

**IN THE CIRCUIT COURT OF THE TWELTH
JUDICIAL CIRCUIT IN AND FOR MANATEE
COUNTY, FLORIDA CIVIL DIVISION**

CORTEZ ROAD INVESTMENTS AND
FINANCE, INC.,

CASE NO.:

Plaintiff,

DIVISION: CIRCUIT CIVIL AG

v.

JONATHAN GRAHAM, SHEILA GRAHAM
MARK S. IBASFALEAN
JACQUELYN SHEPARD, MARY NORMAN
TIMOTHY FITZPATRICK, WENDY
KOKOLAS AND GEORGE KOKOLAS

Defendant.

COMPLAINT

Plaintiff, CORTEZ ROAD INVESTMENTS AND FINANCE (Plaintiff), by and through its undersigned counsel, hereby files its Complaint against JONATHAN GRAHAM, SHEILA GRAHAM, MARK S. IBASFALEAN, JACQUELYN SHEPARD, and TIMOTHY FITZPATRICK WENDY KOKOLAS AND GEORGE KOKOLAS ("Defendants") and for its causes of action, states as follows:

1. This is an action against each of the Defendants pursuant to Chapter 66, Florida Statutes, to recover possession of real property in Manatee County, Florida.
2. Plaintiff is a Florida limited liability company which is authorized to conduct business in Florida and owns real property in Manatee County.
3. Pursuant to Fla. Stat. § 47.011, venue is proper in Manatee County because it is where the Defendants reside, where the causes of action accrued, and where the property in litigation is located.

4. Plaintiff is the owner of the property described in **Composite Exhibit A**, attached hereto and made a part hereof. This property includes the canal itself (not just the submerged bottom) which surrounds the upland property on three sides. (“Private Canal/Property”) The canal was constructed in the upland (dry land) by Plaintiff’s predecessor in interest.

5. This Court has jurisdiction because it is an action for ejectment pertaining to real property located in Manatee County, Florida.

6. The Defendants are owners of the upland property adjacent to the Plaintiff’s Private Canal/Property. Defendants have constructed and are maintaining docks, lifts, and appurtenant structures on and in the Private Canal/Property, without authorization.

7. Plaintiff applied for a dock permit to build docks in Plaintiff’s private canal. MHC Cortez Village, LLC (the Marina) challenged Plaintiff’s application to build docks contending, in part, that because the Defendants’ docks extend into Plaintiff’s private canal, Marina’s customers’ navigation will be impeded. This has left Plaintiff with no choice but to file this suit against Defendants.

8. Plaintiff was forced to file this complaint due to the actions of MHC Cortez Village, LLC Marina (the Marina). The Marina’s 350 customers utilize the Petitioner’s private canal without any legal authority from the Petitioner. Plaintiff received a permit from the Southwest Florida Water Management District to build docks in its private canal. The Marina challenged this permit, and the Plaintiff has been unable to move forward on its docks for almost a year due to this permit challenge. The Marina challenged the dock permit, despite the fact that the Petitioner has not granted the Marina the legal authority to utilize its private canal. The Marina’s permit challenge is largely based on the Marina’s complaint regarding the alleged narrowness of the canal where the Defendants have built their docks. The Marina complains that these docks extend out

too far into the Petitioner's private canal, making it inconvenient for its 350 customers to use the private canal. The Marina has therefore left Petitioner with no other choice than to bring this action.

Ejectment Against Lots Owners Utilizing and Maintaining Structures in and on Plaintiff's Private Canal/Property

Count I – Ejectment Jonathan and Sheila Graham

9. Paragraphs 1 through 8 above are re-alleged and fully incorporated herein.

10. Defendants, Jonathan and Sheila Graham ("Graham") are the record owners of the upland property ("dry lot") located at 4305 126th St. W., Cortez Florida 34215. This property is located in Section 3, township 35S, range 16E. The Parcel identification number is 76100000067. This property is adjacent to Plaintiff's Private Canal/Property.

11. Defendants, Graham, are maintaining a dock, lift, and appurtenant structures on and in Plaintiff's Private Canal/Property, without authorization. An aerial showing this unauthorized use is attached as **Exhibit B**¹. Defendants also are maintaining dredged and filled holes in the submerged bottom of Plaintiff's Private Canal/Property, without authorization for a dock, lift and appurtenant structures.

12. Defendants, Graham, are unlawfully in possession of and utilizing, without authorization, a portion of Plaintiff's Private Canal/Property.

13. Defendants, Graham, continue to utilize and maintain structures in Petitioner's Private Canal/Property without authorization or consent, causing Petitioner a loss of use of portions of his Private Canal/Property and damages.

¹ Defendants, Graham, do not have governmental authorizations for the unauthorized structures. The structures also do not meet applicable governmental requirements.

WHEREFORE, Petitioner demands judgment against Jonathan Graham and Sheila Graham for ejectment from Petitioner's Private Canal/Property, ordering Petitioner to be put into possession of the subject real property, ordering the removal of all of Defendants, Graham's, property from the subject Private Canal/Property, damages against Graham, costs of this action, as well as any other relief deemed just and proper.

Count II – Ejectment (Mark S. Ibasfalean)

14. Paragraphs 1 through 8 above are re-alleged and fully incorporated herein.

15. Defendant, Mark S. Ibasfalean ("Ibasfalean") is the record owner of the upland property ("dry lot") located at 4217 126th St. W., Cortez Florida 34215. This property is located in Section 3, township 35S, range 16E. The Parcel identification number is 7609600007. This property is adjacent to Plaintiff's Private Canal/Property.

16. Defendant, Ibasfalean, is maintaining a dock, lift, and appurtenant structures on and in Plaintiff's Private Canal/Property, without authorization. An aerial showing this unauthorized use is attached as **Exhibit C²**. Defendant also is maintaining dredged and filled holes in the submerged bottom of Plaintiff's Private Canal/Property, without authorization for a dock, lift and appurtenant structures.

17. Defendant, Ibasfalean, is unlawfully in possession of and utilizing, without authorization, a portion of Plaintiff's Private Canal/Property.

18. Defendant, Ibasfalean, continues to utilize and maintain structures in Petitioner's Private Canal/Property without authorization or consent, causing Petitioner a loss of use of portions of his Private Canal/Property and damages.

² Defendant does not have governmental authorizations for the unauthorized structures. The structures also do not meet applicable governmental requirements.

WHEREFORE, Petitioner demands judgment against Ibasfalean for ejectment from Petitioner's Private Canal/Property, ordering Petitioner to be put into possession of the subject real property, ordering the removal of all of Defendant, Ibasfalean's, property from the subject real Private Canal/Property, damages against Ibasfalean, costs of this action, as well as any other relief deemed just and proper.

Count III – Ejectment (Jacquelyn Shepard)

19. Paragraphs 1 through 8 above are re-alleged and fully incorporated herein.

20. Defendant, Jacquelyn Shepard ("Shepard") is the record owner of the upland property ("dry lot") located at 4219 126th St. W., Cortez Florida 34215. This property is located in Section 3, township 35S, range 16E. The Parcel identification number is 7609700005. This property is adjacent to Plaintiff's Private Canal/Property.

21. Defendant, Shepard, is maintaining a dock, lift, and appurtenant structures on and in Plaintiff's Private Canal/Property, without authorization. An aerial showing this unauthorized use is attached as **Exhibit D**³. Defendant also is maintaining dredged and filled holes in the submerged bottom of Plaintiff's Private Canal/Property, without authorization for a dock, lift and appurtenant structures.

22. Defendant, Shepard, is unlawfully in possession of and utilizing, without authorization, a portion of Plaintiff's Private Canal/Property.

23. Defendant, Shepard, continues to utilize and maintain structures in Petitioner's Private Canal/Property without authorization or consent, causing Petitioner a loss of use of portions of his Private Canal/Property and damages.

³ Defendant does not have governmental authorizations for the unauthorized structures. The structures also do not meet applicable governmental requirements.

WHEREFORE, Petitioner demands judgment against Shepard for ejectment from Petitioner's Private Canal/Property, ordering Petitioner to be put into possession of the subject real property, ordering the removal of all of Defendant, Shepard's, property from the subject real Private Canal/Property, damages against Shepard, costs of this action, as well as any other relief deemed just and proper.

Count IV– Ejectment (Jacquelyn Shepard and Joseph Timothy Fitzpatrick)

24. Paragraphs 1 through 8 above are re-alleged and fully incorporated herein.

25. Defendants, Jacquelyn Shepard and Joseph Timothy Fitzpatrick (“Shepard and Fitzpatrick”) are the record owners of the upland property (“dry lot”) located at 4223 126th St. W., Cortez Florida 34215. This property is located in Section 3, township 35S, range 16E. The Parcel identification number is 7609800003. This property is adjacent to Plaintiff's Private Canal/Property.

26. Defendants, Shepard and Fitzpatrick, are maintaining a dock, lift, and appurtenant structures on and in Plaintiff's Private Canal/Property, without authorization. An aerial showing this unauthorized use is attached as **Exhibit E**⁴. Defendants also are maintaining filled holes in the submerged bottom of Plaintiff's Private Canal/Property, without authorization supporting a dock, lift and appurtenant structures.

27. Defendants, Shepard and Fitzpatrick, are unlawfully in possession of and utilizing, without authorization, a portion of Plaintiff's Private Canal/Property.

⁴ Defendants do not have governmental authorizations for the unauthorized structures. The structures also do not meet applicable governmental requirements.

28. Defendants, Shepard and Fitzpatrick, continue to utilize and maintain structures in Petitioner's Private Canal/Property without authorization or consent, causing Petitioner a loss of use of portions of his Private Canal/Property and damages.

Count V– Ejectment (Wendy and George Kokolas)

29. Paragraph 1 through 8 are readopted and restated herein.

30. Defendants, Wendy and George Kokolas (Kokolas) are the owners of the lot located at 4319 126TH ST W CORTEZ, FL 34215, Parcel ID 7611000006000-0415236899, Subdivision CIPRIANIS 1ST SUB CORRECTED PLA PB2/59, Section 3, Township 35S, Lot No. 12, Block No. A. This property is adjacent to Plaintiff's Private Canal/Property.

31. Defendants, Kokolas, are maintaining pilings on and in Plaintiff's Private Canal/Property, without authorization. An aerial showing this unauthorized use is attached as **Exhibit F**. Defendants also are maintaining filled holes in the submerged bottom of Plaintiff's Private Canal/Property, without authorization supporting a dock, lift and appurtenant structures.

32. Defendants, Kokolas, are unlawfully in possession of and utilizing, without authorization, a portion of Plaintiff's Private Canal/Property.

33. Defendants, Kokolas, continue to utilize and maintain structures in Petitioner's Private Canal/Property without authorization or consent, causing Petitioner a loss of use of portions of his Private Canal/Property and damages.

WHEREFORE, Petitioner demands judgment against Wendy and George Kokolas, for ejectment from Petitioner's Private Canal/Property, ordering Petitioner to be put into possession of the subject real property, ordering the removal of all of Defendants, Shepard and Fitzpatrick's, property from the subject Private Canal/Property, damages against Shepard and Fitzpatrick, costs of this action, as well as any other relief deemed just and proper.

Respectfully submitted,

NASON, YEAGER, GERSON, HARRIS
& FUMERO, P.A.

750 Park of Commerce Blvd., Ste. 210

Boca Raton, Florida 33487

Telephone: (561) 982-7114

Facsimile: (561) 982-7116

E-mail: smartin@nasonyeager.com

ntennyson@nasonyeager.com

hwebb@nasonyeager.com

sjanowitz@nasonyeager.com

*Counsel for Plaintiff, Cortez Road Investment and
Finance*

By: */s/ Susan Roeder Martin*

Susan Roeder Martin, Esquire

Florida Bar No.: 380350

Noah B. Tennyson, Esquire

Florida Bar No.: 73605

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished via email through the Florida Courts E-Filing Portal this 3 day of June, 2022 to Jonathan and Sheila Graham at 4305 126th St. W., Cortez Florida 34215; Mark S. Ibasfalean at 4217 126th St. W., Cortez Florida 34215; Jacquelyn Shepard at 4219 126th St. W., Cortez Florida 34215; Joseph Timothy Fitzpatrick at 4223 126th St. W., Cortez Florida 34215; Wendy and George Kokolas are the owners of the lot located at 4319 126TH ST W CORTEZ, FL 34215.