

7.22.08 #35a

TO: The Honorable Chairman and Members of the  
Board of County Commissioners

FROM: James L. Bennett, Pinellas County Attorney *JLB*

SUBJECT: Authority to Defend Case of  
James R. Cordell, Jr. and Kim L. Kaszuba v. Pinellas County  
Circuit Civil Case No. 08-9079-CI-021

DATE: July 22, 2008

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY'S OFFICE TO DEFEND THE ABOVE-STYLED CASE.

DISCUSSION: This case arose from an encroachment, specifically a limestone based driveway, upon public property by the Plaintiffs that now conflicts with plans of the Department of Environmental Management to erect a fence to contain preservation lands. The Plaintiffs seek to prevent Pinellas County from ousting them from public property. A small portion of the driveway encroaches upon these preservation lands.

The Plaintiffs are asserting that they have title to public lands by virtue of usage of this driveway for a term of 20 years. However, such claims are without merit as the claim of a prescriptive easement, or title by adverse possession, cannot be legally asserted upon public property.

Finally, it appears that the Plaintiffs have sufficient room upon their property to assure ingress and egress to their property. Therefore, it does not appear that they have a correct argument to a right of easement by necessity.

JLB:TES  
Attachment (Exhibits not included)

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

**JAMES R. CORDELL, JR, and  
KIM L. KASZUBA**

Plaintiffs,

v.

CASE NO: 08-9079 ED 021

**CHAIRMAN OF THE BOARD in and for  
PINELLAS COUNTY, a political subdivision  
of the State of Florida,**

Defendant.

---

**VERIFIED COMPLAINT**

James R. Cordell, Jr., and Kim L. Kaszuba ("**Plaintiffs**") sue the Chairman of the Board in and for Pinellas County, a political subdivision of the State of Florida ("**Defendant**") and state as follows:

**Jurisdiction and Parties**

1. This is a proceeding for declaratory and injunctive relief to determine legal rights and obligations of the parties and to declare that a roadway is available for use by the Plaintiffs by virtue of an easement to gain ingress and egress to and from their real property.

2. This court has jurisdiction pursuant to Sections 26.012 and 86.011, Florida Statutes.

3. Venue is located in Pinellas County, Florida because the disputes between the parties involve real property situated within Pinellas County, Florida.

4. The claim relates to and arises out of real property owned by Plaintiffs situated in Ozona, Florida, an unincorporated area of Pinellas County, located at 321 Banana Road, Ozona, Pinellas County, Florida 34660 and specifically described as:

East 125 feet of Lot 6 and North 50 feet of East 125 feet of Lot 7, Block 5, Futrell's Subdivision, according to the plat thereof as recorded in Hillsborough Deed Book S, page 234 of the Public Records of Hillsborough County, of which Pinellas County was formerly a part of subject to a 10 foot ingress and egress easement as per instrument #90-100404 as shown in Book 7250, Pages 2102 through 2104, along with Grantor's interest in easements recorded in OR Book 10247, Page 2161, and OR Book 10247, Page 2164 subject to restrictions, easements and reservation of record and taxes for the year 1998 and thereafter.

(the "Banana Road property").

5. Plaintiffs are married and the owners of the Banana Road property, having purchased the property on September 22, 1998.

6. The Banana Road property is maintained by Plaintiffs as their homestead and principal place of residence.

7. Defendant's governing body consists of the Pinellas County, Board of County Commissioners.

8. Defendant owns real property, which consists of vacant land abutting the Banana Road property to the south, specifically described as:

Lot 10, together with the South ½ of Lot 7, Block 5, Futrell's Map of the town of Yellow Bluff, according to the map or plat thereof as recorded in Hillsborough Deed Book S, pages 234 and 235 of the Public Records of Hillsborough County, of which Pinellas County was formerly a part.

("Defendant's property").

#### Relevant Facts

9. Since on or around 1960, a vacant strip of land was formed as a roadway and has been utilized as a private roadway by which owners of the Banana Road property could ingress to and egress from the Banana Road property to Banana Street.

10. Defendant has now asserted that a large portion of the roadway is owned by Defendant and that Defendant will construct a fence along the length of the northernmost side of

its' property thereby precluding Plaintiffs reasonable access to and from their property. A copy of the correspondence received by Plaintiff from Defendant is attached hereto and incorporated herein as Exhibit "A".

11. On June 17, 2008, Defendant had workers mark the subject roadway with spray paint to delineate where Defendant intends to construct its' fence. A copy of composite photographs that show where Defendant intends to construct its' fence are attached hereto as Composite Exhibit "B".

### COUNT I-DECLARATORY JUDGMENT

12. This is a claim for declaratory judgment regarding Plaintiffs' right to ingress and egress along the subject roadway by virtue of a prescriptive easement, or alternatively, as an easement by way of necessity.

13. The allegations set forth in paragraphs 1-11 above are re-alleged as if more fully set forth and incorporated herein.

14. Plaintiffs, and their predecessors in title, for a period of more than 20 years have had continuous, open and uninterrupted use of an easement over and across the northernmost side of Defendants' property for ingress to and egress from the Banana Road property to Banana Street.

15. Plaintiffs have continuously maintained that strip of roadway openly for the last 10 years by laying road rock to make the road more visible and safer to drive across.

16. There is no access to any public road or other reasonable and practicable way of egress or ingress for Plaintiffs' to access the Banana Road property except over the well-established roadway.

17. An undisturbed right of way across Defendants' property in order to access the Banana Road property is necessary for the beneficial use and enjoyment of the Plaintiffs' property, and without it, Plaintiffs would be foreclosed from access.

18. Defendant has asserted it will construct a fence along the roadway on the basis that a portion of the roadway that Plaintiffs utilize to gain access to their property is owned by Defendant. Defendant has further made demand that Plaintiffs remove the road rocks covering the roadway to allow for the construction of the fence.

19. Defendant has refused to allow Plaintiff continued, unimpeded access across Defendants' property to continue the long established ingress and egress route over the northernmost side of Defendants' property.

20. Emergency vehicles and/or utility vehicles (including power and garbage utilities) will not be able to gain access to Plaintiffs' property if the Defendant is permitted to construct a fence which will divide and cut the existing roadway in half.

21. Plaintiffs has conferred with both the local fire department and garbage utility service company who have indicated that no service could be provided if the fence is constructed along the line Defendant has indicated it would construct its' fence.

22. Plaintiffs' own vehicles, boat trailers and utility trailers will be foreclosed from access to the Banana Road property if a fence is constructed by Defendant.

23. Plaintiffs are not reasonably certain that Defendants' purported boundary line is indeed accurate due to the existence of old boundary stakes evident just 1-2 feet off the south side of the roadway, which indicate an inconsistency in what Defendant asserts is its' boundary.

24. Plaintiffs are willing to pay Defendant reasonable compensation to acquisition the portion of property owned by Defendant that is the subject matter of this dispute.

25. The dispute between the parties is actual, bona fide and substantial, with a substantial uncertainty of legal relations involving real property which requires determination and settlement.

**WHEREFORE**, Plaintiffs request that the Court:

- (a) exercise its jurisdiction to determine Plaintiffs' right to an easement for ingress and egress across the northernmost side of Defendants' property;
- (b) declare Plaintiffs have a right to ingress and egress across the northernmost side of Defendants' property by virtue of a prescriptive easement, or alternatively, by way of an easement of necessity;
- (c) prohibit Defendant from constructing a fence alongside its' northernmost boundary of Defendants' property, without appropriate setback requirements;
- (d) award Plaintiffs' attorneys' fees and costs associated with this action; and
- (e) for any other relief this Court deems equitable and just.

**COUNT II-INJUNCTIVE RELIEF**

26. This is a claim for injunctive relief.

27. The allegations set forth in paragraphs 1-25 above are re-alleged as if more fully set forth and incorporated herein.

28. The equities weigh heavily in Plaintiffs' favor. Defendants' proposed construction of a fence deny Plaintiffs the right to rightful use and enjoyment of their home. In this case, Defendant must be made amenable to the restraint of law and equity. It is unfair and inequitable for Defendant to unreasonably dictate how Plaintiffs gain access to the Banana Road property

after continued open, notorious and uninterrupted access has been gained by virtue of an easement along Defendants' northernmost side of Defendants' property for over 20 years.

29. Plaintiffs have no adequate remedy at law which will compensate them if Defendant is permitted to construct a fence in the middle of a private roadway that Plaintiffs', their neighbors, invited guests and emergency and utility vehicles use to access the Banana Road property from Banana Street.

30. Plaintiffs will suffer irreparable harm if Defendant is permitted to foreclose Plaintiffs' access, and that of their neighbors, invited guests and emergency and utility vehicles access to their property by restricting the unimpeded and uninterrupted use of an easement along the northernmost side of Defendants' property.

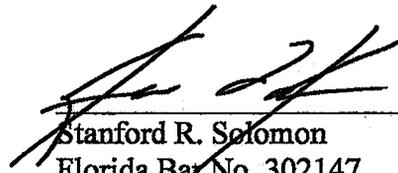
31. Plaintiffs will suffer irreparable harm if Defendant is allowed to proceed with the construction of a fence along the northernmost boundary to Defendants' property.

32. The granting of an injunction preserving the status quo and prohibiting Defendant from constructing a fence along the subject roadway will not disserve the public interest.

33. The damage that will occur to Plaintiffs, absent the imposition of a temporary and permanent injunction, substantially outweighs the damage Defendant would suffer if the injunction were not entered.

WHEREFORE, Plaintiffs request that the Court immediately, on a temporary and permanent basis:

- (a) enter an injunction prohibiting Defendant from constructing a fence alongside its' northernmost boundary which abuts the Banana Road property;
- (b) require Defendant to pay to Plaintiffs all attorneys' fees and costs associated with this action; and
- (c) for any other relief this Court deems equitable and just.



---

Stanford R. Solomon  
Florida Bar No. 302147  
[ssolomon@solomonlaw.com](mailto:ssolomon@solomonlaw.com)  
Kim L. Kaszuba  
Florida Bar No. 111546  
[kkaszuba@solomonlaw.com](mailto:kkaszuba@solomonlaw.com)  
**THE SOLOMON LAW GROUP, P.A.**  
1881 W. Kennedy Boulevard  
Tampa, Florida 33606-1606  
(813) 225-1818 (Tel)  
(813) 225-1050 (Fax)  
Attorneys for PLAINTIFFS

**VERIFICATION**

STATE OF FLORIDA  
COUNTY OF PINELLAS

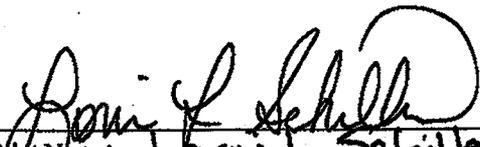
Before me, the undersigned personally appeared James R. Cordell, Jr., who, after being duly sworn, stated:

- A. My name is James R. Cordell, Jr.
- B. I have personal knowledge of the facts and circumstances that are the subject of the above-styled action and of all facts set forth in the foregoing Verified Complaint.
- C. The facts set forth in the foregoing Verified Complaint are true and correct in all respects.
- D. The documents and other writings that are attached to the foregoing Verified Complaint filed in the above-styled action are accurate copies of the documents that they represent.
- E. I have duly executed the foregoing Verified Complaint to verify the truth of all factual assertions made therein.

  
\_\_\_\_\_  
JAMES R. CORDELL, JR

SWORN TO AND SUBSCRIBED before me on June 18<sup>th</sup>, 2008, by James R. Cordell, Jr., to me personally known or who produced a valid Florida driver's license as identification and who did/did not take an oath.

(SEAL)

  
\_\_\_\_\_  
Print Name: Lorri L. Schiller  
NOTARY PUBLIC  
My Commission Expires:

NOTARY PUBLIC-STATE OF FLORIDA  
 Lorri L. Schiller  
Commission #DD675362  
Expires: JUNE 16, 2011  
BONDED THRU ATLANTIC BONDING CO., INC.