

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

GRANDEZZA MASTER PROPERTY OWNERS ASSOCIATION, INC., a Florida Non-Profit Corporation, MIROMAR OUTLET WEST, LLC, a Florida limited liability company, INTERNATIONAL DESIGN CENTER, LLC, a Florida limited liability company, d/b/a MIROMAR DESIGN CENTER, and WILDCAT RUN COMMUNITY ASSOCIATION, INC., a Florida Non-Profit Corporation,

Plaintiffs,

vs.

CASE NO. 13-CA-002807

COLLIER COUNTY, a Political Subdivision of the State of Florida, EASTMAN AGGREGATES, INC., a Florida corporation, and PHILLIPS AND JORDAN, INCORPORATED, a Florida corporation,

Defendants.

**AMENDED EMERGENCY VERIFIED
MOTION FOR TEMPORARY INJUNCTION**

Plaintiffs, Grandezza Master Property Owners Association, Inc., Bella Terra of Southwest Florida, Inc., Urika II, Inc. d/b/a University BP, Miromar Outlet West, LLC, International Design Center, LLC d/b/a Miromar Design Center, and Wildcat Run Community Association, Inc., move the Court pursuant to Rule 1.610, Fla. R. Civ. P., to enter a temporary injunction enjoining Defendants, Collier County

(“Collier”), Eastman Aggregate Enterprises, LLC (“Eastman”), and Phillips and Jordan, Incorporated (“Phillips”) (and, collectively referred to as “Defendants”), and all agents and representatives of, and those acting in concert with, Defendants from utilizing Corkscrew Road in Lee County in conjunction with the transportation of sand for their beach re-nourishment project in Collier County other than between the hours of 6:00 a.m. and 11:00 p.m., or, alternatively requiring that the Defendants use the Alico route, and as grounds therefore state:

1. Plaintiff, Grandezza Master Property Owners Association, Inc., is a homeowners association owned by and representing the interests of homeowners of the Grandezza community located adjacent to Corkscrew Road in Lee County, Florida.

2. Plaintiff, Bella Terra of Southwest Florida, Inc., is now, and at all times mentioned herein was, a homeowners association organized and existing pursuant to the laws of the State of Florida.

3. Plaintiff, Urika II, Inc. d/b/a University BP, is now, and at all times mentioned herein was, a corporation organized and existing pursuant to the laws of the State of Florida with its principal place of business in Lee County, Florida.

4. Plaintiff, Miromar Outlet West, LLC (“Miromar”), is a limited liability company owning real property located in Lee County, Florida and adjacent to Corkscrew Road.

5. Plaintiff, International Design Center, LLC d/b/a Miromar Design Center (“IDC”), is a limited liability company owning real property located in Lee County, Florida and adjacent to Corkscrew Road.

6. Plaintiff, Wildcat Run Community Association, Inc., is a homeowners association owned by and representing the interests of homeowners of the Wild Cat Run community located adjacent to Corkscrew Road in Lee County, Florida.

7. Collier has undertaken a beach re-nourishment project to re-nourish Naples, Park Shore, Pelican Bay, and Vanderbilt Beaches (“Re-nourishment Project”).

8. The Re-nourishment Project will place 250,000 cubic yards of sand on the beaches referenced in Paragraph 7 above.

9. Collier is mining the sand to be used for the Re-nourishment Project at the Stewart Mining Sand Pit located in Collier County, Florida.

10. Defendants, Eastman and Phillips, have contracted with Collier to provide sand hauling services in connection with the Re-nourishment Project.

11. Collier, Eastman, and Phillips intend to use large tandem axle dump trucks weighing approximately 70,000 pounds each to move sand from the Stewart Mining Sand Pit to the Re-nourishment Project.

12. Collier, Eastman and Phillips plan to send roughly 400 trucks per day for six (6) days a week down Corkscrew Road in Lee County, Florida over a four (4) month period extending from October of 2013 through February of 2014.

13. Collier has directed Eastman and Phillips to convoy their sand trucks down Corkscrew Road in Lee County, Florida to the interchange of Corkscrew Road and I-75 where the trucks will attempt to make a left-hand turn onto I-75.

14. The convoy route chosen by Collier, Eastman, and Phillips creates a tremendous safety hazard in an area of heavy residential occupancy and tourist traffic. The route brings the large tandem axle dump trucks past the residential communities of Bella Terra, Wildcat Run, the Preserve, Grandezza and Stoneybrook which contain over four thousand three hundred thirty-five (4,335) homes. In addition, the sand convoy will pass by Pinewoods Elementary School, Miromar Outlets, Miromar Design Center, and the Shoppes of Grande Oak.

15. Corkscrew Road has an average daily traffic volume of approximately 10,000 vehicles, eleven percent (11%) of which are trucks.

16. The use of so many large heavy tandem axle dump trucks on a busy highway with numerous lights and turns when coupled with the acceleration and deceleration issues associated with such trucks creates unacceptable safety risks.

17. With normal usage of Corkscrew Road in the past three (3) years, there have been fifty-seven (57) accidents, seven percent (7%) involving trucks in the past three (3) years, and Lee County Emergency Medical staff has responded to eighty-seven (87) emergency calls.

18. All of the Plaintiffs own real property adjacent to and abutting that portion of Corkscrew Road in Lee County, Florida which Collier, Eastman, and Phillips intend to use in their convoy process.

19. The Defendants have scheduled their truck convoys at a time the traffic volumes on Corkscrew Road is the heaviest. More than twenty-five thousand (25,000) people visit Miromar's outlet mall and IDC's design center daily during the Thanksgiving, Christmas, and New Year holidays.

20. The addition of four hundred (400) large tandem axle dump trucks daily and the existing traffic on Corkscrew Road during the holiday period and tourist season will create a hazardous and potential deadly situation.

21. Corkscrew Road is a heavily used arterial roadway servicing five (5) large gated communities and a largely developed commercial district in the corridor between I-75 and the Bella Terra neighborhood to the east. In this section of roadway, Corkscrew Road is at its traffic capacity during the Thanksgiving, Christmas, and New Year holidays starting in November and running through April when our "snowbirds" and tourists are here in the greatest numbers. Corkscrew Road would be overburdened and gridlocked by the addition of hundreds of large tandem axle dump trucks operating on a daily basis during the height of the holiday and tourist seasons.

22. The continuous stream of tandem axle dump trucks from Collier County will pass numerous school bus stops; three (3) traffic lights, which are not synchronized; and two (2) left-turning lanes into the outlet mall. Thereafter, the trucks

will attempt to turn onto I-75 at a rate that will cause gridlock such as to render the Corkscrew/I-75 interchange obstructed and virtually unusable.

23. Plaintiffs have a clear legal right to utilize the public roadway known as Corkscrew Road in a safe and unobstructed fashion.

24. The sand convoys contemplated by Collier, Eastman, and Phillips will unreasonably obstruct Plaintiffs' use of Corkscrew Road, will place the safety of their employees, residents, and invitees in jeopardy, and violate their constitutional rights.

25. Alternative methods exist for Defendants to complete the Re-nourishment Project that will not unjustly prejudice the Defendants and avoid irreparable harm to Plaintiffs, their residents, their invitees, and the public.

26. Plaintiffs are without an adequate remedy at law to prohibit Defendants from utilizing Corkscrew Road as planned.

27. Irreparable harm to Plaintiffs will occur absent injunctive relief.

28. Plaintiffs have a clear legal right to prohibit Defendants from utilizing Corkscrew Road as described above and possess a substantial likelihood of succeeding on the merits of their claims.

29. Issuance of an injunction prohibiting Defendants from utilizing Corkscrew Road as specified above would not be contrary to the interests of the public generally. In fact, considerations of public interest support the entry of the injunctive relief sought by Plaintiffs.


WHEREFORE, Plaintiffs, Grandezza Master Property Owners Association, Inc., Bella Terra of Southwest Florida, Inc., Urika II, Inc. d/b/a University BP, Miromar Outlet West, LLC, International Design Center, LLC d/b/a Miromar Design Center, and Wildcat Run Community Association, Inc., respectfully request that this Court enter an Order providing as follows:

- A. That the Court enter a temporary injunction requiring Defendants, Collier County, Eastman Aggregate Enterprises, LLC, and Phillips and Jordan, Incorporated, to utilize the less populated Alico route so as to promote public safety, minimize the economic impact on property owners adjacent to the roadway, and to facilitate the open and free access to Corkscrew Road;
- B. That, in the alternative, Defendants, Collier County, Eastman Aggregate Enterprises, LLC, and Phillips and Jordan, Incorporated, and all agents and representatives of, and those acting in concert with, Defendants may only run their sand convoys on Corkscrew Road between the hours of 11:00 p.m. and 6:00 a.m. in association with their beach re-nourishment project in Collier County so as to avoid the regular vehicular traffic associated with Corkscrew Road and to minimize the safety and economic impacts associated with the activities engaged in by Collier County;
- C. That, in the alternative, Defendants, Collier County, Eastman Aggregate Enterprises, LLC, and Phillips and Jordan, Incorporated, be required to keep

the sand convoys in Collier County, Florida and utilize the Immokalee Road route.

D. That Plaintiffs have and recover such other and further relief as the Court deems just and proper.

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[VERIFICATION OF AMENDED MOTION ON THE FOLLOWING PAGE]

VERIFICATION OF AMENDED MOTION

STATE OF FLORIDA


COUNTY OF LEE

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Dated: October 14, 2013.

MIROMAR OUTLET WEST, LLC

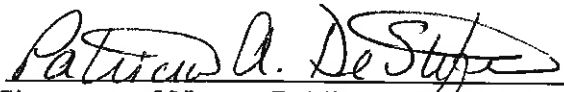
BY: MIROMAR DEVELOPMENT
CORPORATION, Managing
Member

BY: 
Mark Geschwendt, Vice President

SWORN AND SUBSCRIBED TO before me by Mark Geschwendt this 14th
day of October, 2013.



PATRICIA A. DESTEFANO
MY COMMISSION # EE 114516
EXPIRES: August 6, 2015
Bonded Thru Budget Notary Services


Signature of Notary Public - State of Florida
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known — OR — Produced Identification
Type of Identification Produced: _____