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

CHRISTOPHER M. GELETKA, and
CHARLENE DENISE GELETKA,

Plaintiffs,

Case No.: 502017CA007187

vs.

TROY SCHAAF, DARIA LOUISE
ADARIO and THE TOWN OF
HYPOLUXO,

Defendants.
_____/

FINAL ORDER

THIS CAUSE came before the Court for Non-Jury Trial on April 22, 2021. The Court conducted a full day Non-Jury Trial during which time the parties presented witnesses and exhibits. During the Trial, Plaintiffs presented the testimony of two witnesses: Charles Davis and Christopher Geletka. Plaintiffs' Exhibits 1, 2, 6, and 9-17 were admitted into evidence without objection. Defendants presented the testimony of two witnesses: Troy Schaaf and Craig Wallace. Mr. Wallace was presented as an expert in the field of land surveying and mapping. Defendants' Exhibits 1, 2, 3, and 8-11 were admitted into evidence without objection and Defendants' Exhibits 4 and 5 were admitted into evidence over Plaintiffs' objection. Defendant, the Town of Hypoluxo did not appear at the Trial, presented no witnesses, affidavits or exhibits.

PROCEDURAL HISTORY

Plaintiffs Christopher and Charlene Geletka (hereinafter the "Plaintiffs") seek injunctive relief against the Defendants/Counter-Plaintiffs, Troy Schaaf, Daria Louise Adario (hereinafter "Defendants") and The Town of Hypoluxo (hereinafter the "Town") under a three-count, Second Amended Complaint:

A. In Count I, Plaintiffs seek an injunction enforcing a series of Covenants and Restrictions recorded by the developer of the Hypoluxo Park subdivision in February 1956. Plaintiffs seek to enjoin the Town from issuing permits to Defendants to construct a new dock and boat lift and to enjoin Defendants from constructing said dock. Count I also seeks to enjoin Defendants from continuing to use their existing boat lift.

B. In Count II, Plaintiffs seek an injunction enforcing an easement created by a public dedication of the canal known as Marlin Cove. Plaintiffs seek to enjoin Defendants from constructing a new dock and boat lift in Marlin Cove and to enjoin Defendants from using their existing boat lift. Plaintiffs further seek to enjoin the Town from issuing any permits to Defendants for the construction of any structure within Marlin Cove at the Defendants' residence.

C. In Count III, Plaintiffs seek to enjoin Defendants from constructing a new dock and boat lift which extend beyond the boundaries of any riparian rights that Defendants may possess to the adjacent waters of Marlin Cove, and seeks to enjoin the Town for issuing permits for said dock and boat lift.

Defendants filed a four-count, Second Amended Counterclaim against the Plaintiffs:

A. In Count I of the Second Amended Counterclaim, the Defendants seek to quiet title to a portion of Marlin Cove.

B. In Count II of the Second Amended Counterclaim, the Defendants seek to eject the Plaintiffs, and particularly portions of Plaintiffs' dock and boat lift from the portion of Marlin Cove claimed by Defendants.

C. In Count III of the Second Amended Counterclaim, the Defendants seek a judicial declaration of their riparian rights as waterfront owners along Marlin Cove to use and access the waters of the canal.

D. In Count IV of the Second Amended Counterclaim, the Defendants seek a declaratory judgment declaring that Defendants are entitled to replace their boat lift with a dock and boat lift and to moor a boat at the Defendants' residence in the manner and configuration approved by the State of Florida, Department of Environmental Protection and the U.S. Army Corps of Engineers (the "Corps"), notwithstanding the Covenants and Restrictions and the pubic dedication of Marlin Cove.

During this Non-Jury Trial on April 22, 2021, in the cause herein, the Court considered the argument of the parties including detailed Trial Memoranda filed by both parties and the cases and authorities cited therein, the testimony of witnesses and the exhibits admitted into evidence. Accordingly, the Court makes the following findings of fact:

FINDINGS OF FACT

The Subject Properties

1. The Plaintiffs own Lots 8 and 9 within the Plat of Hypoluxo Park ("the Plat"), which include a single house built on both Lots. The Plaintiffs also own Lots 8A and 9A, which are two 12-foot wide by 20-foot deep strips of land located at the westernmost end of a canal referred to on the Plat as Marlin Cove. Collectively, the Plaintiffs own 24 feet of water frontage.

2. The Parties stipulate that Marlin Cove is a man-made canal. As shown on the Plat, Marlin Cove begins at the east end of the Hypoluxo Park subdivision, where it meets the Intracoastal Waterway/Lake Worth. Marlin Cove extends west to a dead-end where it is fronted by 7 strips of land – each strip being only 12 feet wide – the northern most of which are Plaintiffs' Lots 8A and 9A. Marlin Cove is approximately 85 feet wide along its entire length. Fourteen residential lots line each side of Marlin Cove.

3. The Defendants own Lot 57, which is a 100-foot deep by 75-foot wide lot. Lot 57 is the westernmost lot along the north side of Marlin Cove. The westernmost 20 feet of Lot 57's southern border runs alongside the northern border of Lot 8A. The remaining 55 feet of Lot 57 fronts Marlin Cove facing southward. The point at which the seawalls of Lot 8A and Lot 57 meet, the properties form a 90-degree angle at the northwestern corner of the canal.

4. Lot 57 previously included a 30-foot boat dock running parallel with the seawall and extending 6 feet into Marlin Cove. Lot 57's dock was permitted by the Town of Hypoluxo in 1975. (Def. Ex. 10).

5. Troy Schaaf testified to a longstanding familiarity with the Hypoluxo Park neighborhood, dating back to the 1990s. Mr. Schaaf kept a boat at a friend's house across Marlin Cove for a period of time, visited friends in the neighborhood, lived in the neighborhood in a different home and in his position with the Lantana Police Department, patrolled the neighborhood as part of the Department's Marine Unit for many years.

6. In the early 2000s, Lot 57 had fallen into foreclosure. During this same timeframe, a portion of the seawall at Lot 57 collapsed, and the dock also collapsed or was removed. In 2007, HSBC Bank USA obtained a certificate of title to Lot 57 and also obtained permits and replaced/repaired the seawall. However, the Bank did not replace the dock.

7. When Defendants purchased Lot 57 from HBSC Bank USA in 2009, no dock was present. In 2010, Defendants installed a boat lift mounted directly onto the seawall at Lot 57, which was permitted by the Florida Department of Environmental Protection, the Corps and the Town of Hypoluxo.

8. Since that time, Defendants have continuously stored a 28-foot Bertram sport fishing boat on the boat lift.

9. The Plaintiffs purchased Lots 8 and 9, and Lots 8A and 9A from Charles Davis in 2011. When Mr. Davis owned Lots 8A and 9A, there had been a single dock maintained at the southern end of Lot 9A. This dock was shared with the next lot, Lot 10A, such that a boat could be tied up on Lots 9A and 10A on either side of the dock.

10. No pier was ever present on Lot 8A until after the collapse of the seawall and removal of the dock at Lot 57. At that point, in 2005, Mr. Davis built a narrow, 2-foot wide by 20-foot long pier extending east from Lot 8A.

11. Mr. Davis complained to the Town when Defendants installed their boat lift in 2010. The Town advised both parties that there were a set of Covenants and Restrictions regarding the properties but did not take a position regarding their effect and the boat lift was installed.

12. After purchasing the property from Mr. Davis, Plaintiffs removed both docks from Lots 8A and 9A and installed a single, 20-foot long dock with a 4-post boat lift on the north side of the dock. Plaintiffs' dock and boat lift, installed in 2012, are built on an angle across both Lot 8A and Lot 9A, so that the bow of Plaintiffs' boat points into the 90-degree corner of the canal where Lot 8A and Lot 57 meet. Plaintiffs keep a 24-foot center console on their boat lift.

13. Prior to installing the dock and boat lift, Mr. Geletka and Mr. Schaaf communicated regarding the best possible solution to accommodate the new Geletka dock and boat lift next to the existing Schaaf boat lift. Mr. Schaaf expressed his concern that the northeastern piling of Plaintiffs' new boat lift would interfere with the Defendants' existing boat lift.

14. After the Plaintiffs installed their boat lift, the Defendants discovered that the Plaintiffs' new boat lift interferes with the Defendants' ability to launch and retrieve their boat from the boat lift at the lower stages of the tide. The Defendants' existing lift uses two beams mounted against the seawall at an angle. Thus, for each foot that the boat is lowered, the boat also

moves outward about a foot. At the lower stages of the tide, the lift must be lowered to the point where the Defendants' boat comes in contact with the Plaintiffs' boat lift before reaching the water and the boat lift cannot be lowered further without damaging the Defendants' boat.

15. Under the *status quo*, Defendants are able to use the boat lift, but only during the higher stages of the tide. Mr. Schaaf testified that often he must move the boat off of the lift during high tide, regardless of when that occurs, and tie the boat up to another boat across the canal with the permission of the neighbor. Similarly, if the Defendants arrive back at their residence during the lower stages of the tide, they are again forced to tie the boat up across the canal at a neighbor's home and wait until the tide rises high enough to enable the boat to be placed back on the boat lift.

16. Troy Schaaf testified that he explored several options to restore full access to Defendants' boat lift, including adjusting the "bunks," attempting to place the boat on the lift facing eastward and considering moving the lift back toward his eastern property. All proved unsuccessful.

17. On July 18, 2017, Defendants obtained a permit from the State Department of Environmental Protection to install a new dock and a 4-pile boat lift. Defendants plan to build a dock and boat lift mounted on an angle matching the angle of the Plaintiffs' dock and lift. Thus, the two boats would be stored parallel to one another, allowing both boats to pull straight forward onto their respective boat lifts and back straight off their lifts when leaving. The arrangement, as shown in the various permit applications, is akin to cars parking alongside one another in angled parking spots. (Def. Ex. 8).

18. Defendants also applied to the Corps for a permit. In response to complaints received from the Plaintiffs, the Corps required the Defendants to submit an explanation so that the Corps could evaluate whether the Defendants' new dock and boat lift would create a

navigational hazard. Satisfied that no dangerous navigation condition would be created, the Corps issued the Defendants a permit on January 8, 2018. (Def. Ex. 9).

19. The Defendants also applied to the Town for a building permit; however, the Town has held off issuing this final permit, awaiting the outcome of this case.

The Plat and the Restrictions

20. The subdivision containing the subject properties and the canal known as Marlin Cove was created by the Plat of Hypoluxo Park (the "Plat") and recorded on January 28, 1956 at Plat Book 24, Page 198 in the official records of Palm Beach County. The record contains no evidence that the Plat was ever amended or vacated, save for three hand-written notations made to the original of the Plat by the Clerk of the Court; the most relevant of which, documents the abandonment of the public dedication of the two man-made canals, Marlin and Dolphin Cove, by the Town. This abandonment was accomplished by the Town in a Resolution dated July 8, 1961 and recorded at ORB 657, Page 319.

21. The Plat dedication language states that the developer "does hereby dedicate to the perpetual use of the public, as public highways and waterways, the Drives and Coves shown hereon…" (Pltf. Ex. 1).

22. After the Plat was recorded, a document entitled Covenants and Restrictions (hereinafter "Restrictions") was recorded by the developer. (Pltf. Ex. 2). On its face, the Plat makes no reference to the Restrictions. (Pltf. Ex. 1).

23. Article 10 of the Restrictions contains a series of limitations on the size of boat docks to be built in Marlin Cove. Article 10 of the Restrictions also states that no docks or pilings may be placed within the two Coves behind, *inter alia*, Lot 57 without first obtaining approval of the Subdivision Control Committee. (Pltf. Ex. 2).

24. The evidence demonstrates that no Subdivision Control Committee exists. Neither party could produce any witness or exhibit demonstrating such a committee was ever formed, existed, or ever operated at any time after the Restrictions were recorded.

ANALYSIS

A. The Restrictions and the Marketable Record Title Act

The Restrictions were recorded after the Plat, and the Plat, on its face, makes no reference to the Restrictions. It is stipulated by the Parties that none of Defendants' deeds (Def. Ex 3) contain any specific reference to the Restrictions. The evidence includes a continuous chain of deeds to Lot 57, extending back as far October 10, 1972.

The chief purpose of the Marketable Record Title Act (the "MRTA") is to extinguish stale claims and ancient defects to title, and accordingly, to limit the period necessary for title searches. *Dorsey v. Robinson*, 270 So. 3d 462 (Fla. 1st DCA 2019). The MRTA provides that "any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land for 30 years or more, shall have a marketable title to such estate in said land, which shall be free and clear of all claims excepts the matters set forth as exceptions to marketability." §712.02, Fla. Stat. (2020).

The MRTA expressly applies to covenants and restrictions. Section 712.05 sets forth exceptions to the general rule extinguishing claims against title which are more than 30 years old. Section 712.05(2), states that "estates, interests, claims, or charges, or any covenant or restriction, preserved by the filing of a property notice in accordance with the provisions hereof" shall not be extinguished by the MRTA. The Restrictions in this case are clearly "covenants or restrictions" as referenced in Section 712.05(2). The MRTA defines "covenants or restrictions" as "any agreement or limitation contained in a document recorded in the public records of the county in

which a parcel is located which subjects the parcel to any use or other restriction or obligation." §712.01(2), Fla. Stat. (2020). Article 10 of the Restrictions prevents the owner of Lot 57 from erecting any kind of dock or boat lift without prior approval of a Subdivision Control Committee. Other limitations on the size and type of docks are set out in Article 10. This clearly encompasses the type of "use restriction or obligation" captured by the MRTA's definition of "covenants or restrictions."

The Parties stipulated that the Restrictions have not been preserved using the notice procedures set out in the MRTA. *See* §712.05, Fla. Stat. (2020). The parties further stipulated that the Defendants' deeds do not specifically reference the Restrictions. Exhibit 3, which contains deeds to Lot 57, dating back to 1972, confirm this. The only reference found in any of the deeds to Lot 57 is a general reference to "all reservations, covenants, conditions and restrictions of record." The MRTA makes it clear that general references in deeds to any such easements, use restrictions or other restrictions or other interests, created prior to the root of title (more than 30 years ago), are not sufficient to preserve an interest unless "specific identification by reference book and page of record or name of recorded plat appears in a recorded transaction that makes that transaction subject to the specifically identified use restriction covenant easement or interest." §712.03(1), Fla. Stat. (2020). While the deeds refer to the Plat, the Plat itself contains no reference to the Restrictions. Accordingly, the Restrictions have not been preserved in the manner required by the MRTA. §712.02, Fla. Stat.; *Lyday v. Myakka Valley Ranches Improvement Assoc., Inc.*, 279 So. 3d 733, 735 (Fla. 2d DCA 2019).

The Restrictions are not exempt from the effect of the MRTA under the exception to marketability listed in Section 712.03(5). This exception only applies to any recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and

terminal facilities, including those of a public utility or of a government agency, so long as the same are used and the use of any part thereof shall, except from the operation hereof the right to use the entire use thereof." *Id*. However, the Restrictions are exactly that – restrictions. Article 10 of the Restrictions, pertaining to docks, consists of nothing more than use restrictions on the various properties. In the case of Lot 57, approval of a Subdivision Control Committee is required. These restrictions on use of the Lots and fall squarely within the definition of a covenant or restriction in §712.01(2). By contrast, an easement is an incorporeal non-possessory interest in land which entitles the owner of the easement to use the land of another. *Dianne v. Wingate*, 84 So. 3d 427, 429 (Fla. 1st DCA 2012). The Restrictions do not give anyone the right to use the land of another. Rather, they restrict the use each lot owner is entitled to make of their property, therefore any exemption for easements is inapplicable here.

Accordingly, the Restrictions are extinguished by the MRTA and are of no further force and effect as against Lot 57 or its dock. The Plaintiffs are not entitled to an injunction to prevent the Town from issuing a permit or to prevent Defendants from building a dock or boat lift on the basis of the Restrictions.

B. The Public Dedication and Ownership of Marlin Cove

1. Ownership of Marlin Cove

It is well settled under Florida law that a common-law dedication of property to the public does not convey fee simple title, but rather grants the public an easement over the property. *Smith v. Horn*, 70 So. 435 (Fla. 1915). Title to the land underlying the roadways and canals created within a Plat remain with the dedicator. *Pelican Creek Homeowners, LLC v. Pulverenti*, 243 So. 3d 467, 470-71 (Fla. 5th DCA 2018). When the dedication is accomplished by a plat map, the underlying fee simple title to dedicated roads and canals accompanies the conveyance of the

corresponding lots in the plat unless the dedicator expressly reserves the underlying title to himself. This principle, so often applied to roadways, is equally applicable to publicly dedicated canals. *Id.* If the canal is wholly contained within the plat, the corresponding portion of the canal passes from the dedicator to the individual lot, extending from each lot out to the centerline of the canal. *Travis Co. v. City of Coral Gables*, 150 So. 2d 750, 751 (Fla. 3d DCA 1963).

The dedication within the Plat is a common-law dedication. The Plat lacks any reference to a statutory dedication to the public as provided in Section 95.361, Florida Statutes. The record indicates that the Town of Hypoluxo never maintained the canal and, in fact, abandoned the canal in 1961, only five years after the dedication. Mr. Geletka testified that the properties owners are responsible for dredging the canal. The record also lacks any evidence that the dedicator of the Plat expressed any intent to retain the underlying fee title to Marlin Cove to himself when he platted the land or dedicated the canal.

Therefore, the fee simple title to portions of land within Marlin Cove itself accompanied the conveyance of each lot in the Plat as it was sold. *Travis Co. v. City of Coral Gables*, 150 So. 2d at 751. By operation of law, and in the absence of any contrary intent by the dedicator, the Plaintiffs and Defendants each own the fee simple title to a respective portion of Marlin Cove corresponding to their own platted lots and out to the center of Marlin Cove. *Id*. This title remains subject to an easement in favor of the public created by the dedication in the Plat.

Because the Plaintiffs' Lots 8A and 9A and Defendants' Lot 57 form an inside 90-degree corner along the canal, the proper distribution of the canal to the two properties must be ascertained. Craig Wallace, a professional land surveyor with more than 40 years of experience, testified regarding the generally accepted division of title to the land in Marlin Cove between the adjacent platted lots. Mr. Wallace termed the boundary lines separating each lots ownership of a

portion of the canal as "reversion lines," a term commonly known to professional land surveyors. Mr. Wallace testified that he surveyed these apportion lines distributing the fee simple title of portions of Marlin Cove to each lot using the textbook method found in *Brown's Boundary Control and Legal Principles*, Seventh Edition. Mr. Wallace testified that *Brown's* is a long-recognized standard text (now in its 7th Edition) used by the surveying community as well as a standard text used in college courses as instructional materials for surveyors.

During cross-examination, Mr. Wallace directed Plaintiffs' counsel to at least one illustration in *Brown's* providing an example of how to draw reversion lines and divide up the fee title ownership beneath a dedicated street or canal that terminates in a dead end or cul-de-sac. Mr. Wallace testified that he established the reversion lines dividing the boundary of any potential ownership of Marlin Cove between Lots 57, 8A and 9A using the standard method described in *Brown's*. Mr. Wallace's establishment of the reversion lines and apportionment of ownership of portions of Marlin Cove between Lots 57, 8A and 9A were depicted in Defendants' Exhibit 5.[1]

Mr. Wallace's expert testimony, opinion and analysis are unrebutted. Since Plaintiffs and Defendants clearly hold fee simple title to a portion of Marlin Cove by operation of law, Mr. Wallace's opinion regarding the boundaries between these respective holdings (as depicted in Defendants' Exhibit 5) is accepted. Therefore, Plaintiffs hold fee simple title to the portion of Marlin Cove corresponding to Lots 8A and 9A and Defendants own fee simple title to the portion of Marlin Cove corresponding to Lot 57 in accordance with Exhibit 5.

2. <u>The Easement Created by the Public Dedication of Marlin Cove in the Plat</u>

[1] Mr. Wallace further used an alternative method, referred to as a "pier-head" method to draw reversion lines for Lots 57, 8A and 9A. (Def. Ex. 4). Mr. Wallace explained that his purpose in doing so was to "check his work" and confirm that the standard, textbook method in *Brown's* yielded an appropriate result – which, in Mr. Wallace's opinion, it did.

The distribution of ownership to portions of Marlin Cove between Plaintiffs and Defendants remains the same regardless of the status of the public easement created by the dedication in the Plat. If the publicly dedicated easement remains effective, the Parties own respective portions of Marlin Cove subject to that easement. If not, the parties own the very same portions of Marlin Cove free and clear of any such easement.

In Count II of the Complaint, Plaintiffs seek an injunction preventing Defendants from either maintaining their current boat lift, or building a new one, on the grounds that the easement created by the public dedication prevents such action. Plaintiffs also seek to enjoin the Town from issuing permits to allow any new dock or boat lift at Lot 57. Each homeowner's right to have a dock was not created by the Restrictions as Plaintiff alleges. Each homeowner's right to have a dock stems from their ownership of their lot and their potion of Marlin Cove. The Restrictions (now extinguished by the MRTA) merely placed limitations on that right.

Plaintiffs' claim that no homeowner can have a dock within Marlin Cove due to the public dedication in the Plat is similarly incorrect. The extent of a public easement created by a plat depends on the intent of the dedicator. *Easton v. Appler*, 548 So. 2d 691 (Fla. 3d DCA 1989). As *Easton v. Appler* demonstrates, a waterway dedicated to the public is still able to accommodate private docks so long as the docks do not create a conflict or interfere with the public's right to navigate a boat up and down the canal.

By contrast, Plaintiffs' rely on cases such as *McCorquodale v. Keyton*, 63 So. 2d 906 (Fla. 1953) to suggest that an easement by public dedication precludes any structure or improvement whatsoever. *McCorquodale*, which involved a community beach park dedicated to property owners, is distinguishable from this case. *McCorquodale* involved a third-party who built a commercial sandwich shop on the dedicated park land. *Id*. That is not similar to this case. A third-

party's commercial enterprise is no more consistent with a public waterway than it is a community beach park. If Plaintiffs or Defendants were proposing to build a floating restaurant, that would be another matter. But here, the various lot owners have only constructed boat docks where are consistent with the use of Marlin Cove as a waterway. *Easton v. Appler* is much more on point and Defendants' dock – indeed, all the docks behind the houses on Marlin Cove, would be consistent with the use of the easement. In another example, *Dianne v. Wingate*, 84 So. 3d at 430, the Court found that an easement for road access did not preclude the installation of speed bumps. The easement was silent on the fact much like the dedication in the Plat. The *Dianne* Court found that the only question was the fact specific question of whether the speed bumps were installed in a way or in a number that *unreasonably interfered* with the easement. *Id.* at 430-31. Plaintiffs offered no evidence that the existing, or proposed dock or boat lift, would unreasonably interfere with the public's ability to use Marlin Cove, and the Court finds no evidence suggesting that any such interference would occur.

The now extinguished Restrictions further evidence the dedicator's expectation that that the homeowners would build docks to moor boats along this dedicated public waterway in order to use Marlin Cove as a waterway.

Plaintiffs' interpretation of the Plat dedication yields an absurd result which must be avoided by the Court. Under the Plaintiffs' interpretation, no dock, piling or boat lift is allowed in Marlin Cove, despite the presence of many, many such docks, boat lifts and pilings on most of the properties. Indeed, Plaintiffs' own dock would have to go, and all the waterfront homes along Marlin Cove would be denied use of Marlin Cove as a public waterway.

Moreover, it appears that Marlin Cove was abandoned by the Town in 1961. The Plaintiffs argue that this abandonment is ineffectual in that it lacks certain findings required of the Town to accomplish such an abandonment. Evidence on the effect of the Town's abandonment is unclear.

However, the effect of the abandonment makes little difference and does not change the outcome in this case. Boat docks along the homes bordering Marlin Cove are not inconsistent with its use as a public waterway and, in fact, represents the very reason the Cove exists. Indeed, Marlin Cove would provide little use as a public waterway if the boats traversing it had no place to moor. Such would be akin to preventing lot owners from connecting their driveways to the publicly dedicated streets. There is no basis to enjoin the installation of docks in Marlin Cove as a result of the public dedication of Marlin Cove on the Plat.

C. Ejectment of Plaintiffs' Boat Lift

In Count II of the Defendants' Counterlcaim, Defendants seek to eject the Plaintiffs' boat lift from Defendants' portion of Marlin Cove. It is unrebutted that a portion of the Plaintiffs' boat lift is located several feet inside the portion of Marlin Cove owned by Defendants. It is this portion of the Plaintiffs' boat lift that interferes with the Defendants' use of their own boat lift and which prompted Defendants to build a new boat lift.

The Court finds *Pelican Creek Homenwoners, LLC v. Pulverenti*, 243 So. 3d 467 (Fla. 5th DCA, 2018) 243 So. 3d 467 (Fla. 5th DCA, 2018), to be controlling. In *Pelican Creek*, a canal within a platted subdivision was dedicated to the public through a common law dedication *Id*. at 471. The District Court found no reservation of title in the original developer and thus determined that the underlying fee title to the canal transferred to the adjacent property owners. *Id.* at 472. The District Court ultimately ruled that a dock and boathouse constructed by one party over portions of the publicly dedicated canal owned by the second party must be removed. *Id.* at 473. The instant

case is identical in nearly every respect. Having determined that the canal was subject to a common law dedication, with no reservation of ownership to the original developer, the Plaintiffs have no right to construct a dock and boat lift over the portion of Marlin Cove held in Defendants' fee simple ownership, and thus Plaintiffs must be ejected and the encroaching portion of the boat lift removed. This includes the envisioned mooring, in any fashion, of additional vessels in the corner of the canal forming a 90 degree angle between Lots 57 and 8(A) which encroach on the portion of the Cove owned by the Defendants.

D. Riparian Rights

Count III of the Second Amended Complaint and Count III of the Second Amended Counterclaim seek declaratory and injunctive relief regarding the respective riparian rights of Lot 57 and Lots 8A and 9A.

However, the parties have stipulated that Marlin Cove is a man-made waterbody and it has been determined that the canal itself is privately owned in pieces corresponding to the adjacent platted lots that line the canal. In Florida, riparian rights do not attach to artificially created, privately owned waterbodies. *Piccolo v. Jones*, 534 So. 2d 875 (Fla. 3d DCA 1988); *Publix Super Markets, Inc. v. R. E. Pearson*, 315 So. 2d 98 (Fla. 2d DCA 1975).

CONCLUSION

1. Plaintiffs have failed to establish a clear legal right to an injunction against either Defendants or the Town under Count I (the Restrictions), Count II (the easement created by the dedication of Marlin Cove on the Plat) or Count III (riparian rights). Plaintiffs' request for injunctive relief against Defendants and the Town is DENIED.

2. Defendants' relief in Count I of the Second Amended Counterclaim is GRANTED. Title to that portion of Marlin Cove adjacent to Lot 57 and, bounded by the reversion lines, is quieted in favor of Defendants.

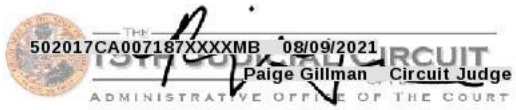
3. Defendants' claim for ejectment in Count II of the Second Amended Counterclaim is GRANTED. Plaintiffs are hereby ordered to remove all portions of their dock, boat lift, pilings and any other structures from that portion of Marlin Cove owned by Defendants, within 60 days of the date of this Order is rendered. Plaintiffs are thereafter barred from erecting or maintaining any type of improvement or otherwise occupying the lands within Marlin Cove owned by Defendants. Nothing in this Final Order precludes Plaintiffs from relocating or re-installing the dock or boat lift in a manner that does not encroach upon the portion of Marlin Cove owned by Defendants.

6. Defendants' request for declaratory relief in Count III of the Second Amended Counterclaim (riparian rights) is DENIED. Neither party possesses common law riparian rights to Marlin Cove – an artificial, privately owned water body.

7. Defendants' request for declaratory relief in Count IV of the Second Amended Counterclaim is GRANTED. Defendants are entitled to erect and maintain docks, boat lifts and pilings within the area of Marlin Cove owned by Defendants, subject only to the requirements of state, federal and local permits.

8. This Court reserves jurisdiction to enforce the terms of this Final Order.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida



502017CA007187XXXXMB 08/09/2021
Paige Gillman
Circuit Judge

Copies to:

ANDREW J. BAUMANN
SETH C. BEHN
Lewis, Longman & Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, Florida 33401
Telephone: (561) 640-0820
Facsimile: (561) 640-8202
Primary Email: abaumann@llw-law.com
Secondary Email: kdesroches@llw-law.com
mlozada@llw-law.com
Primary Email: sbehn@llw-law.com
Secondary Email: nlewis@llw-law.com
Attorneys for Defendant, Troy Schaaf

GEORGE P. ORD
Murphy Reid, L.L.P.
11300 U.S. Highway One, Suite 401
Palm Beach Gardens, FL 33408
Primary Email: gpord@murphyreid.com
Secondary Email:
Jeservice@murphyreid.com
Attorney for Plaintiffs