

01A11-6-84

IN THE SUPREME COURT OF FLORIDA

CASE NOS. 64,689 through  
64,697

**FILED**

S'D J. WHITE

AUG 31 1984

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

JOYCE G. MAINER, etc.,  
et al.,

Petitioners,

v.

CANAL AUTHORITY OF THE STATE  
OF FLORIDA, etc.,

Respondent.

---

REVIEW OF THE DECISION OF  
THE DISTRICT COURT  
OF APPEAL OF FLORIDA, FIFTH DISTRICT

---

BRIEF OF AMICUS CURIAE  
FLORIDA POWER & LIGHT COMPANY

---

Respectfully submitted,

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INTRODUCTION AND INTEREST  
OF AMICUS CURIAE

The interest of Florida Power & Light Company ("FPL") as Amicus Curiae lies in its unique position both as an entity statutorially empowered to condemn, as is the Respondent, The Canal Authority of the State of Florida ("Canal Authority"), and as a condemnee similarly situated as the Petitioners. FPL's condemnation powers arise from Chap. 361, Florida Statutes. The Canal Authority's powers arise from Chap. 374, Florida Statutes. FPL was also the owner of approximately 9,000 acres of land in Marion County, Florida condemned by the Respondent for the Cross-Florida Barge Canal Project ("Project").

Since the abandonment of that Project, FPL has sought the return of its lands. To this end FPL has filed an action which is presently pending before the Honorable Wallace E. Sturgis, Jr., Fifth Judicial Circuit, Marion County, Florida. See FPL v. The Canal Authority of the State of Florida, Case No. 82-1133A. Therefore, FPL's interest is in presenting a resolution of the issues raised before this Court which will do equity but not fundamentally alter the law of eminent domain in Florida.

STATEMENT OF THE CASE AND FACTS

FPL accepts the statement of the case and facts presented by the Petitioners in their brief on the merits but FPL would emphasize certain particular aspects germane to its

arguments. In particular, FPL notes (i) that during the partial condemnation of Petitioners lands, the Canal Authority made various representations to the jury that the remaining lands would be enhanced by completion of the project, (ii) that the final judgment in certain contested condemnations before this Court awarded a fee to the Canal Authority subject to an express reservation, (iii) that the limited purpose for which the property was condemned has been abandoned, and (iv) that all lands condemned for the same limited purpose by the Canal Authority as easements have reverted to the former land-owners upon such abandonment.

#### ARGUMENT

##### I. THE DECISION IN CARLOR IS THE LAW OF FLORIDA

FPL agrees with the Respondent that the rule in Carlor Co., Inc. v. City of Miami, 62 So.2d 879 (Fla. 1953) is the law in Florida. However, FPL also supports the position taken by Petitioners in their brief on the merits. Petitioners' arguments amply present the common law principles applicable to the unique facts posited by the various condemnation proceedings instituted by the Canal Authority and the representations made during such proceedings. These arguments, so limited, would leave the rule in Carlor intact. Therefore FPL, cognizant of its role as Amicus, will not burden this Court with redundant arguments.

FPL contends that the argument of the Respondent and the Fifth District's opinion, is based upon an improper interpretation of the decision in Carlor. While Carlor is the law regarding generally empowered condemnors it is not applicable under these circumstances for two reasons. First, In Carlor the condemnor acting pursuant to a general power of eminent domain to condemn for public purposes, completely took title to the lands in question. Further, as argued by the Petitioners and addressed in Point II below, the title granted in Carlor was not subject to a reservation of rights in a remaining landowner. Therefore, the rule in Carlor is not applicable to these appeals.

II. THE INTEREST ACQUIRED BY THE CANAL  
AUTHORITY IS COMPARABLE TO AN EASEMENT  
AND FUNDAMENTAL FAIRNESS AND EQUITY  
REQUIRES SIMILAR TREATMENT.

The Order of Taking rendered during certain condemnation proceedings giving title to the Canal Authority also reserved "to the owners, their heirs, successors, grantees and assigns the right of access to the water's edge of the pool area from the owner's remaining lands . . . ." See, e.g., Final Judgment ¶5, Gay v. Canal Authority, Case No. 81-1201-A (Fla. 5th Cir., Marion Cty, 1982). This reservation to former landowners effectively vested in them the unrestricted use right to the upland, unflooded portion of their former property subject only to the Canal Authority's right to operate and maintain the canal. Conversely, this reservation in the former landowners

diminished the possessory and use rights acquired by the Canal Authority. Any use of the property taken by the Canal Authority or a subsequent owner which is inconsistent with the rights reserved to the Petitioners would be in derogation of the valuable property rights reserved and held by Petitioners. Cf. Genet v. Florida East Coast Railway Company, 150 So.2d 551 (Fla. 1963); Owenby v. City of Quincy, 95 So.2d 426 (Fla. 1957).

The reservation and use rights held in these cases distinguish and make inapplicable the rule of Carlor. The condemning authority is not free to deal with the land in any way it sees fit. Giving full meaning and effect to the use rights reserved to the former landowners the only utilization of the property which could be made by the Canal Authority or any subsequent owner would be the construction, operation and maintenance of a canal and the Canal Authority's plans to construct the canal have been abandoned.

Under these circumstances, and given the specific representations as to enhancement value to remaining lands, the takings are analogous to easements. Further, to treat these interests as extinguishable because the Canal Authority is in possession of a fee would meet out disparate justice between such landowners and the holders of lands over which only an easement was taken to serve an identical purpose. Compare Canal Authority v. Ocala Manufacturing Co., 365 So.2d 1060 (Fla. 1st DCA 1979) and Sea Dade Industries, Inc. v. Florida Power & Light Co., 245 So.2d 209 (Fla. 1971) with Canal Authority v. Mainer, 440 So.2d 1305 (Fla. 5th DCA 1983). This Court can rectify this



inequity without tampering with the principles set out in Carlor because of the unique circumstances of the statutory grant of eminent domain to the Canal Authority, the interests, both taken and remaining, and the representations made during these condemnation proceedings.

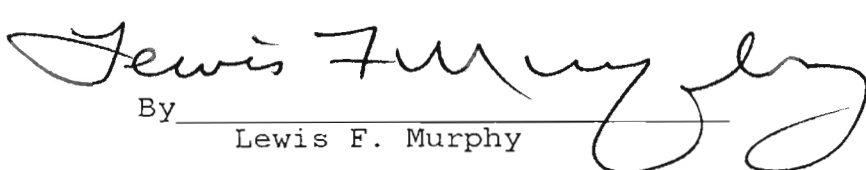
CONCLUSION

The decision of the Fifth District should be reversed and the decision of the able and experienced trial court affirmed.

Respectfully submitted,

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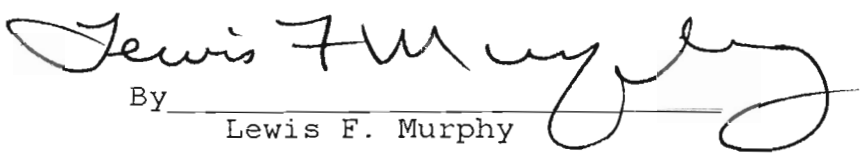
By

  
Lewis F. Murphy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Louis F. Hubener, Esq., Assistant Attorney General, Department of Legal Affairs, the Capitol, Suite 1502, Tallahassee, Florida 32301, Counsel for Respondents; Charles R. Forman, Esq., Piccin, Atkins, Krehl & Forman, P. O. Box 159, Ocala, Florida 32678 and C. Ray Greene, Esq., Greene & Greene, P.A., 2600 Gulf Life Tower, Jacksonville, Florida 32207, Co-Counsel for Petitioners, this 28th day of August, 1984.

By

  
Lewis F. Murphy