IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 92,299

H & F LAND, INC.,

Petitioner

vs.

PANAMA CITY-BAY COUNTY AIRPORT
& INDUSTRIAL DISTRICT,

Respondent

PETITION FOR DISCRETIONARY REVIEW OF DECISION OF DISTRICT COURT OF APPEAL, FIRST DISTRICT, CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE

BRIEF OF RESPONDENT

PANAMA CITY-BAY COUNTY AIRPORT
& INDUSTRIAL DISTRICT

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STATEMENT OF THE CASE

Petitioner H&F Land, Inc. filed this action in Bay County circuit court for determination that it was entitled to a common law implied way of necessity across adjoining land owned by respondent Panama City-Bay County Airport and Industrial District. Respondent filed a motion for summary judgment which contended that the easement claimed by petitioner had been extinguished by the Marketable Record Titles to Real Property Act, Chapter 712, Florida Statutes. (Record 048-049). After hearing argument, the trial judge entered summary final judgment for respondent. (Record 077-083; Appendix 2). Petitioner appealed to the District Court of Appeal, First District, which affirmed the summary final judgment and certified the following question to be of great public importance:

> "DOES THE MARKETABLE RECORD TITLE ACT, CHAPTER 712, FLORIDA STATUTES, OPERATE TO EXTINGUISH AN OTHERWISE VALID CLAIM OF A COMMON LAW WAY OF NECESSITY WHEN SUCH CLAIM IS NOT ASSERTED WITHIN THIRTY YEARS?" (Appendix 1)

Petitioner now seeks the discretionary jurisdiction of this Court for review of the certified question pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v).

STATEMENT OF FACTS

Respondent Panama City-Bay County Airport and Industrial District operates the public airport in the municipality of Panama City, Florida. The initial acquisition of land for that airport began when Bay County acquired 390 acres in Section 19, Township 3 South, Range 14 West from Coastal Lands, Inc. on October 4, 1940. (Record 041-042; Appendix 3, 7) At that time, Coastal Lands, Inc. also owned land in Section 18. Section 18 is immediately north of Section 19. However, most of Coastal Land's land in Section 18 was located north and east of Goose Bayou. A relatively small parcel consisting of approximately eight-tenths of an acre in the southwest quarter of the southwest quarter of the southeast quarter of Section 18 was located on the west shore of Goose Bayou and contiguous to the north boundary of the northeast quarter of Section 19. That parcel is the focus of this case. (See Appendix 6, 7, and 8, which depict the respective locations of petitioner's parcel and respondent's airport) When Coastal Lands conveyed the land in Section 19 to Bay County, that small parcel became landlocked, bounded on the north and east by the waters of Goose Bayou and on the south by the land in Section 19. Coastal Lands subsequently conveyed all of its interest in Section 18 to O. E. Hobbs, petitioner's

predecessor-in-title, on June 15, 1943. (Record 039-040; Appendix 4) As the 1942 aerial photograph confirms, there was no access to petitioner's parcel by public road. (Record- Defendant's exhibit; Appendix 8) The most direct access was across the northeast quarter and the east half of the southeast quarter of Section 19 to a public road, now known as State Road 390, which then ran generally southwest-northeast across the east half of the southeast quarter of Section 19. Much later, during an expansion of the airport in the early 1960's, that length of State Road 390 was relocated to the east through Section 20. The new route of the public road was not owned by the common grantor (Coastal Lands) at the time petitioner's implied way of necessity arose in 1940. Bay County conveyed the Section 19 property to the Panama City Airport Board, respondent's predecessor, on July 23, 1947, and that transaction is respondent's correct root of title. (Appendix 5)

The facts in this case are not disputed. There is no dispute in the record that petitioner and its predecessors-in-title never used Section 19 as a means of access to the landlocked parcel in Section 18. (Record 057-059) Petitioner and its predecessors-in-title never attempted to make any use of the parcel in Section 18. There is also no dispute in the record that petitioner and its predecessors-in-title never recorded the notice

required by Sections 712.03(2) and 712.05, Florida Statutes, or any other instrument to preserve or claim an implied way of necessity across respondent's land in Section 19 for access to petitioner's parcel in Section 18. (Record 052-054)

SUMMARY OF ARGUMENT

THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, CORRECTLY HELD PETITIONER'S CLAIM OF AN IMPLIED WAY OF NECESSITY WAS EXTINGUISHED BY THE MARKETABLE RECORD TITLES TO REAL PROPERTY ACT, CHAPTER 712, FLORIDA STATUTES.

The District Court of Appeal, First District, correctly held petitioner's claim of an implied way of necessity was extinguished by the Marketable Record Titles to Real Property Act, Chapter 712, Florida Statutes. MRTA provided petitioner a simple method to preserve its claim to an implied way of necessity, but petitioner failed to take any action to preserve its interest. Petitioner and its predecessors-in-title never used the implied way of necessity. Petitioner failed to record the notice required under Sections 712.03(2) and 712.05, Florida Statutes, to protect its interest. Petitioner's interest is not otherwise preserved by any of the seven exceptions enumerated by Section 712.103. MRTA implements the important public policy of Florida to extinguish ancient defects and stale claims, to simplify and facilitate land title transactions, and to secure reliance upon record title.

ARGUMENT

THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, CORRECTLY HELD PETITIONER'S CLAIM OF AN IMPLIED WAY OF NECESSITY WAS EXTINGUISHED BY THE MARKETABLE RECORD TITLES TO REAL PROPERTY ACT, CHAPTER 712, FLORIDA STATUTES.

This case demonstrates the compelling importance of the Marketable Record Titles to Real Property Act, Chapter 712, Florida Statutes. In 1940 a common grantor conveyed land in Section 19 to respondent's predecessor-in-title, Bay County, and thereby created a common law implied way of necessity for the small, inaccessible parcel retained by the grantor in Section 18, which was later conveyed to petitioner's predecessor-in-title, O. E. Hobbs. For fifty-six years, petitioner and its predecessors-in-title failed to ever use that easement. For fifty-six years, petitioner and its predecessors-in-title failed to record any notice or any other instrument to preserve their right to use that easement. In 1996, fifty-six years later, petitioner for the first time demanded use of that easement, which would have disrupted the security and safety of air operations at the Panama City-Bay County International Airport operated by respondent. The Marketable Record Titles to Real Property Act was intended to prevent such an unjust stale claim, and the trial judge correctly determined that

petitioner's easement had been extinguished by the MRTA and entered summary judgment for respondent.

Florida enacted Chapter 712, Florida Statutes, commonly referred to as the Marketable Record Title Act or MRTA, in 1963. The important public policy of MRTA is to extinguish ancient defects and stale claims to title to real property and to protect reliance upon record title. Comment has been made that no other legislation has been more valuable for the protection of marketable real property titles. See Reynolds, Marketable Record Title Act and Uniform Title Standards, §§ 2.1-2.16, Florida Real Property Title Examination and Insurance (1996); Cook, The Marketable Record Title Act Made Easy, Fla. Bar J., Oct. 1992, at 55.

Understanding the application of MRTA begins with Section 712.02:

> "**712.02 Marketable record title; suspension of applicability.**-Any person having the legal capacity to own land in this state, who, alone or together with his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

(1) The person claiming such estate; or
(2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed."

Section 712.03 enumerates seven very limited exceptions-the only exceptions to the application of MRTA:

"**712.03 Exceptions to marketability.** Such marketable record title shall not affect or extinguish the following rights:
(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).
(2) Estates, interests, claims, or charges preserved by the filing of a proper notice in accordance with the provisions hereof.
(3) Rights of any person in possession of the lands, so long as such person is in such possession.
(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded

subsequent to the effective date of the root of title.
(5) 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 governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.
(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is assessed in such person's name.
(7) State title to lands beneath navigable waters acquired by virtue of sovereignty."

Section 712.04 provides that all interests which arose prior to the effective date of the root of title, other than the seven limited exceptions described in Section 712.03, are "null and void":

"**712.04 Interests extinguished by marketable record title.**-Subject to the matters stated in s. 712.03, such marketable record title shall be free and clear of all

estates, interests, claims, or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims, or charges, however demoninated, whether such estates, interests, claims, or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental are hereby declared to be null and void, except that this chapter shall not be deemed to affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title."

Section 712.05 provides protection and a procedure to preserve a prior competing interest by recording a notice within thirty years after the effective date of the root of title:

> **"712.05 Effect of filing notice.-**
> (1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:
> (a) Under a disability,
> (b) Unable to assert a claim on his behalf, or
> (c) One of a class, but whose identity cannot be established or is uncertain at the

> time of filing such notice of claim for record. (2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his marketable record title."

Section 712.10 gives very clear direction that MRTA is to be liberally construed to accomplish the intended purpose to secure title to real property and that the only limitations to the application of the act are the seven exceptions set forth in Section 712.03:

> **"712.10 Law to be liberally construed.-** This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03."

Florida courts have consistently applied the MRTA liberally to accomplish the intended purpose of secure land titles. This Court first considered the MRTA in Marshall v. Hollywood, Inc., 236 So.2d 114 (Fla. 1970), and held that a wild or forged deed was an effective root of title and that the MRTA barred a claim prior to that root of title. In the present appeal, petitioner argues in its brief that application of the MRTA must be limited by pre-existing common law and the codification of implied easements of necessity in Section 704.01, Florida Statutes. The petitioner in Marshall v. Hollywood made a similar argument that the MRTA should be construed with

pre-existing statutes of limitations, curative statutes, recording statutes, and common law which held that wild or forged deeds were void. This Court succinctly rejected that argument:

> "In view of the special nature of this Act and its special purpose, the assertation that its construction and application must be bound by precedents related to less comprehensive acts does not make good sense and cannot make good law. The clear Legislative intention behind the Act as expressed in FS §712.10, FSA, was to simplify and facilitate land title transactions by allowing persons to rely on a record title as described by FS § 712.02 FSA, subject only to such limitations as appear in FS § 712.03, FSA. To accept petitioner's arguments would be to disembowel the Act through a case dealing with a factual situation of a nature precisely contemplated and remedied by the Act itself. This we cannot do." Id. 119-120.

This Court quoted with approval commentary by Catsman, The Marketable Record Title Act and Uniform Title Standards, III Florida Real Property Practice (1965), § 6.2 to explain the intended broad application of the Act:

> "'The chief purpose of the act is to extinguish sale claims and ancient defects against the title to real property, and, accordingly, limit the period of search. The act is different from a statute of limitations. In a statute of limitations a claim of vested, present interest is cut off because of the claimant's failure to sue. If suit is not filed, the claim is lost. By the Marketable Record Title Act, any claim or interest, vested or contingent, present or future, is cut off unless the claimant

> preserves his claim by filing a notice with a 30-year period. See § 6.5. If a notice is not filed, the claim is lost. The act also goes beyond a curative act. Curative legislation only corrects certain minor or technical defects through the passage of time, whereas under the Marketable Record Title Act, most defects or clouds on title beyond the period of 30 years are removed and the purchaser is made secure in his transaction.'" Id. 119.

This Court next visited MRTA in ITT Rayonier, Inc. v. Wadsworth, 346 So.2d 1004 (Fla. 1977). In response to questions certified by the U. S. Circuit Court of Appeals, Fifth Circuit, the Court held that the MRTA extinguished the vested remainder interests of children under the statute for descent of homestead and that a later deed by their mother was a marketable root of title. The children argued that their interests under the homestead statute were not subject to extinguishment by MRTA, and Petitioner argues likewise in its brief that its implied easement of necessity under common law and Section 704.01 are immune from the application of MRTA. The Court clearly held that MRTA extinguishes all claims prior to the root of title except the limited exceptions enumerated in Section 712.03:

> "As we answer the questions which concern statutory construction of the Marketable Record Title Act we keep in mind the legislative intent that the Act be liberally construed to effectuate its purpose. That purpose, expressed within the Act is to simplify and facilitate land title

> transactions. It does so in two ways. First, it gives to a person marketable title when public records disclose a title transaction, of record for at least thirty years, which purports to create the estate either in that person or in someone else from whom the estate has passed to that person. Second, subject to six exceptions, it extinguishes all interests in the estate which predate the 'root of title.' " Id. 1008-1009.

This statement by the Court also directly refutes petitioner's argument that MRTA must be strictly construed.

This Court next considered MRTA in City of Miami v. St. Joe Paper Co., 364 So.2d 439 (Fla. 1978), when it held that MRTA was constitutional and that a wild deed established a valid root of title. The Court also held that the interest of a municipality may be extinguished by the operation of MRTA. The following discussion by the Court is important in light of the failure of the petitioner and its predecessors in title to record the notice required by Sections 712.03(2), 712.05(1), and 712.06 to preserve an easement of necessity:

> "The Marketable Record Title Act is a comprehensive plan for reform in conveyancing procedures. It is a curative act in that it may operate to correct certain defects which have arisen in the execution of instruments in the chain of title. Curative statutes reach back on past events to correct errors or irregularities and to render valid and effective attempted acts which would be otherwise ineffective for the purpose the parties intended. They operate to complete a

transaction which the parties intended to accomplish but carried out imperfectly.

The Marketable Record Title Act is also a statute of limitations in that it requires stale demands to be asserted within a reasonable time after a cause of action has accrued. It prescribes a period within which a right may be enforced.

The Marketable Record Title Act is also a recording act in that it provides for a simple and easy method by which the owner of an existing old interest may preserve it. If he fails to take the step of filing the notice as provided, he has only himself to blame if his interest is extinguished. The legislature did not intend to arbitrarily wipe out old claims and interests without affording a means of preserving them and giving a reasonable period of time within which to take the necessary steps to accomplish that purpose." Id. 442. (emphasis supplied)

The Court also cited with approval the commentary of the Second District in Wilson v. Kelley, 226 So.2d 123 (Fla. 2d DCA 1969), about the safeguards in MRTA to prevent unjust extinguishment of a prior interest in land:

"'For those who are concerned with the likelihood that the Act will allow an interloping deed to cut off another person's deserving interest in favor of an undeserving person, there are safeguards in the Act to prevent this from happening. A claimant will not be cut off if he has been a party to any title transaction recorded within a period of not less than thirty years or if he files a simple notice prescribed by the Act during the time allowed for this purpose. He will not be cut off if he remains in possession or if the land is assessed to him on the tax roll. Even if it is no longer assessed to him he is protected if it was assessed to him at any time during the preceding three years. But if he has been a party to no title transaction

> recorded for at least thirty years during which time he has also failed to file the notice, and if for more than three years he has allowed the land to be assessed for taxation to someone else, and if neither he nor any person claiming under him is in possession of the land, it would not seem unjust that his claim should be subordinate to another person's claim that is based upon a chain of title going back to an instrument or court proceedings that has been recorded at least thirty years, and that 'purports to create or transfer the estate' claimed by the second person. In the public interest of simplifying and facilitating land title transactions, it does not seem unreasonable for the legislature to create a presumption that one who is negligent in claiming his land has abandoned his claim.' 226 So.2d at 127." Id. 449. (emphasis supplied)

In the present case, petitioner and its predecessors never used the claimed easement, never took possession of the dominant parcel, and never recorded the required notice for fifty-six years. As sagely put by the Second District, there is an implicit presumption in MRTA that petitioner and its predecessors abandoned the way of necessity across respondent's land.

In Holland v. Hattaway, 438 So.2d 456 (Fla. 5th DCA 1983), the district court of appeal held that an express appurtenant easement for access, contained in a deed of conveyance, was an "estate in land" as used in Section 712.02 and was subject to extinguishment by MRTA. This case refutes petitioner's contention on page 19 of its brief that an appurtenant easement of necessity cannot be severed from the dominant estate.

The First District Court held in City of Jacksonville v. Horn, 496 So.2d 204 (Fla. 1st DCA 1986), that an unrecorded public easement which had never been used was extinguished by MRTA.

Petitioner argues only that its claim of an implied easement of necessity is not subject to the application of MRTA. However, petitioner did not claim in the trial court and the district court of appeal, and does not now argue to this Court, that its claimed interest is exempt because of any of the seven exceptions enumerated by Section 712.03. The courts have very clearly held that statute sets forth the only exceptions to MRTA. In Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973) that court rejected an argument that there was an implied state government reservation of title to sovereign lands and stated:

> ". . . .Furthermore, had the Legislature wished a broader statutory exception under § 712.04, whether by implication or by specific disclaimer, and reservation of any power of conveyance of sovereign land, they could have so provided in the statute. They did not and it is our view that the statute is to be read literally." Id. 613-614.

Petitioner suggests that its claim of an implied way of necessity survives infinite transfers of the dominant estate and the servient estate; that it can be established at any time; and that it is eternally valid

against subsequent bona fide purchasers. This argument ignores the detailed explanation of the broad application of MRTA in the three decisions of the Supreme Court which have been cited in this brief: Marshall v. Hollywood, ITT v. Rayonier, and City of Miami v. St. Joe Paper Co., supra. Petitioner's argument is simply wrong also under common law. Although the case did not involve MRTA, the Fifth District in Dixon v. Feaster, 448 So.2d 554 (Fla. 5th DCA 1984) considered a claim to establish a common law easement of necessity. That court discussed its concern about the inequity of enforcing an unrecorded easement of necessity, which had not been used previously, against a subsequent bona fide purchaser of the servient estate. That court discussed the great difficulty of examining land title records to identify such "hidden claims":

> "There is a further problem. The grantor and grantee to the original conveyance dividing a tract with limited access to public roads should be able to readily see that their action is creating an access problem to a parcel severed or retained and the common law implication as to their intent is certainly not unfair as to them. However, if the implied way of necessity is not established physically and visibly on the ground the circumstances would normally not give subsequent good faith purchases and lenders actual or legally sufficient constructive notice of the implied easement across the servient estate. This is so because neither a careful examination of the recorded chain of title to, nor an accurate survey or personal ground inspection of, the servient tract will

> necessarily or usually give notice of facts and circumstances that would put a cautious title examiner (or even a normal, reasonable and prudent person) on notice of the potential claim of a way of necessity in favor of some other tract of land. Must the cautious purchaser or lender inquire as to the sufficiency, 'practicality' and legality of the present public access to all other tracts that were ever a part of some larger land tract of which the parcel in which he is interested was once a part? Stretching the basis of the common law implied way of necessity to provide for the current and enlarged needs of some present owner of a part of a long ago divided tract of land at the expense of other good faith present owners of other parts of such tract ignores the concept of a purchaser without notice of hidden land claims and the purposes of recording statutes and of legal doctrines relating to actual and constructive notice and constitutes a serious threat to the stability, marketability and insurability of land titles." Id. 560.

Petitioner argues on page 25 of its brief that it could not file the notice required by Section 712.03(2) to preserve its easement as an exception to MRTA. Petitioner claims it could not file the notice because it did not know the location of the easement of necessity because it had never used the easement. Petitioner's plea of helplessness does not ring true. An implied easement of necessity is created at the time of the original conveyance which causes the dominant estate to become landlocked without access. Roy v. Euro-Holland Vastgoed, BV, 404 So.2d 410, 412 (Fla. 4th DCA 1981). Sapp v. General Development Corp., 472 So.2d 544 (Fla. 2d DCA 1985), a case cited by petitioner, clearly refutes

petitioner's argument. That court considered a claim of a statutory easement of necessity under Section 704.01(2) and rejected an argument that a person is not entitled to a statutory way of necessity until a court determines his existence. The following comments by that court demonstrate petitioner's lack of understanding of an easement of necessity:

> ". . . .However, the statute belies his position. Section 704.01(2) provides that 'a statutory way of necessity...exists when any land...shall be shut off or hemmed in..."
>
> . . . .
>
> "In practical terms a landlocked owner always has either a common law way of necessity or a statutory way of necessity, depending on the status of its title, even though the precise location may not be known. At such time as he commences using a way of access across adjoining property, the location becomes presumably established, subject always to a redetermination by the court upon a contention of unreasonable use." Id. 546.

Section 712.03(2) creates an exception to MRTA for those interests which are preserved by recording proper notice. Section 712.05 establishes the procedure for that exception and directs that a notice must be filed for record during the thirty years immediately following the root of title. Section 712.06 describes the information which must be contained in the recorded notice. A form of the notice appears at § 2-16 of Florida Real Property Title Examination Insurance, 4th

Edition, published by The Florida Bar Continuing Legal Education. Based upon that form, respondent has prepared a notice of claim to demonstrate how petitioner's predecessor-in-title could have easily preserved the claim of a way of necessity. That hypothetical notice of claim and the CLE form appear at Tab 10 in the appendix to this brief. Petitioner's predecessors-in-title could have recorded this notice of claim anytime during the approximately fourteen years following the adoption of MRTA in 1963 until July 24, 1977, the end of the thirty-year period immediately following the effective date of the root of respondent's title, which is the July 23, 1947, deed from County of Bay to Panama City Airport Board. Petitioner's predecessors had the best opportunity to preserve an implied easement of necessity. They failed to do so, and the consequence of their failure must be borne by petitioner.

At least eighteen other states have adopted Marketable Record Title Acts. Reynolds, Marketable Record Title Act and Uniform Title Standards, supra, at 2-8. Respondent's search on West Law using the search terms of "marketable record title act - easement of necessity" identified only one other court which has considered whether an implied easement of necessity is extinguished by its Marketable Record Title Act. In an unreported memorandum of decision, the Superior Court of

Connecticut in Larson v. Hammonasset Fishing Assn., Inc. 1996 WL 156014 (Conn. Super.), affirmed, 44 Conn. App., 688 A. 2d 373 (1997), stated as dictum that the plaintiff's claim of an easement of necessity would have been extinguished because of the plaintiff's failure to file the notice required by Connecticut's Marketable Record Title Act. Copies of the Connecticut courts' decisions are included at Tab 9 of this brief.

In the authorities cited in this brief, this Court and other appellate courts have consistently enforced the public policy of MRTA in cases in which the interests extinguished by MRTA had far greater claim of legitimacy than that of petitioner. In Marshall v. Hollywood, supra, a root of title based upon a wild or forged deed prevailed over an otherwise valid deed recorded earlier in the chain of title, notwithstanding "public policy" arguments based upon statutes of limitation, curative statutes, recording statutes, and common law which held that wild or forged deeds were void. In ITT Rayonier, Inc. v. Wadsworth, supra, the homestead interest of children, long-standing public policy established by the Florida Constitution and by statute, was extinguished by a later root of title. In City of Miami v. St. Joe Paper, supra, the interest of a government entity, based upon an otherwise valid recorded deed, was extinguished by a wild deed which was the root of title under MRTA.

In short, no interest, however sacrosanct, is immune from the operation of MRTA unless it is one of the seven exceptions in Section 712.03.

Petitioner incorrectly argues that the public policy of right of access to land must be superior to the clear legislative expression of public policy in MRTA which extinguishes all interests prior to the thirty-year root of title unless preserved by the seven specific exceptions in Section 712.03. Petitioner overlooks the fact that MRTA afforded it a method to preserve its interest and gave the petitioner a reasonable period of time to do so. Petitioner and its predecessors-in-title failed to ever use the way of necessity. Had they done so, petitioner's interest may have been preserved by Section 712.03(5). Section 712.03(2) and 712.05 of MRTA would have preserved petitioner's interest if petitioner had recorded a simple notice; petitioner failed to do so. This case is not about MRTA improperly extinguishing petitioner's interest; it is about petitioner's failure to follow the available procedure to preserve its interest. Petitioner is the author of its own misfortune.

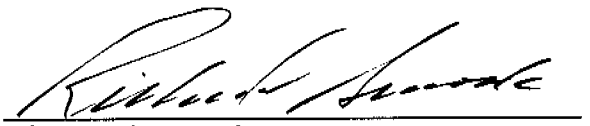
This case dramatically demonstrates the importance of the Marketable Record Titles to Real Property Act, Chapter 712, Florida Statutes. A way of necessity was created by implication at the time of the conveyance by

the common grantor in 1940. That easement did not appear in any instruments in the record chain of title. The easement was never used and remained hidden. Notice of easement was never filed of record. In the intervening fifty-six years, a public airport was constructed on the servient estate. Petitioner's stale claim of an easement across the airport land would have incalculable adverse effect upon the public interest. It is difficult to imagine any factual scenario which would more urgently require the protection of the Marketable Record Titles to Real Property Act to secure long-standing record land title.

CONCLUSION

Petitioner's claim of an implied way of necessity arose prior to the effective date of respondent's root of title. Petitioner failed to preserve its interest by either using the way of necessity or by recording the required notice. The district court of appeal correctly held that petitioner's interest was extinguished by the Marketable Record Titles Act to Real Property. Petitioner's petition for review should be denied.

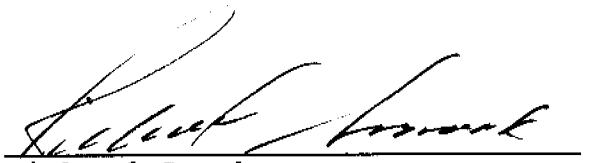
Respectfully submitted,



Richard Smoak

CERTIFICATE OF SERVICE

I CERTIFY that a copy of this answer brief has been forwarded to Rowlett Bryant, P. O. Box 860, Panama City, Florida; Cecilia Redding Boyd, P. O. Box 860, Panama City, Florida; and Thomas Sale, Jr., 602 Harrison Avenue, Suite 1, P. O. Box 426, Panama City, FL 32402 by regular U. S. Mail on March 17, 1998.



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