

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL DISTRICT
IN AND FOR MARTIN COUNTY, FLORIDA

ST. LUCIE INLET HARBOR
DOCK OWNERS ASSOCIATION, INC.,
et al,

CASE NO: 13-331CA
JUDGE: L MIRMAN

Plaintiffs,

v.

JAMES P. LEONHARDT, MARY L. LEONHARDT,
et al.

Defendants.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on Cross-Motions for Final Summary Judgment, and the Court having conducted a review of the pleadings, motions, and memoranda, exhibits, and affidavits, the law, and the arguments of the parties, the Court issues this, its Final Summary Judgment and makes the following findings of fact and conclusions of law.

1. Plaintiff, St. Lucie Inlet Harbor Dock Owners Association (Association) is a Florida non-profit corporation located in Martin County, Florida. Plaintiff represents certain owners of properties with docks. The Association is located in St Lucie Inlet Harbor subdivision in the Rocky Point neighborhood of Martin County, Florida.
2. The other named Plaintiffs are homeowners within St. Lucie Inlet Harbor subdivision, whose properties do not abut the water.
3. Defendants, Kirchman and Leonhardt, are owners of two waterfront lots located in the St. Lucie Inlet Harbor subdivision. The remaining Defendants are also homeowners of non-waterfront lots within the St. Lucie Inlet Harbor subdivision.

4. The St. Lucie Inlet Harbor subdivision was developed by Roger Skillman (hereinafter "Skillman") in the 1960's.
5. On April 14, 1962, Skillman filed a plat of St. Lucie Inlet Harbor subdivision in the public records of (now) Martin County, Florida.
6. On March 15, 1963, before any lots in St. Lucie Harbor subdivision were conveyed, Skillman recorded the Protective Covenants for St. Lucie Inlet Harbor (Declaration) in the public records of (now) Martin County, Florida.
7. The Declaration provides restrictions and limitations, one of which is paragraph 17, which in pertinent part states that the "ownership and use of the park, dock and harbor area adjoining the subdivision are co-operative ventures and it is expected that each lot owner will be fair with his neighbors in using said facilities ...". The "...dock and harbor area adjoining the subdivision..." constitutes the entire waterfront of the subdivision. Paragraph 20 then states "The above restrictions and limitations terminate on January 1, 1982." This clearly applies to paragraph 17, which is of course, above paragraph 20 in the document.
8. On June 7, 1963, Skillman issued a deed for lot 36N, (now Leonhardts) to William O. and Effie E. Carlson. Carlson's deed was specifically given "subject to" the Declaration which reserved riparian rights to Skillman until 1982.
9. In April 1964, Skillman filed an Amended Declaration of Restrictions (Amended Declaration), in the Martin County public records. Paragraph 17 of this amendment is identical to number 16 in the original restrictive deed. Also, paragraph 20, is identical to paragraph 19 of the prior deed, stating "The above restrictions and limitations terminate on January 1, 1982."

10. On July 17, 1964, a deed for lot 36S (now Kirchmans) was issued from Skillman to Willard Porter and Jean Porter.
11. As was the case with the Carlson deed, the Porter deed states, "Subject to the Protective Covenants for St. Lucie Inlet Harbor Again, those Restrictive Covenants expired by their own terms in 1982.
12. As stated in *Haynes v. Carbonell*, 532 So.2d 746, 748 (Fla. 3rd DCA, 1988), riparian interests may be severed only by an "express bilateral agreement to do so." The severance must be explicit, it cannot be implicit. "It is generally held that riparian rights may be separated from the ownership of the land to which they are appurtenant, either by a grant of such rights to another, or *by a reservation thereof in the conveyance* of the land." See *78 Am. Jur.2d "Waters" § 278*. "(A)bsent explicit severance of littoral or riparian rights, those rights remain with upland owner." *Legendary, Inc. v. Destin Yacht Club Owners Ass'n, Inc.* 724 So.2d 623 (Fla. 1st D.C.A., 1998)."
13. The Court believes that the critical question in this case is whether the March, 1963 protective covenant and its later amendment, followed by the later deeds which incorporate them by reference, expressly, and bilaterally reserved riparian rights affecting the entire waterfront property in question: The March 1963 language must be explicit, as a matter of law.
14. The 1963 protective covenant, though it does not use the words "riparian rights," does address them sufficiently explicitly to give rise to a reservation of rights, limited in duration as was expressly stated. "The ownership and use of the harbor area adjoining the subdivision" references the riparian rights in question. They are made "co-operative ventures," thereby severing them from individual lot ownership until 1982 and reserving

them by Skillman until that time. The later, gratuitous, expression that each lot owner will be fair to each other once they are jointly possessed does not change or undo the fact of reservation until 1982. The later deeds, which incorporated the reservation, were subject to the reservation, and thereby affected bilateralism. Compare *Olde Severna Park Improvement Ass'n, Inc. v. Gunby*, 402 Md. 317, 329, 936 A.2d 365, 371 (Md.,2007), in which a subsequent transfer by a developer did not properly reference a prior reservation, and therefore did convey riparian rights. See also *Carr v. Kidd*, 261 Va. 81, 95, 540 S.E.2d 884, 893 (Va., 2001) which references that chain of title can show retention or severance of riparian rights, when reflected on the face of deeds; and see *Irby v. Roberts*, 256 Va. 324, 329, 504 S.E.2d 841, 843 (Va.,1998), finding that the reservation language of, "a 30' easement ... for the purpose of constructing a pier" to be an unambiguous and clear reservation of riparian rights, though it did not contain the words "riparian rights."

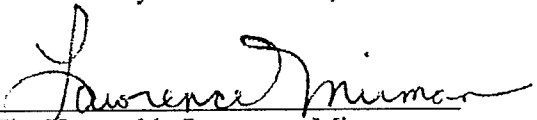
15. However, by the very terms of the reservations, the reservation of riparian rights expired on January 1, 1982. At that point in time, the reservation expired, and the riparian rights in question were fully vested to the defendants by chain of title. At the time riparian title fully vested and was conveyed to the lands ultimately belonging to the defendants; it had been subject to a limited reservation of riparian rights, which expired in 1982. Any act of Skillman after the conveyances of the deeds in question to the Carlsons and Porters could not as a matter of law deprive them or their successors in title of the riparian rights that would inure to them as a matter of law after 1982. The right to affect riparian rights after 1982 had already been conveyed to the Carlsons and Porters by the terms of their deeds which were only restricted until 1982.

Based on the foregoing, it is

ORDERED AND ADJUDGED that Final Summary Judgment is entered in favor of Defendants James P. Leohnhardt and Mary L. Leonhardt and Ronald E. Kirchman and Linda R. Kirchman. Plaintiffs' Motion for Summary Judgment is denied and Plaintiffs shall take nothing from this action. Defendants' Motion for Summary Judgment is hereby GRANTED.

The Court reserves jurisdiction to consider further rulings as may be required, including but not limited to other amounts owed by parties, costs and attorneys fees, if warranted.

DONE and ORDERED at Stuart, Martin County, Florida this 1st day of November, 2013.


The Honorable Lawrence Mirman
Circuit Court Judge

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