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Manuel Farach

The School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., Case No. 1D18-91 (Fla. 1st DCA 2019).
The Public Official Standing Doctrine ("a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute") applies to keep a school district from disputing a property owner's tax assessment challenge.

Toscano Condominium Association, Inc. v. DDA Engineers, P.A., Case No. 3D18-1762 (Fla. 3d DCA 2019).
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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-91

THE SCHOOL DISTRICT OF
ESCAMBIA COUNTY, FLORIDA,

Appellant,

v.

SANTA ROSA DUNES OWNERS
ASSOCIATION, INC.,

Appellee.

On appeal from the Circuit Court for Escambia County.
J. Scott Duncan, Judge.

May 30, 2019

ROWE, J.

The Santa Rosa Dunes Owners Association, Inc., sued the Escambia County Property Appraiser and Escambia County Tax Collector, disputing a tax assessment of property underlying the Association's condominium development. The Association claimed that its property was exempt from ad valorem taxation under section 196.199(2)(b), Florida Statutes (2016). The School District of Escambia County intervened in the suit and asserted that the Association's property should be taxed because the statutory exemption was unconstitutional. The Association challenged the District's standing to intervene, arguing that the public official standing doctrine barred the District's constitutional challenge.

The trial court agreed that the District lacked standing and entered summary judgment for the Association on the District's affirmative defenses. This appeal follows.

The public official standing doctrine, first explained in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 94 So. 681 (Fla. 1922), provides that "a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute." *Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 794-803 (Fla. 2008). The doctrine, grounded in the separation of powers, recognizes that public officials are obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality. *Id.* at 683. For that reason, a public official's "[d]isagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion." *Dep't of Revenue v. Markham,* 396 So. 2d 1120, 1121 (Fla. 1981) (holding that the property appraiser lacked standing to challenge an administrative rule), *superseded by statute*, § 195.092(2), Fla. Stat. (1980), *as recognized in Crossings At Fleming Island*, 991 So. 2d at 802-03 (explaining that while the Legislature partially overruled the holding in *Markham* by enacting section 195.092, which allows a property appraiser and any taxing authority to challenge the validity of any "rule, regulation, order, directive or determination of any agency of the state," the Legislature "did not alter the common law principle announced in *Atlantic Coast Line* and *Markham* that property appraisers, as public officials, lack standing to challenge the constitutionality of a statute").

The parties do not dispute that the District is a public entity and its officers are public officials. But the District contends that the public official standing doctrine applies only when the challenged statute is one that the public officials are "charged with administering." Section 196.199(2)(b) exempts from ad valorem taxation certain leasehold interests in government-owned property used for non-governmental purposes. The plain language of the statute does not require the District to perform any duty. The District's lack of a duty under the statute, however, does not resolve whether the District has standing to challenge the statute.

The Florida Supreme Court and this Court have on several occasions considered challenges to the constitutionality of section 196.199(2)(b) brought by public officials. First, in *Crossings At Fleming Island*, a county property appraiser challenged the constitutionality of the statute. 991 So. 2d at 798. The supreme court held that the property appraiser lacked standing to challenge the statute because the property appraiser was a public official charged with performing a specific duty under the statute—the duty of determining whether property owners are entitled to an exemption from taxation under the statute. In reaching this conclusion, the supreme court reaffirmed the public official standing doctrine and its holding in *Atlantic Coast Line*. *Id*. at 797.

Next, in *Island Resorts Investments, Inc. v. Jones*, 189 So. 3d 917, 922-23 (Fla. 1st DCA 2016), this Court considered whether the public official standing doctrine barred a challenge to the statute brought by two public officials—the property appraiser, who is charged with performing a duty under the statute, and the tax collector, who is not charged with performing any duty under the statute. Though the plain language of the statute did not require the tax collector to perform any duty, this Court, citing the decisions in *Crossings at Fleming Island* and *Atlantic Coast Line,* concluded that the tax collector lacked standing to challenge the constitutionality of section 196.199(2)(b). *Island Resorts*, 189 So. 3d at 922.

The District is in the same position as the tax collector in *Island Resorts*. Neither are charged with performing any duty under section 196.199(2)(b). Still, the District argues it had standing to challenge the constitutionality of the statute. The District misunderstands the public official standing doctrine. The doctrine exists to prevent public officials from nullifying legislation through their refusal to abide by the law and requires them instead to defer to the judiciary's authority to consider the constitutionality of a legislative act. *Atl. Coast Line*, 94 So. at 682-83 ("The right to declare an act unconstitutional is purely a judicial power, and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution."). The prohibition against public officials attacking the constitutionality of a statute is therefore not

limited to those public officials charged with a duty under the challenged law. Consistent with the purpose of the doctrine, the prohibition extends to public officials whose duties are "affected" by the challenged law. *See Crossings At Fleming Island*, 991 So. 2d at 800 (finding that no common law or statutory development since *Atlantic Coast Line* "has altered the basic principle, rooted in the doctrine of separation of powers, that property appraisers must abide by *all applicable Florida statutes* when assessing property and therefore do not have standing to challenge the constitutionality of *such statutes*") (emphasis added); *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982) ("State officers and agencies must presume legislation *affecting their duties* to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise.") (emphasis added); *Santa Rosa Cty. v. Admin. Comm'n, Div. of Admin. Hearings*, 642 So. 2d 618, 623 (Fla. 1st DCA 1994) [hereinafter *Santa Rosa Cty. I*], *approved in part, disapproved in part*, 661 So. 2d 1190 (Fla. 1995) [hereinafter *Santa Rosa Cty. II*] (same); *Miller v. Higgs*, 468 So. 2d 371, 374 (Fla. 1st DCA 1985) *disapproved on other grounds by Capital City Country Club, Inc. v. Tucker*, 613 So. 2d 448 (Fla. 1993) (same); *Markham*, 396 So. 2d at 1121 ("Disagreement with a constitutional or statutory duty, *or the means by which it is to be carried out*, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion.") (emphasis added).

Even though section 196.199(2)(b) does not specifically require the District to perform any duty, the statute's operation affects the District's duty to levy ad valorem taxes under other statutory provisions. *See* Art. VII, § 9, Fla. Const.; § 1011.71(1), Fla. Stat. (2016) (providing that school districts seeking to participate in the state allocation of funds for current operation "shall levy on the taxable value for school purposes of the district" a local effort millage rate); § 1011.04, Fla. Stat. (2016) (providing that school districts are to "determine by resolution the amounts necessary to be raised for current operating purposes and for each district bond interest and sinking fund and the millage necessary to be levied for each such fund, including the voted millage"); § 1001.42, Fla. Stat. (2016) (providing that the powers and duties of the district school board include adopting a "resolution fixing the district school tax levy . . . necessary to carry on the school program adopted for the district for the next ensuing fiscal year as required

by law"). The District argues that applying section 196.199(2)(b) to grant the Association's property an exemption will affect the District's ability to levy ad valorem taxes. Because the public official standing doctrine broadly prohibits ministerial officers from challenging legislative enactments, and because the statute at issue affects the official duties of the District, the trial court correctly found that the District lacked standing to challenge the constitutionality of section 196.199(2)(b).

The District argues that it may nonetheless attack the constitutionality of the statute because the personal injury exception to the public official standing doctrine applies. This exception confers standing on a public official to bring a constitutional challenge when the official can show injury to his person, property, or other material right by the statute in question. *Crossings At Fleming Island*, 991 So. 2d at 799 (quoting *Barr v. Watts*, 70 So. 2d 347, 350 (Fla. 1953) (en banc)). The District alleges it would have to refund about seven million dollars in ad valorem tax revenue it has already collected and escrowed, and it would lose its material and constitutional right to levy ad valorem taxes, subjecting it to a loss of future tax revenue.

The District's alleged injuries are not the type of injuries contemplated by the personal injury exception. *See Green v. City of Pensacola*, 108 So. 2d 897, 900 (Fla. 1st DCA 1959). Rather, the type of personal injury necessary to allow a public official to challenge the constitutionality of a statute is limited to injuries that do "not grow out of the obligation of his oath of office, nor out of his official position." *Atl. Coast Line*, 94 So. 2d at 601 (citing *Bd. of Public Instruction for Santa Rosa Cty. v. Croom*, 94 So. 681 (Fla. 1909)); *see also Green*, 126 So. 2d at 900 ("It may be seriously questioned whether the Comptroller's failure to collect a tax lawfully due the State of Florida would render him liable on his official bond as well as subject him to impeachment for nonfeasance in office."). Here, the alleged injuries to the District arise exclusively from the District's official responsibilities to levy ad valorem taxes. *See* Art. VII, § 9, Fla. Const.; § 1011.71(1), Fla. Stat. (2016). The alleged injuries are thus not personal to the District. The public official standing doctrine therefore bars the District from challenging the constitutionality of section

196.199(2)(b). For these reasons, the trial court's order granting summary judgment for the Association is AFFIRMED.

WINSOR, J., concurs; BILBREY, J., concurs in result.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

BILBREY, J., concurring in result.

I am concerned that in past decisions this court may have approved the expansion of the public official standing doctrine beyond its historical roots. Both *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 94 So. 681 (Fla. 1922), and *Department of Revenue v. Markham*, 396 So. 2d 1120 (Fla. 1981), approved the public official standing doctrine to preclude suit where a public official was challenging a matter concerning the performance of that public official's duties. Then in *Santa Rosa County v. Administration Commission, Division of Administrative Hearing*, 642 So. 2d 621, 623 (Fla. 1st DCA 1994), *approved in part, disapproved in part*, 661 So. 2d 1190 (Fla. 1995), we expanded *Markham* to apply the public official standing doctrine where there was "[l]egislation which affects the duties of state officers and agencies."

Any general law is by definition going to affect, in varying degrees, the people of the State of Florida, including public officials. *See Schrader v. Florida Keys Aqueduct Auth.*, 840 So. 2d 1050, 1055 (Fla. 2003) (noting that a general law is one which "materially affects the people of this state"). So it seems in *Santa Rosa County* we arguably precluded any challenge by a public official to most any general law.

In *Island Resorts Investment, Inc. v. Jones*, 189 So. 3d 917, 922 (Fla. 1st DCA 2016), we were bound to follow the holding from *Santa Rosa County* expanding the public official standing doctrine

to "legislation which affects" the public official's duties. *See Sims v. State*, 260 So. 3d 509, 514 (Fla. 1st DCA 2018) ("Each panel decision is binding on future panels, absent an intervening decision of a higher court or this court sitting en banc."). Our holding in *Island Resorts* again applied the doctrine to legislation beyond that which the public official was charged with administering.

We are of course now bound by *Santa Rosa County* and *Island Resorts*. But even if we could apply only the more limited scope of the public official standing doctrine from *Markham*, here it would not avail the School District of Escambia County. In *Miller v. Higgs*, 468 So. 2d 371 (Fla. 1st DCA 1985), *disapproved in part*, *Capital City Country Club, Inc. v. Tucker*, 613 So. 2d 448 (Fla. 1993), we upheld the constitutionality of section 196.199(2)(b), Florida Statutes. So even if the District had standing to sue, we would be correct to affirm under *Miller*. I therefore agree affirmance is the correct result.

David C. Willis, Daniel J. Gerber, and Christian H. Tiblier of Rumberger, Kirk & Caldwell, P.A., Orlando; William A. VanNortwick, Jr. of Akerman LLP, Jacksonville; and Diane G. DeWolf of Akerman LLP, Tallahassee, for Appellant.

Edward P. Fleming and R. Todd Harris of McDonald Fleming Moorhead, Pensacola, for Appellee.

Third District Court of Appeal

State of Florida

Opinion filed May 29, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1762
Lower Tribunal No. 15-21747

Toscano Condominium Association, Inc.,
Appellant,

vs.

DDA Engineers, P.A.,
f/k/a Donnell, Duquesne, & Albaisa, P.A.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel, P.A., and Jason B. Trauth, and James S. Czodli, for appellant.

Oramas & Associates, P.A., and John E. Oramas, and Miles A. Archabal, for appellee.

Before EMAS, C.J., and SCALES, and LINDSEY, JJ.

LINDSEY, J.

Toscano Condominium Association, Inc. (the "Association") appeals the denial of its motion to file a fourth amended complaint to include Appellee DDA Engineers as a direct defendant in a multi-defendant action for construction and design defects in a condominium building. Because the Association was, at a minimum, on notice of the potential claims against DDA Engineers yet waited until after it had already been granted leave to amend on three prior occasions, and because the Association did not seek to assert those claims until more than two years after the filing of the complaint and more than six months after the trial court conducted its case management conference, we affirm, finding that the trial court did not abuse its discretion in denying the Association's motion for leave to amend.

I. BACKGROUND

The Association assumed control of the condominium at issue in June 2012. In September 2015, the Association filed this action against various defendants for damages allegedly arising from construction and design defects in the condominium. In May 2016, the Association amended its complaint to add more defendants. The Association further amended its complaint to add additional defendants in January and June of 2017. Thereafter, in June 2017, the trial court entered its Case Management Order setting various deadlines for pretrial events and scheduling the case for trial beginning July 16, 2018.[1] The order imposed an

August 1, 2017 deadline for adding parties. Despite this deadline, the Association moved for leave to file a fourth amended complaint to add claims against DDA Engineers on November 30, 2017. The trial court denied the Association's motion to amend on January 22, 2018.[2] The Association now seeks review of the denial of its motion to file the fourth amended complaint.[3]

II. JURISDICTION

As an initial matter, DDA Engineers contends that this appeal is untimely because the Association relied on the trial court's dismissal order as a final judgment, which was entered about six months after the order denying leave to amend. According to DDA Engineers, the order denying the motion for leave to amend was a final and appealable order; therefore, the Association's appeal is untimely.

We disagree. "[A]n order denying leave to amend is a non-final and non-appealable order." Traveler v. Steiner Transocean Ltd., 895 So. 2d 1191, 1192 (Fla. 3d DCA 2005) (citing Palomares v. Ocean Bank of Miami, 574 So. 2d 1159, 1161 (Fla. 3d DCA), review denied, 587 So. 2d 1328 (Fla. 1991)). DDA

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[1] The trial court conducted a case management conference in April 2017, which resulted in the Case Management Order, entered in June 2017.

[2] Throughout the case, the Association stipulated to dismissal of various defendants. Ultimately, the Association dismissed its claims against all other defendants.

[3] In its brief, the Association asserts it has filed, separate and apart from this appeal, an independent action against DDA Engineers.

Engineers mistakenly relies on Valcarcel v. Chase Bank USA NA, 54 So. 3d 989, 990 (Fla. 4th DCA 2010), which held that "[a]n order dismissing an action without prejudice and without granting leave to amend is a final appealable order." But here, unlike in Valcarcel, the order denying the Association's motion for leave to amend did not dismiss the action. "For an order to be final, it must constitute an entry of a dismissal of the case. It is the dismissal of the case that is final and appealable . . . ." GMI, LLC v. Asociacion del Futbol Argentino, 174 So. 3d 500, 501 (Fla. 3d DCA 2015).

Thus, the order denying the Association's motion for leave to amend was an interlocutory order that could not be appealed until the case was completed. This occurred upon the dismissal of the case. Accordingly, we have jurisdiction. See Philip J. Padovano, 2 Fla. Prac., Appellate Practice § 23:3 (2018 ed.) ("When the jurisdiction of an appellate court has been invoked to review a final order or judgment, the court may review the entire case in the lower court, including all issues preserved for review during the trial and pretrial proceedings." (citing Fla. R. App. P. 9.110(h))).

III. STANDARD OF REVIEW

This Court reviews the denial of a motion for leave to amend a pleading for abuse of discretion. RV-7 Prop., Inc. v. Stefani De La O, Inc., 187 So. 3d 915, 916 (Fla. 3d DCA 2016) (citing Cobbum v. Citimortgage, Inc., 158 So. 3d 755 (Fla. 2d

DCA 2015)); Kohn v. City of Miami Beach, 611 So. 2d 538, 539 (Fla. 3d DCA 1992) ("It is settled that as an action progresses, the privilege of amendment progressively decreases to the point that the trial judge does not abuse his discretion in dismissing with prejudice."); Alvarez v. DeAguirre, 395 So. 2d 213, 216 (Fla. 3d DCA 1981) ("While the policy in Florida is to liberally allow amendments to pleadings where justice so requires, Romish v. Albo, 291 So.2d 24 (Fla.3d DCA 1974), Turner v. Trade-Mor, Inc., 252 So.2d 383 (Fla. 4th DCA 1971), a trial judge in the exercise of sound discretion may deny further amendments where a case has progressed to a point that liberality ordinarily to be indulged has diminished." (citing Ruden v. Medalie, 294 So. 2d 403 (Fla. 3d DCA 1974)).

IV. ANALYSIS

The issue before us is whether the trial court abused its discretion in denying the Association's fourth motion to amend. We find it did not. We recognize the general rule governing motions to amend a complaint that "leave to amend a Complaint should not be denied unless the privilege is abused, the opposing party will be prejudiced, or amendment would be futile." Gerber Trade Fin., Inc. v. Bayou Dock Seafood Co., 917 So. 2d 964, 978 (Fla. 3d DCA 2005) (citing World Class Yachts, Inc. v. Murphy, 731 So. 2d 798, 800 (Fla. 4th DCA 1999)); see also Fla. R. Civ. P. 1.190(a) ("Leave of court shall be given freely when justice so

requires."). "However, in addition to the desirability of allowing amendments to pleadings so that cases may be concluded on their merits, there is an equally compelling obligation on the court to see to it that the end of all litigation be finally reached." Price v. Morgan, 436 So. 2d 1116, 1122 (Fla. 5th DCA 1983) (citing Alvarez, 395 So. 2d at 216).

The Association contends both that it did not abuse its amendment privilege and that there was no prejudice to DDA Engineers. Here, the proposed amendment would have been the fourth time the Association amended its complaint to bring in new parties to the litigation. And significantly, the latest request to amend came after the case was set for trial and the trial court had specifically set a deadline for bringing in new parties.

With regard to prejudice, admittedly, DDA Engineers was involved in the case relatively early on in the litigation. But, it faced only indemnity claims from the architect of the condominium building. The Association is correct that these are qualitatively different from the direct claims it sought to bring against DDA Engineers in its role as structural engineers and threshold inspectors. However, litigation must end at some point, and trial courts must be afforded the discretion to manage their dockets. See SR Acquisitions-Florida City, LLC v. San Remo Homes at Florida City, LLC, 78 So. 3d 636, 638 (Fla. 3d DCA 2011) ("A trial court has broad discretion to manage its docket, but must do so within the confines

of governing statutes and rules of procedure."). Likewise, litigants must bear some responsibility in diligently pursuing their cases to resolution in a timely manner. See Freeman v. Mintz, 523 So. 2d 606, 610 (Fla. 3d DCA 1988) (recognizing plaintiffs' "obligations as litigants to diligently prosecute the claim").

V. CONCLUSION

Accordingly, because the Association was at a minimum on notice of the potential claims against DDA Engineers yet waited until after it had already been granted leave to amend on three prior occasions, and because the Association did not seek to assert those claims until more than two years after the filing of the complaint and more than six months after the trial court conducted its case management conference, we find that the trial court did not abuse its discretion in denying leave to amend.

AFFIRMED.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CITY OF PEMBROKE PINES,
Appellant,

v.

CORRECTIONS CORPORATION OF AMERICA, INC.,
n/k/a CoreCivic, Inc.,
Appellee.

No. 4D18-3168

[May 29, 2019]

Appeal of nonfinal order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carol-Lisa Phillips, Judge; L.T. Case No. 12-007337 (25).

E. Bruce Johnson and Hudson C. Gill of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., Fort Lauderdale, for appellant.

Leonard K. Samuels, Paul S. Figg and Ashley Dillman Bruce of Berger Singerman, LLP, Fort Lauderdale, for appellee.

GERBER, C.J.

The City of Pembroke Pines appeals from the circuit court's order denying its motion to dismiss, on sovereign immunity grounds, Corrections Corporation of America's counterclaim seeking non-contractual economic damages alleged in counts for declaratory judgment, promissory estoppel, tortious interference with contract, and tortious interference with an advantageous business relationship. The City argues that the sovereign immunity waiver codified in section 768.28, Florida Statutes (2012), does not apply to these four counts.

We agree with the City. We reverse and remand for entry of a final order dismissing these four counts on sovereign immunity grounds.

We present this opinion in three parts:
1. Factual background;
2. Procedural history; and
3. This appeal.

1. Factual Background

The factual background underlying these claims was set forth in *Corrections Corporation of America, Inc. v. City of Pembroke Pines*, 230 So. 3d 477 (Fla. 4th DCA 2017) ("*Pembroke Pines I*"):

> CCA sought sewer and water services from Pembroke Pines for its property located in the Town of Southwest Ranches but adjacent to Pembroke Pines ("the CCA site"). Pembroke Pines operates potable water and sewer systems that service properties within its boundaries, as well as some properties outside of those boundaries. Those services provided outside of the boundaries extend to a limited number of residential and commercial properties. Southwest Ranches does not have potable water or sewer systems to service its residents, and Pembroke Pines is the only provider in the area. The CCA site is surrounded by four other properties, all of which are, or were at one time, serviced by Pembroke Pines' water or sewer systems (or both). Only one of these properties is actually located within the boundaries of Pembroke Pines. At all times relevant to this dispute, Pembroke Pines admitted that it had the capacity and infrastructure in place to provide water and sewer services to the CCA site through its systems that abut the site.
>
> In 2005, CCA and Southwest Ranches entered into an agreement concerning the development of a correctional facility on the CCA site. The agreement provided that "all required water, sewer and other utility services are available" at the CCA site. CCA was advised that while a water and sewer agreement with Pembroke Pines would be required, it was unclear whether the Pembroke Pines City Commission would grant those services. However, later in 2005, Southwest Ranches entered into an interlocal agreement with Pembroke Pines regarding local roadways and other matters ("Roadways ILA"), in which Pembroke Pines agreed not to interfere with the development or operation of CCA's jail facility:
>
> > Jail Facility. [Pembroke Pines] shall not interfere with [CCA's], or its successors or assigns, development and/or operation of the jail facility, or with [Southwest

> Ranches]'s Agreement with [CCA] concerning development of same.

In 2011, Immigration and Customs Enforcement ("ICE") tentatively selected the CCA site to build a new detention facility. A few days later, Pembroke Pines and Southwest Ranches entered into another interlocal agreement concerning emergency medical and fire services (the "EMS ILA") that provided in pertinent part:

> *Jail Facility:* [Pembroke Pines] acknowledges that it has sufficient capacity to deliver emergency medical protection and fire prevention services to [Southwest Ranches]'s future 2,500 bed detention/corrections facility, located on property currently owned by [CCA]. [Pembroke Pines] agrees to timely provide Broward County, upon request, any documentation that Broward County may require to acknowledge that Pembroke Pines has the capacity, ability, and the willingness to service this facility under the terms and conditions contained herein . . . Further, [Pembroke Pines] agrees that it has sufficient capacity to provide water and sewer service to [Southwest Ranches]'s future 2,500 bed detention/corrections facility (approximately 500,000 gross square feet of floor area), *and that it will expeditiously approve a water/waste water utility agreement to provide such service, at* [*Pembroke Pines*]*'s then prevailing rate, in accordance with state law* ([Pembroke Pines]'s rate + surcharge).

(Emphasis added). In a special meeting on June 27, 2011, the Pembroke Pines City Commission voted on and approved the EMS ILA in Resolution No. 3312.

Some five months later, in December 2011, the City Commission passed yet another affirmative motion, that one being "to approve direction that, should CCA come forward with a request for Pembroke Pines to provide them water and sewer service, that the water and sewer agreement stipulate that it would be for not more than 1,500 beds based on the Engineer's report" (the "December 2011 Motion"). CCA then submitted to Pembroke Pines a proposed Water and Sewer Installation and Service Agreement (the "W & S Agreement") for a 1,500–bed facility, and requested that the matter be

> finalized at the first available City Commission meeting. Pursuant to the EMS ILA, the Pembroke Pines city attorney and the Pembroke Pines city manager agreed on the contractual terms with CCA and the W & S Agreement was then submitted to the City Commission. In an abrupt departure from the numerous manifestations of intent expressed by the Pembroke Pines City Commission over the previous six years, the City Commission did not vote on the W & S Agreement and quite to the contrary, formally adopted a resolution *expressing its opposition* to erecting the ICE detention center on the CCA site. In a later meeting, the City Commission voted to . . . terminate the EMS ILA . . . .

Id. at 478-79 (internal footnote omitted).

2. Procedural History

a. Pembroke Pines I

The City filed an action for declaratory judgment, seeking a ruling that it was not required to provide CCA with water and sewer services or, if it was required to provide utility services, a determination of "whether there [were] any limitations on the obligation to provide service." *Id.* at 479. Following a trial, the circuit court entered an order determining that the City did not have a duty to provide water and sewer services to CCA. *Id.* at 479-80.

CCA appealed, arguing that the City assumed a legally enforceable duty to provide the CCA site with those services by expressly manifesting a desire or intent to provide the services. *Id.* at 480. CCA maintained the evidence at trial established that the City's conduct created a duty to provide utilities.

We agreed with CCA in *Pembroke Pines I*, reasoning in pertinent part:

> As a general rule, "a municipality has no duty to supply services to areas outside its boundaries." *Allen's Creek Props., Inc. v. City of Clearwater*, 679 So. 2d 1172, 1174 (Fla. 1996). In *Allen's Creek*, the Florida Supreme Court recognized exceptions to this general rule where (1) a municipality has agreed to extend its services by contract, and (2) where a municipality has assumed a duty to provide such services through its conduct. *Id.* at 1175–76.

. . . .

Applying *Allen's Creek* to the agreements at hand, we find direct expressions of intent to provide services to the area at issue in the EMS ILA:

> *Jail Facility:* . . . [Pembroke Pines] agrees to timely provide Broward County, upon request, any documentation that Broward County may require to acknowledge that Pembroke Pines has the capacity, ability, and the willingness to service this facility . . . . Further, [Pembroke Pines] agrees that it has sufficient capacity to provide water and sewer service to [Southwest Ranches]'s future 2,500 bed detention/corrections facility (approximately 500,000 gross square feet of floor area), *and that it will expeditiously approve a water/waste water utility agreement to provide such service, at* [*Pembroke Pines*]*'s then prevailing rate, in accordance with state law* ([Pembroke Pines]'s rate + surcharge).

(Emphasis added). By including a statement that it would "approve a water/waste water agreement to provide such service," Pembroke Pines affirmatively and expressly manifested its desire and intent to assume that duty.

Further, although they may not constitute *affirmative* expressions of intent to provide water and sewer service, other actions of the City of Pembroke Pines indicated its willingness to provide services to the CCA site. Pembroke Pines provided these services to all surrounding sites. Also, knowing that it was the only water and sewer service provider in the area, Pembroke Pines agreed in the Roadways ILA that it "shall not interfere with [CCA's] . . . development and/or *operation* of the jail facility." Finally, Pembroke Pines indicated its willingness to provide these services by the City Commission's passage of the December 2011 motion to direct CCA to limit its request for water and sewer services to a 1,500-bed facility.

. . . While the Commission did not vote on CCA's proposed W & S Agreement, which provided the negotiated terms and conditions of utility services, it did vote on and approve the EMS ILA in Resolution No. 3312, in which the City agreed that it would approve a water/wastewater utility agreement. As a

> consequence of the City Commission's approval of the EMS ILA, CCA may have reasonably expected that Pembroke Pines's agreement to provide utility services was valid and binding.
>
> . . . .
>
> Consequently, we find that the conduct exception to the general rule that a municipality has no duty to supply services to areas outside its boundaries applies in the instant case. We reverse the trial court's determination to the contrary.

Id. at 480-82.

b. <u>The Instant Case</u>

While the appeal in *Pembroke Pines I* was occurring, ICE notified Southwest Ranches that ICE would not build a detention center on the CCA site. With no detention center to build, CCA sold the CCA site to Southwest Ranches.

CCA then filed its second amended counterclaim against the City. CCA generally alleged that in reliance on the City's representations that the City would provide water and sewer service to the CCA site, CCA incurred substantial costs, including the purchase price and carrying costs of the CCA site, payments to Southwest Ranches under the CCA–Southwest Ranches agreement, and payments of professional fees for development work. CCA further alleged that the City's ultimate refusal to provide water and sewer service to the CCA site thwarted the development of the ICE facility and deprived CCA of the economic viability of the CCA site.

Based on those and other general allegations, CCA's second amended counterclaim specifically alleged six counts against the City, four of which are relevant here: Count I for declaratory judgment; Count II for promissory estoppel; Count V for tortious interference with contract; and Count VI tortious interference with advantageous business relationship.

In Count I, CCA alleged that because of the City's refusal to provide water and sewer service to the CCA site, CCA was entitled to supplemental relief in the form of damages and costs.

In Count II, CCA alleged that its reliance on the City's representations was reasonable, for which it sought damages and costs, including damages for the purchase price and carrying costs of the CCA site,

payments to Southwest Ranches under the CCA–Southwest Ranches agreement, and payments of professional fees for development work.

In Count V, CCA alleged that the City's refusal to provide water and sewer service to the CCA site interfered with the CCA–Southwest Ranches Agreement to develop a correctional facility on the CCA site, for which CCA had suffered damages, including lost profits and costs.

In Count VI, CCA alleged that the City's refusal to provide water and sewer service to the CCA site interfered with CCA's advantageous business relationship with ICE to develop a correctional facility on the CCA site, for which CCA had suffered damages, including lost profits and costs.

The City moved to dismiss CCA's second amended counterclaim. The City argued, among other grounds, that sovereign immunity barred CCA's state law claims for declaratory relief, promissory estoppel, tortious interference with contract, and tortious interference with advantageous business relationship, because those claims sought only economic damages not based on express contracts between the City and CCA, and were not based on personal injury, wrongful death, or physical property damages. According to the City, the dismissal of those four claims would be in line with Florida cases finding that, based on sovereign immunity, (1) property owners cannot recover for the harm caused by the decision-making process, and (2) no state tort liability exists for allegedly wrongful denials of development-related applications.

The circuit court ultimately entered an order denying the City's motion to dismiss, expressly finding that the City "is not entitled to its defense and assertion of sovereign immunity for the state law claims that have been set forth in Counts I, II, [V] and VI of the Second Amended Counter-claim (Declaratory Judgment, Promissory Estoppel, Tortuous [sic] Interference with Contract, and Tortuous [sic] Interference with an Advantageous Business Relationship), which requests economic damages."

3. <u>This Appeal</u>

This appeal followed. The City argues that the circuit court erred in finding, as a matter of law, that the City was not entitled to sovereign immunity for: (1) CCA's state law tort claims which do not seek damages for injury or loss of property, personal injury, or death, but instead seek damages for economic losses in the form of lost profits; and (2) CCA's state law declaratory judgment claim seeking supplemental relief in the form of economic damages.

CCA's answer brief raises three arguments, including sub-arguments as specified:

(1) the order is not reviewable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(xi) (providing jurisdiction over nonfinal orders which determine that, "as a matter of law, a party is not entitled to sovereign immunity"), because
   (a) the City's underlying conduct was not a discretionary function, which is fundamental to sovereign immunity, and
   (b) this court already concluded in *Pembroke Pines I* that CCA's claims are based on the City's operational decision not to perform its obligation to provide water and sewer service to the CCA site;
(2) if CCA's claims do not fall within section 768.28's statutory waiver of sovereign immunity because the claims seek economic damages, then the City still is liable at common law for actions in its propriety capacity as a municipal corporation; and
(3) section 768.28 does not distinguish between torts on the basis of the type of damages sought or the specific causes of action.

The parties agree that our review is de novo. *See Town of Gulf Stream v. Palm Beach Cty.*, 206 So. 3d 721, 725 (Fla. 4th DCA 2016) ("The issue of sovereign immunity is a legal issue subject to the de novo standard of review.").

We conclude that the City is entitled to sovereign immunity on CCA's state law tort claims and state law declaratory judgment claim. We base our conclusion on five grounds.

First, we conclude the order is reviewable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(xi). The rule's plain language provides appellate jurisdiction over nonfinal orders which determine that, "as a matter of law, a party is not entitled to sovereign immunity," which is exactly the type of nonfinal order on review in this appeal.

Second, contrary to CCA's answer brief, the City's underlying conduct was discretionary in nature. Discretionary or planning level functions "are generally interpreted to be those requiring basic policy decisions, while operational level functions are those that implement policy." *Com. Carrier Corp. v. Indian River Cty.*, 371 So. 2d 1010, 1021 (Fla. 1979). Here, the City Commission's ultimate adoption of a resolution opposing the construction of an ICE detention center on the CCA site, followed by a vote to terminate the EMS ILA, were clearly basic policy decisions made at the City's highest level.

Third, contrary to CCA's answer brief, we did not conclude in *Pembroke Pines I* that CCA's claims are based on the City's operational decision not to perform on its obligation to provide water and sewer service to the CCA site. *Pembroke Pines I* did not involve any determination of sovereign immunity or, more specifically, whether the City's ultimate decision not to provide water and sewer service to the CCA site was discretionary or operational in nature. *Pembroke Pines I* merely decided whether the conduct exception to the general rule that a municipality has no duty to supply services to areas outside its boundaries applied in the underlying case. 230 So. 3d at 482. Now presented in this appeal is the question of whether the City's ultimate decision not to provide water and sewer service to the CCA site was discretionary or operational in nature. As stated above, we conclude that the decision was clearly discretionary in nature.

Fourth, contrary to CCA's answer brief, the City, as a municipal corporation, is equally situated with all other constitutionally authorized governmental entities as to when sovereign immunity applies. *See Com. Carrier*, 371 So. 2d at 1016 (municipalities are "unequivocally included within the definition of 'state agencies or subdivisions'" as used in section 768.28); *Cauley v. City of Jacksonville*, 403 So. 2d 379, 385-86 (Fla. 1981) ("We note that section 768.28 also furthers the philosophy of Florida's present constitution that all local governmental entities be treated equally. . . . Municipalities can no longer be identified as partial outcasts as opposed to other constitutionally authorized local governmental entities.").

Fifth, the plain language of section 768.28's limited waiver of sovereign immunity does not apply to CCA's state law tort claims which are not based on "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment . . . ." Section 768.28(1) states, in pertinent part:

> [T]he state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, *but only to the extent specified in this act.* Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for *injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment* under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the

> claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

(emphasis added).

Persuasive authority for our conclusion is derived from the Fifth District's decision in *County of Brevard v. Miorelli Engineering, Inc.*, 677 So. 2d 32 (Fla. 5th DCA 1996), *quashed on other grounds*, 703 So. 2d 1049 (Fla. 1997). In *Miorelli*, an engineering firm contracted with Brevard County to construct a spring training facility. *Id.* at 33. The firm began developing the facility. *Id.* However, a dispute arose between the county and the firm. *Id.* The county ultimately terminated the firm and withheld the remaining amounts due under the contract. *Id.* The firm filed suit against the county seeking to recover those withheld amounts, as well as payment for extra work, under claims for breach of contract, quantum meruit, fraudulent inducement, and common law fraud. *Id.*

The county filed a motion for summary judgment, asserting sovereign immunity. *Id.* The circuit court granted the county's motion as to the quantum meruit and common law fraud claims, but concluded that sovereign immunity did not bar either the breach of contract or fraudulent inducement claims. *Id.*

On appeal, the Fifth District affirmed that portion of the circuit court's order denying summary judgment on the breach of contract claim, but reversed that portion of the order denying summary judgment on the fraudulent inducement claim. *Id.* at 34-35.

On the breach of contract claim, the Fifth District found that although no explicit legislative waiver of sovereign immunity exists for breach of contract, our supreme court has recognized an implied waiver of sovereign immunity exists for breach of contract. *Id.* at 33 (citing *Pan–Am Tobacco Corp. v. Dep't of Corrs.*, 471 So. 2d 4 (Fla. 1984), for the proposition that because the Legislature authorizes state entities to enter into contracts, the Legislature clearly intended that such contracts be valid and binding on both parties).

However, on the fraudulent inducement claim, the Fifth District found no implied waiver of sovereign immunity, reasoning, in pertinent part:

> The legislature has waived sovereign immunity in tort for personal injury, wrongful death, and injury or loss of property. *See* § 768.28, Fla. Stat. (1995). Fraud in the inducement

> causing only economic loss does not fit within any of those categories of injury or loss enumerated in the statute. Section 768.28 states that sovereign immunity for liability in tort is waived, but only to the extent specified in the statute. Moreover, fraud in the inducement is a tort independent of breach of contract. *Pan–Am* recognized the waiver of sovereign immunity to breach of contract actions, and its holding has not been extended to include the tort of fraudulent inducement causing only economic loss. Sovereign immunity has not been waived as to this type of tort, so the trial court erred in not granting the county's motion for summary judgment as to that count.

Id. at 34.

Miorelli's reasoning applies equally here. CCA lacks an express contract with the City, and lacks a claim for personal injury, wrongful death, or injury or loss of property against the City. The waiver of sovereign immunity has not been extended to include the claim upon which CCA relies here – economic damages framed in counts for declaratory relief, promissory estoppel, tortious interference with contract, and tortious interference with advantageous business relationship. Thus, the circuit court erred in denying the City's motion to dismiss those counts on sovereign immunity grounds.

This conclusion is not only consistent with *Miorelli*, but with other cases applying sovereign immunity to bar recovery of economic damages against a municipality for the denial of a development application. *See Akin v. City of Miami*, 65 So. 2d 54, 55-56 (Fla. 1953) (the granting or withholding of a building permit by a municipality exercises a purely governmental function, and thus the municipality could not be held liable in a tort action for damages for the wrongful refusal to issue such a permit); *Paedae v. Escambia Cty.*, 709 So. 2d 575, 578 (Fla. 1st DCA 1998) (county's interpretation of its comprehensive plan and refusal to issue a permit based on that interpretation is a governmental function which is protected by sovereign immunity); *City of Cape Coral v. Landahl, Brown & Weed Assocs., Inc.,* 470 So. 2d 25, 27 (Fla. 2d DCA 1985) (no cause of action exists for the manner in which a municipality exercises its governmental function of issuing or refusing to issue permits, thus those actions are immune from an action for damages); *City of Live Oak v. Arnold,* 468 So. 2d 410, 412 (Fla. 1st DCA 1985) ("[I]nsofar as the city's defense of sovereign immunity is focused on its actions in denying issuance of the permit based upon its reading of its own code of ordinances, the defense is viable.").

Conclusion

Based on the foregoing, we reverse and remand for entry of a final order dismissing, on sovereign immunity grounds, Count I for declaratory judgment, Count II for promissory estoppel, Count V for tortious interference with contract, and Count VI tortious interference with advantageous business relationship.

Reversed and remanded.

CONNER, J., and METZGER, ELIZABETH, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

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

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

LUIS AVILA AND CRISTINE ROSENHAIM,

Appellants,

v.

Case No. 5D18-1929

HMC ASSETS, LLC SOLELY IN ITS CAPACITY AS SEPARATE TRUSTEE FOR CAM XVIII TRUST AND RIVIERA BELLA MASTER ASSOCIATION, INC.,

Appellees.

_____/

Opinion filed May 31, 2019

Appeal from the Circuit Court
for Volusia County,
Sandra C. Upchurch, Judge.

Tanner Andrews, of Tanner Andrews, P.A., Deland, for Appellant.

Ashland R. Medley and Wendy S. Griffith, of Ashland Medley Law, PLLC, Coral Springs, for Appellee, HMC Assets, LLC Solely in its Capacity as Separate Trustee for CAM XVIII Trust.

No appearance for Appellee, Riviera Bella Master Association, Inc.

COHEN, J.

Luis Avila and Cristine Rosenhaim ("the Avilas") appeal the final summary judgment of foreclosure entered in favor of HMC Assets, LLC Solely in its Capacity as

Separate Trustee for Cam XVIII Trust and Riviera Bella Master Association, Inc. ("HMC"). We affirm without discussion. However, we write to comment upon the trial court's reservation of jurisdiction to enter a deficiency judgment against the Avilas following the foreclosure sale.

HMC attempted to effectuate personal service on the Avilas but could not locate them. Instead, it properly effectuated constructive service. The Avilas maintained their objection to personal jurisdiction throughout the proceedings. The trial court entered a final summary judgment of foreclosure in favor of HMC and reserved jurisdiction to enter further orders, including a deficiency judgment against the Avilas following the foreclosure sale.

"A personal money judgment necessitates in personam jurisdiction over the defendant," but "[c]onstructive service confers only in rem or quasi in rem jurisdiction upon the court." Honegger v. Coaster Fertilizer & Supply, Inc., 712 So. 2d 1161, 1162 (Fla. 2d DCA 1998) (citations omitted). Accordingly, the court never acquired the necessary in personam jurisdiction to enter a deficiency judgment against the Avilas, and entry of such would be improper.[1]

AFFIRMED.

EVANDER, C.J., and EDWARDS, J., concur.

[1] We note that HMC is not precluded from personally serving the Avilas and obtaining a deficiency judgment. A plaintiff is not required to obtain personal jurisdiction in an initial foreclosure action in order to bring a deficiency action in the future. NCNB Nat'l Bank of Fla. v. Pyramid Corp., 497 So. 2d 1353, 1355 (Fla. 2d DCA 1986).

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

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

NAZIA, INC.,

Appellant,

v. Case No. 5D18-2502

AMSCOT CORPORATION,

Appellee.

_____/

Opinion filed May 31, 2019

Nonfinal Appeal from the Circuit Court
for Orange County,
Kevin B. Weiss, Judge.

Alan B. Gest, of Alan B. Gest, P.A., Aventura, for Appellant.

John M. Brennan and John M. Brennan, Jr., of GrayRobinson, P.A., Orlando, for Appellee.

HARRIS, J.

Nazia, Inc. ("Nazia") appeals a temporary injunction requiring it to remove construction that allegedly interfered with a license that gave Amscot Corporation ("Amscot") the right to use parking spaces on Nazia's property. For the reasons that follow, we hold that the trial court abused its discretion in granting the temporary injunction and reverse.

Nazia owns property that shares a southern border with property on which Amscot operates its business. In 2008, the parties entered into an agreement entitled “irrevocable license” that permitted Amscot to “use” ten of Nazia’s parking spaces for $6000 annually. The agreement referenced a sketch purporting to show the location of a designated parking area for the licensed parking spaces. Subsequently, the parties amended the agreement to allow Amscot to use twenty parking spaces for $27,000 annually. The amended licensing agreement referenced an exhibit showing an extended version of the original designated parking area along the southern border of Nazia’s property and specifically authorized Amscot to “erect and maintain professional signs indicating Amscot Customer and Employee Parking at the Parking Lot.”

In 2018, Nazia began construction of a building on the southern edge of its real property that Amscot claimed interfered with the operation of its business. When Nazia failed to comply with Amscot’s demand letter asking Nazia to cease construction, Amscot promptly brought an action seeking temporary and permanent injunctive relief.

At the hearing on the motion for temporary injunction, Amscot’s senior vice president testified about the amended licensing agreement and stated that the twenty parking spaces were in the designated parking area along the fence line separating the Nazia property and the Amscot property. He also stated that Amscot placed security lights along the northern side of the Amscot building to illuminate the parking spaces to provide security, and that Amscot constructed a sidewalk between the properties for its customers and employees to use. He further explained that because the designated parking area was well lit and Amscot had exterior building cameras observing the area, it provided safe access to the Amscot building. He complained that the construction took up some of the

parking spaces and blocked the sidewalk between the properties. However, he admitted that Amscot customers and employees used parking spaces throughout the Nazia property.

The president of Nazia testified and rejected Amscot's contention that there were twenty parking spaces in the designated parking area. Specifically, he appeared to contest the accuracy of the exhibit attached to the amended licensing agreement, explaining "[i]t was just a sketch to give an understanding to [Amscot] that [Amscot] can start parking here if [Amscot would] like." He explained, in relevant part, that Amscot could only park ten to twelve cars in the designated parking area before construction, because there was a light post and a tree blocking a significant portion of the border between the properties, and that the construction blocked only one or two parking spaces. He further testified that construction began in January 2018, that Nazia had to date spent $200,000 on the construction, that Amscot never objected to the construction until June 2018, and agreed that Amscot customers parked throughout Nazia's parking lot—not just in the designated parking area.

Following the hearing, the trial court entered a temporary injunction in favor of Amscot, finding that "Nazia's willful and continuing encroachment, trespass, and interference with Amscot's License is properly subject to temporary and permanent injunctive relief." The court temporarily enjoined Nazia from any and all construction on the parking lot and ordered Nazia to return the parking lot to its original condition and restore Amscot to its parking rights under the license within thirty (30) days. Nazia appealed.

We review de novo a trial court's ruling on a temporary injunction pertaining to purely legal matters. Suggs v. Sw. Fla. Water Mgmt. Dist., 953 So. 2d 699, 699 (Fla. 5th DCA 2007). On appeal, Nazia argues that the trial court erred in imposing a temporary injunction because Amscot only possessed a license to utilize the property, which could legally be revoked at any time, and that the temporary injunction went beyond simply preserving the status quo and awarded Amscot the same relief it would have received in a final court order of permanent injunction. Amscot responds that it possessed a lease over the designated parking area and spent substantial sums to use the property. We agree with Nazia. From our review of the record, we conclude that Amscot is unlikely to succeed on the merits and that the temporary injunction would not preserve the status quo, warranting reversal.

"[A] temporary injunction is an extraordinary remedy that can only be granted if the movant establishes (1) a likelihood of irreparable harm, (2) unavailability of an adequate legal remedy, (3) substantial likelihood of succeeding on the merits, and (4) support for the injunction within considerations of public interest." Phantom of Clearwater, Inc. v. Pinellas Cty., 894 So. 2d 1011, 1014 (Fla. 2d DCA 2005). "The primary purpose of entering a temporary injunction is to preserve the status quo pending the final outcome of a cause." Yardley v. Albu, 826 So. 2d 467, 470–71 (Fla. 5th DCA 2002). "The status quo which will be preserved by a preliminary injunction is the last, actual, peaceable, noncontested condition which preceded the pending controversy." Chi. Title Ins. Agency of Lee Cty. v. Chi. Title Ins. Co., 560 So. 2d 296, 297 (Fla. 2d DCA 1990). "A preliminary injunction is improperly entered when it bypasses the procedures for a permanent injunction and preliminarily grants the same relief that would have been given in a final

order of permanent injunction." Charlotte Cty. v. Vetter, 863 So. 2d 465, 469 (Fla. 2d DCA 2004) (citing Lee County Elec. Co-op., Inc. v. Cook, 604 So. 2d 911, 913 (Fla. 2d DCA 1992)).

We first look at the relationship between the parties. The fact that an agreement is called a "'license' or contains a conclusory provision that the parties have a relationship of licensor and licensee is not determinative. Rather, the proper characterization of the agreement is discerned by the actual terms, conditions, rights and obligations expressly set forth in the agreement." Midgard Mgmt., Inc. v. Park Ctr. Med-Suites, LLC, 114 So. 3d 302, 307 (Fla. 3d DCA 2013). "[A] license is not an interest in real property; it merely gives one the authority to do a particular act on another's land." Keane v. President Condo. Ass'n, 133 So. 3d 1154, 1156 (Fla. 3d DCA 2014) (holding that where parties stipulated that agreement permitting condominium unit owner to use parking space was a license, condominium association could revoke license at will). "It conveys no interest in the land and may not be assigned or conveyed by the licensee." Brevard Cty. v. Blasky, 875 So. 2d 6, 12 (Fla. 5th DCA 2004).

A "lease," on the other hand, involves "a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own [which] passes a present interest in the land for the period specified." Outdoor Media of Pensacola, Inc. v. Santa Rosa Cty., 554 So. 2d 613, 615 (Fla. 1st DCA 1989). Generally, whether an agreement is a license or a lease hinges on whether it is exclusive. See, e.g., Id. at 616 (determining that subject agreement was a lease because county granted the company "exclusive right to place signs on county rights of way for a three-year period"); Randall Indus., Inc. v. Lee Cty., 307 So. 2d 499 (Fla. 2d DCA 1975) (holding that license

agreement giving taxi company exclusive use of airport parking spaces was a lease that required competitive bidding).

Here, Amscot had no more than a license. At best, the amended licensing agreement stated that Amscot has the right to erect signs stating "Amscot Customer and Employee Parking" in the parking lot. However, this cannot overcome the clearly limited language of the amended licensing agreement that only authorized Amscot to "use" the parking spaces. In addition, despite being labelled "irrevocable", the license in this case by its clear terms is not permanent and either party can opt out. The fact that Amscot paid a substantial sum to use the parking spaces does not alter our analysis. To qualify as a true irrevocable license, Amscot needed to make a substantial investment in the property's improvement. See Dance v. Tatum, 629 So. 2d 127, 128–29 (Fla. 1993). Here, the only evidence that Amscot invested in improving the property lies in a provision of the amended licensing agreement which states that "Amscot has contributed Two Thousand Two Hundred and No/100 Dollars ($2,200) for the repair and installation of fencing along the rear of the Land and Amscot's Land" and testimony that Amscot constructed a walkway between the properties. This was hardly a substantial investment, especially compared to the $200,000 Nazia allegedly spent on construction.

We also agree with Nazia's argument that this temporary injunction improperly alters the status quo. In its current form, the temporary injunction instructs Nazia to return the parking lot to its "original condition." Read in context, the phrase "original condition" almost certainly refers to the parking lot's condition under which Amscot's customers and employees used the parking lot prior to construction in light of the temporary injunction's command to "restore AMSCOT to its parking rights under the License within thirty (30)

days." However, this instruction would not preserve the status quo. From a review of the record, construction began as early as January 2018. This would mean that Amscot waited up to six months before providing Nazia with its formal notice and demand to cease construction in June 2018. Therefore, forcing Nazia to remove its construction would not preserve the status quo because peace may have existed between the parties for up to six months before any conflict actually arose. See Chi. Title Ins. Agency of Lee Cty., 560 So. 2d at 297. Further, forcing Nazia to return the parking lot to its original condition impermissibly grants Amscot the full relief it requested, bypassing the procedures required for a permanent injunction. See Vetter, 863 So. 2d at 470.

For the foregoing reasons we reverse this order granting Amscott a temporary injunction.

REVERSED.

EVANDER, C.J. and LAMBERT, J., concur.