

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2004

230 EAST 7th STREET
ASSOCIATES, etc.,

**

Appellant,

**

vs.

CASE NO. 3D03-2563

**

THE WOLKOW COMPANY,

LOWER

**

TRIBUNAL NO. 02-553

**

Appellee.

**

Opinion filed May 19, 2004.

An Appeal from the Circuit Court for Monroe County, Richard Payne, Judge.

Horan, Horan & Wallace and Edward Horan, for appellant.

Morgan & Hendrick and James Hendrick and Karen K. Cabanas, for appellee.

Before SCHWARTZ, C.J., and WELLS and SHEPHERD, JJ.

PER CURIAM.

The appellant bases its claim to a vested right to intrude into the appellee's easement on alleged adverse possession. Because we find, as a matter of law, that the record is insufficient to establish such a right, see *Mumaw v. Roberson*, 60 So. 2d 741 (Fla.

1952); *Bentz v. McDaniel*, ___ So. 2d ___ (Fla. 5th DCA Case no. 5D03-1898, opinion filed, May 7, 2004); *Enos v. Casey Mountain, Inc.*, 532 So. 2d 703 (Fla. 5th DCA 1988), review denied, 542 So. 2d 988 (Fla. 1989); *Kitzinger v. Gulf Power Co.*, 432 So. 2d 188 (Fla. 1st DCA 1983), and that any such right, even if it existed, was abandoned by the passage of more than two decades since it was last exercised, see *Kitzinger*, 432 So. 2d at 188, we approve the judgment below in favor of the appellee easement holder. See also *Hale v. Miracle Enters. Corp.*, 517 So. 2d 102 (Fla. 3d DCA 1987).

Affirmed.