

**DISTRICT COURT OF APPEAL  
FIRST DISTRICT, FLORIDA**

**In re: Affirming Existence of Recreational  
Customary Use on 1,194 Private  
Properties Located in Walton County,  
Florida**

**Case No.: 1D21-3532  
L.T. No. 2018-CA-547**

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**APPELLEE/CROSS-APPELLANTS' RESPONSE TO  
COURT'S ORDER TO SHOW CAUSE AND OPPOSITION TO  
APPELLANT/CROSS-APPELLEE, WALTON COUNTY'S  
MOTION TO DISMISS CROSS-APPEALS**

Appellee/Cross-Appellants identified on the attached Exhibit "A" ("Cross-Appellants"), by and through undersigned counsel, hereby file their response to this Court's Order to Show Cause and opposition to Appellant/Cross-Appellee, Walton County's (the "County") Motion to Dismiss Cross-Appeals (the "Motion") and, in support thereof, state:

**BACKGROUND**

1. This cross-appeal arises from the County's lawsuit under Section 163.035, Florida Statutes seeking a declaratory judgment of public recreational customary use of dry sandy beach of almost the entire Walton County Gulf of Mexico beachfront, including Cross-Appellants' and over 1,100 other private beachfront properties.

2. Under Section 163.035(3)(b)2., Florida Statutes, Cross-Appellants and other beachfront property owners intervened in this case as

full party defendants. While over 500 beachfront property owners have intervened, a significant majority of them are represented by a small group of attorneys. For example, the undersigned represents 97 separate beachfront parcel owners.

3. The attorney group have established a practice of coordinating their efforts to streamline litigation, reduce the fees and costs to their clients and reduce the administrative burden on the trial court to the maximum extent possible, all in a good faith effort to secure the just, speedy and efficient and cost-effective resolution of the County's claims.

4. For example, the attorney group developed a practice of joining in each other's motions instead of filing their own similar motions to avoid duplicative filings and streamline hearings. This practice has taken place since 2019 and has not been objected to by the County or the trial court.

5. Cross-Appellants have brought four Counterclaims against the County, two of which (Counts III and IV) seek declaratory judgments that Florida's adoption of the doctrine of customary use is unconstitutional. Most of the other beachfront property owners have brought identical or very similar counterclaims against the County.

6. On May 17, 2021, a beachfront property owner, N. Henry Davis filed a Motion for Summary Judgment as to Count I of the Corrected

Amended Complaint and as to Count IV of his Counterclaims (the “Davis MSJ”). Mr. Davis’ Count IV is identical to the Cross-Appellants’ Count IV which both seek a declaratory judgment that the doctrine of customary use is unconstitutionally vague.

7. Mr. Davis’ arguments as to Count I of the Corrected Amended Complaint were specific to his beachfront property. He argued that the County could not establish that the public’s use of his beach was uninterrupted or ancient because the County had vacated and, therefore had abandoned a previously granted easement in 1978. Six beachfront property owners similarly situated to Mr. Davis joined in the Davis MSJ by filing a joinder pursuant to the attorneys’ above-referenced practice.<sup>1</sup>

8. On June 7, 2021, Cross-Appellants joined the Davis MSJ by filing the Smolker Intervenors’ Notice of Joinder (the “Joinder”). A copy of the Joinder is attached hereto as Exhibit “B.” Notably, not only did the Joinder “join in and adopt by reference” the Davis MSJ, but it also supplemented the Davis MSJ with additional argument as to Count IV of the Counterclaims. See Ex. B.

9. Consistent with its practice from the inception of this case, the County did not object to or oppose the Joinder.

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<sup>1</sup> The names of these owners are referenced on page 2 of the County’s Motion.

10. On November 4, 2021, the trial court entered its Final Judgment as to Certain Parcels (the “Final Judgment”) which, in pertinent part (1) entered judgment in favor of Davis and the other six similar situated owners and against the County on Count I of the County’s Corrected Amended Complaint; and (2) denied the motion as to Count IV of the Counterclaims, stating that “[t]his Court does not have the authority to rule that the customary use doctrine adopted by the Florida Supreme Court is unconstitutional.” A copy of the Final Judgment is attached hereto as Exhibit “C.” In addition, the Final Judgment also makes two conclusions of law that benefit and apply to the Cross-Appellants and all other defendants in the case: (1) once a customary use is interrupted, it cannot be legally revived; and (2) forty years is not sufficient in length to be deemed “ancient” and therefore cannot support the existence of customary use. Notably, the Final Judgment acknowledges that others “joined in” on the Davis MSJ as to the request that the Court to find that the doctrine of customary use is unconstitutionally vague. See Ex. C at pp. 4-5.

11. On November 18, 2021, the County filed its Notice of Appeal.

12. On December 2, 2021, Mr. Davis and the six other similarly situated beachfront property owners filed notices of cross-appeal.

13. Also on December 2, 2021, the Cross-Appellants filed their Notice of Cross-Appeal. Around this time, three other attorneys representing beachfront property owners filed notices of cross-appeal.

14. On January 25, 2021, the County filed its Motion. On January 26, 2021, this Court entered an Order to show cause why the Motion should not be granted.

### **ARGUMENT**

#### **I. The Cross-Appellants joined the Davis MSJ which was adjudicated by the Final Judgment.**

15. In its Motion, the County completely ignores that Cross-Appellants joined the Davis MSJ through their Joinder. This fact alone defeats the County's Motion.

16. The County did not object to the Joinder and, indeed, has not objected to any beachfront property owner's joinder in any other motion throughout the case.

17. Notably, the trial court has allowed this practice of joinder. In its Final Judgment, the trial court acknowledged that other parties joined in the Davis MSJ. See Ex. C at pp. 4-5. In addition, the trial court expressly stated in the Final Judgment that the six similarly situated property owners filed a joinder in the Davis MSJ.

18. As such, it is clear that the Cross-Appellants' Joinder was sufficient to join the Davis MSJ and assert the same arguments without the need to file a separate similar motion. The County has made no argument or cited any authority that the Joinder was insufficient or inadequate to assert such arguments and request such relief. Accordingly, the Cross-Appellants sought the relief in the Davis MSJ and the Final Judgment adjudicated such request for relief.

**II. Cross-Appellants are entitled to appeal the Final Judgment as a matter of law because the Final Judgment is adverse to and aggrieves them.**

19. "The general rule on appeal to review proceedings of an inferior court is that a party to the cause may appeal only from a decision in some respect adverse to him." *Credit Indus. Co. v. Remark Chem. Co.*, 67 So. 2d 540, 541 (Fla. 1953). "A party may... appeal when he is 'aggrieved by the judgment.'" *Fountain v. City of Jacksonville*, 447 So. 2d 353, 354 (Fla. 1st DCA 1984).

20. Here, Cross-Appellants, like Mr. Davis, brought Count IV against the County which seeks a declaratory judgment that the doctrine of customary use is unconstitutionally vague. The Davis MSJ sought summary judgment on Count IV and the Cross-Appellants joined that motion by filing the Joinder.

21. The Final Judgment adjudicated the Davis MSJ and made rulings with respect to Count IV. Specifically, the Final Judgment states that “[t]his Court does not have the authority to rule that the customary use doctrine adopted by the Florida Supreme Court is unconstitutional.” Thus, the Final Judgment effectively disposes of Cross-Appellants’ Count IV.

22. Moreover, the above ruling in the Final Judgment adversely impacts Cross-Appellants’ Count III which also seeks a declaratory judgment that the doctrine of customary use is unconstitutional on other grounds.

23. Thus, the Final Judgment contains rulings and conclusions of law that are adverse to and aggrieve Cross-Appellants. Therefore, the Cross-Appellants may appeal the Final Judgment. *Credit Indus.*, 67 So. 2d at 541; *Fountain*, 447 So. 2d at 354.

**III. Dismissal of the Cross-Appeals would deprive Cross-Appellants of a meaningful right to appeal.**

24. “A party who suffers an adverse judgment in circuit court has the right to appeal.” *Bondi v. Tucker*, 93 So. 3d 1106, 1108 (Fla. 1st DCA 2012); see also *Bain v. State*, 730 So. 2d 296, 298 (Fla. 2d DCA 1999) (citing Fla. Const. article V, section 4(b)(1), stating that there is a constitutional right to appeal all final orders).

25. Cross-Appellants have suffered an adverse judgment in circuit court in that the Final Judgment rendered adverse rulings as to its Counts III and IV. Therefore, Cross-Appellants have a right to appeal that judgment.

26. If the Motion is granted, Cross-Appellants will be deprived of this right of appeal and will be unable to be heard on appeal as to this issue until the end of the case. In that scenario, Cross-Appellants will be bound by whatever decision is rendered by this Court going forward without ever having been heard as to same.

27. This case has been ongoing for over three years, the parties are still in the very early stages of discovery and trial is not remotely close to being set. And given the number of parties and complexity of the case, completion of discovery and trial will likely take a significant amount of time. As such, it appears that the end of this case will not be until some time years down the road.

28. Clearly, the trial court's authority to declare the doctrine of customary use unconstitutional is a significant threshold issue in the case. This issue and Cross-Appellants' Counts III and IV could dispose of the entire case now without the need for extensive discovery and trials. Accordingly, Cross-Appellants would like to be heard on this significant issue now as

opposed to at end of the case. An appeal of this issue at that point down the road will likely not provide Cross-Appellants a meaningful appeal.

29. Moreover, the Final Judgment makes several conclusions of law that are beneficial to Cross-Appellants' and all defendants' cases against the existence of customary use on the Walton County beachfront. In the event the County collaterally attacks these conclusions, Cross-Appellants need to have the opportunity to defend against such attacks to adequately protect their rights and interests.

**IV. Denial of the Motion will not prejudice the County or result in any administrative burden on this Court as suggested by the County.**

30. The County repeatedly refers to the Cross-Appellants and other cross-appellants as the "109 Additional Cross-Appellants." It appears that the County is suggesting that denial of its Motion will result in an administrative burden on this Court given the number of cross-appellants.

31. The County's characterization of cross-appellants is misleading. The 109 cross-appellants are represented by a total of four (4) attorneys including the undersigned. As such, if the Motion is denied, there will not be 109 different parties and their attorneys filing over a 100 separate briefs and other filings as the County implies.

32. To the contrary, if the Motion is denied, Cross-Appellants intend to primarily support and coordinate with Mr. Davis and the six other similarly

situated owners and only file supplemental, non-duplicative filings. While Cross-Appellants reserve their right to assert arguments to protect their interests, the undersigned anticipates that most, if not all, of their arguments will be asserted by Mr. Davis and detailed additional briefing will be unnecessary or minimal. The undersigned anticipates that the three attorneys representing the other cross-appellants will do the same.

**V. The cases cited by the County are either distinguishable or actually support denial of the Motion.**

33. Citing *Dauer v. Freed*, the County argues that if a judgment ends litigation as to some defendants but not others, the defendants not encompassed by the judgment are not “appellees,” and may not cross-appeal. 444 So. 2d 1012, 1016. *Dauer* is distinguishable and inapplicable.

34. In *Dauer*, one plaintiff sued seven defendants who did not bring any counterclaims against the plaintiff. *Id.* at 1013. The trial court entered final judgment in favor of two of the seven defendants. *Id.* at 1014. The plaintiff appealed the final judgment and all seven defendants cross-appealed. *Id.* at 1014-15. The Third District Court of Appeal ruled that only the two defendants subject to the final judgment could file a cross-appeal as no other party was an appellee on that particular appeal. *Id.* at 1016. The Court further reasoned that the final judgment between the plaintiff and two

defendants ended the litigation between them but the litigation between plaintiff and other five defendants remained pending. *Id.*

35. Unlike this case, in *Dauer*, there was no indication that the final judgment in favor of the two defendants could have applied to, aggrieved or adversely affected the other five defendants. Here, the Final Judgment effectively disposes of one of the Cross-Appellants' counterclaims and adversely impacts another which clearly aggrieves and adversely affects the Cross-Appellants. Further, in *Dauer*, the Court based its ruling in part on the fact that the final judgment ended the litigation between the two defendants because there were no outstanding claims between them. There, the defendants did not file any counterclaims against the plaintiff. Here, almost all defendants, including Cross-Appellants, have filed identical counterclaims against the County. As such, there are still outstanding counterclaims that have been brought by Mr. Davis, the Cross-Appellants and the other cross-appellants and, therefore, the litigation has not ended between the County and any defendant. As such, *Dauer* is distinguishable.

36. The County cites no other case law other than *Credit Indus. Co.*, 67 So. 2d at 541. As stated above, this case provides that a party "may appeal only from a decision in some respect adverse to him." *Id.* The County further cites it for the proposition that "appellate review is limited to persons

‘aggrieved by the judgment’ on review” and that “an appeal... will be dismissed where there is nothing in it prejudicial to the claimed right of the appellant.” *Id.* As established above, the Final Judgment is adverse to, aggrieves and is prejudicial to Cross-Appellants. Accordingly, this case supports Cross-Appellants maintenance of the Cross-Appeals and denial of the Motion.

**WHEREFORE**, Cross-Appellants respectfully request that this Court deny the Motion.

Respectfully submitted this 7<sup>th</sup> day of February 2022.

*/s/ David Smolker*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing pleading has been furnished by electronic mail via the Florida e-Portal system's transmission of the Notice of Electronic Filing on this 7<sup>th</sup> day of February 2022, to all parties on the service list in the Florida E-Portal for this instant action.

*/s/ David Smolker*

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David Smolker

**EXHIBIT A**

<b><u>Defendant</u></b>	<b><u>Beachfront Parcel Identification No.:</u></b>
Addison Drummond Paul and Melissa Parker Paul	24-3S-19-25480-000-0020
Addison Drummond Paul and Melissa Parker Paul, as owners of Lot 2 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
Andrew Christopher Deaton and Kandi Kailynn Deaton	24-3S-19-25120-000-0304
Andrew Colden Florance	35-3S-18-16020-00A-0140
Ashley M. Crosier	24-3S-19-25170-000-0070
Beachcrest Condominium Owners' Association, Inc.	23-3S-19-25080-AAA-AAAA
Beachside Condominium Owners' Association, Inc.	23-3S-19-25011-AAA-AAAA
Bobby L. Burgner and Carrey L. Burgner	12-3S-20-34631-00B-0210
Branch Ranch Minerals, LLC, as owner of Unit 810 in Grand Dunes with an undivided ownership interest in the Grand Dunes Common area beachfront parcel	33-2S-21-42250-AAA-AAAA
Burton Towry and Suzanne Towry and John O. Phillips and Claire Phillips, as owners of Apartment No. B-6 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
Capistrano Condominium Owners' Association, Inc.	27-3S-18-16400-AAA-AAAA
Carlin Homes, LLC, as owner of Lot 23 at Shipwatch with an easement right to use and enjoy the Shipwatch common area beachfront parcel	33-2S-21-42600-000-00C0
Charlton P. Hunt and Dora L. Hunt as owners of Unit 12 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel	23-3S-19-25011-AAA-AAAA
Coastal Beach Holdings, LLC	12-3S-20-34631-00B-0200
Craig Fleming, as owner of Units A and B in the Crosswinds Condominium with an undivided ownership interest in the Crosswinds common area beachfront parcel	27-3S-18-16620-00A-0000
Crosswinds Condominium Association of Panama City Beach, Inc.	27-3S-18-16620-00A-0000
Daniel W. Basse and Jean Basse	35-3S-18-16020-00A-0090

**EXHIBIT A**

Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011, as owner of Lot 4 who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-0040
Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011	24-3S-19-25480-000-0040
David F. Radlmann as Trustee of the 457 W. Park Place Revocable Trust Agreement dated May 25, 2019	36-3S-18-16100-000-1922
Debbie A. Koerner as Trustee of the Debbie A. Koerner Living Trust dated January 4, 1993	12-3S-20-3461-00B-0220
DRA Investments, LLC as owner of Apartment No. 203 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel	27-3S-18-16400-AAA-AAAA
Edwin Johnston, Jr. and Nan V. Johnston, as owners of Unit 801 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel	23-3S-19-25080-AAA-AAAA
Elizabeth M. Schwarting and Larry D. Schwarting, as owners of Lot 3 in Block B at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel	12-3S-20-34631-AAA-AAAA
Emerald Surf Villas Condominium Owners' Association, Inc.	24-3S-19-25445-000-00A0
Eugene J. Sullivan and Judith A. Sullivan, Co-Trustees of the Eugene and Judith Sullivan Living Trust	24-3S-19-25400-000-0010
Frazer Holdings, L.P.	24-3S-19-25170-000-0100 24-3S-19-25430-000-0070
George Sertl, Jr. and Alayne Sertl	27-3S-18-16000-008-0000
Grand Dunes Condominium Owners' Association, Inc.	33-2S-21-42250-AAA-AAAA
Grand Dunes II Condominium Owners' Association, Inc.	33-2S-21-42255-AAA-AAAA
Gregory D. Crosslin and Patricia S. Crosslin, as owners of Lot 17 at Shipwatch who possess an easement right to use and enjoy the Shipwatch common area beachfront parcel	33-2S-21-42600-000-00C0
Heritage Dunes Owners' Association, Inc.	24-3S-19-25480-000-00A0
J. Stuart Collier, Jr.	27-3S-18-16000-010-0050

**EXHIBIT A**

James A. Slatton, Jr.	32-2S-21-42300-000-0100 32-2S-21-42300-000-0030 32-2S-21-42300-000-0040 30-2S-21-42510-000-0190
James Allred Slatton, Jr.	32-2S-21-42300-000-0070
James Creek LTD, LLC	28-3S-18-16071-00A-0110
James Franklin and Funmilayo Franklin	28-3S-18-16077-000-00A0
James Franklin and Funmilayo Franklin as successors in interest to administratively dissolved Bonne Terre Condominium common element property	28-3S-18-16077-AAA-AAAA
Janet D. Hickson Revocable Trust	24-3S-19-25480-000-0030
Janet D. Hickson Revocable Trust, as owner of Lot 3 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
Jimmy K. Hall and Rhonda S. Hall	24-3S-19-25000-008-0000
JMS Seacrest Partners, LLC	27-3S-18-16000-011-0000
Joan-Alan Holdings, LLC, as owner of Apartment No. 201 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel	27-3S-18-16400-AAA-AAAA
John H. Powers and Toni B. Powers	24-3S-19-25420-000-0010
John N. Carroll and Patti G. Carroll, as owners of Apartment No. C-12 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
John R. Burns, Trustee of the John R. Burns Revocable Trust Dated October 19, 2016, as owner of Unit 1520 at Grand Dunes II who possesses an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel	33-2S-21-42250-AAA-AAAA
John W. Lamb and Shirley A. Lamb, as 50% owner of Unit B-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel	27-3S-18-16610-00A-00A0
Julie Ann Belcher	17-3S-19-25000-008-0000
Kenneth Colbert and Gina Colbert, as owners of Lot 3 in Block C at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel	12-3S-20-34631-AAA-AAAA

**EXHIBIT A**

Kenneth S. Camey, St. and Ellen A. Camey, as Co-Trustees of the Kenneth S. and Ellen A. Camey revocable Trust, as owners of Unit 7 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel	23-3S-19-25011-AAA-AAAA
Matthew W. Francher and Julie W. Francher, as owners of Lot 6, Oak Grove at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
Maxwell H. Corbin, Jr. and Martha M. Corbin	28-3S-18-16071-00A-0130
Michael Klukaszewski and Laura Lee Klukaszewski, as owners of Unit B-1 in Emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel	24-3S-19-25445-000-00A0
Michael W. Kometer and Cheryl A. Kometer	32-2S-21-42300-000-0080
NanKris Santa Rosa LLC	19-3S-18-16080-000-0304 19-3S-18-16080-000-0305
Natchez Street Neighborhood Association, Inc.	15-3S-19-25180-000-00B0
Nicholas J. Lembo and Susan Z. Lembo	35-3S-18-16020-00A-0120
Odessa Street Neighborhood Association, Inc.	15-3S-19-25180-000-00A0
Palmer's Southern Comfort, LLC	03-3S-20-34000-005-0030
Paul Donahue and Karyn Donahue	24-3S-19-25480-000-0050
Paul Donahue and Karyn Donahue, as owners of Lot 5 who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
Paul Hughes and Tiffany Casper	24-3S-19-25120-000-0293
Pensacola Street Neighborhood Association, Inc.	15-3S-19-25000-002-0140
Peter J. Howard and Seleta Hayes Howard, as owners of Lot 16, Cinnamon Fem at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
Peter Lloyd Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22, 1996, as owner of Lot 1 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0

**EXHIBIT A**

Peter Llyod Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22, 1996	24-3S-19-25480-000-0010
R. Courtney Robinson, Deborah S. Robinson and Paul L. Zimmering	03-3S-20-34000-005-0100
Randall B. James and Edith A. James, as owners of Unit 205 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel	23-3S-19-25080-AAA-AAAA
Randall L. Churchey and Deborah D. Churchey, Co-Trustees of the Randall and Deborah Churchey Living Trust dated July 19, 2017	24-3S-19-25326-000-012A
Rees 558, LLC	24-3S-19-25480-000-0060
Rees 558, LLC as owner of Lot 6 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
Robert F. O'Connell, as Trustee of the Robert F. O'Connell Trust dated February 20, 2007, and Julian O'Connell, as Trustee of the Juliann O'Connell Trust dated February 20, 2007, as owners of Unit 2050 at Grand Dunes I who possess an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel	33-2S-21-42250-AAA-AAAA
Robert K. Brooke, Jr. and Barbara H. Brooke	28-3S-18-16071-00A-00140
Robert Lee Herring, Trustee of the Robert Lee Herring Living Trust dated September 2, 2015, as owner of unit 1-A in emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel	24-3S-19-25445-000-00A0
Robert S. Stovall and Lisa K. Stovall	08-3S-19-25040-00A-0200
Sam Berry Blair, Jr.	27-3S-18-16000-010-0000
Sanctuary 3124, LLC, as owner of Unit 3124 in Sanctuary by the Sea Condominium with an undivided ownership interest the Sanctuary common area beachfront parcel	07-3S-19-25300-AAA-AAAA
Sanctuary by the Sea Condominium Association, Inc.	07-3S-19-25300-AAA-AAAA
Seaside I Homeowner Association, Inc.	15-3S-19-25080-000-0000
Seaside II Homeowner Association, Inc.	15-3S-19-25090-000-0000
Seaside III Homeowner Association, Inc.	15-3S-19-25110-000-0000

**EXHIBIT A**

Sharon M. Logue Higgins	27-3S-18-16000-026-0020
Sherrell John Courville and Patricia Parker Courville	12-3S-20-34631-00B-0180
Shipwatch Phase I Homeowners Association, Inc.	33-2S-21-42600-000-00C0
Stephen Cheney, as owner of Unit C-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel	27-3S-18-16610-00A-00A0
Sue E. Grove, as owner of Unit B in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel	27-3S-18-16720-AAA-AAAA
Suzanne C. Hallberg	24-3S-19-25120-00-0292
Tagganale Owners' Association, Inc.	27-3S-18-16720-AAA-AAAA
The Generations Partnership, LTD	24-3S-19-251770-000-0090
The Monterey Owners' Association, Inc.	27-3S-18-16610-00A-00A0
The Palms at Seagrove Condominium Owners' Association, Inc.	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
The Village of White Cliffs' Owners' Association, Inc.	12-3S-20-34631-AAA-AAAA
Thomas G. Boren, as Trustee of the Thomas B. Boren Revocable Trust Dated February 18, 2009, as owner of nit 1810 in Grand Dunes with an undivided ownership interest in the Grand Dunes common area beachfront parcel	33-2S-21-42250-AAA-AAAA
Tracy L. Halapy, as owner of Unit 11 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel	23-3S-19-25011-AAA-AAAA
Walton Dunes Townhouse Association, Inc.	19-3S-18-16130-AAA-AAAA
Watercolor Community Association, Inc.	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
West Ruskin Street Neighborhood Association, Inc.	15-3S-19-25000-002-0270
William P. Litton and Ann W. Litton	24-3S-19-25170-000-0080
William T. Tagg, as owner of Units A and C in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel	27-3S-18-16720-AAA-AAAA
Leeward Condominium Owners Association, Inc.	24-3S-19-25210-AAA-AAAA
Mark G. Ervin and Melissa A. Turner, as owners of Unit 3 at Leeward Condominium,	24-3S-19-25210-000-0030

**EXHIBIT A**

who possess the right to use and enjoy the Leeward Condominium common area beachfront parcel	
Brenda Wingate Notermann, as Trustee of the Revocable Living Trust of Brenda Wingate Notermann dated October 12, 2017	12-3S-20-34631-00B-0190
Paul R. Gianneschi and Lisa V. Gianneschi, as owners of Unit 1118 in Sanctuary by the Sea Condominium with an undivided ownership interest in the Sanctuary common area beachfront parcel	07-3S-19-25300-AAA-AAAA
Joseph B. Delozier and Jan S. Delozier	24-3S-19-25120-000-0262
Patricia M. Anderson	12-3S-20-34040-0I0-0070

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR WALTON COUNTY, FLORIDA**

**In re: Affirming Existence of Recreational  
Customary Use on 1,194 Private  
Properties Located in Walton County,  
Florida**

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**Case No.: 2018-CA-000547**

**SMOLKER INTERVENORS' NOTICE OF JOINDER**

The intervenors set forth in attached Exhibit "A" (DEFENDANTS"), by and through their undersigned council, hereby join in and adopt by reference the arguments set forth in Defendant's N. Henry Davis' Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to Count IV of his Counterclaim, (Document No. 2469) filed on May 17, 2021, by D. Kent Safriet, Esq. (the "Motion for Summary Judgment").

**Supplement to N. Henry Davis' Motion For Summary Judgement**

In addition to joining and adopting by reference the arguments in the Motion for Summary Judgment, DEFENDANTS supplement the Motion for Summary Judgment by noting that courts throughout the country recognize that the vagueness doctrine applies not only to legislatively enacted statutes, but also to judicially-created doctrines and common law. *See, e.g., U.S. v. Rybicki*, 354 F.3d 124, 134 (2nd Cir. 2003) (considering "whether the judicially developed honest services doctrine was vague" and thus unconstitutional); *Abernathy v. Conroy*, 429 F.2d 1170, 1174-76 (4th Cir. 1970) (evaluating whether "the South Carolina common law definition of riot offends the first and fourteenth amendments because of vagueness and overbreadth"); *Red Lion Broadcasting Co. v. FCC*, 381 F.2d 908, 922-25 (D.C. Cir. 1967) (evaluating whether the "fairness doctrine," which had been judicially created and adopted by the FCC, was vague and unconstitutional); *U.S. v. Hooker Chemicals & Plastics Corp.*, 748 F. Supp. 67 (W.D.N.Y. 1990) (analyzing whether New

York's common-law standard for assessing punitive damages was unconstitutionally vague); *In re YJ Sons and Co., Inc.*, 212 B.R. 793, 804-05 (D.N.J. 1997) (determining whether the good faith doctrine was unconstitutionally vague).

DEFENDANTS reserve the right to file additional motions as they deem appropriate.8990

DEFENDANTS respectfully request this Court grant the Motion for Summary Judgment and all additional requests for relief raised for the reasons stated therein and grant all other relief deemed proper and just.

DATED this 7<sup>th</sup> day of June 2021.

SMOLKER, BARTLETT, LOEB,  
HINDS & THOMPSON, P.A.

By: /s/ David Smolker

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail via the Florida e-Portal system's transmission of the Notice of Electronic Filing to all counsel of record, on this 7<sup>th</sup> day of June, 2021.

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**UNOFFICIAL  
DOCUMENT**

**EXHIBIT A**

**PARTY DEFENDANTS REPRESENTED BY**  
**SMOLKER, BARTLETT, LOEB, HINDS & THOMPSON, P.A.**

<b><u>No.</u></b>	<b><u>Defendant</u></b>	<b><u>Beachfront Parcel Identification No.</u></b>
1.	51 Green Street, LLC	27-3S-18-16000-010-0031 27-3S-18-16000-010-0030
2.	Addison Drummond Paul and Melissa Parker Paul	24-3S-19-25480-000-0020
3.	Addison Drummond Paul and Melissa Parker Paul, as owners of Lot 2 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
4.	Andrew Christopher Deaton and Kandi Kailynn Deaton	24-3S-19-25120-000-0304
5.	Ashley M. Crosier	24-3S-19-25170-000-0070
6.	Beachcrest Condominium Owners' Association, Inc.	23-3S-19-25080-AAA-AAAA
7.	Beachside Condominium Owners' Association, Inc.	23-3S-19-25011-AAA-AAAA
8.	Bobby L. Burgner and Carrey L. Burgner	12-3S-20-34631-00B-0210
9.	Branch Ranch Minerals, LLC, as owner of Unit 810 in Grand Dunes with an undivided ownership interest in the Grand Dunes common area beachfront parcel	33-2S-21-42250-AAA-AAAA
10.	Burkhardt Steven Schloss, Alyce Schloss Butner and Samuel Adam Schloss	17-3S-19-25030-000-0190
11.	Burton Towry and Suzanne Towry and John O. Phillips and Claire Phillips, as owners of Apartment No. B-6 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
12.	Capistrano Condominium Owners' Association, Inc.	27-3S-18-16400-AAA-AAAA
13.	Carlin Homes, LLC, as owner of Lot 23 at Shipwatch with an easement right to use and enjoy the Shipwatch common area beachfront parcel	33-2S-21-42600-000-00C0
14.	Carol June Hannah, Trustee of the Carol Hannah Family Trust dated 6/28/2007	35-3S-18-16020-00A-0260
15.	Charlie N. Finney	03-3S-20-34000-023-0000
16.	Charlton P. Hunt and Dora L. Hunt as owners of Unit 12 in Beachside Condominium with an	23-3S-19-25011-AAA-AAAA

**EXHIBIT A**

	undivided ownership interest in the Beachside common area beachfront parcel	
17.	Coastal Beach Holdings, LLC	12-3S-20-34631-00B-0200
18.	Craig Fleming, as owner of Units A and B in the Crosswinds Condominium with an undivided ownership interest in the Crosswinds common area beachfront parcel	27-3S-18-16620-00A-0000
19.	Crosswinds Condominium Association of Panama City Beach, Inc.	27-3S-18-16620-00A-0000
20.	Daniel W. Basse and Jean Basse	35-3S-18-16020-00A-0090
21.	Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011, as owner of Lot 4 who possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
22.	Danielle Litaker-Nall, as Trustee of the KOLP Irrevocable Trust u/t/d August 10, 2011	24-3S-19-25480-000-0040
23.	Debbie A. Koerner as Trustee of the Debbie A. Koerner Living Trust dated January 4, 1993	12-3S-20-34631-00B-0220
24.	DRA Investments, LLC, as owner of Apartment No. 203 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel	27-3S-18-16400-AAA-AAAA
25.	Edwin Johnston, Jr. and Nan V. Johnston, as owners of Unit 801 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel	23-3S-19-25080-AAA-AAAA
26.	Elizabeth M. Schwarting and Larry D. Schwarting, as owners of Lot 3 in Block B at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel	12-3S-20-34631-AAA-AAAA
27.	Emerald Surf Villas Condominium Owners' Association, Inc.	24-3S-19-25445-000-00A0
28.	Eugene J. Sullivan and Judith A. Sullivan, Co-Trustees of the Eugene and Judith Sullivan Living Trust	24-3S-19-25400-000-0010
29.	Frazer Holdings, L.P.	24-3S-19-25170-000-0100 24-3S-19-25430-000-0070
30.	Fred E. Carl, Jr. and Margaret L. Carl	24-3S-19-25420-000-0020
31.	George Sertl, Jr. and Alayne Sertl	27-3S-18-16000-008-0000
32.	Grand Dunes Condominium Owners' Association, Inc.	33-2S-21-42250-AAA-AAAA
33.	Grand Dunes II Condominium Owners' Association, Inc.	33-2S-21-42255-AAA-AAAA

**EXHIBIT A**

34.	Gregory D. Crosslin and Patricia S. Crosslin, as owners of Lot 17 at Shipwatch who possess an easement right to use and enjoy the Shipwatch common area beachfront parcel	33-2S-21-42600-000-00C0
35.	Heritage Dunes Owners' Association, Inc.	24-3S-19-25480-000-00A0
36.	J. Stuart Collier, Jr.	27-3S-18-16000-010-0050
37.	James A. Slatton, Jr.	32-2S-21-42300-000-0100 32-2S-21-42300-000-0030 32-2S-21-42300-000-0040 30-2S-21-42510-000-0190
	James Allred Slatton, Jr.	32-2S-21-42300-000-0070
38.	James Creek LTD, LLC	28-3S-18-16071-00A-0110
39.	James Franklin and Funmilayo Franklin	28-3S-18-16077-000-00A0
	James Franklin and Funmilayo Franklin as successors in interest to administratively dissolved Bonne Terre Condominium common element property	28-3S-18-16077-AAA-AAAA
40.	Janet D. Hickson Revocable Trust	24-3S-19-25480-000-0030
41.	Janet D. Hickson Revocable Trust, as owner of Lot 3 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
42.	Jimmy K. Hall and Rhonda S. Hall	24-3S-19-25000-008-0000
43.	JMS Seacrest Partners, LLC	27-3S-18-16000-011-0000
44.	Joan-Alan Holdings, LLC, as owner of Apartment No. 201 in the Capistrano Condominium with an undivided ownership interest in the Capistrano common area beachfront parcel	27-3S-18-16400-AAA-AAAA
45.	John H. Powers and Toni B. Powers	24-3S-19-25420-000-0010
46.	John N. Carroll and Patti G. Carroll, as owners of Apartment No. C-12 in the Palms at Seagrove Condominium with an undivided ownership interest in the Palms at Seagrove common area beachfront parcels	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
47.	John R. Burns, Trustee of the John R. Burns Revocable Trust Dated October 19, 2016, as owner of Unit 1520 at Grand Dunes II who possesses an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel	33-2S-21-42250-AAA-AAAA
48.	John W. Lamb and Shirley A. Lamb, as 50% owner of Unit B-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel	27-3S-18-16610-00A-00A0

**EXHIBIT A**

49.	Julie Ann Belcher	17-3S-19-25000-008-0000
50.	Kenneth Colbert and Gina Colbert, as owners of Lot 3 in Block C at the Village of White Cliffs who possess an easement right to use and enjoy the Village of White Cliffs common area beachfront parcel	12-3S-20-34631-AAA-AAAA
51.	Kenneth S. Carney, Sr. and Ellen A. Carney, as Co-Trustees of the Kenneth S. & Ellen A. Carney Revocable Trust, as owners of Unit 7 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel	23-3S-19-25011-AAA-AAAA
52.	Matthew W. Fancher and Julie W. Fancher, as owners of Lot 6, Oak Grove at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
53.	Maxwell H. Corbin, Jr. and Martha M. Corbin	28-3S-18-16071-00A-0130
54.	Michael Klukaszewski and Laura Lee Klukaszewski, as owners of Unit B-1 in Emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel	24-3S-19-25445-000-00A0
55.	Michael W. Kometer and Cheryl A. Kometer	32-2S-21-42300-000-0080
56.	NanKris Santa Rosa LLC	19-3S-18-16080-000-0304 19-3S-18-16080-000-0305
57.	Natchez Street Neighborhood Association, Inc.	15-3S-19-25180-000-00B0
58.	Nicholas J. Lembo and Susan Z. Lembo	35-3S-18-16020-00A-0120
59.	Odessa Street Neighborhood Association, Inc.	15-3S-19-25180-000-00A0
60.	Palmer's Southern Comfort, LLC	03-3S-20-34000-005-0030
61.	Paul Donahue and Karyn Donahue	24-3S-19-25480-000-0050
62.	Paul Donahue and Karyn Donahue, as owners of Lot 5 who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
63.	Paul Graham Stovall, Sr. and Penelope McNeely Stovall, Trustees of the Penelope Stovall Living Trust dated March 6, 2012	24-3S-19-25120-000-0300
64.	Paul Hughes and Tiffany Casper	24-3S-19-25120-000-0293
65.	Pensacola Street Neighborhood Association, Inc.	15-3S-19-25000-002-0140
66.	Peter J. Howard and Seleta Hayes Howard, as owners of Lot 16, Cinnamon Fern at Watercolor who possess the easement right to use and enjoy the Watercolor common area beachfront parcels	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
67.	Peter Lloyd Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22,	24-3S-19-25480-000-00A0

**EXHIBIT A**

	1996, as owner of Lot 1 in Heritage Dunes who possess an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	
68.	Peter Lloyd Paul, III and Joanna Patterson Paul, as Co-Trustees, under the Revocable Living Trust Agreement of Peter Lloyd Paul III, dated May 22, 1996	24-3S-19-25480-000-0010
69.	R. Courtney Robinson, Deborah S. Robinson and Paul L. Zimmering	03-3S-20-34000-005-0100
70.	Randall B. James and Edith A. James, as owners of Unit 205 in Beachcrest Condominium with an undivided ownership interest in the Beachcrest common area beachfront parcel	23-3S-19-25080-AAA-AAAA
71.	Randall L. Churchey and Deborah D. Churchey, Co-Trustees of the Randall and Deborah Churchey Living Trust dated July 19, 2017	24-3S-19-25326-000-012A
72.	Rebecca L. Hartley	27-3S-18-16000-012-0000
73.	Rees 558, LLC	24-3S-19-25480-000-0060
74.	Rees 558, LLC, as owner of Lot 6 which possesses an easement right to use and enjoy the Heritage Dunes common area beachfront parcel	24-3S-19-25480-000-00A0
75.	Robert F. O'Connell, as Trustee of the Robert F. O'Connell Trust dated February 20, 2007 and Juliann O'Connell, as Trustee of the Juliann O'Connell Trust dated February 20, 2007, as owners of Unit 2050 at Grand Dunes II who possess an easement right to use and enjoy the Grand Dunes Condominium common area beachfront parcel	33-2S-21-42250-AAA-AAAA
76.	Robert K. Brooke, Jr. & Barbara H. Brooke	28-3S-18-16071-00A-0140
77.	Robert Lee Herring, Trustee of the Robert Lee Herring Living Trust dated September 2, 2015, as owner of Unit 1-A in Emerald Surf Villas Condominium with an undivided ownership interest in the Emerald Surf Villas common area beachfront parcel	24-3S-19-25445-000-00A0
78.	Robert S. Stovall and Lisa K. Stovall	08-3S-19-25040-00A-0200
79.	Sam Berry Blair, Jr.	27-3S-18-16000-010-0000
80.	Sanctuary 3124, LLC, as owner of Unit 3124 in Sanctuary by the Sea Condominium with an undivided ownership interest the Sanctuary common area beachfront parcel	07-3S-19-25300-AAA-AAAA
81.	Sanctuary by the Sea Condominium Association, Inc.	07-3S-19-25300-AAA-AAAA
82.	Seaside I Homeowner Association, Inc.	15-3S-19-25080-000-0000
83.	Seaside II Homeowner Association, Inc.	15-3S-19-25090-000-0000

**EXHIBIT A**

84.	Seaside III Homeowner Association, Inc.	15-3S-19-25110-000-0000
85.	Sharon M. Logue Higgins	27-3S-18-16000-026-0020
86.	Sherrell John Courville and Patricia Parker Courville	12-3S-20-34631-00B-0180
87.	Shipwatch Phase I Homeowners Association, Inc.	33-2S-21-42600-000-00C0
88.	Stephen Cheney, as owner of Unit C-101 in the Monterey Condominium with an undivided ownership interest in the Monterey common area beachfront parcel	27-3S-18-16610-00A-00A0
89.	Sue E. Gove, as owner of Unit B in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel	27-3S-18-16720-AAA-AAAA
90.	Suzanne C. Hallberg	24-3S-19-25120-000-0292
91.	Tagganale Owners' Association, Inc.	27-3S-18-16720-AAA-AAAA
92.	The Generations Partnership, LTD	24-3S-19-25170-000-0090
93.	The Monterey Owners' Association, Inc.	27-3S-18-16610-00A-00A0
94.	The Palms at Seagrove Condominium Owners' Association, Inc.	23-3S-19-25061-AAA-AAAA 23-3S-19-25063-AAA-AAAA
95.	The Village of White Cliffs' Owners' Association, Inc.	12-3S-20-34631-AAA-AAAA
96.	Thomas G. Boren, as Trustee of the Thomas B. Boren Revocable Trust Dated February 18, 2009, as owner of Unit 1810 in Grand Dunes with an undivided ownership interest in the Grand Dunes common area beachfront parcel	33-2S-21-42250-AAA-AAAA
97.	Tracy L. Halapy, as owner of Unit 11 in Beachside Condominium with an undivided ownership interest in the Beachside common area beachfront parcel	23-3S-19-25011-AAA-AAAA
98.	Vicki L. Inman	03-3S-20-34000-019-0000
99.	Walton Dunes Townhouse Association, Inc.	19-3S-18-16130-AAA-AAAA
100.	Wando River Services, LLC	24-3S-19-25120-000-0291
101.	Watercolor Community Association, Inc.	15-3S-19-25000-001-0040 15-3S-19-25000-001-0000 15-3S-19-25000-001-0010 15-3S-19-25407-000-00B0
102.	West Ruskin Street Neighborhood Association, Inc.	15-3S-19-25000-002-0270
103.	William P. Litton and Ann W. Litton	24-3S-19-25170-000-0080
104.	William T. Tagg, as owner of Units A and C in the Tagganale Condominium with an undivided ownership interest in the Tagganale common area beachfront parcel	27-3S-18-16720-AAA-AAAA
105.	Leeward Condominium Owners Association, Inc.	24-3S-19-25210-AAA-AAAA

**EXHIBIT A**

106.	Mark G. Ervin and Melissa A. Turner, as owners of Unit 3 at Leeward Condominium, who possess the right to use and enjoy the Leeward Condominium common area beachfront parcel	24-3S-19-25210-000-0030
107.	Brenda Wingate Notermann, as Trustee of the Revocable Living Trust of Brenda Wingate Notermann dated October 12, 2017	12-3S-20-34631-00B-0190
108.	Paul R. Gianneschi and Lisa V. Gianneschi, as owners of Unit 1118 in Sanctuary by the Sea Condominium with an undivided ownership interest the Sanctuary common area beachfront parcel	07-3S-19-25300-AAA-AAAA
109.	Joseph B. Delozier and Jan S. Delozier	24-3S-19-25120-000-0262
110.	Patricia M. Anderson	12-3S-20-34040-010-0070

UNOFFICIAL  
DOCUMENT

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR WALTON COUNTY, FLORIDA**

**In re: Affirming Existence of Recreational  
Customary Use on 1,194 Private  
Properties Located in Walton County,  
Florida**

**Case No.: 2018-CA-000547**

**FINAL JUDGMENT AS TO CERTAIN PARCELS**

THIS cause came before this Court on the following Motions for Summary Judgment filed by N. Henry Davis, Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, as Trustee of The Carl Grivner Trust Dated May 11, 2016 (collectively "Defendants"):

1. Second Motion for Summary Judgment filed by party Defendant N. Henry Davis (Docket No. 1482; Filing # 110160196; filed on July 13, 2020);
2. Second Motion for Summary Judgment filed by Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, As Trustee of The Carl Grivner Trust Dated May 11, 2016, (Docket No. 1480; Filing # 110093327; filed on July 10, 2020);
3. N. Henry Davis' "Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to Count IV of His Counterclaim" (Docket No. 2469 Filing #126944104 filed on May 17, 2021);
4. Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees Of The Kent H. Wallace Trust U/A; and Carl Grivner, as Trustee of The Carl Grivner Trust Dated May 11, 2016 joinder in N. Henry Davis' "Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to Count IV of His Counterclaim." (Docket No. 2478; Filing #127481801 filed on May 25, 2021).

Hearings were held on the various Motions on June 4, 2020, August 14, 2020, November 20,

2020 and July 23, 2021 and two Orders entered granting the various motions which are incorporated herein by reference:

1. "Order Granting Jasmine Dune and Grivner Trust's Second Motion for Summary Judgment and N. Henry Davis' Second Motion for Summary Judgment." Docket No. 1525, Filing No. 11304243, filed September 21, 2020.
2. "Order Granting in Part and Denying in part N. Henry Davis' Motion for Summary Judgment as to Count I of the Corrected Amended Complaint and as to County IV of His Counterclaim." Docket No. 2613, Filing No. 133099329, filed August 20, 2020.

The Court having heard the evidence and arguments from all parties and being fully advised in the premises, the Court hereby finds as follows:

#### **FINDINGS OF FACT**

1. This Court has jurisdiction of the parties in this cause and the subject matter hereof and has jurisdiction to render this judgment; further, that the allegations contained herein have been proven by competent evidence, and there are no material issues of fact or law, and this Final Judgment resolves all Counts in the Complaint with respect to the Defendants named in the Motions and their properties.

2. On October 28, 2020, Walton County filed a Corrected Amended Complaint for Declaration Affirming Recreational Customary Use (the "Complaint"). Count I, which is the only count of the Complaint, seeks a claim for declaratory relief and requests a judgment declaring the recreational customary uses described therein are ancient, reasonable, without interruption, and free from dispute, upon the "dry sand beach area" of 1,194 private gulf front properties in Walton County.

3. Davis' Motions for Summary Judgment collectively ask, in part, that this Court find, as a matter of law, that Defendants' properties differ in circumstances from other properties because on March 28, 1978, the County abandoned, through Walton County Resolution 1978-16

(the “Resolution”) all claims (including customary use claims) of the public landward of the mean high-water line lying southerly of Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat. This Court previously found, upon consideration of Motions for Summary Judgment filed by Defendants (Docket Nos. 1480 and 1482), that customary use rights can be abandoned and were, in fact, abandoned in the property described in the Resolution. See “Order Granting Jasmine Dune and Grivner Trust’s Second Motion for Summary Judgment and N. Henry Davis’ Second Motion for Summary Judgment.” Docket No. 1525, Filing No. 11304243, filed September 21, 2020.

4. Defendants’ properties subject to this action are located within Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat that were abandoned by the County in the Resolution.

5. In its prior Orders on Defendants’ Second Motion for Summary Judgment, this Court did not decide whether the customary use had been (or could be) revived on Defendants’ properties after the Resolution abandoned such use on their properties.

6. Davis’ Motion for Summary Judgment seeks, in part, final summary judgment as to Count I of the Corrected Amended Complaint because the alleged customary use of Defendants’ property was interrupted by the Resolution and no use after the adoption of the 1978 Resolution can revive customary use or be defined as ancient, thereby defeating one of the required elements of the judicially adopted doctrine of customary use in Florida.

7. Davis’s Motion for Summary Judgment also sought a final judgment on Count IV of his Counterclaim holding that the doctrine of customary use, as adopted by the Florida Supreme Court, is unconstitutional.

#### **CONCLUSIONS OF LAW**

8. There are no genuine issues of material fact concerning the plain language of the Resolution. The Resolution shows a clear intent to disclaim and renounce any claim of right in the

County and the public to the property, including customary use, landward of the mean high-water line lying southerly of Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat. Accordingly, the Court finds that the County abandoned any and all customary use rights with respect to the properties in Blocks 17, 18, 19 and 20 of the Gulf Shore Manor plat which might have existed as of March 28, 1978.

9. To the extent the County could establish at trial that customary use of Defendants' properties existed prior to the County's adoption of the Resolution, it is of no consequence to Davis' Motion for Summary Judgment. It is undisputed that any such customary use of Defendants' properties (and any other properties located in the area described in the Resolution) was interrupted when the County abandoned the public's claim of any rights landward of the mean high-water line, making it impossible for the County to prove the "uninterrupted" element of the judicially adopted customary use test.

10. Further, any new claim by the County that customary use was "revived" upon Defendants' properties and the other property described in the Resolution could commence no earlier than the adoption of the Resolution on March 28, 1978.

11. Even assuming a customary use may be revived—which it cannot legally – and assuming the public customarily used the Defendants' beachfront properties between March 28, 1978, and 2018, when the County filed this action, this amount of time (40 years) is not sufficient in length to be deemed "ancient."

12. Accordingly, the County is unable to establish that customary use on Defendants' properties has been either "uninterrupted" or "ancient," both of which elements must be proven under the judicially adopted customary use test.

13. As to Count IV of Defendant's Counterclaim, Davis (and others that joined in

the Motion) asked this Court to find the customary use doctrine void for vagueness under United States constitutional principles, which they assert is proper because the vagueness issue has never been addressed by the Florida Supreme Court. In support of their argument, the Defendants cite numerous cases in which the federal courts have found state law, both statutory and common, to be void for vagueness and violative of the United States Constitution. The Defendants fail, however, to cite any case in which a decision of a Florida trial court holding a common law standard announced by the Florida Supreme Court unconstitutional was affirmed. This Court is mindful of the admonition contained in *Gillam v Stewart*, 291 So.3d 593-594 (Fla. 1974), that “[t]he constitutional system of courts in this State contemplate that only the Supreme Court may overrule its own decisions.” As such, this court fears that the request made by the Defendants encourages it to violate that prohibition and the Court declines to take such a path. As such, the Court concludes that, as a matter of law, it must assume the judicially created customary use doctrine is constitutional.

**THEREFORE, it is hereby ORDERED and ADJUDGED that:**

A. Final Judgment is entered in favor of the Defendants, N. Henry Davis; Jasmine Dunes Property Owners Association, Inc.; Kenneth J. Shaia; William D. Arthur, III; W. Charles Deloach, Jr.; Kent H. Wallace and Suzan Jill Wallace, Co-Trustees of The Kent H. Wallace Trust U/A; and Carl Grivner, As Trustee of The Carl Grivner Trust Dated May 11, 2016, and against Plaintiff, WALTON COUNTY on Count I of the Corrected Amended Complaint.

B. This Court does not have the authority to rule that the customary use doctrine adopted by the Florida Supreme Court is unconstitutional.


C. That portion of the Defendant’s property, which property is more particularly described in the Defendants’ Motions for Summary Judgment, said descriptions being

incorporated herein by reference, lying landward of the mean high-water line of the Gulf of Mexico, is free from any claims of the County or the public to a right of access for the recreational customary uses described in the Plaintiff's Corrected Amended Complaint.

D. Defendants are entitled to court costs and this Court reserves jurisdiction to determine the amount.

E. This Court retains jurisdiction over the parties to enforce the terms of this Final Judgment.

**DONE AND ORDERED**, in Chambers at DeFuniak Springs, Walton County, Florida, this 3<sup>rd</sup> day of November, A.D 2021.



eSigned by DAVID GREEN  
on 11/03/2021 16:48:54 -6hUi3Gq

David W. Green, Circuit Judge

Copies to:

All parties included in E-filing portal.