 235 So. 3d 972, 974 (Fla. 3d DCA 2017) (“other standard of review of an order granting an involuntary dismissal is *de novo*, viewing all of the evidence presented and all available inferences from that evidence in the light most favorable to the non-moving party.”).

The applicable standard of review on appeal of a trial court’s ruling at a bench trial on a motion for involuntary dismissal is the

same as the test used by a trial court in ruling on a directed verdict at a jury trial; a directed verdict should be affirmed when there is absolutely no reasonable evidence upon which the trier of fact could have legally predicated a judgment in favor of the non-moving party. *See Tylinski vs. Klein Auto, Inc.*, 90 So. 3d 870, 873 (Fla. 3d DCA 2012).

Here, viewing all inferences in the factual record in a light most favorable to Appellant, and especially considering the presumption under Florida law favoring easements appurtenant over easements in gross, the only proper view of the evidence that makes any logical sense is that Mr. Mezey intended to create easements appurtenant for the benefit of future development of the estate now owned by Appellant. Appellant established a prima facie entitlement to relief, and the Trial Court erred when it granted involuntary dismissal.

CONCLUSION

Appellant respectfully requests that this Court remand the case to the Trial Court with directions to vacate its order granting a directed verdict in favor of the Appellee. Because the evidence below clearly establishes that the easements at issue are easements

appurtenant, the Trial Court should be further directed to grant the declaratory relief sought by the Appellant in Count I of the Amended Complaint and the injunctive relief sought by the Appellant in Count II of the Amended Complaint.

Dated: April 22, 2024

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CERTIFICATE OF SERVICE

I HEREBY certify that on April 22, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court through the Florida E-Filing Portal System, which will serve a copy of same on all counsel of record.

/s/ Alvin B. Davis
Alvin B Davis

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY certify that this Reply Brief was prepared in Bookman Old Style 14-point, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

/s/ Alvin B. Davis
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