

STATE OF MICHIGAN

IN THE 26TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF ALCONA

JOAN M. GLASS,

Plaintiff/Counter-Defendant,

-vs-

CASE NO. 01-10713-CH(K)
HON JOHN F. KOWALSKI

RICHARD A. GOECKEL and
KATHLEEN D. GOECKEL,

Defendants/Counter-Plaintiffs.

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Jay E. Sommer
A TRUE COPY
ALCONA COUNTY CLERK
Date FEB 05 2002

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

KNOW COMES Richard A. Goeckel and Kathleen D. Goeckel, his wife, Defendants, Counter-Plaintiffs herein, hereinafter referred to as Defendants, and answering the First Amended Complaint of Plaintiff, Counter-Defendant, hereinafter referred to as Plaintiff, respectfully represent unto this Honorable Court as follows, to wit:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

COUNT 1
INTERFERENCE WITH AND OBSTRUCTION OF EXPRESS EASMENT

9. Answering Paragraph 9 of Plaintiffs First Amended Complaint, your Defendants incorporate, by reference, Paragraphs 1-8 as specifically enumerated herein.

10. Admitted.

11. Answering Paragraph 11 of Plaintiffs First Amended Complaint, your Defendants admit that Plaintiff trimmed several trees but denies that the same obstructed Plaintiffs passage over the easement. Your Defendants affirmatively assert that Plaintiff also cut 4-6 inch trees on the easement which were not impugning or obstructing Plaintiffs passage which precipitated Defendants advise to Plaintiff to refrain from touching anything on the easement.

12. Admitted.

13. Answering Paragraph 13 of Plaintiffs First Amended Complaint, your Defendants admit that Plaintiffs son cleared juniper bushes and tree branches from the easement and further affirmatively asserts that Plaintiffs son cleared trees in excess of 4 inches in diameter which precipitated Defendants contact of Defendants attorney asserted in paragraph 13 of Plaintiffs First Amended Complaint.

14. Answering paragraph 14 of Plaintiffs First Amended Complaint, your Defendants admit that he has permitted the large barrel to remain on the easement which was there for at least 5 years prior to Plaintiffs purchasing the property to prohibit traffic from the highway driving down the easement. Your Defendant affirmatively asserts that the barrel does not impugn access and use consistent with the purpose of the grant of easement and thus Plaintiff had never complained about the barrel on the easement until the initiation of this litigation.

15. Answering Paragraph 15 of Plaintiffs First Amended Complaint, your Defendants deny that they have inhibited or otherwise interfered with Plaintiffs beneficial use and enjoyment of the easement for the reason that the allegations therein set forth are untrue.

16. Answering Paragraph 16 of Plaintiffs First Amended Complaint, your Defendants deny that Plaintiff has no adequate remedy at law and further affirmatively asserts that Defendant is entitled to no remedy at law or inequity based upon the foregoing.

WHEREFORE Defendants demand Judgment dismissing Count 1 of Plaintiffs First Amended Complaint with actual costs to be taxed.

COUNT 2
PRESCRIPTIVE EASEMENT

17. Answering Paragraph 17 of Plaintiffs First Amended Complaint, your Defendants incorporate, by reference, the allegations set forth in Paragraphs 1 – 16 as specifically as reiterated herein.

18. Answering Paragraph 18 of Plaintiffs First Amended Complaint, your Defendants deny the allegations therein set forth for the reason that the allegations are untrue. In support hereof, it will be affirmatively shown that Henry Prince specifically advised Plaintiff to limit her use of easement to access to and from Lake Huron when, on one rare occasion, said Plaintiff engaged in use of the easement beyond its specific purpose.

19. Answering Paragraph 19 of Plaintiffs First Amended Complaint, your Defendants deny that Plaintiff had used the lakefront portions of the easement for beach activities which included sunbathing and lounging for the reason that the allegation therein set forth is untrue.

20. Answering Paragraph 20 of Plaintiffs First Amended Complaint, your Defendants deny that Plaintiff use of the easement described in Paragraph 18 has been continuous, open, exclusive, notorious, and adverse for more than 33 years for the reason that the allegations therein set forth is untrue.

WHEREFORE Defendants demand Judgment dismissing Count 2 of Plaintiffs First Amended Complaint with actual costs to be taxed.

COUNT 3
INTERFERENCE WITH PLAINTIFF'S
RIGHTS TO NAVIGATE AND WALK ALONG LAKE HURON SHORE

21. Answering Paragraph 21 of Plaintiffs First Amended Complaint, your Defendants incorporate, by reference, Paragraphs 1 – 20 above as specifically as reiterated herein.

22. Answering Paragraph 22 of Plaintiffs First Amended Complaint, your Defendants deny that the waters of Lake Huron lying below and lakeward of the natural ordinary high-water mark are under federal law and common law and are subject to a navigational servitude held by the State of Michigan and further deny that said property is held in trust for the benefit of the people of the state and country for navigational and recreational purposes.

In support of the foregoing denial, it is affirmatively asserted that, subject to limited exceptions, Great Lake riparian owners title line is wherever the water's edge exists at the moment. It is known as the "Movable Freehold" Doctrine. The right of the riparian owner subject to the Great Lakes Submerged Land Act being MCLA322.701, et seq. This act does not change the movable freehold theory as the State of Michigan does not have title to the property

between the statutory fixed ordinary high water mark and the actual waters edge. The State, pursuant to the Great Lakes Submerged Land Act has the right to regulate the use of the same. The riparian owner has the right to the exclusive use of the property to the water edge, which may be a movable line as the water rises and falls.

23. Answering Paragraph 23 of Plaintiffs First Amended Complaint, your Defendants deny that the owners allow the public to use the shore of Lake Huron between the ordinary high water mark and the then existing water line for the reason that the allegation therein set forth is untrue. In support hereof, it is affirmatively asserted that the riparian owners have the right to exclusive possession of said property and, due to its substantial value and the interest of privacy, the local custom is to maintain exclusive possession of the same.

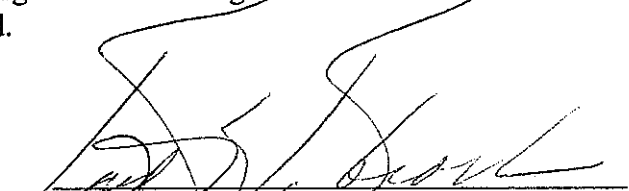
24. Answering Paragraph 24 of Plaintiffs First Amended Complaint, your Defendants admit that Plaintiff and others have the right to navigate portions of the water above the low water mark but to not have the right to walk on those portions above the then existing water line for the reason that the allegation therein set forth is untrue.

25. Answering Paragraph 25 of Plaintiffs First Amended Complaint, your Defendants admit that Defendants have interfered with Plaintiffs use of the portions of the shore below and lakeward of the high water mark when the said property remains above the then existing low water mark for the reason that said Defendant has every right to do so.

26. Answering Paragraph 26 of Plaintiffs First Amended Complaint, your Defendants affirmatively asset that Plaintiff has no remedy and no equity and is therefore not entitle to the relief requested.

WHEREFORE Defendants demand Judgment dismissing Count 3 of Plaintiffs First Amended Complaint with actual cost to be taxed.

Date: 2-4-02


Brent R. Babcock (P23533)
Attorney for Defendants