

# Judge: Prive condo developer was ‘trespassing’ when it built on homeowners’ property



The Prive at Island Estate condo is under construction in Aventura.

By [Brian Bandell](#) – Senior Reporter, South Florida Business Journal

A judge ruled that a company related to the developer of the \$500 million Prive at Island Estates condominium project in Aventura should be held liable for trespassing in a claim brought by a group of neighboring homeowners.

The dispute revolved around whether Two Islands Development Corp. had permission to build a sidewalk across the lawns of multiple homeowners in 2015. One of the homeowners was [arrested](#) after the developer told police that she was trying to prevent building the sidewalk on her lawn.

Prive is being built by a separate company, which also includes [Gary Cohen](#) as a significant investor. It should be completed in November.

The 160-unit project in two 16-story towers is under development on the North Island in Dumfoundling Bay. It can only be accessed by driving over a bridge through the South Island, which connects to the mainland. The city required the developer to build a sidewalk on both sides of the street through the South Island in order to obtain a building permit for Prive.

Attorney [Matt Leto](#), who represents homeowners [David L. Clarke](#) and [Dara H. Clarke](#) in the lawsuit, said the removal of the sidewalk should invalidate Prive’s building permit and prevent the project from receiving a temporary certificate of occupancy.

Leto, with Hall Lamb Hall and Leto, worked with [Andy Hall](#) on the case. The other homeowners were represented by [Susan Raffanello](#) of Coffey Burlington.

Attorney [Glen H. Waldman](#), who represents Two Islands Development and Prive, said the ruling won't have any impact on the condo project, and he expects unit closings to start in a couple of weeks. The city required that the two sidewalks exist in order to obtain the building permit, and that condition was met, so it doesn't matter if the sidewalk is subsequently removed, Waldman said.

"If the people of the South Island don't want a second sidewalk, that's between them and the city," Waldman said. "We don't have a dog in that fight."

Waldman noted that the homeowners didn't challenge the building permit. Leto said the homeowners will seek to remove the sidewalk and then see what that means for Prive's building permit.

Earlier this month in a related case, a judge [granted the homeowners' motion](#) to invalidate several easement agreements that Two Islands Development had on the South Island, but continued to allow the developer to pass through the property to reach its project.

On Oct. 9, Miami-Dade County Circuit Court Judge [William Thomas](#) granted the homeowners' a partial summary judgement that Two Islands Development was liable for trespassing when it built the sidewalk. When the South Island's homes were built, the agreement allowed the "developer" to build sidewalks. However, Two Islands Development lost its status as the developer of the South Island after it sold its last parcel there in 2008, the judge ruled.

The developer argued that it was allowed to build the sidewalk across the homeowners' property because the plats [official surveys] of their land had a "utility easement." Thomas ruled that a sidewalk is not a utility.

"A homebuyer would know, for example, that FP&L has the right to bury its lines in the platted 'utility easement' on the lot," the judge ruled. "But the homebuyer would not be charged with knowledge that he might be forced to allow strangers to walk across his lot on a sidewalk absent an indication of a pedestrian walkway on the plat. Indeed, access by strangers would obviously increase the risks and liability attendant to ownership of the lot and is therefore a matter that requires disclosure on a plat."

Thomas said the building permit did not give the developer the license to trespass on the homeowners' property. The judge noted that the developer did have one way to remedy the problem: by asking the city commission to waive the requirement for two sidewalks on the South Island in order to obtain a building permit for Prive.

Meanwhile, Dara Clarke continues to pursue a lawsuit against Two Islands Development and the city for malicious prosecution and excessive force over her arrest as she confronted the construction workers building the sidewalk. Leto said the trespass ruling should help that case, which he expects to go to trial.