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Swinging Jibs: Trespass on Neighboring Air Space?

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Like the swallows returning to Capistrano, the cranes have returned to Florida. Not Whooping Cranes but Tower Cranes; those tall, long jibbed metal monsters that swing over construction projects and neighboring properties.

So with these giant cranes, the questions that regularly surface are; what are the rights of the developer or general contractor to have the crane jibs swing over the neighboring properties? If they do, is the neighboring property owner entitled to compensation? Can the neighboring property owner enjoin the cranes from crossing their property / airspace?

The short answer in Florida appears to be that a brief encroachment of unused airspace, so long as the encroachment does not cause any measurable harm to the land below, will not rise to the level of trespass nor will it support a claim for an injunction.

Interestingly, there are no appellate decisions in Florida specifically addressing this issue. However, Florida Court's have looked at the issue of trespass into airspace by passing airplanes. The court held that a "property owner was entitled to compensation when his property was taken or its beneficial use to such owner was destroyed." The Court found a trespass where the planes flew over the property at altitudes ranging from 100 to 150 feet, and caused vibrations that produced structural damages to homes, spread exhaust fumes and caused objects to fall from tables and shelves. In a later case however, plaintiffs were denied relief because they failed to establish a "diminution in value to the property."

Thus, to prevail on a claim of trespass from a crane jib encroachment, it appears a plaintiff would have to establish that the crane has resulted in the Plaintiff's property being taken or its beneficial use of the property has been destroyed.

Another approach would be to seek an injunction preventing the crane from crossing over their property. To prevail on an injunction, the plaintiff must show that they will suffer irreparable harm for which no adequate remedy at law exists and that they have a substantial likelihood of success on the merits. With an adequate remedy at law in the form of money damages, and the likelihood of prevailing on the merits slim, an injunction is not likely under current Florida law.

There was a relatively recent case (2013) in Miami-Dade County involving this issue. The non-jury trial spanned 8 days spread over 7 months. The trial court heard from many witnesses (including experts on crane safety and operation) and issued a 34 page decision.

In the end, the trial court concluded that the encroachment by the tower crane was temporary and was not sustained (because the crane was always moving), and that the plaintiff did not meet its burden to establish that the minor encroachment has interfered with or diminished their ability to use, access and enjoy their property or business. The Plaintiff appealed but the appeal court affirmed the decision without an opinion.

Though the developer ultimately prevailed, it was not without a steep price. Both sides incurred significant attorney's fees, expert fees and costs. Indeed, the less expensive, more prudent and neighborly path is to work out a temporary air rights agreement. These agreements typically include compensation to the adjoining property owner, allow for the temporary encroachment and provide for insurance and indemnification in the event of an accident.

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