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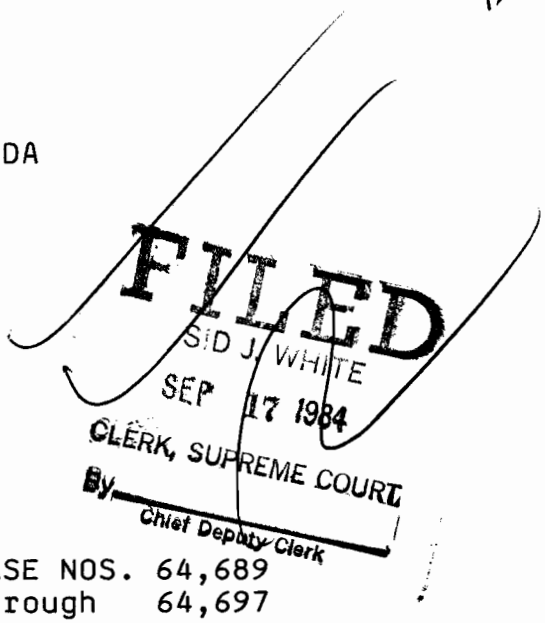
IN THE SUPREME COURT OF FLORIDA



JOYCE C. MAINER, ETC. et. al.,	:	
Petitioners	:	
vs.	:	CASE NOS. 64,689 through 64,697
CANAL AUTHORITY OF THE STATE OF FLORIDA, ETC.	:	
Respondents	:	

Amicus Curiae Brief of
Florida Defenders of the
Environment in Opposition
to Relief Sought by Petitioners.

By:

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STATEMENT OF CASE

Amicus Curiae does not take issue with the Statement of the Case found on page 1 of Petitioner's Initial Brief.

STATEMENT OF FACTS

Amicus Curiae adopts the Statement of Facts as set forthin the Reply Brief of the Canal Authority of Florida, supplemented as stated below.

Although the United States Congress has never deauthorized the Cross Florida Barge Canal project, various executive agencies of the United States government and the legislature of the State of Florida have indicated alternative public uses to be made of said lands in the event said project is ever deauthorized. Specifically, the legislature of the State of Florida enacted §§ 2 and 3, ch. 79-167 codified in the 1983 Florida Statutes as §§ 253.781 and 253.782 to specify alternative public uses for much of the land. Rather than burden this statement with a full exposition of said purposes, Amicus Curiae has attached them as Appendix A.

ARGUMENT

I. PETITIONERS' CLAIM OF AN EQUITABLE RIGHT TO REPURCHASE LANDS CONVEYED TO THE CANAL AUTHORITY IN FEE SIMPLE ABSOLUTE BY EMINENT DOMAIN OR PURCHASE IS UNSOUND.

-A-

CONVEYANCE OF LAND BY FEE SIMPLE ABSOLUTE TO A STATE AGENCY EXHAUSTS ALL PROPERTY AND EQUITABLE INTERESTS IN SAID LAND IN THE GRANTOR IN THE ABSENCE OF FRAUD, OR OTHER GROUNDS OF RELIEF THAT EXISTED AT THE TIME OF THE TAKING.

It takes no recitation of authority to establish that a valid conveyance of the fee simple absolute in real property transfers all right, title and interest possessed by the grantor to the grantee, leaving no legal or equitable interests in the grantor. No common law proposition is more unassailable than this. It is equally true that in condemming a fee simple absolute the state acquires all the interests of the condemnee. As stated by Judge Barkdull in Langston v. City of Miami Beach, 242 So. 2d 481, 483 (Fla. App. 3 Dist. 1971), "Upon a completion of the condemnation, the condemning authority occupied the same status as a bona fide purchaser for value."

Moreover, this Court held in Ryan v. Town of Manalapan, 414 So. 2d 193 (Fla. 1982), that a government takes a fee simple absolute free of various contractual impediments, such as restrictive covenants, that would bind a private grantee. It is, thus, contrary to public police to restrict the operations of the police powers even by recorded covenants. It would be an even greater impediment to fetter a fee simple absolute in the total

absence of any such restriction, and a fortiori even more contrary to public policy.

In the absence of allegations and proof of circumstances that would invalidate ab initio the eminent domain takings and purchases in question, the conveyances of fee simple absolute titles cannot be later challenged. Otherwise no public purchase would ever be secure against collateral attack. It is against public policy to forever bind public decisions against change as the need of change occurs. This Court definitively repudiated such a collateral attack in Carlor Co. v. City of Miami, 62 So. 2d 897 (Fla. 1953), a case that is fully examined in Respondent's brief. This point alone is sufficient grounds upon which this Honorable Court may affirm the holding of the district court of appeal below.

-B-

AN INCHOATE EQUITABLE RIGHT SUCH AS CLAIMED BY PETITONERS, IF SUCH EXISTED, WOULD BE VOID AS VIOLATING THE RULE AGAINST PERPETUITIES.

Those lands in questions taken by eminent domain or negotiated purchase were transferred to the Respondent by conveyance of fee simple absolute, reserving no recognized property interests whatever in grantees. Grantees now claim a right to have said properties reconveyed to them, not as a property right but as an equitable right created by post-conveyance events. Such a right, if it existed, would be void as violative of the rule against perpetuities.

The Rule as it existed at the time of these conveyances was explicated in Inglehart v. Phillips, 383 So. 2d 610, (Fla. 1980). There, this Court reiterated that "[T]he vesting of an estate...can be postponed no longer than a life or lives in being plus twenty-one years plus the period of gestation." Id, at 614, quoting Story v. First National Bank & Trust Co., 115 Fla. 436, 156 So. 101 (1934). This Court also said:

> It is a rule of law, not of construction, and it applies to equitable estates of both realty and personality. It is not a rule that invalidates interests which last too long, but interests which vest too remotely. In other words, the rule is concerned not with the duration of estates but with the time of vesting. (E.S.)

Id. This description applies precisely to the facts of this case. Petitioners claim an equitable interest in the lands with an unlimited time of vesting. Nothing in the theory would deny the possibility of a vesting at a more remote time than the period fixed by the Rule. Accordingly, such an interest if it existed, would be void and unenforceable. In truth, however, this argument demonstrates yet another reason why no such interest exists. (The Rule is now codified in Fla. Stat. § 689.22 in virtually the same form stated above.)

-C-

AN INCHOATE EQUITABLE RIGHT SUCH AS CLAIMED BY PETITIONERS, IF SUCH EXISTED, WOULD BE VOID AS AN UNREASONABLE RESTRAINT ON THE FREE ALIENABILITY OF PROPERTY.

Petitioners claim an equitable right to repurchase said lands at such a time as the canal project is abandoned, if ever, upon paying exactly the same consideration as originally paid by

the Respondents when acquiring the lands. This theory is directly contradicted and destroyed by this Court's holding in Inglehart v. Phillips, supra. In Inglehart, plaintiffs sought to exercise a written and recorded repurchase option that purported to be effective whenever the plaintiffs' grantee desired to sell the land in question. The repurchase price was the original consideration plus the cost of permanent improvements.

Although Inglehart acknowledged that fixed price repurchase options of limited duration may be valid, this Court therein validated the fix price option without limit as to duration, which according to this Court, "has uniformly been held an unreasonable restraint." 383 So. 2d 616. If parties cannot explicitly bind themselves by written and recorded agreements to such agreements because of superior public policy considerations as explicated in Inglehart, a fortiori the law will not out of thin air create the forbidden restraints that fly in the face of the very same public policy considerations that would nullify them if written down. To do so would flatly violate the Rule against free alienability. It would also bind the sovereign in the exercise of the police powers for the health, safety and welfare of all the people of the State. In this instance, the legislature of the State of Florida has definitively indicated how it desires properties to be utilized in the event of deauthorization. See Appendix A. Petitioner's have alleged and proved no basis upon which this court may interfere with the choice made by the Legislature.

Petitioners rely upon The People v. Hugh White, 11 Barb. 66 (N.Y. 1851), a New York case, to support this theory.

Respondent's brief fully demonstrates the error of that assertion. In addition, it should be noted that the law of Inglehart, as described above, also applies in New York. See Kowalsky v. Familia, 71 Misc. 2d 287, 336 N.Y.S. 2d 37 (S. Ct. 1972). (Unlimited repurchase option for fixed price is void.)

In short, the principles of Inglehart repudiate Petitioners' theory of recovery.

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CANAL AUTHORITY v. OCALA MFG. CO., 365 SO. 2D 1060 (FLA. APP. 1ST DIST. 1979), RESTS UPON A NON-ADVERSARIAL TRIAL AND SHOULD BE CONDEMNED.

Petitioners seek relief upon the authority of Canal Authority v. Ocala Mfg. Co., supra. As pointed out by Respondent's brief, this case does not support Petitioners' assertion. Moreover, in its opinion the First District Court of Appeal noted that the trial, as evidenced by the transcript, had not been adversarial. 365 So. 2d 1062. A reading of that transcript (attached as Appendix B) and the order entered in the case, 365 So. 2d 100; not only reveals that the trial was non-adversarial but also raises a strong inference that the Canal Authority's blatant failure to defend was extremely prejudicial to the property interests of the Canal Authority that were in dispute in that litigation. This Court cannot now disturb the disposition of that particular litigation but it can and should repudiate Canal Authority v. Ocala Mfg. Co. as authority for any proposition whatever, including the one proposed by Petitioners.

II. IF, arguendo, PETITIONERS POSSESS A RIGHT TO REPURCHASE, THE REPURCHASE PRICE WOULD NOT BE THE ORIGINAL CONSIDERATION.

Petitioners possess no right to repurchase the properties in question, but if they did, the repurchase price would not be the original consideration. Iglehart v. Phillips, supra., unequivocally repudiates such a harsh result. Two alternatives can be proposed. First, the fair market value at the time the repurchase is concluded. Second, the present value of the original consideration calculated as the original consideration increased at compound market interest rates down to the date of repurchase.

The following argument can be made in favor of fair market value. Petitioners received fair market value at the time of the original sales. Because they have not proved a theory to invalidate the purchases ab initio, their claimed right to repurchase rests upon post-conveyance factors. They claim a right to repurchase; not a right to upset the original purchase. This being so, the consideration most consistent with the demand is fair market value at the time of reconveyance.

The following argument can be made in favor of original purchase price plus compounded interest. If equity requires an undoing of the original conveyances, then equity will require that both parties perform equitable. As stated in Inglehart v. Phillips, "When the equity powers of the court have been brought into action, its active jurisdiction will be continued until full justice has been done between the parties." 383 So. 2d 610. If the original grantee must reconvey the land in its present value as determined by the vagaries of inflation and market forces, so too must the Petitioners restore the original consideration in its

present value as determined by the vagaries of inflation and market forces. In the case of cash money that means the present value of the original consideration as it would have increased had it been invested at compound market interest rates. These computations can be easily made with the use of standard formulas or actuarial tables. For example, a purchase price of $ 1000 on a given date in 1969, if invested at 10% interest compounded daily, would have a value of $4481 on the same date in 1984. If, contrary to all the authorities, a repurchase were ordered on grounds of equity, equity would also require that one or the other of the methods for fixing the consideration described herein be employed. It would be contrary to law and equity and a damaging affront to the taxpayers of the state to require payment of only the original consideration.

Conclusion

As demonstrated, herein Petitioners' claim for relief is groundless. Amicus Curiae urges this Honorable Court to affirm the opinion of the First District Court of Appeal below. Amicus Curiae also urges the Court to take this occasion to repudiate Canal Authority v. Ocala Mfg. Co., supra, as authority for any legal proposition whatever.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the persons listed below, this 17 day of September, 1984.

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