

STATE OF MICHIGAN
COURT OF APPEALS

BAY CLIFF ESTATES CONDOMINIUM
ASSOCIATION, PORT SUTTON
CONDOMINIUM ASSOCIATION, SUTTONS
BAY YACHT CLUB CONDOMINIUM
ASSOCIATION, and SUTTONS BAY YACHT
VILLAGE CONDOMINIUM ASSOCIATION,

Plaintiffs-Appellants,

v

HARBOR CLUB PROPERTIES, INC., CHURCH
& CHURCH, INC., HARBOR HEIGHTS
CONDOMINIUM ASSOCIATION, INC., and
SUTTONS BAY YACHT BASIN
CONDOMINIUM ASSOCIATION, INC.,

Defendants-Appellees.

UNPUBLISHED
September 21, 2010

No. 292083
Leelanau Circuit Court
LC No. 08-007909-CZ

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In this quiet title action, plaintiffs appeal the trial court's order declaring that defendant Harbor Club Properties owns a certain walkway adjacent to a private marina on Lake Michigan. We affirm.

This action arose from a dispute over the opportunity to lease the bottomlands of a Suttons Bay marina. In keeping with the Great Lakes Submerged Lands Act, MCL 324.32504(1), the State of Michigan leased the bottomlands to defendant Church & Church. The property described in the lease included a walkway approximately ten feet wide that runs along the edge of the marina. Defendants built and operated a marina on the leased bottomlands and developed condominium projects nearby. Defendants also recorded a master deed describing certain condominium property. An exception clause in the master deed excluded "lands covered by the Suttons Bay Yacht Basin description, a proposed marina condominium." In 2001, defendant Harbor Club Properties executed a quitclaim deed conveying an amenities parcel to a group of condominium associations, including the plaintiff associations.

Subsequently, both parties sought to renew the bottomlands lease. MCL 324.32504(1) mandates that bottomland lessees must be “a riparian or littoral owner or owners of property touching or situated opposite the [land or water area subject to the lease] or an occupant of that land.” Both parties asserted that they were riparian owners by claiming ownership of the walkway. The state declined to identify which party was the riparian owner and recommended that the parties seek a court determination of the legal riparian upland owner. This action ensued.

Defendants sought summary disposition on the property dispute. The parties submitted multiple deeds, surveys, legal descriptions, and supporting material to the trial court. After carefully examining the documentary evidence, the trial court concluded that the walkway is upland riparian property, and that defendant Harbor Club owned the walkway. The trial court made no formal factual findings, because both parties asserted that the case presented no genuine issues of material fact.

We review de novo the trial court’s decision. *Minerva Partners, Ltd v First Passage, LLC*, 274 Mich App 207, 213; 731 NW2d 472 (2007). At the outset, we reject defendants’ contention that plaintiffs’ quiet title action was untimely. We conclude that plaintiffs filed their action within the 15-year limitations period applicable to their claim. MCL 600.5801; see also *Steward v Panek*, 251 Mich App 546, 557; 652 NW2d 232 (2002).

Turning to the legal issues in this appeal, we must determine (1) whether the master deed is ambiguous; (2) whether the exception clause in the master deed operated to retain Harbor Club’s ownership of the walkway; (3) whether the quitclaim deed is ambiguous; and (4) whether the quitclaim deed conveyed the walkway to plaintiffs. In analyzing these issues, our objective is to “give effect to the parties’ intent as manifested in the language of the instrument.” *Mich Dep’t of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005). Unless there is an ambiguity in a deed, we apply the deed’s plain language. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 373; 761 NW2d 353 (2008).

We find no ambiguity in the master deed. Plaintiffs contend that the master deed is ambiguous on the ground that the excepted property requires a reference to an ambiguous legal description in the draft master deed of the proposed Yacht Basin property. We disagree. Plaintiffs have presented nothing to demonstrate that the Yacht Basin draft controls the interpretation of the master deed exception clause. As defendants point out, the master deed expressly incorporates the survey plan, site plan, and drawings that were recorded with the deed. In contrast, the Yacht Basin draft postdates the Master deed by nearly a year, and the draft was neither executed nor recorded. The survey plan and the site plan incorporated in the master deed provide sufficient descriptions of the excepted property; no reference to the Yacht Basin draft is necessary.

Plaintiffs argue in the alternative that if the master deed is not ambiguous, the plain language of the deed precludes defendants from claiming a fee simple title to the walkway. Plaintiffs note that the exception in the deed refers only to the proposed Yacht Basin property, which, according to plaintiffs, includes only leasehold and bottomland interests. This argument rests on the incorrect premise that the walkway is bottomland property. Although the walkway is

included within the metes and bounds description of the bottomlands lease, the affidavit of professional surveyor John Korr established that the walkway is in fact upland property. Plaintiffs presented no surveyor evidence to contradict the Korr affidavit. Accordingly, the record establishes that the walkway is upland riparian property to which defendants could hold title. The exception clause in the lease operated to retain defendants' title to the walkway.

Plaintiffs next contend that even if the master deed enabled defendants to retain title to the walkway, defendants subsequently conveyed that title to plaintiffs in the quitclaim deed. Again, we disagree. There is no ambiguity in the quitclaim deed. Korr specifically attested that the amenities parcel terminates on the landward side of the walkway. Given this landward boundary, the quitclaim deed of the amenities parcel did not convey an interest in the walkway to plaintiffs.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro