

cc: Shelley Parpan
& plaintiffs
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FREDERICK H. PARPARD and
SHELLEY H. PARPARD;
BEVERLY A. WARNKE;
MARK MAHER;
THOMAS WARNKE;
TODD A. BERTOSSI;
GROVER P. JONES and
BONNIE K. JONES;
JOHN V. YULL;
ROSE BISCONTI;
GLEN WESSEL; and
ANAND PATEL, LLC,

CASE NO. 502004CA003168XXXXMB AA
CIVIL DIVISION

Plaintiffs,

v.

MICHAEL M. SINGER
and DONALD TRACEY,

Defendants.

**FINAL JUDGMENT AS TO DONALD TRACEY
PURSUANT TO STIPULATION FOR SETTLEMENT**

THIS CAUSE came to be heard upon the attached Stipulation for Settlement entered into by and among Plaintiffs, by and through their undersigned counsel, and Defendant, DONALD TRACEY, as follows:

The Plaintiffs and Defendant, Donald Tracey, all reside on or own property located on Lakeside Harbour Drive in Boynton Beach, Florida. In October, 1947, the owners of the properties located on each side of what is now Lakeside Harbour Drive decided to create a "roadway for themselves, their heirs, executors, administrators, assigns and successors in title ..." The then-property owners properly executed an Easement and Contract, which was recorded in Book 824, Page 26, of the Public Records of Palm Beach County.

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The road right-of-way created by the Easement extended from Dixie Highway, as then constituted, "to the waters of Lake Worth," and also "projected eastward upon any fill which may be made in the waters of Lake Worth abutting the center line of the roadway above described." The Easement established the right to use and construct the roadway and the "cost and burden of maintenance of such roadway" runs as a covenant with the title to the properties abutting the road, extending to the property owners, their heirs, executors, administrators, assigns and successors in title.

There is presently a dock located at the eastern-end of Lakeside Harbour Drive, which has been in existence since the late 1950's or early 1960's. As a result of damage, the dock is presently the subject of a Boynton Beach Code Compliance proceeding.

Plaintiffs believe and maintain that, as a result of the Easement, the dock is a community dock that all Lakeside Harbour Drive property owners are entitled to use and enjoy, and that each property owner has an ownership interest in the dock. Plaintiffs further believe and maintain that, as a result of the Easement, they have easement rights over that portion of Lakeside Harbour Drive which abuts Defendant Tracey's property.

Donald Tracey has in the past challenged the Plaintiffs' Easement rights to the dock and adjoining property. Plaintiffs filed the instant action to obtain a declaration of their rights under the Easement. Defendant Tracey answered the Second Amended Complaint, and disputed the Plaintiffs' claims.

The Plaintiffs and Donald Tracey reached a stipulation for settlement of the issues raised in these proceedings.

Based on the foregoing stipulated facts, which the parties have stipulated and agreed are true and correct, it is hereby ORDERED and ADJUDGED that:

1. Plaintiffs and Tracey have and shall continue to have rights under the Easement that include an ownership interest in the dock such that each Plaintiff and Tracey have the right to use and access the dock free from interference.

2. The rights under the Easement include easement rights over those portions of Lakeside Harbour Drive abutting each owners' property, including Defendant Tracey's property.

3. Tracey shall cooperate with (and by virtue of the Stipulation has already consented to) the continuing maintenance, repair, and/or construction of the dock, and to further cooperate in the repair of the existing dock or construction of a reconfigured dock by signing any necessary applications for permits and other governmental approvals, authorizations and/or forms. In the event that Donald Tracey refuses to sign necessary applications, the Stipulation shall serve to constitute his written consent and a copy of the Stipulation may be submitted to appropriate authorities as such. Except as may be agreed upon in the future among the parties subject to the Easement, the reconfigured dock shall not exceed the size and/or square footage of the existing dock, but may be relocated within the easement boundaries as may be necessary for reconstruction and/or governmental approvals. The Plaintiffs have agreed to discuss with Tracey, in mutual good faith, Tracey's stated intention to extend the dock for purposes of installing a boat slip, but the agreement to discuss is not intended to constitute and shall not constitute any prior agreement or consent on the part of the Plaintiffs to Tracey's intention to extend the dock.

4. Tracey shall cooperate with (and by virtue of the Stipulation has already consented to) the continuing maintenance, repair, repaving and/or landscaping of Lakeside Harbour Drive, including but not limited to the entrance gate and that portion of Lakeside Harbour Drive which abuts Defendant Tracey's property. Upon execution of the Stipulation by Donald Tracey, no further consent, written or oral, shall be necessary.

5. The terms of the Stipulation and this Final Judgment shall be binding upon the heirs, successors and assigns of the parties herein.

6. The parties shall bear their own attorney's fees and expenses in connection with the above-captioned litigation.

7. In the event of any further proceedings related to an alleged breach, construction, interpretation, or enforcement of the Stipulation or this Final Judgment, the prevailing party shall be entitled to payment of reasonable attorney's fees and costs.

DONE and ORDERED in West Palm Beach, Florida, this ____ day of February, 2006.

KAREN MILLER
Circuit Judge

Copies furnished:

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