IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

100 EMERALD BEACH WAY LC,	**CIVIL DIVISION**
Plaintiff,	**CASE NO.: 50-2023-CA-10818 (AI)**
v.	
JOHN THORNTON and MARGARET THORNTON,	
Defendants.	

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ORDER GRANTING DEFENDANTS' DISPOSITIVE MOTION, DENYING PLAINTIFF'S RELATED CROSS-MOTION AND CLOSING CASE

THIS CAUSE came before the Court for a special-set hearing on January 19, 2024, upon the following: (1) the Omnibus Motion to Dismiss, for Summary Judgment and/or to Stay This Refiled Action Pending Plaintiff's Payment of Costs from Earlier Action (the "Motion") filed by Defendants, John Thornton and Margaret Thornton (the "Thorntons"); and (2) the Cross-Motion for Summary Judgment (the "Cross-Motion") filed by Plaintiff, 100 Emerald Beach Way LC ("100 Emerald").[1] The Court has reviewed the Parties' filings[2], has heard argument of counsel and is otherwise fully-advised in the premises. For the reasons set forth below, it is hereby:

ORDERED AND ADJUDGED that the Thorntons' Motion is **GRANTED** as set forth herein, and 100 Emerald's Cross-Motion is **DENIED**.

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[1] In addition to the Motion and Cross-Motion, the Parties responded to the opposing motion and replied in support of their own motion.

[2] In their filings, the Parties requested that the Court take judicial notice of certain court/administrative records. At the hearing, when asked by the Court, the Parties agreed that the Court may take the requested judicial notice.

INTRODUCTION

The history of this matter is particularly relevant to the issues at hand, and the pertinent facts are not in dispute.[3] 100 Emerald and the Thorntons own neighboring lots in the Emerald Subdivision in the Town of Palm Beach. (Compl. ¶¶ 2-4.) 100 Emerald owns Lot 3, the Thorntons own Lot 2 and non-party 1230 LC owns Lot 1. (*Id.* ¶¶ 18-23.)

As set forth in the operative Replat of the Replat, a street (Emerald Beach Way f/k/a Ocean Woods Drive) runs along the North portion of Lots 1 and 2 and culminates in a *cul de sac* on Lot 2. (Compl. ¶ 16, Ex. D.) 1230 LC (as owner of Lot 1) and the Thorntons (as owners of Lot 2) each own the portion of Emerald Beach Way that is located on their respective Lots. (*Id.*) 100 Emerald (as owner of Lot 3) does not own any portion of Emerald Beach Way. (*Id.*) Rather, 100 Emerald holds an Ingress and Egress Easement (the "Easement") over Emerald Beach Way (f/k/a Ocean Woods Drive):

> Ingress and Egress Easement - The ingress and egress easement shown as Ocean Woods Drive is hereby dedicated as a private street for ingress and egress to the residents of this subdivision and for construction and maintenance of utilities and drainage.

(*Id.*)

In addition to Lot 2, the Thorntons own another property at 1236 South Ocean Boulevard, which abuts the Emerald Subdivision to the South. (Compl. ¶¶ 3, 4, 27.) On December 28, 2016, the Thorntons unified the titles of these properties and memorialized that action in a Unity of Title Agreement with the Town of Palm Beach. (attached as Ex. A.) Its express effect was to "join both Properties [*i.e.*, Lot 2 and 1236 South Ocean Boulevard] together as a single residence" such that the "Properties shall be considered as a single parcel of land." (*Id.*) Further, the Agreement "shall

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[3] The undersigned was the presiding judge (either individually or as a member of a three-judge appellate panel) in the other proceedings summarized herein.

be a covenant running with the Properties" and, because it "shall be recorded in the public records," it "shall constitute notice to all persons whomsoever of the terms and conditions herein set forth." (*Id.*) (emphasis added).

The Unity of Title Agreement was publicly recorded on December 29, 2016 (approximately six-and-a-half years before this lawsuit was filed). (*Id.*) Under Florida law, 100 Emerald was placed on notice of the Unity of Title Agreement as of the recording date. *See, e.g.*, Fla. Stat. § 695.11 ("All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida . . . shall be notice to all persons."); *Mayfield v. First City Bank of Fla.*, 95 So. 3d 398, 402 (Fla. 1st DCA 2012) (holding that, pursuant to Fla. Stat. § 695.11, "constructive notice attached at the time the [documents] were recorded"). Notwithstanding the public recording, in prior litigation between the Parties, 100 Emerald has acknowledged being on notice of same as early as November 1, 2017 (nearly six years before this lawsuit was filed). (Mot. at Ex. C.)

In its Complaint in this lawsuit, 100 Emerald asserts three claims: that the Thorntons are not "residents" of the Emerald Subdivision (Count I) and that the Thorntons have "overburdened" (Count II) and "encroached" (Count III) on the Easement. (*See* Compl.) These issues were addressed or, at a minimum, could have and should have been addressed, in prior litigation between the Parties. That litigation is summarized below.

I. 2017 Lawsuit and Related Appeals

On July 21, 2017, 100 Emerald filed a lawsuit against the Thorntons in Palm Beach County Circuit Court, Case No. 50-2017-CA-008154 (AI). (Mot. at Ex. B.) The initial Complaint in that case was premised on the Replat of the Replat (attaching same as an exhibit) and sought *inter alia*

declaratory and injunctive relief with respect to the Easement. (*Id.*) Therein, 100 Emerald alleged that the Thorntons were not residents of the Emerald Subdivision.

> 11. 200 Emerald Beach Way [Lot 2] is a vacant lot that is directly to the west of 100 Emerald Beach Way. The Thorntons do not reside at 200 Emerald Beach Way and instead use it mainly as an area for numerous dogs to run and bark without proper control or supervision.
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> 12. Defendants own an ocean-front mansion located at 1236 S. Ocean Boulevard, Palm Beach, Florida 33480, which is directly south of both 100 Emerald Beach Way and 200 Emerald Beach Way. Upon information and belief, the Thorntons reside at 1236 S. Ocean Boulevard.

(*See* Mot. at Ex. B.)[4] In its Second Amended Complaint (deemed filed on November 6, 2017), 100 Emerald reiterated that claim, specifically contesting the Unity of Title Agreement:

> 33. ... The Thorntons were not and have never been residents of the Subdivision. . . .
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> 35. The Thorntons entered into a Unity of Title Agreement with the Town of Palm Beach, *solely for Town of Palm Beach zoning purposes*, which for zoning purposes considers the property upon which the Thorntons' residence is located (1236 S. Ocean Boulevard) and the vacant lot (Lot 2 of the Subdivision) as a "single parcel of land." However, that Unity of Title Agreement cannot affect the title rights of the lot owners within the Subdivision, does not make the Thorntons' residence a part of the Subdivision and cannot extend property rights dedicated to the residents of the Subdivision to residents of property outside the Subdivision.
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> 36. The Thorntons and the Town of Palm Beach may by agreement between them regard—the [sic] Thorntons' residence and Lot 2 of the Subdivision as a single parcel of land for zoning purposes, but only Lot 2 is within the Subdivision and the Thorntons do not reside on the vacant lot.

(Mot. at Ex. C.)

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[4] 100 Emerald raised similar allegations (or variations thereof) in many of its other cases, discussed *infra*. (*See, e.g.*, Mot. at Ex. L, ¶¶ 4-5; Mot. at Ex. O, ¶¶ 4-5, 12-13; Mot. at Ex. Q, ¶¶ 8-9); Mot. at Ex. R, ¶¶ 8-9; Mot. at Ex. U ¶ 4 and page 30.)

On April 11, 2019 (more than four years before filing this lawsuit), 100 Emerald filed its Fifth Amended Complaint. (Mot. at Ex. E.) In Count IV, 100 Emerald asserted a claim for "Declaratory and Injunctive Relief Regarding Encroachment upon the Access Easement." (*Id.* at ¶¶ 125-137.) Therein, 100 Emerald alleged that the "Thorntons are wrongfully and unlawfully interfering with Plaintiff's rights to the written ingress and egress easement by constructing a driveway, landscaping and other improvements which encroach over Plaintiff's 35-foot written ingress and egress easement." (*Id.* ¶ 127.) 100 Emerald makes a similar allegation in this lawsuit. (Compl. ¶ 35.)

On December 13, 2019, 100 Emerald filed its Sixth Amended Complaint. (Mot. at Ex. F.) In Count IV, 100 Emerald again asserted a claim for "Declaratory and Injunctive Relief Regarding Encroachment upon the Access Easement." (*Id.* ¶¶ 124-136.) Count IV of the Sixth Amended Complaint is virtually identical to Count III of the Complaint in this lawsuit. (*Compare id. with* Compl. ¶¶53-62) On April 29, 2020, the Thorntons moved for summary judgment on Count IV of the Sixth Amended Complaint, arguing that the status quo with respect to the Easement (and any alleged use/encroachment thereon) had remained the same since 2008 and, in any event, did not unreasonably interfere with 100 Emerald's ingress and egress easement. (*Id.*). 100 Emerald did not respond to that motion; instead, on September 15, 2020, 100 Emerald voluntarily dismissed that claim without prejudice. (Mot. at Ex. H.)

On January 7, 2021, the Court entered an Order, which permanently enjoined 100 Emerald and its guests/invitees from parking or stopping on Emerald Beach Way. (Mot. at Ex. I.) Therein, the Court recognized that Emerald Beach Way was the Thorntons' private property and reaffirmed its earlier rulings that 100 Emerald possessed only an ingress and egress easement over same. (*Id.*) The Court's ruling expressly extended to the Thorntons' entire unified property:

> 100 LC is hereby permanently enjoined from (i) parking on, stopping on, occupying, or otherwise using for its own purposes the Thorntons' property at 1236 (which encompasses the relevant part of EBW [Emerald Beach Way]) in Palm Beach; and/or (ii) causing or inviting its guests, vendors, tradespeople, and/or business invitees to do so. 100 LC shall take all reasonable steps to ensure that its guests, vendors, tradespeople, and/or business invitees stop/park on and within its property at 100 Emerald Beach Way ("100 EBW") and not on any segment of the Thorntons' property.

(*Id.* at 7.) On June 8, 2022, the Fourth District Court of Appeal affirmed in a written opinion:

> We affirm the trial court's rulings without discussion except to briefly explain the reason why we affirm the trial court's decision that the private easement for ingress and egress in this case [prohibits] 100 LLC and its invitees from stopping or parking on the easement property or engaging in other activities (such as unloading vehicles). Based on the evidence presented, we agree that the trial court properly found: no implied or secondary easement rights for such activities; the easement property is not a public or private street; and 100 LC is estopped from claiming the property has such status.

100 Emerald Beach Way LC v. Thornton, 341 So. 3d 346, 346 (Fla. 4th DCA 2022). The Fourth District further noted that the Thorntons "own the easement property [Emerald Beach Way] as private property." *Id.* at 346 n.1.

On June 4, 2021, the Court entered an Order, which permanently enjoined 100 Emerald from placing garbage and landscaping debris on Emerald Beach Way. Therein, the Court cited extensively to its prior Easement rulings, reiterated that 100 Emerald possessed only an ingress and egress easement over Emerald Beach Way and expressly referenced the Thorntons' unified "private property at 1236 South Ocean Boulevard." (Mot. at Ex. J.) In other words, given the Unity of Title, the Court did not distinguish between the Thorntons' rights as owners of Lot 2 as distinct from the Thorntons' rights as owners of 1236 South Ocean Boulevard. On June 30, 2022, the Fourth District Court of Appeal *per curiam* affirmed. *100 Emerald Beach Way LC v. Thornton*, 341 So. 3d 1124 (Fla. 4th DCA 2022) (table).

On October 3, 2022, the Court entered an Omnibus Final Judgment, which disposed of all remaining claims; attached several of the Court's prior rulings and reaffirmed that the ingress and egress easement over Emerald Beach Way is "exclusively limited to affording such ingress and egress" and "no one - - other than the Thorntons and/or their guests/invitees - - may park on, stop on, occupy, or otherwise use the Thorntons' property at 1236 (which encompasses the relevant part of EBW [Emerald Beach Way]." (Mot. at Ex. K at 2.) The Court further found that "no implied and/or secondary easement affords any right to park on, stop on, occupy, or otherwise use the Thorntons' property on and along EBW and/or at or on any portion of 1236." (*Id.*) Again, the Court did not distinguish between the Thorntons' rights as owners of Lot 2 as distinct from the Thorntons' rights as owners of 1236 South Ocean Boulevard.

In one of the rulings attached to the Omnibus Final Judgment, the Court applied a four-year statute of limitations to 100 Emerald's easement claims, rejected 100 Emerald's purported "distinction between an encroachment on an easement and use of an easement [as] a distinction without a difference or relevance"; and noted that an "encroachment by the servient estate that prevents use of an easement is indistinguishable from outright refusal by the servient estate to allow use of the easement for statute of limitations purposes." (Mot. at Ex. K, Ex. B) (citing *Crigger v. Fla. Power Corp.*, 436 So. 2d 937 (Fla. 5th DCA 1983) and noting its citation in *Conrad v. Young*, 10 So. 3d 1154 (Fla. 4th DCA 2009)). 100 Emerald did not appeal the Omnibus Final Judgment.

II. *Certiorari, Mandamus* and Other Proceedings

On November 5, 2018, 100 Emerald filed a *mandamus* petition against the Town of Palm Beach, seeking the issuance of parking permits on Emerald Beach Way. (Mot. at Ex. L.) The Court denied the petition in a Final Judgment. (Mot. at Ex. M.) In rejecting 100 Emerald's position, the Final Judgment cited with approval the testimony of Craig Hauschild (Civil Engineer for the Town of Palm Beach), who testified that the Town does not issue right-of-way permits to park on private property belonging to other residents (*i.e.*, the portion of Emerald Beach Way owned by the Thorntons). (*Id.* at Findings of Fact ¶¶ 8(c), 20-21 and Conclusions of Law ¶ 7.) 100 Emerald appealed that decision but voluntarily dismissed that appeal. (Mot. at Ex. N.)

On November 20, 2018, 100 Emerald filed a Complaint against the Thorntons and the Town of Palm Beach, seeking to prevent the Thorntons from constructing a "Tennis Complex" on Lot 2. (Mot. at Ex. O.)[5] In that Complaint, 100 Emerald admitted to being on notice of the Thorntons' application for a building permit for said construction as early as June 27, 2017 (nearly six years before this lawsuit was filed), as 100 Emerald submitted a written objection to that application. (*Id.* at ¶ 16.) The Town of Palm Beach approved the application on June 28, 2017. (*Id.* ¶ 17.) On January 7, 2021, the parties filed a Joint Stipulation of Dismissal with Prejudice of the action. (Mot. at Ex. P.)

Meanwhile, on April 4, 2019, 100 Emerald filed a *certiorari* petition against the Palm Beach Town Council and the Thorntons, seeking to challenge the Town's approval of the construction of tennis courts and a designated parking area on Lot 2. (Mot. at Ex. Q.) In pertinent part, the petition stated that, on May 24, 2017 (more than six years before this lawsuit was filed),

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[5] As discussed *infra*, the "Tennis Complex" consisted of tennis courts and a designated parking area. (Mot. at Ex. Q.)

Mrs. Thornton filed an application with the Town to build a "commercial tennis complex" and a "supplemental parking lot than can hold up to 10 vehicles." (*Id.* at ¶ 11.) The petition further stated that, on June 27, 2017 (nearly six years before this lawsuit was filed), 100 Emerald filed an objection to that application. (*Id.* at ¶ 16.) Finally, the petition stated that, on December 28, 2018 (more than four years before thus lawsuit was filed), 100 Emerald appealed that zoning decision, expressly acknowledging that "the two tennis courts and separate staff parking area are ALREADY CONSTRUCTED" and "BEING USED." (*Id.* at ¶ 47) (emphasis in original). On June 14, 2019, 100 Emerald filed another *certiorari* petition against the Palm Beach Town Council and the Thorntons, asserting a second challenge to the Town's approval of the construction of tennis courts and a designated parking area on Lot 2. (Mot. at Ex. R.) The two *certiorari* petitions were consolidated and denied *per curiam* on June 24, 2020. (Mot. at Ex. S.) 100 Emerald sought second-tier *certiorari* review at the Fourth District Court of Appeal, which was denied *per curiam* on December 23, 2020. (Mot. at Ex. T.)

On September 20, 2019, 100 Emerald filed a *certiorari* petition against the Palm Beach Town Council and the Thorntons, seeking to challenge the approval of "No Parking" signs on Emerald Beach Way. (Mot. at Ex. U.) 100 Emerald's petition was denied *per curiam* on June 16, 2021. (Mot. at Ex. V.)

III. The Current Lawsuit

On May 31, 2023, 100 Emerald filed its Complaint in this lawsuit. In Count I, 100 Emerald seeks declaratory and injunctive relief regarding the Thorntons' use of Emerald Beach Way and Lot 2. (Compl. ¶¶ 29-40.) 100 Emerald contends that the Thorntons do not reside on Lot 2 and have no right to use Emerald Beach Way. (*Id.*) In Count II, 100 Emerald seeks declaratory and injunctive relief regarding the Thorntons' alleged "overburdening" of Emerald Beach Way through

their use of same to access Lot 2 and the unified 1236 Property. (Compl. ¶¶ 41-52.) In Count III, 100 Emerald seeks declaratory and injunctive relief regarding the Thorntons' alleged "encroachment" onto Emerald Beach Way by constructing a driveway, landscaping and other improvements. (Compl. ¶¶ 53-62.)

FINDINGS AND CONCLUSIONS

The Parties raised numerous arguments/counter-arguments in their written submissions and at the special-set hearing. As explained below, the Court finds that 100 Emerald's claims are barred by (1) the doctrines of res judicata, collateral estoppel and the rule against splitting causes of action; and (2) the statute of limitations.[6]

I. 100 Emerald's Claims are Barred By Res Judicata, Collateral Estoppel and/or the Rule Against Splitting Causes of Action.

Collateral estoppel (also known as issue preclusion) "precludes re-litigating an issue where the same issue has been fully litigated by the parties or their privies, and a final decision has been rendered by a court." *Pearce v. Sandler*, 219 So. 3d 961, 965 (Fla. 3d DCA 2017). Collateral estoppel "applies where: (1) the identical issues were presented in a prior proceeding; (2) there was a full and fair opportunity to litigate the issues in the prior proceeding; (3) the issues in the prior litigation were a critical and necessary part of the prior determination; (4) the parties in the two proceedings were identical; and (5) the issues were actually litigated in the prior proceeding." *Id.* In addition, "collateral estoppel 'may be employed to bar prosecution or argumentation of facts necessarily established in a prior proceeding.'" *Campbell v. State*, 906 So. 2d 293, 295 (Fla. 2d DCA 2004) (quoting *State v. Strong*, 593 So. 2d 1065, 1067 (Fla. 4th DCA 1992)).

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[6] At the hearing, the Court inquired whether dismissal pursuant to Fla R. Civ. P. 1.140(b) or summary judgment pursuant to Fla. R. Civ. P. 1.510(a) was the proper procedural mechanism to dispose of 100 Emerald's claims. In an abundance of caution, the Court relies on both rules independently/alternatively for its rulings.

Res judicata (also known as claim preclusion) bars a later-filed lawsuit if (A) a judgment on the merits was rendered in an earlier lawsuit; and (B) four "identities" exist between the earlier and later lawsuits. *Pearce*, 219 So. 3d at 965. These four "identities" are "(1) identity in the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the actions; and (4) identity of the quality or capacity of the persons for or against whom the claim is made." *Id.* "Importantly, the doctrine of res judicata not only bars issues that were raised, but it also precludes consideration of issues that could have been raised but were not raised in the first case." *Id.* Thus, the "mere changing of the theory on which the plaintiff proceeds does not constitute a distinct and different cause of action obviating the defense of res judicata." *Signo v. Fla. Farm Bureau Cas. Ins. Co.*, 454 So. 2d 3, 5 (Fla. 4th DCA 1984).

Finally, res judicata applies to all "theories of recovery and defenses that could have been presented in the prior litigation." *Bay Fin. Sav. Bank, F.S.B. v. Hook*, 648 So. 2d 305, 307 (Fla. 2d DCA 1995). In other words, the "doctrine of res judicata makes a judgment on the merits conclusive 'not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.'" *AMEC Civil, LLC v. State, Dept. of Transp.*, 41 So. 3d 235, 238–39 (Fla. 1st DCA 2010) (quoting *Kimbrell v. Paige*, 448 So. 2d 1009, 1012 (Fla. 1984)). Thus, courts "properly look not only to the claims actually litigated in the first suit, but also to 'every other matter which the parties might have litigated and had determined, within the issues as [framed] by the pleadings or as incident to or essentially connected with the subject matter' of the first litigation." *AMEC Civil*, 41 So. 3d at 239 (alteration in original) (quoting *Zikofsky v. Marketing 10, Inc.*, 904 So. 2d 520, 523 (Fla. 4th DCA 2005)).

Relatedly, Florida courts adhere to the rule against splitting causes of action. That rule "is an aspect of the doctrine of res judicata." *Brewster v. Castano*, 937 So. 2d 1268, 1269 n.1 (Fla. 2d DCA 2006) (citing *Dep't of Agric. & Consumer Servs. v. Mid–Florida Growers, Inc.*, 570 So. 2d 892, 901 (Fla. 1990)). The rule "makes it incumbent upon plaintiffs to raise all available claims involving the same circumstances in one action." *Id.* "If a party drops a claim in the first action and then later seeks to maintain a separate second action on the abandoned claim, the rule against splitting causes of action precludes that party from maintaining the second suit." *Lobato-Bleidt v. Lobato*, 688 So. 2d 431, 433 (Fla. 5th DCA 1997) (citing *Dade Cnty. v. Matheson*, 605 So. 2d 469 (Fla. 3d DCA 1992)).

With these principles in mind, the Court analyzes the operative Complaint in this case. The Complaint attaches and relies upon the Replat of the Replat of the Emerald Subdivision, just like 100 Emerald's Complaint in Case No. 50-2017-CA-008154 (AI), which was filed nearly six years prior on July 21, 2017. The Complaint seeks declaratory and injunctive relief regarding the Easement and the Thorntons' use of its private property, just like the multitude of prior proceedings outlined above.

100 Emerald argues that the prior lawsuits only concerned *100 Emerald's* use of the Easement - - not *the Thorntons'* use of the Easement. However, that is not supported by the record. The Parties litigated - - and the Court specifically adjudicated - - the Thorntons' rights to their unified property, specifically including the Easement and Emerald Beach Way. (Mot. at Exs. I, J, K, M, U, V.) Further, the Parties litigated - - and the Court determined - - the Thorntons' right to construct the tennis courts and parking area on Lot 2 (which includes the Easement). (Mot. at Exs. O through T.) The Court rejects the notion that the Thorntons are permitted to use Lot 2 for those purposes but are not also permitted to use that same Lot 2 (*i.e.*, Emerald Beach Way) to access

those facilities (either while they were being constructed or once constructed). In this way, 100 Emerald's reliance on *Tyson v. Viacom, Inc.*, 890 So. 2d 1205 (Fla. 4th DCA 2005), is misplaced. There, the "final judgment in the prior case addressed only the whistle blower count" and did not address the claims for breach of contract or fraud in the inducement (or the distinct facts regarding same) that the plaintiff attempted to assert in a second lawsuit. *Id.* at 1210. Here, by contrast, the Court's prior rulings address the claims that 100 Emerald seeks to advance now.

In sum, the Court finds that the claims advanced by 100 Emerald now already were adjudicated in prior proceedings and are barred by the preclusion doctrines discussed above. *See, e.g.*, *Brown v. Quina*, 192 So. 2d 544, 546 (Fla. 1st DCA 1966) (in light of earlier lawsuit and appeal, the "question of the existence of the easement in the plaintiffs and the defendants conveyance in contravention thereof has become res judicata as to that point"); *Lockhart v. Dade Cnty.*, 157 Fla. 281, 284 (1946) ("In both suits the character of the ocean front road was in issue; both suits were for the same ultimate purpose; both suits involved the same parties or their successors in title; and both suits were projected for the purpose of quieting title to the lands in question. The issues squarely presented these questions, and this Court's opinion shows conclusively that they were adjudicated."); *Crigger v. Fla. Power Corp.*, 509 So. 2d 1322, 1323 (Fla. 5th DCA 1987) ("The issue of the size of the easement and extent of the taking was presented by the Criggers in the second appeal and not reversed. Therefore, the trial court's ruling was impliedly affirmed, became the law of the case and res judicata, is not properly the subject of a second challenge on this appeal, and it is affirmed.").

Notwithstanding, even if these issues had not already been adjudicated previously, they still would be barred because they could have been raised in earlier litigation. The Parties disputed this point. However, the Florida Supreme Court and the Fourth District Court of Appeal repeatedly

and expressly have recognized that res judicata extends to claims/issues that could have been raised in prior proceedings. *See, e.g.*, *Klement v. Kofsman o/b/o A.K.*, 337 So. 3d 27, 30–31 (Fla. 4th DCA 2022) ("Res judicata bars not only claims that were raised but also claims that could have been raised in the prior action."); *Phila. Fin. Mgmt. of San S.F., LLC v. DJSP Enters., Inc.*, 227 So. 3d 612, 619 n.2 (Fla. 4th DCA 2017) ("Res judicata applies in those circumstances because 'the doctrine of res judicata not only bars issues that were raised, but it also precludes consideration of issues that could have been raised but were not raised in the first case.'") (quoting *Fla. Dept. of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001)).

Further, res judicata extends to claims that are related to the first litigation. *See, e.g.*, *Aronowitz v. Home Diagnostics, Inc.*, 174 So. 3d 1062, 1066 (Fla. 4th DCA 2015) ("Res judicata also bars 'every other matter which the parties might have litigated and had determined, within the issues as [framed] by the pleadings or as incident to or essentially connected with the subject matter' of the first litigation.'") (quoting *Zikofsky v. Mktg. 10, Inc.*, 904 So. 2d 520, 523 (Fla. 4th DCA 2005), in turn quoting *Hay v. Salisbury*, 92 Fla. 446, 109 So. 617, 621 (1926) and *Tyson v. Viacom, Inc.*, 890 So. 2d 1205, 1214 (Fla. 4th DCA 2005) (Gross, J., concurring)); *Zamora v. Fla. Atl. Univ. Bd. of Trs.*, 969 So. 2d 1108, 1112 (Fla. 4th DCA 2007) ("The doctrine of res judicata makes a judgment on the merits conclusive 'not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.'") (quoting *Kimbrell v. Paige*, 448 So. 2d 1009, 1012 (Fla. 1984)).[7] Given these decisions, the Court rejects the "narrow" applications of these doctrines advanced by 100 Emerald. *See Signo v. Fla. Farm Bureau Cas. Ins. Co.*, 454 So. 2d 3

[7] The Court notes that all of these decisions post-date the Fourth District's decision in *Tyson v. Viacom, Inc.* and rely on earlier precedent from the Florida Supreme Court. Thus, the Court considers these decisions binding here.

(1984) (rejecting "narrow" application); *Zikofsky v. Mktg. 10, Inc.*, 904 So. 2d 520, 523 (Fla. 4th DCA 2005) (same).

100 Emerald's earlier pleadings both expressly and implicitly dealt with the issues/claims that 100 Emerald raises in its operative Complaint. 100 Emerald previously has challenged the Thorntons' status as "residents" of Lot 2 and the Emerald Subdivision. (*See, e.g.*, Mot. at Ex. B, ¶¶ 11-12; Mot. at Ex. C, ¶¶ 33-35, Mot. at Ex. L, ¶¶ 4-5; Mot. at Ex. O, ¶¶ 4-5, 12-13; Mot. at Ex. Q, ¶¶ 8-9); Mot. at Ex. R, ¶¶ 8-9; Mot. at Ex. U ¶ 4 and page 30.) 100 Emerald previously has challenged the Thorntons' use of Emerald Beach Way and their private property. (Mot. at Exs. B through V.) 100 Emerald is not permitted to relitigate these issues now.

Finally, given these prior lawsuits, the rule against splitting causes of action prevents 100 Emerald from re-asserting its encroachment claim (Count III) that it previously asserted but voluntarily dismissed. *Lobato-Bleidt v. Lobato*, 688 So. 2d 431, 433 (Fla. 5th DCA 1997) ("If a party drops a claim in the first action and then later seeks to maintain a separate second action on the abandoned claim, the rule against splitting causes of action precludes that party from maintaining the second suit."); *Dade Cnty. v. Matheson*, 605 So. 2d 469, 472 (Fla. 3d DCA 1992) ("Especially in cases where a party voluntarily drops a claim in a first action, and then later seeks to maintain a separate second action on the abandoned claim, the rule against splitting causes of action applies to preclude that party from maintaining the separate second suit on the abandoned claim. . . . Accordingly, the trial court's dismissal of Count I of the heirs' Complaint is affirmed.")

For the foregoing reasons, the Court finds that 100 Emerald's claims are barred by the doctrines of res judicata, collateral estoppel and/or the rule against splitting causes of action.

II. 100 Emerald's Claims are Barred by the Statute of Limitations

The above analysis is dispositive. However, 100 Emerald's claims also are time-barred by the statute of limitations. The Parties dispute whether a four-year or five-year statute of limitations applies. As noted above, in prior litigation, the Court applied a four-year statute of limitations in finding an Easement encroachment/use claim to be time-barred. (Mot. at Ex. K, Ex. B.) The Court continues to believe that a four-year statute of limitation applies. *See also Fredrick v. N. Palm Beach Cnty. Imp. Dist.*, 971 So. 2d 974, 978 (Fla. 4th DCA 2008) ("We agree with the parties and the trial court that the four-year statute of limitations should be applied" to claim based on the date of "recording of the Notice of Taxing Authority and the Ibis Declaration of Covenants, Restrictions and Easements in the public records"); *Pozo v. Sunset Real Estate Partners*, 322 So. 3d 1236, 1237 (Fla. 3d DCA 2021) ("Declaratory judgment actions are subject to a four-year statute of limitations") (quoting *Manatee Cnty. v. Mandarin Dev., Inc.*, 301 So. 3d 372, 375–76 (Fla. 2d DCA 2020), in turn citing Fla. Stat. § 95.11(3)(p)).

100 Emerald filed its Complaint on May 31, 2023. Thus, all claims that existed prior to May 31, 2019, are time-barred. Here, there is no dispute that the Unity of Title Agreement was entered into on December 28, 2016, and publicly recorded on December 29, 2016. (Mot. at Ex. A.) Although 100 Emerald legally was on notice of same as of the recording date, 100 Emerald expressly acknowledged its notice of same as of November 1, 2017. (Mot. at Ex. C.) If 100 Emerald wanted to challenge that Unity of Title Agreement - - and its stated legal effect as a "covenant running with the Properties" to "join both Properties [*i.e.*, Lot 2 and 1236 South Ocean Boulevard] together as a single residence" such that the "Properties shall be considered as a single parcel of land" (Mot. at Ex. A.) - - it could not wait nearly six years to do so.[8] 100 Emerald's

[8] As noted above, 100 Emerald's prior pleadings expressly referenced/challenged the Unity of Title Agreement. (Mot. at Ex. C.) Thus, 100 Emerald could have and did challenge the issue previously.

reliance on *Kilgore v. Killearn Homes Ass'n, Inc.*, 676 So. 2d 4 (Fla. 1st DCA 1996), is misplaced. There, the First District Court of Appeal interpreted a unity of title agreement and held that its purpose was determined by the express language of the document. *Id.* at 6. Given the express language of the Unity of Title Agreement, it was incumbent on 100 Emerald to raise its claims earlier. Now, its claims are time-barred.

Similarly, 100 Emerald has admitted to being on notice of the Thorntons' use of Lot 2 since as early as June 27, 2017, when it submitted a written objection to the Thorntons' permit application for construction of tennis courts and a parking structure. (Mot. at Ex. O, ¶ 16; Mot. at Ex. Q, ¶¶ 11, 16, 47.) As the Court previously recognized, a cause of action regarding use of and/or encroachment on an easement accrues when the "servient owners' use is hostile" or against the easement-holder's wishes. (Mot. at Ex. K, Ex. B (citing *Crigger v. Fla. Power Corp.*, 436 So. 2d 937 (Fla. 5th DCA 1983) and *Conrad v. Young*, 10 So. 3d 1154 (Fla. 4th DCA 2009).) Accordingly, 100 Emerald's claims accrued as of June 27, 2017, when the Thorntons' use became hostile to 100 Emerald. The Court rejects 100 Emerald's argument that its claims accrued later (*i.e.*, when construction was completed). However, even if that were the proper timeframe, 100 Emerald's claims still would be time-barred. 100 Emerald has acknowledged that, as of December 28, 2018 (more than four years before this lawsuit was filed), "the two tennis courts and separate staff parking area are ALREADY CONSTRUCTED" and "BEING USED." (Mot. at Ex. Q, ¶ 47.)

Similarly, the Court rejects 100 Emerald's reliance on the "continuing tort doctrine." 100 Emerald's claims accrued when they were on notice of the Thorntons' intended use of Emerald Beach Way. *See, e.g.*, *Suarez v. City of Tampa*, 987 So. 2d 681, 685–86 (Fla. 2d DCA 2008) (rejecting reliance on continuing tort doctrine to extend statute of limitations because "the listing of the claim against the City in the 1996 and 1997 bankruptcy filings and the undisputed evidence

of knowledge of harm in the March 1996 letter give the lie to the appellants' assertion that the trespass cause of action did not accrue until March 9, 1998"); *Black Diamond Props., Inc. v. Haines*, 69 So. 3d 1090, 1094 (Fla. 5th DCA 2011) ("Plaintiffs' reliance on the continuing tort doctrine to counter the statute of limitations defense is unavailing" because a "continuing tort is established by continual tortious acts, not by continual harmful effects from an original, completed act.").

Finally, by virtue of its Fifth Amended Complaint in its prior 2017 lawsuit, 100 Emerald was clearly on notice of the Thorntons' alleged "encroachment" into the Easement vis-à-vis construction of a driveway, landscaping and other improvements. (Mot. at Ex. E, ¶¶ 125-137.) That pleading was filed on April 11, 2019 - - outside the May 31, 2019, cut-off.

In sum, 100 Emerald's claims are time-barred by the statute of limitations.

CONCLUSION

The Thorntons' Motion is **GRANTED** as set forth herein, and 100 Emerald's Cross-Motion is **DENIED.** The Complaint is **DISMISSED WITH PREJUDICE** or, in the alternative, the Court enters **SUMMARY JUDGMENT** in favor of the Thorntons on all three Counts of the Complaint. 100 Emerald shall take nothing from this action, and the Thorntons shall go hence without day. The Court retains jurisdiction to consider motions for attorneys' fees and costs.

DONE AND ORDERED in Chambers in West Palm Beach, Florida this 20th day of February, 2024.

HONORABLE G. JOSEPH CURLEY, JR.
CIRCUIT COURT JUDGE

Copies to all counsel on attached Service List

SERVICE LIST: CASE NO. 50-2023-CA-10818 (AI)

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This instrument prepared by
M. TIMOTHY HANLON, ESQ.
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340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480

UNITY OF TITLE AGREEMENT

THIS UNITY OF TITLE AGREEMENT ("Agreement") is made and entered into as of this 28th day of December, 2016, by and between JOHN L. THORNTON and MARGARET B. THORNTON ("Owner") and the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida ("Town").

RECITALS

WHEREAS, Owner is the fee simple title holder of the following described property situated, lying and being in the Town of Palm Beach, Palm Beach County, Florida (the "Property" or "Properties"):

Parcel 1:
Being that part of the South 300 feet of the North 649 feet of Government Lot 1 in Section 2, Township 44 South, Range 43 East, Palm Beach County, Florida, lying between the waters of the Atlantic Ocean and the center line of Ocean Boulevard. Subject to the right-of-way of Ocean Boulevard.

Parcel Identification Number: 50-43-44-02-00-001-0051; and

Parcel 2:
Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, Page 177, of the Public Records of Palm Beach County, Florida.

Parcel Identification Number: 50-43-44-02-09-000-0020; and

WHEREAS, the Properties are physically contiguous and Owner is seeking a permit to join both Properties together as a single residence; and

WHEREAS, it is the desire of the Owner, in consideration of the receipt of such permit to create this Unity of Title, unifying the Properties into one single parcel so that the zoning requirements and other requirements of the Town will be met; and

WHEREAS, there are no mortgages or other encumbrances of record on the Property and all real estate taxes for the year 2016 and previous years have been paid.

EXHIBIT "A"

NOW, THEREFORE, in consideration of Ten and 00/100 ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Town agree as follows:

1. The Properties shall be considered as a single parcel of land.

2. No portion of said single parcel of land shall be sold, transferred, devised, leased or assigned separately from the whole of the Property, except upon prior written approval of the Owner and the Town.

3. In the event a request is made in the future that this Unity of Title be released, should the two parcels otherwise be independently in compliance with the Town's comprehensive plan, zoning ordinance and the regulations of the Town, the Town shall, upon written request by the Owner, their successors or assigns, execute a recordable termination of this Unity of Title.

4. This Agreement shall be a covenant running with the Properties and shall be binding upon the Owner, their successors and assigns, and shall constitute notice to all persons whomsoever of the terms and provisions herein set forth.

5. This Agreement shall be recorded in the public records of Palm Beach County, Florida.

IN WITNESS WHEREOF the parties have executed and entered into this Agreement as of the date set forth above.

Signed, sealed and delivered
In the presence of:

Witness
Print Name: SUSIE F. ROJAS

Witness
Print Name: ALBERTO DUMIT

Witness
Print Name: SUSIE F. ROJAS

Witness
Print Name: ALBERTO DUMIT

OWNER:

John L. Thornton

Margaret B. Thornton

Witness
Print Name: Cheryl Kleer

Witness
Print Name: Antonette M. Fabriz

TOWN:

TOWN OF PALM BEACH

By: _____
Thomas G. Bradford
Town Manager

ATTEST:

_____
Susan A. Owens
Town Clerk

RECOMMEND APPROVAL:

12/22/16

_____
Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

_____
John C. Randolph
Town Attorney

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 8th day of Dec., 2016, by JOHNL. THORNTON and MARGARET B. THORNTON, who are personally known to me or who have produced _____ as identification.

Notary Public State of Florida
Deborah L Chambliss
My Commission FF 909096
Expires 08/12/2019

_____
Signature of Notary Public

Deborah L. Chambliss
Printed Name of Notary Public

_____
Commission Number

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 28th day of December, 2016, by Thomas G. Bradford, the Town Manager of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

Kathleen Dominguez
Signature of Notary Public

KATHLEEN DOMINGUEZ
Commission # FF 995620
My Commission Expires
May 24, 2020

Kathleen Dominguez
Printed Name of Notary Public

FF 995620
Commission Number

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 28th day of December, 2016, by SUSAN A. OWENS, the Town Clerk of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

Kathleen Dominguez
Signature of Notary Public

KATHLEEN DOMINGUEZ
Commission # FF 995620
My Commission Expires
May 24, 2020

Kathleen Dominguez
Printed Name of Notary Public

FF 995620
Commission Number