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 REPLY BRIEF

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SUMMARY OF ARGUMENT

In its Answer Brief, the School Board contends its November 2, 2010, lawsuit for breach of contract and specific performance of the parties May 9, 2005, agreement, was timely filed. In support of that contention, the School Board argues that its claims did not accrue until it demanded Langley's performance on October 22, 2010. This argument is without merit.

The School Board's accrual argument is fatally flawed because there is no demand provision or any other language in the parties' agreement which supports the School Board's position. The School Board does not contend otherwise. Faced with an absence of contractual language which supports its position, the School Board attempts to use findings made during the 2006 litigation - which is not at issue in this appeal – to convince this Court that its causes of action did not accrue until it demanded Langley's performance in 2010. The School Board's reliance on the 2006 litigation is misplaced and its 2010 demand did not magically restart the statute of limitations for its causes of action. Under the School Board's logic, it could have made the same demand in the year 2030 and be heard to argue its claims accrued then. This Court should hold that Langley has no obligation to perform under the parties' agreement and vacate the Final Judgment on appeal.

ARGUMENT

I. THE 2006 TRIAL COURT'S FINDING THAT LANGLEY DID NOT BREACH THE AGREEMENT HAS NO BEARING ON THE ACCRUAL DATE OF THE SCHOOL BOARD'S CLAIMS.

In the Initial Brief, Langley specifically argued that no language in the parties' agreement supports the School Board's argument that its causes of action accrued only when it demanded performance. (IB at 14-15). Instead, the parties agreed that by a date certain - June 15, 2005 - Langley was obligated to perform by deeding property to the School Board. When Langley failed to perform on June 15, 2005, the School Board's breach of contract and specific performance claims accrued. Consequently, the School Board sued on June 14, 2006, the day before the cause of action for specific performance would have been time-barred.

In its Answer Brief, the School Board makes no attempt to show how any aspect of the parties' agreement supports its accrual argument. Instead, the School Board attempts to shift this Court's attention to findings made by a trial court in a prior 2006 lawsuit. Those findings are not at issue in this appeal.

Even if they were, they do not support the School Board's accrual argument for two reasons. First, as argued in the Initial Brief, 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.

The School Board asserts that the 2006 trial court's ruling that "there is no evidence to support to support the School Board's contention that it provided the Partnership with a sited plan which conforms to paragraph 5 of the agreement" is tantamount to a ruling that a "condition precedent" to Langley's duty to perform was the School Board's provision of a compliant parcel to Langley. (AB at 7-8). This tortured interpretation of the trial court's ruling is unavailing.

The court never ruled that a condition precedent to Langley's duty to perform was the School Board's need to demand a compliant parcel. The court did not reach the question of whether Langley's basic refusal to deed land by the agreed-upon deadline constituted a breach. That question was not before the trial court in the 2006 litigation because the School Board made a deliberate choice to pursue a specific piece of property to which it was not entitled under the contract. 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.

Second, the 2006 ruling that Langley did not breach has absolutely no bearing on the question of when the School Board's claims accrued. The 2006 court found that Langley did not breach the agreement when he failed to deed over the specific piece of property demanded by the School Board. Specifically, it found that Langley had no obligation to deed over the specific parcel demanded by the School Board because the School Board was not entitled to it under the terms of the agreement. Thus, the School Board's contention that "the cause of action did not accrue" because the court found "there was no breach of contract" is ludicrous. (AB at 11). There was no breach of contract because the School Board demanded a parcel that was not contemplated in the parties' agreement.

The 2006 trial court's ruling that there was no breach does not mean, *ipso facto*, that the causes of action had not accrued. The causes of action accrued on June 15, 2005. With that in mind, the School Board sued on June 14, 2006, the day before the cause of action for specific performance would have been time-barred. The School Board lost because its demand did not comport with the agreement. Thus, Langley did not breach when he refused the demand. The School Board's subsequent demand of a compliant parcel did not establish a new accrual date for its claims. Under that logic, the School Board could have made the same demand in the year 2020 and be heard to argue its claims accrued then.

The case law cited in the School Board's Answer Brief does not support its argument. Instead, it supports Langley's. For instance, the School Board relies on the well-settled proposition that a cause of action accrues when the last element necessary to constitute the cause of action occurs. (AB at 9-10). The School Board's claims accrued on June 15, 2005, when Langley failed to deed over a compliant parcel. That is why the School Board originally sued on June 14, 2005. The School Board's ill-advised decision to sue when Langley refused to comply with a demand Langley had no duty to accept does not mean the School Board did not have a fully accrued cause of action for Langley's failure to deed over a compliant parcel under the plain language of the agreement. The last element necessary to constitute the School Board's claims occurred when Langley failed to perform by June 15, 2005.

Finally, it is important to note that in its Answer Brief, the School Board did not address Langley's argument that the School Board had ample time to timely pursue its claims after the 2006 litigation ended. It failed to do so. The 2006 litigation culminated when the Final Judgment was rendered in July of 2009. That left the School Board with almost a year to file suit. The School Board makes no attempt to explain why it waited approximately four months after the 2009 Final Judgment to demand Langley's performance in a November 3, 2009, letter. The School Board then decided to wait almost an entire year until it again demanded

performance in an October 22, 2010, letter, and finally sued on November 2, 2010. In sum, the School Board should not be awarded for its decision to overreach during the 2006 litigation and its subsequent decision to delay pursuit of its rights under the agreement for over a year after the Final Judgment issued in July of 2009.

CONCLUSION

The School Board is precluded from recovering on the 2005 agreement between the parties because its claims are time-barred. The cause of action accrued on June 15, 2005, and the School Board had a 5 year window to bring suit against Langley for its failure to transfer a deed that complied with the parties' agreement. Despite ample opportunity to do so, the School Board failed to timely pursue its rights. The statute of limitations was not tolled since none of the enumerated tolling provisions applied to the School Board. Thus, Langley has no liability under the parties' agreement and the Final Judgment should be vacated.

DATED this 21st day of December, 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 email and U.S. Mail on December 21, 2012 to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply 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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