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VEX Properties v. S. States Utilities, Inc., 792 So. 2d 504 (Fla. Dist. Ct. App. 2001)

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and others similarly affected, and therefore, the statute required a public hearing before any change could take place.

Sarah A. Hubbard

FLORIDA

VLX Properties v. S. States Utilities, Inc., 792 So. 2d 504 (Fla. Dist. Ct. App. 2001) (holding the grantee, VLX Properties, acquired property subject to a flowage easement, to which its grantor agreed by way of a joinder agreement and, thus, VLX's action for inverse condemnation must fail).

This case arose out of an inverse condemnation action between the possessor of a certain property interest and the holder of a flowage easement across the property. Appellant VLX Properties, Inc. ("VLX") owned the property, which included a portion of James Pond—the property at issue in this case. VLX obtained its interest from Lawyers Title Investment Fund ("LTIF"). However, prior to granting a portion of the pond to VLX, LTIF conveyed a portion to Glen Abbey Golf Course, Inc. ("Glen Abbey"). LTIF and other adjacent landowners retained ownership of the remaining portion of the pond.

For many years Glen Abbey used wells to irrigate the golf course. However, once reclaimed water became available, Glen Abbey was administratively prohibited from continuing to draw groundwater and thus was required to use reclaimed water to irrigate its golf course. Glen Abbey contracted with Appellee Southern States Utilities, Inc. ("Southern Utilities") to provide the irrigation services. Subsequently, LTIF conveyed its remaining portion of the pond to VLX.

The reclaimed water flowed over both the portion of the pond LTIF conveyed to Glen Abbey and that portion which LTIF later conveyed to VLX. Thus, VLX sought compensation by way of inverse condemnation because the water was permitted to flow over its portion of the pond. In essence, VLX contended a dam should have restricted the water's flow. The primary issue was whether VLX's grantor, LTIF, agreed to the flowage easement into James Pond. The Florida Court of Appeals held the facts were sufficient to find LTIF joined in the agreement between Glen Abbey and Southern Utilities and, thus, consented to the flowage easement into James Pond. In order to make this determination the court examined the agreement between Glen Abbey and Southern Utilities and its effect on contiguous property owners.

Since Glen Abbey only owned a portion of James Pond, it was essential LTIF joined in the agreement between Glen Abbey and Southern Utilities. LTIF also had to obtain flowage easements from all the other owners of James Pond who were not involved in the LTIF/Glen Abbey sales agreement. These two requirements were

accomplished, and the parties recorded the joinder agreement and flowage easements in the public records. The joinder agreement between LTIF and Glen Abbey explicitly acknowledged the pond's designated use as storage for the reclaimed water "on and/or adjacent" to the property subject to the agreement.

VLX contended Glen Abbey should have obtained a separate flowage easement from LTIF. The court disagreed, finding the joinder agreement clearly illustrated that LTIF consented to the flowage easement across the entire pond. The court stated, "[i]t is simply too fanciful to imagine that [LTIF] intended that water be placed into the pond yet not flow beyond the golf course's invisible boundary." The court also emphasized that if LTIF intended to sell a flowage easement over its adjacent portion of the pond, it would have included this in the joinder agreement with Glen Abbey. VLX further argued that since Glen Abbey did not own portions of the property included in the Delivery Agreement between itself and Southern Utilities, Glen Abbey did not have the right to grant an easement over the additional property. The court agreed Glen Abbey could not grant an easement over property it did not own, but stated, "Glen Abbey could agree by contract to provide storage over unowned contiguous lands if the owners of the contiguous lands agreed." Here the owners of the contiguous lands consented to the agreement between Glen Abbey and Southern Utilities and "by its terms the Delivery Agreement contemplated that ponds contiguous to the golf course would be utilized to provide storage for the water to be used in the irrigation."

In conclusion, the court held LTIF owned a sufficient interest in the contiguous property to subject it to storage of reclaimed water. LTIF's subsequent conveyance to VLX was subject to such previous grant and as such VLX's inverse condemnation action must fail.

Lucia Padilla

IDAHO

United States v. Idaho, 23 P.3d 117 (Idaho 2001) (affirming the Snake River Basin Adjudication District Court's summary judgment denying the United States an implied reserved water right within the Deer Flat National Wildlife Refuge).

In 1937, the United States created the Deer Flat Migratory Waterfowl Refuge and the Snake River Migratory Waterfowl Refuge along the Snake River in Idaho. Contained within both refuges were several islands along the Snake River that provided habitat for native birds. In 1963, the United States consolidated the two refuges into the Snake River National Wildlife Refuge. In 1992, the United States filed claims for reserved water rights. Amended claims followed in 1994