

**IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR MANATEE COUNTY FLORIDA**

**CORTEZ ROAD INVESTMENTS AND
FINANCE, INC.,**

CASE NO: _____

Plaintiff,

v.

**MHC CORTEZ VILLAGE, LLC, a Foreign
Limited Liability Company,**

Defendant.

_____ /

COMPLAINT

Plaintiff, **CORTEZ ROAD INVESTMENTS AND FINANCE, INC.**, (“Plaintiff”), by and through the undersigned counsel, hereby files its Complaint against Defendant, **MHC Cortez Village, LLC**, a foreign limited liability company, as owner of the marina, condominium units, and common elements or amenities in Cortez Village Marina (“Defendant” or “Cortez Marina”), and for its causes of action, states as follows:

1. This is an action for damages greater than \$30,000, exclusive of interest, attorneys’ fees and costs, and both temporary and permanent injunctive relief against Defendant resulting from Defendant’s invitation and incitement to others to unlawfully enter upon and through real property in Manatee County, Florida.

2. Plaintiff is a Florida limited liability company which is authorized to conduct business in Florida and owns real property in Manatee County, Florida, which is the subject matter of this proceeding.

3. Defendant owns property and is conducting business in Manatee County, Florida, at a marina located in Manatee County, Florida at 12160 Cortez Road., Cortez, Florida 34215 (“Marina Property”). This property abuts or fronts Cortez Road and has vehicular access from Cortez Road.

4. Pursuant to Fla. Stat. § 47.011, venue is proper in Manatee County because it is where Defendant owns the property and leases the condominium units/slips, operates the commercial marina and Common Elements, where the causes of action accrued, and where the property in litigation is located.

5. This Court has original jurisdiction consistent with Florida Statutes Section 26.012(2)(a) as the damages exceed thirty thousand dollars and thus exceed the maximum jurisdiction of the Florida County Courts.

6. This Court has subject matter jurisdiction of the claims herein and personal jurisdiction of the parties hereto.

7. All conditions precedent to bringing this lawsuit have occurred or have been waived

8. Plaintiff’s counsel has agreed to provide legal representation in this matter in exchange for a reasonable fee.

CORTEZ ROAD INVESTMENT AND FINANCE, LLC, PROPERTY

9. Plaintiff is the owner and record title holder of real property situated within Manatee County, Florida, described in attached *Composite Exhibit A*.

10. The property described in *Exhibit A* includes the Private Canal and canal submerged bottom (“**Plaintiff’s Private Canal**”), which was constructed in the upland (being dry land) by one of Plaintiff’s predecessors in interest in the 1950s.

11. Plaintiff is the owner of the portion of the canal shown in green on the Manatee County Property Record Card, dated January 26, 2022, attached as *Exhibit B*. This ownership of the Private Canal is further described in the Quit Claim Deed, attached as *Exhibit C*.

12. The Plaintiff's chain of title with respect to the Private Canal is as follows:

- a. Deed: From the Cipriani family as individual members and on behalf of Cipriani trusts to Hunters Hill, Inc, April 5, 2002, OR Book 1767, page 1667;
- b. Warranty Deed: Hunters Hill, Inc. to Florida Land Enterprises, Inc. of the "Mangrove and Canal Property", recorded March 18, 2016, in OR Book 2611, p. 5800, of the Public Records of Manatee County Florida;
- c. Warranty Deed: Item Development, Inc. from Hunters Hill, Inc. to Florida Land Enterprises, Inc., recorded March 18, 2016, in OR Book 2611, p. 5807 of said Records;
- d. Quit Claim Deed: Hunters Hill, Inc. to Florida Land Enterprises, Inc., recorded March 18, 2016, in OR Book 2611, p. 5810 of said Records; and,
- e. Articles of Amendment changing the name of Florida Land Enterprises, Inc., to Cortez Road Investments and Finance, recorded in OR Book 2660, p. 983 of said Records.

Documents in the Plaintiff's chain of title are attached as composite *Exhibit D*.

13. There are no easements, licenses, or other use authorizations for navigation dedicated to the Cortez Marina, its predecessors in interest, or the general public found in the Plaintiff's chain of title.

DEFENDANT

A. Defendant's Ownership of the Marina Property

14. Bradenton Boat Club, the Defendant's predecessor in interest, was the owner of real property situated within Manatee County, Florida, Special Warranty Deed dated December 29, 2010. Bradenton Boat Club was a commercial condominium according to the declaration filed at OR Book 2304, page 3290.

15. Bradenton Boat Club received an Assignment of Agreement and Transfer of Dock Rights Agreement. This assignment pertained to the previous agreement between predecessors in interest, Mr. and Mrs. Cipriani, who granted Mr. and Mrs. Schorno the right and privilege to build a *single* dock and tie up a *single* boat, adjacent to lot 4 of the Cipriani second subdivision.

16. The public records of Manatee County do not indicate that any additional rights to build docks, tie up boats, or utilize the Private Canal were granted to Defendant's predecessors in interest or to the public. Therefore, Defendant's use is limited to a single dock, where that single dock is adjacent to Cipriani lot 4, with but one boat.

17. There is no authorization to increase the burden upon the Private Canal/Property to **350 vessels**, as has been done by Defendant.

18. In June of 2006, Bradenton Boat Club applied to Manatee County for authorization for the future installation of 22 wet slips and dry slips for 272 boats, along with an office. Permission was not requested or obtained from Plaintiff's predecessor to increase the burden upon the Private Canal/Property in this manner, much less in any manner.

19. In December of 2008, the Defendant received authorization from Manatee County to add 9,000 feet of additional facilities to the marina. At some later point, Defendant further increased its unauthorized usage of the Private Canal/Property to 344 boat racks, with 279 inside racked vessels, 10 wet slips, and 55 outside boat storage spots. The increase in use and burden to Plaintiff's Private Canal/Property from the additional vessels was also not authorized.

20. Bradenton Boat Club conveyed the property to Cortez Boat Club, LLC. a/k/a Cortez BBC, LLC, by a deed to Cortez BBC, LLC. There are no rights to utilize the Private Canal included in this deed.

21. Thereafter, Cortez Bradenton Boat Club, LLC transferred to Southern Marinas Bradenton, LLC the majority of the remaining units.¹

22. On March 4, 2021, Defendant filed a notice with the Division of Corporations changing its name from Southern Marina Bradenton, LLC to MHC Cortez Village, LLC.

B. Facilities Owned and Operated by the Defendant on the Marina Property

23. Defendant, MHC Cortez, LLC, owns all the commercial condominium units in the form of dry storage units and wet slip units, except one, on the Marina Property. Defendant operates for profit a marina which contains 344 boat racks, with 279 inside racked vessels, 10 wet slips, and 55 outside boat storage spots (“Slips”), which are designated in the Warranty Deeds as condominium units. Defendant owns the Common Elements or amenities associated with these units.

24. The slips are rented to third parties to store vessels, which also utilize the services and equipment of the Defendant to put vessels into the Private Canal.

25. Defendant’s operations include a fuel dispenser with a 4,000 gallon tank, commercial parking for motor vehicles, a marina office, and bath and shower facilities (“Common Elements”.² as set forth in the Warranty Deed from Cortez BBC, LLC to MHC Cortez, LLC, dated May 29, 2019. These facilities are accessible from Cortez Road, but vessels also use the Private Canal to access the fuel dispenser.

¹All units were transferred except for 8 privately owned units. Seven of the eight of the privately owned units were thereafter transferred to Southern Marinas Bradenton, LLC. One unit remains privately owned.

² The “common elements” of the Marina, are defined by Section 2.10 of the Declaration of Condominium (OR Book 2304, Page 3290) and described as such in Section 3.1.1 of the First Amendment to the Declaration (OR Book 2364, Page 1835). An undivided interest in the common elements is owned by each boat slip unit owner according to Section 5.1 of the Declaration. Since Southern Marinas Bradenton, LLC, now Cortez Marina, owns all of the boat slips units, other than the one owned by Steven Donatelli, all the common elements are owned between those two owners. Finally, there is the Assignment of Developer’s Rights to Southern Marinas Bradenton, LLC (OR Book 2784, Page 7603).

26. The Marina Property also includes a maintenance facility and boat brokerage which are accessible from Cortez Road (“sales/maintenance facilities”). However, the Defendant and its customers also utilize Plaintiff’s Private Canal to demonstrate and test boats.

C. Defendant is Inciting Others to Use the Private Canal

27. Defendant is inciting the lessees of the condominium units, customers of the Common Elements and the sales/maintenance facilities, and others to unlawfully enter upon the Plaintiff’s Property by leasing slips to third parties, selling fuel, testing vessels, and advising the third parties that they can utilize Plaintiff’s Property to access the Intracoastal Waterway. See Marina brochure attached as *Exhibit E*.

28. While these Common Elements are accessible from Cortez Road, the Defendant’s customers generally access the facilities through Plaintiff’s Private Canal.

29. The Defendant and its customers also utilize Plaintiff’s Private Canal to demonstrate and test boats associated with its boat brokerage and maintenance services.

30. Defendant does not have an easement, license, or agreement to use the Plaintiff’s Private Canal. Defendant, its lessees, and its customers do not otherwise have permission to use the Plaintiff’s Private Canal.

31. To ensure notice to all relevant parties of Plaintiff’s property rights, Plaintiff recorded a Notice of No Access Rights in the Public Records of Manatee County, Florida at OR Book 261, Page 5812, a copy of which is attached as *Exhibit F*.

32. Plaintiff has posted “Private Property, No Trespassing” signs at the boundaries of Plaintiff’s Private Canal on Plaintiff’s Property.

UNLAWFUL ENTRY

33. Pursuant to Section 82.01(5), Florida Statutes, “[u]nlawful entry’ means the entry into and possessing of real property, even if the possession is temporary or for a portion of the real property, when such entry is not authorized by law or consented to by a person entitled to possession of the real property.”

34. Representatives of the Defendants and their employees, lessees, customers, guests, and invitees (hereinafter collectively “lessees”) have also been and continue to willfully and unlawfully enter onto and through the Plaintiff’s Property without any authorization to do so.

35. Defendant leases boat slips to third parties with the unauthorized representation that the lessees can utilize Plaintiff’s Property. Defendant has directly and proximately benefited from the lessees’ unlawful entry upon, through, and possession of the Plaintiff’s Property, while causing damage to Plaintiff.

36. During low tides, Defendant’s lessees cause prop damage the bottom of Plaintiff’s Property. Defendant’s lessees also have damaged and continue to damage the vegetation in Plaintiff’s Property through careless navigation. The water quality in Plaintiff’s Private Canal has been negatively impacted by Defendant’s Lessees’ gas, oil, and trash from Defendants’ lessees and damage to vegetation by Defendant’s lessees.

37. Plaintiff has been and will in the future be deprived of the full use and enjoyment of the Plaintiff’s Private Canal and has suffered and will continue to suffer damages in an amount to be proven at trial as a result of the unlawful entry upon and damage to Plaintiff’s Private Canal, through the unlawful use and temporary possession of the Plaintiff’s Private Canal by the Defendants and their lessees, whether temporary or otherwise, by the through the Defendants.

38. Plaintiff is entitled to all damages directly or proximately caused by the unlawful entry, use, and possession of the Plaintiff's Property.

**COUNT I – UNLAWFUL ENTRY PURSUANT TO CHAPTER 82, FLORIDA STATUTES
(DAMAGES)**

39. Paragraphs 1 through 34 above are re-alleged and fully incorporated herein.

40. Upon information and belief, Defendant's managers, employees, representatives, invitees, guests, invitees, and slip lessees have entered upon and possessed Plaintiff's Property/Canal, and such entry was not authorized by law or consented to by Plaintiff.

41. The continued unlawful entry by Defendants is willful and knowingly wrongful, such that, per Section 82.03(2), Fla. Stat. "the court *must* award the Plaintiff damages equal to double the reasonable rental value of the real property from the beginning of the forcible entry, unlawful entry, or unlawful detention until possession is delivered to the Plaintiff ." (Emphasis added).

42. The foregoing unlawful entry and use has been and continues to cause Plaintiff damage.

WHEREFORE, PLAINTIFF demands judgment against Defendant, MHC CORTEZ VILLAGE, LLC, for damages in an amount to be determined at trial, including but not limited to damages equal to double the reasonable rental value of the real property from the beginning of the unlawful entry until possession is delivered to the Plaintiff, for continuously, knowingly, and unlawfully entering upon, through, and possessing the Plaintiff Property itself and through its lessees; court costs; attorneys' fees; as well as any other relief deemed just and proper.

**COUNT II – UNLAWFUL ENTRY PURSUANT TO CHAPTER 82, FLORIDA STATUTES
(POSSESSION AND INJUNCTIVE RELIEF)**

43. Paragraphs 1 through 34 above are re-alleged and fully incorporated herein.

44. Upon information and belief, Defendants, their employees, guests, invitees, and lessees are unlawfully entering upon and through the Plaintiff Private Canal, without authorization from Plaintiff as the record title holder of the Plaintiff Property.

45. Upon information and belief, Defendant, its guests, invitees, employees, and lessees, continue to utilize the Plaintiff Private Canal without Plaintiff's authorization or consent.

46. Defendant is also inciting and encouraging others to unlawfully enter upon and through the Plaintiff's Private Canal by marketing its slips with the representation that lessees can use Plaintiff's Private Canal for "Intracoastal [access]" and "ocean access," when the only such access is by way of unlawfully entering upon and through the Plaintiff's Private Canal.

47. Plaintiff does not have an adequate remedy at law, given the unquantifiable damages which continue to accumulate.

48. The injury to Plaintiff is and will continue to be irreparable, given Plaintiff is being stripped by the Defendants of its right to exclusively use and enjoy its property, such that notwithstanding the damage Plaintiff has suffered, Plaintiff is without an adequate remedy at law.

49. Plaintiff has a substantial likelihood of success on the merits.

50. The ongoing injury to Plaintiff outweighs any damage the injunction sought could possibly cause to Defendants.

51. An injunction, temporary and then permanent, will serve the public interest by preventing the public from unknowingly responding to Defendant's unlawful and unauthorized invitation to trespass onto Plaintiff's Property, and should be entered against Defendants.

52. Plaintiff requires and is entitled to this Honorable Court's injunctive power to permanently enjoin the Defendant (and its lessees) from continuing to violate of Plaintiff's inherent property rights.

WHEREFORE, Plaintiff respectfully requests that this Court declare that the Defendant MHC Cortez Village, LLC, and its lessees, employees, invitees, and guests have unlawfully entered into possession of the Plaintiff Property, grant final judgment of possession along with issuance of a writ of possession forthwith in accordance with Section 82.091(1), Florida Statutes, in favor of Plaintiff and against the Defendant, enter a preliminary temporary injunction, followed by a permanent injunction, prohibiting Defendant, and all of their lessees, guests, employees, and invitees from unlawfully entering upon and through the Plaintiff's Private Canal, court costs, attorneys' fees against Defendant as well as any other relief deemed just and proper.

COUNT III – UNJUST ENRICHMENT

53. Paragraphs 1 through 34 above are re-alleged and fully incorporated herein.

54. Plaintiff has conferred a benefit on the Defendants, and Defendants have knowledge of that benefit.

55. Defendants voluntarily accepted and have retained this benefit.

56. Defendants have provided no compensation or consideration in exchange for this benefit.

57. The circumstances are such that it would be inequitable for the Defendants to retain any benefit without first paying the value thereof to the Plaintiff.

58. Plaintiff is therefore entitled to restitution because Defendants have been unjustly enriched at Plaintiff's expense.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order awarding to Plaintiff damages in an amount to be determined at trial; court costs; attorneys' fees; as well as any other relief deemed just and proper.

Dated: May 26, 2022
Boca Raton, Florida

Respectfully submitted,

By: /s/ *Susan Roeder Martin*

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