State of Florida



Hublic Service Commission -M-E-M-O-R-A-N-D-U-M-

DATE: September 20, 2002

TO: Division of the Commission Clerk and Administrative Services

FROM: Office of the General Counsel (Gervasi)

RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee

County by Gistro, Inc.

Please file the attached letter with attachments dated September 18, 2002, in the docket file for the above-referenced docket.

RG/dm

cc:

Division of Economic Regulation (Brady, Redemann)

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FPSC-COMMISSION CLERK

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LAW OFFICES

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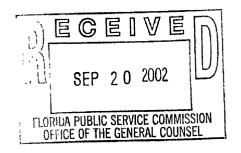
September 18, 2002

Via Telecopy and Mail

David M. Owen, Esquire Chief Assistant County Attorney Lee County, Florida Post Office Box 398 Fort Myers, Florida 33902

Gistro, Inc. v. Lee County Re:

Dear David:



Thank you for providing a copy of Robert Burandt's letter to you of September 5, wherein Mr. Burandt invites you, in the last paragraph, to advise the Public Service Commission counsel assigned to this matter if there is any doubt as to Gistro's authority to disconnect customers from the wastewater collection system within the Forest Mere subdivision. A copy of that letter is attached for your ready reference.

Also attached are copies of the applicable documents from the case of <u>Pfaff v. Forest</u> Mere Joint Venture, et al., which includes a Sheriff's deed for, among other things:

"in and to all that certain real estate and, the wastewater treatment plant located thereon, including the existing collection system serving the Forest Mere and Spring Lake subdivisions, in the County of Florida known and described as follows..."

Thus, the issue of Gistro, Inc.'s ownership of the wastewater collection system, as assignee of Forest Mere Joint Venture is in serious doubt. Also, it appears that Gistro may be the trespasser here, rather than the County, et al.

At Mr. Burandt's invitation, I am providing a duplicate of this letter to Roseann Gervasi at the Florida Public Service Commission, as well as a copy to Mr. Burandt.

David M. Owen, Esq. September 18, 2002 Page 2

Our client, Bonita Springs Utilities, Inc., is interested in settling this matter by purchasing the subject wastewater collection system, but it appears on the surface, at least, that the proper party to convey title may not be Gistro, Inc. By copy hereof, I am asking Mr. Burandt to respond hereto.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP

William E. Sundström, P.A.

For the Firm

WES:imt

cc: (Via telecopy and mail)

Rosanne Gervasi Robert Burandt Fred Partin Don Thomson Martin Friedman

Roosa, Sutton, Burandt, Adamski & Roland, LLP

Attorneys and Counselors at Law

Richard V.S. Roosa Larry D. Sutton Robert B. Burandt Robert C. Adamski Ty G. Roland

David Owen, Esq.

P.O. Box 398

Chief County Attorney

Fort Myers, FL 33902-0398

1714 Cape Coral Parkway East Cape Coral, Florida 33904 Telephone:

(239) 542-4733

Facsimile:

(239) 542-9203

Septem RECEIVED

SEP 1 3 2002

Rose Sundstrom & Bentley, LLP

DE SEP 10 AM 8: C"

RE:

Gistro, Inc. v. Lee County

Dear Mr. Owen:

This will acknowledge and thank you for your letter dated August 26, 2002. Unfortunately, Lee County has left my client with no other alternative, but to institute litigation against Lee County for what we consider to be the inexcusable issuance of building permits knowing that the result will be a trespass in violation of Florida Statutes. With regard to any settlement between my client and Bonita Springs Utilities, be advised that we are all optimistic. However, the County's continued issuing of building permits is only exacerbating the problem and moving the parties further apart. Further be advised that while my client appreciates your thoughts concerning settlement and what is in his best interest, it doesn't resolve the fact that the County is authorizing and potentially encouraging people to commit the crime of trespass against him.

From your past letters there does not appear to be any dispute that these lines belong to my client yet the County continues to issue building permits to people, who will eventually have to trespass into these lines and then face the fact that my client will disconnect them from the lines leaving them in a house that is inhabitable. This is the cross the County must bear when these people come back to them and ask them why they can't live in their house after they have successfully obtained a building permit.

If you have any doubt as to my client's authority to disconnect these people from those sewer lines, I suggest you contact the lead attorney for the Public Service Commission, Rosanne Gervaisi in order to confirm same. I order to expedite, I will advise you that her fax number is 1-850-413-6225. Please keep in mind that every action has a reaction and the reaction of the County's issuing building permits to persons, who are destined to trespass into my client's sewer lines will result in the disconnection of that sewer line and a house that is inhabitable. Please be sure to convey that message to Mr. James Yaeger, Mr. James Lavender, Mr. Rick Diaz, Ms. Mary Gibbs, Mr. Robert Stewart, Mr. Don Stilwell and the County Commissioners.

Sincerely.

Robert B. Burandt Rbb/bh cc: client

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT IN AND FOR LEF COUNTY, FLORIDA

ROLF PEAFF and MARK PEAFF.

Plaintiffs,

VS.

FOREST MERE JOINT VENTURE. consisting of GULF CONSTRUCTION, INC., Florida corporation, and NAPLES AMERICAN INVESTMENTS,],4C'' 1 FRITZ HOLZBERG, JUERGEN BARCK, WILLIAM SCHWEIKHARDT, Trustee of 94, ರ್ಶದ LANDVEST ASSOCIATES, INC., a Florida Corporation,

Defendants.

CASE NO.: 95-4498-CA-LG

EXECUTION

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to levy on the property subject to execution J. FRITZ HOLZBERG individually in the sum of one hundred and seventy five thousand, four hundred and fifteen dollars and eighty two cents (\$175.415.82), plus interest at 10% through December 31, 1998, and at such other interest rate thereafter as set by the Comptroller of the State of Florida, until paid and to have this writ before the Court when satisfied.

DATED on 11-21- , 1998,

CHARLIE GREEN
AS CLERK OF THE COURT,

As Deputy Clerk

CC!

a')

Seidensticker & San Filippo 2150 Goodlette Road Suite 305

(P)

Naples, Florida 34102 Telephone: (941) 403-0611 Facsimile: (941) 403-0711

STATE OF FLORIDA

COUNTY OF LEE

I do hereby certify that the foregoing is a true and correct copy of an execution issued out of County Court, Lee County, Case No. 95-4498CA and is now on file in the Office of the Sheriff of Lee County of which I am an employee.

JOHN J. McDOUGALL Sheriff of Lee County, Florida

Rosa S. Estrada, Deputy Sheriff

ROSCI S. ESTOLIDA

MY COMMISSION & CCYTHASY EXPIRES

April 4, 2004

GONDRO THEN YEAR FAMILY SULANCE, UNC.

NEWS-PRESS

Published every morning — Dally and Sunday Fort Myers, Florida

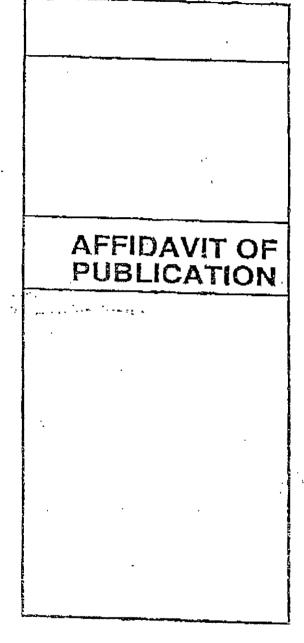
Affidavit of Publication

STATE OF FLORIDA COUNTY OF LEE

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Inder and by virtue of recutions, issued out of and under the 1861 of the Courts, State of Fioriot, Inder date of Cotober 3, 1991, Soptember 17, 1995, Documber 17, 1995, March 21, 1997, Navember 17, 1997, March 12, 1998, 1998, April 27, March 12, 1998, April 27, March 12, 1998, April 27, March 12, 1998, April 27, 1998, April 28, 199 335-0335 CLASSIFIED NEWS-PRESS THE BELIEVING IN SELLING 15 . .



NEWS-PRESS "Serving Southwest Florida Since 1884"



SHERIFF'S DEED

THIS INDENTURE, made this 5TH day of October, in the year of our Lord Two
Thousand, between John J. McDougall. Sheriff of Lee County, State of Florida, of the first part
and Rolf Pfaff, second part, whose permanent address is c/o David Mourick, Esquire, 3551
Bonita Bay Blvd, Suite 3, Bonita Springs, Florida 34134, County of Lee, State of Florida.

WHEREAS. By virtue of a certain execution issued out of and under the seal of the
Circuit Court of Lee County aforesaid, tested the 24th day of November 1998, at the suit of Rolf
Pfaff and Mark Pfaff Plaintiff, against Forest Mere Joint Venture. A Greneral Partnership, I. Fritz

Pfaff and Mark Pfaff Plaintiff, against Forest Mere Joint Venture, A General Parinership, J. Fritz Holzberg, Elfie Holzberg and Euro American Financial Services, Inc., Trustee, et al., defendant, directed and delivered to the said Sheriff, commanding him that the said defendant's property subject to levy, he cause to be made certain moneys in said execution specified, the said Sheriff did levy on and seize property hereinafter described, and on the 5th day of October 2000, at 11:00a.m., being a legal sale day, sold the said property at public auction at 14750 Six Mile Cypress Pkwy., Fort Myers, Florida in said State and County, having first given public notice of the time and place of such saic, by advertising said property for sale, in manner and form as required by statute in such case made and provided, in the Fort Myers News-Press, an official newspaper published in Fort Myers, Florida, in said County, for thirty days next preceding said day of sale; and that at such sale the said property was struck off to the said party of the second part, for the sum of FIVE DOLLARS AND NO/100, he being the highest bidder therefor, and that being the highest sum bid for the same.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, Sheriff as aforesaid, by virtue of the said execution, and in pursuance of the statute in such case made and provided, and in consideration of the sum of money so bid as aforesaid, and in hand paid to the said party of the first part by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said ROLF PFAFF the said party of the second part, all the estate, right, title and interest, which the said defendant had on the 3 RD day of March, 1997, or at any time afterward, of, in and to all that certain real estate and, the wastewater treatment plant located hereon, including the existing collection system serving the Forest Mere and Spring Lake Subdivisions, in the County of Florida, known and described as follows:

See Attached Exhibit "A" attached hereto and made a part hereof by reference.

PAGE

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aforesaid, can or should convey by virtue of said execution and the laws relating thereto. his heirs and assigns forever, as fully and absolutely as the said party of the first part, as Sheriff as TO HAVE AND TO HOLD said described property unto said party of the second part,

~ 70000° his hand and affixed his seal, this Arah and a part, as Sheriff as aforesaid, has hereumo ser IN WITNESS WHEREOF, The said party of the first

Sheriff of Les County, Florida

Signed, sealed and delivered in the presence of:

STATE OF FLORIDA,

COUNTY OF LEE

2000, by Sheriff John J. McDougall, who is personally known to me. The foregoing instrument was acknowledged before me this Andlay of

NOTARY RYBLIC, State of Florida'

My Commission expires:

MONY Carol Myrick MY COMMISSION & CC913155 EXPRES March 21, 2004 March 1820 Ison fan Welsange fac

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G DONALD THOMSON PA

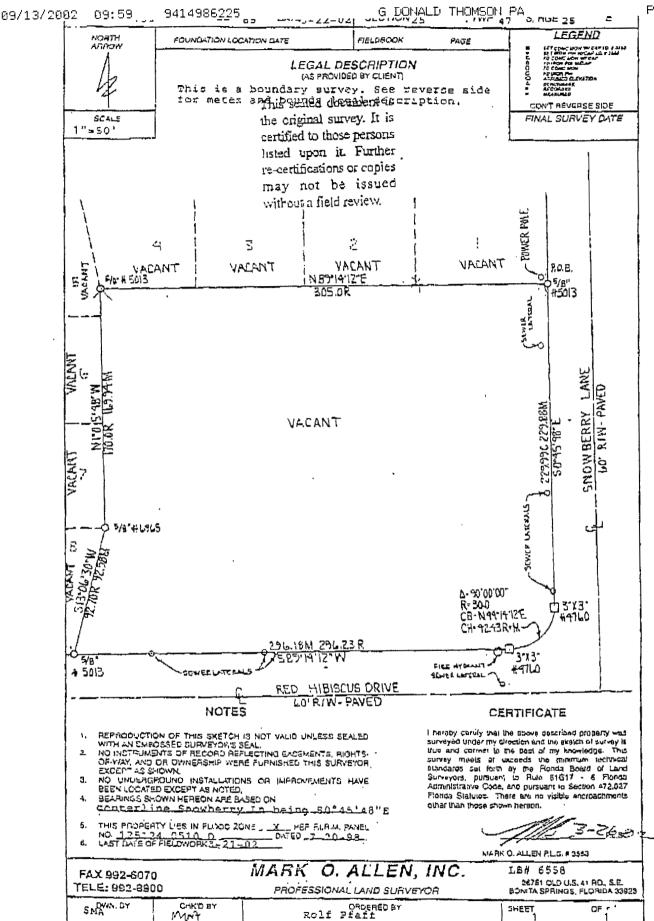
EXHIBIT

That portion of land lying in the North 1/2 of the Southeast 1/4 of Section 25, Lownship 47 South, Range 25 Fast, Lee County, Florida, more particularly described as follows:

Commencing at the East 1/4 corner of Section 25. Yownship 47 South, Range 25 East, thence run S 89° 14' 12" W a distance of 2381.82 feet to the Point of Beginning;

thence run S 0° 45' 48" E a distance of 114.85 feet to a point on a curve with its center point on a bearing of S 28° 25' 16" E having a radius of (30.00 feet, thence run southwesterly along the arc of said curve 109.08 feet to a point of tongency, thence run S 13° 30' 11" W a distance of 213.79 feet, thence run S 88° 54' 12" W a distance of 141.72 feet, thence run N 1° 05' 48" W a distance of 405.99 feet, thence run N 89° 14' 12" E a distance of 262.41 feet to the l'oint of Beginning. Containing 1.91 acres more or less.

and, the wastewater treatment plant located thereon including the existing collection system serving the Forest Mere and Spring Lake Subdivisions.



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09/13/2002 09:59

wo, Plat Book 48, Pages 74-77 and Phase Three, Plat Book 50, rwo, Plat Book 48, Pages 74-77 and Phase Three, Plat Book 50, Pages 36-38 more particularly described as follows; Beginning at the Southeast Corner of Lot 1, Block 3, Spring Lakes Phase Three, thence 585°14'12"W 305.0 Feet; thence S01°05'48"E 170.0 Feet; thence \$13°00'30"W 92.70 Feet to the Northerly Right-of-Way line of Red Hibiscus Drive; thence along the said Red Bibiscus Drive NS9°14'12"E 296.23 Feet to a point of Curvature, thence along a Curvature, the Left having a radius of 30.0 Feet, thence along a curve to the Left having a radius of 30.0 Feet, a central angle of 90°00'00" for 47.12 Feet to a point of tangency; thence along the West Right-of-way of Snowberry Lane 230.0 Feet to the Point of Beginning.

APPENDIX A LECCHO CE ABBREVATIONS

APPRODE APP 6.VP 6.VP 6.VP CALL CALL	ANC AMERICANTE ASSAULT ASSAULT ASSAULT BOULEVARD BOUCHARK CHOPO CAGGUATED COAG SEARING COASTE LIVES STRUCTURE COASTE LIVES STRUCTURE COASTE LIVES STRUCTURE COASTE LIVES COASTE LIVES COASTE LIVES COASTE LIVES COASTE LIVES COASTE COAST	600 600 600 600 600 600 600 600 600 600	FOJE OF PAVEMENT EDDE OF WATER FELDINGOT FOUND FOR PRIN F	COLORPE PTURAL REGION	POWT OF BEDINNING PORT OF COMMUNICATION TO COMMUNICATION TO POWER TO POWER OF THE P
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