

IN THE SUPREME COURT
STATE OF FLORIDA

JOYCE G. MAINER, etc.
et al.,

Petitioners,

vs.

CANAL AUTHORITY OF THE
STATE OF FLORIDA, a body
corporate under the laws
of the State of Florida,
etc.

Respondent.

CASE NOS. 64,689
through 64,697

FILED

SID J. WHITE

NOV 18 1984

CLERK, SUPREME COURT

Chief Deputy Clerk

PETITION TO INVOKE DISCRETIONARY JURISDICTION
TO REVIEW DECISION OF
DISTRICT COURT OF APPEAL, FIFTH DISTRICT
DOCKET NOS. 82-817, 82-818, 82-819, 82-821
82-823, 82-824, 82-825, 82-826 and 82-827

JURISDICTIONAL BRIEF OF PETITIONERS

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STATEMENT OF THE CASE AND FACTS

The nine cases addressed in this brief all sought to rescind the Canal Authority's acquisition of certain lands in the late 1960's and early 1970's for the construction of the Cross-Florida Barge Canal. The cases which this Court has ordered consolidated on appeal are: (1) Joyce G. Mainer, etc., et al. v. Canal Authority of the State of Florida, Case No. 64,689; (2) Walter R. Berman, etc. v. Canal Authority of the State of Florida, Case No. 64,690; (3) Francis S. Gay, et al. v. Canal Authority of the State of Florida, Case No. 64,691; (4) Kenneth T. Hodges, et al. v. Canal Authority of the State of Florida, Case No. 64,692; (5) Silver Springs Shores, Inc. v. Canal Authority of the State of Florida, Case No. 64,693; (6) John H. Couse, et al. v. Canal Authority of the State of Florida, Case No. 64,694; (7) Astor West, Inc. v. Canal Authority of the State of Florida, Case No. 64,695; (8) Hasty-Greene Investments, Inc. v. Canal Authority of the State of Florida, Case No. 64,696; and (9) James J. Griffiths, et al. v. Canal Authority of the State of Florida, Case No. 64,697.

The trial court ordered the cases consolidated for the purpose of trial, which was held on December 17 and 18, 1981, in Marion County, Florida. The trial court entered a final judgment in each case on May 20, 1982, ordering the Canal Authority to reconvey the lands sought to the petitioners. Thereafter, the Canal Authority timely filed a notice of appeal in each case to the District Court of Appeal of the State of Florida, Fifth District. The district court of appeal consolidated the cases on appeal and reversed the final judgments of the circuit court.

The petitioners herein all seek to reacquire interests in certain lands that the Canal Authority acquired in the late 1960's and early 1970's, the details of which are more particularly set forth infra. Generally, the cases fall into four categories as follows:

1. Contested Condemnation: The former landowners seek to reacquire land to which the Canal Authority acquired fee simple title after contested condemnation proceedings. These include Silver Springs Shores, Inc., Couse, Gay, Mainer and Berman.

2. Settlement After Institution of Condemnation Proceedings: In two cases, Astor West and Griffits, the former landowners and the Canal Authority negotiated a purchase by which the Authority acquired fee simple title. The settlements were reached after the filing of the condemnation suit.

3. Negotiated Conveyance in Lieu of Condemnation. The former landowner, Hodges, seeks to reacquire land which the Canal Authority purchased in fee simple pursuant to negotiations in lieu of and under threat of condemnation.

4. Donation: The former landowner, Hasty-Greene, Inc., seeks to reacquire title to land which it donated in fee simple to the Canal Authority in lieu of and under threat of condemnation.

The petitioners' grounds for reconveyance were frustration of purpose, the abandonment of the project, and the failure of their remaining lands to benefit by an increase in value attendant to completion of the project.

In the various final judgments, the trial court found that in each case the subject lands have not been used for Canal Project purposes

and there is no present intention to use the subject lands for canal project purposes; that the plans of the Canal Authority to construct the Canal Project have been frustrated and abandoned; there is no valid purpose for the Canal Authority to retain the subject property; the Canal Project construction has been terminated and abandoned; the Canal Authority, at the time of acquisition of the subject land, had represented to petitioners that their remaining lands would be "enhanced" by the completion of the project, and such enhancement was "considered" by the petitioners; and, therefore, a major part of the "consideration" for the acquisition has failed since the benefits of completion have not materialized. In addition, in Silver Springs Shores and Hodges, the trial court made the finding in paragraphs 14 and 18 that the plans for the construction of the Eureka Pool have been terminated and abandoned (A. 22-39).

Finding virtually the same as those above are set out in the Gay, Mainer and Berman final judgments in paragraphs 6, 14, 15, 18, 21, 22 and 23 (A. 5-21, 40-49) These judgments also find that the need for the property in question was tied directly to the construction and flooding of the Eureka Pool and that such construction has been terminated and abandoned.

The trial court found in each final judgment that completion of the Canal Project as originally planned would have "enhanced" the value of each petitioner's remaining lands and concluded, as a matter of law, that without such enhancement there was a failure of consideration (A. 5-78).

The details more particular to each case are set forth below. The repurchase price is the amount the trial court has required the petitioners to pay to the Canal Authority for the land. The amount paid is the amount the Canal Authority originally paid for the acquisition.

CONTESTED CONDEMNATION

Silver Springs Shores, Inc. v. Canal Authority

Acreage taken-----	3,556.79 acres (fee simple)
Parent tract-----	11,550.8 acres
Amount paid-----	\$411,878.00
Acquisition by-----	Final judgment in condemnation entered in February 18, 1971
Appeal taken-----	No
Location-----	Eureka Pool
Acreage plaintiff seeks-----	3,556.79 acres
Repurchase price-----	\$411,878.00

John H. Couse & Barnetta S. Couse v. Canal Authority

Acreage taken-----	24.0 acres (fee simple)
Parent tract-----	90 acres
Amount paid-----	\$15,000.00
Acquisition by-----	Final judgment in condemnation entered on January 17, 1967
Appeal taken-----	Yes. Rptd. at 194 So.2d 301; 197 So.2d 841; 209 So.2d 865
Location-----	Rodman Pool
Acreage plaintiffs seek-----	24.0
Repurchase price-----	\$3,930.00

The trial court apparently offset the original \$15,000.00 paid by the Couses by the \$7,000.00 for the lost barbeque pit and river house and \$3,500.00 for trees later destroyed on the land taken.

Walter R. Berman, Trustee v. Canal Authority

Acreage taken-----	2.96 acres
Parent tract-----	16.97 acres
Amount paid-----	\$2,475.00
Acquisition by-----	Final judgment in condemnation
Appeal taken-----	No
Location-----	State Road 464 bridge on Eureka Pool
Acreage plaintiff seeks-----	.99 acres
Repurchase price-----	\$828.00

The petitioner Berman purchased the remainder of the parent tract from the Shiskins (the original condemnees) in July of 1980, and then brought this action. The Shiskins also gave Berman a quitclaim deed to the .99 acre sought herein which was part of the 2.96 acres the Canal Authority acquired in fee simple.

Francis S. Gay & Catherine Gay v. Canal Authority

Acreage taken-----	86.67 acres (parcel 1) 6.8 acres (parcel 2)
Interest taken-----	Fee simple subject to right of access to water's edge of pool area from remaining lands (parcel 1)
Parent tract-----	156.26 acres
Amount paid-----	\$127,000.00
Acquisition by-----	Final judgment in condemnation
Location-----	Eureka Pool (parcel 1) State Road 40 bridge (parcel 2)
Acreage plaintiffs seek-----	86.67 acres (parcel 1)
Repurchase price:-----	\$122,313.70

Joyce G. Mainer (formerly Joyce Elaine Gay) et al. v. Canal Authority

Acreage taken-----	48.90 acres (parcel 1) 2.25 acres (parcel 2)
Interest taken-----	Fee simple subject to right of access to water's edge of pool area from owner's remaining lands
Parent tract-----	170 acres
Amount paid-----	\$75,900.00
Acquisition by-----	Final judgment in condemnation entered on February 2, 1969
Appeal taken-----	No
Location-----	Eureka Pool (parcel 1) State Road 40 bridge (parcel 2)
Acreage plaintiffs seek-----	48.90 acres (parcel 1)
Repurchase price-----	\$73,380.12

Joyce G. Mainer and the other petitioners inherited the remainder (of the parent tract) from Lenore Gay, the original condemnee.

SETTLEMENT AFTER INSTITUTION OF CONDEMNATION

James J. Griffitts and Leola Griffitts v. Canal Authority

Acreage taken-----	15.51 acres (fee simple); 3.66 acres (temporary detour easement - expired)
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Parent tract----- 379 acres
 Amount paid----- \$39,987.60
 Acquisition by----- Purchase price was negotiated after
 condemnation suit filed
 Appeal taken----- No
 Purpose----- Widen State Road 484; relocate portion
 of Seaboard Coastline Railroad tracks near
 Dunnellon, Florida
 Acreage plaintiffs seek----- 15.51
 Repurchase price:----- \$39,987.60

Astor West, Inc. v. Canal Authority

Acreage taken----- 3.10 acres (fee simple)
 16.25 acres (temporary easement -
 now expired)
 Parent tract----- 110 tract
 Amount paid----- \$8,339.00 (fee simple)
 Acquisition by----- Purchase price was negotiated after
 condemnation suit filed
 Appeal taken----- No
 Purpose----- Relocation of Seaboard Coastline Railroad
 tracks near Dunnellon, Florida
 Acreage plaintiff seeks----- 3.10 acres
 Repurchase price----- \$9,300.00

NEGOTIATED CONVEYANCE IN LIEU OF CONDEMNATION

Kenneth T. Hodges & Alverna C. Hodges v. Canal Authority

Acreage taken----- 12.62 acres (fee simple)
 Parent tract----- 20 acres
 Amount paid----- \$1,600.00
 Acquisition by----- Negotiated purchase in lieu of
 and under threat of condemnation
 Location----- Eureka Pool
 Acreage plaintiffs seek----- 12.62 acres
 Repurchase price----- \$1,600.00

DONATION - FEE SIMPLE

Hasty-Greene Investments, Inc. v. Canal Authority

Acreage acquired----- .38 acres (fee simple)
 Parent tract----- None
 Amount paid----- -0-
 Acquisition by----- Donation (title conveyed July 21, 1966)
 Location----- Rodman Pool
 Acreage plaintiff seeks----- .38 acres
 Repurchase price----- -0-

JURISDICTIONAL ARGUMENT

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY
AND DIRECTLY CONFLICTS WITH PREVIOUS DECISIONS OF THIS COURT
AND OF THE OTHER DISTRICT COURTS.

The decision rendered by the District Court of Appeal, Fifth District, in this cause expressly and directly conflicts with the decision of the District Court of Appeal, First District, on the same question of law, Canal Authority v. Ocala Mfg. Co. 365 So.2d 1060 (Fla. 1st DCA 1979). Furthermore, in its decision, the District Court expressly relied on Carlor Co., Inc. v. City of Miami, 62 So.2d 897 (Fla. 1953) as controlling precedent (A. 1-4). The misapplication of the legal principles in Carlor to the materially different facts in the instant cases generates direct conflict between the two decisions and gives this Court jurisdiction.

The District Court of Appeal, First District, in the Ocala Mfg. Co. case, supra, held that where land was conveyed to the State Canal Authority upon the representation that adjoining land would be enhanced in value by the creation of a pool and construction of a canal and these were never completed, rescission of contract and reconveyance of property was in order.

In the instant cases, the District Court of Appeal, Fifth District, held that the Canal Authority could retain its ownership of lands acquired in fee simple, even though the land was conveyed or acquired by the Canal Authority upon the representation that adjoining land would be enhanced in value by the creation of a pool and construction of a canal

and neither was ever completed and the project has been abandoned (A. 1-4).

The facts in Ocala Mfg. Co., supra are identical to the facts in the Hodges case (Case No. 64,692) except that the acreage involved and the amount of money involved is different. The facts in Ocala Mfg. Co., supra are identical to the facts in Griffits and Astor West (Case Nos. 64,697 and 64,695) except that railroad frontage instead of water frontage was involved, the purchase price was negotiated after condemnation proceedings were filed, and the acreage involved and repurchase prices were different. The facts in the Ocala Mfg. Co., supra are identical to the facts in the Mainer, Berman, Gay, Couse and Silver Springs Shores, Inc. (Case Nos. 64,689, 64,690, 64,691, 64,694 and 64,693) except that the lands were acquired through condemnation rather than by deed in lieu of condemnation, and the acreages involved and repurchase prices were different. The facts in Ocala Mfg. Co., supra, are identical to the facts in the Hasty-Greene Investments, Inc. (Case No. 64,696) except that Hasty-Greene donated the land and gave a deed in lieu of condemnation, the acreage was different, and there was no price to be paid to the Canal Authority for the reconveyance.

In all of the cases the lands were acquired by the Canal Authority either by donation in lieu of condemnation, sale in lieu of condemnation, negotiation while in condemnation, or by final judgment in condemnation, and a vital part of the consideration to be received by the owners in each instance was the anticipated increase in value of the owners remaining lands upon the completion of the canal project which has now been abandoned. The District Court of Appeal, First District, held that the

failure of the Canal Authority to construct the project and thereby enhance the owner's remaining lands, as promised, amounted to a constructive fraud, or that there was a failure of consideration or that there was impossibility of performance, any of which required reconveyance. Canal Authority v. Ocala Mfg. Co., supra.

In direct conflict with the First District, the Fifth District Court of Appeal held that the failure of the Canal Authority to complete the project, and thereby enhance the owners remaining lands as promised, was irrelevant because extrinsic fraud was not proven and no reconveyance was required (A. 1-4).

A second basis for extending jurisdiction was the District Court's misapplication of law to the facts of these cases. In its decision, the District Court expressly applied the earlier decision of this Court in Carlor Co., Inc. v. City of Miami, 62 So.2d 897 (Fla. 1953) as controlling precedent (A 3). The Carlor case should not have been cited as precedent because the instant case contain materially different facts. This misapplication of the legal principles in Carlor generates direct conflict between the two decisions and gives this Court jurisdiction. Art. V §3(b)(3), Fla. Const. (1980); Gibson v. Avis Rent-A-Car System, Inc., et al. 386 So.2d 520 (Fla. 1980); Lubell v. Roman Spa, Inc. et al., 362 So.2d 922 (Fla. 1978); Wale v. Barnes, 278 So.2d 601 (Fla. 1973).

These cases involve partial takings without the payment of full compensation by a public body whose power of taking was strictly limited to canal purposes and which has no valid alternative purpose for the retention of these properties. The District Court apparently overlooked these materially different facts in relying on the case of Carlor Co. v.

City of Miami, supra. Carlor was total taking with the payment of full compensation by a city possessing a general power of condemnation, together with the concurrent power of conversion to alternative authorized uses.

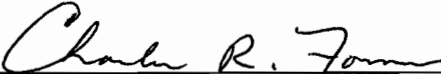
As additional consideration for their lands, the petitioners in the Gay and Mainer (Case Nos. 64,691 and 64,689) cases were granted an alienable and assignable right of access to the waters of the Eureka Pool, "...to the owners, their heirs, successors, grantees and assigns the right of access to the waters' edge of the pool area from the owners remaining lands... (A. 6,14). This grant created a limitation on the fee taken by the Canal Authority. Furthermore, the grant was conditional on the existence of the pool which Appellant never created. As a result, the grant has failed. The District Court improperly ignored these factual distinctions with Carlor in concluding, "All of the fees in these cases were held by the Canal Authority in fee simple, without any condition or reservation." (A. 3).

CONCLUSION

Petitioners have shown that the instant cases contain facts materially different from those found in Carlor Co., Inc. v. City of Miami, supra. By expressly misapplying the law of Carlor to these cases the District Court generated direct conflict between the two decisions. Furthermore, the decision expressly and directly conflicts with the decision in Canal Authority v. Ocala Mfg.Co., supra. This Court has jurisdiction pursuant to Art. V. §3(b)(3), Fla. Const. (1980).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief has been furnished by U.S. Mail to LOUIS F. HUBENER, ESQUIRE, Assistant Attorney General, Department of Legal Affairs, The Capitol, Suite 1502, Tallahassee, Florida 32301, this 6th day of January, 1984.



CHARLES R. FORMAN