

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY FLORIDA

JUAN FABREGA, SR., GAIL FABREGA, DANIEL SMEESTER, SUSAN GUTIERREZ, JUAN FABREGA JR., LETICIA PUREZA, ROBERT ALLEN GUTIERREZ, MONIQUE GUTIERREZ, JAMES KANZLER, DENISE KANZLER, WILLIAM GRAYSON, individually and as Trustee of the GRAYSON FAMILY TRUST, KATHRYN GRAYSON MATTAY, RYAN J. SERRA and JENNIFER L SERRA, as Trustees of the RYAN J. SERRA and JENNIFER L SERRA TRUST DATED DECEMBER 03, 2021 VICTOR MATTAY, JANE WILKINS, and VERA CHRISTENSON,

v.

Case No.:

LARRY J. DAVIS, LINDA J. DAVIS, 5102 5TH STREET, LLC, a Florida limited liability company, MARLENE ADAMS, BRENT PULLEN, JENNIFER PULLEN, SUN DAZE PROPERTIES, LLC, KIMBERLY DOBSON, RICHARD BRADY and JOAN BRADY, as Trustees of the BRADY LIVING TRUST, CAROL PEQUEEN, BDK FUTURES LLC, a Florida limited liability company, 125 52<sup>ND</sup> ST LLC, a Florida limited liability company, BLUE COCONUT LLC, a Florida limited liability company, JOSE CURBELO, CONCEPCION CURBELO, CITY OF HOLMES BEACH, a governmental entity, 535 INC, a Pennsylvania corporation, GAY THOMAS, individually and as Trustee of the THOMAS FAMILY TRUST, THOMAS EAKINS LAND AND CATTLE LLC, a Texas limited liability company, TKW BEACH LLC, a Florida limited liability company, JOSEPH PASCARELLA, DEBRA A. PASCARELLA, KATHY KOTOVSKY, KEVIN SLACHCIAK, and RIDE THE TIDE 51<sup>ST</sup> LLC,

Defendants.

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## COMPLAINT

1. Plaintiffs, JUAN C. FABREGA, JR., LETICIA PUREZA, JUAN FABREGA, SR., and GAIL FABREGA are the owners of the property located at 127 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

2. Plaintiffs, SUSAN GUTIERREZ and DANIEL SMEESTER, are the owners of the Property located at 109 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

3. Plaintiffs, ROBERT ALLEN GUTIERREZ and MONIQUE GUTIERREZ, are the owners of the property located at 117 52<sup>nd</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

4. Plaintiffs, JAMES KANZLER and DENISE KANZLER, are the owners of the Property located at 105 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

5. Plaintiff, DENISE KANZLER, is an owner of the Property located at 109 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

6. Plaintiff, WILLIAM GRAYSON, individually and as Trustee of the GRAYSON FAMILY TRUST owns the properties located at 118 51ST St., Holmes Beach, FL 34217 and 122 51ST ST, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

7. Plaintiffs, KATHRYN GRAYSON MATTAY and VICTOR MATTAY, are the owns of the property located at 120 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

8. Plaintiffs, RYAN J. SERRA and JENNIFER L SERRA, as Trustees of the RYAN J. SERRA and JENNIFER L SERRA TRUST DATED DECEMBER 03, 2020, are owners of the property located at 129 52<sup>nd</sup> ST, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

9. Plaintiff, JANE WILKINS, is the owner of the property located at 124 51<sup>ST</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

10. Plaintiff, VERA CHRISTENSON, is the owner of the property located at 129 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

11. Defendants, LARRY J DAVIS and LINDA J DAVIS, are the owners of the property located at 103 51<sup>st</sup> St., Holmes Beach, FL 34217 (the "Davis Property"). The northern 2 and 1/2 feet of Davis Property is subject to a beach access easement which benefits the lot owners contained within the Gutierrez Subdivision (the "Easement").

12. Defendant, 5102 5TH ST LLC, is the owner of the property located at 5102 51<sup>st</sup> St., Holmes Beach, FL 34217 (the "5102 Property"). The southern 2 and 1/2 feet of 5102 Property is subject to a beach access easement which benefits the lot owners contained within the Gutierrez Subdivision (the "Easement").

13. Defendant, KIMBERLY DOBSON, is the owner of the property located at 128 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, KIMBERLY DOBSON, is being named only in her capacity as an interested lot owner with rights to the subject Easement.

14. Defendants, JENNIFER AND BRENT PULLEN, is the owner of the property located at 126 51<sup>st</sup> St., Unit A, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

Defendants, JENNIFER AND BRENT PULLEN, are being named only in their capacity as an interested lot owner with rights to the subject Easement.

15. Defendant, SUN DAZE PROPERTIES, LLC, is the owner of the property located at 126 51<sup>st</sup> St, Unit B, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, SUN DAZE PROPERTIES, LLC, is being named only in its capacity as an interested lot owner with rights to the subject Easement.

16. Defendant, MARLENE ADAMS, has a life estate in the property located at 5101 5<sup>th</sup> Ave, Homles Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, MARLENE ADAMS, is being named only in her capacity as an interested lot owner with rights to the subject Easement.

17. Defendants, RICHARD BRADY and JOAN BRADY, as Trustees of the BRADY LIVING TRUST, are owners of the property located at 130 51ST ST, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendants, RICHARD BRADY and JOAN BRADY, as Trustees of the BRADY LIVING TRUST, are being named only in their capacity as an interested lot owner with rights to the subject Easement.

18. Defendant, CAROL PEQUEEN, is an owner of the Property located at 109 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, CAROL PEQUEEN, is being named only in its capacity as an interested lot owner with rights to the subject Easement.

19. Defendant, BDK FUTURES LLC, is the owner of the property located at 127 52<sup>nd</sup> ST, Unit A, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, BDK FUTURES LLC, is being named only in its capacity as an interested lot owner with rights to the subject Easement.

20. Defendant, 125 52<sup>nd</sup> ST LLC, is the owner of the property located at 125 52<sup>nd</sup> ST, Unit A, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, 125 52<sup>nd</sup> ST LLC, is being named only in its capacity as an interested lot owner with rights to the subject Easement.

21. Defendant, BLUE COCONUT LLC, is the owner of the property located at 123 52<sup>nd</sup> ST, Units B, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendant, BLUE COCONUT LLC, is being named only in its capacity as an interested lot owner with rights to the subject Easement.

22. Defendants, JOSE CURBELO and CONCEPCION CURBELO, are the owners of the property located at 123 52<sup>nd</sup> ST, Unit A, Holmes Beach, FL 34217, located within the Gutierrez Subdivision. Defendants, JOSE CURBELO and CONCEPCION CURBELO, are being named only in their capacity as interested lot owners with rights to the subject Easement.

23. Defendant, CITY OF HOLMES BEACH, is the owner of the property located at 121 52<sup>nd</sup> ST, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

24. Defendant, 535 INC, a Pennsylvania Corporation, is the owner of the property located at 119 52<sup>nd</sup> ST, Unit A, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

25. Defendant, GAY THOMAS, as Trustee of the THOMAS FAMILY TRUST, is the owner of the property located at 5105 5<sup>th</sup> Ave, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

26. Defendant, GAY THOMAS, is the owner of the property located at 5106 5<sup>th</sup> Ave, Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

27. Defendant, THOMAS EAKINS LAND AND CATTLE LLC, a Texas limited liability company, is the owner of the property located at 97 52<sup>nd</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

28. Defendant, TKW BEACH LLC, a Florida limited liability company, is the owner of the property located at 95 52<sup>nd</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

29. Defendants, JOSEPH PASCARELLA, DEBRA A. PASCARELLA, are the owners of the property located at 117 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

30. Defendant, KATHY KOTOVSKY, is the owner of the property located at 119 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

31. Defendant, KEVIN SLACHCIAK, is the owner of the property located at 125 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

32. Defendant, RIDE THE TIDE 51<sup>ST</sup> LLC, is the owner of the property located at 131 51<sup>st</sup> St., Holmes Beach, FL 34217, located within the Gutierrez Subdivision.

33. Venue for this action is proper in Manatee County as the subject properties all located within Manatee County, Florida, and all parties either reside or own property in Manatee County.

#### **GENERAL ALLEGATIONS**

34. The properties owned by the Parties are all part of the Plat of Gutierrez Subdivision, Holmes Beach, FL, as revised, which are recorded in Plat Book 7, page 37, Plat Book 7, Page 84, and Plat Book 8, Page of the Public Records of Manatee County Florida (collectively referred to as the "Gutierrez Plat"). *See the Gutierrez Plat attached as composite Exhibit "1."*

35. The Gutierrez Plat dedicates a beach access “walk easement” along the north 2.5 feet of the Davis Property boundary line and the south 2.5 feet of the 5102 Property boundary line for the benefit of the property owners in the Gutierrez Subdivision (the “Easement”).

36. For the past 73 years, the Easement has been used openly as a private beach access to the Gulf of Mexico by the property owners in the Gutierrez Subdivision.

37. Additionally, the City of Holmes Beach and Manatee County reflect the existence of the Easement in County records.

38. The Davises purchased the Davis Property on or about April 29, 1988.

39. For the past 33 years, the Davises did not interfere with the owners of the Gutierrez Subdivision utilizing the Easement. In fact, Dr. Davis has historically provided boundary markers to Plaintiffs to assist in identifying the location of the Easement.

40. Recently, the Davises began a campaign to prevent owners within the Gutierrez Subdivision from enjoying or accessing the Easement. Mrs. Davis began interrogating property owners about whether they lived within the Gutierrez Subdivision and whether they were authorized users of the Easement. Mrs. Davis then planted obstructive plants alongside and within the Easement and told the property owners within the Gutierrez Subdivision that they were prohibited from trimming back the plantings.

41. In August of 2023, after the Davises complained to Plaintiffs that residents were staying from the boundaries of the Easement, Plaintiffs engaged a surveyor to identify the true boundaries of the Easement. Plaintiffs then cleared and marked the Easement to be consistent with the survey.

42. In September of 2023, the Davises behavior escalated when they filled the entire length of the Easement with large boulders in an effort to completely prevent access. Plaintiffs

made repeated demands to the Davises to remove the boulders. In addition to ignoring Plaintiffs' requests, the Davises posted no trespassing signs and had an armed security officer posted at the entrance of the Easement.

43. Thereafter, in early October of 2023, the Davises attempted to erect a fence along their northern property line and directly within the boundaries of the Easement. However, code enforcement later directed all work to cease as the fence was being installed within the Easement.

44. Plaintiffs continue to demand that the Davises cease interfering with their Easement rights and to restore the Easement to its condition prior to the Davises' interference, however, the Davises refuse to comply with Plaintiffs' demands.

45. Plaintiffs have engaged the law firm of Bentley Goodrich Kison and are obligated to pay them a reasonable fee for their services.

#### **COUNT I – DECLARATORY JUDGMENT**

46. This is a count for declaratory judgment pursuant to Chapter 86, Florida Statutes.

47. Plaintiffs reassert the allegations in paragraphs 1 through 45 as though fully set forth herein.

48. There is a bona fide, actual, present, practical need for a declaration that the Plaintiffs have an existing and valid easement right over the northern 2.5 feet of the Davis Property boundary line and the southern 2.5 feet of the 5102 Property boundary line, as granted by the Gutierrez Plat, to access the Gulf of Mexico.

49. There is a present, ascertained or ascertainable state of facts or present controversy as to the right of Plaintiffs and the remaining lot owners in the Gutierrez subdivision as their right to access and utilize the Easement has been completely obstructed by the Davises.

50. The interests, rights and obligations of the Plaintiffs as it relates to the Easement and their right to access and maintain the Easement, require judicial resolution of the facts and law applied to the facts.

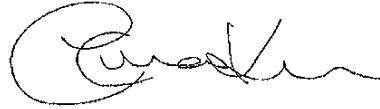
51. All parties who have or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter of this controversy have been joined in this litigation.

52. All adverse interests are before the Court by proper process and the relief sought is not merely the giving of legal advice by the Court or to answer a question propounded by curiosity.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment as follows:

- a. Declare that the language contained within the Gutierrez Plat is unambiguous and sufficient to create a private easement for the benefit of the Plaintiffs and property owners within the Gutierrez Subdivision;
- b. Declare that, in the event the Court determines an easement was not created under the language of the Gutierrez Plat, that a prescriptive easement was validly created over the northern 2.5 feet of the Davis Property boundary line and the southern 2.5 feet of the 5102 Property boundary line.
- c. Enter injunctive relief in favor of Plaintiffs preventing the Davises from obstructing or blocking Plaintiffs from accessing the Easement and requiring the Davises to remove all obstructions from the Easement.
- d. Award Plaintiffs taxable costs and fees; and
- e. Reserve jurisdiction for the entry of any and all supplemental relief necessary to enforce this Court's judgment.

**BENTLEY GOODRICH KISON, P.A.**



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