EXHIBIT

24

Date Approved: June 20, 2012

7 Harbors General Membership Meeting

May 16, 2012

Trustees Present:

Lori Woods	Babe Dillay	Ed Michalski
Pat Parks	Pat Hamlin	Tom Oltesvig
Brandon Pierce	Wendy Stark	Lillian Walker
Patte Day	Kim Powell	Vicki Zellinger

President Woods called the meeting to order at 7:03. Trustee Oltesvig led the Pledge of Allegiance.

It was announced that the usual order of the meeting was changed due to the presence of Mr. Bruce Seglund, the Association attorney. President Woods stated that a search of Association documents indicated that the Deed Restrictions had expired January 1, 1986, and were not renewed. Mr. Seglund responded to questions regarding the effect of the expiration of the deed restrictions.

President Woods stated that the Board will take up the matter and report back to the membership. No motion will be necessary. She stated that we are now aware that our deed restrictions have expired, so we will go forward according to law.

Ballot language will include a list of advantages to continuing to support an association.

Sale of Eagles

President Woods announced that the purchase agreement of May 2011 was set up for full payment in one year, but it had been requested to extend the land contract after May 2012 for the remaining balance due ($55,000), at an interest rate of 10%. The attorney will be consulted to be sure that the paperwork is in order. She stated that the Association has the right to continue to meet in the Eagles hall.

The **minutes** were read by Secretary Walker and were accepted as presented.

The **Treasurer's report** was read by Treasurer Dillay and accepted as presented.

Pat Bitner stated that the Trustees had voted to restrict the **proceeds from the sale of the Eagles** to repair or replacement of the bridge, but the fund was titled "Emergency and Bridge Fund." President Woods stated that the attorney had advised that this decision should be made by the general membership.

Committee Reports

East - Bob Schiff reported that a quote had been received, with Guardian Asphalt at $14,925.00 which includes 7 miscellaneous potholes. He stated that Guardian has bid the work at the same rate as last year. He indicated that work has been scheduled based on need. He suggested that the Board ask east owners if they wanted to continue the road assessment for another two years in order to complete the entire east portion. He was told that the East Road Committee needs to bring a proposal to the Board.

The East Road Committee contacted asphalt haulers for bids on paving Highland Ct. in order to give the **homeowners on Highland Ct.** an idea of what costs they were facing. If all 11 homeowners participate, the estimate is $16,280.00 which includes base.

Central - Ed Michalski reported that hot tar repairs to cracks and potholes will be done.

West - Pat Hamlin stated that now is the time for grading and that she had called B&B to do the work sometime this week.

Newsletter

Patte Day reported that all is well.

Welcome

Patte Day reported that three more newcomers had been welcomed.

Old Business

The **play structure** has been removed from the White Lake beach area.

A one-year contract for **summer and winter maintenance** was awarded by S&D as the low bidder at $8,525.00. In addition to plowing snow and mowing, the contract includes placement, servicing, removal, and storage for sand barrels, and placement, removal, and storage of buoys.

The Oakland County Sheriff's Department has stated that, if **loitering and nuisance behavior on the outlots or beaches** occurs, observers are encouraged to call the Sheriff's Department.

Ed Michalski stated that he had sprayed the **rusted locks** at the beach with WD-40.

The Board suggested that members contribute **questions for the Sheriff's Department** so that a list can be compiled and presented asking for answers.

During a discussion of **weight limits on the bridge,** President Woods offered to contact the Weighmaster to ask what can be done if trucks exceed the weight limit.

It was MOVED by Larry McCullough, SUPPORTED by Pat Parks, to adjourn the meeting. The MOTION CARRIED with a unanimous vote.

The meeting was adjourned at 8:53 p.m.

Respectfully submitted,

Lillian Ann Walker, Secretary

EXHIBIT

25

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CIVIL DIVISION

WILLIAM DEGHETTO and DEBRA DEGHETTO, LORI WOODS, RICHARD NELSON, CONNIE HILL and JOHN HILL, JANICE SMITH and LLOYD SMITH, PATTE DAY and DONALD DAY, MARGARET RIEPEN and KENNETH RIEPEN, RICK WOODWORTH, SHIRLEY MATUSZEWSKI, JEANNIE KOZIOL and WALTER KOZIOL, JUNE MULLINIX and GREGORY MULLINIX, KENDRA PAPPAS and VERN PAPPAS, EDWARD MICHALSKI, EDWARD BALDWIN, SUSAN C. VERNIER and LON M. VERNIER, JUDITH JOHNS and JOHN JOHNS, CELESTINE KESSLER and NEIL KESSLER, KATHRYN WOLFF and PAUL WOLFF, CHERYL JONES and ROBERT JONES, MARCIA CARLINE and THOMAS CARLINE, and PRICE SPOOR,

Plaintiff,

-vs- No. 2014-141355-CH

Hon. Martha D. Anderson

BEAUMONT'S SEVEN HARBORS

WHITE AND DUCK LAKE ASSOCIATION,

Defendant.

_____/

PAGE 1 to 100

The Deposition of LORI WOODS,
Taken at 39395 W. Twelve Mile Road; Suite 200,
Farmington Hills, Michigan,
Commencing at 10:25 a.m.,
Tuesday, January 20, 2015,
Before Bethany Lee Robinson, CSR-3244.

APPEARANCES:

MR. PHILLIP J. NEUMAN P35499
Couzens, Lansky, Fealk, Ellis, Roeder & Lazar, PC
39395 W. Twelve Mile Road; Suite 200
Farmington Hills, Michigan 48331
248-489-8600
pneuman@couzens.com

Appearing on behalf of the Plaintiff.

APPEARANCES (Continued):

MR. GREGORY MEIHN P38939
MS. MERCEDES VARASTEH DORDESKI P70821
Foley & Mansfield, PLLP
130 Nine Mile Road
Ferndale, Michigan 48220
248-721-4200
gmeihn@foleymansfield.com
mdordeski@foleymansfield.com

Appearing on behalf of the Defendant.

ALSO PRESENT: Ms. Patte Day
Mr. Edward Michalski

* * *

time that the opinion of Mr. Seglund was that the Association was voluntary, correct?

A. The Board and the general membership, yes.

Q. Well, the general membership wasn't made aware of it May 16th, were they?

A. Yes.

Q. How were they made aware of it?

A. That was the general membership meeting.

Q. Were all of them there, were every homeowner, 700-plus, there?

MR. NEUMAN: Objection.

MR. MEIHN: She knows, she is the president.

MR. NEUMAN: I want to clarify something, you said it many times in many different venues, there are not 700 homeowners. There are not 700. There are only about -- how many different owners are there in the Association?

A. 384, I believe.

MR. MEIHN: We will get to that.

BY MR. MEIHN:

Q. Were all the homeowners, 384, 700, whatever that number is, was everyone there?

A. No.

Q. You sent this newsletter out, did you not, for purposes of alerting all of the homeowners of this position?

A. Yes.
Q. You sent this out, did you not?
A. No.
Q. Who sent this out?
A. The newsletter editor.
Q. And who was that?
A. Patte Day.
Q. Who provided the information that is in this newsletter to her?
A. The information for the important homeowner announcement, I provided.
Q. Did the Board by motion authorize you to provide this information into the newsletter to be sent out to the homeowners, to your knowledge?
A. I don't recall.
Q. Do you recall any kind of vote by the Board at any meeting prior to this newsletter going out that you had authority to send this type of information out in the August newsletter?

MR. NEUMAN: I will object to the form of the question to the extent it presumes there is a requirement there be some vote to authorize information being put forward in the newsletter.

BY MR. MEIHN:
Q. You still have to answer my question.

A. I don't recall.
Q. Now, you, if you look at that Exhibit 2 for a moment, it goes on and says, I am asking you to look at paragraph 3, the first sentence, it says:

Among many other affects, this means that the membership in the Association is no longer mandatory.

Did I read that correctly?

A. Yes.
Q. And then it says:

However, membership in the Association will now be voluntary and limited to the homeowners, with those who desire to remain members or to become members, still required to pay dues as a condition of membership.

Correct?

A. Yes.
Q. You wrote that, did you not?
A. Yes.
Q. Did the Board approve you making this determination on behalf of the Association that this was the actual answer or result or condition of the Association?

MR. NEUMAN: Object to the form of the question. It's a compound question.

A. I don't recall.

EXHIBIT

26

~SEVEN HARBORS NEWS~

Prsrt. Std.
ECRWSS
U.S. Postage Paid
EDDM Retail

WWW.7HARBORS.ORG ~ P.O BOX 70 HIGHLAND MI 48357

WHITE AND DUCK LAKE NEIGHBORHOOD ASSOCIATION

~AUGUST 2012~

TO: SEVEN HARBORS RESIDENT
HIGHLAND, MI
48356

LAKE ISSUES:

WHITE LAKE WATER ISSUES should be directed to WLCL www.wlcl.org

DUCK LAKE WATER ISSUES should be directed to: 248-887-0824

SCHOOL'S starting soon, so please keep your eyes out for our CHILDREN~~~~~~~~~~~~~~~~

IMPORTANT: HOMEOWNER ANNOUNCEMENT

We have recently learned that the building and use restrictions ("deed restrictions") originally recorded against all of our properties by the original developers on December 12, 1956 expired by their own terms on January 1, 1986. We have no indication that they were legally extended beyond that date, making them unenforceable at this time.

This was discussed at a meeting of Beaumont's Seven Harbors White and Duck Lake Association ("Association") held on May 16, 2012, where legal counsel was present. We thank all homeowners and members who attended that meeting for their concern and their contributions.

Among many other affects, this means that membership in the Association is no longer mandatory. However, membership in the Association will now be voluntary and limited to the homeowners, with those who desire to remain members or to become members, still required to pay dues as a condition of membership.

Nonetheless, the Association is still a valid and existing non-profit corporation in Michigan and we intend to maintain our existence and operations as we have in the past. Among other things, the many benefits provided by the Association include road plowing and maintenance as well as the maintenance of the beaches and other out lot properties. We sincerely hope that all homeowners will continue to remain members, or become members, of the Association and remain active, or become active, in your community.

If you have any questions, please join us at the next scheduled General Membership meeting or feel free to contact any member of the Board.

Beaumont's Seven Harbors White and Duck Lake Association, Board of Trustees

NGAD 800-631-6989

DEPOSITION EXHIBIT 2

PLAINTIFF

COUNTY ROAD ISSUES should be directed to the Oakland County Road Commission 248-858-4804

LEGAL/SAFETY ISSUES should be directed to the non emergency Oakland County Sheriff 248-858-4911

PLEASE SUPPORT OUR ADVERTISERS

They have brought IN close to $3000.00 in the last 2 years and have made this newsletter possible with no charge to the members

OUR 2012/13 NOMINEES

President	Brandon Pierce
1st Vice President	Kim Powell ~
	Tom Oltesvig
2nd Vice President	Cliff Fluegge
Secretary~	Lillian Walker
Treasurer	Charlene Graham

Trustees (8 positions)
Babe Dillay, Pat Hamlin, LuAnn Hroba, Cheryl Klein , Sue Klopf, Tom Oltesvig, Pat Parks, Steve Powell, Vicki Zellinger

ELECTION NIGHT @ Our next General Membership Meeting

Sept 19th, 2012 @ 7:00pm at

The Eagles Club at the corner of Jackson Blvd. and Duck Lake

DNR

REPORT
ALL POACHING
HOTLINE

1-800-929-7800

~~ ~~

~YOUR ELECTED 2011-12 BOARD OF TRUSTEES~

PRESIDENT: LORI WOODS 248-343-4323 snowbaby48356@yahoo.com

VICE PRESIDENT: ED MICHALSKI 248-887-2629 emichals45@yahoo.com

2ND V. P.: CLIFF FLUEGGE 248~887-7649 im1badcat@comcast.com

SECRETARY: LILLIAN WALKER 248-887-1151 LilMcDw35@gmail.com

TREASURER: BABE DILLAY 248-887-127 treas7h@yahoo.com

For a complete list of committees and Trustees, please visit

www.7-harbors.org

PLAINTIFF 79.5

EXHIBIT 27

LAW OFFICES

ADKISON, NEED & ALLEN

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
LISA J. HAMAMEH
BARRY D. MALONE
LINDA S. MAYER
GREGORY K. NEED
G. HANS RENTROP

OF COUNSEL:
KEVIN M. CHUDLER

40950 Woodward, Suite 300
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

April 5, 2013

VIA FIRST CLASS AND ELECTRONIC MAIL

Brandon Pierce, President
Beaumont's Seven Harbors White and Duck Lake Association
3976 Woodland Drive
Highland, MI 48356
Email: admbenefits@comcast.net

Re: Research on Maintenance Fees and Lien Issues

Dear Mr. Pierce:

The Association asked that we answer the following questions:

1. What, if any, deed maintenance fees may be charged against the units within the Association;
2. May the liens that were against delinquent units be re-recorded; and
3. What is the best way to memorialize the maintenance fee agreements going forward?

This letter provides a thorough analysis to answer the three questions. Briefly, the Association has mandatory dues that are set by the general membership at the annual meeting. The Association has authority to lien delinquent units. The Association would be best served by recording an amendment to the Master Deed specifying the maintenance fees and mandatory nature.

In 1937, the Master Deed was recorded against all future lots within the Association. That deed specifies that each parcel is a member of the Association. It also creates lien authority in favor of the Association against any delinquent unit. The deed mentions bylaws, but does not specify when, if ever, the bylaws must be created or if they must be recorded to be effective. Without a specific timeframe for bylaws creation, the default rule is under Michigan's Nonprofit Corporation Act, which requires bylaws to be drafted at the time of incorporation. Finally, the deed creates mandatory maintenance dues, which are capped at a $5.00 annual fee.

In 1947, the Association was officially created by filing its Articles of Incorporation. As an entity recognized by state law, the Association stated several procedural requirements, including that all members must pay an annual maintenance fee. At that time, the maintenance fee was capped at $20.00 per unit.

In 1956 and 1959, restrictions were recorded against the units. These restrictions include a clause setting the expiration date in 1986. It is our understanding that this clause has caused concern amongst Association members about whether dues are mandatory and if they were mandatory, whether they are no longer mandatory. The 1956 and 1959 restrictions are the same in all respects other than the 1959 restrictions include unit owner signatures. Both speak to a mandatory Association. While there is an expiration date stated, and our research indicates that the expiration likely occurred, the Association membership and dues were mandatory since its inception. Therefore, the restrictions' expiration, if that occurred, does not impact the Association's mandatory nature.

Also in 1959, the Articles of Incorporation were amended. Amongst other amendments, the fees on each lot were adjusted to a minimum of $2.00 and a maximum of $15.00. The dues had been at this point ranging between $5.00 and $20.00 and were typically based on the percentage of taxable value of each unit. In 1978, the Articles of Incorporation were again amended. This amendment states, "Maintenance fees shall be collected from each property owner in each subdivision... [and] the maintenance fees may be increased or decreased as required for the upkeep and maintenance of the Association and its properties and roadways." The determination of the fee is set by vote of the majority of paid-up members present at the general membership meeting. The 1994 bylaws reiterate this fee schedule.

As of the 1937 Master Deed, all subsequent purchasers were on notice that each parcel was a member of the Association and subject to an annual maintenance fee. Further, each unit owner was aware that the Association held lien authority over delinquent maintenance dues. This position was further formalized by the Association's creation in 1947. As of that point, all subsequent purchasers were on notice that their unit and ownership interest came with responsibilities and obligations to the Association.

While the recording of deeds could have been better handled, the Association documents have been filed with the State of Michigan and available to anyone on notice. Purchasers subsequent to the Master Deed were on notice. Therefore, it is sufficient that unit owners were aware of their obligations to the Association and the Association could collect. As of 1978, the maintenance fees are to be set by a vote of the general membership at the annual meeting. Those fees are to be adjusted as needed to meet the Association's obligations. This has been the rule governing the Association for 35 years. Even though the building restrictions recorded in 1956 and 1959 may have expired, the 1978 Articles of Incorporation amendment is the governing document for Association rules and procedure. Assuming that the maintenance fees have been set in accordance with the 1978 amendment requirement for a general membership vote of paid-up

members, and I have no documentation in my possession to the contrary, the Association is free to collect whatever maintenance fee was set in compliance with the required vote.

The Association has the authority to collect mandatory dues and lien delinquent units. To better formalize this position, and to put further subsequent purchasers on notice, it is recommended to record a Master Deed Amendment specifying how dues are set and the mandatory nature.

If you have any further questions or concerns, please do not hesitate to contact my office.

Very truly yours,

ADKISON, NEED & ALLEN, P.L.L.C.

Barry D. Malone

BDM/kf

m:\barbat, frank\beaumont's seven harbors white and duck lake assoc\corres\2013-04-05 ltr to bpierce re research and lien issues.docx

EXHIBIT 28

LAW OFFICES

ADKISON, NEED & ALLEN

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
SALAM F. ELIA
LINDA S. MAYER
GREGORY K. NEED
G. HANS RENTROP

40950 Woodward, Suite 300
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:
KEVIN M. CHUDLER

March 20, 2014

VIA ELECTRONIC MAIL

Phillip J. Neuman, Esq.
Couzens Lansky Fealk Ellis Roeder & Lazar PC
39395 W 12 Mile Road, Suite 200
Farmington Hills, MI 48331

Re: Beaumont's Seven Harbors White and Duck Lake Association

Dear Mr. Neuman:

Thank you for your patience with regard to this matter. As we discussed, this is the response to your letter regarding matters involving the Beaumont's Seven Harbors White and Duck Lake Association ("Association"), as articulated in your letter of November 19, 2013.

As I have indicated to you, my clients have been doing exhaustive research at the Oakland County Register of Deeds regarding instruments recorded against various Beaumont's Seven Harbors properties.

You have challenged the assertion that membership in the Association is mandatory. I disagree with your conclusion. While it is true that several of the Beaumont's Seven Harbors recorded restrictions expired, the latest in 1986, it also appears clear that the properties were developed by the Beaumont's beginning in the 1930's in accordance with a common plan or scheme requiring a mandatory association. My clients have reviewed many instruments and have found language in them similar to the one described in the attached abstract (Beaumont to Johnson, dated 6/6/55), which makes it quite clear in the conveyance document itself that Association membership is mandatory, and provides that ownership is governed by the restrictions and by-laws of the association. This covenant is entirely independent from the restrictions which, as previously noted, had expired. And, contrary to the deeds referenced in your letter, there is no expiration date in the deeds reviewed by my clients.

My clients examined title documents for several properties in the development. In virtually every case, in the documents that they examined, they found language similar or

identical to the Beaumont-Johnson conveyance, requiring the owner of the conveyed property to be a member of the Association.

Additionally, in the deeds where you noted a 1960 expiration date, it appears that the expiration date applies only to a part of the restrictions, those pertaining to various building and maintenance related items. I include an abstract containing the text of one of those deeds. The 1960 expiration date is found at on the first page of the document and then repeated again beginning of the bottom of the third page. The remaining four pages of the document include two sections beginning with the language "Grantors further convey..." etc. or "the grantors further covenant and agree..." etc. These sections include a conveyance of rights in the roadways and lake frontage, a requirement of Association membership, and incorporation by reference of the restrictions in the Association bylaws. There is no expiration date as to the matters set forth in these last four pages of the document.

All these various conveyances appear to have indicated that the property was subject to the rules and regulations of the Association. Thus, these provisions survive an expiration of the deed restrictions.

In 1947, the Association was officially created by filing its Articles of Incorporation, which stated several procedural requirements, including that all members must pay an annual maintenance fee. The Articles were amended in 1959, and again in 1978. This latter amendment states, "Maintenance fees shall be collected from each property owner in each subdivision... [and] the maintenance fees may be increased or decreased as required for the upkeep and maintenance of the Association and its properties and roadways." The determination of the fee is set by vote of the majority of eligible voting members present at the general membership meeting. The 1994 bylaws reiterate this process.

Questions with regard to the amount of the required fee have dated, apparently, back to 1952. Minutes of a Board meeting held on December 10, 1952 were found, a copy attached, within which it was stated that the Association would stipulate the maintenance fee. This is the process that apparently has been used ever since, confirmed by the 1978 amendment to the Articles.

Although the restrictions expired in 1986, I am advised that at that time the restrictions could have been reinstated by seventy-five percent of the lot owners. Ultimately, it apparently was determined that as a result of the language in the deeds that Association membership was mandatory and that the properties were already subject to Association bylaws, restrictions, and fees established by the Association board, thus reinstatement was unnecessary. In 1988, the attached document was recorded by then-Association President Frank Cooper III. That document set the fee at $35 per year. Since then, in accordance with the Association Bylaws, the fee has been increased.

By virtue of the above, as noted before, we do not agree that this is a voluntary Association. We also contend that the Board of the Association has the right to set the

membership fee, based upon process in place back to 1952, and confirmed by the 1978 amendment to the Articles and the document recorded in 1988.

There remains the issue of putting liens on the properties. I have advised the Board on that point and understand that they will discuss removing the liens next week, but have not yet had that discussion. No action will be taken to enforce them and no new liens will be filed in the meantime.

As you know, under Michigan law, restrictions can be imposed on properties through evidence of a common plan or scheme. In such event, all properties may be subject to various covenants or restrictions, even if a specific reference to those covenants or restrictions is not found in a particular chain of title. In this case, there appears to be a clear intent that the Association was to be mandatory, with dues to be established by the Association. Thus, even if there was a technical defect in how the Association imposed these fees, given all these actions dating back in 1952 and confirmed in 1978 and 1988, we would also argue that the payment of these dues by the property owners over a period of more than 25 years and perhaps as many as 60 years confirms the common plan for development of the properties and constitutes a waiver of any possible technical defects in the way these assessments were imposed.

Obviously, since I do not know the identity of your clients, I cannot say whether or not the language quoted above is found in their deeds. This is why I indicated to you in our telephone call that title searches may be required on these properties. If you can provide evidence that their title instruments did not include language requiring mandatory membership, I would be happy to review same and consider whether my conclusions apply to them. Otherwise, it is our opinion that Association membership is mandatory and the Association has the ability to set the amount of assessments, suspending for the moment what enforcement mechanisms are available to collect those assessments, including liens.

The opinion that Association membership was mandatory and that the Association could establish the dues amounts is certainly consistent with what appears to be the intent of all parties going back to the 1930's. With only private roads in a large part of the Beaumont development, without some kind of a mechanism to collect fees, there would be no certainty that those roads would be properly maintained. Without proper snowplowing, maintenance and repairs, though, travel across the private roads, including travel by emergency vehicles, would almost certainly be much more difficult or at times, perhaps impossible. I also would note that the failure to have a mechanism in place to provide for private maintenance could significantly affect the marketability and value of the Beaumont properties or, at the very least, make it more difficult to obtain mortgage financing. Although I have not independently confirmed this, I was advised by a mortgage broker that Fannie Mae mortgage loans require private road maintenance agreements, and other lenders often require an additional premium for private mortgage insurance because of the risk to the lender in having properties on a private road without any assurances of proper maintenance. A determination that the Association is voluntary or that it does not have the ability to impose a reasonable fee to maintain its roads, would create several, probably unintended but

still significant, negative consequences for everyone owning property within Beaumont's Seven Harbors.

Please call upon your review to discuss.

Very truly yours,

ADKISON, NEED & ALLEN, P.L.L.C.

Gregory K. Need.

/mms
Enc.

m:\beaumont's seven harbors white and duck lake assoc\corres\2014-03-20 ltr to pneuman re status.docx

1978

Harry S. Beaumont and
Florence M. Beaumont, his wife,
to
Mere: Parks Johnson, 3491
Woodland Drive, 7 Harbors,
Milford, Michigan.

Warranty Deed, $1.00 etc.
Liber 3346, Page 474,
Oakland County Records.
Dated June 6, 1955.
Acknowledged June 6, 1955.
Recorded June 13, 1955.
Register No. 37765.

Conveys Land in Township of Highland, Oakland County, Michigan, described as Lot 158 of Supervisor's Plat of Seven Harbors, a subdivision of part of the east half of Section 12, town 3 north, range 7 east, Highland Township, as recorded in Liber 44 on Page 58 of the Oakland County Records.

It is hereby agree_that the owner of this conveyed property is now a member of the "Beaumont's Seven Harbors White and Duck Lake Association", and is governed, herewith, by it's restrictions and by-laws, and will pay yearly, to this Association, 1 percent of the assessed valuation of this conveyed property, as setby the Township, but not to exceed $15.00 per year, per parcel, which shall be used, together with money so collected from other owners, for the upkeep of Seven Harbors, including care and maintenance of it's private roadways, parks and beaches and taxes on same. Also, according to the by-laws, the party of the second part will not sell or otherwise dispose of this conveyed property to any person or persons not acceptable to membership in this Association.

$1.10 Revenue.

58378 | John F. Beaumont and Harriet Beaumont, his wife, Harry S. Beaumont and Florence M. Beaumont, his wife,

to

Warranty Deed, $1.00 etc.
Liber 1101, Page 175, Deeds.
Dated June 1[illegible], 1935.
Acknowledged June 15, 1935.
Recorded July 31, 1937.
Register No. 10939.

Conveys land in Township of Highland, Oakland County, Michigan, described as a parcel of land in the southeast quarter of Section 12, town 3 north, range 7 east, Highland Township, Oakland County, Michigan, more particularly described as beginning at a stake located north 1 degree 04 minutes east 861.04 feet and north 38 degrees 58 minutes 30 seconds east 536.65 feet from the center of said southeast quarter of Section 12, thence north 67 degrees 45 minutes west 40.0 feet to a stake, thence north 22 degrees 15 minutes east 94.7 feet to a stake in the southerly line of Woodland Drive, so called, thence north 84 degrees 15 minutes east 45.3 feet along said southerly line of Woodland Drive to a stake, thence south 22 degrees 15 minutes west 115.97 feet to the point of beginning. More particularly described as being parcel #13 of Seven Harbors White Lake.
This conveyance is made subject to the following covenants and restrictions which shall run with the land and be operative until January 1, 1960.

Restrictions

Building Line:

The building line for the premises herein conveyed shall be 30 feet from the front or street line of said premises and not nearer to the side lines than five feet. The building line on all corners shall be 30 feet from the street upon which the narrow part of the premises front.

Projections forming a part of the residence shall be considered as part of the residence and must be constructed within the building line. Bay windows, vestibules and sun parlors shall be considered

38378

as part of the residence and shall be constructed within the building line. Steps and open porches shall not be construed as part of the residence.

All garages shall be erected on the rear half of the premises unless attached to the residence and where the premises conveyed are 120 feet or more in depth, the garage shall be not less than 25 feet from the rear line and on all parcels less than 120 feet in depth, the garage line shall be not less than 10 feet from the rear line.

Character and Value of Building:

Nothing but a single cottage to be used for single residence purposes only shall be erected on any lake front parcel, with a floor space on the ground floor of not less than 400 square feet, exclusive of porches, and nothing but a single cottage to be used for single residence purposes only having a floor space of 360 square feet on the ground floor on any other parcel.

The ground floor of the cottage shall not be closer to the ground than 18 inches and in the event the construction is on posts the opening between the ground and the floor joist shall be screened or boarded up.

The outside of the cottage shall be finished with German siding, shingles, brick, stone or stucco.

No flat, peak or hip-roof shall be constructed on the cottage unless a dormer is placed in the front part thereof.

No chimney or device for conveying smoke shall be constructed or used in connection with any building on the premises unless the same is built of stone, brick or concrete.

All outside woodwork shall be painted or stained not less than two coats.

All toilets shall be attached to and made a part of the cottage or residence, same to be of the sanitary chemical type. No out buildings of any nature may be erected on the premises, except a garage for private purposes only, and shall be constructed in the same style and architecture, subsequent to or simultaneous with the erection of

58378

the cottage, and shall be painted or stained at least two coats in the same color as the house.

All roofing shall consist of cedar, tile, slate or asphalt shingles. No rolled roofing will be allowed.

Docks and Buoys:

Docks and buoys may be erected in front of all lake front parcels, but shall be placed at right angles to the shore line, and in the middle of the lot upon which same is constructed. All docks and buoys erected along the lake front shall be painted white, at least two coats. White wash shall not be construed as paint. In no event shall a bathing house or boat house be erected.

Fences:

No fences shall be constructed in front of the building line as hereinbefore set forth. Fences in the rear or back of the building line shall be not more than four feet high, not constructed of solid boards, and of such a character as not to obstruct the view.

Front Yards:

All portions of parcel referred to herein lying in front of the building line shall be used only for ornamental purposes and nothing shall be planted thereon other than trees or shrubs of such a character as not to obstruct the view.

Garbage and Refuse:

Garbage and refuse shall be kept in covered containers within 20 feet of the rear of the cottage and shall be disposed of at least once a week by incineration until such time as the association provided for herein shall provide a system of collection and removal of thesame from the premises. Tin cans and glass to be kept separate from other garbage.

In no event shall garbage or refuse of any nature be thrown or placed in the lake.

No poultry of any kind shall be owned or kept on any lot in said subdivision.

The restrictions contained herein shall be in full force and effect

158378 until the year 1960, and shall apply to all parcels in Seven Harbors White Lake. Any buildings erected on said parcels shall comply in every instance with the building lines provided herein. It is further understood that the association provided for herein may by a two-thirds vote of the members voting at a regular annual meeting have the power to cause the plat of Seven Harbors White Lake to be recorded.

The owner of any parcel who shall rent, or lease, any cottage erected on the premises owned shall inform said tenant or tenants of the covenants and restrictions contained herein and such tenant shall be bound thereby.

Bathing

All persons bathing in the waters appurtenant to Seven Harbors White Lake shall wear at all times a two-piece or combination bathing suit; and all persons going to or from the lake attired in bathing suits shall at all times wear some outer garment covering; and no owner, occupant or person of any parcel shall be permitted to travel upon any of the rights of way in bathing attire unless so covered.

Grantors further convey to said grantees a permanent easement over and across the roadways and Lake frontage reservations and rights of way in Seven Harbors White Lake described as follows:

Beginning at a point said point being north 1 degree 04 minutes east 624.20 feet from the centre the southeast quarter of Section 12, town 3 north, range 7 east, Highland Township, Oakland County, Michigan; thence south 66 degrees 25 minutes west 55.06 feet to a point; thence north 25 degrees 57 minutes west 246.75 feet to a point; thence north 13 degrees 13 minutes 30 seconds west 70.65 feet to a point; thence north 54 degrees 43 minutes 30 seconds west 158.17 feet to a point; thence north 13 degrees 13 minutes 30 seconds west 50 feet to a point; thence south 76 degrees 09 minutes 30 seconds east 168.44 feet to a point; thence north 13 degrees 13 minutes 30 seconds west 23.65 feet to a point; thence north 53 degrees 45 minutes east 356.27 feet to a point; thence north 21

degrees 55 minutes east 230.97 feet to a point; thence north 30 degrees 55 minutes east 43.76 feet to a point; thence north 63 degrees 55 minutes east 31.67 feet to a point; thence north 15 degrees 55 minutes west 152.34 feet to a point on shore of White Lake; thence north 84 degrees 15 minutes east 30 feet along shore of White Lake to a point; thence south 9 degrees 33 minutes east 150.29 feet to a point; thence north 84 degrees 15 minutes east 152.60 feet to a point; thence south 67 degrees 45 minutes east 404.57 feet to a point; thence north 30 degrees 55 minutes east 290.40 feet to a point; thence north 55 degrees 55 minutes east 52.45 feet to a point; thence north 6 degrees 35 minutes east 104.90 feet to a point on shore of White Lake; thence south 51 degrees 05 minutes east 240.35 feet along shore of White Lake to a point; thence north 84 degrees 43 minutes west 150 feet to a point; thence south 30 degrees 57 minutes west 121.68 feet to a point thence south 8 degrees 36 minutes west 67.53 feet to a point; thence south 17 degrees 24 minutes east 243.92 feet to a point; thence south 9 degrees 18 west 110.68 feet to a point; thence south 30 degrees 47 minutes west 33.04 feet to a point; thence south 85 degrees 33 minutes west 85.33 feet to a point; thence south 6 degrees 26 minutes east 122.00 feet to a point on shore of White Lake; thence south 84 degrees 07 minutes west 50 feet along shore of White Lake to a point; thence north 1 degree 46 minutes 30 seconds west 123.40 feet to a point; thence south 85 degrees 33 minutes west 30 feet to a point; thence north 62 degrees 58 minutes west 493.96 feet to a point thence north 67 degrees 45 minutes west 317.59 feet to a point; thence north 21 degrees 55 minutes east 50 feet to a point; thence south 67 degrees 45 minutes east 318.62 feet to a point; thence south 62 degrees 58 minutes east 482.51 feet to a point; thence north 85 degrees 33 minutes east 164.55 feet to a point; thence north 9 degrees 18 minutes east 87.30 feet to a point; thence north 17 degrees 24 minutes west 243.71 feet to a point; thence north 8 degrees 36 minutes east 75.50 feet to a point; thence south 30 degrees 55

minutes west 248.66 feet to a point; thence north 67 degrees 45 minutes west 406.30 feet to a point; thence south 84 degrees 15 minutes west 144.37 feet to a point; thence south 63 degrees 55 minutes west 7.83 feet to a point; thence south 30 degrees 55 minutes west 25.11 feet to a point; thence south 21 degrees 55 minutes west 241.20 feet to a point; thence south 53 degrees 45 minutes west 347.57 feet to a point; thence south 13 degrees 13 minutes 30 seconds east 74.95 feet to a point, thence south 25 degrees 57 minutes east 184.32 feet to a point; thence north 53 degrees 45 minutes east 61..28 feet to a point; thence south 62 degrees 58 minutes east 55.99 feet to a point; thence south 53 degrees 45 minutes west 477.50 feet to a point; thence south 0 degrees 59 minutes west 47.97 feet to a point; thence south 64 degrees 10 minutes west 138.30 feet to point of beginning.

Said roadways, rights of way and lake frontages are reserved for the benefit of the owners of Seven Harbors, White Lake, for boating, bathing and access to and from the lake and for no other purpose.

It is further covenanted and agreed by the grantee hereunder, that in consideration of a similar waiver on the part of the grantors the grantee waive forever, all right, to sell, assign, transfer or convey all or any right, title and interest in and to the premises herein described, or at any time to sell, assign, rent, or lease the whole or any part of said premises by or to any person or persons other than those of the Caucasian race and the grantee covenant and agree and it is made an express condition of this deed that no part of said premises shall ever be conveyed to or occupied by any person or persons belonging to that branch of the Caucasian Race known as the Semitic race.

The grantors further covenant and agree that they will grant, convey, quit claim and set over all the roadways or rights of way, all lake frontage, set aside for the benefit and convenience of property owners, hereinbefore described, together with all their right, title and interest [illegible] provided for herein,

BOARD MEETING

December 10,1952

Present: Pres. Chapman; Vice Pres. Williams; Secretaries, Mrs. Engelman and Mrs. Cadd; Directors: Ross, Wolf, [illegible], Davis, McDonell and Sullivan.

Meeting was called to order by Pres. Chapman at 7:30 P.M.

Minutes of previous meeting read and corrected.

Financial statement read and approved. Motion made by Mr. Williams and seconded by Mr. McDonell that we pay labor bill of $[illegible] for month of November. Carried.

President Chapman expressed appreciation of cooperation of the Board for the year. He felt all effort expended has been for the good of the Association and the neighborhood.

Report on social activities was given by Mrs. Cadd. Statement attached hereto. It was suggested that the turkey dinner be included in the program for 1953 and perhaps make it an annual affair.

Discussion followed as to who were given a ballot and therefore a vote. In referring to By-Laws, it found that only paid-up members were allowed a vote. became an assessment no information was discussed. The argument having been given that in the first contracts, it did not state % of the assessed valuation. However, in examining contracts, it was found some were different but that all state to that an amendment shall be formed and therefore this association would stipulate the fee for [illegible].

Mr. McDonell suggested a project to raise money so that the association could be self supporting and not have to rely on Mr. Dunscomb to carry the load. It was suggested that we build a house and sell. Material could be gotten at cost; exact direction was [illegible]; would have to check for volunteer help; method of financing, size of house and price range. Mr. McDonell was asked to appoint a building committee.

Subject of unpaid members was brought up and it was hoped that through decency and human cooperation [illegible] would be discouraged. It was definitely incorporating to make these members [illegible] was not the answer. Comparison was made of other communities and the condition of their roads and their cost and it was found that our roads were not kept and the cost considerably cheaper.

January 7th was set as date for special meeting to count the ballots and have a report from the building committee on project. Regular meeting to be Jan. 21st at 7:30 P.M.

Meeting was adjourned by Pres. Chapman at 8:50 P.M., stating that the prospect for 53 would be good if continued with spirit of this past year.

Respectfully submitted,

Henrietta A. Cadd, Secty.

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SUPERVISORS PLAT OF SEVEN HARBORS

SUPERVISORS PLAT OF SEVEN HARBORS IS A PRIVATE SUBDIVISION WITH PRIVATE ROADS. THEREFORE, RESIDENTS ARE RESPONSIBLE FOR COSTS OF ALL ROAD MAINTENANCE INCLUDING GRADING AND SNOWPLOWING. THE ANNUAL MANDATORY FEE PER HOUSEHOLD IS CURRENTLY 35.00 AND IS DUE ANNUALLY ON JANUARY 1.

THE SOLE PURPOSE OF THE ANNUAL 35.00 FEE PER HOUSEHOLD IS TO PROVIDE SAFE VEHICULAR INGRESS AND EGRESS TO AND FROM THE PROPERTIES LOCATED WITHIN THE SUPERVISORS PLAT OF SEVEN HARBORS SUBDIVISION. SUPERVISORS PLAT OF SEVEN HARBORS HAS A FULLY FORMED ASSOCIATION WHICH ASSESSES FEES, COLLECTS SAME, AND IS RESPONSIBLE FOR CONTRACTING AND PAYMENT OF ALL MAINTENANCE EXPENSES INCURRED BY SUPERVISORS PLAT OF SEVEN HARBORS SUBDIVISION.

WITNESS:

George Scarcliff
GEORGE SCARCLIFF

Cheryl Fori
CHERYL FORI

dated 10-14-88

SUPERVISORS PLAT OF SEVEN HARBORS

BY Frank H. Cooper III (Res.)
FRANK COOPER III
PRESIDENT

11#36 REG/DEEDS PAID
0001 NOV.14'88 09:55AM
3594 MISC 5.00

STATE OF MICHIGAN
COUNTY OF OAKLAND

ON THIS 14th OF OCTOBER 1988 THE FOREGOING WAS ACKNOWLEDGED BEFORE ME A NOTARY PUBLIC OF OAKLAND COUNTY, STATE OF MICHIGAN BY FRANK COOPER III, PRESIDENT OF SUPERVISORS PLAT OF SEVEN HARBORS .

Cheryl Ann Fori
CHERYL ANN FORI
NOTARY PUBLIC, OAKLAND COUNTY
MICHIGAN

MY COMMISSION EXPIRES 6-3-91

DRAFTED BY
& returned to
FRANK COOPER III
3374 CLARICE AVE.
HIGHLAND, MICHIGAN 48031

5.00

EXT 54-11-12-278-005 44.00

EXHIBIT 29

2003 WL 22717941
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

W. Randall DEAN, Plaintiff - Counterdefendant-Appellant/Cross-Appellee,
v.
Scott A. HANSON, Patricia A. Hanson, Brian J. Hoxie, and Michele Hoxie, Defendants-Counterplaintiffs-Appellees/Cross-Appellants.

No. 241317. | Nov. 18, 2003.

Before: O'CONNELL, P.J., and JANSEN and WILDER, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiff appeals as of right from a consent order that adopted a prior order denying him injunctive relief as to certain building and land use restrictions, declaring a common scheme or plan prevailed over his development, and entitling defendants Scott Hanson, Patricia Hanson, Brian Hoxie, and Michelle Hoxie rights in an area of common usage. [1] Defendants cross-appeal from the order. We affirm.

I.

This action arose after plaintiff subdivided a twenty-acre parcel of land located in Washtenaw County. To accomplish the subdivision, plaintiff recorded both a Building and Use Restrictions document and a Declaration of Private Road Easement applicable to all five parcels. Exhibit A to the building and use restrictions is a survey representing the five subdivided parcels, labeled A through E. Parcel A consisted of approximately 10.01 acres and the remaining lots B through E were approximately 2.5 acres each. Additionally, the survey showed part of parcel A contained a 6.94-acre easement for "common usage." Plaintiff was apparently contemplating the donation of the common usage easement to a non-profit nature conservancy. Exhibit B to the building and use restrictions stated the legal descriptions of the five parcels as well as three easements. Easement number three provided the metes and bounds description of the parcel A area of "common usage" easement.

Plaintiff sold parcels of the property, and defendants owned lots D and E within the subdivision. A dispute arose between the parties when plaintiff decided to further subdivide the remaining three parcels he owned. Defendants did not want plaintiff selling a lot in the area of Parcel A that was designated for "common usage" because they believed this area would be left undeveloped and accessible to them under the subdivision's overall scheme. In an effort to protect their perceived interest in the area of common usage, defendants recorded a claim of interest against this area. Plaintiff responded by filing his complaint. Plaintiff's count I sought, inter alia, injunctions and monetary damages against both defendants, alleging that defendants violated specific sections of the building use and restrictions by: 1) routinely leaving trash containers in plain sight on non-collection days; 2) storing recreational vehicles in places other than behind the rear of their homes, without hard-surfaced storage pads; 3) erecting garages with room for more than two cars; and 4) leaving portions of their property in unkempt condition. Count IV sought a declaratory judgment providing that defendants only have rights in the parcels they purchased, that plaintiff may further develop his remaining property and that plaintiff does not have to leave the area of common usage undeveloped as a nature preserve.

Defendants answered plaintiff's amended complaint, counterclaiming for a declaratory judgment providing that plaintiff be barred from permitting more than one residential structure on lots A, B and C, and barred from developing the area of common usage. Plaintiff, then, moved for partial summary disposition under MCR 2.116(C)(8),(9) and (10), arguing that defendants' counterclaim failed to state a claim upon which relief can be granted because none of the documents related to subdividing his property could be interpreted as establishing an easement on the area of common usage or restricting his ability to further develop this area. Defendants subsequently filed their own motion for summary disposition, seeking the dismissal of plaintiff's claims for injunctive relief as to the alleged violations of building and use restrictions. Defendants also sought summary disposition on their declaratory judgment counterclaim that a reciprocal negative easement existed over the area of common usage and that plaintiff was restricted

from building more than one structure on Lots A, B and C based on the subdivision's common plan or scheme.

*2 The trial court ruled that plaintiff could not further subdivide his remaining parcels and that defendants shared common rights in the area of "common usage" through the doctrine of reciprocal negative easements. The trial court granted defendants' summary disposition motion on plaintiff's claims for injunctive relief regarding alleged land use restriction violations.

II.

On appeal, plaintiff first argues that the trial court erred as a matter of law, when it determined that that the twenty-acre parcel plaintiff subdivided was developed in accordance with a common plan or scheme and that the doctrine of reciprocal negative easements granted all of the subdivided lot owners access to the area of "common usage" easement included in parcel A. Plaintiff argues the trial court erred in discerning a common plan or scheme from the building and use restrictions, survey, and property descriptions. We disagree. This Court reviews summary disposition judgments de novo. *Taylor v. Gate Pharmaceuticals,* 468 Mich. 1, 5; 658 NW2d 128 (2003).

In analyzing the Building and Use Restrictions document, the survey, property descriptions, Declaration of Private Road Easement and warranty deeds, the primary objective is to determine the intentions of the parties from the instruments themselves. *Pyne v. Elliot,* 53 Mich.App 419, 429; 220 NW2d 54 (1974), quoting *Thomas v. Jewell,* 300 Mich. 556, 558; 2 NW2d 501 (1942). A general plan or scheme of development must have been maintained from the property's inception and must have been understood, accepted, relied and acted on by all having interest in the subdivision. *Sanborn v. McLean,* 233 Mich. 227, 229; 206 NW 496 (1925); *French v. White Star Refining Co,* 229 Mich. 474, 476; 201 NW 444 (1924). We find, upon a de novo review, that the trial court properly determined that a common scheme or plan was intended from the recorded documents.

First, the building and use restriction document clearly states that restrictions are binding on all owners. The Private Road Easement, recorded in conjunction with the subdivision of plaintiff's property, also demonstrates plaintiff's intent on a common scheme or plan because it was created for the specific purpose of providing road access to the five parcels. Further evidence of the common scheme is present in the survey attached to the building and use restrictions document that was created before plaintiff ever sold a parcel. The survey described the five parcels and illustrated the area of "common usage" immediately adjacent to all five lots. Moreover, the metes and bounds legal descriptions attached as exhibit B to the building and use descriptions sets forth the plan of five separate parcels and three easements. Finally, the warranty deeds plaintiff provided to both defendants did not contain their own building and use restrictions. Instead, all the parcels were governed by the building and use restrictions document filed by plaintiff. We therefore conclude that there was ample demonstration of an "understood, accepted, relied and acted on" common scheme or plan. See *Sanborn, supra* at 229.

*3 We also find, upon a de novo review, that under the doctrine of reciprocal negative easement, defendants have property rights in the area of "common usage" easement contained on parcel A. Initially, we note that a reciprocal negative easement is a valuable property right. *Webb v. Smith (After Second Rem),* 224 Mich.App 203, 210; 568 NW2d 378 (1997), citing *Austin v. Van Horn,* 245 Mich. 344, 346; 222 NW 721 (1929). And when a parcel is developed in accordance with a common scheme or plan, the doctrine of reciprocal negative easements may subject all lots within the subdivision to the common plan or scheme, regardless of whether such lots are specifically burdened by restrictions in their chain of title. *Allen v. Detroit,* 167 Mich. 464, 469; 133 NW 317 (1911). Reciprocal negative easements must arise pursuant to a scheme of restriction by a common owner. *Golf View Improvement Ass'n v. Uznis,* 342 Mich. 128, 132; 68 NW2d 785 (1955). A party asserting the existence of a reciprocal negative easement has the burden of proof.*Denhardt v. De Roo,* 295 Mich. 223, 228; 294 NW 163 (1940), quoting *Fenwick v. Leonard,* 255 Mich. 85, 90; 237 NW 381 (1931). In *Sanborn, supra,* the seminal case regarding reciprocal negative easements, our Supreme Court noted:

> If the owner of two or more lots, so situated as to bear the relation, sells one with restrictions of benefit to the land retained, the servitude becomes mutual, and, during the period of restraint, the owner of the lot or lots retained can do nothing forbidden to the owner of the lot sold. For want of a better descriptive term this is styled a reciprocal negative easement. It runs with the land sold by virtue of express fastening and abides

• Restriction 3, which requires trash to be kept out of sight, in closed containers, was violated by both defendants because they placed their trash out for pick-up on days where pick-up was not scheduled.

*5 • Restriction 7(g), which requires lawn to be regularly mowed, was violated when the Hoxie defendants failed to mow parts of their lawn regularly.

Plaintiff also alleges that injunctive relief was appropriate regarding defendants' violations of section 2.4 of the Private Road Declaration, which prohibits defendants from performing maintenance on the private road.

As plaintiff correctly points out to this Court, the trial court erred by employing a "balancing test" of the harm to each party when it denied injunctive relief to plaintiff on the above restriction violations. And although it reached its decision for the wrong reason, the trial court's decision that injunctive relief was not appropriate was the correct result and will be affirmed. *Gleason v. Dep't of Trans,* 256 Mich.App 1, 3-4; 662 NW2d 822 (2003).

Balancing the economic harm to each party is not an analytical step courts take when it comes to enforcing property restrictions through an injunction. Rather, with the exception of the three equitable exceptions discussed, *infra,* Michigan courts generally enforce valid restrictions by injunction and typically do not consider the parties' respective damages when deciding whether to grant the injunction. *Webb, supra* at 211, citing *Cooper v. Kovan,* 349 Mich. 520, 530; 84 NW2d 859 (1957). This approach was recently confirmed by our Supreme Court in *Terrien v. Zwit,* 467 Mich. 56, 65; 648 NW2d 602 (2002), when it ruled that a restrictive covenant disallowing property owners to use their property for commercial purposes must be enforced against a "day-care" business that violated the covenant, even if the day-care brought no harm on other property. The Court explained:

"[T]he plaintiff's right to maintain the restrictions is not affected by the extent of the damages he might suffer for their violation."This all comes down to the well-understood proposition that a breach of a covenant, no matter how minor and no matter how *de minimis* the damages, can be the subject of enforcement. As this Court said in *Oosterhouse v. Brummel,* 343 Mich. 283, 289; 72 NW2d 6 (1955), " 'If the construction of the instrument be clear and the breach clear, then it is not a question of damage, but the mere circumstance of the breach of the covenant affords sufficient ground for the Court to interfere by injunction." ' *Id.*

In making his argument that an injunction was proper regarding the restriction violations, plaintiff relies heavily on *Webb, supra,* where this Court required the defendants to demolish a second home they had built in violation of certain property restrictions, which limited purchasers to one house per lot. *Webb, supra* at 206.The *Webb* Court reasoned that the restrictions had been readily ascertainable and that requiring the defendant to tear down the house was proper under the prevailing law. *Id.* at 214.Plaintiff also relies on *Pietrowski v. Dufrane,* 247 Wis 2d 232; 634 NW2d 109 (2001). In *Pietrowski, supra,* the restrictions at issue prevented property owners in the subdivision from erecting more than one family dwelling and one private garage on their land. The plaintiff asserted that because the defendants already had a house and an attached garage on their property, the construction of an additional garage violated the restrictive covenants. *Id.* at 237.The *Pietrowski* Court ordered defendant to remove the garage because it violated the restriction. *Id.* at 246.

*6 Although strict enforcement of restrictions through an injunction is the general rule, Michigan courts have also fashioned three equitable exceptions to the strict enforcement of property restrictions: (1) technical violations and absence of substantial injury, (2) changed conditions, and (3) limitations and laches. *Webb, supra* at 211, citing *Cooper, supra* at 530.Also, restrictive covenants are to be strictly construed against the grantor and liberally in favor of the grantee. *Patterson v. Butterfield,* 244 Mich. 330, 335; 221 NW 293 (1928). All doubt should be resolved in favor of the free and unrestricted use of property and against restricted use. *Id.*

In the present case, we find an equitable exception applicable to all of the alleged restrictions violations. *Webb, supra* at 211.The *Webb* Court adopted the definition of *Camelot Citizens Ass'n v. Stevens,* 329 So.2d 847, 850 (La App, 1976), which characterized a technical violation of a negative covenant as a "slight deviation" or a violation that " 'can in no wise, we think, add to or take from the objects and purposes of the general scheme of development." ' *Webb, supra* at 212, quoting *Camelot Citizens Ass'n, supra* at 850 (omitting the citations from *Camelot Citizens Ass'n*). In *Webb, supra,* this Court determined that the construction of a second house on the property *did* take away from the general scheme of development because the second home impaired the plaintiffs'

view of a lake and resulted in over $5,500 in damages to plaintiffs' property. *Id.* at 212-213.

We first address the alleged two-car garage restriction violation. We find, applying equitable principles, even though defendants' construction of three and four car garages is in apparent violation of the two-car garage restriction, the doctrine of laches, the third equitable exception to the general rule of strict enforcement of property restrictions, supports the trial court's refusal to order defendants to remove part of their garages. See *Webb, supra* at 211.The record indicates that the trial court declined to enforce an injunction regarding the garages because plaintiff had indicated in a deposition that he was aware of the garage additions being built, well before instituting his complaint, but did nothing at that time. It was not until defendants filed a "claim of interest" in 1998 on the area of common usage that plaintiff asserted any violation of the garage restriction. And it was not until July 1999, that plaintiff filed a complaint alleging restriction violations. Laches applies when there has been an unexcused delay in commencing an action, which results in prejudice. *Dep't of Public Health v. Rivergate Manor,* 452 Mich. 495, 507; 550 NW2d 515 (1996). The prejudice is caused by the plaintiff's failure to do something which should have been done under the circumstances or failure to claim or enforce a right at the proper time.*Schmude Oil Co v. Omar Operating Co,* 184 Mich.App 574, 583; 458 NW2d 659 (1990). Plaintiff's failure to bring an action or attempt to enforce the garage provision prior to defendant's claim of interest was filed, is unexcused and prejudiced defendants. Thus, we find, upon a de novo review, applying equitable principles and the doctrine of laches, the third equitable exception to the general rule of strict enforcement of property restrictions, supports the trial court's refusal to order defendants to remove part of their garages. [3] See *Webb, supra* at 211.

*7 We find that the other alleged restriction violations fall under the "technical violations" exception. Regarding the trash removal violations alleged by plaintiff, defendants placed their trash cans out the evening before the next morning's scheduled pick-up in violation of the restriction. The alleged trash violations cannot be said to have caused plaintiff substantial harm. It is clearly a "technical violation" not requiring injunctive relief. See *Webb, supra* at 211.

The alleged violation of the Declaration of Private Road Easement is merely a technical violation. Plaintiff argues that defendants violated the restriction by performing maintenance on the private road without conducting a meeting regarding the maintenance to be performed. But the meeting requirement exists in section 2.4 of the Declaration because all parcel owners must share in the cost of the maintenance. A meeting is necessary to decide on the extent of the maintenance to be performed and to decide how the cost is to be allocated. But as was indicated by defendants' counsel at the motion hearing, defendants did not meet with plaintiff because he was not asked to pay for any part of this road grading. The fact that defendants had a section of the road graded should be classified as a technical violation because it does not take away from the general scheme of the subdivision. See *Webb, supra* at 211.

Next, regarding the alleged "lawn mowing" violations, we find, upon a de novo review, this is also a technical violation of the building and use restriction document, not requiring injunctive relief. As the trial court pointed out, in 1998 and 1999, defendants had failed to mow certain back sections of their lawn, but it has not happened since. See *Webb, supra* at 211.

Additionally, the alleged violation of restriction 7(h) by the Hanson defendants is properly characterized as a technical violation because even though the restriction requires a licensed builder to do additional construction, the fact that Scott Hanson did the framing of the garage himself does not "take from the objects and purposes of the general scheme of development."See *Webb, supra* at 212.

Plaintiff next claims the trial court erred in granting defendants' motion for summary disposition as to the following restriction:

> 4(b).*recreational vehicles:* The *onsite storage* of only one recreational vehicle such as a camper, self-propelled motor home, snowmobile, all terrain vehicles, boat, and boat trailer which are licensed by the lot owner and in operative condition, shall be permitted if stored behind the rear line of the house and on a hard surface similar to the driveway. [Emphasis added.]

Plaintiff argues that a proper reading of the restriction dictates that only one recreational vehicle (RV) be allowed on defendants' property, regardless of who owns it. In support of his interpretation of the RV restriction, plaintiff cites *Borowski v. Welch,* 117 Mich.App 712; 324 NW2d 144

(1982). In *Borowski, supra,* this Court held that the defendant violated a RV restriction when he parked his mobile home in his driveway. The restriction stated:

> *8 No house trailer, trailer, coach, tent or temporary shelter including fishing shanty, shall be parked, placed, erected or occupied on said premises, except an unoccupied trailer or fishing shanty may be totally stored in a garage thereon. [*Id.* at 713.]

The *Borowski* Court determined that the above restriction prohibited a mobile home from being parked in the defendant's driveway because the overall intent of the restriction was to prohibit the presence of large, unsightly vehicles. *Id.* at 717.

The problem with applying *Borowski, supra,* to this case is that unlike the defendant in *Borowski,* who owned the mobile home and stored it permanently on his property in violation of the restriction, defendants, in the present case, are not attempting to store multiple RVs, that they own, in violation of the restriction. Defendants are, also, not seeking to permanently store RVs on their property owned by their friends and family. Rather, on the occasion when visitors arrive in mobile homes, defendants have permitted them to park on defendants' property. In construing the scope of a restrictive covenant on property, all doubts must be resolved in favor of the free use of the property. *O'Connor v Resort Custom Builders, Inc,* 459 Mich. 335, 341-342; 591 NW2d 216 (1999).

Therefore, construing the RV restriction in favor of the free use of the property, we find, upon a de novo review, that defendants did not violate the restriction by having friends and family visit with their RVs. Plaintiff's interpretation of the RV restriction is not consistent with the free use of property because it would prohibit defendants from ever entertaining guests that happen to bring an RV. Moreover, aside from the fact that defendants did not own these visiting RVs, they were not permanently stored on defendants' property. [4]

Next, plaintiff argues that the Hoxie defendants violated the RV restriction, individually, by not storing their motor home "behind the rear line of the house."Plaintiff insists that "behind the rear line of the house" meant entirely behind the house and out of sight. The record indicates that the Hoxie motor home was not stored directly behind their house but was stored on another part of the lot, behind a line that was parallel to their house. The trial court determined that "behind the rear line of the house" meant "behind a line drawn parallel to and along that part of the house furthest from the lot line."

We hold, upon a de novo review, that the trial court properly interpreted the restriction in favor of the free use of the property because there was simply no evidence presented by plaintiff that this restriction meant the mobile home was to be kept out of sight, entirely behind the Hoxie's home. [5]

Affirmed.

Footnotes

1 Although the parties stipulated to the terms of the consent order, the parties, specifically, reserved the right to appeal or cross-appeal the terms of a prior order of the trial court denying in part plaintiff's motion for summary disposition and granting in part defendants' motion for summary disposition, which is the basis of this appeal.

2 Plaintiff argues that the Private Road Declaration entitles him to further subdivide the property he owns because it states:
If additional parcels are credited [sic] by the division of the above five parcels, the cost of improving and maintaining the easement will be borne by the owners of the increased number of parcels, with the owner of an improved parcel paying one full share and the owner of an unimproved parcel paying one-half share.

3 In light of our resolution of this issue, we need not address the issue defendants raise on cross-appeal. We note that although it appears defendants did in fact violate the two-car garage restriction, the violation was excused by the laches exception to the rule requiring strict enforcement of building restrictions. Defendants violated the restriction and are not entitled to an alternative ruling stating that they did not violate the restriction.

4 Plaintiffs do not argue that defendants *did* own and store more than one RV on their property, but instead plaintiff argues that the trial court misinterpreted the wording of the RV restriction.

5 We note that plaintiff also raises issue with the fact that defendants violated the twenty page brief limitation contained in MCR 2.119(A)(2) when they filed a forty-four page summary disposition brief. Plaintiff contends that he was "substantially prejudiced"

by the undue length of defendants' brief. MCR 2.119(A)(2) states that the trial judge may permit briefs to go beyond the twenty page limit. As long as the opposing party to the lengthy brief has ample opportunity to respond, the page limitation is irrelevant. *People v. Leonard,* 224 Mich.App 569, 579; 569 NW2d 663 (1997). In the present case, the trial court acknowledged, at the summary disposition hearing, that defendants' brief was over twenty pages, but it also gave plaintiff the opportunity to do the same. The trial judge stated he would not rule immediately on the motion, in order to give plaintiff time to respond at-length if he desired. The record indicates plaintiff was given approximately sixty days to file an amended brief, and he did not do so. There was no evidence of "substantial prejudice" caused by the trial court permitting a forty-four page brief. Moreover, it was within the trial judge's discretion to permit the nonconforming brief.

End of Document

EXHIBIT 30

NOTICE OF PRIVATE ROAD

PROPERTY ADDRESS: 3580 RESERVE COURT

PURCHASERS: DONALD E. DAY AND BARBARA L. DAY, HUSBAND AND WIFE

SELLERS: WALTER J. BOLT AND NANCY J. BOLT, FORMERLY KNOWN AS NANCY J. COBB, HUSBAND AND WIFE

YOU ARE HEREBY NOTIFIED PURSUANT TO SECTION 261 OF THE SUBDIVISION CONTROL ACT OF 1967 THAT YOU ARE PURCHASING A PARCEL OF LAND THAT ABUTS AND IS SERVICED BY A PRIVATE ROAD WHICH IS NOT TO BE MAINTAINED BY THE BOARD OF COUNTY ROAD COMMISSIONERS.

Walter Bolt
SELLER WALTER J. BOLT

Nancy J. Bolt
SELLER NANCY J. BOLT

RECEIPT OF THE ORIGINAL IS HEREBY ACKNOWLEDGED:

Donald E. Day
PURCHASER DONALD E. DAY

Barbara L. Day
PURCHASER BARBARA L. DAY

EXHIBIT 31

2009 WL 1567359
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Deborah ANDREOZZI and Clarence Lorentz, Plaintiffs–Appellants,
v.
STONY POINT PENINSULA ASSOCIATION, Barbara Orr, Jana Burnette, Steve Williams, Barclay Stewart, Kathleen B. Loveridge, Brian Dotson, Nancy Jordan, Don Johnson and Robert Groulx, Defendants–Appellees.

Docket No. 281113. | June 4, 2009.

West KeySummary

1 **Municipal Corporations**
Powers of council or other governing body
Public Contracts
Manner of making contract
The board of trustees of a resort owner's association was entitled to enter into a contract with the majority approval of its members, pursuant to state statute. Although the bylaws of the association required a 2/3 vote to approve a contract of over $500, the summer resort owners corporation act superseded the associations bylaws and allowed for majority approval. M.C.L.A. §§ 450.1231, 455.219.

Cases that cite this headnote

Monroe Circuit Court; LC No. 05–020288–CZ.

Before: JANSEN, P.J., and METER and FORT HOOD, JJ.

Opinion

PER CURIAM.

*1 Plaintiffs appeal by right the circuit court's grant of summary disposition in favor of defendants. We affirm, albeit for different reasons than those relied upon by the circuit court.

I

This case arises out of plaintiffs' claim that defendants [1] improperly levied an assessment to dredge a canal on lands under the control of the Stony Point Peninsula Association (the association). Although the Stony Point Peninsula area was originally platted in the 1920s, the association was not incorporated until 1963, at which time articles of incorporation were filed in accordance with the summer resort owners corporation act, 1929 PA 137, MCL 455.201 *et seq.* The 1963 articles of incorporation describe the purpose of the association in the following manner:

> To acquire or receive by gift, maintain, develop and service property known as Stony Point Peninsula, Frenchtown Township, Monroe County, Michigan as per the recorded plat thereof, or land adjacent thereto. To lease, [or] sell said land or portion thereof as shall be approved by a majority of [the] Members at the Annual Meeting. In compliance with the provisions of [the summer resort owners corporation a]ct the trustees shall enact, subject to the approval of the members[,] general by-laws pertaining to police powers, control of streets, sanitation, and such other provisions as are provided by [the summer resort owners corporation a]ct.

Sometime before September 2004, defendants became aware that the association's canal was in need of dredging. In early September 2004, defendants issued a written notice announcing that the association's annual meeting would be held on October 2, 2004, and informing the members that the proposed 2004–2005 annual budget would be considered at that time. Attached to the notice was a proposed annual budget, which included a line item labeled "Proposed Canal Dredge Project" in the amount of $110,000. The proposed annual budget made clear that, upon approval of the canal-dredging project by the members, each member would be responsible for paying a prorated portion of the $110,000 amount.

At the annual meeting, a motion was made to "approve the canal dredging project for $110,000."Although the prorated amount that each member would be required to pay for

the project was described in the minutes as a "proposed assessment," the minutes made clear that the $110,000 expense would be included as a line item in the "capital improvements portion" of the annual budget. Of the 270 votes cast on the motion, 153 (56 # percent) were cast in favor of the canal-dredging project, and 117 (43 # percent) were cast in opposition to the canal-dredging project. The motion was declared to have carried, and defendants included the $110,000 cost in the final budget. Defendants entered into a contract with a dredging company and began collecting each member's prorated portion of the $110,000 amount.

Plaintiffs filed suit in the Monroe Circuit Court, alleging that the canal-dredging expenditure was a "special assessment," and that pursuant to the association's bylaws, it had required approval by two-thirds of the members and proxies voting at the annual meeting. Plaintiffs argued that because the expenditure had only been approved by 56 # percent of the members and proxies voting, defendants were without authority to enter into the canal-dredging contract or to collect the prorated portions of the $110,000 cost.

***2** The circuit court granted summary disposition in favor of defendants, concluding that the association's board of directors had been authorized to enter into the canal-dredging contract and to charge the association's members for the cost of the project.

II

We review de novo a circuit court's decision to grant or deny summary disposition. *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337, 572 N.W.2d 201 (1998). We similarly review de novo matters of statutory interpretation, *Toll Northville Ltd v. Northville Twp.,* 480 Mich. 6, 10–11, 743 N.W.2d 902 (2008), and all other questions of law, *Cowles v. Bank West,* 476 Mich. 1, 13, 719 N.W.2d 94 (2006).

III

A

Under the summer resort owners corporation act, a group of 10 or more property owners may form a summer resort owners corporation by filing articles of incorporation, also known as articles of association,[2] in accordance with the act. MCL 455.201. Upon filing such articles, "the persons so associating, [and] their successors and assigns, shall become and be a body politic and corporate, under the name assumed in their articles ... and shall have and possess all the general powers and privileges and be subject to all the liabilities of a municipal corporation and become the local governing body."MCL 455.204. All property owners holding lands within the county and "contiguous to the resort community in which the corporation is organized" are eligible to become members of the corporation. MCL 455.206.

The general corporate governance authority of a summer resort owners corporation is vested in a board of directors, also known as a board of trustees. MCL 455.206; MCL 455.209; MCL 455.210. The board has the authority to enact bylaws, which are "subject to repeal or modification by the members at any regular or special meeting...."MCL 455.212. Specifically, the board may enact bylaws for any of the following purposes:

> To keep all [the corporation's] lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly assemblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt

and obstruction and in good repair. [MCL 455.212.]

B

*3 The Business Corporation Act, 1972 PA 284, MCL 450.1101 *et seq.*, expressly applies to "summer resort associations" to the extent that it is not inconsistent with the specific acts under which those summer resort associations were formed. MCL 450.1123(1). An entity formed under the summer resort owners corporations act is statutorily described as a "corporation" rather than as an "association." MCL 455.201; MCL 455.204. Therefore, it is not immediately apparent whether such an entity is a "summer resort association" within the meaning of MCL 450.1123(1). But for the reasons set forth below, we conclude that entities formed under the summer resort owners corporation act do, indeed, constitute "summer resort associations" within the meaning of MCL 450.1123(1).

It is the longstanding opinion of the Attorney General that entities formed under the summer resort owners corporation act qualify as "summer resort associations" within the meaning of MCL 450.1123(1). OAG 1975–1976, No. 5065, p 734 (December 17, 1976); see also OAG 2003–2004, No. 7164, p 167 (October 7, 2004). While opinions of the Attorney General are not binding on this Court, we find the Attorney General's opinion on this matter persuasive for the following reasons. See *Risk v. Lincoln Charter Twp.*, 279 Mich.App. 389, 398–399, 760 N.W.2d 510 (2008).

In addition to the summer resort owners corporation act, Chapter 455 of the Michigan Compiled Laws, entitled "Summer Resort and Park Associations," includes the summer resort and park associations act, 1897 PA 230, MCL 455.1 *et seq.*, the summer resort and assembly associations act, 1889 PA 39, MCL 455.51 *et seq.*, and the suburban homestead, villa park, and summer resort associations act, 1887 PA 69, MCL 455.101 *et seq.*[3] Each of these acts allows individuals to associate under certain circumstances for the purpose of acquiring, owning, or improving real property. Although each of the acts contains its own distinct provisions, the four acts also share many similarities. See 2 Cameron, Michigan Real Property Law, § 21.36, pp 1225–1228. Whereas the summer resort and assembly associations act and the suburban homestead, villa park, and summer resort associations act describe the entities formed thereunder as "association[s]," MCL 455.51; MCL 455.101, the summer resort and park associations act and the summer resort owners corporation act describe the entities formed thereunder as "corporation[s]," MCL 455.1; MCL 455.201. Nonetheless, the summer resort and park associations act and the summer resort owners corporation act describe the original incorporators as "the persons associating," MCL 455.2, and as "the persons so associating," MCL 455.202. Moreover, all four acts contain at least one provision that describes the incorporating document required thereunder as the "articles of association." See, e.g., MCL 455.2; MCL 455.52; MCL 455.103; MCL 455.202. In light of the placement of the summer resort owners corporation act in the overall statutory scheme, see *Tallman v. Dep't of Natural Resources*, 421 Mich. 585, 600, 365 N.W.2d 724 (1984), and the use of the terms "associating" and "articles of association" in the summer resort owners corporation act, we conclude that entities formed under the summer resort owners corporation act do constitute "summer resort associations" within the meaning of MCL 450.1123(1). Accordingly, the Business Corporation Act applies to summer resort owners corporations to the extent that it is not inconsistent with the summer resort owners corporation act. MCL 450.1123(1).

IV

*4 Although plaintiffs' amended complaint did not contain distinct and separately entitled causes of action, it is apparent that plaintiffs attempted to set forth a claim for declaratory relief under MCR 2.605, and a shareholders oppression claim under MCL 450.1489. We are not bound by a party's choice of labels in the complaint because this would exalt form over substance. *Johnston v. Livonia*, 177 Mich.App. 200, 208, 441 N.W.2d 41 (1989). Instead, we read the pleadings as a whole and look beyond the procedural labels to determine the exact nature of the claims asserted. See *MacDonald v. Barbarotto*, 161 Mich.App. 542, 547, 411 N.W.2d 747 (1987).

Plaintiffs requested that the circuit court declare that the cost of the canal-dredging project was a "special assessment," that a two-thirds vote of the association's members had been required to approve the $110,000 expenditure, and that because the expenditure had not been approved by two-thirds of the membership, it was "unauthorized, invalid, and unenforceable." We conclude that plaintiffs properly requested declaratory relief in this regard."MCR 2.605 provides that a court may declare the rights and legal relations of an interested party seeking a declaratory judgment in a

case of actual controversy within its jurisdiction."*Kircher v. Ypsilanti,* 269 Mich.App. 224, 226, 712 N.W.2d 738 (2005).

The complaint also made clear that plaintiffs were asserting a shareholder oppression claim pursuant to MCL 450.1489. The cause of action created by MCL 450.1489 is a cause of action for oppression, running in favor of minority shareholders in a closely held corporation. *Estes v. Idea Engineering & Fabrications, Inc.,* 250 Mich.App. 270, 278, 649 N.W.2d 84 (2002). Although plaintiffs are members of a summer resort owners corporation, and are not in actuality "shareholder[s]" of a closely held business, they are certainly similar in many respects to minority shareholders of a closely held corporation. Specifically, the gravamen of plaintiffs' complaint was that the association's controlling members and directors had engaged in oppressive conduct by violating a supermajority voting requirement in the bylaws, and had thereby trampled upon the voting rights of the minority members. Similar conduct, if committed within the confines of a closely held business corporation, would likely give rise to a cause of action for oppression under MCL 450.1489. See *Franchino v. Franchino,* 263 Mich.App. 172, 184–186, 687 N.W.2d 620 (2004) (observing that MCL 450.1489 protects the interests of a shareholder "as a shareholder" and that "[s]hareholder's rights are typically considered to include voting at shareholder's meetings, electing directors, adopting bylaws, amending charters, examining the corporate books, and receiving corporate dividends"). As we explained more fully in section III(B), *supra,* the Business Corporation Act applies to summer resort owners corporations to the extent that it is not inconsistent with the summer resort owners corporation act. Therefore, even though plaintiffs are not technically shareholders of a closely held business corporation, we conclude that they were entitled to sue for oppression-like conduct pursuant to MCL 450.1489.[4] See MCL 450.1123(1).

V

***5** Plaintiffs argue that the association's bylaws required an affirmative two-thirds vote before defendants could enter into the canal-dredging contract at issue, that only 56 # percent of the members and proxies voting at the annual meeting actually approved the contract and expenditure, and that defendants therefore engaged in ultra vires conduct by implementing the canal-dredging project and charging the members for its cost.

The bylaws of Stony Point Peninsula Association state that "[t]he officers or board of directors shall not enter any contract or purchase or sell property, real or personal, if the amount exceeds $500. All purchases in excess thereof must be approved at the Annual, or a duly called Special Meeting of the Corporation by a # vote of members and proxies present."The parties do not contest that the board entered into a contract in excess of $100,000 and that when the motion was presented at the annual meeting it was supported by less than two-thirds of the members and proxies voting.

The circuit court concluded that although the bylaws required a two-thirds vote before the board of directors could approve a contract or expenditure exceeding $500, the board was nonetheless authorized to enter into the contract at issue in this case because it had general supervisory power over the association's property and common areas, and an accompanying duty to maintain the association's canal. Given this theorized duty, the circuit court determined that the board was not required to abide by the two-thirds requirement in the bylaws when implementing the canal-dredging project.

We conclude that the board's general duty to maintain the canal, to the extent that any such duty existed,[5] could not overcome the specific supermajority provision in the association's bylaws. The relevant statutory language provides that "[t]he board of trustees shall have the management and control of all the business and all the property, real and personal, of the corporation and shall represent the corporation, with full power of authority to act for it in all things legal whatsoever, *and subject only to restrictions or limitations imposed by the by-laws of the corporation and any special restriction or limitation imposed by a vote of the members....*" MCL 455.210 (emphasis added). While the beginning language of MCL 455.210 indicates that the board has broad power over an association's property, the latter portion clearly indicates that the power may be limited by the association's bylaws or a vote of the membership. In this case, the bylaws, which were adopted by the association's members, plainly and clearly limited the board's power to enter into contracts or expenditures in excess of $500 by requiring that at least two-thirds of the members and proxies voting approve such an expenditure. Under MCL 455.210, this duly enacted bylaw provision superceded any general duty to maintain the canal that the board might have possessed.

***6** Defendants argue that, irrespective of whether the board had a general duty to maintain the canal, the two-thirds

voting provision in the association's bylaws was invalid under the Business Corporation Act. They contend that, under the Business Corporation Act, a supermajority voting requirement must be contained in the articles of incorporation rather than in the bylaws. In support of this contention, defendants cite MCL 450.1441(2), which provides in relevant part:

> Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this act.

But MCL 450.1455, another section of the Business Corporation Act, belies defendants' argument in this regard. The final sentence of MCL 455.1455 provides that "[t]he failure to include [a supermajority voting requirement] in the articles shall not invalidate any by-law or agreement which would otherwise be considered valid."This provision makes clear that when the bylaws require supermajority approval for a given action, that requirement is valid even if it has not been included in the articles of incorporation, so long as the bylaw provision was otherwise properly enacted or adopted. Indeed, legislative analyses prepared at the time the final sentence of MCL 455.1455 was added by 1989 PA 121 indicate that the purpose of the sentence was to "[a]dd a new provision to preclude any inference that a high vote provision [i]s invalid unless included in the articles."Senate Legislative Analysis, Senate Bill 181 (as enrolled), July 24, 1989; see also Senate Legislative Analysis, Senate Bill 181, April 25, 1989. [6] Accordingly, under MCL 450.1455, we conclude that a supermajority voting requirement contained in the bylaws is not invalid merely because it is not included in the arti cles of incorporation.

We are convinced, however, that the plain language of the summer resort owners corporation act is inconsistent with, and therefore supercedes, the two-thirds voting requirement in the association's bylaws. At the time this action was commenced, MCL 455.219 [7] provided that "[t]he corporation may assess annual dues and special assessments against its members, *by a vote of a majority* thereof" (emphasis added). Defendants argue that this statutory language took precedence over the supermajority provision contained in the association's bylaws, and that in light of the 56 # percent approval obtained at the annual meeting, they were entitled to proceed with the canal-dredging project notwithstanding the bylaw provision. We agree with defendants in this regard.

As noted above, a supermajority voting requirement contained in the bylaws is not invalid merely because it has not been included in the articles of incorporation. MCL 450.1455. However, as a general rule, the bylaws may not contain any provision that is "inconsistent with law...." MCL 450.1231. Under the version of 455.219 in effect at the time, only a majority vote of the members of a summer resort owners corporation was required to approve the assessment of annual dues and special assessments. Former MCL 455.219. And the summer resort owners corporation act, itself, makes no allowance for the placement of supermajority voting requirements in the articles or bylaws. We conclude that the supermajority voting requirement contained in the association's bylaws was "inconsistent with" the lang uage of the former MCL 455.219, and that the former MCL 455.219 consequently superceded the inconsistent bylaw provision. See MCL 450.1231. In other words, only a majority vote of the membership was required to approve the canal-dredging project and collection of the related costs in this case. Former MCL 455.219.

*7 Plaintiffs contend that the cost of the dredging project was a "special assessment." In contrast, defendants contend that because the project cost was included in the association's annual budget, it was not a "special assessment" but was merely a part of the "annual dues." We need not resolve this dispute. The language of the former 455.219 applied equally to both annual dues and special assessments. Thus, irrespective of whether the prorated amounts assessed against the members to pay for the canal-dredging project were "annual dues" or "special assessments," only a "vote of a majority" of the members and proxies [8] was required to approve the canal-dredging project and expenditure. Former MCL 455.219.

In sum, the supermajority requirement contained in the association's bylaws was "inconsistent with law" to the extent that it imposed a higher vote requirement than was imposed by MCL 455.219. See MCL 450.1231. The plain statutory language of the former MCL 455.219, requiring only "a vote of a majority" of the membership, superceded the inconsistent supermajority requirement contained in the association's bylaws. Because a majority of the association's members and proxies voted to approve the canal-dredging project and expenditure, defendants were authorized to implement the

project, to include it in the annual budget, and to charge the association's members for the cost of the project. [9]

Given that defendants were authorized to implement the canal-dredging project and to charge the association's members for its cost, see former MCL 455.219, plaintiffs were not entitled to the declaratory relief they sought in this case. For the same reasons, we cannot conclude that defendants' conduct was "illegal, fraudulent, or willfully unfair and oppressive" within the meaning of MCL 450.1489(1). It is axiomatic that we will not reverse if the circuit court has reached the correct result, even if it has done so for the wrong reasons. *Taylor v. Laban,* 241 Mich.App. 449, 458, 616 N.W.2d 229 (2000). [10]

VI

In light of our conclusion that defendants were entitled to implement the canal-dredging project and charge the association's members for the cost of the project, we need not determine whether defendants were entitled to governmental immunity in this case. Nor do we address the alternative grounds for affirmance raised by defendants on appeal.

Affirmed. No taxable costs under MCR 7.219, a public question having been involved.

Footnotes

1 The individual defendants are or were members of the Stony Point Peninsula Association board of directors.

2 The document required for the formation of a summer resort owners corporation is variously described as the "articles of incorporation," MCL 455.201, and as the "articles of association," MCL 455.202. However, it is apparent that the "articles of incorporation" described in MCL 455.201 and the "articles of association" described in MCL 455.202 are the same document.

3 Chapter 455 of the Michigan Compiled Laws also contains other statutes that are not relevant to this case.

4 We reject defendants' assertion that plaintiffs were required to bring a derivative claim on behalf of the corporation rather than a direct claim in their own right. The complaint made clear that plaintiffs were suing to vindicate their own voting rights as minority members of the association, and not merely to enforce rights that belonged to the association itself. Indeed, as this Court has observed, the statutory claim created by MCL 450.1489"is a direct cause of action, not derivative, and though similar to a common-law shareholder equitable action, provides a separate, independent, and statutory basis...."*Estes,* 250 Mich.App. at 278, 649 N.W.2d 84.

5 We expressly decline to decide whether such a general duty to maintain the association's canal existed under MCL 455.210. We need not reach this issue to resolve the present appeal.

6 We acknowledge that legislative analyses are " 'generally unpersuasive tool[s] of statutory construction' " because they "are prepared by House and Senate staff members and do not necessarily represent the views of any individual legislator." *Kinder Morgan Michigan, LLC v. City of Jackson,* 277 Mich.App. 159, 170, 744 N.W.2d 184 (2007) (citation omitted). Nevertheless, "legislative bill analyses do have probative value in certain, limited circumstances." *Id.*

7 MCL 455.219 was amended by 2006 PA 44, but still requires "a vote of a majority" of the members before a summer resort owners association's board may assess annual dues or special assessments. MCL 455.219(2).

8 Members of a summer resort owners corporation may vote by proxy to approve annual dues or special assessments at an annual meeting. See OAG 1975–1976, No. 5065, p 734 (December 17, 1976).

9 We note that, as a precondition to the assessment of annual dues and special assessments, the former MCL 455.219 required approval by a majority of *all* association members rather than by a mere majority of the members and proxies present and voting. Former 455.219; see also OAG 2003–2004, No. 7164, p 167 (October 7, 2004). However, it appears that this requirement was satisfied in the case at bar. The minutes of the annual meeting indicated that although there were only 270 votes cast on the canal-dredging motion, there were 297 "Total Eligible Votes," consisting of "[a]ll votes [of][m]embers in good standing."As noted previously, of the 270 votes actually cast on the motion, 153 were cast in favor and 117 were cast in opposition. The 153 votes cast in favor of the motion constituted a majority of the 297 total eligible member votes in existence at the time of the annual meeting.

10 We have presumed for purposes of this appeal that the Stony Point Peninsula Association's corporate existence did not expire by limitation in 1993. The duration of a summer resort owners corporation may not exceed 30 years. MCL 455.202. At the expiration of the initial 30–year term, a summer resort owners corporation may reincorporate and renew its existence for one additional 30–year period. MCL 455.281. The Stony Point Peninsula Association's original 1963 articles of incorporation provided for a 30–year corporate existence. In September 1993, the association filed a certificate of amendment to its articles of incorporation, providing that the corporation's existence would be "perpetual" from that time forward. Although a business corporation is authorized to have a perpetual existence, MCL 450.1261(a), a summer resort owners corporation *may not* have a perpetual existence, MCL 455.202.

Thus, the 1993 amendment, calling for a "perpetual" existence, exceeded the scope of the statute. Nonetheless, because plaintiffs do not dispute that the association was authorized to reincorporate and renew its existence, and in the absence of any evidence or argument to the contrary, we consider the 1993 amendment as having effectively extended the corporate existence for one additional 30–year period under MCL 455.281.

End of Document

EXHIBIT 32

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT
CIVIL DIVISION

WILLIAM DEGHETTO and DEBRA DEGHETTO,
LORI WOODS, RICHARD NELSON,
CONNIE HILL and JOHN HILL,
JANICE SMITH and LLOYD SMITH,
PATTE DAY and DONALD DAY,
MARGARET RIEPEN and KENNETH RIEPEN,
RICK WOODWORTH, SHIRLEY MATUSZEWSKI,
JEANNIE KOZIOL and WALTER KOZIOL,
JUNE MULLINIX and GREGORY MULLINIX,
KENDRA PAPPAS and VERN PAPPAS,
EDWARD MICHALSKI, EDWARD BALDWIN,
SUSAN C. VERNIER and LON M. VERNIER,
JUDITH JOHNS and JOHN JOHNS,
CELESTINE KESSLER and NEIL KESSLER,
KATHRYN WOLFF and PAUL WOLFF,
CHERYL JONES and ROBERT JONES,
MARCIA CARLINE and THOMAS CARLINE,
and PRICE SPOOR,

Plaintiffs,

v

Case No. 2014- 141355-CH
Hon. MARTHA D. ANDERSON

BEAUMONT'S SEVEN HARBORS WHITE AND DUCK LAKE ASSOCIATION,

Defendant.

PHILLIP J. NEUMAN (P35499) MARK S. FRANKEL (P41565) COUZENS, LANSKY, FEALK, ELLIS, ROEDER & LAZAR, P.C. Attorneys for Plaintiffs 39395 W. Twelve Mile Road, Suite 200 Farmington Hills, MI 48331 248-489-8600/Fax: (248) 324-2572 pneuman@couzens.com mfrankel@couzens.com	GREGORY M. MEIHN (P38939) HOWARD I. WALLACH (P29921) FOLEY & MANSFIELD, P.L.L.P. Attorneys for Defendant 130 Nine Mile Rd. Ferndale, MI 48220 (248) 721-4200/Fax: (248) 721-4201 gmeihn@foleymansfield.com hwallach@foleymansfield.com

PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

INTERROGATORIES

1. State your full legal name, and your current address and telephone number (both home phone number and cell phone number).

ANSWER: Patricia Lynn Day-3580 Reserve Court, Highland, MI 48356 810-632-6441 Cell- 248-939-1408

2. Identify all persons who you know or believe have knowledge or information regarding any fact related to your claims in this matter and describe the knowledge or information you believe or understand that person has or may have.

ANSWER: Bertbert (a.k.a. all plaintiffs)

3. Identify every person to whom you have spoken or with whom you have corresponded concerning the claims asserted in this matter, or the facts which you believe support your allegations in this matter.

ANSWER:

Plaintiff objects to this interrogatory to the extent it requests information which is subject to the attorney-client privilege or the common interest privilege. Plaintiff further objects to this interrogatory for the reason that it is vague, overbroad and burdensome.

4. Identify each person who has provided any written or recorded statement to you concerning this matter.

ANSWER: None.

5. State whether you have ever been a plaintiff/claimant, a complaining party, a defendant/respondent or a witness in any federal, state or local court proceeding, administrative proceeding, or arbitration hearing. For each such proceeding, state the name of the case; its

d. The facts provided by you and/or your counsel to any person whom you may call as an expert witness and on which he or she relied or may rely to reach any opinion; and

e. The names and citations of all cases in which he or she previously testified either at trial or during discovery.

ANSWER:

We do not anticipate calling an expert witness to give opinion testimony at any trial of this matter.

18. Have you ever been a member of the Board?

ANSWER: Yes.

19. If the answer to the preceding interrogatory is yes, please state:

a. The dates you served on the Board;

b. Your position(s) with the Board;

c. Your reasons for leaving the Board.

ANSWER:

a. October of 2011 – September of 2012

b. Trustee

c. Nothing got accomplished. Everything our President asked us to do was argued. It was dysfunctional, non-productive and is even worse now.

20. Have you, in the past, paid Association dues or fees? If the answer is in the affirmatively, identify the years you paid Association dues or fees.

ANSWER: 2006 through 2012.

EXHIBIT 33

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

WILLIAM DEGHETTO and DEBRA DEGHETTO, LORI WOODS, RICHARD NELSON, CONNIE HILL and JOHN HILL, JANICE SMITH and LLOYD SMITH, PATTE DAY and DONALD DAY, MARGARET RIEPEN and KENNETH RIEPEN, RICK WOODWORTH, SHIRLEY MATUSZEWSKI, JEANNIE KOZIOL and WALTER KOZIOL, JULIE MULLINIX and GREGORY MULLINIX, KENDRA PAPPAS and VERN PAPPAS, EDWARD MICHALSKI, EDWARD BALDWIN, SUSAN C. VERNIER and LON M. VERNIER, JUDITH JOHNS and JOHN JOHNS, CELESTINE KESSLER and NEIL KESSLER, KATHRYN WOLFF and PAUL WOLFF, CHERYL JONES and ROBERT JONES, MARCIA CARLINE and THOMAS CARLINE, and PRICE SPOOR,
Plaintiffs,

-vs-

BEAUMONT'S SEVEN HARBORS WHITE AND DUCK LAKE ASSOCIATION,
Defendant.
/

Civil Action
Case No. 2014-141355-CH
Hon. Martha D. Anderson

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The Deposition of JEANNIE KOZIOL,

Taken at Couzens, Lansky, Fealk,

Ellis, Roeder & Lazar, P.C.,

39395 West Twelve Mile Road, Suite 200

Farmington Hills, Michigan,

Commencing at 12:00 p.m.,

Wednesday, January 28, 2015,

Before Rhonda M. Foster, CRR, RMR, RPR, CSR-3612.

APPEARANCES:

MR. PHILLIP J. NEUMAN P35499
Couzens, Lansky, Fealk, Ellis
Roeder & Lazar, P.C.
39395 West Twelve Mile Road, Suite 200
Farmington Hills, Michigan 48331
(248) 489-8600
Phillip.Neuman@Couzens.com

Appearing on behalf of the Plaintiffs.

MR. GREGORY M. MEIHN P38939
Foley & Mansfield, P.L.L.P.
130 East Nine Mile Road
Ferndale, Michigan 48220
(248) 721-4200
gmeihn@foleymansfield.com

Appearing on behalf of the Defendant.

ALSO PRESENT:

Patte Day
Donald Day
Celestine Kessler

to the Township to assist in the repairs, maintenance, or modifications of the road you live on?

A. Can you repeat that?

Q. Yes, ma'am. For the record, the road you live on is what road?

A. Duck Lake Road.

Q. And you believe that that is a Township road?

A. A County road.

Q. A County road, correct.

And it is maintained by the Township?

A. Correct.

Q. So my question to you was: Do you know if during the timeframe that you have lived in that home, since 1991 until the present, has the association provided any funds to either the Township or the County to assist in maintaining, modifying, the road that you live on? I am just asking if you know.

A. I don't know the answer to that. I can tell you during my tenure, they have not, my tenure as Treasurer.

Q. That's what I was asking you. So when you say "tenure," you were on the Board, correct?

A. Correct.

Q. Let's talk about that for a moment. You were on the Board from what period to what period?

A. I believe it was October 2005 to September 2010.

Q. And did you hold a particular office?
A. Treasurer.
Q. And when you were on the Board from 2005 to '10, approximately, if you know, how many Board members were participating in the management and operation of the association?

MR. NEUMAN: Just so I can be clear, you are talking about overall, the total number from --

THE WITNESS: Board members and Trustees?

MR. NEUMAN: -- from 2005 to 2010?

MR. MEIHN: Yes, sir.

THE WITNESS: I am unclear as to what the question is.

BY MR. MEIHN:
Q. Let's make it easier.

In 2005, you became a member of the Board, right?
A. Correct.
Q. And you became a Trustee or an officer, correct?
A. An officer, yes.
Q. All right. How many Board members were on the Board in 2005?
A. I believe there were seven Board members, and then we had Trustees. And I believe there were eight Trustees.
Q. And from your understanding, what's the distinction in