

State of Florida



Public 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) *RG*
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)

1\020640fm1g

DOCUMENT NUMBER-DATE
10128 SEP 20 02
FPSC-COMMISSION CLERK

LAW OFFICES
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

CHRIS H. BENTLEY, P.A.
ROBERT C. BRANNAN
F. MARSHALL DETERDING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

September 18, 2002

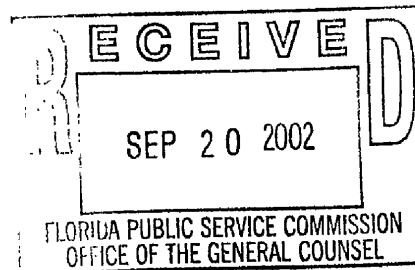
ROBERT M. C. ROSE
WAYNE L. SCHIEFELBEIN
OF COUNSEL

Via Telecopy and Mail

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

Re: Gistro, Inc. v. Lee County

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 Pfaff v. Forest 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. Sundstrom, P.A.
For the Firm

WES:jmt

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

1714 Cape Coral Parkway East
Cape Coral, Florida 33904

Telephone: (239) 542-4733

Facsimile: (239) 542-9203

September 5, 2002

RECEIVED

SEP 13 2002

Rose Sundstrom & Bentley, LLP

02 SEP 10 AM 8:24
RECEIVED BY
LEE CO. ATTORNEY

David Owen, Esq.
Chief County Attorney
P.O. Box 398
Fort Myers, FL 33902-0398

RE: Gistro, Inc. v. Lee County

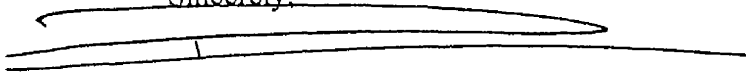
Dear Mr. Owen:

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. In 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 LEE COUNTY, FLORIDA

ROLF PFAFF and MARK PFAFF,

Plaintiffs,

vs.

FOREST MERE JOINT VENTURE,
consisting of GULF CONSTRUCTION, INC.,
a Florida corporation, and NAPLES
AMERICAN INVESTMENTS, INC., J.
FRITZ HOLZBERG, JUERGEN BAECK,
WILLIAM SCHWEIKHARDT, Trustee of
Trust 94, and LANDVEST TITLE
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 11-27-, 1998,

CHARLIE GREEN
AS CLERK OF THE COURT,

By: *P. Wilson*
As Deputy Clerk

cc: Seidensticker & San Filippo
2150 Goodlette Road
Suite 305
Naples, Florida 34102
Telephone: (941) 403-0611
Facsimile: (941) 403-0711

136 1/11

27

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

BY: 
Rosa S. Estrada, Deputy Sheriff



Rosa S. Estrada
MY COMMISSION # CCY11667 EXPIRES
April 4, 2004
BONDED THROUGH FAIR INSURANCE, INC.

AFFIDAVIT OF PUBLICATION

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 General Partnership, 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 sale, 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 3RD 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.

INSTR # 5110463 OR BK 3396 PG 0355 REC'D 04/16/01 09:57 PM
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY
DOC TAX PD(F.S.201.02) 0.70
DEPUTY CLERK K. CARTER



NOTARY PUBLIC
MAY CAROL MYRICK
MY COMMISSION # C091234 EXPIRES
MARCH 21, 2004
NUMBERED THAT YOUR FIAN INSURANCE INC.

My Commission expires:

NOTARY PUBLIC, State of Florida
Mary Carol Myrick

The foregoing instrument was acknowledged before me this 2nd day of July, 2000, by Sheriff John J. McDougall, who is personally known to me.

COUNTY OF LEE

STATE OF FLORIDA

[Signature]

Signed, sealed and delivered in the presence of:

[Signature]
Sheriff of Lee County, Florida

IN WITNESS WHEREOF, The said party of the first part, as Sheriff as aforesaid, has hereunto set his hand and affixed his seal, this 2nd day of July, 2000.

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

EXHIBIT "A"

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

Commencing at the East 1/4 corner of Section 25, Township 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 130.00 feet, thence run southwesterly along the arc of said curve 109.08 feet to a point of tangency, 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 Point 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.

two, 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 S89°14'12"W 305.0 Feet; thence S01°05'48"E 170.0 Feet; thence S13°00'30"W 92.70 Feet to the Northerly Right-of-way line of Red Hibiscus Drive; thence along the said Red Hibiscus Drive N89°14'12"E 296.23 Feet to a point of Curvature, 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

LEGEND OF ABBREVIATIONS

A	AKC	E.O.P.	EDGE OF PAVEMENT	P.C.B.	POINT OF BEGINNING
APPROX.	ANTHROPOMETER	E.O.W.	EDGE OF WATER	P.O.C.	POINT OF COMMENCEMENT
ASPH	ASPHALT	F.B.	FIELD BOOK	PROP	PROPERTY
AVE	AVENUE	FO	FOUND	PT	POINT OF TANGENCY
BLVD.	BOULEVARD	FLA	FLORIDA	PUE	PUBLIC UTILITY EASEMENT
B.M.	BENCHMARK	LR.	IRON PIN	R	RADIUS
C	CHORD	LN.	LANE	RAD	REINFORCED CONCRETE PIPE
CALE	CALCULATED	LE	LESS	ROP	ROAD
C.B.	CHORD BEARING	ME	MAINTENANCE EASEMENT	ROL	ROAD
CBS	CONCRETE BLOCK STRUCTURE	MLN.	MAN HOLE	RES	RESIDENCE
CMS	CENTRAL AND GEODETIC SURVEY	MON	MONUMENT	RLS	REGISTERED LAND SURVEYOR
CHND	CHECKED	N/A	NOT APPLICABLE	R.O.W.	RIGHT OF WAY
CNP	CORROGATED METAL PIPS	NGVC	NATIONAL GEODETIC VERTICAL DATUM	R.D.W.	RANGE
CO.	COUNTY	NO.	NUMBER	R.D.W. AGE	RANGE
CONC	CONCRETE	O.A. BOOK	OFFICIAL RECORD BOOK	SEG	SECTION
COR.	CORNER	ORIG	ORIGINAL	ST	STREET
COU	COURT	OS	OFFSET	STY	STORY
DE	DEPRESSION	P.B.	POINT OF BEGINNING	TOS	TOP OF BANK
DESC	DESCRIPTION	P.C.	POINT OF CURVATURE	TOWNSHIP	TOWNSHIP
D.M.	DRAIN HOLE	P.D.	POINT OF INTERSECTION	TYP	TYPICAL
DWN	DRAIN	P.I.	POINT OF INTERSECTION	UE	UTILITY EASEMENT
EL OR ELEV	ELEVATION	P.L.	PROFESSIONAL LAND SURVEYOR	WI	WITH
				W	WEST
				Q	QUARTER
				Q	QUARTER