IN THE SUPREME COURT OF FLORIDA

HENRY H. BLANTON, as Trustee for
CAROLINE INVESTMENTS, INC.,
PROFIT SHARING PLAN,

Petitioner/Appellant,

v. CASE NO.: SC03-1685

CITY OF PINELLAS PARK, FLORIDA,
YALE MOSK & CO., and YALE MOSK,
an individual,

Respondents/Appellees.
_____/

ON A CERTIFIED QUESTION FROM THE
SECOND DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENTS/APPELLEES

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PRELIMINARY STATEMENT

Respondents/Appellees, Yale Mosk & Co., and Yale Mosk, an individual, refer to themselves as "Mosk" or as Defendants, their capacity in the trial court.

Mosk refers to Petitioner/Appellant, Henry F. Blanton, as Trustee for Caroline Investments Inc., Profit Sharing Plan, as "Blanton" or as Plaintiff, his capacity in the trial court.

Mosk designates references to the Record on Appeal by the prefix "R" followed by the volume and the page number.

Mosk designates references to Blanton's Initial Brief by the prefix "SCIB" followed by the page number.

Mosk designates references to Blanton's Initial Brief in the Second District Court of Appeal by the prefix "IB" followed by the page number.

Mosk designates references to Blanton's Appendix to his Supreme Court Initial Brief by the prefix "App." followed by the page number.

Mosk designates references to the Supplemental Appendix included with this brief by the prefix "SA" followed by the page number.

Mosk designates references to the Amicus Curiae Brief of Real Property, Probate & Trust Law Section of The Florida Bar in Support of Petitioner by the prefix "Amicus" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Because this matter is on appeal from the dismissal of Blanton's second amended complaint, Mosk realizes that all well-pled factual allegations in the complaint must be accepted as true (Mosk disagrees with many of the factual allegations, including those on the negotiations).[1]

The Second District affirmed "the trial court's finding that Blanton's claim to a statutory way of necessity was time-barred in light of the Florida Supreme Court's **holding** that 'statutory or common law ways of necessity are subject to the provisions of the Marketable Record Title to Real Property Act ('MRTA').' *H & F Land, Inc. v. Panama City-Bay County Airport & Indus. Dist.*, 736 So. 2d 1167, 1170 (Fla. 1999) (App. 3, emphasis added)." In his Introduction, Blanton characterizes the holding of the Second District Court of Appeal as being "based on *dicta* in *H & F* that suggests that MRTA applies to both common law and statutory ways of necessity" (IB 1).

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[1] The exhibits Blanton attached to his second amended complaint are deemed a part of Blanton's second amended complaint, per Fla. R. Civ. P. 1.130(b). These exhibits show that a 30-foot right-of-way lies immediately to the north of his property (R 158; see also aerial photo). These are the documents Mosk referred to at oral argument, prompting footnote 2 in the Second District's opinion on another mode of access to the property (App. 3).

CERTIFIED QUESTION

DOES THE MARKETABLE RECORD TITLE TO REAL PROPERTY ACT, CHAPTER 712, FLORIDA STATUTES, OPERATE TO EXTINGUISH AN OTHERWISE VALID CLAIM OF A STATUTORY WAY OF NECESSITY WHEN SUCH CLAIM WAS NOT TIMELY ASSERTED UNDER THE PROVISIONS OF THAT ACT?

SUMMARY OF ARGUMENT

The trial court correctly ruled that Blanton's claim for a statutory way of necessity is time-barred by the Marketable Record Title Act ("MRTA").

Blanton's argument that MRTA does not apply to statutory ways of necessity conflicts with the Florida Supreme Court's decision in *H & F Land, Inc. v. Panama City-Bay County Airport & Industrial District*, 736 So. 2d 1167, 1170 (Fla. 1999), in which the Court expressly stated, "we . . . hold that statutory or common law ways of necessity are subject to the provisions of [MRTA]."

The Second District rejected Blanton's argument that the Court's holding is dicta. But even if the statement were dicta (which it is not), the reasoning of the Supreme Court applies with equal force to statutory ways of necessity because there are no practical differences between statutory and common law ways of necessity. The burden on the servient parcel is precisely the same. Both types of easements remain in effect until the "necessity" no longer exists, and unless they are recorded, their existence remains undisclosed to the public, frustrating the purposes of MRTA.

The same public purpose underlies both common law and statutory ways of necessity. Although the Supreme Court acknowledged this public purpose, it has held that the public purpose behind MRTA prevails, because it is more important for the

overall stability of property law under MRTA that claimants assert their interests in property in a reasonable and timely manner.

MRTA contains a list of express exceptions to the statute, which does not include statutory or common law ways of necessity. The year after this Court announced its holding in *H & F* that MRTA applies to both statutory and common law ways of necessity, the legislature substantively amended this list of exceptions by adding to it. Had the legislature disagreed with the statement in *H & F*, it had the perfect opportunity to set the record straight by also adding statutory ways of necessity to the list. It did not do so. One must, therefore, presume the legislature agreed with this Court's statement.

Blanton and the Amicus contend it is difficult to apply MRTA to a claim for a statutory way of necessity because there is no clear time to start the clock. The statute, however, makes it clear that the right to assert a statutory way of necessity exists from the moment property located outside a municipality becomes landlocked. MRTA's 30-year clock begins ticking at that moment, as well. Whether the owner of the landlocked property chooses to take advantage of the statutory way of necessity by putting his property to one of the uses specified in the statute is up to him. His subjective desires on the subject, however, do not affect the clock. The time runs

regardless, as these are the only specified uses for which the statute would provide a right of way.

Blanton would have this Court hold that a statutory way of necessity is a claim like no other because it is subject to no time limitations of any kind. The notion of a perpetual claim, however, offends fundamental public policy and basic fairness. It would encourage people to wait to assert these claims until their neighboring landowners could least afford to accommodate them. Without time limits, statutory ways of necessity would be transformed from a useful statutory tool into a form of real estate blackmail.

Blanton (or his predecessors in title) at one time had a common law way of necessity over Mosk's property, because there was once unity of title between these properties. This right was lost because it was never recorded. Blanton has cited no authority for the proposition that the legislature created statutory ways of necessity to give delinquent property owners never-ending opportunities to impose burdensome easements on their neighbors' properties. Such an interpretation would create a loophole the legislature never intended and would directly contravene the legislature's clearly stated purpose in enacting MRTA.

STANDARD OF REVIEW

The issue on appeal involves a question of statutory construction, which, like other questions of law, is reviewed *de novo* by this Court. *See Bellsouth Telecommunications, Inc. v. Meeks*, 28 Fla. L. Weekly S775 (Fla. October 16, 2003); *State v. Glatzmayer*, 789 So. 2d 297, 301 n. 7 (Fla. 2001).

This Court has recognized that MRTA should be liberally construed, subject only to the limitations set forth in § 712.03. *See H & F*, 736 So. 2d at 1176; *see also* § 712.10.

ARGUMENT

I. FLORIDA'S MARKETABLE RECORD TITLE ACT BARS BLANTON'S CLAIM FOR A STATUTORY WAY OF NECESSITY.

Blanton's claim for a statutory way of necessity is barred by the Marketable Record Title to Real Property Act ("MRTA"), which vests marketable record title to property owners who have held record ownership in property for 30 years or more. Blanton argues that a claim for a statutory way of necessity, unlike its common law equivalent, is not subject to any time restrictions and may be made at any time.[2] As the trial court recognized, Blanton is wrong.

The Second District affirmed the trial court's decision in recognition that this Court's holding in *H & F Land, Inc. v. Panama City-Bay County Airport & Indus. Dist.*, 736 So. 2d 1167 (Fla. 1999), is controlling authority in this case. As this Court expressly stated in *H & F*, "we . . . hold that **statutory** or common law ways of

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[2] In the Second District, Blanton did not dispute that his claim was indeed untimely if MRTA applies to claims for statutory ways of necessity, and conceded as much at oral argument. Now, however, Blanton contends that even if this Court were to find that MRTA applies to statutory ways of necessity, the 30-year clock does not start until the Court determines the statutory way of necessity exists, after the appropriate route has been designated, and after compensation has been paid (SCIB 20). This new position is addressed below.

necessity are subject to the provisions of the Marketable Record Title to Real Property Act ("MRTA")." *Id.*, at 1170 (emphasis added).

MRTA provides, in relevant part:

> 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 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. . . .

§ 712.02, Florida Statutes (2000)(emphasis added).[3] In light of the unambiguous language in MRTA referring to "all claims" and what the Court acknowledged was the clear policy underlying MRTA, "both of which clearly mandate that 'any claim or interest' in property be publicly asserted and recorded, we find that MRTA indeed encompasses all claims to an interest in property, including ways of necessity." *Id.*, at 1172.

The Second District certified the question because it was of the view that "*H & F* arose in the context of a common law way of necessity and the supreme court's reference to statutory ways of necessity appears only in the stated holding. . ." (App. 3). Blanton contends this Court's own statement that its holding applies to

[3] Blanton did not contend that the claim of a statutory way of necessity falls within any of the exceptions to MRTA listed in § 712.03, Florida Statutes (2000).

both statutory and common law ways of necessity is dicta because the plaintiff in that case sought a common law way of necessity (IB 15). Again, Blanton is incorrect.

After conducting a thorough legal analysis of MRTA's history, purpose and exceptions, this Court observed that "a core concern of MRTA was that there be **no 'hidden' interests** in property that could be asserted without limitation against a record property owner." *Id.*, at 1172 (emphasis added, citation omitted). The Court concluded that "MRTA has essentially shifted the burden to those claiming an interest in land to publicly assert these claims so that **all interests in land** will be a matter of public record. The circumstances of this case serve as a vivid illustration of the legislature's concerns in seeking to provide stability in property law while still providing a reasonable opportunity for the assertion of legitimate but unrecorded claims." *Id.*, at 1176 (emphasis added).

Near the end of its opinion, the Court observed, "Of course, nothing in this opinion prevents H & F from seeking an **easement** from the Airport District to gain access to its property." *Id.*, at 1176, n. 12 (emphasis added). Blanton suggests it is significant that H & F did not assert a statutory way of necessity (SCIB 14). H & F contended it was entitled to a common law way of necessity, and a statutory way of necessity is not available if a common law way of necessity exists because the

property is not actually landlocked. *See e.g., Hancock v. Tipton*, 732 So. 2d 369 (Fla. 2d DCA 1999); *Ganey v. Byrd*, 383 So. 2d 652 (Fla. 1st DCA 1980).

The analysis in *H & F* applies with equal force to statutory as well as to common law ways of necessity, because there are no practical differences between the two with respect to their effect on the servient property.[4] Blanton's assertion to the contrary is wrong (SCIB 15).

Both statutory and common law ways of necessity are easements. The only differences are that one is legislatively created and requires payment to the servient parcel owner if demanded, while the other is implied at common law and requires no additional payment. § 704.01; § 704.04, Florida Statutes (2000). The burden of the easement on the servient property, however, is precisely the same. Even Blanton has acknowledged that the existence of a way of necessity "may be a dramatic impact on the value of the neighboring property that must provide the access" (IB 20).

As easements, both statutory and common law ways of necessity are interests in land, rather than mere personal interests. *See H & F*, at 1172. Once created, these easements will run with the property until the "necessity" no longer exists. *See*

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[4] The legislature recognized the similarity between these easements since it codified common law and statutory ways of necessity as subsections of the same statute.

Parham v. Reddick, 537 So. 2d 132, 135 (Fla. 1st DCA 1988)(easements created by necessity terminate when necessity for their existence disappears). Unless and until these easements are asserted, however, their existence remains undisclosed to the public -- a fact that makes it all the more important under MRTA's scheme to have them recorded. *See H & F*, at 1175.

Neither statutory nor common law ways of necessity require judicial intervention to exist. In the case of common law ways of necessity, the way "exists" when a person grants land to another for which there is no accessible right-of-way except over the grantor's land. § 704.01(1).

In the case of statutory ways of necessity, the way likewise "exists" when any land or portion thereof becomes landlocked, subject to certain additional limitations.[5] § 704.01(2). The owner of such a landlocked parcel

> may use and maintain an easement . . . over, under, through, and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route . . .; and the use thereof . . . **shall not constitute a trespass**; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

[5] In addition to being landlocked, the property must also be located outside a municipality, and it may only be used for a dwelling or dwellings, agricultural, timber, or stockraising purposes, in order to utilize a statutory way of necessity. § 704.01(2).

Id. (emphasis added).

In *Sapp v. General Development Corporation*, 472 So. 2d 544 (Fla. 2d DCA 1985), the court rejected the argument that a person is not entitled to a statutory way of necessity until the court determines its existence. Relying on the language of the statute, the court held that a person who is entitled to a statutory way of necessity need not wait until a court determines the existence of the way of necessity. *Id.*, at 546. The court interpreted the judicial remedy afforded by § 704.04 as merely the means by which the owner of the servient parcel can "register an objection to the **further** uncompensated use of the way." *Id.*, at 547 (emphasis added).[6]

This Court cited *Sapp* with approval in *H &F*, and agreed that "as soon as a claimant makes a claim and begins to use the claimed way of necessity, the location becomes presumptively established." *H & F*, 736 So. 2d at 1175, n. 9. The Court's reliance on a statutory way of necessity case and its use of the term "claimed way of necessity" shows that this Court does not distinguish, for purposes of MRTA, between common law and statutory ways of necessity. *Id.*

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[6] *Sapp* refutes Blanton's contention that a statutory way of necessity does not begin until after a court has determined it exists, designated the appropriate route, and assigned a reasonable compensation to be paid (SCIB 20). This Court's citing of *Sapp* in *H & F* demonstrates that the Court's analysis did not rest entirely on common law way of necessity cases, contrary to Blanton's suggestion at SCIB 15.

Blanton attempts to distinguish common law from statutory ways of necessity on the basis that statutory ways of necessity do not stem from the chain of title (SCIB 12). However, unless the easement were recorded, looking solely at the chain of title would not alert a prospective purchaser to the existence of a common law way of necessity anymore readily than it would to a statutory way of necessity, because the deeds would not recite that they were landlocking some other parcel. One would need to know what property was adjacent to the parcel in question.

The *Lawyers Title Guaranty Fund* Notes recognize this fact and state that, "The Fund Agent is responsible for determining that a right of access exists as to the land being insured." Fund Title Note 3.01.02 (SA 1). The Fund Title Notes go on to warn:

> Common law and statutory ways of necessity provided by Sec. 704.01, F.S., may not be relied on as access unless the extent of the easement has been judicially determined or is evidenced by a recorded easement between the owners of the dominant and servient estates.

Fund Title Note 3.02.03.B (SA 2). The Fund Title Notes state that MRTA "may operate to extinguish ways of necessity," citing the First District's and this Court's decisions in *H & F*. Fund Title Note 3.02.03.B (SA 2). Significantly, the Fund Title Notes make no distinction between statutory and common law ways of necessity --

both types need to be recorded in order to be relied upon as a means of providing access.

As part of his "chain of title" argument, Blanton asserts that statutory ways of necessity, unlike their common law counterparts, are created for public policy reasons. Public policy, however, is yet another similarity between the two ways of necessity. The same rule of public policy supports both the fiction of an implied grant of an easement under a common law way of necessity, and the legislatively created easement under a statutory way of necessity -- namely that lands should not be rendered unfit for occupancy or successful cultivation. *See H & F*, at 1172; *Deseret Ranches of Florida, Inc. v. Bowman*, 349 So. 2d 155, 156 (Fla. 1977). "Stripped of legal legerdemain, it seems clear that in final analysis the common law doctrine is based **entirely** upon public policy, which is favorable to full utilization of the natural resources and against the possible loss of utility in the case of landlocked property." *Stein v. Darby*, 126 So. 2d 313, 319 (Fla. 1st DCA 1961), *cert. denied*, 134 So. 2d 232 (Fla. 1961)(emphasis added).[7]

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[7] Blanton cites several out-of-state cases that discuss the public policy underpinnings for ways of necessity (SCIB 19). Some of these cases involve common law, rather than statutory ways of necessity and, therefore, demonstrate the similarities rather than the differences between the two easements. None of these cases, however, address the issue before this Court, which is whether a claim for a (continued...)

Blanton's "chain of title" argument also lacks any basis in the statutory language of MRTA. Section 712.02 provides that a landowner who has owned his property 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." This provision does not limit its application to claims based on a chain of title. Indeed, such a limitation would be illogical, because the burden placed on the property by a statutory way of necessity is precisely the same as that of a common law way of necessity. Moreover, § 712.10 requires that MRTA "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."[8]

Blanton's construction of MRTA frustrates that legislative purpose. A purchaser of land who relies on the public record to disclose "all claims" on the property, only to discover that an unasserted statutory way of necessity exists on the property, would find little comfort in the "chain of title" distinction suggested by Blanton. Indeed, Blanton is attempting to do precisely what this Court has held

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[7](...continued)
statutory way of necessity must be made within certain time parameters.

[8] As noted above, Blanton has never claimed that he falls within any of those stated exceptions.

MRTA was designed to prevent -- assert a hidden interest in the property without limitation against the record property owner. *See H & F*, 736 So. 2d at 1172.

Blanton argues that application of MRTA to statutory ways of necessity would defeat that public policy. When the First District certified the question in *H & F* to the Supreme Court, the court recognized that "[t]he policies underlying MRTA appear to here be in conflict with the public policy that 'lands should not be rendered unfit for occupancy or cultivation.'" *H & F Land, Inc. v. Panama City-Bay County Airport and Industrial District*, 706 So. 2d 327, 328 (Fla. 1st DCA 1998), *decision approved*, 736 So. 2d 1167 (Fla. 1999)(citation omitted). That fact did not prevent the First District from affirming the trial court's decision that MRTA extinguished the claim. *Id.*

This Court also acknowledged the public policy underlying ways of necessity but agreed with the First District that the public policy supporting MRTA prevailed:

> Our decision today is predicated upon the strong public policy concerns underlying the enactment of MRTA. The Legislature clearly stated the purpose of MRTA and the exclusivity of its exceptions by adopting section 712.10. It provides: "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 § 712.02 subject only to such limitations as appear in § 712.03." § 712.10 Fla. Stat. (1995). **While we also recognize the public policy concerns behind section 704.01, we conclude that it is important for the overall stability of property law under MRTA that**

> **claimants assert their interests in property in a reasonable and timely manner.**

H & F, 736 So. 2d at 1176 (emphasis added). Notably, the Court did not limit this statement to § 704.01(1), which it would have if, as Blanton claims, it intended its holding only to apply to common law ways of necessity.

Stated another way, a landowner's rights under MRTA trump the more general public policy concerns evidenced by § 704.01, because it is more important for a landowner to know that, after a certain point in time, there are no more "claims" that can be asserted to his property than it is for every scrap of land in Florida to be utilized.

The legislative history also shows the legislature approves of the Court's construction of MRTA. The Supreme Court announced its holding in *H & F* in 1999. The very next year, the legislature substantively amended § 712.03 of MRTA -- the section that lists the exceptions to MRTA's 30-year limitation period -- by adding subsection (8).[9] *See* 2000 Fla. Laws, ch. 2000-17. Had it disagreed with the Supreme Court's statements in *H & F*, the legislature had the perfect opportunity to set the

[9] Section 712.03(8) adds to the list of exceptions from MRTA "[a] restriction or covenant recorded pursuant to chapter 376 or chapter 403."

record straight by also adding statutory ways of necessity to the list of exceptions.[10] It did not do so; therefore, one must presume the legislature agreed with the Supreme Court's express statement that MRTA applies to both common law and statutory ways of necessity. *See, e.g., Gulfstream Park Racing Association, Inc. v. Department of Business Regulation*, 441 So. 2d 627 (Fla. 1983)(when legislature reenacts statute which has a judicial construction placed upon it, it is presumed the legislature is aware of that construction and intends to adopt it, absent clear expression to contrary).

Contrary to Blanton's assertions, statutory ways of necessity do not exist any time any property becomes landlocked (SCIB 7, 8, 10, 12). Indeed, these easements are available -- if at all -- only in certain areas (*i.e.*, "outside any municipality") and only for certain uses (*i.e.*, land "which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes"). § 704.01(2). A statutory way of necessity cannot be asserted if the property is located within a municipality or utilized if the property is being used (or desired to be used) for commercial or industrial purposes.

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[10] Blanton argues that if the legislature had intended for MRTA to apply to statutory ways of necessity, it could have said so as it did for mining easements in § 704.05. This statute says nothing about MRTA applying to common law ways of necessity either, yet this Court applied MRTA to those easements. *See H & F, supra.*

Thus, vast and valuable portions of Florida land are entirely outside the scope of § 704.01(2). If the goal of the Florida legislature had been to ensure that no piece of Florida real estate ever became landlocked for any reason, the legislature would not have limited the application of § 704.01(2) so significantly. Blanton's dire prediction that application of MRTA to statutory ways of necessity would ultimately create landlocked parcels all over Florida is simply incorrect and demonstrates that Blanton's suggested interpretation of § 704.01(2) is overly broad (SCIB 18).

Those landowners whose claims to statutory ways of necessity have been extinguished by MRTA are simply in the same position as owners of land located within municipalities or being used (or desired to be used) for commercial or industrial purposes. Yet these landowners are not without recourse; they are still free to negotiate with the owners of neighboring properties to acquire the needed access easements as this Court reminded in *H & F*. 736 So. 2d 1176, n. 12. Indeed, Blanton has even pled that he has been quoted a price for the access easement he seeks -- albeit one he does not like. Blanton, therefore, holds the key to unlock his allegedly landlocked property.

Both Blanton and the Amicus argue that attempting to apply MRTA to statutory ways of necessity is difficult because there is no clear time to "start the clock." There is nothing difficult about it. Section 704.01(2) provides that ". . . a statutory way of

necessity . . . exists when any land . . . shall be shut off or hemmed in by lands, fencing, or other improvements or other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road." In other words, the easement is "born," to use Blanton's term, when the property becomes landlocked. The clock begins ticking at that moment. The landowner has 30 years to assert the statutory way of necessity over the servient estate.[11]

The Amicus takes the position that a statutory way of necessity does not even "exist" until one of the enumerated "uses" arises. The Amicus misreads the statute. The right to a statutory way of necessity "exists" when a piece of property (located outside a municipality) becomes landlocked, but it may only be utilized under certain conditions, such as the use of the property for a dwelling or certain agricultural purposes. § 704.01(2).

The Amicus's position, as further illustrated by the hypothetical at Amicus 9, is just like a mother telling her child that a hot dog dinner is ready and waiting for him

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[11] The hypothetical example posited by the Amicus illustrates a potential problem created by a landowner who sleeps on his rights by failing to assert a statutory way of necessity when his property becomes landlocked (Amicus 7-8). While not the facts of this case, the landowner in the hypothetical would have at least 30 years in total to establish a right of way; under the most conservative view, he would have 28 years left if he took no action doing the 2 years before the pit existed.

for dinner. Just because the child really "desires" steak (which is not an option), or he refuses to eat because he is not hungry does not mean the hot dog dinner does not exist; it is merely not being consumed. It is also growing cold and stale while the child refuses to eat it. Similarly, the statutory way of necessity "exists" when the property becomes landlocked; whether the owner of the landlocked property chooses to take advantage of the statute by putting the property to one of the specified uses is up to him. Like the hot dog dinner, a claim for statutory way of necessity will also grow stale if it is not asserted in a timely fashion -- *i.e.*, within the 30-year time frame of MRTA. Although the law is very patient, its patience does have limits.

Blanton would have this Court take the position that a statutory way of necessity is a claim like no other -- a claim that is subject to no time limitations of any kind. The notion of a perpetual claim is contrary to fundamental public policy and basic fairness, because it would encourage people to wait to assert these claims until their neighboring landowners could least afford to accommodate them. For example, a landlocked landowner could wait for decades (as Blanton did here) while his neighboring landowners fully developed their properties. The landlocked landowner could then bring his claim for a statutory way of necessity that would require tunneling through or even demolishing structures that had already been built. Even though the court would require the payment of compensation, the sheer inconvenience and disruption

to the activities of the neighboring property owner would be a powerful incentive for that property owner either to pay the landlocked landowner not to assert the claim or buy the landlocked property at an extortionately high price. If there were no time limits on a claim for a statutory way of necessity, the Court would transform a useful statutory tool into a form of real estate blackmail.

Blanton argues that statutory ways of necessity are the "last resort" for landlocked landowners who have no claim to a common law way of necessity (SCIB 12). Blanton, however, fails to mention that he (or his predecessors in title) at one time **had** a common law way of necessity over Mosk's property because, as the Initial Brief does recount, there once was unity of title between these properties (SCIB 3). *See* § 704.01(1). This right was lost because it was never recorded.[12]

Blanton has cited no authority for the proposition that the legislature created statutory ways of necessity to give delinquent landowners, who have slept on their common law rights for over 30 years, never-ending opportunities to impose

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[12] Section 712.09, Florida Statutes (2000), provides that if the 30-year period for filing notice under § 712.05 shall have expired prior to July 1, 1965 (as it did for Blanton's claim for common law way of necessity), the period is extended until July 1, 1965. Consequently, even if one assumes that Blanton's right to a statutory way of necessity arose when the common law way of necessity was no longer available (*see Sapp*, *supra*), and Blanton is given another 30 years, from July 1, 1965, in order to assert a statutory way of necessity claim, that time period ended in 1995. Blanton did not file his declaratory action until 1997 -- two years late (R VI/1).

burdensome easements on their neighbors' properties. As the trial court recognized, such an interpretation would "create a loophole which was never intended by the Florida Legislature and would be directly contrary to [the] Legislature's clearly stated purpose of MRTA" (R 5/720). *See also H & F*, 736 So. 2d at 1176 (MRTA mandates extinguishment of stale interest in property in favor of record title owner of property).

CONCLUSION

Defendants respectfully request the Court to answer the certified question in the affirmative and approve the decision of the Second District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: STEVEN L. BRANNOCK, ESQ., Holland & Knight, LLP, P.O. Box 1288, Tampa, Florida 33601-1288, Attorneys for Appellant; EDWARD FOREMAN, ESQ. and LAURA M. BAMOND, ESQ., Law Offices of Edward Foreman, 100 Second Avenue North, Suite 300, St. Petersburg, Florida 33701, Attorneys for Appellee City of Pinellas Park, Florida; ROBERT W. GOLDMAN, ESQ., Goldman, Felcoski & Stone, P.A., 4933 Tamiami Trail North, Suite 203, Naples, Florida 34103 and JOHN W. LITTLE, III, ESQ., Steel, Hector & Davis, LLP, 1900 Phillips Point West, 777 S. Flagler Drive, West Palm Beach, Florida 33401, Attorneys for Amicus Curiae Real Property, Probate & Trust Law Section of the Florida Bar, on December 16, 2003.

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Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared using 14-point Times New Roman type, a font that is proportionately spaced.

Attorney

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