IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2014-011755-CA-01
SECTION: CA23
JUDGE: Barbara Areces

1000 Brickell Ltd et al
Plaintiff(s)

vs.

City Of Miami
Defendant(s)
_____/

ORDER ON COMPETING MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on November 21, 2019 and March 9, 2020, on the Plaintiffs' Motion for Summary Judgment, and Defendant's Motion for Summary Judgment, respectively, the Court having reviewed the Motions, Responses, court file, considered argument of counsel, and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED that:

1. For the reasons stated on the record, summarized hereinbelow, the competing Motions for Summary Judgment are granted in part and denied in part.

2. Plaintiff's Motion for Summary Judgment is granted in favor of Plaintiff 1000 Brickell Ltd. on Count I (Quiet Title) and Count II (Declaratory Judgment). Standing of Kai Properties was never properly established, so it is denied as it pertains to this Plaintiff.

3. Defendant's Motion for Summary Judgment regarding Plaintiff Kai Properties' standing is denied. The standing issue never shifted to the Plaintiff. However, as stated above, Plaintiff never properly addressed this issue in its motion either, so, in essence, Defendant

prevailed on this point.

4. Defendant's Motion for Summary Judgment is granted in part as it pertains to Count III (Breach of Warranty Deed) and Count IV (Breach of Consent Agreement), of the Second Amended Complaint. The Defendant is entitled to sovereign immunity on these claims.

Undisputed Material Facts

A. On November 15, 1974, 1000 Brickell, Inc., conveyed property to the City of Miami through a Warranty Deed, which was recorded on December 11, 1974, in Official Records Book 8854, Pages 562-563, CFN 74R275956, of the Public Records of Miami-Dade County, Florida.

B. The warranty deed included the following reverter clause:

> TO HAVE AND TO HOLD, the same in fee simple forever; provided however, that if any part of the property herein conveyed shall ever be used for any purpose other than public park purposes, the estate hereby granted to the grantee shall automatically and immediately terminate, and all right, title and interest in and to such property shall thereupon revert to the grantor.

C. On November 22, 1999, the City and Plaintiff 1000 Brickell, Ltd., entered into a Consent Agreement that authorized the City to enter into a Revocable License Agreement with La Cucina Management, Inc. d/b/a Perricone's Marketplace.

D. The Consent Agreement allowed Perricone's Marketplace to use a portion of the north parcel of the property (1,144 sq. ft.) "for the installation of new ground level seating, and providing food and beverage service to its patrons as well as for the benefit of the general public."

E. The City eventually allowed Perricone's Marketplace to exceed the scope of use authorized by the Consent Agreement, without Plaintiff's consent.

F. On May 8, 2014, the Plaintiffs filed their original complaint which raised two counts: (1) declaratory judgment; and (2) temporary and permanent injunction.

G. On May 8, 2019, the Plaintiffs filed an amended complaint which raised three counts: (1) quiet title; (2) declaratory judgment; and (3) temporary and permanent injunction.

H. On August 19, 2019, the Plaintiffs moved for leave to file a second amended complaint, which alleges four counts: (1) quiet title; (2) declaratory judgment; (3) breach of the warranty deed; and (4) breach of the consent agreement. On January 9, 2020, the Court granted the Plaintiffs' motion for leave to file the second amended complaint.

Findings and Conclusions of Law

The Court finds that there are no genuine issues of material fact in dispute and that based on the applicable law, Plaintiff, 1000 Brickell Ltd. is not entitled to monetary damages but is entitled to summary judgment on its action to quiet title and for declaratory judgment. The City's arguments in opposition to the quiet title and declaratory judgment claims are unavailing.

I. The City argues that Plaintiff 1000 Brickell, Ltd. failed to prove standing. However, the Consent Agreement establishes Plaintiff 1000 Brickell, Ltd. has standing as successor in interest to the original grantor, 1000 Brickell, Inc.

II. The City contends that Section 95.36(1), Florida Statutes, terminates the dedicator's rights after thirty years, and since the deed in this case was recorded more than thirty years prior to the filing of this action, this action is time barred. However, the Court reads the statute as follows:

> **Dedications** of land to municipalities or counties for park purposes that have been recorded for 30 years **shall not be challenged** by the dedicator or any other person when the land

a. has been put to some municipal or county use during the period of dedication; or

b. has been conveyed by the municipality or county by a deed recorded for 7 years,

and all rights of the dedicator and all other persons in the land are terminated. [Emphasis added]

(Note: The wording has not been changed at all; the Court only added the letters "a" and "b" to the subparts).

The statute limits the ability to *challenge* a *dedication.* Plaintiff is not challenging the dedication itself. There was clearly a conveyance of the property for purposes of a park. Plaintiff brought this action to, among other things, enforce the reverter provision, not to challenge the actual conveyance document (dedication). For example, Plaintiff is not claiming some sort of fraud in the inducement, forgery on the Warranty Deed, that the person or entity who executed the Warranty Deed did not have legal authority, etc. There is no dispute surrounding the dedication itself.

This statute sets forth the parameters which would prevent a person or entity from challenging a dedication that has been recorded for 30 years. It does not terminate their rights after 30 years. For example, if the dedication were recorded for 30 years but the land was never "put to some municipal or county use during the period of dedication" a challenge could still be made. The rights were not terminated upon the passage of 30 years.

Additionally, if section 95.36 applied, there would have been no need for the City to obtain Plaintiff's consent before allowing a portion of the property to be used for restaurant seating, instead of a public park.

The Court finds that as to reverter provisions, Florida Statutes, Section 689.18, applies. It provides in pertinent part:

(2) All reverter or forfeiture provisions of unlimited duration embodied in any plat or deed executed more than 21 years prior to the passage of this law conveying real estate or any interest therein in the state, be and the same are hereby canceled and annulled and declared to be of no further force and effect.

. . . .

(4) No reverter or forfeiture provision contained in any deed conveying real estate or any interest therein in the state, executed on and after July 1, 1951, shall be valid and binding more than 21 years from the date of such deed, and upon the expiration of such period of 21 years, the reverter or forfeiture provision shall become null, void, and unenforceable.

(5) **Any and all conveyances of real property in this state** heretofore or hereafter **made to any governmental,** educational, literary, scientific, religious, public utility, public transportation, charitable or nonprofit **corporation or association are hereby excepted from the provisions of this section.**

. . . .

(7) **This section shall not vary, alter, or terminate** the restrictions placed upon said real estate, contained either in restrictive covenants or **reverter or forfeiture clauses** . . . .

[Emphasis added.]

Based on the foregoing, the reverter provision of unlimited duration contained in the Warranty Deed does not expire after twenty-one years and remains enforceable.

III. The City also contends that the five-year statute of limitations in section 95.11(2)(B) bars this action. The Court finds that this cause of action is not barred by said statute, because the continuing breach doctrine applies. Under the continuing breach doctrine, a cause of action for breach of contract/breach of a written instrument does not begin to accrue upon the initial breach; rather, on contracts providing serial performance, accrual of a breach of contract cause of action commences upon the occurrence of the last breach. *XP Global, Inc. v. AVM, L.P.*, 2016 WL 4987618, at *3 (S.D. Fla. Sept. 19, 2016); *Grove Isle Ass'n, Inc. v. Grove Isle Associates, LLLP,* 137 So.3d 1081, 1095 (Fla. 3d DCA 2014); *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1043 (11th Cir. 2014); *City of Quincy v. Womack*, 60 So.3d 1076 (Fla.

1st DCA 2011) and *Viera v. City of Lake Worth*, 230 So.3d 484, 487 (Fla. 4th DCA) (citing *Winn-Dixie* for the application of the continuing violation principle to a restrictive covenant running with the land). In addition, the Court finds that the Amended Complaint and Second Amended Complaint relate back to the original Complaint, as the allegations relate to the same transaction - - the Warranty Deed. Thus the Court finds that the claims are not barred by Section 95.11(2)(b).

IV. In defense of Plaintiff's claims, the City further contends that Plaintiffs' claims were barred based on the doctrine of waiver. Specifically, the City of Miami asserts that Plaintiffs waived their claims by entering into the Consent Agreement. The Court rejects said argument. Per the plain terms of the Consent Agreement, 1000 Brickell, Ltd., was authorized to modify the restrictive covenant under the terms and conditions of the Consent. The Plaintiff's consent to permit Perricone's to use 1,144 square feet of the park did not relinquish or extinguish its reverter rights under the Warranty Deed. The consent simply modified the restrictive covenant to allow the limited use. The Court finds that Plaintiff, 1000 Brickell, Ltd., did not waive its claims as a result of the Consent Agreement.

V. The Court agrees with the City's contention that Plaintiff cannot pursue damages since the claims that would allow for damages are barred by sovereign immunity. Neither the Warranty Deed nor the Consent Agreement provide Plaintiffs the ability to seek damages. There is no written contract in this case between the Plaintiffs and the City that would entitle the Plaintiffs to recover damages, and the City is entitled to sovereign immunity on said claims. See *City of Fort Lauderdale vs. Israel,* 178 So.3d 444 (Fla. 4th DCA 2015).

VI. The Court rejects the remaining affirmative defenses.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 31st day of March, 2020.

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Hon. Barbara Areces

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Christopher A. Green, cagreen@miamigov.com
Christopher A. Green, kjones@miamigov.com
Christopher A. Green, RGillespie@miamigov.com
Deana D Falce, dfalce@shubinbass.com
Deana D Falce, eservice@shubinbass.com
Deana D Falce, esantana@shubinbass.com
Eric John Eves, eeves@miamigov.com
Eric John Eves, LTowles@miamigov.com
John A. Greco, jagreco@miamigov.com
John A. Greco, kjones@miamigov.com
John A. Greco, MRedruello@miamigov.com
John K. Shubin, jshubin@shubinbass.com
John K. Shubin, eservice@shubinbass.com
Justin M. L. Stern, jmlstern@duanemorris.com
Justin M. L. Stern, dmgarcia@duanemorris.com
Leslie B. Rothenberg, lbr@ferrarolaw.com
Leslie B. Rothenberg, mac@ferrarolaw.com
Nicole Levy Kushner, nkushner@bergersingerman.com
Nicole Levy Kushner, cphillips@bergersingerman.com
Nicole Levy Kushner, drt@bergersingerman.com
Richard D. Shane, rdshane@duanemorris.com

Richard D. Shane, cmackey@duanemorris.com
Scott D. Kravetz, sdkravetz@duanemorris.com
Scott D. Kravetz, dmgarcia@duanemorris.com
Scott D. Kravetz, rlguillou@duanemorris.com

Physically Served: