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Insights

# Easement Update: Fees Don't Run With the Land

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The Florida Supreme Court recently held in *RJ's International Trading, LLC v. Crown Castle South, LLC*, No. SC2024-0547 (Fla. Oct. 29, 2026), that a prevailing-party attorney's fee provision in a recorded easement agreement does not run with the land, so it does not bind successors in interest who were not parties to the original agreement. Answering a question certified by the U.S. Court of Appeals for the Eleventh Circuit, the Court declined to extend *Hayslip v. U.S. Home Corp.*, 336 So. 3d 207 (Fla. 2022), which held that an arbitration provision in a deed runs with the land.

## Understanding Easements and Covenants

Generally, an easement is the right to use another's property for a particular purpose, such as the right to walk or drive over land. Neighboring property owners often enter into easement agreements intended to bind subsequent owners, where one owner (the dominant estate holder) may exercise easement rights over property owned by a neighbor (the servient estate holder). Disputes can arise in various circumstances, such as where a dominant estate holder tries to unreasonably expand its use beyond what was intended in the easement agreement or where a servient estate holder blocks or unreasonably restricts or limits the use of the easement.

A fee-shifting provision within an easement agreement is a type of covenant. For a covenant to run with the land in Florida, the original parties must intend to bind successors, successors must have notice of the covenant, and the covenant must "touch and concern" the land.

## Why the Attorney's Fee Provision Does Not Run With the Land

In *RJ's International*, the Court found that a fee provision does not "touch and concern" the land because it is not sufficiently connected to how the land is used, occupied, or enjoyed. The Court traced the "touch and concern" requirement back to a 1583 English landlord-tenant decision known as *Spencer's Case*. The rule in *Spencer's Case* provides that covenants that touch and concern the land can be enforceable against an assignee, while covenants that are merely collateral to the land cannot.

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The Court did a thorough job of explaining how a nearly 450-year-old English legal principle, which courts have relaxed over time, applies to Florida lawsuits today.

## What the Ruling Means for Florida Property Owners and Purchasers

While the opinion is not yet final, the *RJ's International* decision, if it stands, will have real consequences for the ability to enforce easements in Florida because of the "American Rule," which requires each party to pay its own attorney's fees regardless of the outcome, unless a statute or contract provides otherwise. A fee-shifting covenant within an easement agreement is a contractual exception to the American Rule. But now, such a fee provision does not bind successors simply because they acquired an interest in the land. Unless a successor expressly assumes the obligation, the provision generally binds only the original parties.

The inability to recover attorney's fees may deter meritorious easement claims because of the substantial cost of litigation, and it reduces the leverage a fee clause once provided.

Of course, not all easement agreements have fee-shifting provisions to begin with, and there are often other legal mechanisms to recover attorney's fees. However, property owners, lessees, and prospective purchasers should keep this limitation in mind when drafting easement agreements and considering property transactions. A party that wants a fee provision to bind successors should require each successor to expressly assume it in the deed, assignment, sublease, or estoppel certificate.

If you need assistance with preparing or reviewing easement agreements or litigating easement rights, please reach out to **Joe Kovecses** at joseph.kovecses@lowndes-law.com or 407.418.6704.