

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

MICHAEL P. COLOSI,

Case No.: 2025-CA-2916

Plaintiff,

v.

QUARRY COMMUNITY DEVELOPMENT
DISTRICT and FLOW WAY COMMUNITY
DEVELOPMENT DISTRICT, ESPLANADE
GOLF AND COUNTRY CLUB OF NAPLES, INC.,

Defendants.

_____ /

MOTION TO DISMISS COMPLAINT

Defendant, Esplanade Golf and Country Club of Naples, Inc. (“Esplanade”), by and through the undersigned counsel, and pursuant to Rule 1.140, Fla. R. Civ. P., hereby moves to dismiss the Complaint filed by Plaintiff, Michael P. Colosi (“Colosi”), and in support thereof, states as follows:

INTRODUCTION

1. On or about December 18, 2025, Plaintiff filed his Complaint against Esplanade along with Defendants, Flow Way Community Development District (“Flow Way”) and Quarry Community Development District (“Quarry”), seeking a statutory way of necessity under Section 704.01(2), Fla. Stat., as well as a declaratory judgment establishing said easement.

2. In support of his requests, Plaintiff alleges that his parcel located in Collier County, Florida, Parcel Identification Number (PID) 00180920000 by the deed recorded at OR Book 6261, Page 1049, of the Public Records of Collier County, Florida, as more particularly described in the deed attached as Exhibit “A” to the Complaint (“Property”) is “shut off or hemmed in by lands, fencing, or other improvements” and that the Property is otherwise “landlocked insofar as recorded

interest are concerned.” *Complaint*, ¶¶ 9, 13. Plaintiff further asserts that he has no practicable route of egress or ingress to the nearest practicable public or private road in which he “has vested easement rights.” *Complaint*, ¶ 9.

3. For the reasons herein, Plaintiff’s Complaint should be dismissed.

4. Plaintiff has failed to plead sufficient fact to establish he is entitled to a statutory way of necessity under § 704.01(2), Fla. Stat., or to declaratory relief. Additionally, Plaintiff has failed to plead any of the required elements to support his request for temporary injunctive relief.

5. Furthermore, Plaintiff has asserted claims for relief that are outside the scope of either Chapter 704 or Chapter 86, Fla. Stat., and those claims should be stricken.

ARGUMENT

I. Plaintiff Fails to State a Claim for a Statutory Way of Necessity under Section 704.01(2)

6. A statutory easement by necessity is created when the following are established: 1) the claimant's property is landlocked by property belonging to others; 2) there is no practicable route of ingress or egress to the nearest public or private road; 3) there is no right to a common law way of necessity under section 704.01(1) because there is no unity of title between the dominant (landlocked) and servient (adjoining) tracts; 4) the landlocked property is situated outside a municipality; 5) the landlocked property is being used or the owner desires to use the property as a dwelling or for agricultural, timber raising or cutting, or stock raising purposes; and 6) the statutory way of necessity sought over the adjoining parcel is the “nearest practicable route” of access. *Cirelli v. Ent*, 885 So. 2d 423, 432-33 (Fla. 5th DCA 2004).

7. If a common law way of necessity exists a plaintiff is not entitled to a statutory way of necessity. *Id.*; *Boyd v. Walker*, 776 So.2d 370, 370 (Fla. 5th DCA 2001) (stating “a landowner who has a common-law way of necessity under Section 704.01(1) is ineligible for a statutory way

of necessity under Section 704.01(2)); *Parham v. Reddick*, 537 So.2d 132, 134-35 (Fla. 1st DCA 1988) (noting “where an implied common law way of necessity exists, the subsection (2) statutory way of necessity does not exist, because the purportedly landlocked lands are not, in fact, hemmed in”); *Hancock v. Tipton*, 732 So.2d 369, 373 (Fla. 2d DCA 1999) (holding plaintiffs were not entitled to statutory easement by necessity where their property shared unity of title with lands owned by defendants and evidence demonstrated plaintiffs’ parcel became inaccessible as a result of conveyances dividing the original parcel).

8. Plaintiff’s Complaint is devoid of any facts permitting the Court to deraign title to the Property and determine whether unity of title existed. *See generally, Sapp v. Gen. Dev. Corp.*, 472 So. 2d 544 (Fla. 2d DCA 1985) (noting “[t]he legislature also provided a statutory way of necessity to enable the owner of landlocked property to have access across his neighbor's land when title to both properties is not deraigned from a common grantor). For example, Plaintiff does not allege when or how he acquired title to his Property, or how his Property came to be allegedly hemmed in. Plaintiff has pled no facts to allow the Court to determine whether his alleged necessity arose from severance. Plaintiff goes on to assert that he has “rights of access along the east side of the properties immediately to the south of the [Property] to the Quarry Property.” *Complaint*, ¶ 11. Plaintiff does not clarify how such “rights of access” arose (i.e., were they from a common grantor). Plaintiff must show that the property is not served by a common law easement. Plaintiff fails to do so.

9. Plaintiff also alleges that a rudimentary dirt road exists and has been used as a continuous means of ingress and egress for at least 40 years but broadly and incredibly generally asserts that any common law rights have been extinguished by MRTA. *Complaint*, ¶¶ 28, 40. However, again, Plaintiff does not assert any ultimate facts which permit the Court to determine

whether a common law way of necessity exists or existed and therefore, whether MRTA is applicable to extinguish any implied grant. *See Cirelli*, 885 So. 2d at 435 (holding that MRTA does not act to extinguish statutory ways of necessity under Section 704.01(2)). Moreover, these allegations do not provide the Defendants a meaningful opportunity to evaluate what facts support the bare legal conclusions or how to respond or defend against them.

10. Accordingly, Plaintiff has failed to meet his burden at the pleadings stage to establish that a common law way of necessity does not exist and that a statutory way of necessity is therefore available under Section 704.01(2), Fla. Stat. *See Faison v. Smith*, 510 So.2d 928, 928 (Fla. 5th DCA 1987) (holding that as a condition of their claim to entitlement of a statutory way of necessity, a claimant must show that his property is in fact hemmed in and that *the burden is on the claimant* to prove they do not have a common law right of access).

11. Further, Plaintiff has failed to allege sufficient facts establishing his Property is truly “hemmed in” or “landlocked” or that the route requested by Plaintiff is the most practical. *See Chodos v. Kjenslie*, 773 So.2d 1193, 1194 (Fla. 5th DCA 2000) (Peterson, J., concurring) (concurring that plaintiff failed to establish route sought was the most practical and noting “practical does not necessarily mean a route that would be the most convenient and comfortable for [the plaintiff]”). Instead, the Complaint contains bare legal conclusions mirroring the language of Section 704.01(2), Fla. Stat. *Complaint*, ¶¶ 9, 40, 48. Pleading bare legal conclusions which track the language of a statute is insufficient. *Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So.3d 855, 864 (Fla. 4th 2012) (noting a party cannot “properly allege a cause of action by alleging in conclusive form, which tracks the language of the statute, acts which lack factual allegations and merely state bare legal conclusions”).

12. Plaintiff’s Complaint should be dismissed on these grounds.

II. Plaintiff Fails to State a Claim for Declaratory Relief

13. The elements of the cause of action of declaratory judgment are: (1) there is a bona fide, actual, present practical need for the declaration; (2) the declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; (3) some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; (4) there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; (5) the antagonistic and adverse interests are all before the court by proper process or class representation; (6) relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity. *Riverside Ave. Prop., LLC v. 1661 Riverside Condo. Ass'n, Inc.*, 325 So. 3d 997, 1000 (Fla. 1st DCA 2021).

14. As discussed in Section I, above, since Plaintiff has not properly pled that there is no right to a common law way of necessity under section 704.01(1), Plaintiff cannot establish a present controversy, a bona fide dispute or that he has an actually, present need. Due to Plaintiff's failure to plead sufficient ultimate facts to support his alleged need for a statutory easement by necessity, a declaratory judgment is merely based on a hypothetical. Moreover, the easement sought by Plaintiff does not result in access to his Property, and there are others who have interests which would be affected by the declaration sought.

III. Plaintiff has Failed to Plead Entitlement to a Temporary Injunction

15. Plaintiff seeks a temporary injunction during the pendency of this matter requiring Defendants to permit access to his Property across Defendants' respective properties. As an initial matter, injunctive relief is outside of the scope of the remedies available under Section 704.01(2), Fla. Stat.

16. More importantly, to be entitled to temporary injunctive relief, Plaintiff is required to establish (1) the likelihood of irreparable harm, (2) the unavailability of an adequate legal remedy, (3) a substantial likelihood of success on the merits, and (4) that considerations of the public interest support the entry of the injunction. *Marlette v. Carullo*, 351 So. 3d 1193, 1195 (Fla. 2d DCA 2022).

17. Plaintiff has failed to plead any of the elements necessary to establish entitlement to temporary injunctive relief. Without factual allegations supporting the above elements, the Court cannot make a determination as to whether such relief is warranted on the face of the Complaint. *See id.* at 1196 (reversing order which denied defendant’s motion to dissolve temporary injunction with instructions to vacate the temporary injunction where plaintiff failed to plead, let alone prove, three of the four requisite elements).

IV. Motion to Strike Claims for Alleged Money Damages and Punitive Damages and Attorneys’ Fees

18. In Counts I and II, Plaintiff seeks damages including “any and all actual, special, nominal, and compensatory damages” as well as punitive damages all of which are outside of the scope of damages available under Chapter 704, Fla. Stat. Chapter 704 does not authorize an award of damages or punitive damages in connection with a statutory way of necessity. Rather the statutory scheme constitutes a limited access determination and if appropriate, compensation pursuant to § 704.04, Fla. Stat. Plaintiff’s inclusion of a broad damages demand confirms that the relief sought is not confined to the narrow statutory remedy, and must be stricken. The request in Count II for a broad range of monetary damages is also improper under Ch. 86 and should be stricken as a matter of law. Moreover, there is no right to prevailing party attorneys’ fees under Ch. 86, Florida Statutes, and Plaintiff’s claims for attorneys’ fees in Count II should be stricken as a matter of law.

19. Plaintiff has failed to plead a separate contractual or statutory basis for the types of damages being sought and has failed to plead the necessary proffer to support an award of punitive damages, and proper leave is required to assert a claim for punitive damages. *See* § 768.72, Fla. Stat. (stating “no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages); Rule 1.120(g), Florida Rules of Civil Procedure (requiring items of special damages to be plead with specificity); *B & J Holding Corp. v. Weiss*, 353 So. 2d 141, 143 (Fla. 3d DCA 1977).

20. These requests for relief should all be stricken.

WHEREFORE, Defendant, Esplanade Golf and Country Club of Naples, Inc., respectfully requests the Court grant this motion, dismiss Plaintiff’s Complaint, strike the claims for damages and attorneys’ fees as set forth herein, award Defendant its reasonable attorneys’ fees and costs incurred in defending this action under 704.04, Fla. Stat. and grant such further relief as the Court deems necessary and just.

CERTIFICATE OF CONFERRAL

I HERBEY CERTIFY that conferral is not required under Rule 1.202, Fla. R. Civ. P., prior to filing this motion.

/s/ Mary A. Norberg
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Naples, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2026February 9, 2026, I filed a true and correct copy of the foregoing with the Clerk of the Courts by using the Florida Court E-Portal filing system which will send notice of electronic filing to the following: Cary J. Goggin, Esq., Lawhon Goggin, LLP, 3003 Tamiami Trail N., Suite 200, Naples Florida 34103 (Carygoggin@lawhon-law.com; Drewgoggin@lawhon-law.com); Joseph A. Brown, Esq., Patrick Scott O'Bryant, Esq., Kutak Rock, 107 W. College Avenue, Tallahassee, Florida 32301 (Joseph.Brown@KutakRock.com; Patrick.OBryant@KutakRock.com).

/s/ Mary A. Norberg