

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

GARY M. BIVENS, EDWARD LOPER,)
LEONARD MIZIO, and JOHN SAUCO,)

Appellants,)

v.)

Case No. 2D13-1834

RIVER HAVEN, INC., a Florida)
corporation; CHARLOTTE COUNTY, a)
Political Subdivision of the State of)
Florida; COLONIAL BANK, N.A.; JOHN)
MILOWE; GLORIA BELLO; MARIE)
CINELLI; LEONCE GAUDET and)
MARY GAUDET; LOPER GREENE)
DEVELOPMENT CORPORATION, a)
dissolved Florida corporation; DONALD)
BARNES and KAY BARNES;)
MARJORIE BARNES; LARRY JONES)
and SARAH JONES; DONALD)
DENNINGER and FLORENCE)
DENNINGER; VERNON BRAGG and)
VIRGINIA BRAGG; WILLIAM SHAY and)
SARAH HILDEBRAND; V. FRANK)
DESGUIN, Property Appraiser; and)
VICKIE POTTS, Tax Collector; and)
ANY UNKNOWN PARTIES)
CLAIMING AN INTEREST IN THE)
PROPERTY,)

Appellees.)

Opinion filed February 28, 2014.

Appeal from the Circuit Court for Charlotte
County; Joseph G. Foster, Judge.

Jay J. Bartlett of Smolker Bartlett Schlosser
Loeb & Hinds, P.A., Tampa, for Appellants.

Michael R. Whitt and Mark A. Trank of
Becker & Poliakoff, P.A., Fort Myers, for
Appellee River Haven, Inc., a Florida
corporation.

Robert J. Gill of Adams and Reese LLP,
Sarasota, for Appellee Charlotte County,
a Political Subdivision of the State of
Florida.

No appearance for remaining Appellees.

KHOUZAM, Judge.

We review the trial court's order denying the Appellants' motion for apportionment of proceeds resulting from an eminent domain proceeding. The parties agree that the Appellants had an equitable interest in the land taken and that the trial court erred in finding that they are not entitled to compensation. The parties also agree that the trial court had the authority to order the distribution, despite its finding to the contrary.¹ We therefore reverse and remand with directions for the court to determine the value of the interest lost and to order the appropriate portion of the funds distributed. This determination may be based on the evidence already presented or, if necessary, the trial court may take additional evidence.

Reversed and remanded for proceedings consistent with this opinion.

WALLACE and CRENSHAW, JJ., Concur.

¹Additionally, the parties agree that the order contains a misstatement of fact: the order states that River Haven residents "pay a monthly rent" to occupy their lots, but the parties agree that the monthly fee is for maintenance rather than rent.