

Roy Black loses boundary fight

by Julie Kay

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"Good fences make good neighbors," poet Robert Frost famously wrote.'

But as famed Miami attorney Roy Black learned, a fence can just as easily land you in court and make a bitter enemy out of the residents next door: Black faced off in court against his neighbor on exclusive Star Island, a Miami Beach enclave of multimilliondollar mansions that celebrities like Gloria Estefan and Rosie O'Donnell have called home.

At issue in the boundary dispute is 2 percent of Black's 11-acre property at 45 Star Island Drive, which stretches from the water to the street. Black lost the case against his neighbor, Miami investor Shay Kostiner. He and his firm, Black, Srebnick, Kornspan & Stumpf, plan to appeal.

"This is an important case for the firm and Roy," said Jared Lopez, a partner at Black's law firm, who was designated to speak for him. "This was a very technical issue. Judge (Gerald Bagley) did an admirable job sorting through these complex issues. We're appreciative he took the time to resolve them, but we disagree with his findings and we do plan to appeal."

Black and his wife, Lea, who appears on "The Real Housewives of Miami," bought the mansion for \$7.1 million in May, 2011. At the time, Black said he was deciding whether to tear down the existing nine-bedroom, nine-bathroom house or renovate it. The two-story house, 10,598-square-foot house with a view toward MacArthur Causeway includes a swimming pool and boat dock.

The Blacks have been renting the house for two years.

Kostiner, president of Great American Capital Holding Inc., bought the 4, 722-square-foot house on the wedge-shaped lot next door at 44 Star Island Drive in 2010. He has not been living in it, said his attorney, William Petros of Petros & Elegant in Coral Gables.

He said Kostiner filed suit against 45 Star Island LLC, a company owned by the Blacks, in September 2011 after his next-door neighbor tore down the fence. Miami-Dade Circuit Judge Gerald Bagley heard the bench trial in October and ruled in favor of Kostiner on March 10.

The case boiled down to who owned a sliver of land between the properties. Black contended Miami Beach city plats showed he did.

But Petros and his partner, Justin Elegant, delved into the property's history, finding the original survey company from the 1920s was still in business. Their team scoured photographs and archives and found that the 1919 construction of a bridge abutting the Black estate meant five lots east of the bridge were "moved around a shade" on a later plat, each getting an extra 5 feet of waterfront land. "It turned out this surveyor had an indefinite document retention policy," Petros said. "They found field notes from 1917. It was unbelievable."

Star Island, the first manmade island in Biscayne Bay, was created in 1917,

Petros' experts presented the photographs, field notes and other evidence from the surveyor at trial along with research from libraries, the Florida Memories Project and the Historical Museum of Miami spanning 90 years.

Black's only witness at trial was William Sklar, a real estate lawyer at Akerman his firm retained in July 2013.

"Sklar is not a surveyor, nor does he claim to be an expert or authority on surveying," Bagley noted.

Sklar and Black argued the plat is the standard for real estate boundary issues and the original survey work was not relevant.

Bagley sided with Petros, stating in his ruling, "Photographs from the 1920s Kostiner introduced into evidence are particularly compelling."

Bagley also found that a survey of Black's property in 1950 incorrectly relied on a city plat rather than the original survey from 1917. He also noted the owner before Black "lived harmoniously as to the boundary lines with its neighbor of Lot 44 for more than 20 years."

Petros said he was not nervous about facing off against one of the most prominent trial lawyers in South Florida.

"I'm a professional. I've been doing this awhile," he said, adding Black was "remarkably professional" Scott Kornspan, managing partner of Black's firm, said the firm will fight on even though the dispute only concerns 2 percent of Black's property.

"We knew all along that if we won he would appeal, and if he won we would appeal," Kornspan said. "This is an important legal issue."

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