

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. SC13-775

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Petitioner,

vs.

CLIPPER BAY INVESTMENTS, LLC,

Respondent.

First District Court of Florida Case No. 1D11-5496
First Judicial Circuit Court Lower Case No. 08-1218-CA01-ORP

**AMENDED SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT,
CLIPPER BAY INVESTMENTS, LLC**

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TABLE OF CONTENTS

I. Introduction1

 A. The supplemental briefing in context.....1

 B. The supplemental briefing as ordered2

II. The Record Evidence.....3

 A. The 1987 lease describes FDOT's ROW as south of the
 county road3

 B. The Exhibit Drawing5

III. Conclusion7

Certificate of Service9

Certificate of Compliance9

TABLE OF CITATIONS

Cases

Clipper Bay Investments, LLC vs. Florida Department of Transportation, 117 So. 3d 7 (Fla. 1st DCA 2013)5, 7

Statutes

§ 712.02, Fla. Stat.1, 2

§ 712.03, Fla. Stat.1, 2

§ 712.03(5), Fla. Stat.....2

§ 712.04, Fla. Stat.2, 8

§ 712.10, Fla. Stat.2

I. Introduction

A. The supplemental briefing in context:

Clipper Bay is entitled to marketable record title to the disputed property because “the public records disclosed a record title transaction affecting title to the land which has been of record for not less than 30 years purporting to create an estate in (Clipper Bay) with nothing appearing of record . . . purporting to divest (Clipper Bay) of the estate claimed.” §712.02, Fla. Stat. (2010); Initial Br. at p. 2. This record title transaction or “root of title” is the 1969 deed recorded on March 17, 1970 at OR BK 204 PG 704 of the public records of Santa Rosa County, Florida. Tr. at I-67-68; 172-173.¹

Clipper Bay’s marketable record title “is free and clear of all estates, interests, claims or charges, the existence of which depends upon any act, title transaction event, or omission that occurred before” March 17, 1970, subject only to a limitation or exception preserved under § 712.03. This is achieved by the Marketable Record Title Act (“MRTA”) declaring that any such pre-root prior

¹ The Record on Appeal will be in the form of "R. at [Record Volume]-[Record Page]." Trial transcript references, although part of the record, have been separately paginated and accordingly will be separately referenced in the form of "Tr. at [Trial Volume]-[Trial Page]." Physical exhibits included in the Record but not paginated as part of the Record will be in the form of "Oversized Exhibit [Number]." Additionally, cited transcript excerpts are attached hereto as **Composite Exhibit A**, for the Court's convenience.

interest, including a governmental interest such as FDOT's here, is "declared to be null and void." § 712.04, Fla. Stat. (2010).

Moreover, the Marketable Record Title Act "is to be liberally construed to effect the legislative purpose of simplifying and facilitating land title transaction by allowing persons to rely on a record title as described in §. 712.02 subject only to such limitation as appear in §. 712.03." § 712.10, Fla. Stat. (2010).

The disputed issue is whether Clipper Bay's marketable record title is subject to any § 712.03 limitation or exception. The Florida Department of Transportation ("FDOT") argues that two limitations or exceptions apply. The limitation relevant to this supplemental briefing is one that preserves "recorded or unrecorded . . . rights-of-way . . . , 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." § 712.03(5), Fla. Stat. (2010).

B. The supplemental briefing as ordered:

Supplemental briefing was ordered to verify two matters. First, "whether the lease between the Department of Transportation (FDOT) and Santa Rosa County was recorded in the Santa Rosa County Records at Book 920, Page 06 (dated November 19, 1987)." Second, whether "the property description therein includes only the county road."

That lease was so recorded in 1987; and, its property description includes the county road, along with a small parking area at the road's western terminus beyond the disputed property. However, even though the lease was recorded, it is uncontroverted that a proper records search of the Santa Rosa County public records back to Clipper Bay's root of title does not disclose this lease. Tr. at I-177-178.

The Court also directed the parties to provide an aerial map that clearly demarks five items: (1) the property in dispute; (2) the position of the county road and Interstate 10; (3) the position of the fence; (4) the property lines of the deeds and lease in the record; and, (5) the property awarded by the trial court and the First District Court of Appeal. FDOT has provided this map to the Court as Composite Exhibit B to its brief. FDOT chose to include the boundaries of the property described in Clipper Bay's 1970 root of title. The southern boundary in that 1970 deed, in the 1970 subdivision plat, and throughout Clipper Bay's record title is the fence bounding the Interstate 10 right-of-way.

These matters will be briefly discussed.

II. The Record Evidence

A. The 1987 lease describes FDOT's ROW as south of the county road.

Seventeen years after Clipper Bay's root of title was recorded and the Escambia Shores plat was recorded, the FDOT lease to Santa Rosa County was

recorded in the Santa Rosa County public records at OR Book 920, Page 06 (dated November 19, 1987). Clipper Bay placed this lease into evidence as Clipper Bay's Trial Exhibit Number 15. Tr. at I-177. Through Clipper Bay's expert title examiner, Frank Jackson, it was established that this lease was not in Clipper Bay's chain of title and, therefore, did not affect Clipper Bay's marketable record title. Tr. at I-177-178. That fact is not disputed. Clipper Bay also explored the impact of this 1987 lease in its cross-examination of FDOT's right-of-way manager, Eddie Rudd, FDOT's only witness. Tr. at II-297-303.

FDOT prepared the 1987 lease. That lease dictates that the county road be constructed just north of the I-10 right-of-way.² For example, paragraph 12 requires that the county's road "be kept near the existing I-10 right-of-way because that is the highest land elevation so that the least amount of wetlands would be disturbed." Paragraph 13 states that "[i]f the proposed roadway causes any backup of drainage of surface water on the I-10 right-of-way as it now exists, the County will install drainage structures to eliminate any such backup of water." (Clipper Bay's Trial Exhibit 15; attached to FDOT's Initial Supplemental Brief as Exhibit A). This lease in which FDOT describes its right-of-way as south of the county

²The lease extends far beyond the aerial map provided. The county road runs just north of the I-10 right-of-way and continues east of Clipper Bay's property. Tr. at II-298.

road was recorded almost two decades before FDOT disputed Clipper Bay's title and asserted its entire fee was the I-10 right-of-way.

In reviewing the evidence presented on the lease, the First District correctly stated that "[w]hile this evidence may support the county road being subject to the exception, it does not support FDOT's argument that the rest of the land was part of its Interstate 10 right-of-way." *Clipper Bay Investments, LLC vs. Florida Department of Transportation*, 117 So. 3d 7, 15-16 (Fla. 1st DCA 2013). After its review of the entire record, the First District correctly concluded that "FDOT failed to present competent substantial evidence that the land at issue was ever devoted to or required for part of its Interstate 10 right-of-way." *Id.* at 16. Indeed, the only competent, substantial evidence is that FDOT's right-of-way is bounded by its limited access fence which is south of Clipper Bay's property.

B. The Exhibit Drawing

In addition to the FDOT aerial map provided as ordered, the record on appeal contains multiple aerial maps depicting the requested items including the map attached hereto as **Exhibit B**. Clipper Bay's Trial Exhibit Number 19; R. at IX-1795. The aerial map FDOT has provided is accurate, but that map and FDOT's brief requires some comment.

First, at paragraph U-1, FDOT states that "[t]he red line extends through some residential tracts bordering the north bank of the canal; the Department

deeded any interest in those tracts to the homeowners.” Initial Supp. Br. p. 3.

There is no evidence in the record on appeal of any such conveyances. Therefore, the Court should disregard this alleged “fact.” What the record does support is that FDOT has no fee interest in the land north of the I-10 right-of-way fence line owned by Clipper Bay by virtue of the application of MRTA.

Second, FDOT shows the boundary of Clipper Bay’s root of title on its Composite Exhibit B, Page 1 of 2 in yellow. The same description in that deed is used in the plat of Escambia Shores subdivision (which was recorded in the Santa Rosa County public records at Plat Book B, Page 147, as revised by Minute Book N, Page 333 in 1969). Oversized Exhibit 4. A copy of the plat is attached hereto as **Exhibit C**. As shown on the plat, the property description and a corresponding map of the plat was duly approved and accepted by Santa Rosa County.³ The plat map clearly shows Interstate 10 is south of what was then Block C of the plat. As established at trial by Clipper Bay’s expert surveyor, Clipper Bay’s property is a part of that same Block C and its southern boundary is the I-10 fence line, the line separating Clipper Bay’s property from the only area FDOT has used as part of the I-10 right-of-way. Tr. at I-81-86.

³ The ownership of all of the property within the Escambia Shores plat is also certified as owned by Clipper Bay’s predecessor in title, Escambia Shores, Inc. There is no evidence on the face of the plat that any of the platted property was owned by FDOT. This includes all of the property now in dispute.

Conveniently and tellingly, FDOT changed its description of this fence when it prepared the aerial map. On FDOT's Composite Exhibit B, FDOT now refers to its I-10 limited access fence as a "4' HOG WIRE FENCE WITH 2 STRANDS OF BARBED WIRE." Yet, the entire record evidence (including FDOT's own unrecorded right-of-way maps) describes this fence line as the "limited access" right-of-way line. Tr. at II-272-273.

Finally, regarding the stipulated fact in subparagraph S-D.3 of FDOT's Supplemental Initial Brief, Clipper Bay is not aware of any record evidence that supports the stipulated fact and does not believe the fact is relevant. Clipper Bay agrees that the trial court awarded the county road, as built and maintained, to the County (as Clipper Bay had stipulated). However, this stipulation and award was made in compliance with the maintenance statute, not as a result of the lease. And, the First District Court of Appeal affirmed that portion of the trial court's order. (*Clipper Bay Investments, LLC vs. Florida Department of Transportation*, 117 So. 3d 7, 16 (Fla. 1st DCA 2013)).

III. Conclusion

The competent, substantial evidence fully and solely supports the finding that the north boundary of FDOT's I-10 right-of-way is the fence and that fence is the southern boundary of Clipper Bay's parcel. With no right-of-way north of that fence, FDOT's competing fee interest must "be declared null and void." § 712.04,

Fla. Stat. (2010). And, Clipper Bay should have marketable record title without limitation or exception.

Respectfully submitted,

/s/ Kenneth B. Bell
KENNETH B. BELL
WILLIAM J. DUNAWAY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original has been electronically filed and that a true and correct copy of the foregoing has been furnished to the following via electronic delivery, this 19th day of June, 2014.

Marc Peoples
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/s/ William J. Dunaway

KENNETH B. BELL
WILLIAM J. DUNAWAY

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Respondent's Answer Brief has been submitted in Times New Roman 14-point font, in compliance with Fla. R. App. P. 9.210.

Dated this 19th day of June, 2014.

/s/ William J. Dunaway

KENNETH B. BELL
WILLIAM J. DUNAWAY

Exhibit A

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

CLIPPER BAY INVESTMENTS, LLC,

Plaintiff,

vs.

STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION AND SANTA
ROSA COUNTY,

Defendants.

CASE NO.: 08-1218-CA01-ORP

STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION,

Defendant/Counter-plaintiff,

vs.

CLIPPER BAY INVESTMENTS, LLC,
a Georgia Limited Liability Company,

Plaintiff/Counter-defendant.

TRIAL
VOLUME I, Day 1

Reported by Elaine Richbourg, a Court Reporter
and Notary Public, State of Florida at Large, in the
offices of Santa Rosa County Courthouse, 6865
Caroline Street, Milton, Florida, on Monday, May
16th, 2011, commencing at approximately 9:m.00a.CST.

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2012 JAN 19 A 8:17

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SANTA ROSA COUNTY
CLERK'S OFFICE

1 hand those to Mr. Parker.

2 Q (By Mr. Dunaway) Mr. Parker, if you would
3 review exhibit 14-A and 14-B and you've completed
4 that review, look up at me.

5 MR. LAMBERT: Your Honor, while Mr. Parker
6 examines the deed, may I interposed an
7 objection that I anticipate?

8 THE COURT: Okay.

9 MR. LAMBERT: And that is the objection
10 that if Mr. Parker is going to testify as to
11 what that deed conveys, I'd ask the Court to
12 instruct him that's outside of his purview.

13 THE COURT: Okay. Let me look at this
14 because I'm going to be asking a question with
15 regards to what the right-of-way line is.

16 MR. LAMBERT: Yes, ma'am. Thank you.

17 Q (By Mr. Dunaway) Mr. Parker, with regards
18 to exhibit 14-A, which is a deed recorded at OR book
19 204-704, how do you begin to determine the legal
20 description or how do you begin to determine if its
21 sufficient to identify the location and boundaries
22 of this parcel?

23 A First of all, you determine if the
24 property can be identified. In this case, this
25 property can be identified. It gives you a general

1 area of where to start looking for the property.
2 And then it identified -- it shows an identifiable
3 point in a platted subdivision so you can pull that
4 plat from the Santa Rosa County clerk's office and
5 from that point it gives you a starting point of
6 this legal description, which can be identified in
7 the field.

8 THE COURT: Mr. Parker, and I'm going to
9 ask the attorneys to come up here. All right.
10 I've got the plat.

11 THE WITNESS: Okay.

12 THE COURT: And here's 442.

13 THE WITNESS: Okay.

14 THE COURT: All right. Kind of show me
15 what it says, please.

16 THE WITNESS: All right. This is block
17 442.

18 THE COURT: I understand this is his
19 opinion but I'm just getting it as his opinion.

20 THE WITNESS: This is lot 442.

21 THE COURT: This is the whole thing, lot
22 442?

23 THE WITNESS: Yes.

24 THE COURT: Because this looks as if this
25 goes to this block. So, you've got 20, 21, 22,

1 THE COURT: Oh, one more step down?

2 THE WITNESS: Yeah.

3 MR. LAMBERT: May I approach, Your Honor,
4 to see what he's drawing?

5 THE COURT: Yes. This is what he's saying
6 is the DOT's 1963, said this was their
7 right-of-way. That's what he said --

8 MR. LAMBERT: Yes, ma'am.

9 Q (By Mr. Dunaway) Now, Mr. Parker, if you
10 would refer to exhibit 14-A and Her Honor had you
11 take the line south 1600.59 feet to the right-of-way
12 line. I'd like for you to pick up there in the
13 legal description?

14 A Okay.

15 Q And tell me what the next call is?

16 A To a point in the north right-of-way line
17 of Interstate 10 Highway. Do you want me to go to
18 the next column?

19 Q How far do you go on that call?

20 A Down to the right-of-way line or along?

21 Q Along said highway line?

22 A Just north 89 degrees 52 minutes, 35
23 seconds west along said right-of-way line
24 512.77 feet.

25 Q And is that -- is that point denoted here

1 on my exhibit drawing 14-B?

2 A Yes, it is.

3 Q Now, what is the next call?

4 A Thence north 85 degrees, 53 minutes,
5 thirty seconds west along said right-of-way line
6 412.21 feet to a point on the southerly extension of
7 the west line of said block 442.

8 Q Now, did you depict that line as going --
9 as is indicated in green until terminal point here
10 at the southern extension of 442?

11 A Yes.

12 Q Why, Mr. Parker, did you not jog directly
13 north and then again west to carve out that section
14 which you noted on your exhibit drawing as a north
15 R/W per DOT map dated 7/9/63?

16 A Because we was plotting purely what this
17 legal description said, where it said go.

18 Q And was there any confusion about that
19 legal description?

20 A None.

21 THE COURT: Okay. Then how do you -- if
22 that's not a right-of-way, then how do you do
23 that? If you've got north 85 degrees along
24 said right-of-way line and you don't have that
25 as part of the right-of-way line, how do you do

1 on my exhibit drawing 14-B?

2 A Yes, it is.

3 Q Now, what is the next call?

4 A Thence north 85 degrees, 53 minutes,
5 thirty seconds west along said right-of-way line
6 412.21 feet to a point on the southerly extension of
7 the west line of said block 442.

8 Q Now, did you depict that line as going --
9 as is indicated in green until terminal point here
10 at the southern extension of 442?

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13 north and then again west to carve out that section
14 which you noted on your exhibit drawing as a north
15 R/W per DOT map dated 7/9/63?

16 A Because we was plotting purely what this
17 legal description said, where it said go.

18 Q And was there any confusion about that
19 legal description?

20 A None.

21 THE COURT: Okay. Then how do you -- if
22 that's not a right-of-way, then how do you do
23 that? If you've got north 85 degrees along
24 said right-of-way line and you don't have that
25 as part of the right-of-way line, how do you do

1 that? I'm looking at what you just told me is
2 the north right-of-way line.

3 THE WITNESS: Okay.

4 THE COURT: And you've got the point being
5 right here; correct?

6 THE WITNESS: That's correct.

7 THE COURT: And then it says north
8 89 degrees. Thence north 85 degrees along --
9 along said right-of-way line. The right-of-way
10 line is up here. You're pulling it down here,
11 how do you do that?

12 THE WITNESS: The plat of Escambia Shores,
13 which is part of this legal here, shows the
14 right-of-way line as coming here. Now, the
15 only thing I can say to that is, I don't know
16 what was used, at this point in time, when they
17 surveyed that. They may have had a map of some
18 sort or some indication of where the
19 right-of-way line was. Interstate fencing,
20 maps that showed the location, but they went
21 and came along here. So, that's where we
22 plotted it when we plotted --

23 THE COURT: Okay. So, that's what
24 Escambia Shores said?

25 THE WITNESS: That's correct.

1 THE COURT: All right. So, the question
2 is: Again, so we get right back to what was
3 the right-of-way line at some -- at some point,
4 you're saying that it even changed or somebody
5 surveyed this wrong because it had to have
6 changed if it says it's going to be along the
7 right-of-way line?

8 THE WITNESS: That's correct. I changed.
9 The right-of-way did change.

10 THE COURT: Okay. So, the question is:
11 When did this change?

12 THE WITNESS: That's the question.

13 THE COURT: Okay. Thank you.

14 Q (By Mr. Dunaway) Mr. Parker, are you
15 familiar with this area in and around Interstate 10
16 to know whether or not the DOT maintains a fence
17 along its roadway?

18 A I'm familiar with the property but I
19 couldn't tell what you they maintain, no.

20 Q Okay. Is the aerial that I've provided,
21 does it show the roadway of I-10?

22 A Yes.

23 Q In relationship to the property and to the
24 boundary line that you've drawn in exhibit 14-B?

25 A Yes.

1 Q And does that southern extension, that
2 southern portion of the property, as you've drawn it
3 in 14-B, does it follow, generally, the FDOT's fence
4 line along this area?

5 A Yes.

6 Q In working in your 40 years a surveyor
7 with surveying and, specifically, concerning
8 right-of-ways, have you -- when, if ever, have you
9 encountered different terminology being used for the
10 term right-of-way?

11 A There was no different terminology. It
12 was a right-of-way line as established from their
13 right-of-way maps.

14 Q Does the fact that the DOT might own more
15 property than they designated in, by their maps,
16 does that have any significance? That is, does all
17 of the property owned by DOT, by definition, become
18 right-of-way?

19 A No.

20 Q So, in this case, you have indicated in
21 14-B, that there is an area here called a borrow
22 area that is north of the right-of-way; is that
23 correct?

24 A Yes.

25 Q And you've also indicated that the

1 drawing, the legal description is clear for you that
2 you would not jog north and then west to follow that
3 right-of-way line, you would proceed as that call
4 and close; is that correct?

5 A Yes.

6 Q If Mr. Overman or a surveyor in, who
7 surveyed the Escambia Shores plat, is it possible
8 that he made a mistake in platting this line from
9 here over?

10 A Yeah, it's possible.

11 Q It's equally possible that he had more
12 information than we do?

13 A That's entirely possible, yes.

14 Q Do you know whether this plat has been of
15 record for more than 30 years?

16 A Can I come look at that map?

17 Q You can. I'll bring it over to you.

18 MR. LAMBERT: We'll stipulate to that
19 fact. It was recorded in the '70's, wasn't it?

20 THE WITNESS: It was recorded in January
21 of 1970.

22 Q (By Mr. Dunaway) And does the map of
23 survey provide at the bottom an annotation, the
24 north right-of-way line?

25 A Yes.

1 A This trustee deed?

2 Q Correct.

3 A It's a trustee's deed but I believe that
4 it falls within the equivalent of a warranty deed or
5 its equivalent.

6 Q Okay. And if you'll review or if you'll
7 pick up now the document that is just to your right
8 that's under tab 14, you'll find tab 14 and you'll
9 find --

10 A Yes. Okay.

11 Q Here you're looking at a document that is
12 found at OR book 204 page 704, exhibit 14-A. Did
13 you find that document in the Clipper Bay's chain of
14 title?

15 A I did.

16 Q What documents beyond that did you find in
17 Clipper Bay's chain of title?

18 A Prior to this one?

19 Q Correct.

20 A I would not have gone prior to this one.

21 Q And why not?

22 A This is my 30 year root of title deed
23 warranty deed or its equivalent and anything prior
24 to that, from my understanding from the Marketable
25 Record Title Act and on the advice of my

1 underwriters, I would not have searched.

2 Q And how then will you determine if the
3 land that is described in that deed is or if Clipper
4 Bay's property is contained -- is the property
5 that's contained within that deed?

6 A I would have relied on the surveyor.

7 Q And if -- if a surveyor had indicated that
8 the property, Clipper Bay's property is contained in
9 that deed, would that then add significance for your
10 search?

11 A Correct.

12 Q Okay. What, in reviewing the chain of
13 title, several of these instruments in the chain of
14 title contained in exhibits 1 all the way down
15 through and including 14, many of them reference a
16 block C?

17 A Correct.

18 Q To an Escambia Shores plat. What does
19 that mean to you?

20 A It means that somewhere on their plat
21 there's a designated parcel of land known as block
22 C.

23 Q What makes an instrument a deed, what
24 makes it a title transaction?

25 A Well, my understanding is it's, when it's

1 Q (By Mr. Dunaway) Mr. Jackson, I'm now
2 showing you what's been marked and admitted into
3 evidence as exhibit 15.

4 A Do you want me to put this back where I
5 got it?

6 Q Please do. I violated my rule by not
7 giving you the number. Would you review exhibit 15,
8 please?

9 THE COURT: What are you looking at?

10 MR. DUNAWAY: Exhibit 15, Your Honor.

11 THE WITNESS: The lease agreement.

12 MR. DUNAWAY: It's the lease -- the lease.

13 A (By the Witness) There is a lease
14 agreement from the State of Florida, Department of
15 Transportation, to the Board of County Commissioners
16 of Escambia County, Florida.

17 Q Why was it that you did not find that
18 document in Clipper Bay's chain of title?

19 A Because it's that part of blocks 356, 357,
20 358, 359, 360, 61, 62, 63, 364, 365, 366 through
21 367. Also, the undivided area lying west of Avalon
22 Beach. There's no specific reference to the block.
23 I didn't do this search so I'm not sure how to
24 answer the question. I might have picked this up.

25 Q Well, what impact, if any, does this lease

1 have on Clipper Bay's chain of title?

2 A None whatsoever, as far as I'm concerned.

3 MR. DUNAWAY: No further questions, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. LAMBERT:

7 Q Good afternoon, Mr. Jackson.

8 A Hey.

9 Q I'm Wayne Lambert. I represent the
10 Department of Transportation?

11 A Yes, sir.

12 Q And you and I met recently at a
13 deposition; is that correct?

14 A Correct.

15 Q But it is from the root of the title that
16 you actually begin your examination to pick up all
17 the records that you need to search?

18 A In one sense, that's correct.

19 Q Okay. And if you had -- if we could make
20 an assumption that property was owned by either
21 Amadio and DiJoris, George and Mamie Manus by
22 Central Bank and Trust Company or Central Plaza Bank
23 and Trust Company, if you could make the assumption
24 that those 4 entities may have had title beginning
25 in the 1950's, sometime?

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

CLIPPER BAY INVESTMENTS, LLC,

Plaintiff,

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STATE OF FLORIDA, DEPARTMENT OF
TRANSPORTATION AND SANTA
ROSA COUNTY,

Defendants.

_____/

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vs.

CLIPPER BAY INVESTMENTS, LLC,
a Georgia Limited Liability Company,

Plaintiff/Counter-defendant.

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TRIAL
VOLUME II, Day 1

Reported by Elaine Richbourg, a Court Reporter
and Notary Public, State of Florida at Large, in the
offices of Santa Rosa County Courthouse, 6865
Caroline Street, Milton, Florida, on Monday, May
16th, 2011, commencing at approximately 2:50p.m.CST.

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1 A Well, looking at this it says, Del Monte
2 channel proposed and it shows the east line of the
3 channel and the west line of 442 as being common.
4 But the canal does have a zig in it. According to
5 this plat they were common.

6 Q Mr. Rudd, the Department's right-of-way
7 map in the area that I'm indicating with my little
8 pointer has some language there. Would you read off
9 of the original map what that language says?

10 A What is it you want me to read?

11 Q I want you to read the language that would
12 be on the limited access right-of-way line.

13 A Right-of-way line and limited access.

14 Q Now, I want to call your attention to the
15 Escambia Shores unit 1 subdivision plat. Are you
16 familiar with that plat?

17 A I've seen it. I'm not looking at it.

18 MR. LAMBERT: May I approach the witness,
19 Your Honor?

20 THE COURT: Uh-huh.

21 MR. LAMBERT: Thank you.

22 THE COURT: Judge, let me ask, Mr. Rudd,
23 when you were saying that that says
24 right-of-way line, does that make that then the
25 right-of-way or is the right-of-way still up at

1 San Mateo, at the south side of San Mateo?

2 THE WITNESS: Well, the map is indicating
3 that that's the limited access right-of-way
4 line, where its pointing to. And then that's
5 what I get out of it. The right-of-way line
6 and limited access. And then the line at San
7 Mateo is the right-of-way line for the borrow
8 area that we acquired.

9 THE COURT: So, both of them are
10 right-of-way lines?

11 THE WITNESS: Yes, ma'am.

12 Q (By Mr. Lambert) You can explain your
13 answer further for the Court. I don't want to cut
14 you off, certainly.

15 A Well, that's indicated on our map by the
16 symbology up there along San Mateo, is a solid line
17 and then a couple of dash lines. And that's our
18 indication for right-of-way lines. So that's the
19 right-of-way line for the borrow area, which is all
20 part of the Interstate 10. It's all for the
21 Interstate 10 project.

22 Q What you have just described for the Court
23 is on the northern boundary of the borrow area
24 marked on our right-of-way maps, there's a
25 particular symbol for surveying used. Is there a

1 that the Department has that would indicate
2 that we either acquired in fee things we wanted
3 an easement but when you get to the -- when you
4 shuck the corn to the kernel, by the time that
5 acquisition was made, we acquired everything in
6 fee.

7 THE COURT: Okay.

8 MR. LAMBERT: And my objection would be
9 not relevant.

10 THE COURT: Overruled.

11 Q (By Mr. Dunaway) Your Honor, if I can go
12 straight to that corn, I would like to show Mr. Rudd
13 what has been admitted into evidence as exhibit 15.
14 Mr. Rudd, can you review exhibit 15 and tell me who
15 prepared that document?

16 A I don't know this -- I can't make out the
17 signature up top right there. But this instrument
18 was prepared by Phillip Minor, State of Florida,
19 Department of Transportation in 1987.

20 Q In 1987, did Mr. Minor have access to the
21 right-of-way maps that you in front of you?

22 A Yes, he did.

23 Q Was he the supervisor in charge of
24 right-of-way for DOT in this area?

25 A He was the supervisor for right-of-way

1 engineering, which is not in charge of the
2 right-of-way --

3 Q I'm sorry. As right-of-way engineering,
4 would he have known where the location of the DOT's
5 right-of-way was?

6 A Yes.

7 Q Will you refer to paragraph 12 of that
8 document and read it for the court?

9 A The proposed road will be kept near the
10 existing I-10 right-of-way because that is the
11 highest land elevation so that the least amount of
12 wetlands would be disturbed.

13 Q Thank you, Mr. Rudd. May I retrieve 15.
14 Are you familiar with the location of Boat Ramp Road
15 running along the southern side of the Escambia
16 Shores plat and running to Boat Ramp, the Archie
17 Glover Boat Ramp?

18 A I know there's a road out there. I
19 haven't been on the road.

20 Q Is it a road that's maintained by DOT?

21 A Not to my knowledge. I believe the County
22 does.

23 Q Does DOT have a fence that is south of the
24 road designating the I-10 limited access?

25 A I could only say I believe so.

1 Q Okay.

2 MR. DUNAWAY: No further questions.

3 MR. LAMBERT: Give me just a moment, Your
4 Honor.

5 THE COURT: Of course.

6 REDIRECT EXAMINATION

7 BY MR. LAMBERT:

8 Q Mr. Rudd, I want to draw your attention
9 back to what's been admitted as exhibit 15. It's
10 the lease agreement. Do you have that in front of
11 you still?

12 A No, sir.

13 Q Okay. Well, here, may I use yours Will?

14 MR. DUNAWAY: This is the Court's copy.

15 Q (By Mr. Lambert) The paragraph number 12
16 that you just read describes the proposed road being
17 near the existing I-10 right-of-way because that is
18 the highest land elevation so that the least amount
19 of wetlands would be disturbed. That's what you
20 just read, isn't it?

21 A Yes, sir. Could I say something else in
22 regards to that?

23 Q Yes, sir.

24 A While it's true that Phillip Minor's name
25 stamp is on there, what that really means is Phillip

1 Minor prepared the legal description.

2 Q And that's where I'm going.

3 A The other part, this first portion is
4 prepared by some of those lawyer people and they
5 prepared that.

6 MR. DUNAWAY: Who don't know where the
7 right-of-way is?

8 THE WITNESS: I don't know about that.
9 I'm not going to go there.

10 Q (By Mr. Lambert) Now, Mr. Rudd, what I
11 want to is I want to draw your attention to the
12 legal description that Phillip Minor prepared?

13 A Okay.

14 Q I want you to tell me, as best you can, if
15 the northern boundary or, actually, tell me where
16 the northern boundary of the property encompassed by
17 lease falls?

18 A I'm not sure. You're asking me where the
19 northern right-of-way limits of this road is, of the
20 leased area that we --

21 Q Is it possible for you to tell where the
22 property described in the lease falls within the
23 Escambia Shores subdivision?

24 A Well, I can see that, you know, it says
25 that part of the blocks in the Avalon Beach

1 subdivision, blocks 356, 7, 8 9, 60, 1, 2, 3, 4, 5,
2 6, 7 and 8 of Avalon Beach. So we know it's a
3 portion of those areas. And then it's -- I'd have
4 to plot out the description.

5 Q Okay. Using your right-of-way map,
6 Mr. Rudd, is it possible for you to determine the
7 location of the center line that's described in the
8 lease?

9 A Yes. It's possible to determine that. We
10 also have it -- it's not one of your exhibits but on
11 one of these other sheets we show that access road,
12 the location of it in this file here.

13 Q The access road being Archie Glover Boat
14 Ramp Road?

15 A That's correct. The lease area.

16 THE COURT: Okay. Where is that on this,
17 is it there?

18 THE WITNESS: It's the northerly limits in
19 block 367 is just above the lot line between
20 lots 19 and 20. It would be the northern
21 limits of it and it's a straight shot.

22 THE COURT: You'll have to show me that
23 because I can't see that.

24 Q (By Mr. Lambert) You're in between lots 19
25 and 20?

1 A Correct. And the north limits of this
2 lease area is just into lot 20, maybe 5 feet into
3 lot 20, block 367.

4 Q That's the northern limits?

5 A The northerly limits of it.

6 Q The limit would run between lots 19 and 20
7 and block 367?

8 A Correct. It a straight shot east and west
9 from there.

10 Q It's pretty much a east to west road?

11 A That's correct.

12 Q So, it would run almost entirely through
13 the green?

14 A That's correct.

15 Q It does not encroach upon what is marked
16 as red until it crosses over Third Avenue. Once it
17 crosses Third Avenue, then it would encroach on what
18 you have on your maps as limited access; is that
19 correct?

20 A That's correct.

21 Q East of Third Avenue it is all in the area
22 that is marked borrow area on your right-of-way map?

23 A That's correct.

24 Q Mr. Rudd where -- where are the wetlands
25 that we're concerned about staying away from?

1 A On this map or just any place?

2 Q No, sir, on this map.

3 A Oh, I don't know -- I do not know where
4 the fence is located.

5 Q That wasn't my question. My question is:
6 Where are the wetlands that we're trying to avoid?

7 A I don't know.

8 Q Would they be on the I-10 pavement?

9 A I have no idea.

10 Q It could be on I-10 pavement?

11 A Unlikely.

12 Q What about close to the tide flat and the
13 canal that's up here?

14 A I would imagine there's some wetlands up
15 there.

16 Q Maybe near where the Escambia shoreline
17 meets the upland?

18 A I would think it would be way up there.

19 Q So, we would be wanting, would we not, to
20 keep the road as far as way from the canal and the
21 Escambia Bay shoreline, would we not?

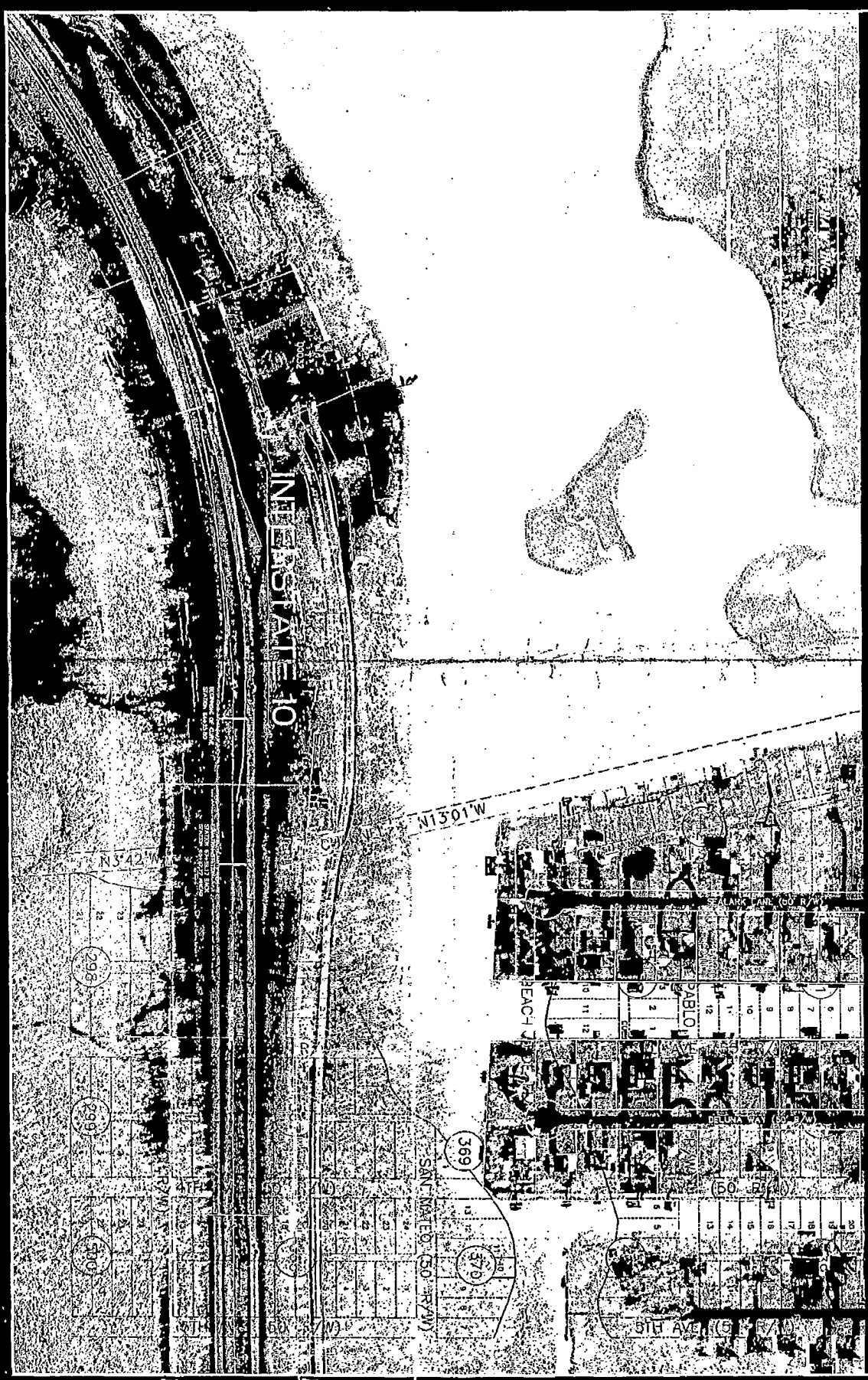
22 A To would make sense to me.

23 MR. LAMBERT: He's with the Court, Your
24 Honor.

25 MR. DUNAWAY: I have no further questions.

Exhibit B

EXHIBIT DRAWING



Foot
Survey
Clippin Bar

Foot
Survey
Clippin Bar

Exhibit C

