

IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT IN AND
FOR MONROE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. CA-M-05-313

GORDON BEYER, MOLLY BEYER,
and THOMAS BEYER, as Trustees,

Plaintiffs,

v.

CITY OF MARATHON,

Defendant,

v.

STATE OF FLORIDA,

Third Party Defendant.

FILED FOR RECORD
2008 NOV -5 AM 8:33
DANNY L. KOLHAGE
CLERK OF COURT
MONROE COUNTY, FLORIDA

**ORDER GRANTING FINAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANT
CITY OF MARATHON AND THIRD PARTY DEFENDANT STATE OF FLORIDA**

THIS CAUSE is before the Court on Defendants' Joint Motion for Summary Judgment, filed on September 30, 2008. Having reviewed the motion, memorandum of law, supporting documentation, and having heard argument of counsel on October 28, 2008, the Court finds and orders as follows.

For the reasons announced by the Court at the conclusion of the hearing on Defendants' joint motion for summary judgment, and based upon the allegations of Plaintiffs' Complaint, the Court finds that Plaintiffs' claim in this case is for a facial taking. As further articulated by the Court during the hearing, there is no ripeness requirement for a facial taking claim. Instead, a facial taking claim accrues, and the statute of limitations begins to run, on the date of enactment of the regulation alleged to have caused the taking. Here, the Court finds that Plaintiffs' taking claim accrued, at the

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latest, in 1997, the year in which the Monroe County Year 2010 Comprehensive Plan became effective.

The Court further finds that Florida's four year statute of limitations period applies to Plaintiffs' facial taking claim. Therefore, the applicable limitations period for Plaintiffs' claim expired in 2001. Because this lawsuit was filed in 2005, as a matter of law and fact, it is time barred by Florida's statute of limitations. Accordingly,

IT IS ORDERED AND ADJUDGED as follows:

- (1) Defendants' Joint Motion for Summary Judgment is GRANTED;
- (2) Plaintiffs' Request for Judicial Notice is GRANTED; and
- (3) Defendant City of Marathon's Motion to Strike Plaintiffs' Avoidance of Marathon's Affirmative Defenses, Plaintiffs' Motion to Strike Defendants' Affirmative Defenses, and Plaintiffs' Motion to Amend the Pleadings to Assert Avoidances to Defendants' Affirmative Defenses are all DENIED AS MOOT.

IT IS FURTHER ORDERED AND ADJUDGED as follows:

- (1) Final judgment is hereby entered in favor of Defendant City of Marathon and Defendant/Third Party Defendant State of Florida, and against Plaintiffs Gordon Beyer, Molly Beyer and Thomas Beyer, as Trustees;
- (2) Plaintiffs Gordon Beyer, Molly Beyer and Thomas Beyer, as Trustees, shall take nothing by this action, and Defendants shall go hence without day.

DONE and ORDERED at Key West, Monroe County, Florida, this 31 day of October, 2008.



DAVID J. AUDLIN, JR.
CIRCUIT JUDGE

Copies to:
All counsel of record