IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO.: 5D12-2044

THE LANGLEY LIMITED PARTNERSHIP, LLP

Appellant,

v.

SCHOOL BOARD OF LAKE COUNTY, FLORIDA,

Appellee.

ON APPEAL TO THE FIFTH DISTRICT COURT OF APPEAL
FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

In this brief, the Appellant, The Langley Limited Partnership, LLP, will be referred to as "Langley." The Appellee, the School Board of Lake County, Florida, will be referred to as the "School Board." The Honorable Mark A. Nacke presided over the proceedings at issue in this appeal and authored the Final Judgment from which this appeal arises. His tribunal will be referred to as the Trial Court. Citations to Volumes One through Four of the five volume record on appeal will be made by the letter "R.," followed by the appropriate volume and page number(s).

Volume Five of the record is comprised of two transcripts that are not consecutively paginated. The first is a transcript of the Motion for Rehearing Proceedings. It will be referred to as "Rehearing Tr.," followed by the appropriate page number. The second transcript is of the Bench Trial proceedings which led to the Final Judgment on appeal. It will referred to as "Tr. T.," followed by the appropriate page number.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over the instant appeal pursuant to Florida Rule of Appellate Procedure 9.030(b)(1)(A). Venue is proper in this Court pursuant to Section 35.043, Florida Statutes. The Final Judgment at issue in this appeal was entered on December 1, 2011. (R. Vol. IV at 475). The Appellant timely filed a

Motion for Rehearing pursuant to Florida Rule of Civil Procedure 1.530 (R. Vol. III at 460), which was denied on April 12, 2012. (R. Vol. IV at 476). The Notice of Appeal was timely filed on May 8, 2012. (R. Vol. IV at 477). Accordingly, jurisdiction lies in this Honorable Court. FLA. R. APP. P. 9.110(b).

INTRODUCTION

This is an appeal from a Final Judgment which ordered Langley to deed forty acres of property to the School Board pursuant to a 2005 written agreement between the parties. The Final Judgment was entered following a bench trial on the School Board's 2010 suit against Langley for breach of contract and specific performance of the parties' agreement. The sole issue on appeal is whether the School Board's lawsuit was time-barred.

STATEMENT OF THE CASE

Langley owns a large expanse of land near Mascotte, Florida, in Lake County. (R. Vol. I at 148). The City of Mascotte reached a deal with Langley to annex a large portion of Langley's property into the Mascotte city limits. *Id*. The School Board attempted to stymie the annexation by filing a Petition for a Writ of Certiorari in early 2004 ("the Certiorari litigation"). *Id*. To settle the Certiorari litigation, the parties agreed, in writing, that Langley would deed forty acres of land to the School Board by June 15, 2005, so the School Board could build a

public school. *Id*. at 2, 89. In exchange, the School Board dismissed the Certiorari litigation. *Id*.

On June 14, 2006, the School Board sued Langley for breach of contract and specific performance. *Id*. at 84. The Honorable T. Michael Johnson ruled in Langley's favor, finding that the School Board was demanding a 40 acre parcel that was not compliant with the parties' agreement. *Id*. at 106. Thus, Langley was not obligated to deed the land requested by the School Board. *Id*.

On November 2, 2010, the School Board again sued Langley for breach of contract and specific performance of the 2005 agreement. *Id*. at 1-25. Langley argued that the suit was time-barred, as over five years had passed since Langley's alleged breach of the written agreement. *Id*. at 29-30, 148-154. The Trial Court ruled that both counts were timely. (R. Vol. IV at 474). The sole basis for its ruling was that the 2006 litigation tolled the statute of limitations for both 2010 causes of action. *Id*. After the denial of his Motion for Rehearing, Langley filed his Notice of Appeal. (R. Vol. IV at 476-477).

STATEMENT OF THE FACTS

A. The Parties' Written Agreement and its Amendments

The parties entered into the written agreement on February 14, 2005. (R. Vol. IV at 472). The agreement provided that in exchange for the School Board's voluntary dismissal of the Certiorari litigation, Langley would deed 40 acres of

land to the School Board "for the purpose of construction of public schools." (R. Vol. I at 2). The legal description of the land from which the 40 acre parcel would be carved out was identified in an exhibit attached to the agreement. *Id*. at 8. Clause 3 of the agreement provides that the specific 40 acre parcel would be decided by "mutual agreement" of the parties. *Id*. at 6.

However, Clause 5 provides that in the event the parties could not agree on a specific parcel within 90 days, Langley "shall deed" a 40 acre parcel within the area specified in the exhibit "with a maximum of four hundred (400) foot frontage" on State Road 33. *Id*. Absent from the agreement is any provision regarding an obligation on Langley's behalf to accept a deed demanded by the School Board which complied with Clause 5. Instead, the onus was on Langley to transfer a deed which complied with Clause 5 within 90 days of the contract in the event the parties could not agree on the specific parcel. *Id*.

The parties were unable to agree on the specific 40 acre parcel. Thus, on May 9, 2005, they amended the agreement to extend the time to agree on a specific parcel. *Id*. at 161. Specifically, the agreement was amended to extend the deadline to June 15, 2005. After expiration of the June 15, 2005, deadline, Langley was legally obligated to deed a 40 acre parcel that met the requirements of Clause 5. *Id*.

B. 2006 Litigation.

On June 15, 2005, the School Board sent Langley a demand letter, reminding Langley that June 15, 2005, was the deadline for performing under the agreement. *Id*. at 69. Attached to the letter was a drawing of a parcel desired by the School Board. *Id*. The School Board claimed that its demand was compliant with Clause 5. *Id*. The School Board indicated its hope that following a survey and the provision of an exact legal description of the land, Langley would execute a deed to the requested property. *Id*. On May 3, 2006, the School Board sent Langley another demand letter, along with a Warranty Deed for the parcel identified in the June 15, 2005, demand letter. *Id*. at 71. On May 8, 2006, Langley responded by letter, indicating his refusal to deed the specific parcel requested by the School Board in its demand letters. *Id*. at 81. On June 2, 2006, the School Board again wrote to Langley, demanding execution of the deed to the parcel desired by the School Board. *Id*. at 83.

On June 14, 2006, the School Board sued Langley for breach of contract and specific performance of the amended agreement. *Id*. at 84. Langley's main defense to the suit was that the School Board refused to agree to language in the deed restricting the land to use for a school-related site. Langley argued that the pervasive use of the phrase "school site" in the agreement made clear that Langley

entered into the agreement with the expectation that the deeded land would be used to construct a school building. *Id*. at 102. In addition, the amendment to the agreement described the agreement as "a written agreement whereby Langley would provide the School Board with forty (40) acres, for a future school site, for the purpose of constructing a public school." *Id*. at 9. Use of the site for construction of a school was critical to Langley's decision to deed it to the School Board. The presence of a school would likely increase the value of Langley's surrounding land, whereas uncertainty as to the School Board's use of the 40 acres would severely undermine Langley's ability to market the surrounding land.

Ultimately, on July 15, 2009, the court ruled in Langley's favor, but not on the issue of a school site use restriction. *Id*. at 100-109. Instead, the court found that Langley did not breach the contract by refusing to deed over the land requested by the School Board in its demand letters, because that plot of land had over 400 feet of frontage on State Road 33. Thus, because the School Board's demand did not comply with Clause 5, Langley had no obligation to comply with the demand. *Id*. at 105. The court did not address the question of whether Langley breached by failing to deed over a compliant 40 acre parcel by the June 15, 2005, deadline, as required under the contract.

C. **2010 Litigation**.

Roughly four months after the July, 2009, Final Judgment, the School Board sent yet another letter to Langley, on November 3, 2009. This letter, however, did not demand a deed to a specific piece of property desired by the School Board. It simply demanded Langley's compliance under the original agreement. *Id*. at 19. Langley did not respond to that letter. *Id*. at 14. After waiting almost an entire year, the School Board sent another letter to Langley on October 22, 2010. *Id*. This letter demanded that Langley execute a warranty deed to a different forty acre parcel desired by the School Board. *Id*. Langley did not respond to the letter.

On November 2, 2010, the School Board filed suit against Langley for breach of contract and specific performance of the original 2005 written agreement. *Id*. at 1. Once again, the basis for the breach of contract claim was Langley's failure to execute a deed to the specific piece of property demanded by the School Board in its October 22, 2010, letter. *Id*. at 4. Once again, the School Board requested that Langley specifically perform by executing the deed presented with the October 22, 2010, letter. *Id*. at 5.

Langley again defended the suit on the basis that the School Board's refusal to include language restricting the deed to use of the land as a school site was a breach of the parties' agreement. *Id*. at 29. Langley also filed three affirmative defenses regarding the lapse in time between the 2005 agreement and the 2010

lawsuit. *Id*. at 29-30. First, Langley argued that the School Board should be estopped from seeking relief due to its untimely delay in pursuing the lawsuit. *Id*. Second, he argued that the School Board waived its right to pursue its causes of action because they were not timely pursued. *Id*. Finally, and most importantly, Langley argued that both causes of action were time-barred by Section 95.11(2)(b), Florida Statutes. *Id*.

In its Final Judgment, the Trial Court ruled that Langley breached the 2005 agreement because he failed to execute the deed attached to the School Board's October 22, 2010, letter, or any other compliant deed. (R. Vol. IV at 475). The Trial Court did not rule on Langley's defense that the School Board breached the agreement by refusing to accept a deed that limited the site to a school-related building. Finally, the Trial Court ruled that the School Board's 2010 causes of action were timely filed because the 2006 litigation tolled the statute of limitations, relying on *DuPont v. Parker & Co. of Fla.*, 190 So. 2d 388 (Fla. 3d DCA 1966) for the general proposition that the statute of limitations is tolled when a party is prevented from exercising its legal remedy due to the pendency of other legal proceedings. (R. Vol. IV at 474).

Langley moved for rehearing, and a hearing was held on April 11, 2012. (Rehearing Tr. at 1-37). At the hearing, Langley argued specifically that *DuPont* was no longer valid authority because it had been expressly superseded by Section

95.051, Florida Statutes. *Id*. at 6-7. Further, Langley argued that Section 95.051 does not include a "pending litigation" exception in the list of events which toll the statute of limitations. Thus, Langley contended, the 2006 litigation did not toll the statute of limitations for the School Board's 2010 actions for breach of contract and specific performance. *Id*. The Trial Court was not persuaded and it denied the Motion for Rehearing. This appeal followed. (R. Vol. IV at 476-477).

SUMMARY OF THE ARGUMENT

The School Board's 2010 lawsuit was time-barred. The 2010 breach of contract and specific performance claims accrued on June 15, 2005, the date specified in the agreement for Langley to deed a parcel of property to the School Board that complied with Clause 5. Approximately five years and four months elapsed between Langley's required date of performance and the School Board's November 2, 2010, lawsuit. Under Florida law, from the date a written contract is breached, a breach of contract claim must be filed within five years and a specific performance claim must be filed within one year. Therefore, the School Board's claims were time-barred.

The 2006 litigation did not toll the statute of limitations. The authority relied upon by the Trial Court for that proposition has been expressly superseded by statute. This Court should vacate the Final Judgment and hold that Langley has no obligation to perform under the 2005 agreement.

ARGUMENT

I. THE SCHOOL BOARD'S CLAIMS FOR BREACH OF CONTRACT AND SPECIFIC PERFORMANCE ARE TIME-BARRED.

A. Standard of Review

A legal issue surrounding a statute of limitations question is an issue of law subject to *de novo* review. *See, e.g., Hamilton v. Tanner*, 962 So. 2d 997, 1000 (Fla. 2d DCA 2007).

B. Argument on the Merits

Pursuant to Section 95.11(2)(b), Florida Statutes, a cause of action based on a written instrument shall be commenced within five years. Pursuant to Section 95.11(5)(b), a cause of action for specific performance of a contract shall be commenced within one year. The limitations period begins to run when "the last element constituting the cause of action occurs." FLA. STAT. § 95.11(2)(B). The elements of a breach of contract action are: (1) a valid contract; (2) a material breach; and (3) damages. *See, e.g., Abbott Laboratories, Inc. v. General Elec. Capital*, 765 So. 2d 737, 740 (Fla. 5th DCA 2000). An action for specific performance begins to run on the date the contract is breached. *See, e.g., City of Orlando v. Williams*, 493 So. 2d 15, 16 (5th DCA 1986).

In the instant case, there is no dispute that the contract between the parties is valid and that Langley's failure to deed land pursuant to the agreement constitutes a

material breach. Based on the clear language of the agreement, the date of the alleged breach is June 15, 2005. To wit, Clause 5 of the amended agreement provides that if the parties could not agree on a specific parcel by June 15, 2005, Langley "shall deed" a forty acre parcel within the specified area that has "a maximum of four hundred (400) foot frontage" on State Road 33 and otherwise meets local requirements for school construction. (R. Vol. I at 24-25).

Thus, when June 15, 2005, passed without an agreement between the parties as to the specific forty acre parcel to be transferred, Langley breached the contract by failing to present an executed deed to the School Board of a parcel of land that complied with Clause 5. The School Board was well aware that June 15, 2005, was the operative breach date provided in the agreement. That is exactly why the School Board filed suit on June 14, 2006, one day before the statute of limitations ran for specific performance under the agreement. (R. Vol. I at 84). Therefore, any claim by the School Board that it understood the contract to provide for a different breach date should be greeted with heavy skepticism. The breach of contract and specific performance claims were filed on November 2, 2010 - over five years and four months after the date of Langley's breach. Therefore, they are time-barred.

The 2006 litigation did not toll the statute of limitations for the School Board's 2010 claims. Section 95.051, Florida Statutes, sets forth the reasons an action's statute of limitations may be tolled:

1) The running of the time under any statute of limitations except ss. 95.281, 95.35, and 95.36 is tolled by:

(a) Absence from the state of the person to be sued.

(b) Use by the person to be sued of a false name that is unknown to the person entitled to sue so that process cannot be served on the person to be sued.

(c) Concealment in the state of the person to be sued so that process cannot be served on him or her.

(d) The adjudicated incapacity, before the cause of action accrued, of the person entitled to sue. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

(e) Voluntary payments by the alleged father of the child in paternity actions during the time of the payments.

(f) The payment of any part of the principal or interest of any obligation or liability founded on a written instrument.

(g) The pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action.

(h) The period of an intervening bankruptcy tolls the expiration period of a tax certificate under s. 197.482 and any proceeding or process under chapter 197.

(i) The minority or previously adjudicated incapacity of the person entitled to sue during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue; except with respect to the statute of limitations for a claim for medical malpractice as provided in s. 95.11. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

FLA. STAT. § 95.051(1). Further, Section 95.051(2) provides that no "other reason" which is not "specified in this section" tolls the "running of any statute of limitations."

Accordingly, when the Florida Supreme Court examined and interpreted Section 95.051 in 2000, it concluded that "the Legislature enumerated specific grounds for tolling limitation periods" and "[f]urthermore, the tolling statute specifically precludes application of any tolling provision not specifically provided therein." *Hearndon v. Graham*, 767 So. 2d 1179, 1185 (Fla. 2000). Therefore, if a basis for tolling is not contained in Section 95.051, it does not toll a statute of limitations. *Id*.; *see also Major League Baseball v. Morsani*, 790 So. 2d 1071 (Fla. 2001). None of the enumerated grounds contained in Section 95.051 are relevant or applicable in this case. Accordingly, the analysis should have ended there.

In its Final Judgment, however, the Trial Court relied on *Dupont* for the proposition that the statute of limitations was tolled during the pendency of the School Board's 2006 litigation against Langley. That reliance was erroneous because *Dupont* was superseded by Section 95.051. *See, e.g., Swartzman v. Harlan*, 535 So.2d 605, 607 (1st DCA 1988) ("We conclude that in 1974 the legislature superseded the general rule adopted by prior case law by creating section 95.051 which provides for specific instances that toll the running of any statute of limitations.").

Furthermore, even if *DuPont* was not superseded by Section 95.051, it never should have controlled the question of whether the School Board's causes of action were tolled. *DuPont* stood for the general proposition that the statute of limitations on an action should be tolled if a party is prevented from exercising his legal remedy due to the pendency of other legal proceedings. In this case, the 2006 litigation did not prevent the School Board from exercising its legal remedy under the agreement. The School Board very easily could have sued Langley for his failure to supply a deed which complied with the agreement. Instead, the School Board overreached and lost the 2006 litigation because it sued to obtain a parcel of land that was unobtainable under its agreement with Langley. Thus, even if *DuPont* controlled, the 2006 litigation would not have had the effect of tolling the statute of limitations for breach of contract or specific performance of the 2005 agreement.

The School Board will likely argue that there are two reasons why its 2010 causes of action were timely filed. Both arguments are without merit and both are waived. First, the School Board will likely argue that their causes of action accrued each time they made a demand on Langley to accept a parcel of land it desired. This argument is without merit because there is no "demand provision" in the contract. Based on the clear language of the agreement, Langley was obligated to perform by a date certain - June 15, 2005. There is no language whatsoever in the contract

which suggests that Langley's duty to perform was contingent on responding to a demand from the School Board. In fact, it was the just the opposite. The onus was on Langley to present a compliant deed to the School Board as of June 15, 2005, because the parties never agreed to a specific parcel for the transfer.

Second, the School Board will likely argue that Judge Johnson's July 15, 2009, ruling established that Langley did not breach the contract on June 15, 2005. Thus, the School Board will argue, June 15, 2005, could not have been the accrual date. However, that issue was not before Judge Johnson. The basis for the School Board's breach of contract claim in the 2006 lawsuit was not Langley's failure to deed a compliant forty acre parcel by the June 15, 2005, deadline, pursuant to the contract. Rather, the School Board alleged that Langley breached the contract when he failed to accept the specific piece of non-compliant property demanded by the School Board in its demand letters. Langley's failure to deed the specific parcel of land desired by the School Board was the sole basis of the School Board's claims. Thus, the court's decision did not reach the question of whether Langley's basic refusal to deed land pursuant to the June 15, 2005, deadline constituted a breach of the parties' contract.

In any event, any argument regarding the accrual date of the School Board's causes of actions should be deemed waived. At the hearing on Langley's Motion for Rehearing, the School Board acknowledged that tolling was an inappropriate

basis for finding that its 2010 causes of action were timely. (Rehearing Tr. at 1-37). Instead, the School Board argued that its causes of action accrued each time it submitted a demand to Langley which complied with the agreement. Nonetheless, after the Trial Court made clear that it was resting on its prior ruling regarding tolling, the School Board failed to move to alter or amend the judgment Florida Rule of Civil Procedure 1.530(g) to reflect a ruling based on accrual. Therefore, the School Board should not be heard to argue that the Final Judgment should be affirmed on the basis of accrual. If that is, in fact, the School Board's argument, then it should have requested amendment of the Final Judgment pursuant to Florida Rule of Civil Procedure 1.530(g) to comport with its understanding of how Langley breached the agreement. In the event the School Board argues accrual, rather than affirmance of the Trial Court's decision on the basis of tolling, its argument should be deemed waived.

CONCLUSION

The School Board's November 2, 2010, suit was commenced after the expiration of the statute of limitations for breach of contract and specific performance of the parties' 2005 agreement. Therefore, the School Board is precluded from recovery under the 2005 agreement. The Final Judgment is fundamentally erroneous because it fails to acknowledge the express mandate of Section 95.051, Florida Statutes. Therefore, Langley respectfully requests that this

Court vacate the Final Judgment on appeal and affirmatively hold that Langley has no duty to perform under the 2005 agreement.

DATED this 8th day of October, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. mail on October 8, 2012, to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Michael M. Brownlee
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