

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

THE WINDEMERE OWNERS'
ASSOCIATION, INC., a Florida not for
profit corporation,

Plaintiff,

v.

Case No. 2024 CA 001011
Division: E

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

LA RIVA RESORT ASSOCIATION III, INC.,
a Florida not-for-profit corporation,
Plaintiff,

v.

Case No. 2024 CA 001018
Division: N

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

MIRABELLA OWNERS'
ASSOCIATION, INC., a Florida not for
profit corporation,

Plaintiff,

v.

Case No. 2024 CA 001019
Division: F

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

OCEAN BREEZE OWNERS
ASSOCIATION, INC., a Florida not for
profit corporation,

Plaintiff,

v.

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

_____ /

Case No. 2024 CA 001020

Division: E

THE PALMS OF PERDIDO OWNERS'
ASSOCIATION, INC., a Florida not for
profit corporation,

Plaintiff,

v.

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

_____ /

Case No. 2024 CA 001021

Division: N

PORTICO AT PERDIDO CONDOMINIUM
ASSOCIATION, INC., a Florida not-for-
profit corporation,

Plaintiff,

v.

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, acting through its duly elected
Board of County Commissioners,

Defendant,

_____ /

Case No. 2024 CA 001022

Division: E

ORDER GRANTING DEFENDANT'S MOTIONS TO DISMISS

THIS MATTER came before the Court for a hearing on November 19, 2024, regarding the Motions to Dismiss filed by Defendant, ESCAMBIA COUNTY, FLORIDA (the "County"), seeking dismissal of six lawsuits¹ filed by the Plaintiff condominium associations (collectively, the "Associations") challenging the validity of an easement purportedly encumbering the Associations' beachfront properties consisting of individual lots within the platted Gulf Beach Subdivision². The Defendant's motions are based on the same grounds, and the cases were consolidated for the limited purpose of this hearing. The Court has considered the submissions and arguments provided by the parties and agrees that the Plaintiffs have failed to join indispensable parties. Accordingly, the Defendant's motions to dismiss are granted.

BACKGROUND

The lots that are the subject of this lawsuit are located in Gulf Beach Subdivision, as shown in Plat Book 4 at page 52 of the public records of Escambia County, Florida. The subdivision was platted by the United States of America in 1957 (the "Plat"), and

¹ *Ocean Breeze Owners Association, Inc. v. Escambia County* (Case No. 2024 CA 001020); *Mirabella Owners' Association, Inc. v. Escambia County* (Case No. 2024 CA 001019); *La Riva Resort Association III, Inc. v. Escambia County* (Case No. 2024 CA 001018); *Portico at Perdido Condominium Association, Inc. v. Escambia County* (Case No. 2024 CA 001022); *The Palms of Perdido Owners' Association, Inc. v. Escambia County* (Case No. 2024 CA 001021).

²The Gulf Beach Subdivision consists of 64 lots, certain of which are owned by the Associations: (i) The Windemere Owners' Association, Inc., owns Lots 39, 40, and 41; (ii) Ocean Breeze Owners Association, Inc., owns Lots 2, 49, and 50; (iii) Mirabella Owners' Association, Inc., owns Lots 8, 9, 10, and 11; (iv) La Riva Resort Association III, Inc., owns the west 80 feet of Lot 27, Lot 28, and the east 20 feet of Lot 29; (v) Portico at Perdido Condominium Association, Inc., owns Lot 51, less the easterly five feet thereof and Lot 52; and (vi) The Palms of Perdido Owners' Association, Inc., owns the west 25 feet of Lot 36, Lot 37, and the east half of Lot 38.

subsequently the United States conveyed deeds to the 64 lots fronting on the Gulf of Mexico. The Plat does not contain any reference to any easement in favor of the public permitting the use of or access to any portion of Lots 1 through 64 of Gulf Beach Subdivision (collectively, the “Lots”). However, although outside the four corners of the complaint,³ all of the original deeds to the 64 Lots contain the same reservation that each lot was conveyed with “the southerly 75 feet of said lot being subject to a perpetual easement for public use generally.”⁴ Accordingly, the language purportedly granting this easement is not unique to the deeds the federal government executed in 1957 conveying title to the Lots now owned by Plaintiffs, but such language also appears in the instruments conveying title to the remaining Lots in the Gulf Beach Subdivision. As a result, the purported easement extends along each of the 64 lots, from the eastern edge of the subdivision along the Gulf of Mexico for approximately one and a half miles to the Perdido Key State Park, which abuts the western boundary of the subdivision.

LEGAL AUTHORITY

An indispensable party is one “whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party’s interest

³ On a motion to dismiss for failure to join an indispensable party, the Court may consider evidence outside the four corners of the complaint. See Bruce J. Berman, *Berman’s Florida Civil Procedure* § 1.140:25 (ed. 2024)(citing *Fresh Del Monte Produce, N.V. v. Chiquita Int’l Ltd.*, 664 So. 2d 263, 265 n.3 (Fla. 3d DCA 1995)(Cope, J. concurring in part and dissenting in part)(citing *City Nat’l Bank of Miami v. Simmons*, 351 So. 2d 1109, 1110 (Fla. 4th DCA 1977)).

⁴Prior to the hearing, the County filed a Notice of Filing containing the deed to each of the 64 Lots in Gulf Beach Subdivision that the federal government executed and delivered conveying title to the initial grantees in 1957. The Court reviewed and considered these original deeds from the United States referenced in the complaints, but otherwise confined its review to the four corners of the complaints.

or the interests of another party in the action.” *Greater Miami Expressway Agency v. Miami-Dade County Expressway Authority*, 388 So. 3d 138, 141 (Fla. 3d DCA 2023) (quoting *Florida Department of Revenue v. Cummings*, 930 So. 2d 604, 607, Fla. 2006) (internal quotations omitted). The purpose of the indispensable party doctrine is to prevent multiple suits with possible inconsistent results. See *McCray v. Adams*, 529 So. 2d 1131, 1136 (Fla. 1st DCA 1988). Significantly, *Burt v. Richards*, a substantially similar case for declaratory relief and quiet title, involved disputed claims to a right-of-way easement that separated the plaintiffs’ and individual defendants’ properties. See 541 So. 2d 707, 708 (Fla. 4th DCA 1989). On appeal, the Court found that all property owners adjoining the easement constituted indispensable parties. *Id.*

CONCLUSIONS

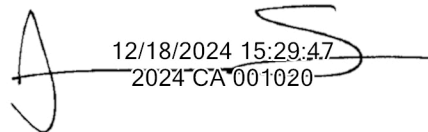
The Court finds that the holding in *Burt v. Richards* applies here. Specifically, Defendant Escambia County and all the lot-owners abutting the easement constitute indispensable parties. See *Burt*, 541 So. 2d at 708. The easement encumbering the 64 Gulf-front lots serves as a continuous east-west corridor for beach access of the owners of the 64 Lots as well as the general public. Because Escambia County is the sole defendant, only the interest of the general public is currently represented in this action. As such, the Court would not be able to grant the relief requested by the Plaintiffs without creating gaps in the easement and affecting the access rights of the remaining 64 lot-owners. Additionally, allowing the lawsuit to proceed without joining the remaining 64 lot-owners would subject the Defendant to multiple suits with possible inconsistent results. Significantly, Plaintiffs’ attorney filed six separate lawsuits raising substantially identical claims regarding the easement, which necessarily creates the potential for inconsistent

results. The Court rejects the Plaintiffs' argument that an examination of the chain-of-title and use for each individual lot that Plaintiffs own is necessary and sufficient to dispose of Plaintiffs' claims. Accordingly, all 64 lot-owners are indispensable parties and should be joined in this suit.

WHEREFORE, it is ORDERED AND ADJUDGED as follows:

1. The Defendant's motions to dismiss for failure to join indispensable parties are GRANTED without prejudice.
2. Plaintiffs are granted leave to amend their complaint under Case No. 2024 CA 001011 with all indispensable parties joined as either plaintiffs or defendants.
3. Any amended complaint must be filed within sixty (60) days from the date of hearing on November 19, 2024.

DONE AND ORDERED in Chambers, Pensacola, Escambia County, Florida.

 12/18/2024 15:29:47
2024 CA 001020

signed by CIRCUIT COURT JUDGE JAN SHACKELFORD 12/18/2024 03:29:47 XoYfiG55

Conformed copies:

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