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.

INITIAL BRIEF OF APPELLANT

Alvin B. Davis, Esq.
Florida Bar No. 218073
SQUIRE PATTON BOGGS(US) LLP
Suite 3400
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305.577.2835
Email: alvin.davis@squirepb.com

John B. Rosenquest IV, Esq.
Florida Bar No. 48431
ROSENQUEST LAW FIRM, P.A.
Suite 114
8325 NE 2nd Avenue
Miami, Florida 33138
Telephone: 305.607.5115
Email: jay@rosenquestlawfirm.com

Counsel for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Frederick Mezey was a real estate developer in Miami-Dade County. At the times relevant to this dispute, Mr. Mezey owned, directly or through companies he controlled, the land now owned by the Appellant, PAJ Investment Group, LLC ("PAJ"). Mr. Mezey owned, directly or through companies he controlled, the land now owned by the Appellee, El Lago N.W. 7th Condominium Association, Inc. ("El Lago"). Mr. Mezey owned directly or through companies he controlled, several other parcels in the immediate area. He owned or controlled Tamiami Sports, Inc. ("Tamiami Sports"), the original grantee of the easements, as well.

In January of 1980, American Properties, a company controlled by Mr. Mezey, granted two essentially identical easements along the east and west sides of the El Lago property to Tamiami Sports. Among other things, the easements expressly stated that they were "perpetual", "for the purpose of ingress and egress", assignable and not exclusive. With Mr. Mezey's extensive property ownership in the area in mind, the easements also granted "full rights of ingress and egress over…the other lands of the Grantor to and from said right-of-way easement…." The easements began at NW 7th Street and ended

at the southern border of the PAJ parcel, which was directly north of the El Lago property. The easements provided the only means of access to the PAJ property.

Mr. Mezey was the developer of the El Lago condominium. El Lago acquired its property in 1981, expressly subject to the recorded easements. The easements are referenced in the legal description of the El Lago property, in its Declaration of Condominium and are shown on the survey. PAJ acquired title to its property in 2002 after confirming it benefited from the recorded easements. Although the property was largely submerged at the time of acquisition, as a result of Miami International Airport construction, it has always been zoned for residential development. PAJ obtained the necessary permits and approvals to develop the property accordingly.

For well over a decade PAJ's representatives and agents utilized the easements, with El Lago's direct knowledge, for ingress and egress to and from PAJ's property. When PAJ's plans for development began to mature, which development would have some impact on views from the El Lago building and on some parking spaces within the PAJ easements, El Lago reversed course and purported to no

longer recognize PAJ's easement rights. This dispute over the nature of the easements followed.

STANDARD OF REVIEW

The standard of review on appeal of a trial court's ruling on a motion for directed verdict is *de novo. Fell v. Carlin,* 6 So. 3d 119 (Fla. 2d DCA 2009); *Meruelo v. The Mark Andrew of the Palm Beaches,* 12 So. 3d 247 (Fla. 4th DCA 2009).

ISSUES ON APPEAL

1. The trial court failed to meet the standard for granting a directed verdict.

2. The trial court failed to analyze the easements as a whole and to give reasonable meaning to all the provisions of the easements in erroneously determining that they were easements in gross.

3. The trial court failed to examine the surrounding circumstances at the time the easements were granted in order to determine that the intent of the parties was to create easements appurtenant.

4. The trial court failed to adhere to the presumption under Florida law that the easements are easements appurtenant.

STATEMENT OF THE CASE

On June 23, 2022, PAJ filed its initial Complaint in this matter. PAJ sought a declaratory judgment as to the validity of two easements appurtenant that benefit the PAJ property and run across the outside edges of the El Lago property, injunctive relief to prevent interference with access to those easements, and related damages. By the time of the non-jury trial at issue in this appeal, only Count I for declaratory judgment and Count II for injunctive relief remained for adjudication.

On August 11, 2022, PAJ filed its Emergency Verified Motion for Preliminary Injunction, seeking to enjoin El Lago from interfering with PAJ's right-of-way access and its right of ingress/egress to the PAJ property pursuant to its rights under the easements appurtenant.

On August 12, 2022, having heard arguments of counsel, having reviewed the record and being fully advised in the premises, the trial court entered an Order Granting Preliminary Injunction in favor of PAJ. It included the following findings of fact. [R-119-126]

a. PAJ's parcel of land is the "Dominant Estate."

b. The Easements - by their express terms - provide a "perpetual"; "right of way" and ingress/egress access to the Dominant Estate. They also permit Plaintiff to "provide utilities to serve the Dominant Estate."

c. For decades, Defendants did not object to Plaintiff's rights pursuant to the Easements, which were explicitly acknowledged by the Association.

d. Only after the Plaintiff entered into a contract to sell the Dominant Estate did the Association make clear that it would no longer accept or recognize the enforceability of the easements.

e. There is no other access to the Dominant Estate.

The trial court's Order concluded, as a matter of law, that the easements are easements appurtenant, they run with the land, and they bind El Lago as holder of the "Servient Estate." [R. 119-126][1]

On August 17th, 2022, there was an evidentiary hearing on PAJ's Motion for Temporary Injunction. El Lago sought to challenge the ownership of the easements and whether they had been somehow extinguished. During that hearing the trial court commented that an

[1] Citations to the Record on Appeal will be denoted "R", followed by the cited page numbers. Citations to the Appendix will be denoted "A", followed by the Tab and Page Numbers. When the Record on Appeal has been supplemented to include documents in the Appendix, an amended Initial Brief will be submitted containing references only to the Record on Appeal.

easement was here… "because they [Mr. Mezey, as owner of the Dominant Estate] wanted to be able to get to the property. "Why else would it be there." [A. Tab 1, 14:13-16] She further noted that the easements "are perpetual…." The trial court did express concern that the planned development was going "to ruin [El Lago's] view." She added, "I think these easements are perpetual. It's just what can you do with this easement." [A. Tab 1, 14:13-16; A.38:12-14; A.44:10-11; A.43:17-18]

On September 14, 2022, the trial court entered an order continuing the injunction in place, but temporarily limiting the use to which the easements could be put. PAJ was precluded from "moving forward with heavy equipment, fill and development." Access to the easements was otherwise permitted. The trial court's earlier findings of fact and conclusions of law were never vacated.

On August 29th, 2022, PAJ filed a four-count Amended Complaint for declaratory judgment, injunctive relief and damages.

On November 14, 2022, El Lago filed its Answer and Affirmative Defenses.

On February 9, 2023, El Lago filed a single-count counterclaim for injunction.

On the same day, PAJ filed its Answer and Affirmative Defenses to the counterclaim.

On October 18, 2023, the trial court conducted a non-jury trial on the remaining counts of PAJ's claim: Count I for Declaratory Relief and Count II for Injunctive Relief.

At the close of PAJ's case, consisting of the testimony of its designated witness, the testimony of its expert and the submission into evidence of numerous exhibits, El Lago, without offering any evidence or putting on a case itself, moved for entry of a directed verdict. Without articulating its reasons, the trial court announced: "I'm granting the directed verdict." [A. Tab 2, 296:11-12] When asked for an explanation, the trial court advised that the basis was: "For all the reasons stated on the record." [*Id.* At 15-16]

However, in additional remarks at the conclusion of the trial, the trial court did actually identify the factors upon which the ruling was based. Noting PAJ's plans to build on the PAJ parcel and the necessary use it would make of its easements for access and ingress and egress, the court announced that the easements were not intended to make roads. They were not intended to take away parking spots. [*Id.* 297:4-8]

More to the very essence of the ruling the court, referring to the condominium owners present in the courtroom, recited that "…they live here and this is disrupting their life. And they've lived here for a very long time and these are members of the community. You need to – you can't just go in and say, ['W]e're going to just bulldoze everything, we're just going to make it a road for ourselves and all that.'" [*Id.* at: 11-17]

Immediately following this statement and providing final clarity, the trial court stated that "for all those reasons, I'm directing a verdict." [*Id.* 297:19-20] The court then acknowledged, "I may be wrong on the law.... I just think that I'm making the right decision for these people." [*Id.* At 20-24] The court concluded it's ruling with a suggestion at odds with the decision: "Maybe you can work something out where you're going to be able to use the easement, you know, temporarily or something, but that's my ruling." [*Id.* 298:1-3]

On November 2, 2023, the trial court entered an order granting a directed verdict, prepared and submitted by El Lago's counsel. The trial court signed the Order as submitted. [R. 2205-2210]

STATEMENT OF FACTS

1. Frederick Mezey was a real estate developer in Miami-Dade County at the time the easements at issue were granted. [A. Tab 2, 168:6-9]

2. Mr. Mezey owned and controlled American Properties LTD, the grantor of the easements, at the time the easements were granted. [A. Tab 2, 167:23; 168:1; 186:12-21; 240:20-23]

3. Mr. Mezey owned or controlled the Dominant Estate, now the PAJ property, at the time the easements were granted.[2] [R. 119-126]

4. Mr. Mezey owned or controlled the property on which the easements are located, now the El Lago property, the Servient Estate, at the time the easements were granted. [A. Tab 2, 187:21-188:6; 211:1-10 and A. Tab 6]

5. The easements are fifty-feet and fifty-two-feet wide and travel north-south over the eastern-most and western-most portions of the El Lago property. [A. Tab 6]

[2] *See* A. Tab 6, 451, the Dominant Estate is designated as "LAKE" at the top of the diagram.

6. Each easement identifies itself as an "indenture" and was executed by Mr. Mezey with the formalities of a deed and subsequently recorded.

7. The easements, by their terms, are perpetual. [A. Tab 3, Tab 4, R. 119-126]

8. The easements, by their terms, grant rights-of-way over the Servient Estate. [A. Tab 3, Tab 4]

9. The easements, by their terms, grant the rights of ingress and egress over the Servient Estate. [A. Tab 3, Tab 4]

10. The easements, by their terms, are assignable. The grant is to the Grantee, its successors and assigns. [A. Tab 3, Tab 4]

11. The easements do not reserve for the Grantor the unilateral right to terminate them or any other limitation of their term.

12. The easements, by their terms, are non-exclusive. The rights to use the easements were not exclusively conferred on the Grantee, but also to its successors and assigns, agents and representatives and remained with the Grantor and its successors.

13. The easements, by their terms, grant "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. Tab 3, Tab 4]

14. The easements, by their terms, permit PAJ to use the Servient Estate to provide utilities to serve the Dominant Estate. [R. 119-126]

15. The easements run from NW 7th Street to the southern border of the Dominant Estate. [A. Tab 6]

16. The easements provide the only means of access to the Dominant Estate. [R. 119-126]

17. The Dominant Estate is zoned for residential development. PAJ obtained the necessary permits and approvals, including a permit to fill and build upon the submerged land. [A. Tab2, 249-251]

18. Following its use of the easements, the easements require the holder of the Dominant Estate to remove the vehicles, equipment and tools used from the Servient Estate and to cause the lands to be left in good and proper condition. [A. Tab 3, Tab 4]

19. El Lago acquired its property in 1981. The property as acquired by the Condominium Association was expressly subject to the easements. [T. Tab 5, 399-400] The easements were executed with all necessary formalities of law for a deed and were recorded in

the Public Records. They are included in El Lago's Declaration of Condominium, the legal description of the El Lago property and in its survey. Since the formation of the El Lago Condominium, all unit owners purchased their units expressly subject to the easements.

20. Significantly, for purposes of future development in the area, the El Lago property was also subject to: "(a) Riparian rights and the title to any filled-in lands…" [A. Tab 5, 399] This could only be a reference to the PAJ parcel, which was under water at the time and which would be filled in in order to be developed as permitted by the zoning code.

21. PAJ acquired the Dominant Estate in 2002, with plans for residential development, using the recorded easements for their stated purposes: ingress and egress "right-of-way,' vehicular access and to provide utilities for the benefit of the PAJ parcel. [A., Tab 2, 236:1-6]

22. Thereafter, PAJ's representatives and agents utilized the easements for more than a decade to access the PAJ property, with the knowledge and acquiescence of El Lago. [A. Tab 2, 252:16-25 - 253:1-12]

23. As a gate had been erected by El Lago at the NW 7th Street entrance to the easements, El Lago, recognizing PAJ's easement rights, furnished PAJ with a device that controlled the gate so that PAJ could have access to its easements. [A. Tab 2, 253:2-12]

24. When PAJ's development plans matured to the point of a possible sale of the Dominant Estate in 2022, El Lago refused to further honor the easements. [A. Tab 2, 253:16-254:5]

SUMMARY OF THE ARGUMENT

I. THE TRIAL COURT FAILED TO MEET THE STANDARD FOR A DIRECTED VERDICT.

The standard for directing a verdict is stringent. It required the trial court to find that no proper view of the evidence could sustain the conclusion that the easements at issue were easements appurtenant. That standard could not be - and was not - met here.

A. The Facts in the Record, Including Those Found by the Court, Support the Existence of Easements Appurtenant.

The wholly unrebutted facts in this record demonstrate that a well-known real estate developer in Miami-Dade County assembled several adjacent parcels of property, including those directly involved in this dispute. Through various entities he provided for perpetual, non-exclusive easements that would allow essential, required access to one of his parcels, the Dominant Estate, through another of his properties, the Servient Estate, as well as to his other properties. When the Servient Estate was conveyed to El Lago, the transfer was expressly made subject to the easements. When PAJ acquired its parcel it also obtained the right to enforce the recorded easements appurtenant as a matter of settled Florida law. Its property was otherwise inaccessible.

B. All Reasonable Inferences Support the Existence of Easements Appurtenant.

Because of his common, simultaneous ownership of the PAJ parcel and the El Lago parcel and because the only means of access to the PAJ parcel was through the El Lago parcel, it is only reasonable to infer that the easements at issue here were created to allow access to the PAJ parcel for purposes of development, without which it would have essentially no value. As the trial court itself commented, "Why else would [the easements] be there." [A. Tab 1, 14:13-16]

C. El Lago Admitted All Facts in Evidence and Every Conclusion Favorable to PAJ.

Only PAJ offered testimony and evidence at the non-jury trial of this matter. When PAJ concluded its presentation of evidence, El Lago offered no responsive evidence of any kind. It moved for a directed verdict. Because of the ample record facts supporting PAJ's position and the favorable conclusions that could be drawn from that evidence, all of which were admitted by El Lago, as a matter of law, there was no possible basis for a directed verdict.

II. THE EASEMENTS AT ISSUE ARE EASEMENTS APPURTENANT

A. Reviewed as a Whole and Giving Reasonable Meaning to All Provisions, the Easements are Easements Appurtenant.

Easement indentures are to be read, as contracts are read, giving a reasonable meaning to all provisions, not leaving some part useless or inexplicable. The language employed in these easements establishes that they are easements appurtenant and not utilities easements or easements in gross, as the trial court ruled. They provide the holder of the Dominant Estate with access to its property using a "right-of-way" through the Servient Estate. A "right-of-way" is "a right of passage over the land of another." *Miami Beach v. Carner,* 579 So. 2d 248, 253 (Fla. 3d DCA 1991)

The rights-of-way are fifty and fifty-two feet wide, far wider than required for a utilities easement and wide enough for four lanes of vehicular traffic over each. The easements are for purposes of ingress and egress and "other purposes hereinafter set forth". The use is several times recited to be "perpetual."

The easements begin at NW 7th Street and end at the PAJ property line. Those very specific boundaries, not required for a

utilities easement, but allowing for access to NW 7th Street from the PAJ property, demonstrate the purpose of the easements as rights of way.

Importantly, the rights granted are to the grantee and to its successors and assigns, agents and representatives. The rights conferred are not exclusive or limited to the original grantee. Perhaps most significantly for interpretive purposes, the easements grant "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…" (emphasis added).

Although the easements do provide for use for utilities, among many other rights, the trial court's insupportably narrow reading of the easements as "utilities easements" leaves all the other multiple rights and the scope granted, as cited above, "useless" or inexplicable. The trial court erred by ignoring the plain, whole reading of the documents. These provisions clearly identify rights that benefit an appurtenant estate and therefore the easements are appurtenant.

B. It Was the Duty of the Court to Ascertain and Give Effect to the Intentions of the Parties.

The clear language of the easements, read as a whole, established their practical and permanent purpose, to allow for a means of access to the PAJ property and for ingress to and egress from Mr. Mezey's other adjacent properties. The trial court clearly understood that purpose when it found that the PAJ property was the "Dominant Estate," which only has meaning in the context of an easement appurtenant. The trial court confirmed this view when it explained that the easements could have no other purpose than for access to the Dominant Estate.

At the close of the non-jury trial, the trial court, without vacating any of its earlier findings of fact or conclusions of law, and without any evidentiary presentation by El Lago, narrowed the easements to utilities easements in gross. This determination of a singular purpose, which demonstrably conflicts with several earlier determinations by this same trial court, reflects an ambiguity in the language of the easements. Additionally, although not required, the trial court may have found ambiguous the lack of specific reference to the Dominant Estate in the easements' texts, directly or by metes

and bounds. The Grantee did not even own property at the time of the grant, which also contributed to some uncertainty as to the nature of the easements.

Under black letter Florida law, when faced with an ambiguous easement, the trial court was obligated to consider the situation of the properties and the parties and to examine the surrounding circumstances at the time of the grant in 1980. It was also to give consideration to the conduct of the parties in determining intent.

This the trial court failed to do, which requires reversal. Given Mr. Mezey's role in accumulating the properties around this location, the need for, but the lack of, direct access from NW 7th Street to the PAJ property, the "perpetual" nature of the easements, their assignability, their non-exclusivity, their use for access to other Mezey-controlled properties, the width of the easements, the fact that there are two easements, the lack of any need for a utilities easement by El Lago, and the reality that the only use of the easements, as easements, from the time of the grant until the time this dispute arose was by PAJ for access to its property, these can only be easements appurtenant.

C. The Actual Use of the Easements Establishes They Are Appurtenant.

From the time of its purchase of its parcel, PAJ utilized the easements for ingress to and egress from its parcel. As El Lago had placed a gate at the entrance to the easement, El Lago, in recognition of PAJ's easements, provided an access device to PAJ to allow continued access. There is no better way to construe the language of the easements than to examine their usage and enjoyment for a number of years. They were used as easements appurtenant.

D. The Trial Court Erred by Failing to Presume the Easements are Easements Appurtenant.

There are multiple ways for easements to be created. There are multiple purposes for which easements are created. There are multiple ways for easements to be described. In characterizing the nature of an easement, easements in gross are not favored by the courts of Florida. An easement will never be presumed as personal when it may fairly be construed as appurtenant to a benefitting estate.

Given the surrounding circumstances at the time these easements were granted, they must be presumed to be appurtenant. Characterizing them as in gross leaves them with no purpose.

E. The Cases Relied Upon by the Trial Court Provide No Support for the Court's Ruling

Four cases not referenced during the hearing were inserted into the draft order simply because they included the words "right-of-way" and, in two instances, "ingress and egress." They are demonstrably distinguishable and of no assistance to this Court.

Although the easements in those cases were found to be in gross, the nature of the easement was not in dispute in any of those cases. More importantly, the facts in those cases bear no resemblance whatsoever to the facts in the instant case. In three of the cases, the utility services at issue were provided on and for the benefit of lands subject to the easements. In the fourth case, the easement was to allow for the construction of a transmission line spanning three counties.

A cursory reading of these cases demonstrates that they provide no support for the ruling below.

ARGUMENT

I. THE TRIAL COURT FAILED TO MEET THE STANDARD FOR A DIRECTED VERDICT

A. The Facts in the Record, Including Those Found by the Court, Demonstrate the Existence of Easements Appurtenant.

An easement is classified as either "appurtenant" or "in gross" in reference to whether the easement rights conferred are for the benefit of realty (appurtenant) or a person (in gross). *See J.C. Vereen & Sons v. Houser, 1*67 So. 45, 47, (Fla. 1936); *see also Hayslip v. U.S. Home Corp.,* 336 So. 3d 207, 209 (Fla. 2022) (distinguishing between "real covenants that run with the land" (easements appurtenant) and "personal covenants which only bind the covenanting parties personally" (easements in gross)).

An easement is appurtenant if the right it represents is attached to realty (the servient estate) and accompanies (or is "appurtenant" to) some superior right for a dominant estate. If an easement exists for the benefit of a particular piece of land, it is appurtenant. *N. Dade Water Co. v. Fla. State Turnpike Auth., 1*14 So. 2d 458 (Fla. 3d DC A 1959), appeal dismissed 120 So. 2d 620 (Fla. 1960). "An appurtenant easement is a permanent easement running with the land and passes as to incident to it." *SHM Cape Harbour LLC v. Realmark Meta LLC,*

*3*35 So. 3d 754, 759 (Fla. 2nd 2022) (internal quotations omitted) (holding an easement as appurtenant when its benefit inured to successors of the dominant estate); *Behm v. Saeli, 5*60 So. 2d 432 (holding an easement was appurtenant "since it was created to benefit the owners of the dominant estate").

The easements at issue reflect they are "indentures" and they were executed with all the formalities of a deed, which indicates they are easements appurtenant. *See Devino v. 2436 East Las Olas, LLC, 3*06 So. 3d 118, 120 (Fla. 4th DCA 2020). An "indenture" is an obligation affecting land, which suggests and easement appurtenant. *Id.*, *see also* Fla. Stat. § 689.02 (form of warranty deed, which begins with ["T]his indenture")

1. The Pertinent Record Facts

The trial court's Order on Defendant's Motion for Directed Verdict (the "Motion") correctly recites the standards for granting a directed verdict. It does nothing more. It does not demonstrate how that standard applies to the undisputed facts in this record. Given the standard articulated by the trial court, in light of the undisputed facts in this record and the presumption under Florida law that an

easement is appurtenant, it was wholly inappropriate and an error of law to grant the Motion.

These essential facts were never disputed.

- At the time the easements were granted in 1980, which is the time at which they must be examined, the PAJ property, the El Lago property and the grantee of the easements were all entities owned and controlled by Frederick Mezey, a Miami-Dade real estate developer. [A. Tab 2, 187:21-188:6; 241:1-10]
- Mr. Mezey or entities he controlled owned other parcels in this same area. [A. Tab 2, 167-8, 186-7]
- The easements are "indentures" and were executed with the formalities of a deed and recorded.
- The easements granted "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. Tab 3, Tab 4]
- The easements began at NW 7th Street and proceeded north, ending at the border between the El Lago parcel on the south and the PAJ parcel on the north. [A. Tab 6]

- As found by the trial court, the easements were the only means of access to the PAJ parcel. [R. 119-26]
- The trial court determined that the PAJ parcel was a Dominant Estate. [*Id.*].
- The Dominant Estate was and remains zoned for residential development.
- El Lago made no use of the easements for utilities.
- For more than a decade, PAJ used the easements for ingress to and egress from the Dominant Estate, without interference by El Lago. [A. Tab 2, 252:16 - 253:1-12]
- Having placed a gate at the entrance to the easements, El Lago provided a device which permitted PAJ continued access to and use of the easements. [*Id.* 253:2-12]
- The easements granted rights to the nominal grantee and its successors and assigns, agents and representatives.
- The grantor reserved its right to also use the easements.

- The easements were fully assignable. [A. Tab 3, Tab 4]
- Each right granted in the easements would benefit the Dominant Estate.
- The easements were perpetual. [A. Tab 3, Tab 4]
- The easements were right-of-way easements for access. [*Id.]*
- The easements were for ingress and egress. [*Id.*]
- At fifty and fifty-two feet wide, the easements were substantially wider than would have been required if they were merely utilities easements. Each was wide enough to accommodate four lanes of vehicular traffic.
- The court found that the utilities referenced in the easements were to serve the Dominant Estate. [R. 119-126]
- The easements provided for significant construction efforts on the Servient Estate. [A. Tab 3, Tab 4]
- The easements were granted prior to El Lago's ownership of its parcel, which was expressly subject to these easements. [A. Tab 5:399-400]

2. These Facts, Viewed Through the Prism of Florida's Standard for Directed Verdicts and Florida Law's Presumption that Easements are Appurtenant, Bars a Direct Verdict Here

The position of PAJ in this dispute is that the easements at issue are easements appurtenant and that it is permitted to utilize them for all the purposes delineated. The test to have been employed by the trial court, as found in the cases cited by the trial court itself, is whether a proper view of the evidence listed in detail above, and extracted from the record of this case, could possibly sustain that position. *Cook v. Estate of Mills,* 374 So. 2d 599 (Fla. 3d DCA 1979).

A motion for directed verdict tests the legal sufficiency of the evidence. *Tiny's Liquors, Inc. v. Davis,* 353 So. 2d 168 (Fla. 3d DCA 1977.) The motion must be viewed as one that admits the truth of all the facts in evidence. *Moisan v. Frank K. Kriz, Jr. M.D.*, 531 So. 2d 398) Fla. 2d DCA 1988) Put another way, to the same effect, if from the exhaustive list of facts in this record cited above, there is any evidence to support a verdict in favor of PAJ, a directed verdict is improper. *Community Christian Center Ministries v. Plante,* 719 So. 2d 368 (Fla. 4th DCA 1998). *Bourgeois v. Dade County,* 99 So. 2d 575 (Fla. 1956) (directed verdict can be granted only when no proper view

of the evidence could possibly sustain the position of the party against whom it is directed.) *Lester's Diner II, Inc. v. Gilliam,* 788 So. 2d 283 (Fla. 4th DCA 2000)

Here there is not merely "any" evidence, there is overwhelming evidence and a presumption under Florida law that the easements are appurtenant. Fairly viewed, it does not appear reasonable that this evidence could sustain any other position. At issue are adjacent parcels of property, owned and controlled by the same individual, a real estate developer, when he created the easements. They were granted to, and assignable by, another entity controlled by the developer. Access to the northern parcel, the Dominant Estate, was only possible through the southern parcel, the Servient Estate. The easements would permit that access and access to other parcels owned by the grantor. The easements granted an array of permissible uses, all of which would be essential to any development of the northern parcel. The easements were perpetual, which would be required for any development to be accessible to residents. They were not exclusive. To the extent that the easements provided for utilities, the utilities contemplated, as found by the trial court itself, were intended to serve the northern parcel, the Dominant Estate.

The facts in this record, viewed fairly, did not permit entry of a directed verdict.

B. All Reasonable Inferences Support the Existence of Easements Appurtenant

A motion for directed verdict admits every reasonable inference that can be drawn from the facts in evidence. A directed verdict is only proper when all inferences from the evidence, considered in the light most favorable to the non-moving party, support the movant's case as a matter of law. *Wald v. Grainger,* 64 So. 3d 1201 (Fla. 2011); *Stringer v. Katzell,* 674 So. 2d 193 (Fla. 4th DCA 1996); *Demchak v. Davia,* 89 So. 3d 253 (Fla. 3d DCA 2012); *Bourgeios, supra.*

It is reasonable to infer that a Miami-Dade real estate developer acquired the two parcels addressed here and additional nearby parcels for purposes of development. The "lake" involved here was not actually a lake in the customary sense, but an accumulation of water filling the open area left after the area was dredged for fill for use in nearby construction projects. What is important about the "lake" is that it was on property zoned for residential development.

Accordingly, it is reasonable to infer that the easements at issue here were granted in order to make it possible to have access to

parcels intended for development, including the two at issue here and the other properties of the grantor, as expressly stated in the easements. As the court itself commented, "why else would [the easement] be there." [A. Tab 1, 14:13-16] The location of the easements, beginning at the nearest public road and ending at the southern boundary of the PAJ parcel further supports the inference that they were created to serve the dominant estate and are, necessarily, appurtenant.

The fact that the easements were "perpetual" also drives the inference that long-term development was contemplated here and not some temporary or short-lived use of the easements.

The fact that the utilities referred to in the easements were found by the court to be utilities for the benefit of the Dominant Estate, confirms that the Dominant Estate was intended to be developed and that access for ingress and egress was therefore an obvious requirement.

C. The Actual Use of the Easements Establishes They Are Appurtenant.

The only evidence of the use of the easements, as easements, came from the sworn testimony of PAJ's witnesses at the non-jury

trial. The easements were utilized by PAJ's representatives, agents and experts for many years as a means of ingress to and egress from the PAJ parcel, using the easement as the expressly specified "right-of-way" to the Dominant Estate. [A. Tab 2, 252:16 - 253:1-12]

El Lago's residents were well aware of PAJ's use of the easement PAJ for this intended purpose and, in fact, facilitated it. A gate had been erected by El Lago at the entrance to the easement. El Lago provided PAJ's representatives with a device to enable them to operate the gate and gain access to the easement.

The trial court's Order characterizes the easements as "utilities" easements for the purpose of servicing the Dominant Estate. [R. 119-126] PAJ has not yet used the easement for that specific purpose, since it had not reached that stage in its development efforts. It was never used as a utilities easement by El Lago, the utilities of which were presumably all in place when the property was converted to condominium ownership. El Lago had no need for a utilities easement.

In determining the nature of an easement it is appropriate for the court to take into account the practical construction of the instrument given by the parties themselves by their conduct. *Kotick*

v. Durrant, 196 So. 802 (Fla. 1940). There is no better way of construing an easement than by its usage. *Id.*

II. THE EASEMENTS AT ISSUE ARE EASEMENTS APPURTENANT

A. Reviewed In Their Entirety and Giving Reasonable Meaning to All Provisions, the Easements are Easements Appurtenant.

The easements at issue here are detailed, comprehensive and provide for the perpetual, non-exclusive exercise of the widest possible range of uses. Accordingly, in its initial ruling, the trial court properly concluded, as a matter of law, that the easements were easements appurtenant, that run with the land. It further found that they bind the successor owners of the Servient Estate such as El Lago and are enforceable by PAJ, the holder of the Dominant Estate. [R. 119-126]

In the Order under appeal, however, the trial court has now fastened on just one element of the easements, disregarding all of the others, in determining that they were solely utilities easements, personal and exclusive to Tamiami Sports and limited in duration.

Aside from disregarding the court's own prior Order, which has never been vacated or withdrawn, it appears that in the current order

the trial court failed to give the required consideration and weight to the following essential concepts: (1) In construing easements, courts must construe them in such a way as to give reasonable meaning to all provisions rather than leaving parts of the easement useless or inexplicable. *Branscombe v. Jupiter Harbour, LLC,* 76 So. 2d 942 (Fla. 4th DCA 2011); *SHM Cape Harbour, LLC v. Realmark Meta, LLC,* 335, So. 3d 754 (Fla. 2nd DCA 2022); *PNC Bank, N.A. v. Progressive Employer Serv. II,* 55 So. 2d 655 (Fla. 4th DCA 2011). (2) If doubt exists as to its real nature, an easement is presumed to be appurtenant. (*See* Section II. D. *infra).*

The easements at issue grant numerous, perpetual rights, not merely to the original grantee but, significantly for purposes of this case, to its successors and assigns, agents and representatives. Mr. Mezey had collected a number of parcels in the area for development. He may reasonably have had in mind his own development efforts or sales of the properties to others for development. By granting perpetual easements to another company he controlled and to its successors and assigns, he was ensuring that whoever ultimately developed the Dominant Estate, would have the

essential access and be able to provide utilities as described in the easements.

The rights granted are consistent with this conclusion. The easements were characterized as right-of-way easements, and ingress and egress easements to permit access from NW 7th Street to the PAJ parcel, as the trial court itself noted. ("why else would it be there.") [A. Tab 1, 14:12-16] But with future development in this area clearly in mind, the easements were also to provide free and full rights of ingress and egress over and across "other lands of the Grantor to and from said right-of-way easement…"

The easements contemplated a range of construction-related activities on the Servient Estate pertaining to sewer lines, utility lines, surface water drainage lines, water, electric, gas and telephone facilities over, under and, again significantly, **across t**he easements. These were clearly intended for the future development of the PAJ parcel and other Mezey-controlled parcels. The rights conferred were to benefit a parcel, not a person.

By determining that the easements were "personal interests" of the original grantee, and therefore exclusive to and terminable at the will of the grantor, the trial court ignored the fact that the easements

are perpetual, non-exclusive and assignable. Nothing in the easements indicates that the grantor reserved any right to rescind them. Although the Order drafted by El Lago's counsel states that there is no Dominant Estate, the trial court itself had already determined that the PAJ property was the Dominant Estate.

Disregarding the extensive, material language in the easements detailed above, which, as a matter of Florida law, it was not permitted to do, and contrary to its own prior order and the legal presumption favoring easements appurtenant, the trial court concluded that these were solely utility easements in gross. As a functioning condominium since 1981, El Lago had to have had all of its utility services in place. There is nothing in the record to indicate that El Lago had any use for a utilities easement or that in the more than five decades since their grant, it ever utilized the easements as utility easements. Since, as the court noted, the original grantee did not own any property at the time, it also had no need for a utilities easement at the time of the grant. Thus, the effect of the trial court's current ruling is to establish an easement with no purpose whatsoever. That is, make the easements themselves "useless."

More specifically, the trial court's ruling renders "useless" major portions of the easements themselves and is wholly inconsistent with the facts, the texts of the easements and earlier rulings in the record, including facts found by the trial court itself. (See, generally, Section I. A. 1, *infra)* Including all of the easement language and all of the facts in this record in the analysis of the easements, accompanied by the legal presumption that an easement is an easement appurtenant, required that the trial court confirm its earlier factual findings and conclusions of law and determine once again that the easements are easements appurtenant.

B. It Was the Duty of the Trial Court to Ascertain and Give Effect to the Intentions of the Parties.

In August of 2022, this trial court concluded that the PAJ parcel was the Dominant Estate, that the El Lago parcel was the Servient Estate and that the easements at issue were easements appurtenant, running with the land. [R. 119-126] Following a non-jury trial in 2023, at which El Lago offered no evidence, the same trial court determined that the easements were solely utilities easements, and in gross. The prior order was never vacated, explained or even referenced in the order under appeal.

Thus, based on the facts in the record, the trial court earlier found that based on its analysis of the rights granted, the easements benefit an estate in land rather than a person. Therefore, the easements were easements appurtenant, granting right-of-way access to a Dominant Estate and providing for utilities to serve that estate. On the same facts, the trial court has now found that the easements are solely utilities easements, easements in gross, essentially serving no one.

Although the Order under appeal recites that there are no ambiguities in the easement language, there is an obvious ambiguity reflected in these directly contrary rulings.[3]

In the face of these directly conflicting rulings, based on the same easement language and the same record facts, it may fairly be concluded that at the very least the Trial Court did in fact find ambiguities in the easements that led to these disparate orders. If as the trial court found, the utilities references in the easements were to serve the Dominant Estate, the easements were, by definition,

---

[3] The record reflects that residents of El Lago were in attendance at the non-jury trial. Although no evidence was adduced by El Lago's counsel, there was discussion of the impact that development of the PAJ parcel might have on El Lago residents in both the cross-examination of the PAJ witnesses and in counsels' colloquies with the trial court. [A. Tab 2, 291:22 – 292:16, 294:11-20] It is clear from the trial court's comments when it ruled, that this impact was a significant factor, if not the controlling factor, in the court's decision. The trial court recited:

> "…it's also what [PAJ] want to do…they [PAJ] want to come in and they want to take away their parking spots…They want to make these roads…[the easement] wasn't to make a road…" [A. Tab 2, 296:23-25; 297: 5-7]

Referring to the residents: "And they've lived here for a very long time and these are members of the community." [A. Tab 2, 297:12-14]

The Trial Court concludes: "I may be wrong on the law…I just think that I'm making the right decision for these people…" [297:20; 297:23-24]

appurtenant. If, as the trial court recited, the only purpose of the easements was to provide access to the PAJ parcel, the easements had to be appurtenant.

In the face of this apparent confusion, it was the "duty of the court to ascertain and give effect to the intention of the parties..." *Kotick v. Durrant, 1*43 Fla. 386 (Fla. 1940); *American Quick Sign, Inc. v. Reinhardt,* 899 So. 2d 461 (Fla. 5th DCA 2005) (the court must attempt to fulfill the intentions of the parties who created the easement); *Walters v. McCall,* 450 So. 2d 1139 (Fla. 1st DCA 1984) (if ambiguous, the legal extent of a right must be ascertained from the intention of the parties, in light of the surrounding circumstances, at the time the easement was created.) The parties, whose intentions were to be measured, were those of the grantor and the grantee at the time of the grant. Here, Mr. Mezey filled both roles, through different entities he owned and controlled. The court was to consider the situation of the properties (adjacent to each other, the northern parcel lacking any other access) and of the parties (the same real estate developer acting through separate entities) and the surrounding factual circumstances at that time.

The situation of the properties and the parties and the surrounding circumstances in 1980 were examined in detail in Section I, *supra.* They will not be repeated here. In summary, the grantor and the grantee were owned or controlled by the same real estate developer. As were several other adjacent parcels. The easements alone would permit the full development of what is now the PAJ parcel. The easements were perpetual, non-exclusive and assignable and provided for right-of-way ingress into and egress from the PAJ parcel and other properties owned by the developer. Taken together, the property ownership, the background of the developer, the location and relationship of the parcels and the critical issue of access, all required multiple easements that would facilitate development of all of the developer's parcels, by the developer or his successors or assigns.

Conversely, the easements as now construed by the trial court serve no purpose whatsoever. If, as utilities easements in gross, they were personal to Tamiami Sports, which is directly contrary to their expressly stated permanence and assignability, they were useless when granted. Tamiami Sports owned no property as to which the easements would apply. Tamiami Sports was a placeholder with no

need for two utilities easements. Implicit in the trial court's current finding is that the grantor at the time, the developer, was content to own the PAJ property for development purposes, but without any access, which would have precluded any development.

Giving necessary, required consideration to the circumstances surrounding the creation of these easements in 1980, as delineated above, the easements at issue were clearly granted for the purpose of benefitting the PAJ parcel and other parcels controlled by the grantor at the time of the grant. They are easements appurtenant.

C. The Actual Use of the Easements Establishes They Are Appurtenant.

For more than a decade, PAJ's representatives, agents and experts utilized the easements for one of the principal purposes specified in them, for right-of-way ingress into and egress from the PAJ parcel. This use was with the knowledge and the acquiescence of El Lago and its unit owners.

El Lago even facilitated the use of the easement by PAJ. The Condominium Association had erected a fence at the entrance point of the easement for the safety of its unit owners. Acknowledging the rights of PAJ under the easements, El Lago provided PAJ with the

device necessary to allow them to open the gate. Having erected a barrier to prevent unauthorized persons from entering the property, El Lago would not have voluntarily provided access to the property to PAJ, unless PAJ had a lawful, authorized right to enter on the Servient Estate. It had such a right pursuant to the easements.

El Lago and its unit owners were aware of PAJ's rights not merely because of its exercise of those rights but because the El Lago condominium documents, signed by each unit owner, provide that the El Lago property is expressly subject to the easements at issue. [A. Tab 5, 399] The easements were granted before the development of the El Lago condominium. Rights created in this manner, cannot be altered by later enacted condominium documents. Here, of course, the Declaration of Condominium did not seek to alter the easements but indicated that they were subject to those grants.

Residents of El Lago currently use portions of the Servient Estate for parking. That use is inconsistent with the easements and Declaration of Condominium. It has not been necessary for PAJ to address this unauthorized use to date, since it has not yet interfered with PAJ's exercise of its rights under the easements. That use did not, however, create any permanent right to such use, nor did El Lago

even suggest as much as trial. The prior easement rights, identified in the condominium documents, prevail.[4]

The fact that PAJ's future use of the easements consistent with the full range of rights in the easements, might expand beyond its past use for ingress and egress does not alter the outcome here. As long as PAJ's use of the easements is consistent with the rights granted in these contracts, El Lago has no basis to seek limitations on PAJ's rights. In *Kimlow, Inc. v. Seminole Landing Ass'n,* 586 So. 2d 1290 (Fla. 4th DCA 1991) the servient tenant complained that the expanded use of a sewer line permitted by the easement was not compatible with the low density residences in the surrounding neighborhood. The court determined that the fact that the sewer line would serve more customers than the appellee thought it should was not determinative. The use of an easement within its prescribed rights, as here, cannot be limited because the dominant tenant's

---

[4] Other than references during arguments of counsel and colloquies with the trial court, there was no actual evidence presented by either party as to the ultimate use to which the easements would be put by PAJ or any assignee or successor of PAJ. Testimony at the non-jury trial established that the ultimate use to which the easements would be put had yet to be determined. The non-jury trial was limited to the nature and not the scope of the easements. [A. Tab 2, 254]

plans for its property are not to the servient tenant's liking. Yet, that appears to be precisely the basis for the trial court's ruling.

D. Under Florida Law It Is Presumed That The Easements Are Easements Appurtenant.

For all the reasons stated and facts cited above, these easements are easements appurtenant rather than easements in gross, as they were most recently construed by the trial court.[5] Beyond that, under Florida law as articulated by the Florida Supreme Court, easements in gross are not favored by the courts. An easement will never be presumed as personal, that is, in gross, when it may fairly be construed as appurtenant to some other estate. *Palm Beach County v. Cove Club Investors Ltd.,* 734 So. 2d 379 Fla. 1999), *Devino v. 2436 East Las Olas, LLC,* 306 So. 3d 118 (Fla. 4th DCA 2020) (an easement will never be construed as personal when it can be construed as appurtenant…").

Here because of the facts of Mr. Mezey's efforts to accumulate parcels, his history as a developer in Miami-Dade County, the geography of the parcels, the expansive rights conferred and the

[5] These easements were found to be appurtenant by this same court. [R. 119-126]

timing of the transactions, it is clear that the easements are appurtenant to the PAJ parcel, as the Dominant Estate, as determined by the trial court. [R. 119-126]

E. The Cases Relied Upon by the Trial Court Provide No Support for the Court's Ruling.

The Order prepared for the trial court relied on four cases in support of its conclusion that, despite the "right-of-way" and "ingress and egress" and "perpetual" and assignability and non-exclusivity language, the easements at issue are utilities easements in gross. (R.2208). Those cases provide no basis for the trial court's ruling here. The facts in those cases are not remotely similar.[6]

In *Dunes of Seagrove Owners Association, Inc. v. Dunes of Seagrove Development, Inc.,* 180 So. 3d 1209 (Fla. 1st DCA 2015) the easement permitted the grantee access to and across a beach in order to provide beach services on that very beach, the land subject to the easement itself. There was no appurtenant dominant estate in *Dunes*

---

[6] The trial court directed the verdict based on "all the reasons on the record," and suggested that El Lago, whose counsel was asked to prepare the court's order, obtain a copy of the transcript of the hearing. None of the cases found in the Order submitted by El Lago's counsel and addressed here may be found "on the record." They were not referenced in the hearing. [A. Tab 2]

that benefitted from the easement. Here, the nominal grantee never provided services to El Lago and none was intended to be provided. The *Dunes* easements were term limited. The easements at issue are perpetual. The *Dunes* easements provided access to the beach on which the services were to be provided by the vendor. The easements at issue here were found by the trial court to provide access and utilities to the PAJ parcel.

The easement in *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127 (895 So.2d 1127 (Fla. 5th DCA 2005) was a typical easement granted to an electric utility company, which had erected transmission lines through three counties. The easement allowed for a portion of those lines to be erected on and over the grantor's property. There was no dispute as to the nature of the easement. The dispute addressed an additional use that was proposed for the fiber optic wires on the facilities erected. That is, the scope of the easement. The right-of-way referenced in the *City of Orlando* easement bears no relationship to the right-of-way in the PAJ easement. It allowed for the permanent placement of large utility poles on the land owned by the grantor forever. The rights conferred served no dominant estate, but rather, all of the customers served by

the lines in question. There was no dispute as to whether the easement was appurtenant or in gross. There are no factual similarities to the dispute at issue here. There is nothing in *City of Orlando* supportive of the trial court's ruling.

The easement in *Division of Administration v. Ely,* 351 So. 2d 66 (Fla. 3d DCA 1977) was granted by a trailer park to the propane gas company that was providing liquified petroleum gas to the trailers in the park. That is, as in *Dunes,* the grantee was providing services on and to the land subject to the easement estate itself. There was no dominant estate. No such services in the easements here are contemplated on the El Lago property nor have such services ever been provided to El Lago in the decades since the grant.

Finally, in *North Dade Water Co. v. Florida State Turnpike* Authority, 114 So. 2d 458 (Fla. 3d DCA 1959), the grantee was a water company with an easement to provide water and sewer services on the land subject to the easement. There was no dispute as to the nature of the easement. It was a typical utilities easement in which the utility company was granted an easement to construct its facilities on the land which it was serving. There was no dominant estate. There is no suggestion in this record that the easement at

issue here was intended for Tamiami Sports to provide utility services to El Lago on whose land the easements run.

These four cases provide no support for the trial court's holding. They were included in the order submitted by counsel for El Lago because of the happenstance inclusions of "right-of-way" and "ingress and egress" language in the decisions. That language was merely descriptive and had no bearing on the ruling in any of the cases. These cases all involve facilities and/or services being provided on the land on which the easement was granted. Not one had a dominant estate that benefited from the rights conferred by the easement. That is indisputably not the case here.

CONCLUSION

The undisputed facts in the record below, recited in copious detail in this brief, and the reasonable, perhaps the only, inferences to be drawn from those facts, precluded the entry of a directed verdict in this matter.

Perhaps more to the point, those facts and inferences demonstrate that the easements in this dispute are clearly easements appurtenant created to ensure the productive development of all the

parcels concerned. In the words of the trial court, "why else would [they] be there."

CERTIFICATE OF SERVICE

I HEREBY certify that on February 5, 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 Initial 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
Alvin B. Davis