

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

JUAN FABREGA, SR., et al.,

Plaintiffs,

v.

CASE NO. 2023CA6103

LARRY J. DAVIS, et al.,

Defendants.

**DEFENDANTS, LARRY J. DAVIS AND LINDA J. DAVIS'S,  
ANSWER, DEFENSES AND DEMAND FOR JURY TRIAL**

Defendants, LARRY J. DAVIS and LINDA J. DAVIS (collectively, the Davises),  
hereby answer the Complaint as follows:

1. Without knowledge; therefore denied.
2. Without knowledge; therefore denied.
3. Without knowledge; therefore denied.
4. Without knowledge; therefore denied.
5. Without knowledge; therefore denied.
6. Without knowledge; therefore denied.
7. Without knowledge; therefore denied.
8. Without knowledge; therefore denied.
9. Without knowledge; therefore denied.
10. Without knowledge; therefore denied.
11. Without knowledge; therefore denied.
12. Admitted.

13. Without knowledge; therefore denied.
14. Without knowledge; therefore denied.
15. Without knowledge; therefore denied.
16. Without knowledge; therefore denied.
17. Without knowledge; therefore denied.
18. Without knowledge; therefore denied.
19. Without knowledge; therefore denied.
20. Without knowledge; therefore denied.
21. Without knowledge; therefore denied.
22. Without knowledge; therefore denied.
23. Without knowledge; therefore denied.
24. Without knowledge; therefore denied.
25. Without knowledge; therefore denied.
26. Without knowledge; therefore denied.
27. Without knowledge; therefore denied.
28. Without knowledge; therefore denied.
29. Without knowledge; therefore denied.
30. Without knowledge; therefore denied.
31. Without knowledge; therefore denied.
32. Without knowledge; therefore denied.
33. Admitted as to venue only, the remainder of the allegations are without knowledge; therefore denied.

34. Admitted there is an Exhibit 1 attached to the Complaint. The document speaks for itself. The remainder of the allegations are without knowledge and therefore denied.

35. Without knowledge; therefore denied.

36. Without knowledge; therefore denied.

37. Without knowledge; therefore denied.

38. Admitted.

39. Admitted.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Without knowledge; therefore denied.

46. Without knowledge; therefore denied.

47. The Davises restate their responses to paragraphs 1 through 45.

48. Denied.

49. Denied.

50. Denied.

51. Without knowledge; therefore denied.

52. Denied.

All allegations not specifically admitted herein, are hereby denied.

## **DEFENSES**

### **First Defense**

Plaintiff fails to state a cause of action upon which relief can be granted. Plaintiff asserts the existence of an easement to access the beach, yet the language which forms the basis of the claimed beach access easement does not reference a path to access the beach.

### **Second Defense**

Plaintiffs' claims are barred by the Florida Marketable Record Title Act (MRTA). Specifically, under the MRTA marketable record title is free and clear of all estates, interests, claims, or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. The Davises, together with their predecessors in title, have been vested with a fee simple estate in the subject real property of record for more than 30 years and therefore have a marketable record title to such real property, which is free and clear of all claims, including the claims of the plaintiffs herein.

### **Third Defense**

Any easement which may have been created has been abandoned and therefore does not exist.

### **Fourth Defense**

Since there are multiple ways to access the beach in close proximity to the claimed beach access easement, there is no easement based on necessity. Specifically, there are two public paths, one house down to the left and in the other direction two houses down, which provide immediate access to the beach.

### **Fifth Defense**

Any claimed easement has terminated or is at least limited by abuse of the claimed easement for the reasons set forth in the following counterclaim.

### **COUNTERCLAIM**

Counterclaimants, Larry Davis and Linda Davis, sue counterclaim defendants 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 Trust dated December 03, 202, Victor Mattay, Jane Wilkins and Vera Christenson (Counterclaim Defendants) and state as follows:

1. Counterclaimants Larry Davis and Linda Davis (Davises or Counterclaimants) are citizens of Florida and residents of Manatee County, Florida, owning real property in Holmes Beach, Manatee County, Florida located at 103 51ST ST, HOLMES BEACH, FL 34217 with a legal description of: LOT 4 REVISED PLAT OF GUTIERREZ SUB, LESS LANDS LYING SEAWARDLY OF E.C.L. REC IN RD PB 10/116 PI#74200.0000/7 (the Real Property).
2. Counterclaim Defendants are property owners in Holmes Beach, Manatee County, Florida who claim an easement to access the beach on the Real Property at the end of the road adjacent to the Real Property (Claimed Easement).
3. All conditions precedent to this cause of action have occurred or have been waived.

4. As a result of the Claimed Easement, Counterclaim Defendants have attempted to use the Claimed Easement in an extreme manner, abusing any right it may have to access the beach.

5. Specifically, some or all the Counterclaim Defendants did the following which constitute an abuse of any claimed easement, causing damage to the Real Property and the Davises:

- (a) cleared a path on the Real Property removing protected sea oats, sea grapes, bushes and other vegetation;
- (b) brought up sand from the beach to the seawall at the beach side of the easement, which is not where any claimed pathway exists;
- (c) created a path, different than any historical path, to the beach, destroying sea oats and other vegetation;
- (d) created yet a second, different path tramping down, and removing, more sea oats and other protected vegetation on the Real Property;
- (e) cut down at least two very large pine trees on the Real Property;
- (f) either directly, or through individuals renting or using Counterclaim Defendants' properties, left garbage on numerous occasions in the vegetation (including in the sea grapes and sea oats);
- (g) due to the constant abuse of the path, a person broke into, and was living in, the home located on the Rreal Property for several days while the Davises were not present;
- (h) threatened to cut other plants, including bushes and palms, on the Real Property;

- (i) guests of Counterclaim Defendants frequently leaving the pathway, tramping on protected vegetation on the Real Property and invading the privacy of the Davises;
- (j) Putting the gravel and stones on the claimed pathway, cutting down another tree and a number of bushes, attempting to create a 5-foot-wide flat graveled pathway, wider than any historical pathway.
- (k) Creating a five (5) foot wide rock and gravel pathway on either side of the property lines, running the distance from the street to the beach.
- (l) Digging up and destroying expensive plantings, including acacia palms along the claimed easement.
- (m) Removing and destroying at least 20 "No Trespassing" signs on the Real Property.
- (n) Built a chained barrier across the entrance to the property, placing the rock and gravel pathway and placing a sign on the barrier stating that it is a private walkway to the beach for the use of the Guitterez property owners only.

6. Counterclaim Defendants' actions constitute trespass and an extreme abuse of any claimed easement.

7. Counterclaimants have been damaged as a result of Counterclaim Defendants abuse of the claimed easement, including destruction of parts of the real Property and the need to hire private security to protect the Real Property from further abuse.

8. Money cannot fully compensate the Counterclaimants for the damages caused by, and what will be caused by, the abuse and continued abuse of the easement.

**WHEREFORE**, Counterclaimants pray this Court enter a judgment for compensatory and consequential damages, for injunctive relief to prevent the Counterclaim Defendants from continuing to abuse the claimed easement, for an award of costs, and for such other and further relief as may be deemed appropriate.

**DEMAND FOR TRIAL BY JURY**

Defendants, Larry Davis and Linda Davis, hereby demand a trial by jury on all claims so triable.

/s/ John D. Goldsmith  
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*Attorneys for Defendants*  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Defendants, Larry J. Davis and Linda Davis's Answer, Defenses and Demand for Jury Trial** was electronically filed on March 25, 2024 with the Clerk of Court by using the Florida Courts E-filing Portal System, which will send a notice of electronic filing and copy all parties and counsel of record.

/s/ John D. Goldsmith  
Attorney