IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA

Case No.: 5D24-0332
LT Case: 16-2022-CA-3973

IMESON HOLDINGS OF NORTH FLORIDA, LLC,

***Appellant*,**

vs.

FIRST COAST LAND MANAGEMENT, LLC,

***Appellee*.**

APPELLANT IMESON HOLDINGS OF NORTH FLORIDA LLC'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Appellant, Imeson Holdings of North Florida, LLC, will be referred to as "Appellant" or "Imeson". Appellee, First Coast Land Management, LLC, will be referred to as "Appellee" or "FCLM".

The record on appeal consist of one volume, entitled Record on Appeal. Citations to this volume are as follows R. Followed by the corresponding page number(s).

All bold-type, italicized, or underlined emphasis is supplied, and all other emphasis is contained within original quotations, unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

On or about July 2, 2013, the Appellee FCLM, while owner of the Property, described in the Amended Complaint as Parcel A, granted Appellant Imeson an easement in the Parcel A Property ("Parcel A Easement"). (R. 49-52, 61-64, 69-70).

On or about July 3, 2013, Appellee FCLM, while owner of the Property, described in the Amended Complaint as Parcel B, granted Appellant Imeson an easement in the Parcel B Property ("Parcel B Easement"). (R. 49-52, 65-68, 71-72). References to both Parcel A Property and Parcel B Property will be referred to as the "Property".

References to both the Parcel A Easement and Parcel B Easement will be referred to as the “Easements”.

Subsequent to the granting of the Easements, the Appellee FCLM has impaired the Easements by constructing unauthorized improvements on the Property, as well as, without authorization sold dirt from the property and filled ponds on the Property, which directly burdens the Easements, thereby negating the Easements value or use. (R. 52-53, 73-82).

On or about, February 5, 2010, Appellant Imeson, filed a three count complaint consisting of Count I: Breach of Contract (Easement); Count II: Action for Permanent Injunctive Relief; and Count III: Action for Damages for Trespass. (R. 12-44).

On or about, July 14, 2022, Appellant Imeson, filed a three count Amended Complaint For Damages and Injunctive Relief consisting of Count I: Breach of Contract (Easement); Count II: Action for Permanent Injunctive Relief; and Count III: Action for Damages for Trespass. (R. 48 - 58), and on July 21, 2022 filed a Notice of Filing Exhibits to Plaintiff’s Amended Complaint for Damages and Injunctive Relief. (R. 59-82).

On or about, September 9, 2022, Appellee FCLM, filed Defendant First Coast Land Management, LLC's Motion To Dismiss Plaintiff's Amended Complaint ("Motion To Dismiss"). (R. 87-97).

On or about, December 20, 2023, a hearing was conducted before the Honorable Michael S. Sharrit on the Appellee FCLM's Motion To Dismiss. (R. 148-224), and a Final Order Granting Defendant's Motion To Dismiss Amended Complaint was entered on January 8, 2024. (R. 143-146).

During the December 20, 2023 hearing the Appellee Imeson motioned the court (oral tenus) for leave to file an amendment to the complaint (R. 212).

SUMMARY OF ARGUMENT

The Appellant appeals the lower tribunals Final Order Granting Defendant's Motion To Dismiss Amended Complaint (R. 143-146).

It is well settled by Florida's courts, that a refusal to allow an amendment is an abuse of the trial court's discretion unless it clearly appears that allowing the amendment would prejudice the opposing party. *Dow v. Investments*, 226 So.3d 1010 (Fla 4th 2017), *citing McCray v. Bellsouth Telecommunications*, Inc., 213 So.3d 938, 939 (Fla. 4th DCA 2017).

It is also a well established legal principal, “that if a written contract (easement) is ambiguous so the intent of the parties cannot be understood from an inspection of the instrument, extrinsic or parol evidence of the subject matter of the contract, of the relation of the parties, and of the circumstances surrounding them when they entered into the contract may be received in order to properly interpret the instrument”. *Buie v. Bluebird Landing Owner’s Ass’n, Inc*., 172 So.3d 519 (Fla. App. 2015), *citing Lemon v. Aspen Emerald Lakes Assoc*., Ltd., 446 So.2d 177, 180 (Fla. 5th DCA 1984).

Further, judicial interpretation calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts. *7 At Blue Lagoon (1), LLC v. Blue Lagoon Condo, Ass’n, Inc*., 354 So.3d 1117, 1120 (Fla. App. 2023).

In the instant case, the Appellee FCLM, while the owner of the Property and for good and valuable consideration, granted Appellant Imeson an easement in the Property, and subsequent to the granting of the Easements to Appellant Imeson, the Appellee constructed unauthorized improvements on the Property, as well as, without authorization sold dirt from the property and filled ponds on the

Property, which directly burdens the Easements, thereby negating the Easements value or use. (R. 52-53, 73-82).

This Court should enter an order reversing the order dismissing the amended complaint and remand this matter to the trial court for further proceedings.

ARGUMENT

ISSUE I The Trial Court Erred In Narrowly Defining That The Purpose Of The Easement, Based Upon The Language Of The Easement, Was Unambiguous and Restricted To That Of A Water Management System Thereby Justifying Dismissal With Prejudice.

A. Standard of Review

This case involves the review of the trial court's Final Order Granting Defendant's Motion To Dismiss Amended Complaint, and review of the denial of the Plaintiff's Motion for Leave to Amend Complaint.

Appellate courts review questions concerning orders dismissing a complaint with prejudice on a "de novo" standard. *Wildflower, LLC v. St. Johns River Water Mgmt. Dist*., 179 So.3d 369 (Fla. App 2015); and review questions concerning denial of motions to amend complaint on an "abuse of discretion" standard. *Vaughn v. Boerckel*, 20 So.3d 443, 445 (Fla. App. 2009). This appeal also presents a

pure legal issue of textual interpretation which courts review questions concerning on a "de novo" standard. *7 At Blue Lagoon (1), LLC*, 354 So.3d at 1120.

B. Introduction

The trial court, in its Final Order Granting Defendant's Motion To Dismiss Amended Complaint, erred by narrowly concluding that the language of the Easements was unambiguous and restricted to the purposes of a water management system and therefore could not be cured by amendment, thereby justifying dismissal with prejudice.

C. Argument

The trial court as concluded that the language of the Easements is restricted to the purposes of a water management system. (R. 143-146, 221-222). The material language of the Easements at issue in this matter is as follows:

> … exclusive, perpetual right, privilege and easement to construct, reconstruct, install, lay, operate, maintain, repair, replace, improve, alter, relocate and inspect wastewater collection, interceptor mains, pipe lines, lateral lines, manholes, valves, connections, equipment, buildings, any drainage and/or paving improvements, over, under, and across, including, but not limited to, agricultural uses, timber, mineral rights and/or extraction, storage either temporary or permanent, open or enclosed, on hereinafter described lands, together with full use, occupation, and enjoyment thereof for any or all of the described purposes, and all rights and privileges thereto, including the right to ingress and egress to the [Property]. (R. 70, 72).

The Appellate Imeson would submit that the plain language of the easement also conveys additional purposes to include agricultural uses, timber, mineral rights and or extraction, storage either temporary or permanent, as emphasized by the underlined material language of the easement as follows:

> … exclusive, perpetual right, privilege and easement to construct, reconstruct, install, lay, operate, maintain, repair, replace, improve, alter, relocate and inspect wastewater collection, interceptor mains, pipe lines, lateral lines, manholes, valves, connections, equipment, buildings, any drainage and/or paving improvements, over, under, and across, including, <u>but not limited to, agricultural uses, timber, mineral rights and/or extraction, storage either temporary or permanent, open or enclosed, on hereinafter described lands, together with full use, occupation, and enjoyment thereof for any or all of the described purposes, and all rights and privileges thereto, including the right to ingress and egress to the [Property]</u>. (R. 70, 72).

The plain meaning of the easement would suggest the breath of the easement was not restricted to that of a water management system. “When determining whether an easement conveys a particular right, the rules of contract interpretation apply, giving effect to the plain meaning of the terms as stated.” *Buie*, 172 So.3d 519, *citing, Sandlake Residences, LLC v. Ogilvie*, 951 So.2d 117, 119 (Fla. 5th DCA 2007).

In the instant matter, the Appellant Imeson concedes, that it mistakenly interpreted the easements conveyance of mineral rights and or extraction to include the digging of burrow pits and the removal of soil. (R. 203). *Noblin v. Harbor Hills Dev*., 896 So. 2d 781, 787 (Fla. App. 2005). “that clay, sand, topsoil, and limestone may not be minerals”.

In the instant case, FCLM and Imeson, at the time of the conveyance of the Easements where in the business of burrowing pits and the removal of soil. (R. 192-207, 218-221), and the failure to state the easements purpose of burrowing and the removal of soil is not a fatal flaw. *Buie, 172 S.3d 519, citing Am. Quick Sign, Inc. v. Reinhardt*, 899 So.2d 461, 466 (Fla 5th DCA 2005) (failing to state an easement’s purpose in the creating document is not a fatal flaw).

The Appellant Imeson, would submit that such flaw, instead, here in the instant action, the easement is ambiguous (R. 192-207, 218-221) because its full scope isn’t defined, or knowable from the language of the reservation itself. *Buie, 172 So.3d* at 522.

Therefore “the language employed, the legal extent of the right must be ascertained from the intention of the parties [when the easement was created].” *Buie, 172 So.3d 519, citing, Walters v.*

McCall, 450 So. 2d 1139, 1142 (Fla. 1st DCA 1984*); Hillsborough Cnty v. Kortum*, 585 So.2d 1029, 1031 (Fla. 2d DCA 1991).

"It is well-established legal principal that if a written contract is ambiguous so that the intent of the parties cannot be understood from an inspection of the instrument, extrinsic or parol evidence of the subject matter of the contract, of the relation of the parties, and of the circumstances surround them when they entered into the contract may be received in order to properly interpret the instrument" *Buie, 172 So.3d 519, citing, Lemon v. Aspen Emerald Lakes Assocs., Ltd*., 446 So.2d 177, 180 (Fla. 5th DCA1984).

Finally, the Appellant Imeson would submit that considering the allegations in the complaint as true and in the light most favorable to the Imeson, the complaint alleges the existence of a valid easements and the record supports that FCLM constructed unauthorized improvements on the Property, as well as, without authorization sold dirt from the property and filled ponds on the Property, which directly burdens the Easements, thereby negating the Easements' value or use.

The Appellant Imeson would respectfully submit that the trial court erred in concluding that the language of the Easements was

unambiguous and restricted to that of a water management system thereby justifying dismissal of the amended complaint with prejudice, and that this Court should enter an order reversing the order dismissing the amended complaint with prejudice and remand this matter to the trial court for further proceedings.

ISSUE II The Trial Court Erred In Dismissing The Complaint With Prejudice Thereby Denying Amendment Of The Complaint Where The Appellant/Plaintiff Stated Causes Of Action For Breach Of Contract (Easement), Injunctive Relief, And Trespass, Where The Appellee's/Defendant's Construction Of Certain Improvements On The Property Subject to the Easements, and Removal Soil Continues To Diminish the Value And Restrict Access To The Easements.

A. Standard of Review

This case involves the review of the trial court's Final Order Granting Appellee's/Defendant's Motion To Dismiss Amended Complaint, and review of the denial of the Appellant's/Plaintiff's Motion for Leave to Amend Complaint.

Appellate courts review questions concerning orders dismissing a complaint with prejudice on a "de novo" standard. *Wildflower, LLC v. St. Johns River Water Mgmt. Dist*., 179 So.3d 369 (Fla. App 2015); and review questions concerning denial of motions to amend

complaint on an "abuse of discretion" standard. *Vaughn v. Boerckel*, 20 So.3d 443, 445 (Fla. App. 2009). This appeal also presents a pure legal issue of textual interpretation which courts review questions concerning on a "de novo" standard. This appeal also presents a pure legal issue of textual interpretation which courts review questions concerning on a "de novo" standard. *7 At Blue Lagoon (1), LLC,* 354 So.3d at 1120.

B. Introduction

The trial court, in its Final Order Granting Defendant's Motion To Dismiss Amended Complaint, erred by concluding that the Appellant's entire claim was predicated on suing under Easements for rights that the Easements did not provide and which could not be cured by amendment, therefore justifying dismissal with prejudice.

C. Argument

For *arguendo,* if the trial court did not err in concluding the Appellant's entire claim was predicated on suing under Easements for rights that the Easements did not provide, thereby justifying dismissal with prejudice, (R. 143-146). Such conclusion ignores the Appellant's right to assign the Easements for profit to an entity that's business is predicated on the rights provided by the Easements, and

further ignores the Appellee's continued trespass and irreparable harm to the value of the Easements, thus effectively negating the Easements value and use.

Here, the Easements are Express Easements in Gross which are assignable for profit.

Florida recognizes easements in gross. *Platt v. Pietras*, 382 So.2d 414 (Fla. App. 1980). Easements are "in gross" as they are not appurtenant and is not supported by a dominate estate. The Court in *Morris v. Winbar LLC*, 273 So.3d 176 (Fla. App. 2019), provides detailed analysis in determining whether an easement is either appurtenant or in gross. "An easement 'in gross' is a mere personal interest in the real estate of another; it is not supported by a dominate estate. *Id.* at 179, citing *N. Dade Water Co. v. Fla. State Turnpike Auth*., 114 So.2d 458, 461(Fla. 3d DCA 1959).

Further, Florida recognizes the entitlement for a holder of an easement in gross to profit from the land and to assignee an easement in gross to profit from the land. *Dunes of Seagrove Owners Ass'n, Inc. v. Dunes of Seagrove Dev., Inc*, 180 So.3d 1209 (Fla. App. 2015). *See also*, *Wiggins v. Lykes Bros., Inc*., 97 So. 2d 273 (Fla. 1957) (Assignment of Cattle Grazing Rights).

Finally, Appellant Imeson would submit that based upon the forgoing argument, an amendment would not be futile, and therefore trial court abused it discretion by dismissing the complaint without allowing Imeson an opportunity to amend.

The Appellant Imeson would respectfully submit that the trial court erred in concluding that Appellant's entire claim was predicated on suing under Easements for rights that the Easements did not provide and which could not be cured by amendment, therefore justifying dismissal with prejudice, and that this Court should enter an order reversing the order dismissing the amended complaint with prejudice and remand this matter to the trial court for further proceedings.

CONCLUSION

Based upon the foregoing discussion, the Appellant respectfully request, this Honorable Court enter an order (1) reversing the order dismissing the amended complaint with prejudice and remand this matter to the trial court for further proceedings; and (2) grant Appellant's such other and further relief as it may deem just, proper, and necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed with the ePortal website and served on April 25, 2024, to the following counsel of record: James R. McCachren, Esquire, at jrmmccachren@sgrlaw.com, as Counsel for First Coast Land Management, LLC.

/s/ R. Cash Barlow
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing was printed in Arial 14-point and satisfied the word count provision and other requirements of Florida Rule of Appellate Procedure 9.210.

/s/ R. Cash Barlow
R. Cash Barlow