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Steven W. Boldt v. Patrick W. Brannon

SC07-563

THE FINAL CASE ON OUR CALENDAR THIS MORNING.

MAY IT PLEASE THE COURT, MY NAME IS JOE BANKS, AT COUNSEL TABLE WITH ME IS LEE RIGHT MEYER, AND WE REPRESENT THE NEIGHBORS, PETITIONERS IN THIS COURT, AND WE'RE HERE TODAY ON CERTIFIED QUESTION THAT IS RELATED TO EASEMENT BY IMPLICATION FROM -- RECORDED IN 1953. AND TO PLEAD THE CERTIFIED QUESTION ON THE FACT THAT A RESIDENCE WAS BUILT --

LET ME ASK YOU WHAT'S AMBIGUOUS ABOUT THE TERM EGRESS?

WE DON'T BELIEVE THERE'S ANYTHING AMBIGUOUS ABOUT THE TERM. WE BELIEVE THAT WITH THE EASEMENT TOUCHES ON THE WATER, YOU GET THE RIGHTS THAT GO WITH THAT EASEMENT, AND WE BELIEVE THAT THOSE RIGHTS TRAVEL WITH THE LAND AS A MATTER OF LAW.

WHY? WHY? WHY DO YOU OBTAIN A PATIENT RIGHTS? THE WORD INGRESS AND THE WORD EGRESS AS JUSTICE CAN TEAR ROW JUST INDICATED IS NOT AMBIGUOUS. HOW DOES THAT CONVEY A RIGHT IN SOMETHING WHEN IT'S REALLY A RIGHT OVER OR ACROSS?

AN EASEMENT TOUCHES IT IS WATER. THIS COURT WAS AN EASEMENT THAT TOUCHED ON THE WATER, AND THIS COURT SAID THAT WHEN AN EASEMENT TOUCHES ON THE WATER, THE RIGHTS APPROPRIATE TO THAT EASEMENT TRAVEL WITH IT.

WHAT ARE THOSE THAT ARE APPROPRIATE IF IT'S ONLY A RIGHT OF INGRESS AND EGRESS.

WE SAY THAT -- THE TRIAL JUDGE SAYS --

WELL, THE JUDGE WENT INTO ALL TYPES OF EXTRANEOUS FACTS. THE JUDGE, DID HE NOT HERE OR SHE WENT INTO EXPLORATION OF HOW IT WAS USED AND WHEN IT WAS USED AND ALL THAT, DID THEY NOT?

SHE HAD EXTENSIVE EVIDENTIARY HEARINGS.

RIGHT. SO THE POINT IS WHY DO YOU NEED TO GET INTO ALL THAT IF IT'S NOT AMBIGUOUS? WHY CAN YOU EVEN CONSIDER EXTRANEOUS EVIDENCE IF THE SUBJECT MATTER IS NOT AMBIGUOUS? WE SAY IT IS UNAMBIGUOUS. WE HAVE TAKEN THAT POSITION.

RIGHT.

BUT WE NOW HAVE A PRIOR JUDGE AND A MEMBER OF THE DISTRICT COURT THAT READS WHAT IS UNAMBIGUOUS ONE WAY, AND WE HAVE THE REST OF THE SECOND DISTRICT COURT OF APPEAL READS WHAT IS --

MY POINT WITH THIS, WE'RE GOING CIRCULAR, IT SEEMS TO ME. I WANT TO REALLY UNDERSTAND THIS. STILL THE BASIC QUESTION IS HOW HAS THE LAW TRANSFORMED SOMETHING ACROSS OR OVER A PIECE OF PROPERTY INTO AN INTEREST IN THE LAND THAT GENERATES SOME INTEREST IN A REPAIR RIGHT? YOU POINTED TO A CASE. LET'S GO TO LEGAL THEORY.

RIGHT. THE LEGAL THEORY COMES FROM -- BUT YOU ALSO COULD FIND THE SAME LEGAL THEORY IN THE CARTAGE CASE FROM THE SECOND DISTRICT, AND IN THAT INDICATION WHEN YOU HAVE AN EASEMENT THAT TOUCHES ON WATER, THE RIGHT TO RECONSIDERED NECESSARY OR CONSISTENT WITH THAT EASEMENT TRAVEL WITH THE LAND.

WELL, IS THAT AN EXPANSION OF WHAT THAT EASEMENT WAS WHEN IT SAYS CONSISTENT WITH OR NECESSARY TO? IS THAT AN EXPANSION OF INGRESS AND EGRESS?

I DON'T THINK SO.

NO?

I THINK A REPAIR RIGHT DO TRAVEL WITH THE LAND, AND THAT'S BY IMPLICATION. AND THE RIGHTS FOUND BY THE TRIAL JUDGE HERE BUT ARE TRADITIONAL ARE NOT OUTRAGEOUS RIGHTS. THEY ARE THE RIGHT TO FISH EVEN IF YOU TAKE THE MOST NARROW VIEW OF INGRESS AND EGRESS.

WELL, IT DEPENDS ON HOW YOU FISH. SOME PEOPLE YOU'RE STANDING ON THE EASEMENT FOR A LONG PERIOD OF TIME AND THAT'S NOT GOING TO AND FROM, THAT'S REMAINING ON. AND IN THE NATURE OF THIS EASEMENT, DO YOU NOT AGREE, IS TO HAVE ACCESS TO THE WATER AND BACK TO THE OTHER PART OF THE PRIVATE ROADWAY?

WE DO NOT -- WE THINK THE ROADS THAT GO WITH THE EASEMENT --

WELL, WIPE AREN'T THE RIGHTS NOTHING MORE THAN JUST TO SECURE THE EASEMENT IN AT THE WATER SO WHEN YOU HAVE --

ADDITIONAL RIGHTS THAT HAVE BEEN RECOGNIZED BY THE LAW INCLUDE FISHING WHICH IS ACTUAL ACCESS TO AND FROM THE WATER. I AGREE THAT YOU STAND ON THE SEA WE'LL TO FISH, BUT IT'S BEEN RECOGNIZED THAT YOU COULD BUILD A DOCK HERE.

WE'RE HAVING DIFFICULTY WITH THIS INITIAL, APPARENTLY EVERYBODY BRIES IS PLAIN -- AGREES IS PLAIN LANGUAGE. SO I THINK THE TYPICAL DEFINITION OF INGRESS AND EGRESS IS THE RIGHT TO COME AND GO. WOULD YOU AGREE WITH THAT? WE CAN START AT THE STARTING POINT. THE RIGHT TO COME AND GO. BUT WHERE DO YOU GET FROM THIS RIGHT TO COME AND GO, ALL RIGHT? THE RIGHT TO STAY? THAT IS WHICH IS SORT OF TRYING TO PHRASE IT IN A LITTLE DIFFERENT WAY. WE'RE HAVING SOME DIFFICULTY WITH WHEN THESE LIMITED WORDS ARE USED, INGRESS AND EGRESS, WHICH THERE'S A COMMON DEFINITION OR UNDERSTANDING THAT MEANS RESPONSIBLE GO -- COME AND GO, WOULDN'T YOU AGREE THAT MEANS COME AND GO?

I UNDERSTAND.

AND SO WE'RE HAVING DIFFICULTY GETTING PAST THE COMING AND GOING TO MEANING SOMETHING MORE EXTENSIVE THAN COMING AND GOING. NOW, SO HELP US WITH WHERE IF PARTIES AGREE, YOU KNOW, IN THE FUTURE THE REST OF THE MEMBERS OF THE NEIGHBORHOOD OR DEVELOPMENT ARE GOING TO HAVE THE RIGHT TO COME AND GO, WHERE DO THEY GET MORE EXPENSIVE TENSIVE RIGHTS THAN COMING AND GOING?

I UNDERSTAND.

THAT'S WHERE IT'S THAT GETTING THROUGH THAT THRESHOLD OR WHERE BEYOND COMING AND GOING YOU GET MORE EXTENSIVE RIGHTS. SO HELP US BREAKTHROUGH. BECAUSE THAT'S, YOU KNOW, WHERE YOU WANT US TO GO IN THIS CASE. SO HELP WAS THAT.

OKAY. WE HAVE AN INGRESS AND EGRESS EASEMENT, BUT IT'S ON A PLAQUE. YOU DON'T HAVE LOTS OF ROOM TO RIGHT OUT EVERY SINGLE REPAIRING ROUTE. IT TOUCHES ON THE WATER, AND IT HAS THE PURPOSE AS FOUND BY THE TRIAL JUDGE, OF GIVING ACCESS FOR THE NEIGHBORS TO THE WATER. THE -- WAS IN THE BEST POSITION TO RESERVE THE RIGHTS. CLEARLY THE -- COULD HAVE EXPRESSLY RESERVED -- THAT WOULD HAVE BEEN AS EASY AS JUST TO WRITE ONLY INGRESS AND EGRESS. HAVING NOT DONE THAT UNDER CARTAGE, UNDER FINN, DEPENDING ON HOW YOU -- THE TEST IS EITHER THE RIGHT --

WHY SHOULDN'T BE BURDEN -- THE BURDEN BE THE OTHER WAY THOUGH? THAT IS, IF MORE EXTENSIVE RIGHTS THAN COMING AND GOING WERE GOING TO BE GRANTED THAT THEY WOULD HAVE HAD TO HAVE BEEN SET OUT AS OPPOSED TO THE OPPOSITE WAY IF IT WAS JUST GOING TO BE LIMITED TO COMING AND GOING, YOU WOULD HAVE HAD TO PUT WORDS IN LIKE ONLY OR SOMETHING LIKE THAT. WHY SHOULD IT BE, WHY SHOULDN'T IT BE THE OH WAY -- OTHER WAY AROUND WHEN WE'RE TALKING ABOUT EVERYBODY ASSUMING THAT THEY'VE GOT, YOU KNOW, FUNDAMENTAL PROPERTY RIGHTS TO BEGIN WITH AND THIS IS REALLY A BURDEN ON THEIR FUNDAMENTAL PROPERTY RIGHTS, BUT ONLY TO THE EXTENT THAT THE EASEMENT IS GRANTED. AND AGAIN IN THIS CASE THE EASEMENT IS ONLY IN TERMS OF COMING AND GOING, SO WHY SHOULD THE BURDEN BE THE WAY THAT YOU'RE SAYING, THAT IS LIMITING WORDS LIKE ONLY OR WHATEVER SHOULD BE THERE, WHY SHOULDN'T THE BURDEN BE THE OTHER WAY STAND? IF YOU'RE GOING TO GET SOMETHING MORE THAN COMING AND GOING, WHY THERE BE A REQUIREMENT OF AN EXPRESS PROVISION THAT COMING AND GOING PLUS?

I THINK WITH AN EXPRESS EASEMENT THAT WOULD BE A FAIR ARGUMENT. WITH AN IMPLIED EASEMENT, THOUGH, IT'S NOT A NEGOTIATED EASEMENT, IT'S ONLY THE GRANTOR AT THE TIME. SO WITH AN IMPLIED EASEMENT, THE LAW SAYS THAT BY IMPLICATION RIPARIAN RIGHTS TRAVEL WITH THE LAND, THOSE RIGHTS THAT ARE APPROPRIATE TO OR CONSISTENT WITH AND THAT THAT OCCURS AS A MATTER OF LAW UNLESS EXPRESSLY RESERVED BECAUSE THE GRANTOR IS

THE ONLY PERSON ON THE SCENE WHEN THE PLATTE IS REPORTED, AND THE ONLY ONE THAT HAS THE POWER TO RESERVE THE RIPARIAN RIGHTS --

HOW ARE THE PROPERTY OWNERS, THEN, GOING TO BE PUT ON NOTICE OF THIS SO THAT THEY CAN HAVE SOME SAY? THAT IS, THAT IT'S ONE THING FOR YOU TO BE MADE AWARE OF THAT, WELL, THE OTHER PEOPLE IN THE DEVELOPMENT ARE GOING TO GET THE RIGHT TO COME AND GO THROUGH THIS EASEMENT, BUT YOU NEED, REALLY, TO GO OUT AND GET A LAWYER NOW BECAUSE THE FLORIDA SUPREME COURT HAS HELD IT'S NOT JUST THE RIGHT TO COME AND GO, IT'S THE RIGHT TO BUILD A HOUSE OUT THERE OR, YOU KNOW, WHATEVER. SO EVERYBODY CAN STAY OVERNIGHT AND HAVE A BEACH PARTY. YOU KNOW, WHAT, WHERE ARE THE DOMINANT ESTATE HOLDERS GIVEN FAIR NOTICE OF THIS?

THAT RAISES A NUMBER OF ISSUES. FIRST, BECAUSE I THINK IT'S VERY IMPORTANT TO EMPHASIZE THIS TO THE ENTIRE PORT, THERE IS NO CAMPING GOING ON IN THIS EASEMENT. WE'RE NOT SEEKING --

IT'S NOT WHAT YOU'RE SEEKING, IT'S THE RIGHT THAT IS GO WITH IT, SO PLEASE ANSWER THE JUSTICE'S QUESTION, IF YOU COULD.

OKAY. WHAT WE SAY IS THAT AS A MATTER OF FACT IN THIS CASE THE RECORD IS CLEAR THAT THE ESTATE WAS ON NOTICE OF HOW THIS EASEMENT WAS BEING USED. FACTUAL FINDINGS AS TO HOW THE EASEMENT WAS BEING USED, THERE WAS \$7500 PUT IN ESCROW WHEN THE ESTATE WAS SOLD IN 2000 TO TRY TO EXTINGUISH THE EASEMENT, SO IN THIS CASE, IT'S A MATTER OF FACT THAT THERE'S NO ISSUE. WE ARE ASKING THE COURT TO RULE AS A MATTER OF FACT TO GIVE CERTAIN DEFINED RIPARIAN RIGHTS.

HOW CAN YOU -- LIMITATION, IF YOU SAY RIPARIAN RIGHTS --

WE HAVE IDENTIFIED THE RIGHTS WE THINK ARE CONSISTENT WITH AND THE OTHER ONES HAVE BEEN UNCONTESTED. AT THIS PORT THE DOCK IS NOW BEING CONTESTED AND ACCESS TO AND FROM IS NOT BEING CONTESTED.

SO YOU BELIEVE IT INCLUDES BUILDING A DOCK?

WE DO.

SO THE OWNERS IN THIS SUBDIVISION, HOW MANY ARE THERE?

THERE ARE 22 LOTS AND FOUR TRACTS.

SO THOSE 26 OWNERS COULD BUILD A PIER OUT THERE THAT INCLUDES THEY COULD KEEP SAILBOATS AND ALL SORT OF BOATS? NOT JUST PIER, I'M TALKING ABOUT A MARINA TYPE FOR THE LOCAL OWNERS. IF WE ACCEPT YOUR ARGUMENT, THAT WOULD BE TRUE, CORRECT?

THE SECOND DISTRICT HAS RULED THIS WAY, SO THAT CLEARLY IS A RIGHT THAT -- A RIPARIAN RIGHT.

THE SECOND DISTRICT ALSO STATED, REALLY, THAT NOT PRACTICAL BECAUSE OF THE ENVIRONMENTAL CONCERNS.

THAT'S CORRECT, WHICH IS ONE OF THE THINGS I WANTED TO HIGHLIGHT ABOUT THE CERTIFIED QUESTION. BECAUSE THE DOCK ON ADJACENT PROPERTY, IT'S UNLIKELY WE WOULD BE ABLE TO BUILD A FULL DOCK BECAUSE A SEA WAL THAT'S BEEN ERECTED SINCE THE TIME OF THE ORIGINAL TIME OF THE EASEMENT, OUR RIPARIAN RIGHTS HAVE BEEN RESTRICTED BY THE SEA WAL, AND THEN BECAUSE THERE'S A HOUSE THAT'S BEEN BUILT, IT WOULD SEEM THAT THE SECOND DISTRICT AT SOME LEVEL WAS MOVED BY THE FACT THERE'S A HOUSE ON THE PROPERTY AND PEOPLE ARE MOVING TO AND TROJAN THROUGH THE BACKYARD.

JUSTICE CANTERA HAD A QUESTION HE WAS TRYING TO GET IN.

I'M STILL STRUGGLING TO FIGURE OUT WHAT'S SO IMPORTANT THAT THIS IS A MATTER OF GREAT PUBLIC IMPORTANCE. IS THIS A BURNING ISSUE IN FLORIDA LAW? WE HAVE THE -- CASE, WE NOW HAVE A VIRTUALLY UNANIMOUS DECISION FROM THE DCA OF WHICH I UNDERSTAND YOU DON'T AGREE WITH, BUT HOW IS THIS ISSUE SO IMPORTANT THAT IT'S GOING TO RECUR IN THE STATE OF FLORIDA SOMEWHERE THAT GIVEN THE FACT WE HAVE A WELL-REASONED DECISION OF THE DCA, WHICH YOU MAY OR MAY NOT AGREE WITH, THAT NECESSITATES OUR INVOLVEMENT AND OUR SPEAKING ON THE MATTER?

THE REASON IT IS OF GREAT PUBLIC IMPORTANCE IS THERE ARE INGRESS AND EGRESS -- ALL OVER THE CASE.

WE NOW HAVE A CASE, WE HAVE THAT CASE. THERE'S NO CONFLICT IN THE LAW, SO WHY DO WE

HAVE TO PUT A FURTHER LAYER OF JURISPRUDENCE ON THAT?

THIS COURT SHOULD SPEAK, I THINK, TO THE INGRESS AND EGRESS EASEMENT BECAUSE IT IS A STATEWIDE ISSUE. THE SECOND DISTRICT HAS RULED, THE SECOND DISTRICT YOU TAKE THE TEST THEY SET OUT WHEN THEY COME TO THEIR CONCLUSION, THEY'VE ESSENTIALLY RULED, OR THEY HAVE RULED, THAT FISHING WOULD BE INCONSISTENT WITH ACCESS TO THE WATER.

WELL, THEY SAID THAT IN THESE PARTICULAR CIRCUMSTANCES, CORRECT? IF THERE WERE A BEACH ON THE PROPERTY AND YOU CAN GO BELOW THE MEAN HIGH WATER MARK AND FISH, THAT WOULD BE A PERMISSIBLE USE OF THE WATER, WOULDN'T IT BE? THE PUBLIC HAS A RIGHT TO USE THAT.

RIGHT F THERE WERE --

SO IT'S ONLY IN THESE PARTICULAR CIRCUMSTANCES BECAUSE THERE'S A SEAWALL THAT YOU CAN'T FISH.

BUT I THINK THAT THE SECOND DISTRICT OPINION APPLIES TO EVERY INCREASE AND EGRESS EASEMENT, AND MANY OF THEM WOULD BE THE SAME CIRCUMSTANCE WITH A SEA WALL, AND IT DOESN'T ANSWER THE QUESTION TO SAY IF IT WAS PUBLIC LAND YOU COULD GO TO PUBLIC LAND THAT'S THE ANSWER THE SECOND DISTRICT TRED TO IMPLY. HERE MY CLIENTS PAID FOR OR THE PREDECESSORS OF MY CLIENTS PAID FOR THE RIGHT OF THIS EASEMENT, AND THERE'S NO DISPUTE HOW IT'S BEEN -- THERE MAY BE DISPUTE BELOW, BUT AT THIS POINT WE HAVE A FACTUAL RECORD.

LET ME ASK YOU THIS, IS THE SOLE PURPOSE WAS TO MAKE SURE EVERYONE GOT DOWN TO THE WATER, BUT IN FACT IT WAS ALSO NECESSARY TO HAVE THIS BECAUSE OTHERWISE THERE NEEDED TO BE AUTOMOBILE ACCESS AS WELL, CORRECT?

THAT'S CORRECT.

SO IN THIS SOLE WORDING OR PHRASE, INGRESS AND EGRESS, IT DIDN'T JUST PERTAIN TO WHETHER YOU GOT DOWN TO THE WATER, IT REALLY PERTAINED TO VEHICULAR TRAFFIC, CORRECT?

THAT'S CORRECT.

AND I DON'T THINK, CORRECT ME IF I AM WRONG, THAT YOU WOULD CONTEND THAT THAT WOULD HAVE ALLOWED ALL OF YOUR CLIENTS TO USE THAT EASEMENT AS A PARKING LOT FOR THEIR CARS, DO YOU? THAT IS THE WHOLE -- SO AND YOUR IDEA OF THIS BEING AN EASEMENT TO ALLOW THEM TO REMAIN ON THAT LAND, THE LAND THAT IS OWNED BY TRACT A AND B IN ORDER TO ENJOY THE SUNSET OR FIREWORKS, HOW FAR IS IT ONLY AT THE WATER'S EDGE, OR DOES IT EXTEND ALL THE WAY BACK TO ANY PLACE ALONG THAT EASEMENT SINCE IT TOUCHES ON THE WATER THAT THEY SHOULD BE ABLE TO VIEW THE SUNSET FROM ANY PLACE FROM THE BEGINNING OF THE EASEMENT TO THE END OF IT?

AS A PURE LEGAL MATTER, IT MAY BE ANYWHERE ON --

AND SEE, THAT'S WHERE I SAY, THAT'S MY CONCERN. IT SEEMS TO ME THAT IF WE WERE REALLY TO LOOK AT ORIGINAL INTENT, PROBABLY THIS GRANTOR ASSUMED THERE WAS GOING TO BE A BEACH THAT WAS GOING TO BE FOR EVERYBODY, AND HE WANTED A DOCK. IT WOULD BE HARD FOR ME TO BELIEVE THAT HE WAS INTENDING THAT SINCE IT WAS RIGHT IN THE BACKYARD OF TRACTS A AND B WHERE IT WAS LOGICAL THEY WERE GOING TO BUILD A HOME THAT THEY WERE GOING TO HAVE PERMANENT VISITOR ESSENTIALLY IN THEIR BACKYARD. AND SO I JUST DON'T, AGAIN, I GUESS JUST ECHO ANYTHING A DIFFERENT WAY THAT THERE WAS ANOTHER PURPOSE FOR THIS EASEMENT, WHICH YOU AGREE, THE DRIVEWAY, AND THAT THINGS CHANGED BECAUSE THE BEACH ERODED. BUT THAT'S NOT ANYTHING THAT SHOULD BE WORKED AGAINST THE PEOPLE WHOSE HOME EASEMENT IT'S ON, DO YOU SEE THAT OR NOT? IN OTHER WORDS, THIS ISSUE PROBABLY WOULDN'T BE THERE IF THERE WAS A BEACH, CORRECT?

I DON'T THINK THAT THAT'S NECESSARILY CORRECT. AS FAR AS VIEWING FIREWORKS. POSSIBLY THEY WOULD GO TO THE BEACH TO VIEWFIRE WORKS, BUT THEY --

I MEAN, THIS IS A CASE OF -- IT'S HARD TO FEEL REALLY BADLY FOR THESE OWNERS BECAUSE THERE'S A PUBLIC PARK RIGHT NEXT DOOR WHERE THEY CAN WATCH ALL THE FIREWORKS THAT THEY WANT. SO I DON'T REALLY, WE TALK ABOUT VALUABLE BUNDLE OF RIGHTS, IT REALLY IS FOR PEOPLE LISTENING TO THE CASES WE'VE HEARD THIS WEEK, WE REALLY ARE SORT OF STARTING TO NITPICK ABOUT WHETHER PEOPLE SHOULD BE ABLE TO STAND ON OTHER PEOPLE'S

PROPERTY TO WATCH FIREWORKS SIMPLY BECAUSE THAT EASEMENT GOES TO THE WATER. WE BELIEVE THAT THIS IS UPSETTING EXPECTATIONS. OUR CLIENTS HAVE HAD THESE VERY FEW RIGHTS ARE AT ISSUE IN THIS COURSE. TO BE CLEAR IT'S FISHING, VIEWING SUNSETS, AND VIEWING FIREWORKS, I THINK ARE THE ISSUES THAT ARE -- AND HOW FAR BACK FROM THE END OF THE EASEMENT ARE THEY ALLOWED TO VIEW THIS? IN OTHER WORDS, HOW MANY OF THEM ARE ALLOWED TO BE ON THE EASEMENT, AND HOW FAR BACK?

AS A PRACTICAL MATTER, YOU READ THE TRIAL JUDGE'S ORDER, THEY CAN'T BE ALL THE WAY BACK BECAUSE TOWARDS THE BACK OF THE EASEMENT THERE'S ANOTHER GATE, AND AS A PRACTICAL MATTER, THEY'RE GOING TO BE STANDING ON THE SEA WALL. IN THIS CASE, A PURELY LEGAL MATTER, MAYBE RIPARIAN RIGHTS WOULD COVER THE ENTIRE EASEMENT. THAT'S NOT THE ISSUE HERE.

AS YOU SAID EARLIER, EVERYBODY'S GOT TO RELY ON WHAT'S IN THE PUBLIC RECORDS AS TO WHAT THE RIGHTS ARE TO THE PROPERTY. YOU'RE ALMOST ARGUING IT'S AN ADVERSE PERCEPTION OF SUBTLE EXPECTATIONS. WHAT WE HAVE CLEARLY IS AN INGRESS AND EGRESS EASEMENT, AND YOU'RE SAYING IT INCLUDES NOT ONLY THE RIGHT TO COME AND GO BUT THE RIGHT TO STAY.

IT INCLUDES THE RIGHT TO ACCESS THE WATER, AND THAT WOULD BE -- AND STAY ON THE EASEMENT. WHILE YOU'RE THROWING YOUR FISHING POLE BASICALLY, RIGHT? BUT THE STATE DOESN'T GO SO FAR AS CAMPING OR HAVING A PARTY.

WHY NOT? IF THEY HAVE THE RIGHT TO STAY THERE, YOU MEAN, I CAN'T EAT A SANDWICH WHILE I'M FISHING? IS THAT WHAT R WHAT YOU'RE SAYING? THE PROBLEM WE'RE GETTING INTO IS YOU SEE WHERE THIS LEADS US S WHAT THE CONCERN IS. JUSTICE QUINCE HAD A QUESTION. IT'S BEEN ANSWERED? PLEASE RESPOND TO JUSTICE BELL IF THERE'S MORE YOU THINK YOU NEED TO RESPOND TO.

IF THIS DOES BECOME AN ISSUE OF FACT, THEN I THINK OUR RECORD SUPPORTS WE WIN THERE TOO.

SO WHEN ANYONE SEES AN INGRESS AND EGRESS EASEMENT ON A PLANTED SUBDIVISION THAT WOULD INCLUDE THE RIGHT FOR SOMEBODY TO COME AND STAY AND FISH OR WATCH FIREWORKS OR WHATEVER? IF IT'S, YOU KNOW, WHATEVER INTEREST IN ADDITION TO COMING AND GOING?

THEY WOULD HAVE THE RIGHT TO WATCH FIREWORKS, TO VIEW THE SUNSET, OR TO FISH. NOT TO STAY AND CAMP, NOT TO GRILL.

AND HOW DO WE SEE THAT RIGHT FROM THIS PLATTE?

BECAUSE THE RIPARIAN RIGHTS RUN WITH THE LAND. THIS GOES BACK TO THE FACT THAT RIPARIAN RIGHTS THAT ARE NOT EXPRESSLY RESERVED RUN WITH THE LAND, AND THESE ARE NATURAL RIPARIAN RIGHTS THAT ASSIST IN ACCESSING THE WATER. WE'RE NOT ASKING FOR A GENERAL USE EASEMENT, AND IF IT EVER DID BECOME A PROBLEM WITH JUST TOO MANY PEOPLE ON THE EASEMENT, THAT'S A DIFFERENT ISSUE.

HOW'S FIGURE DIFFERENT FROM GRILLING? I MEAN, IF YOU'RE FISHING, YOU COULD BE THERE FOR HOURS FISHING, AND AT THE SAME TIME, WHILE YOU'RE FISHING, YOU'RE GRILLING, SO YOU COULD BE GRILLING, SO WHY WOULD THAT BE SEPARATED OUT FROM THIS? IT'S KIND OF HARD TO TRY TO SEE WHAT, YOU KNOW, WHAT IS INCLUDED AND WHAT IS INCLUDED FROM YOUR ARGUMENT.

WE SAY THAT WHAT IS INCLUDED IS THOSE THINGS THAT ARE CONSISTENT WITH THE PURPOSE OF THE EASEMENT. THE EASE SUSPECT TO ACCESS THE WATER. FISHING ACCESS IT IS WATER. THE LINE GOES IN. VIEWING THE SUNSET OVER THE WATER ACCESS IT IS WATER, IT'S THE RIGHT TO A VIEW. GRILLING IS JUST TAKING UP SPACE ON AN EASEMENT, IT'S A PLACE TO GO -- WELL, WHY ISN'T THE VIEW IS THE PURPOSE OF THE EASEMENT IS TO GET TO THE PUBLIC WATERAWAYWAY? TO GET YOU FROM POINT A TO POINT B.

OUR ARGUMENT THAT IS THE RIPARIAN RIGHTS THAT TRAVEL WITH THE EASEMENT, GIVE YOU MORE THAN, THAT IT IS ANYTHING CONSISTENT WITH THAT PURPOSE, THE PURPOSE ISTO ACCESS THE WATER BUT ANYTHING THAT IS CONSISTENT WITH THAT PURPOSE IS RIPARIAN RIGHT, TRAVELS WITHTHE LAND UNLESS EXPRESSLY RESERVED WOULD GIVE YOU

WAS USED ON A JUST WEEKLY BASIS, NOT OVER THE WHOLE EASEMENT BUT AFTER THE BEACH WAS ERODED BY THE SEAWALL!!\$\$!!!!!!!!!!!!!!SEAWALL, YOU KNOW TO BE DOWN AT THE EDGE OF THE WATER, AND FISHING, AND -- GATHER DOWN THERE FOR FIREWORKS, DOES THAT PLAY ANY PART WHATSOEVER NOT IN YOU KNOW THE -- FACT SPECIFIC, BUT THE TRIAL JUST -- SPENT SOMETIME ON THAT IS THAT TOTALLY OUT THE WINDOW THAT IS HOW IT WAS USED FOR THE LAST 50 YEARS?

YES, YOUR HONOR, IN THIS CASE, ON A LEGAL ISSUES PRESENTED, BECAUSE -- WELL LET ME TELL YOU AN EXAMPLE. A CASE YOU CAN LOOK AT YOU DON'T HAVE TO TAKE MY WORD FOR IT. IN THE -- CASE THAT IS 4th DISTRICT IN 1990, THAT WAS A SIMILAR CASE, TO THE EXTENT THAT THE EASEMENT THAT WAS ON THE PLAT A CONDOMINIUM HAD A DECLARATION I'M SORRY NOT PLAT BUT A DECLARATION, HAD DEMARKED AN AREA FOR INGRESS AND EGRESS TO A ROAD, AND FOR UTILITIES, BUT HISTORICALLY HAD BEEN USED FOR PARK, AND WHAT SOMEONE COMPLAINED ABOUT, THIS AND IT GOT INTO LITIGATION, THE COURT SAID IS HISTORICALLY -- IRRELEVANT BECAUSE THE EASEMENT IS UNAMBIGUOUS, AND THERE IS A REASON IT HAS TO BE THAT WAY, AND WE WOULD CONTEST THAT THE FACTS ARE AS COUNSEL CLAIMS BUT WE DON'T WANT TO GET THERE WE DON'T NEED TO GET THERE BECAUSE THERE IS A REASON WHY AN UNAMBIGUOUS EASEMENT MUST BE CONSTRUED BY PLAIN MEANING THAT IS BECAUSE YOU HAVE TO BE ABLE TO RELY ON THE PROPERTY RECORDS, A BUYER CANNOT BE EXPECTED TO CANVASS THE ENTIRE NEIGHBORHOOD TO DETERMINE USES TO WHICH THAT EASEMENT THAT APPEARS TO BE EXPRESS PLAIN LANGUAGE INGRESS AND EGRESS MIGHT OTHERWISE HAVE BEEN WRONGLY PUT FOR ANY NUMBER OF YEARS. OTHERWISE!!\$\$!!!!!!!!!!!!!!OTHERWISE, YOU ARE GOING TO THROW OUT DECADES OF PROPERTY LAW MAKE ALL BUYERS MAKE THAT KIND OF FACTUAL INQUIRY!!\$\$!!!!!!!!!!!!!!INQUIRY. IN THIS CASE, A PERFECT EXAMPLE, TO ACCEPT THE \$PETITIONER'S ARGUMENT WOULD YOU BE -- IN -- IN EASEMENT, FOR -- A CROSSING AND TURN IT INTO AN EASEMENT TO POSSESS.

LET ME LET ME GET TO A POINT THAT -- CAN -- IS A QUESTION IN MY MIND, IS THAT IT DOES SEEM THAT THERE WAS A DETERMINATION THAT THERE COULD BE A DOCK BUILT AT THE END OF THIS EASEMENT. AND YOU ARE NOT CONTESTING THAT IN THIS IN THIS COURT, ARE YOU?

NO, SIR.

NOW, ISN'T IT SOMEWHAT INCONSISTENT THAT THIS EASEMENT COULD BE THE BASIS THAT THERE COULD BE A DOCK BUTT AND!!\$\$!!!!!!!!!!!!!!BUILT AND PEOPLE CAN'T FINISH OFF THE DOCK CAN'T SIT THERE WATCH THE SUNSET? HOW DOES THAT WORK?

I'M HAPPY TO ADDRESS THAT HONOR THE CASE OUT OF SECOND DISTRICT FIRMLY ESTABLISHES WE DID NOT CONTEST BELOW, THAT IF YOU HAVE AN EASEMENT RIGHT THAT -- AN EASY NAENT GRANTS YOU ACCESS TO THE WATER INGRESS AND EGRESS EASEMENT THAT FACILITATE WITH OUR ACCESS TO WATER YOU ARE THEN PERMITTED TO BUILD A DOCK EYE ASSUMING ENVIRONMENTAL OTHER REGULATORY.

THAT IS WHAT I WAS TRYING TO GO TO ANY AUTHORITY OUT OF THIS COURT? I DON'T MEAN TO INTERRUPT THE QUESTION, BUT, IS THERE ANY AUTHORITY OUT OF THIS COURT BECAUSE I THINK IT IS INCONSISTENT, TO BE ABLE TO DO A DOCK WITH SOME OTHER DISCUSSIONS WE ARE HAVING. I CAN NOT RECALL, STANDING HERE NOW, AND BACK OVER OUR CASES ANY FLORIDA SUPREME COURT AUTHORITY THAT SPECIFICALLY SAID THAT -- THAT A DOCK.

THAT YOU CAN BUILD A DOCK YOU ARE RILYING ON SECOND DISTRICT CASE THAT SUGGESTED THAT!!\$\$!!!!!!THAT.

YES, WE ARE.

OKAY FINISH JUSTICE WELLS!!\$\$!!!!!!!!!!WELLS --

IF YOU HAVE ACCESS TO THE WATER A DOCK FACILITATES YOUR ACCESS TO THE WATER AND HERE IN THIS CASE, P.

LET ME ASK YOU THIS ABOUT -- I THOUGHT THE THEORY WAS THAT THE DOCK WOULD BE BUILT BELOW THE MEAN HIGH WATER MARK AND THEREFORE THE DOCK ITSELF, IS NOT ON THE CERTIFY VEE ENT ESTATE.

ABSOLUTELY YOUR HONOR US THE DIFFERENCE WHAT YOU ARE DOING WITH THE DOCK YOU ARE GOING OUT TO THE WATER AND DO YOU REMEMBERING YOUR ACTIVITIES ON THE WATER THAT IS

SURE I'VE GOT RIGHT TO INGRESS EGRESS SO, THE OTHERSIDE SAYS WELL IT CARRIES WITH IT THOSE THINGS REASONABLE NECESSARY POWER BOATS NO LONGER, ROW BOATS CAN WE PAVE IT -- GET THE BOAT DOWN --

I'M SORRY I SUPPOSE IF THERE WOULD BE THE POSSIBILITY OF SOME OF THIS KIND OF ISSUES COMING UP JUST LIKE THE SKWOUND COUNSEL, IF I'M GOING DOWN THERE TO FISH CAN I BRING A SANDWICH FUNNY YOU SAID THAT I HAD WRITTEN DOWN THEY ARE SAYING WER NOT CONTENDING WE CAN GROW OR PICNIC AHEAD THE SAME QUESTION IF I'M FISHING 12 HOURS GOING TO BE HUNGRY MAY I BRING A SANDWICH!!\$!!!!!! AND WICH SAAD BAG OF CHIPS IS THAT NOT PICNICKING WHAT O POINT DO I BRING HIBACHI, BECAUSE I'M TIRED OF COLD SANDWICHES I DECIDED TO COOK FISH I CAUGHT.

WHILE TALKING ABOUT EXTREMES YOU OUT TO TALK ABOUT INTERPRETING THIS BY PLAIN MEANING IN A VERY NARROW WAY THAT WHAT ABOUT THE EXTREME OF THAT, THAT IS THAT THE DOMINANT LAND OWNERS!!\$!!!!!! LAND OWNERS, NOW, ERECT A LOUD SPEAKER OUT THERE, AND SOMEBODY IT HAS BEEN USED TO WALKING IN THE NEIGHBORHOOD, AND THEN WALKING DOWN BY THE WATER YOU KNOW USING THIS EASEMENT!!\$!!!!!! EASEMENT, THEY ARRIVE DOWN THERE, AT THE END OF THE EASEMENT!!\$!!!!!! EASEMENT, AND THE LOUD SPEAKER, BLAIRZ IN THEIR EAR NOW THAT YOU HAVE GOT HERE GET OUT OF HERE, BECAUSE, THE COURT SAY YOU DON'T HAVE RIGHT TO STAY. NOW, THERE IS SOMETHING -- VERY FALLACIOUS ABOUT GRANTING AN EASEMENT DOWN TO THE WATER TO COME AND GO, IF YOU HAVE GOT TO LEAVE IMMEDIATELY, THAT IS THAT -- THAT SEEMS LIKE THAT YOU ARE NOT REALLY GETTING YOU KNOW WHAT YOU ARE ENTITLED TO SO IS THAT YOUR POSITION? THAT ANYBODY THAT GETS DOWN TO THE \$WATER'S EDGE, HAS GOT TO TURN RIGHT AROUND AND LEAVE IMMEDIATELY? ANYONE WHO GETS \$WATER'S EDGE HAS TO DECIDE TO EITHER GET IN THE WATER OR TURN AROUND AND GO BACK, BECAUSE THAT IS EXACTLY WHAT THE SECOND DISTRICT SAID THEY HAVE THE RIGHT TO DO, THEY CAN GET IN THE WATER FROM THE SEAWALL, NOW, WHETHER YOU WANT TO GET IN THE WATER FROM THE SEAWALL WHETHER IT IS A GOOD IDEA, WHETHER YOU NEED SOME KIND OF DEVICE, I DON'T KNOW, AND -- HOW MUCH TIME DO THEY HAVE TO DECIDE.

THAT IS A GREAT QUESTION, YOUR HONOR THERE IS ALWAYS GOING TO BE SOME GREY AREA, WITH -- WITH THESE RIGHTS UNLESS YOU SAY THEY GET NOTHING, OR THEY GET EVERYTHING. THEY REALLY GETTING NOTHING BECAUSE THEY CAN'T HAVE A DOCK, THERE IS NO BEACH, AND I DON'T KNOW WHETHER THIS IS A GREAT WATER FOR SWIMMING IN, CAN THEY IF THEY HAD KAYAKS CAN THEY TIE UP THEIR KAYAKS TO SOME PLACE IN THE WATER I MEAN SOMETHING THAT WAS MEANINGFUL FOR THEM?

THE RECORD DOESN'T REFLECT ANYTHING THAT WOULD ALLOW YOU TO TIE UP A KAYAK, BUT I BELIEVE JUDGE -- DECISION SAYS YOU CAN WALK DOWN EASEMENTS WITH YOUR -- I DON'T KNOW IF HE USED THE WORD KAYAK OR IF HE SAID RAFT, BUT YOU COULD THROW A KAYAK IN AND JUMP IN THERE IF YOU WANT TO NOW -- DID IT VERY QUICKLY.

-- I'M NOT REPRESENTING TO THE COURT IT IS A GOOD IDEA TO DO THAT BECAUSE -- WHETHER THERE ARE BARNICLES AND OTHER THINGS MIGHT MAKE THAT DIFFICULT, I THINK THE RECORD SUGGESTS THAT THERE ARE BUILT UP OYSTERS -- SEAWALLS GET -- ACCUMULATED ON IT -- THE RECORD SUGGESTS THAT THIS IS A MATTER WHICH SHOULD BE ABLE TO BE WORKED OUT BY PEOPLE OF GOOD WILL. AND THAT THIS IS A TREMENDOUSLY HARD THING FOR COURTS TO POLICE AND MAKE SURE THAT SOMEONE MEETS THE STOPWATCH TIME THAT THEY ARE ABLE TO BE AT THE END OF THIS EASEMENT, EVERY HE EVERYBODY THAT PARTICIPATES HERE NEW WHEN THEY BOUGHT THEIR PROPERTY THIS WAS SOMETHING THAT WAS IN EXISTENCE!!\$!!!!!! EXISTENCE. AND I'M JUST VERY CONCERNED ABOUT HOW SOMETHING LIKE THIS GETS ALL THE WAY UP TO THIS COURT WHEN IT IS REALLY SOMETHING THAT HAS TO BE WORKED OUT BY NEIGHBORS.

YOUR HONOR I CAN'T DISAGREE WITH THE IDEA THAT NEIGHBORS SHOULD TRY TO WORK THINGS OUT AND THAT IF -- IF EASEMENT RIGHTS ARE GOING TO WORK AT ALL THEY ARE GOING TO HAVE SOME GIVE-AND-TAKE, THE RECORD REFLECTS, HOWEVER THAT THERE WAS GREAT CONFLICT AMONG THE VARIOUS AS ANYBODY WHO TESTIFIED OR GAVE AFFIDAVITS AS TO USE

OF THIS VEZMENT BRINGS US BACK TO THE POINTS OF PROPERTY RECORDS ARE, AND GIVING APPROXIMATE PLAIN MEANING TO CLEAR AND UNAMBIGUOUS EASEMENTS SO PEOPLE DON'T GO AND YOU ARE AND ASK ALL THE NEIGHBORS WHEN THEY DECIDE WHETHER TO BUY PROPERTY TO WHAT USES HAVE THIS EASEMENTS BEEN PUT.

AN ISSUE ABOUT THE LOCKED GATE, MA CLEARLY SEEMS TO VIOLATE THE RIGHT OF INGRESS AND EGRESS.

IF THE GATE IS LOCKED IN THE NEIGHBORS CAN'T GET THROUGH, SURE YOUR HODGEOR AND I DON'T THINK THAT IS AN ISSUE BEFORE THIS COURT I DON'T THINK THAT THE QUESTION FRAMED RAISES THAT ISSUE. BUT ONE OF THE OTHER POINTS WE NEED TO MAKE IS THE QUESTION OF WHETHER YOU CAN INCREASE THE BURDEN ON THE STATE JUST BECAUSE A DOCK CAN'T BE BUILT OR THE BEACH ERODED THE ANSWER IS NO, LONGSTANDING FLORIDA LAW ALL CITED IN OUR ANSWER BRIEF AND I HAVE A LIST OF THEM HERE THAT I CAN GIVE THE COURT IF YOU WANT, TO BUT I DON'T THINK IT IS AN UNSETTLED PRINCIPLE THE A VERY CASE THE CRUTCHFIELD CASE THE WALTERS CASE THEY ARE ALL IN THE BRIEF STATE YOU CAN'T INCREASE THE BURDEN ON THE STATE BEYOND CONTEMPLATED AT THE TIME THE EASEMENT AS WE.

LET ME ASK YOU ABOUT ANOTHER USE, COULD THEY -- RIDE BICYCLES DOWN TO THE END OF THE WATER AND THEN BACK, AS LONG AS AND THEY CAN SINCE INGRESS AND EGRESS!!\$\$!!!!!!!EGRESS, THEY CAN USE IT AS A PATH TO GO DOWN, AND BACK? IF YES YOUR HONOR IT APPEARS!!\$\$!!!!!!!APPEARS --

FROM A POINT OF VIEW OF ANNOYING A NEIGHBOR, COULD THEY USE YOU KNOW, HAVE THOSE LITTLE ATVs\$\$, AND -- HAVE THOSE GO DOWN AND BACK, I MEAN AGAIN WE ARE STILL TALKING ABOUT INGRESS AND EGRESS COULD THAT BE DONE ON THIS EASEMENT.

THERE IS GOING TO COME A POINT OF VIEWS USE WHERE IT IS ABUSE OF EASEMENTS CERTAINLY PARTIES CAN GO TO COURTS AND FIGHT OVER ABUSE OF EASEMENT AND IF YOU ARE RUMBLING DOWN THAT EASEMENT BACK-AND-FORTH ALL DAY, BECAUSE YOU ARE SAYING I'M IN AGGRESSION AND EGRESSING, I AS YOU -- SAP TRIAL JUDGE MIGHT TELL YOU YOU ARE ABUSE HEING THE MEEBTS BUT IF YOUR QUESTION IS MATERIAL THAT COULD -- THEORETICALLY COULD ONE TRAVERSE EASEMENT ON BICYCLE ATV MOTORCYCLE PROBABLY SO BUT THE KEY POINT IS WHICH IN THE EXPECTATIONS WHEN YOU LOOK AT THAT PLAT AND YOU ARE THINKING OF OF BUYING THAT PROPERTY, AND YOU SEE INGRESS AND EGRESS EASEMENT ARE YOU ENVISIONING 5, 10, 30 NEIGHBORS, STANDING IN YOUR YARD FOR 12 HOURS --

I GUESS WHAT I BOUGHT IT IN 2000 AND I REALIZE THERE WAS NO BEACH THERE ANYMORE NO DOCK, WOULD I BE CONCERNED THAT I MAY HAVE SOME PROBLEMS, WHICH IS OBVIOUSLY WHAT YOUR CLIENTS THOUGHT AND PUT UP THE GATE, SO THEY CAME OUT FIGHTING ON THIS ONE, AS JUDGE OBSERFSHSLIKE BAD OFFENSE MAKE BAD NEIGHBORS BAD EASEMENTS MAKE BAD NEIGHBORS.

RIGHT, BUT WHEN YOU ARE TALKING ABOUT THE EXPECTATIONS OF PROPERTY, THE PURPOSE OF HAVING PLATS AND RECORDED DOCUMENTS, AND LETTING PEOPLE UNDERSTAND THE USES TO WHICH PROPERTY WILL BE PUT -- IS TO SAY WHAT IS THE EXPECTATION OF AN INGRESS AND EGRESS EASY!!\$\$!!!!!!!EASIMENT THAT WOULD BE FOR PEOPLE TO TRANSFER THE PROPERTY TO GO TO AND FROM THE WATER, NOT FOR PEOPLE OH, TO CONGREGATE IN AND OCCUPY YOUR BACKYARD.

LET ME ASK THIS ONE QUESTION WITH REGARD TO THE NEIGHBORHOOD!!\$\$!!!!!!!NEIGHBORHOOD, IS THERE ANYTHING THAT IF WE ALLOW THESE PEOPLE TO COME, CAN THEY BRING THEIR COUSINS AND THEIR -- COUSINS AND FRIENDS. WE DON'T KNOW THAT YOUR HONOR.

I'M SAYING, THEORETICALLY!!\$\$!!!!!!!THEORETICALLY, IF -- ALLOW IT TO STAND NOT LIMITED, PERSE TO JUST AN OWNER; CORRECT?

JUSTICE QUINCE HAD A QUESTION.

THERE WAS A BEACH HERE, PREVIOUSLY!!\$\$!!!!!!!PREVIOUSLY; CORRECT?

UM-HMM.

THE BEACH GONE BY NATURAL CAUSES OR IS THE BEACH GONE BECAUSE OF SOMETHING THE PERSON ON THE DOMINANT ESTATE DID.

AS I UNDERSTAND THE RECORD YOUR HONOR, THE BEACH WAS THERE, IN 1953 WHEN THE PLAT

WAS ISSUED, SOMETIME IN THE I BELIEVE 1957 OR 58, THE TRACT OWNERS BUILT A SEAWALL OVER TIME --

DOES IT MAKE A DIFFERENCE, WHETHER OR NOT WHAT THE PERSONS EXPECTED OR HAD AT ONE POINT IS NOW GONE, BECAUSE OF THE ACTIONS OF THE PEOPLE ON THE DOMINANT ESTATE!!\$\$!!!!!!!ESTATE.

NO, BECAUSE THEY STILL HAVE THE RIGHT TO ACCESS THE WATER THEY STILL HAVE THE RIGHT TO GO ACROSS THE PROPERTY, USE THAT PRIVATE PROPERTY TO GET IN THE WATER IF THEY CAN AND TO.

THEY NO LONGER HAVE THE BEACH THAT THEY HAD BEFORE BUT THEY CERTAINLY HAD THE RIGHT TO ACCESS EVEN YOU KNOW, WITH WHATEVER RIPARIAN OR OTHERWISE RIGHT THEY HAD. NO THAT IS TRUE YOUR HONOR.

-- LANDOWNER DID TO CAUSE THE BEACH TO GO AWAY? THIS A NATURAL EVENT OR IS THERE SOMETHING THAT -- THE LANDOWNER SOMEHOW DID SOMETHING TO REMOVE THE BEACH. MY UNDERSTANDING YOUR HONOR THAT SEAWALLS WERE PUT UP, I THINK -- 57 OR 58, AND THEN AT THAT SAME TIME, THEY BUILT A DOCK, US THAT PROPERTY THIS EASEMENT DID HAVE A DOCK, AT ONE POINT.

BEACH AREA, THE BEACH YEAH NATURAL EROSION OF THESEA RECLAIMING.

THE BEACH AREA NATURALLY ERODE THERE HAD WAS DOCK THE DOCK WAS WASHING AWAY BY A HURRICANE, AND OF COURSE FROM 1960 UNTIL -- WELL, UNTIL AT LEAST SOMETIME, MUCH LATER, NO ONE TRIED TO REBUILD THE DOCK, THERE WAS A LITTLE BIT OF TESTIMONY ABOUT A COUPLE OF NEIGHBORS INTERESTED IN REBUILDING A DOCK.

WHO BUILT THE DOCK?

THE ONE DOCK THAT DID EXIST.

YES.

THE DEVELOPER MR. DAVIS AND HE GAVE AN AFFIDAVIT ACTUALLY BUT WE SAY YOU DON'T EVEN NEED HIS AFFIDAVIT BECAUSE YOU HAVE TO STICK TO THE EXPRESS LANGUAGE BUT IF YOU LOOK AT HIS AFFIDAVIT HE SAID THIS IS ONLY FOR INGRESS AND EGRESS. OF COURSE HE WAS TALKING ABOUT AN ISSUE OF PARKING THAT HAD BEEN RAISED --

IF YOU BUILT A DOCK AT THE ENDS OF AN EASEMENT, WHO OWNS THE END OF AN EASEMENT WHO OWNS THE DOCK.

Raises interesting questions.

MR. THERE IS LIABILITY FOR OWNER STHOIN DOC.

CHARGED WITH MAINTAINING THE DOCK IN THIS CASE I BELIEVE THE RECORD REFREQUENTLY\$\$!!!!!! A HOMEOWNERS ASSOCIATION TYPE ORGANIZATION, WAS BEING FORMED BECAUSE THAT WOULD I GUESS HAVE TO BE -- THE GROUP THAT WOULD HAVE TO BE RESPONSIBLE FOR THE DOCK.

THIS WAY OF INGRESS AND EGRESS IS THAT A RIGHT ONLY OF THE OTHER PROPERTY OWNERS IN THAT SUBDIVISION OR RIGHT OF THE PUBLIC OF A NO YOUR HONOR NOT RIGHT OF PUBLIC THE INGRESS EGRESS AN MEANT RIGHT THAT IS RIGHT TO USE OUR PRIVATE FROT GET TO THE WATER IT WAS ONLY GRANT TO DO THE PLATS WITHIN TO THE -- WITHIN THE PLAT.

WOULD IT HAVE BEEN IF THE BEACH HAD REMAINED, THE PUBLIC BEACH BELOW MEAN HIGHWATER MARK, THAT WOULD HAVE BEEN A PUBLIC BEACH IT JUST WOULD HAVE PLANTE TO GET TO IT THEY WOULD HAVE HAD TO COME THROUGH THE WATER.

EXACTLY THE QUESTION HOW DO YOU GET THERE DO YOU HAVE A RIGHT TO GO ACROSS OUR PRIVATE PROPERTY TO GET THERE OR DO YOU HAVE GO THROUGH PUBLIC PARK OR COME UP THE BEACH SOME OTHER WAY THAT IS RIGHT.

WITH OUR ASSISTANCE YOU HAVE UTILIZED ALL OF YOUR TIME.

YOUR HONOR THANK YOU WOULD JUST ASK THE COURT THEN TO AFFIRM OR DECIDE THAT JURISDICTION IS NOT PROPERLY BEFORE THE COURT.

WE THANK BOTH OF YOU INTERESTING QUESTION THANK YOU FOR ENLIGHTENED YOU SEE GREAT DETAIL WE'LL TAKE THE CASE UNDER ADVISEMENTS THANK YOU VERY MUCH.

COURT WILL STAND IN RECESS