Supreme Court of Florida

No. SC2024-0547

RJ'S INTERNATIONAL TRADING, LLC,
Appellant,

vs.

CROWN CASTLE SOUTH, LLC, et al.,
Appellee.

October 29, 2026

GROSSHANS, J.

Individuals can transfer land or establish legal interests in it by executing deeds, contracts, and other documents. Often, such instruments also impose continuing obligations. Not surprisingly, these obligations are generally enforceable by and against the original parties as a matter of contract law. But are those same contractual obligations binding upon subsequent parties who acquire an interest in the relevant land? The answer depends, in part, on how closely the obligation is connected to the land itself. Where a sufficient connection exists and other requirements are

satisfied, the obligation binds successors by operation of law and is said to "run with the land"—an ancient term of art.

In this case, the parties request that we answer a certified question from the U.S. Court of Appeals for the Eleventh Circuit, which asks whether a prevailing-party attorney's fee provision in an easement agreement runs with the land as a matter of Florida law. *RJ's Int'l Trading, LLC v. Crown Castle S., LLC*, 98 F.4th 1330, 1343 (11th Cir. 2024).[1] Framed differently, is a promise to pay attorney's fees an obligation that binds successors to the land? We conclude that it is not. In so holding, we decline to extend the reasoning of our recent decision in *Hayslip v. U.S. Home Corp.*, 336 So. 3d 207 (Fla. 2022), which addressed a materially different obligation.

I

More than three decades ago, Hidden Valley Corporation bought two neighboring properties in Miami. Hidden Valley leased one of them to BellSouth Mobility, later giving BellSouth (and its successors) permission to use for telecommunication purposes a portion of the adjacent property (which Hidden Valley retained). In

1. We have jurisdiction. *See* art. V, § 3(b)(6), Fla. Const.

the easement agreement creating this nonpossessory interest, there is a section entitled "Remedies for Breach," which includes an attorney's fee provision. It states:

> In the event that it is necessary for either party hereto to file suit in order to enforce the terms hereof, then the prevailing party in such suit shall be entitled to receive reasonable attorney's fees and court costs in addition to any other award that the court might make, from the non-prevailing party.

Following creation of the easement, multiple transfers of both properties occurred. At the time of the lawsuit in this case, RJ's International Trading, LLC (RJI) owned one of the properties subject to the easement. Crown Castle South, LLC subleased the neighboring property from BellSouth and had the right to use a portion of RJI's property by virtue of the easement.

Conflict arose in 2020 when Crown Castle excavated portions of RJI's land beyond the easement and installed fiber optic cables underground. Based on the unauthorized excavation and installation, RJI sued Crown Castle in federal court. RJI asserted five claims, alleging trespass and breach of the easement agreement as two of the theories of liability.

The district court granted partial summary judgment for RJI, finding Crown Castle liable on the trespass and breach-of-easement claims. In doing so, the court ruled that a valid and enforceable easement existed. It further ruled that Crown Castle's excavation and installation activities exceeded the easement's boundaries and constituted a trespass. The court made no determination as to damages.

Ultimately, following a six-day trial, the jury awarded RJI $1 for Crown Castle's breach of the easement agreement and $40,000 for its trespass.[2] The district court entered a final judgment (later amended), which reflected the jury's assigned damages for the breach-of-easement and trespass claims.[3] Crown Castle did not seek appellate review.

After entry of the updated judgment, RJI asked the district court for an award of attorney's fees based on the prevailing-party provision in the easement agreement. Relying on property-law

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2. The jury declined to award any punitive damages.

3. The jury awarded RJI a small amount of damages for its last remaining claim, but RJI dismissed that claim prior to entry of the final judgment.

principles, RJI reasoned that the fee provision was a "real covenant" that bound not only the original contracting parties (Hidden Valley and BellSouth) but also those who succeeded them in interest (including RJI and Crown Castle). Recognizing what Florida law requires in this regard, RJI contended that the provision ran with the land.

Crown Castle opposed RJI's motion for fees, arguing that the fee provision was too attenuated from the land to "touch and concern" it—one of the requirements for a provision to run with the land. Instead, according to Crown Castle, the fee provision was merely a personal covenant that bound only the original parties to the easement agreement: Hidden Valley and BellSouth.

Siding with Crown Castle, the court denied RJI's motion for attorney's fees. It ruled that the promise to pay attorney's fees did not touch and concern land and, thus, did not run with the land. In reaching this conclusion, the court noted out-of-state cases, found support in *Caulk v. Orange County*, 661 So. 2d 932 (Fla. 5th DCA 1995), and distinguished our decision in *Hayslip*.

RJI appealed. The Eleventh Circuit first considered and rejected RJI's argument that it was a "part[y] hereto" as that term is

used in the easement agreement. *RJ's Int'l Trading*, 98 F.4th at 1339. That interpretive issue is not before us.

Having resolved this issue against RJI, the court next assessed whether the prevailing-party fee provision could be enforced as a covenant running with the land. *Id.* at 1339-43. It discussed Florida law on this topic, including *Caulk* and *Hayslip*. In *Caulk*, the Fifth District Court of Appeal held that the reservation of eminent-domain proceeds did not run with the land. 661 So. 2d at 934. *Hayslip*, on the other hand, involved an arbitration provision, which we found to touch and concern the land. 336 So. 3d at 210. In the Eleventh Circuit's view, *Hayslip* appeared to come closer to answering the question in this case. *RJ's Int'l Trading*, 98 F.4th at 1342. Yet, due to factual distinctions, the court was reluctant to treat *Hayslip* as controlling. *Id.* at 1341-42.

Based on this uncertainty and other considerations, the Eleventh Circuit certified the following question to us: "Under Florida law, when an easement agreement contains a prevailing-party attorney's fee provision, is the fee provision a real covenant such that it runs with the land?" *Id.* at 1343. We accepted review.

II

A covenant or obligation that "runs with the land" binds successors who "become liable as promisors upon the promise made by their predecessor" by virtue of their acquiring an interest in the land. *Restatement (First) of Prop.* § 530 cmt. a (A.L.I. 1944). Note that this liability is not based on any promise or covenant that the successor to the land personally made. *Id.*; *see also Huck v. Kenmare Commons Homes Ass'n*, 382 So. 3d 759, 766 (Fla. 1st DCA 2023). Invoking this doctrine, RJI maintains that the attorney's fee provision here runs with the land and is binding on Crown Castle as a matter of Florida law, even though Crown Castle did not personally promise to pay RJI's attorney's fees. Based on our assessment of the law, we disagree.

For a covenant to run with the land, three requirements must be satisfied. First, the original contracting parties must intend for successors in interest to be bound by the covenant. *Hayslip*, 336 So. 3d at 209. Second, successors in interest must have notice of the covenant. *Id.* And third, the covenant must touch and concern the land. *Id.* Our focus is on the final requirement, which is dispositive in answering the certified question.

A

Many jurists trace the touch and concern requirement back to a 1583 English decision, known as *Spencer's Case*, 5 Co. Rep. 16a, 77 Eng. Rep. 72 (Q.B. 1583).[4] In that decision, which arose in the landlord-tenant context, an English court distinguished between covenants that touched and concerned the land and those that were merely collateral to it. *Spencer's Case*, 5 Co. Rep. at 16b, 77 Eng. Rep. at 74. The former could be enforceable against an assignee; the latter could not. To illustrate the distinction, the court identified several collateral covenants that would not bind an assignee including: (1) a lessee's promise to build a house for the lessor on land that was not the subject of the lease and (2) a lessee's promise to pay "any collateral sum" to the lessor. *Id.*

Two centuries later, that same English court explained that to touch and concern[5] the land, the covenant must "directly affect[] the nature, quality, or value of the thing demised, [or] the mode of

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4. *E.g.*, A. Dan Tarlock, *Touch and Concern Is Dead, Long Live the Doctrine*, 77 Neb. L. Rev. 804, 814 (1998); *Gallagher v. Bell*, 516 A.2d 1028, 1032 (Md. Ct. Spec. App. 1986).

5. Since its earliest references, courts have used "touch *or* concern" and "touch *and* concern" interchangeably.

occupying it." *Mayor of Congleton v. Pattison*, 10 East, 130, 136, 103 Eng. Rep. 725, 727 (K.B. 1808).

In America, states accepted this common law concept as a limitation on the enforceability of covenants by or against successors. *See Regency Homes Ass'n v. Egermayer*, 498 N.W.2d 783, 789-91 (Neb. 1993) (canvassing cases on this concept from a multitude of jurisdictions); *Flying Diamond Oil Corp. v. Newton Sheep Co.*, 776 P.2d 618, 623 (Utah 1989) (noting effect of the touch and concern requirement). As for Florida, the first reported decision applying this requirement appears to be *Dunn v. Barton*, 16 Fla. 765 (1878). There, while not using the specific phrase "touch and concern," we found that a restrictive covenant ran with the land because it affected "the mode of enjoyment of the premises." *Id.* at 771.

Since then, Florida courts have considered whether certain covenants or obligations meet the touch and concern requirement. *Caulk*, 661 So. 2d at 933 (reservation of right to proceeds from an eminent-domain proceeding); *Maule Indus., Inc. v. Sheffield Steel Prods., Inc.*, 105 So. 2d 798, 799 (Fla. 3d DCA 1958) (covenant requiring maintenance of railroad facilities); *Hagan v. Sabal Palms,*

Inc., 186 So. 2d 302, 304 (Fla. 2d DCA 1966) (covenant restricting what buildings could be constructed); *Huck*, 382 So. 3d at 766 (prohibition on street parking); *Keyes Co. v. Frazier*, 213 So. 2d 276, 277 (Fla. 3d DCA 1968) (promise to pay real estate commission); *Winn-Dixie Stores, Inc. v. Dolgencorp, Inc.*, 964 So. 2d 261, 262 (Fla. 4th DCA 2007) (restricting commercial use of certain property).

In some cases, courts spoke in terms of the obligation enhancing the value of the land. *E.g.*, *Maule Indus.*, 105 So. 2d at 801. But in those same cases and others, courts focused on whether the covenant affected the use, occupation, or enjoyment of the land. *Dunn*, 16 Fla. at 771; *Maule Indus.*, 105 So. 2d at 801; *Winn-Dixie Stores*, 964 So. 2d at 265; *Huck*, 382 So. 3d at 765. We think that this latter formulation is doctrinally sound and consistent with the concept's history. Accordingly, when deciding if the touch and concern requirement is met, courts should consider whether the obligation is sufficiently connected to how the land is used, occupied, or enjoyed.

B

Florida courts have not previously considered the particular obligation at issue here. That being said, we believe that *Caulk*—a

case we cited with approval in *Hayslip*—provides helpful insight. The covenant at issue in *Caulk* reserved to the original grantor proceeds from any eminent-domain proceeding involving the land conveyed. 661 So. 2d at 933. The Fifth District held that this covenant did not run with the land, stressing that "[a]lthough the covenant 'concern[ed]' the land" in some sense, it did so "only tangentially." *Id.* at 934. That is, the covenant did not directly impact the property. *Id.*

Like the covenant in *Caulk*, the fee provision in question is simply too attenuated from the use, enjoyment, or occupation of the land to touch and concern it. The obligation does not restrict or proscribe how the land RJI owns can be used. Nor does it govern who can enjoy or make use of it. Put simply, the fee provision itself does not meaningfully bear on the use of the land or otherwise enhance the day-to-day enjoyment of it or impact its mode of occupation. Although the fee provision may provide a financial benefit to the prevailing party in a dispute, it does not alter the parties' rights or remedies with respect to the property itself. And, it only becomes relevant after the parties have exhausted all legal and equitable remedies in court.

In light of this, we find that the fee provision is, at best, only tangentially related to the land. *See id.*; *Huck*, 382 So. 3d at 765-66. Thus, the attenuated connection between the fee provision and the land renders the provision incapable of running with the land so as to bind successors to the property, such as Crown Castle.

We note that our holding aligns with the majority of courts outside of Florida that have addressed the precise issue of whether a fee provision touches and concerns the land. *See Est. of Ogumoro v. Han Yoon Ko*, No. CV-06-0015-GA, 2011 WL 5223117, at *14 (N. Mar. I. Oct. 20, 2011) (fee provision does not run); *Fusco v. Matsumoto*, No. 2009-SCC-0030-CIV, 2011 WL 12673474, at *14 (N. Mar. I. Dec. 30, 2011) (same); *Keogh v. Peck*, 259 Ill. App. 503, 518 (1931) (same); *Paloma Inv. Ltd. P'ship v. Jenkins*, 978 P.2d 110, 116 (Ariz. Ct. App. 1998) (same); *Lundeberg v. Dastrup*, 497 P.2d 648, 650 (Utah 1972) (same). To our knowledge, only two courts have reached the opposite conclusion. *Jack Mathis Gen. Contractors, Inc. v. Murphy*, 472 P.2d 820, 823 (Or. 1970) (fee provision runs); *Solky v. Smith*, 129 Nev. 1152 n.4 (2013) (unpublished) (same).

C

This brings us to RJI's most forceful argument. RJI contends that our recent decision in *Hayslip* compels us to hold that the fee provision here touches and concerns the land. We see things differently.

In *Hayslip*, we held that an arbitration provision in a deed ran with the land. 336 So. 3d at 209-10. We reasoned that the challenged provision touched and concerned the land as it established the means for resolving defects to the home and that the outcome of any arbitration proceeding necessarily affected both the home and homeowner. *Id.*

The fee provision here is different. It is, as the Eleventh Circuit noted, further removed from the land than the arbitration provision in *Hayslip*. Specifically, the Eleventh Circuit said:

> In *Hayslip*, arbitration was the means of resolving alleged defects in the property. Hayslip had to arbitrate with the developer to force the developer to fix defective stucco—part of the property. The arbitration was thus one step removed from the property itself.
>
> By contrast, the fee provision here is two steps removed. The parties have already litigated their dispute over Crown Castle's trespass and breach of the easement. And through that litigation, RJI has already been awarded both equitable and legal remedies.

RJ's Int'l Trading, 98 F.4th at 1342.

We underscore the nature of the obligation in *Hayslip*. The defects subject to arbitration were construction-related, meaning that they were physical, built into the house, and in a real sense tied to the land. *See Hayslip*, 336 So. 3d at 210 (characterizing the defects as being "in the home"). And as alluded to above, we also stressed that the outcome of the arbitration proceeding impacted the property, because it was the means by which the homeowners could seek recourse from the builder for improvements or repairs to the property. *Id.*

By contrast, a prevailing-party fee provision does not govern the resolution of property-related disputes. It comes into play only after the dispute has been finally resolved on the merits and serves solely to allocate litigation costs between the parties. It is wholly unconnected to the use, enjoyment, or occupation of the property itself or any interest therein. Accordingly, we find that *Hayslip* is distinguishable and does not have controlling significance.

We add one other point. It is undisputed that the touch and concern requirement has not remained static since the late 1500s. Decisions have, over time, relaxed the rule to some extent and

found covenants enforceable that would not have run with the land under the traditional common law. *See e.g.*, *Neponsit Prop. Owners' Ass'n v. Emigrant Indus. Sav. Bank*, 15 N.E.2d 793, 796-97 (N.Y. 1938) (promise to pay annual assessments to homeowners association enforceable); *Egermayer*, 498 N.W.2d at 793 (similar). Various reasons have been offered for this shift, including freedom of contract and the availability of recorded deeds that did not exist at common law. *See* Richard A. Epstein, *Notice and Freedom of Contract in the Law of Servitudes*, 55 S. Cal. L. Rev. 1353, 1358 (1982). *Hayslip*, though not expressly relying on either rationale, is arguably consistent with that trend.[6] However, RJI has not convinced us to extend *Hayslip*'s reach under the facts presented here.

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6. Neither party has argued that *Hayslip* is clearly erroneous or asked us to revisit that decision in any respect. Moreover, whether *Hayslip* was correctly decided and how these principles might apply beyond the circumstances presented here are beyond the scope of the question certified to us by the Eleventh Circuit. *See* art. V, § 3(b)(6), Fla. Const. (providing that we "[m]ay review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida").

III

Based on the analysis above, we answer the Eleventh Circuit's certified question in the negative and return this case to it for further proceedings.

It is so ordered.

COURIEL, C.J., and LABARGA, MUÑIZ, and FRANCIS, JJ., concur.
BARRIOS, J., concurs in result only with an opinion, in which TANENBAUM, J., concurs.
TANENBAUM, J., concurs in result only with an opinion, in which BARRIOS, J., concurs.

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

BARRIOS, J., concurring in result only.

In response to the certified question, the majority articulates the test for whether a covenant touches and concerns the land in this way: "whether the obligation is sufficiently connected to how the land is used, occupied, or enjoyed." Applying this rule, the majority concludes that the attorney fee provision here does not touch and concern the land and consequently does not run with the land. While I agree with the result reached, I do so for a different reason. In my view, a covenant must be evaluated using a complete understanding of the "used, occupied, or enjoyed" rule, which

carries with it a requirement that the subject matter of the covenant have a direct effect on the physical use of the property. I cannot square my understanding of the complete common-law rule with *Hayslip v. U.S. Home Corp.*, 336 So. 3d 207 (Fla. 2022). For those reasons, I concur in result only.

The touch and concern test articulated by the majority has its roots in *Dunn v. Barton*, 16 Fla. 765, 772 (1878), where we said a covenant runs with the land when "it affects the mode of enjoyment of the premises." We applied that rule and concluded that an agreement limiting leased premises to be used in a way that would compete with an adjacent bar-room business was a covenant running with the land. Following *Dunn*, we continued to apply that rule, limiting the touch and concern test to covenants that directly impacted the physical use of the land. *See, e.g.*, *Armstrong v. Seaboard Air Line Ry. Co.*, 95 So. 506, 510 (Fla. 1922) (covenant to maintain freight schedule and depot name did not touch and concern the land because it did not relate to a thing physically connected to or annexed to the property); *Osius v. Barton*, 147 So. 862, 867-68 (Fla. 1933) (covenant prohibiting commercial uses within a subdivision was one running with the land); *Frumkes v.*

Boyer, 101 So. 2d 387, 389-90 (Fla. 1958) (provision of deed dedicating portion of land for use as public road was a covenant running with the land).

Both the rule and application deployed in *Dunn* were consistent with an understanding of the touch and concern requirement as an inquiry into the relationship between the covenant's subject matter and the physical land itself. This understanding was synthesized in the First Restatement of Property. *Restatement (First) of Prop.* § 537 cmt.f (A.L.I. 1944) ("It must in some way make the use or enjoyment more satisfactory to his physical senses."). The restatement explains that "it is not enough that the performance of the promise operates to benefit either the promisor or the beneficiary of the promise in the use of his land but it must operate to benefit him in the physical use of his land." *Id.* In other words, a promise cannot run with the land unless it relates to "the way in which [*their*] land [] is used." *Huck v. Kenmare Commons Homes Ass'n*, 382 So. 3d 759, 765 (Fla. 1st DCA 2023) (alterations in original) ("For the burden of a promise to run the promise must be one respecting the use of the land of the promisor." (citing *Restatement (First) of Prop.* § 537 cmt. b)). That

qualifier—that the enjoyment or use be related to the physical use of the land—is critical for any coherent and principled application of the rule.

More modern applications of the rule began uncoupling the use and enjoyment aspect of the rule from the physical use of the land. For example, in *Palm Beach County v. Cove Club Investors, Ltd.*, 734 So. 2d 379 (Fla. 1999), this Court considered whether a covenant requiring individual lot owners in a mobile home community to pay monthly recreation fees to an adjoining country club constituted a compensable property right when the government condemned one of the lots. Over dissent, a majority of this Court held that the covenant was a covenant running with the land and that the country club's right to receive the monthly fees was a compensable property interest upon condemnation. *Id.* at 390. Then in *Hayslip*, a builder's warranty deed contained a provision requiring that any dispute arising from a construction defect be resolved through binding arbitration. We reasoned that the arbitration covenant touched and concerned the property itself because it affected the mode of enjoyment of the premises—referencing *Dunn*—and that the thing required to be done (arbitrate

the dispute) touched the enjoyment of the land because the homeowners benefit from the defective stucco being resolved. *Hayslip*, 336 So. 3d at 210.

My best reading of both *Hayslip* and *Cove Club* is that the results of those cases are based on a misapplication of the touch and concern test rather than an effort to move away from the established common-law rule. My conclusion in this regard is supported by both the majority's reliance on and the *Hayslip* Court's "favorable citation" to *Caulk v. Orange County*, 661 So. 2d 932 (Fla. 5th DCA 1995). There, the Fifth District held that a covenant did not run with the land, stressing that "[a]lthough the covenant 'concern[ed]' the land" in some sense, it did so "only tangentially." *Id.* at 934. In describing what it meant by "tangentially," the Fifth District explained that

> [u]nlike covenants respecting mineral rights and crops, for example, which directly impact the use of the land, the covenant . . . [had] no effect whatever on the land. The only thing the covenant in the instant case really "touches" and "concerns" is the intangible personal property, namely cash, that may be paid by a condemnor.

Id.

Viewed through this lens, I agree that, as the majority says, "[l]ike the covenant in *Caulk*, the fee provision in question is simply too attenuated from the use, enjoyment, or occupation of the land to touch and concern it." It is important to explain why though, and in my view, the attorney fee provision is too attenuated because it does not relate to the physical use of the land. I agree with the majority that *Hayslip* is distinguishable and does not have controlling significance. But it is difficult to discern the logical difference between an arbitration provision and a prevailing party attorney fee provision applicable to litigation over an easement. So, I'd call *Hayslip* what it is—an outlier. This distinction is worth articulating now, so when the next issue arises, whether it is a jury trial waiver or something else, parties are not left to guess how "tangential" the issue is and instead can order their affairs around a clear statement of the applicable common-law rule.

TANENBAUM, J., concurs.

TANENBAUM, J., concurring in result only.

At the outset, I join Justice Barrios's concurrence in full. I still want separately to expand on why a prevailing party attorney fee provision cannot ever be a real covenant.

The Eleventh Circuit asks us whether a prevailing party fee provision in a contract granting an easement constitutes a covenant running with the land. Both an easement and real covenant address restrictions and duties pertaining to the use of land but in a non-mutual way, as I will briefly explain. By their very nature, then, neither of these could include within their definition a bilateral contract imposing mutuality of obligation. In turn, a prevailing party attorney fee provision, including the one the Eleventh Circuit asks us about here, could not—as a matter of law—run with the land.

First consider an easement. When an easement is created, "it modifies what would otherwise be the normal right of [a] possessor" of land. 2 AMERICAN LAW OF PROPERTY: A TREATISE ON THE LAW OF PROPERTY IN THE UNITED STATES § 8.4 at 231 (A. James Casner ed., 1952). A possessor "subject to the burden of the easement" has fewer possessory rights "as against the owner of the easement than they otherwise would be." *Id.*; *see also id.* § 8.5 at 232 ("An easement consists in a privilege on the part of the person entitled to it to make some use of land subject to it.").

The grant of an easement is asymmetric; there is no mutuality of obligation in an easement. Rather, an easement can entitle its owner to "positive action within or upon the land subject to it" or "to compel the owner of the land subject to [the easement] to refrain from action he could take were his land free from the easement." *Id.* § 8.5 at 232. In this respect, under an easement, there is a dominant estate (which owns the privilege to act or compel) and a servient estate (which is subject to the easement's restrictions or requirements).

A real covenant is similar, though it creates a contractual obligation and does not necessarily vest the property interest that an easement does. Still, for a covenant to bind the assignee of a promisor or be enforceable by that of a promisee (absent an assumption contract), the covenant must either diminish the covenantor's legal rights or increase the covenantee's rights with respect to some physical use or enjoyment of the land. *See id.* § 9.4 at 342–43. Putting it a different way, there are two sides to the covenant, and the question about its running—whether it "touches and concerns" land—must be separately considered for each side. *Id.* § 9.13 at 374.

On the one hand, "the covenant must always be capable of running with the land of the" covenantee, "in order to be able to run with the retained land of the" covenantor. *Id.* As to the benefit to the covenantee, it must be as to the physical use of the land, meaning that the benefit to the covenantee must at least be "by reason of [the covenantee's] ownership" and "physical use" of his or her land. *Id.* at 379 & n.40; *see Dunn v. Barton*, 16 Fla. 765, 771 (1878) ("Such a covenant as existed between Mrs. Barton and Dunn would run with the land, affecting, as it does, the mode of enjoyment of the premises.").

By contrast, the most that can be said about the prevailing party fee provision at issue here is that it is a bilateral agreement pertaining to litigation involving the easement contract. *Cf. Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021) (noting that a one-way attorney-fee provision is "unilateral" and section 57.105(7), Florida Statutes, transforms such a "one-sided provision into a reciprocal provision"); *D.L. Peoples Grp., Inc. v. Hawley*, 804 So. 2d 561, 563 (Fla. 1st DCA 2002) (defining "a bilateral contract" in terms of "mutuality of obligation"). We cannot assess whether one party's burden or the other's benefit runs with the land under the provision

because it simply is not that kind of agreement. Rather, it is an agreement with a mutuality of obligation that is, at best, merely "collateral to the land" rather than "touch[ing] and concern[ing]" it. AMERICAN LAW OF PROPERTY, § 9.4 at 341. Simply put, a prevailing party fee provision does not obligate one party to act or not act in a way that benefits the other party's land. Such a provision can have no connection to the land "over and above the fact that [it has] been placed in the" contract. *Id.*

So it is regarding the fee provision in the easement agreement. The prevailing party fee provision contained in the easement agreement has nothing to do with the easement itself or the servient property. The premise underlying the Eleventh Circuit's question, then, is flawed. In this respect, so is the premise underlying *Hayslip*. Regardless of whether a fee provision appears in an easement agreement or anywhere else, it is not the type of contractual obligation that ever could run with the land. The answer to the certified question is no.

BARRIOS, J., concurs.

Certified Question of Law from the United States Court of Appeals for the Eleventh Circuit – Case No. 22-11977

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