

STATE OF MICHIGAN
COURT OF APPEALS

SOUTH COVE CONDO ASSN,

Plaintiff-Appellant,

v

DUNESCAPE @ NEW BUFFALO II LTD,

Defendant-Appellee.

UNPUBLISHED

October 31, 2006

No. 270571

Berrien Circuit Court

LC No. 05-002810-CZ

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

BANDSTRA, J. (*concurring in part and dissenting in part*).

I agree with the majority's conclusion that the trial court erred in deciding that the 1994 agreement unambiguously ratified the 1993 agreement's grant of a 26-foot wide easement for purposes of ingress and egress to the Norwest property now owned by defendant. However, it is uncontested that Norwest had been granted such an easement in 1993, and plaintiff has the burden of proving that the 1994 agreement reduced its width.

The majority concludes that this burden has been satisfied because the 1994 agreement unambiguously evidenced such a reduction. I disagree. The majority suggests a plausible interpretation of the 1994 agreement's "ratification of easement" section to the effect that, contrary to its title, the section reduced the width of the already granted easement. But certainly it would also be reasonable to conclude that the "ratification" section of the 1994 agreement does just what its title suggests, i.e., ratifies the 26-foot wide ingress/egress easement. That is especially plausible considering that the 1994 agreement describes the "easement property" as "the existing roadway," not just the 14-foot wide "driving surface" to be found upon that roadway.

Neither party is entitled to summary disposition. I respectfully dissent from the decision to grant that relief to plaintiff.

/s/ Richard A. Bandstra