

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

LAURENCE K. BARNES, as Trustee of the Laurence K. Barnes Revocable Trust u/a/d 09/15/2005; BETH R. BARNES, as Trustee of the Beth R. Barnes Revocable Trust u/a/d 09/15/2005; CAROL BURROW, as Trustee of the Carol Burrow Declaration of Trust Agreement dated February 11, 1999; MICHAEL LANIGAN; LOUISE A. MELLING; JAMES F. WEEGE, as Trustee of and under the Declaration of the James F. Weege Trust dated 05/04/2006; CHARLES L. LEA, JR. and KATHLEEN HARRIGAN LEA; EDWARD H. BUXTON and CATHY D. BUXTON; NEW HEIGHTS DEVELOPMENT LLC, a Florida Limited Liability Company; WAYNE E. METCALF, as Trustee of the Wayne E. Metcalf Trust dated 12/19/1994; PHILIP M. MCKINNEY and PATRICIA H. MCKINNEY; ANTHONY N. STRIPPOLI and ALKA STRIPPOLI; EDWARD SIVRI; BRUCE ELLIG and JANICE ELLIG; 6767 NORTH OCEAN BOULEVARD, INC., a Florida Corporation; JAMES MCREADY and SUZANNE MCREADY; REGAN LINDSAY ROSS; ANTON LETICA and LINDA LETICA; JESUS ANDY OLIVERA and DALIA OLIVERA; THE DUNES OF OCEAN RIDGE, INC., a Florida corporation; JAMES S. GARDNER, JR. and BARBARA GARDNER; BIMINI KID LIMITED, LLC a Florida Limited Liability Company; JEFFREY PETERSEN and PATRICIA PETERSEN; RICHARD N. EDELSTEIN; ROGER C. SIPP; GREGORY L. ZINK and CARMEN ZINK; EDWARD C. JALBERT and KEITH E. RAVAIOLI; THOMAS M. WHITE and MARTHA L. WHITE; MARK J. MCKENNA AND STEPHANIE MCKENNA,

Case No.: 50-2020-CA-004136

Division: Circuit Civil AG

Plaintiffs,

v.

MCCORMICK MILE INVESTMENTS, LLC,
a Florida Limited Liability Company;
WATERFRONT ICW PROPERTIES, LLC,
a Florida Limited Liability Company;
COASTAL ENERGY RESOURCES LLC,
a Florida Limited Liability Company,

Defendants.

Amended Order Granting Plaintiffs' Motion for Summary Judgment, Denying Defendants' Motion for Summary Judgment, and Entering Final Judgment

THIS MATTER having come before the court on May 11, 2021, on the parties' cross-motions for summary judgment,¹ as well as on August 4, 2021, for the undersigned's clarification of its ruling in open court following its denial of the Defendants' Motion For Rehearing, and the court, having reviewed the parties' respective motions and responses, considered the arguments of counsel, and being otherwise fully advised of the premises, hereby sets forth the following background information, undisputed facts, and conclusions of law:

BACKGROUND

1. This matter involves a platted subdivision in Palm Beach County, Florida, known as McCormick Mile and developed by the Ocean Ridge Development Company (Developer) in 1956.

¹ The specific motions argued to the court were (i) Plaintiffs' Motion for Partial Summary Judgment as to the Threshold Issue of Their Ownership of the Submerged Lands Adjacent to Their Lots Pursuant to Florida's Centerline Rule of Construction; (ii) Defendants' Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment; (iii) Defendants' Motion for Summary Judgment as to Plaintiffs Gregory L. Zink and Carmen Zink (Lot 54) and Michael Lanigan (Lot 15); and (iv) Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment as to Plaintiffs Gregory L. Zink and Carmen Zink (Lot 54) Michael Lanigan (Lot15).

2. Plaintiffs are the owners of 29 platted lots within the McCormick Mile subdivision (Lots).²

3. Defendants all claim some right, title, or interest in the submerged lands within the McCormick Mile subdivision as successor to the Developer by virtue of a 2015 quit claim deed.

4. The primary dispute is whether the Plaintiffs or the Defendants own title to the submerged lands adjacent to the Lots.

UNDISPUTED FACTS

5. The Developer acquired title to certain real property on December 27, 1955, pursuant to a warranty deed (Vesting Deed) that legally described the property as being “east of the centerline of Spanish Creek” (Property). The Vesting Deed was recorded at Deed Book 1119, Page 34 of the Official Records of Palm Beach County, Florida.

6. In 1956, the Developer platted all of the Property using the same legal description contained in the Vesting Deed (McCormick Mile Plat). The McCormick Mile Plat was recorded in Plat Book 24, Page 191, of the Official Records of Palm Beach County, Florida.

7. There are two waterways depicted on the face of the McCormick Mile Plat and labeled, respectively, the “Spanish Creek” and the “Canal” (Platted Waterways).

8. Each of the Lots is depicted as directly abutting one or both of the Platted Waterways, and there is no reservation of or exclusion for the Platted Waterways or any

² Plaintiffs own, respectively, lot numbers: 1, 10, 15, 17, 18, 19, 20, 21, 22, 23, 24, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, and 58, all within the McCormick Mile subdivision.

submerged lands on the face of the McCormick Mile Plat.

9. The plain language in the dedicatory statement on the face of the McCormick Mile Plat makes clear that the Developer owned all of the Property in fee simple and had all of that Property, including all of the submerged lands “east of the centerline of Spanish Creek,” surveyed and platted.

10. After platting the Property, the Developer sold all of the Lots, conveying title pursuant to general warranty deeds (Original Deeds). The Lot numbers corresponding to each of the Original Deeds, the Official Record Book and Page where the Original Deeds were recorded in the Deed Book of the Official Records of Palm Beach County Florida, and the names of the Plaintiffs are identified as follows:

LOT NUMBERS	ORIGINAL DEEDS - DEED BOOK AND	PLAINTIFFS LOT OWNERS
1	139/631	Paul A. Cook and Joell L. Cook, as Co-Trustees of the Revocable Trust dated February 13, 2004, created by Joell L. Cook
10	1133/186	Carol Burrow, as Trustee of the Carol Burrow Declaration of Trust Agreement dated February 11, 1999
15	1154/120	Michael Lanigan
17	1130/185	Louise A. Melling
18	1128/152	Laurence K. Barnes, as Trustee of the Laurence K. Barnes Revocable Trust U/A/D 09/15/2005, and Beth R. Barnes, as Trustee of the Beth R. Barnes Revocable Trust U/A/D 09/15/2005

19	1131/159	James F. Weege, as Trustee of and under the Declaration of The James F. Weege Trust dated 05/04/2006
20	1129/66 1	Charles L. Lea and Kathleen H. Lea
21	1129/66 1	Edward H. Buxton and Cathy D. Buxton
22	1160/46 7	New Heights Development, LLC, a Florida limited liability company
23	1136/30 9	Wayne E. Metcalf, Trustee of the Wayne E. Metcalf Trust dated December 19, 1994
24	1140/30 8	Philip M. McKinney and Patricia H. McKinney
38	1150/35 5	Anthony N. Strippoli and Alka Strippoli
39	1150/33 5	Edward Sivri
40	1154/11 7	Bruce Robert Ellig and Janice Reals Ellig
41	1154/11 8	6767 North Ocean Boulevard, Inc., a Florida corporation
42	1157/11 9	James C. McCready III and Suzanne L. McCready
44	1152/58 9	Reagan L. Ross
45	1154/11 7	Anton Leticia and Linda Leticia
46	1154/11 7	Jesus A. Olivera and Dalia Olivera
47	1158/49 5	The Dunes of Ocean Ridge, Inc., a Florida not-for-profit corporation
48	1143/54 0	James S. Gardner, Jr. and Barbara Gardner
49	1134/15 1	Bimini Kid Limited, LLC, a Florida limited liability company
50	1123/39 8	Jeffrey Petersen and Patricia Petersen

52	1124/66 1	Richard N. Edelstein
53	1125/568	Roger C. Sipp
54	1144/332	Carmen Zink and Gregory L. Zink
55	1149/483	Edward C. Jalbert and Keith E. Ravaioli
56	1147/63	Thomas M. White and Martha L. White
58	1148/396	Mark J. McKenna and Stephanie McKenna

11. The Original Deeds convey the Lots by express reference to the McCormick Mile Plat, including reference to the plat book and page where the McCormick Mile Plat is recorded in the Official Records of Palm Beach County, Florida.

12. The Original Deeds convey the Lots in fee simple, together with all of the “tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining,” and without reservation of, or exception for, the Platted Waterways or any submerged lands.

13. Thereafter, the Developer was dissolved by proclamation in 1965.

14. The Developer never asserted control or dominion over the Platted Waterways either before or after it was dissolved in 1965.

15. *Fifty years* after the Developer was dissolved, in 2015, Defendant Waterfront ICW Properties, LLC (ICW) procured a quit claim deed from the purported “sole surviving member of the Board of Directors of Ocean Ridge Development Company” (Quit Claim Deed) together with an affidavit from the same individual (Smith Affidavit). The Quit Claim Deed was recorded a Book 27965, Page 1706, and the Smith

Affidavit was recorded at Book 27965, Page 1709, all in the Official Records of Palm Beach County, Florida.

16. The Quit Claim Deed is Defendants' *sole* claim to title to the Platted Waterways or any of the submerged lands within the McCormick Milesubdivision.

17. On November 4, 2019, Defendants caused a "Surveyor's Affidavit" to be recorded in the Official Records of Palm Beach County, Florida (Surveyor's Affidavit). The Surveyor's Affidavit was recorded at Book 30999, Page 329, in the Official Records of Palm Beach County, Florida.

18. On November 14, 2019, ICW gave Defendant McCormick Mile Investments, LLC (MMI) a special warranty deed and caused it to be recorded in the Official Records of Palm Beach County, Florida. (ICW Deed). The ICW Deed was recorded at Book 31028, Page 1496, in the Official Records of Palm Beach County, Florida.

19. The ICW Deed is MMI's *sole* claim to title to the submerged lands within the McCormick Mile subdivision.

20. On November 14, 2019, ICW gave Defendant Coastal Energy Resources, LLC (CER) a mineral deed and caused it to be recorded the Official Records of Palm Beach County, Florida. (ICW Mineral Deed). The ICW Mineral Deed was recorded at Book 31028, Page 1484, in the Official Records of Palm Beach County, Florida.

21. The ICW Mineral Deed is CER's *sole* claim to title to the submerged lands within the McCormick Mile subdivision.

22. On May 5, 2020, MMI gave Defendant Palm Beach County ICW Land, LLC (PBCI) an easement for the purpose of drainage, flowage, and storage and caused it to be

recorded the Official Records of Palm Beach County, Florida (MMI Easement). The MMI Easement was recorded at Book 31421, Page 216, in the Official Records of Palm Beach County, Florida.

23. The MMI Easement is PBCI's *sole* claim to any interest in or to the submerged lands within the McCormick Mile subdivision.

24. Since January 2020, MMI has recorded in the Official Records of Palm Beach County, Florida, an instrument entitled "Notice of No Access and Docking Rights" against the residential lots within the McCormick Mile Plat, including against each of the Plaintiffs' Lots (Notices of No Access). The recording information of each of the Notices of No Access against Plaintiffs' Lots in the Official Records of Palm Beach County, Florida is as follows:

LOT NUMBER	OR BOOK/PAGE NUMBER
1	31181/1833
10	32371/112
15	31318/84
17	31225/479
18	31181/1787
19	31225/470
20	31317/1933
21	31160/250
22	31225/509
23	31318/103
24	31225/501
38	31317/1919
39	31318/94
40	31325/300
41	31318/23
42	31160/215
44	31160/225
45	31317/1993
46	31160/21

47	31317/1975
48	31318/166
49	31181/1668
50	31317/1967
52	32371/96
53	32371/104
54	32371/40
55	32371/39
56	32371/24
58	32371/120

CONCLUSIONS OF LAW

Summary Judgment Standard

25. Pursuant to the Florida Supreme Court’s recent opinion in *In re: Amendments to Florida Rule of Civil Procedure 1.510*, Case No. SC20-1490 (Fla. April 29, 2021), Florida’s summary judgment standard is to be construed and applied in accordance with the federal summary judgment standard.

26. Per the new Rule 1.510, the “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.*

27. Moreover, the “correct test for the existence of a genuine factual dispute is whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* (quotation omitted). No longer is it plausible to maintain that “the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the ‘slightest doubt’ is raised.” *Id.* (quotation omitted).

**Florida's Centerline Rule of Construction
and Rule of Dedication by Depiction on Plat**

28. There are two primary rules in Florida law particularly relevant to this case that guide courts in construing plats and deeds conveying by reference to plats: (i) the centerline rule of construction and (ii) the rule of dedication by depiction on a plat. The first rule provides that a developer who records a plat depicting a right-of-way and then conveys lots by reference to the plat, without affirmatively and expressly reserving title to the right-of-way in the deed, grants to the lot owners title to lot together with title to the centerline of the adjacent right-of-way. The second rule provides that a developer who records a plat depicting a right-of-way, without affirmatively and clearly excepting or excluding the right-of-way from dedication on the face of the plat, and then conveys the lots by reference to the plat, grants an irrevocable easement to the rights-of-way in favor of the lot owners. The case law frequently discusses both rules together.

29. The centerline rule of construction has long been the law of the land in the United States, applying to roadways, waterways, and other right-of-ways alike, and is “fixture of Florida law.” *Castillo v. United States*, 952 F. 3d 1311, 1320, fn. 4 (Fed. Cir. 2020).

30. The Florida Supreme Court has long held that “[w]here the owner of land has it surveyed, mapped, and platted, showing subdivisions thereof, with spaces for intervening streets or other highways between the subdivisions clearly indicated upon the map or plat, and conveyances in fee of the subdivisions are made with reference to such map or plat, the owner thereby evinces an intention to dedicate an easement in the streets or other highways to the public use as such, the title to the land under the street

remaining in the owner or his grantees; and, where such conveyances are made with reference to the map or plat, the dedication of the easement for street purposes cannot be subsequently revoked as against the grantees, and the title of the grantees of subdivisions abutting on such streets, in the absence of a contrary showing, extends to the center of such highway, subject to the public easement." *Smith v. Horn*, 70 So. 435, 70 Fla. 484, 489-490 (Fla. 1915).

31. The centerline rule of construction is based on the intention of the parties, and "the improbability of the grantor desiring or intending his interest in the street when he parted with his title to adjoining land. Such intention will never be presumed." *Florida Southern Railway Co. v. Brown*, 1 So. 512, 513-14 (1887).

32. Therefore, the starting point for any analysis is that the lot owners in a platted subdivision own to the centerline of the adjacent right-of-way and not the developer, absent a different intent clearly manifest on the face of the plat or the deeds.

33. Similarly, the Florida Supreme Court has expressed the rule of dedication by depiction on a plat, as follows: "It has frequently been held by this court that where the owner of a tract of land makes a town plat thereof, laying same out into blocks and lots, with intervening streets clearly indicated upon the plat . . . , he thereby evinces an intention to dedicate the streets to public use as such, and his grantees, as against him and those claiming under him, acquire the right to have such streets kept open. Such acts constitute a complete dedication, and the streets cannot be closed up or obstructed unless in pursuance of legal authority." *Florida East Coast Ry. Co. v. Worley*, 38 So. 618, 622 (Fla. 1905); *see also McCorquodale v. Keyton*, 63 So. 2d 906, 910 (Fla. 1953).

34. It “follows that such distinct and independent private rights in other lands of the grantor than those granted may be acquired, by implied covenant, as appurtenant to the premises granted, although they are not of such nature as to give rise to public rights by dedication. The object of the principle is, not to create public rights, but to secure to persons purchasing lots under such circumstances those benefits, the promise of which, it is reasonable to infer, has induced them to buy portions of a tract laid out on the plan indicated.” *McCorquodale*, 63 So. 2d at 910.

35. One aspect of the public policy reason behind both rules is practical and simple: to ensure that the use and ownership of a right-of-way on a plat is not left to ambiguity and so that the party most likely to use it, the adjoining or adjacent lotowner, is presumed to own it and have the right to use it in common with the other lot owners.

36. Over 115 years ago, in 1905, the Florida Supreme Court eloquently and forcefully stated the equitable component to the public policy reason behind these rules:

To say the least of it, these deeds were so drawn as to induce a large proportion of the purchasers to believe that the premises in controversy were dedicated, and thus they have received a consideration from the public for this very land; **and to allow them now to say that they did not intend to include it is to allow them to practice a palpable fraud upon the public** and to take advantage of their own wrong. This the plainest of dictates of common honesty forbids. The law will not allow them to affect ambiguous expressions, and then permit them to put their own construction on them. Here the words are emphatically their own, for the grantees – the public – were not there to dictate or suggest and certainly the principle of self-interest was sufficient to make them careful not to prejudice themselves by using words of too extensive a meaning.

Florida East Coast Ry. Co. v. Worley, 38 So. 618, 622 (Fla. 1905) (emphasis added).

37. These rules set forth by the Florida Supreme Court govern this court’s construction of the McCormick Mile Plat and the Original Deeds. Indeed, the rules and

the foregoing cases make clear that, in this case, the court need only look to the McCormick Mile Plat and the Original Deeds in order to discern the intent of the developer.

38. Moreover, both Plaintiffs and Defendants agreed in their summary judgment papers that the McCormick Mile Plat and the Original Deeds govern the parties' respective claims to the submerged lands and that there is no genuine dispute as to the plain language the McCormick Mile Plat and the Original Deeds.³ Instead, the parties simply disagreed about the interpretation of the recorded instruments, the application of the law to those instruments, and the result.

Defendants' Arguments Against Summary Judgment

39. In an effort to avoid the application of the rules and the necessary outcome that follows their application to the undisputed McCormick Mile Plat and Original Deed, Defendants argued that (i) the Spanish Creek and Canal waterways were never included as part of the McCormick Mile Plat and thus could not have been dedicated or conveyed by the Developer via the Original Deeds, (ii) the waterways were never expressly dedicated, and, by expressly dedicating the streets on the plat to the public and not including the waterways, the Developer thereby evinced an intent not to dedicate the waterways, (iii) without a dedication of the waterways, the centerline rule of construction does not apply and title to the Spanish Creek and Canal waterways could not have been conveyed by the Original Deeds, (iv) the legal descriptions in the Original Deeds do not refer to the waterways as boundaries or

³ At the hearing, however, counsel for Defendants argued that there were "many" issues of material fact.

“monuments” and thus the centerline rule of construction does not apply, and (v) some of the Lots do not extend to the waterway and the centerline rule of construction does not apply where the lot does not actually abut the waterway.

40. Respectfully, Defendants’ arguments find no support in controlling case law and are also contradicted by the plain language of the McCormick Mile Plat and the Original Deeds.

41. As noted above, it is clear from the dedicatory statement that the Developer platted all of the Property it owned including the submerged lands “east of the centerline of the Spanish Creek.” This is of critical importance as that Property includes the Spanish Creek and the Canal, which are plainly depicted and expressly identified as such on the face of the McCormick Mile Plat.

42. The court finds no merit in or evidentiary support for the Defendants’ argument that the Spanish Creek was not platted because the centerline of the Spanish Creek is actually on the seawall (instead of in the middle of the waterbody) or that the Canal was not part of the plat because both mouths of the Canal are marked by a dotted line on the plat instead of a solid line.

43. The Platted Waterways were plainly depicted and expressly identified on the face of the McCormick Mile Plat, and, when the Developer deeded the Lots by reference to the McCormick Mile Plat, it thereby granted the Lot owners an irrevocable easement over and across the Platted Waterways. *See, e.g., Smith*, 70 So. at 489-90; *McCorquodale*, 63 So. 2d at 910.

44. That there was an express dedication of the streets and not of the

Platted Waterways on the face of the McCormick Mile Plat does not reflect a sufficient contrary intent of the Developer to change this conclusion. *See, e.g., Worley*, 38 So. at 621 (“We attach no importance to the failure to mention the park in connection with streets or highways in the dedicatory statement. If there is nothing in the reservation to withdraw the park from the dedication, the filing of the plat with the work ‘park’ written upon a parcel exhibited thereon, and the sale of lots according to the plat, would operate as a dedication, notwithstanding the omission to mention the park in the dedicatory statement.”).

45. Defendants argued that this court’s final judgment in Circuit Court Case No.: 50-2015-CA – 01311640XXX0MB (Wellington Arms Final Judgment) has already determined that (i) the Spanish Creek is a manmade, artificial waterway, (ii) the location of the plat boundary is at the seawall, and (iii) the Quit Claim Deed conveyed the property west of the seawall.

46. The Wellington Arms Final Judgment determined that the portion of Spanish Creek at issue in that case was not sovereign submerged lands. However, it involved, as Defendants admit, different parties and different real property (Lots 63-66 of the McCormick Mile subdivision). While not receding from any portion of the

Wellington Arms Final Judgment, the court finds that, under the facts of *this* case, Plaintiffs are not bound by the Wellington Arms Final Judgment as to their property and their rights at issue herein.

47. Defendants have argued here that the Spanish Creek and the Canal are

manmade, artificial waterways, and Plaintiffs have not opposed that assertion. For purposes of this Order, the court finds that the Spanish Creek and the Canal are manmade, artificial waterways susceptible of being privately owned.

48. Defendants also argued that the location of the centerline of Spanish Creek had somehow changed over the years and that constituted an issue of material fact precluding summary judgment. However, the court was not presented with competent substantial summary judgment evidence of the alleged relocation or 'resetting' of the centerline of Spanish Creek sufficient to create an issue of material fact.

49. The determination as to the actual current location of the centerline of Spanish Creek is not material to the court's ruling and the court makes no such determination. The court's ruling as to ownership of the submerged lands is based on the information available on the *face* of the McCormick Mile Plat and the Original Deeds. It is this plat and these deeds that govern the outcome.

50. As to the argument that some of the Lots do not actually abut the adjacent waterways, the McCormick Mile Plat itself depicts no gap or hiatus between the Lots and the adjacent Platted Waterways, and the plat controls over what may have been - or is currently - actually on the ground for purposes of this court's analysis. *Smith*, 70 So. at 488; *The Travis Co. v. City of Coral Gables*, 153 So. 2d 750, 751 (Fla. 3d DCA 1963).

51. The remainder of Defendants' arguments cannot be maintained in light of the controlling precedent in *Travis*. *Travis* is on point with the undisputed

facts in this case. In *Travis*, the plat depicted a canal. *Id.* The canal was not expressly dedicated to the public on the plat. *Id.* The developer then conveyed lots describing them by reference to the plat. *Id.* The developer then later came back and argued that, because the canal had never been dedicated, it had deeded only the lots and had never intended to convey title the canal and that it therefore still owed it. *Id.*

52. The trial court in *Travis* rejected the developer's argument and held that the deeds from the developer, without reservation of title to the canal, conveyed the lots together with title to the center of the canal. *Id.*

53. The Third District Court of Appeal held that the trial court's ruling was "in accord with the rule that a conveyance of a parcel of land according to a plat, which parcel is bound by a street, private road, or other private way, carries title with it to the center of such street, road, or way, unless the deed evidences a contrary intention." *Id.*

54. *Travis* and over 115 years of Florida Supreme Court case law govern this case and, when that authority is applied to the undisputed facts before the court, it leads to the conclusions set forth below.

55. All of the Property, including all of the submerged lands east of the centerline of Spanish Creek, was platted as part of the McCormick Mile Plat as legally described and depicted thereon.

56. By depicting the Spanish Creek and the Canal and expressly labeling them as such on the McCormick Mile Plat, the Developer thereby evidenced the intent to dedicate those waterways to the lot owners and the public. When the Developer

thereafter conveyed the lots by express reference to the McCormick Mile Plat, the Developer granted an irrevocable easement over, in, and to the Platted Waterways in favor of the lot owners.

57. By conveying the Lots by reference to the McCormick Mile Plat without expressly reserving title to the submerged lands in the Original Deeds, the Developer also thereby deeded title to the Lots together with title to the submerged lands adjacent to the Lots to the centerline of the Platted Waterways.

58. As a result, the Developer was divested of title to the submerged lands adjacent to the Plaintiffs' Lots in the mid-1950s, and, at the same time, title to those submerged lands was vested in the Lot owners, where it has remained ever since.

59. While not determinative of any of the foregoing conclusions, the equities lie strongly with Plaintiffs based on the undisputed facts. Florida law already generally favors the rights of lot owners over those of the developers of platted subdivisions. *See, e.g., Worley*, 38 So. at 622.

60. Here, after selling all of the Lots, the Developer never made any claim to the submerged lands and was dissolved in 1965.

61. Plaintiffs argue, that for the next 50 years, the Lot owners owned and enjoyed, unimpeded, their Lots and the adjacent submerged lands on which they built and maintained their seawalls, docks, pilings, and decks, and stored their boats. Moreover, they enjoyed free and unrestricted access to the Platted Waterways and used those waterways for boating, fishing, recreation, and to access the waters of the adjacent

Lake Worth, the Intracoastal Waterway, and the Atlantic Ocean. Plaintiffs argued that, by contrast, during that entire time, the Developer never asserted any right to the submerged lands. The court finds that Defendants did not put forward any summary judgment evidence to the contrary.

62. In 2015, Defendant ICW obtained the Quit Claim Deed from the “sole surviving member of the Board of Directors of Ocean Ridge Development Company.” Again, the Quit Claim Deed is Defendants’ *sole* claim to title to the submerged lands adjacent to Plaintiffs’ Lots.

63. A “‘quit-claim’ deed yields only such interest as the grantor had at the time of the making such deed.” *Blitch v. Sapp*, 194 So. 328, 330 (Fla. 1940).

64. Here, the Developer had been divested of all right, title, and interest in and to the submerged lands adjacent to Plaintiffs’ Lots to the centerline of the respective Platted Waterway in the *mid-1950s*. In 2015, the Developer had no right, title, or interest to give as to the submerged lands adjacent to Plaintiffs’ Lots to the centerline of the respective Platted Waterway. Thus, the Quit Claim Deed did not convey any right, title, or interest in or to the submerged lands adjacent to Plaintiffs’ Lots to the centerline of the respective Platted Waterway.

65. If Defendant ICW acquired no title to the submerged lands adjacent to Plaintiffs’ Lots to the centerline of the respective Platted Waterway, it could not have subsequently granted any interest in the property to Defendants MMI and CER. Likewise, MMI could not grant any interest in the submerged lands adjacent to Plaintiffs’ Lots to the centerline of the respective Platted Waterway to Defendant

PBCI.

66. Instead, Plaintiffs' own and hold title to the submerged lands adjacent to their respective Lots to the centerline of the relevant Platted Waterways, subject to the irrevocable easement in favor of the lot owners in the McCormick Mile subdivision.

67. The court wishes to emphasize that the Defendants' actions in 2015 in procuring a quitclaim deed from the sole-surviving member of the Developer LLC that was dissolved in 1965 or 50 years earlier and using same as the Defendants' basis to make significant monetary demands on these landowners, many of whom having enjoyed the appurtenances of this waterfront property, such as docks, for decades, shocks the conscience of the court. What has happened here is plain and simply wrong and will not be countenanced by this court. Further, this is a perfect example in this court's respectful view of how the revised summary judgment rule shall apply. That is, the court finds under these facts that a reasonable jury would not return a verdict for the Defendants on the main claim brought by Plaintiffs or on any of their affirmative claims.

**Without title to the Platted Waterways,
Defendants' remaining claims are all moot**

68. The court's determination disposes of Plaintiffs' declaratory judgment and quiet title causes of action, which will be granted.

69. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment asks the court, for the sake of judicial economy, to enter an order dismissing their slander of title cause of action, without prejudice, and finding

that the dismissal does not operate as an adjudication on the merits. The court will grant this relief.

70. Defendants' Motion for Summary Judgment as to Plaintiffs Gregory L. Zink and Carmen Zink (Lot 54) and Michael Lanigan (Lot 15), their defenses to Plaintiffs' Amended Complaint, and their Counterclaims are all premised on the Defendants' ownership of the submerged lands adjacent to the Plaintiffs' Lots.

71. Defendants' motion for summary judgment, premised on their owning title to the submerged lands adjacent to Plaintiffs' Lots, is denied.

72. As the court has determined Defendants do not hold title to the submerged lands adjacent to the Plaintiffs' Lots, the court rules against each Defendants' Defenses of failure to state a cause of action, statute of limitations, laches, waiver, truth, and failure to join indispensable parties.

73. Lastly, Defendants' counterclaims of trespass, ejectment, and injunctive relief, are all based on Defendants' alleged title to the submerged lands adjacent to Plaintiffs' Lots, and, for that reason, fail as a matter of law and the court's determination serves as an adjudication of these claims.

74. With all of the claims, defenses, and counterclaims adjudicated or otherwise disposed of, there is no further judicial labor for the Court in this matter and, accordingly, the court hereby enters final judgment as follows:

WHEREFORE, it is ORDERED, ADJUDGED, and DECREED that:

1. Plaintiffs' Motion for Partial Summary Judgment as to the Threshold Issue of Their Ownership of the Submerged Lands Adjacent to Their Lots Pursuant to

Florida's Centerline Rule of Construction is hereby **GRANTED**.

2. Defendants' Motion for Summary Judgment as to Plaintiffs Gregory L. Zink and Carmen Zink (Lot 54) and Michael Lanigan (Lot 15) is hereby **DENIED**.

3. The Court hereby **DECLARES** as follows:

- a. Ocean Ridge Development Company platted all of the property described in and depicted on the McCormick Mile Plat without reservation, including, without limitation, all of the submerged lands;
- b. Ocean Ridge Development Company deeded out all of the Lots in the Original Deeds without reservation, including, without reservation of any submerged lands;
- c. Ocean Ridge Development Company granted an irrevocable easement in favor of all of the lot owners within the McCormick Mile Plat over, across, under, and through the Platted Waterways and submerged lands, for all purposes discernable from the face of the Plat, including, but not limited to, the purposes of building and maintaining docks, piles, decks, water craft docking and storage, recreational and fishing uses, access to the adjacent waters of Lake Worth, the Intracoastal Waterway, and the Atlantic Ocean, and adjoining parks;
- d. Ocean Ridge Development Company was divested of title to the submerged lands adjacent to Plaintiffs' Lots in the mid-1950s and, at the same time, title was vested in the adjacent Lot owners;
- e. Plaintiffs, as the owners of their respective Lots in fee simple absolute, own the adjacent submerged lands to the centerline of the Platted Waterway, free and clear of any and all claims of Defendants;
- f. At the time the Quit Claim Deed and the Smith Affidavit were given in 2015, Ocean Ridge Development Company had no interest in any of the submerged lands adjacent to the Plaintiffs' Lots to the centerline of the Platted Waterway; and

g. The Quit Claim Deed, Smith Affidavit, Surveyor Affidavit, ICW Deed, ICW Mineral Deed, MMI Easement, and the Notices of No Access are thus all wild instruments, and are hereby cancelled of record, declared to be null and void, and expunged from title as to Plaintiffs' Lots and the submerged lands adjacent to the Plaintiffs' Lots to the centerline of the Platted Waterway.

4. Judgment quieting title is hereby **ENTERED** in favor of each of the Plaintiffs, and their respective successors in title, as against Defendants, and anyone claiming by, through, or under Defendants, and title to each Plaintiff's respective Lot and the submerged lands adjacent to their Lot to the centerline of the Platted Waterway is forever quieted and confirmed in the respective Plaintiff. Defendants are perpetually enjoined from asserting any right, title, or interest in Plaintiffs' Lots and the submerged lands adjacent to those Lots to the centerline of the Platted Waterway.

5. Defendants' causes of action for Trespass, Ejectment, and Preliminary and Permanent Injunctive relief set forth in their Second Amended Counterclaim are all moot as a result of the Court's rulings and are therefore hereby **DISMISSED**, with prejudice.

6. Plaintiffs' slander of title cause of action is hereby **DISMISSED**, without prejudice. This dismissal shall not operate as an adjudication on the merits of Plaintiffs' slander of title cause of action.

7. Full and final judgment is hereby **ENTERED** in favor of Plaintiffs and against Defendants, and Defendants shall take nothing in this action and Plaintiffs

shall go henceforth without day. The court reserves jurisdiction to award taxable costs in favor of the Plaintiffs. As stated on August 4, 2021, the court will respectfully not entertain any further motions for rehearing.

DONE AND ORDERED in Palm Beach County, Florida.



502020CA004136XXXMB 08/09/2021
Donald Hafele
Circuit Judge

Copies Furnished to:

Michael H. Nullman, Esq. (mnullman@nasonyeager.com; creyes@nasonyeager.com) Nason, Yeager, Gerson, Harris & Fumero, P.A.
3001 PGA Blvd., Ste. 305
Palm Beach Gardens, FL 33410

Christopher W. Smart, Esquire (csmart@carltonfields.com; kstubbs@carltonfields.com) Samia G. Bennouna, Esquire (sbennouna@carltonfields.com; tpaecf@cfdom.net) Carlton Fields, P.A.

Corporate Center Three at International Plaza
4221 West Boy Scout Boulevard, Suite 1000
Tampa, FL 33607

William P. Sklar, Esquire (wsklar@carltonfields.com; sgarrick@carltonfields.com) Ilan A. Nieuchowicz, Esquire (inieuchowicz@carltonfields.com; shampton@carltonfields.com; wpbecf@cfdom.net) Carlton Fields, P.A.
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401