# STATE OF MICHIGAN

# COURT OF APPEALS

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| COVEYOU MEADOWS PROPERTY OWNERS ASSOCIATION and JEAN PRIDDY,<br><br>Plaintiffs-Appellees/Cross-Appellants, | UNPUBLISHED<br>February 23, 1999 |
| v | No. 204778<br>Emmet Circuit Court |
| LORENZO J. COVEYOU and HEDY COVEYOU,<br><br>Defendants-Appellants/Cross-Appellees. | LC No. 93-002313 CH |

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment imposing a constructive trust on certain real property owned by defendants and ordered defendants to convey the property to plaintiff Coveyou Meadows Property Owners Association (the "Association"). Defendants now appeal as of right and plaintiffs cross-appeal. We affirm.

## I. Basic Facts And Procedural History

At issue in this matter is real property that was part of a 350-acre farm, which has been owned by defendant Lorenzo Coveyou and his ancestors for over 100 years. From 1969 to 1972, defendants developed the "Coveyou Meadow Subdivisions," three subdivisions comprising twenty-six lots in a meadow area that gradually rises from the shores of Walloon Lake. No lots of the subdivision actually included lake frontage. Defendants recorded the plat of Coveyou Meadow on Walloon Lake in November 1969, and the respective plats for Coveyou Meadow on Walloon Lake No. 2 and No. 3 in June 1972. Plaintiffs are the Association and an individual lot owner and current president of the Association.

The dispute here concerns the dedication of land, including lake frontage, to the Association pursuant to certain Restrictions, that were recorded in May 1970 before the sale of any lots in the subdivision. Section 6 of the Restrictions, entitled "Recreational Outlots," specifies that defendants, as the developers of the subdivision, were to dedicate three types of outlots within two years after either

the twentieth lot was sold or twelve houses had been built on the lots. Outlot S, consisting of a minimum of 200 feet of lake shore frontage, was to be designated for swimming purposes; Outlot L was to be designated for boat launching, consisting of an area that contained launching ramps and reasonable space for parking; and defendants agreed to "plat additional areas totaling not less than five acres, to be designated as Outlot 'R1,' Outlot R2,' etc., for recreational use of all purchasers." It is apparently undisputed that the Restrictions were silent about the dimension and location of the outlots. The chief disagreement between the parties is the amount of land to be dedicated, most especially the amount of lake frontage on Walloon Lake. Defendants claim that the Restrictions only obligated them to dedicate 200 feet of lake frontage, whereas plaintiffs argue that they were entitled to all the lake frontage.

All land contracts and conveyances from defendants to the individual lot purchasers contained a description of a common beach area to be used by the lot owners until Outlot S was dedicated. In May 1970, defendants sold the first lot under a land contract. As in all subsequent land contracts and deeds, defendants granted the purchasers the right to use lake front beach as a temporary outlot until Outlot S was designated under the Restrictions. The description for the temporary Outlot S provided:

> The Grantees herein shall also be entitled to the use for recreational purposes in common with other purchasers of lots in this subdivision, the following described parcel of land in the Township of Bear Creek, County of Emmet and State of Michigan: The Northwesterly 200 feet of the Southeasterly 300 feet of a parcel of land described as: . . . until such time as Out Lot "S" of said subdivision is designated and dedicated to the common use of Grantees herein and other subdivision lot owners.

During the period between May 1970 and September 1986, defendants sold all twenty-six lots in the three subdivisions. There was testimony that some sales were made through realtors with whom defendants had listed the lots, whereas other sales were made directly by defendants, or directly from former lot owners. Several past and present lot owners testified that they received a brochure from defendants and their real estate agents depicting the Coveyou Meadow Subdivisions and that they learned about the amenities of the subdivision from an information sign about the development located near the entrance that was placed there by Lorenzo Coveyou in the late 1970s, who changed it from time to time.

Defendants and their real estate agents apparently used one prototypical brochure that was modified over the years. The first brochure was prepared by a realtor as a marketing tool to attract prospective purchasers in the early 1970s. After the listing with the realtor expired, defendants lined out the realtor's information on their remaining brochures and continued to distribute them. Both brochures stated that the Coveyou Meadow Subdivisions offered a recreation area, a boat basin and a private beach area, among other amenities. Thereafter, another brochure, similar to the first two, advertised a nature area in what was originally called a recreation area, as well as a new recreation area along the waterfront area next to the tennis courts, a boat launching area, a natural area, a private beach area and a wooded natural area along the entire shoreline of Walloon Lake. However, the proposed boat basin was taken out of the plan when the Department of Natural Resources refused to approve it. Lorenzo Coveyou testified that one of the realtors made up the brochure, but that he did not approve a permit

for it, although he had seen it in 1986. Lorenzo Coveyou acknowledged that the brochure informed prospective buyers to contact defendants for more information.

According to defendants' surveying expert, the east end of the lakefront area is tree-lined and the west end was swampy, wet and tree lined. There was a little over 400 feet of lakefront from the creek at the east end of the shoreline to the westerly edge of the boat launch. Lorenzo Coveyou testified that there was slightly over 900 feet of shorefront.

Lorenzo Coveyou also claimed that he reviewed the Restrictions line by line with the lot owners before they purchased the lots. He testified that he regularly met with prospective purchasers and showed them the 200 feet of lake frontage that allegedly corresponded to the Association and the boundaries of the lots, and went through the Restrictions with them. At their own expense, defendants installed tennis courts during the period from 1975 to 1979, charging property owners who used them a fee of $100 per family for maintenance of the courts. Defendants also installed an eighty-foot dock at the west end of the beach area until some lot owners installed a larger dock in 1989.

According to Lorenzo Coveyou, he originally mowed a 200 foot area near the beach area so that "the property owners would have 200 feet and we would have 200 feet" and a better area for swimming. After the tennis courts were built and the low-lying area along the shoreline was filled in with soil, he expanded the area he mowed to 400 feet "[s]o that we could give the property owners a nice beach, or nice swimming area," although he claimed that the beach area pertaining to plaintiff Association still remained only 200 feet. However, Lorenzo Coveyou conceded that the lot owners then "moved to the west with their picnic area" to take over "the other 200 feet." According to him, he continued to mow both areas until 1988 or 1989, when the lawsuit commenced, because it was his intention to let the lot owners have "this other 200 feet" of beach, while defendants would use the "the old 200 feet of beach" as "the family beach." He testified that he contracted to have sand brought in and spread all along the shoreline, including the approximately 200 feet of beach area in the deed description and the area 200 feet to the west.

Lorenzo Coveyou also testified that the area directly to the west of Outlot L was a swamp area or wetland that was never maintained or mowed. No trespassing signs were posted, one close to the boat ramp and another about 200 feet back, although he gave permission to the Association members to use the area. He also acknowledged that the recreational Outlots R1 and R2 were not to total less than five acres, but there was no reference to the specific locations of these outlots in the deed description. He stated that he met and consulted with an engineer and surveyor to lay out the entire development away from the lakefront between the rows of lots 1-8 and 21-26 in the interest of safety "to protect the children." He also testified that after quite a delay, defendants finally installed a boat launch in connection with recreational Outlot L, even though some Association members did not want it, because he believed that it was "very important" to give "all the property owners, a chance to get to the lake." He claimed that defendants owned slightly over 900 feet of shore land and that he never represented to any lot owner that they had over 200 feet of lakefront. He testified that because he had health problems for at least two years after 1982, acknowledging that he was "out of commission" during that time, he could not proceed with the dedications.

The parties stipulated that the twentieth lot was sold on February 16, 1979. Thus, the date by which the outlots were to be dedicated was February 16, 1981. However, five years passed before defendants sent letters to the lot owners in the spring of 1986 calling for the first Association meeting at which one of the topics of discussion was the "transfer of ownership and control of recreational, swimming and common outlot areas."

In July 1986, the lot owners held a meeting with defendants to discuss the dedication of the outlots. That same month, the Property Owner's Management Committee met, with Lorenzo Coveyou present. The minutes of the meeting state that "[t]he Committee tried to establish the boundaries of all Association property but Mr. Coveyou was unable to provide them at this time." The minutes of the meeting also stated that the meeting was adjourned for "a week or two" at which time "Mr. Coveyou will show us a proposal of the approximate boundaries of Outlots S, L, RI and R2."[1] However, Lorenzo Coveyou did not attend a subsequent meeting in October 1986 or present his proposals concerning the boundaries of the dedicated property to the committee for this meeting. The minutes of the second annual meeting of the Association in July 1987 state that "[t]here was confusion on the part of the lot owners regarding the location of Outlot R. Mr. & Mrs. Coveyou indicated that it was their intention that the nature area would be over 5 acres of recreation area." Lorenzo Coveyou testified that he proposed a boat launch and 200 feet of beach frontage for swimming.

Because plaintiffs came to believe that defendants did not plan to carry through with the dedication of the outlots under the Restrictions, they decided to seek legal advice regarding the situation. At a meeting of the Property Owner's Management Committee in April 1988, at which Lorenzo Coveyou was present, there was discussion about the dedication of the outlots, but Lorenzo Coveyou did not present the committee with any written proposals. Lorenzo Coveyou did not attend the property owners' annual meeting in July 1988, but his wife and son were present and participated in the discussion.[2]

In the meantime, in 1988, Bear Creek Township assessed defendants' farm as three separate parcels rather than as a single parcel as before. The assessor assessed defendants for tax parcel 004, which consisted of the entire waterfront owned by defendants, according to the county equalization map.[3]

Thereafter, defendants filed an appeal with the Township Board of Review regarding tax parcel 004. When the Board of Review denied the appeal, defendants appealed their property assessment to the Michigan Tax Tribunal, Small Claims Division. As stated by the hearing judge in her opinion and judgment, defendants claimed in part that "the subject property is an outlot used as a park and lake right of way by property owners in a subdivision" and that "it is their intent to some day convey or dedicate ownership of the subject lot to the subdivision." Nevertheless, the tax tribunal found in favor of Bear Creek Township, holding that "[u]ntil such time as [defendants] formally dedicate[] or convey[] title of [sic] the subject property to the lot owners or an association of the subdivision, the property is assessable to [them]."

However, in 1990, the State Tax Commission and Emmet County Equalization Department informed the township assessor not to assess tax parcel 004 to defendants because it was common

property of the Coveyou Meadow lots. Thus, after 1989, the assessor did not assess tax parcel 004 to defendants, but rather treated the entire waterfront property as common property of the subdivisions, assessing the individual lot owners a pro rata portion of the assessed taxes. According to the assessor, the assessment of the entire waterfront property to the subdivisions increased the value of the assessed individual lots because they would "sell higher with lake frontage than without lake frontage. The assessor testified that tax parcel 005 was assessed to defendants without any dollar amount placed on it because it is a small parcel consisting of wetlands.

A suit involving virtually the same issues and parties was filed in 1989 and dismissed without prejudice by the trial court on its own motion in 1992 when the parties appeared to have reached a settlement. Plaintiffs refilled their suit in April 1993 when the settlement talks broke down. Plaintiffs' amended complaint contained three counts. Count I sought declaratory relief, asking for an interpretation of the Restrictions, specifically the language pertaining to defendants' dedication of certain recreational outlots for the common use of all owners in the Coveyou Meadow Subdivisions. Count II sought a determination of plaintiffs' interests in lands pursuant to the Restrictions. Count III sought the imposition of a constructive trust.

Defendants moved for summary disposition under MCR 2.116(C)(7) [statute of limitations]. After a motion hearing, the trial court entered an opinion and order denying defendants' motion on the ground that the fifteen-year statute of limitations applied. The court visited the property in question. Following the three-day bench trial, the trial court entered an opinion in March 1995 imposing a constructive trust in favor of plaintiffs with respect to the property in question. In pertinent part, the trial court found:

> Defendants intended . . . to dedicate all of the lake frontage from the eastern line of the farm to the point where the swamp begins a short distance west of the boat ramp. Defendants['] representations to prospective purchasers led Plaintiffs to reasonably believe that this entire area would be dedicated. To allow Defendants to now dedicate anything less would be inequitable and unconscionable.

In July 1997, the trial court entered a judgment ordering the imposition of the constructive trust**.** Defendants appeal as of right from that judgment and plaintiffs cross-appeal.

## II. Standard Of Review

### A. Summary Disposition Under MCR 2.116(C)(7)

When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court must accept the plaintiff's well-pleaded allegations as true and construe them in favor of the plaintiff. *Beauregard-Bezou v Pierce*, 194 Mich App 388, 390-391; 487 NW2d 792 (1992). If there are no facts in dispute, the issue whether the claim is statutorily barred is a question of law for the court. *Id.* The issue was raised below, and thus preserved for appellate review.

B. Constructive Trust

This Court reviews equitable actions under a de novo standard, reviewing the findings of fact supporting the decision for clear error. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997). The issue was raised below, and thus preserved for appellate review.

C. Exclusion Of Evidence Under Statute Of Frauds And Parol Evidence Rule

"This Court reviews de novo questions of law such as whether the statute of frauds bars enforcement of a purported contract." *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). Defendants made continuing objections below, thus preserving the issue for appellate review.

III. Summary Disposition Under MCR 2.116(C)(7)

Defendants argue that the trial court erred in denying their motion for summary disposition under MCR 2.116(7), when it determined that plaintiffs' action was governed by the fifteen-year period of limitations found in MCL 600.5801(4); MSA 27A.5801(4), rather than the six-year period of limitations found in MCL 600.5807(8); MSA 27A.5807(8). We disagree.

Given that defendants dedicated the outlots to plaintiff Coveyou Meadows for the "exclusive and private use" of the lot owners, plaintiffs' claims were subject to the fifteen-year limitations period prescribed in § 5801(4). Section 5801 pertains to "*any* action for the recovery or possession of any lands" (emphasis supplied). As the trial court noted, "the fifteen year statute is intended to apply generally to actions where issues of possession, use and enjoyment of real property are involved." See *Stabile v General Enterprises*, 70 Mich App 711, 716-717; 246 NW2d 375 (1976).

IV. Constructive Trust

Defendants argue that the trial court erred in imposing a constructive trust. We again disagree. A court may impose a constructive trust as an equitable remedy when the facts justify it. *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988). Contrary to the defendants' argument, the imposition of a constructive trust does not *require* – although it may commonly involve – the transfer or acquisition of trust property. In *Kent v Klein*, 352 Mich 652, 656; 91 NW2d 11 (1958), the Michigan Supreme Court stated that a constructive trust is a remedial device that arises, not by agreement or from intention, but by operation of law. Quoting from Judge Cardozo in *Beatty v Guggenheim Exploration Co*, 225 NY 380, 386; 122 NE 378 (1919), the Court observed:

> "[A constructive trust] is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not, in good conscience, retain the beneficial interest, equity converts him into a trustee." [*Kent, supra* at 656.]

The Court further explained:

> Fraud in the inception we do not require, nor deceit, nor chicanery in any of its varied guises, for it is not necessary that property be wrongfully acquired. It is enough that it be unconscionably withheld.
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> * * *
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> "'". . . . Actual fraud is not necessary, but such a trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done. Such trusts are also known as trusts *ex maleficio* or *ex delicto*, or involuntary trusts, and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice."'" [*Id.* at 657-658 (citations omitted)].

Thus, the trial court did not err when it stated that "wrongful holding alone is sufficient for the imposition of a constructive trust." The trial court was also correct in its observation that

> [a] constructive trust is an appropriate remedy to prevent unjust enrichment. *In re Swantek Estate*, [*supra*]. A constructive trust may be imposed based upon misrepresentation, concealment, mistake, undue influence, duress, or fraud. *Chapman v Chapman*, 31 Mich App 576[, 580; 188 NW2d 21] (1971).

The trial court based the imposition of a constructive trust upon its findings that the property was "unconscionably withheld" *and* "unjust enrichment." To establish a claim of unjust enrichment, a plaintiff must show (1) that the defendant received a benefit from the plaintiff and (2) that it would be inequitable that the defendant retain the benefit. *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992).

Regarding unjust enrichment, the trial court found:

> In 1990, Bear Creek Township received a bulletin from the State Tax Commission relative to valuation of community property in recorded subdivisions. As a result, Township Assessor Judy Hamill testified that from 1990 to present, parcel #004 has not been taxed to Defendants. Instead, the entire waterfront of the Coveyou farm has been treated as common property of the subdivisions, with a pro rata portion of its value assessed each owner in the subdivisions. Thus, since 1990, Defendants have not paid any taxes for this waterfront property. The assessment of this land to the subdivision owners resulted from Defendants['] actions in preparing the ambiguous legal description in Exhibit 10, and quite possibly, from the position taken in their tax appeal.

> Because Plaintiffs have paid the property taxes on the waterfront, further unjust enrichment of Defendants would occur if they were allowed to keep this property.

Although defendants maintain that the property tax issue is "nothing more than a red herring," the evidence shows that defendants sought to retain ownership of the property, despite the fact that they represented to the Tax Tribunal that they intended to convey ownership of the property. Accordingly, there was unjust enrichment to the extent that defendants profited at plaintiffs' expense by paying no taxes on their waterfront property, which was assessed at a slightly higher value because the assessor believed that the lots "would sell higher with lake frontage than without lake frontage." Thus, the trial court's determination that a constructive trust was necessary to prevent unjust enrichment was not clearly erroneous. We further conclude that the trial court did not clearly err in finding that the property was "unconscionably withheld."

V. Exclusion Of Evidence Under Statute Of Frauds And Parol Evidence Rule

Defendants argue that evidence in the form of testimony, brochures and pictures of the informational sign describing the dimension, size and location of the outlots was inadmissible under the statute of frauds and the parol evidence rule. We disagree once again. As the trial court correctly observed, neither the statute of frauds nor the parol evidence rule are applicable to bar admission of evidence for the purpose of establishing a constructive trust. See *Kent*, *supra* at 656. In *Kren v Ruben*, 338 Mich 288, 295; 61 NW2d 9 (1953), the Michigan Supreme Court explained:

> "'Inasmuch as constructive trusts arise by construction or operation of law and not by agreement or intention, the statute of frauds, and statutes prohibiting parol trusts, have no application to such trusts, and do not prevent the establishment or enforcement thereof . . .. So it is frequently said that a constructive trust may be established by parol evidence.'" [Citations omitted.]

In any event, the trial court's admission of the challenged evidence also would not have violated the parol evidence rule, if it applied, as the evidence was offered to supplement, not to contradict, the terms of a written agreement. *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 367; 320 NW2d 836 (1982).

VI. Dedication Of Real Property In Excess Of Amount Set Forth In The Restrictions

Defendants argue that the trial court erred in ordering them to convey the subject property to plaintiff Coveyou Meadows under the terms of the constructive trust, contending that the Restrictions reserved to them, as the developers, the right to decide the location and size of the outlots. We continue to disagree and note that the trial court found:

> There is nothing in the Restrictions that specifies the precise locations and dimensions of these Out Lots. There is nothing in the Restrictions that indicates the method to be used in determining the exact size, location and number of these Out Lots. Defendants contend that these matters are within their exclusive discretion. As the

> proprietors of the subdivisions, Defendants could have specifically reserved such exclusive discretion in the Restrictions, but they did not do so. No lot purchaser was advised by Defendants that the location, size and number of Out Lots would be exclusively at the discretion of the Defendants.

The trial court's determination was not clearly erroneous.

Defendants also argue that the trial court erred in imposing a constructive trust as to the area east of the entrance road and the cul-de-sac and the eastern one hundred feet of water frontage. Again, we disagree. The trial court observed:

> The Defendants' information sign likewise shows Defendants' intent and representation that the entire waterfront from the eastern boundary to the swamp west of the boat docks would be dedicated. . . .
>
> The depiction of the water front area is substantially identical to the depiction on the second version of the brochure, i.e., Exhibit 7. There is also a significant addition. The drawing of the development as it appears in Plaintiffs' Exhibits 13-15 has certain areas colored in blue. The blue colored areas include all of the lots in the subdivision. The entire beach area is also colored in blue. *A reasonable interpretation is that the blue colored in areas were those that were to be within the subdivision, either as individual lots or common area*. [Emphasis added.]

Further support for a determination that defendants intended to convey more than 200 feet of lake frontage is evidenced by the trial court's findings that

> [d]efendants say that they often reviewed the Restrictions line by line with prospective buyers, that the Restrictions only obligated them to dedicate 200 feet of frontage, and they ask this Court to hold that dedication of 200 is sufficient. Despite providing in the Restrictions for "a minimum" of 200 feet of beach, Defendants now say it was always their intent to dedicate just 200 feet. If this were true, the Court would be constrained to find that Defendants committed a fraud. In various ways, as will be discussed below, the Court finds that Defendants held out to Plaintiffs that more than this minimum amount would be provided.

The trial court's findings are well supported by the testimony and, therefore, are not clearly erroneous.

We also conclude that the trial court did not exceed its equitable authority by requiring defendants to deed the constructive trust property to the Association. *Kent*, *supra* at 658. While defendants contend that "[s]uch a conveyance is totally inconsistent with the reservation of the right of all lot owners in all present and future subdivisions established by Defendants to use the out lots," it is apparent that the trial court took into consideration the fact that, if defendants plat or sell additional lots or condominiums, then those new subdivision lot owners would have the right to use the amenities available to the old subdivision lot owners. As the trial court stated in its opinion, "[d]efendants shall

retain the right reserved to them under the Restrictions to provide access to the common areas to owners in any additional subdivisions they may develop." Accordingly, there is no basis for defendants' contention that they were prejudiced in the future development of their remaining property.

The trial court also did not exceed its equitable authority by requiring defendants to dedicate more lake frontage if they sold additional lots with boat dockage rights. In view of the amended zoning ordinance providing a limited number of boats based on frontage available and the trial court's broad equitable power to fashion a remedy "whenever it becomes necessary to prevent a failure of justice," *Kent*, *supra* at 658 (citations omitted), the trial court acted properly by requiring defendants to dedicate more lake frontage if they sold additional lots with boat dockage rights.

VII. Constructive Trust As To All Waterfront Property

Plaintiffs contend in their cross-appeal that the trial court erred when it declined to impose a constructive trust on all the waterfront property. We disagree. As the trial court found, evidence contained in the trial testimony, the sign at the entrance of the subdivision, and the brochures did not support plaintiffs' contention that defendants intended to dedicate all the waterfront area to the lot owners, although there was some testimony that defendants gave that impression to certain lot owners. In this regard, the trial court did not clearly err when it concluded that the imposition of a constructive trust as to the lake frontage along the western edge of the swamp was not necessary or appropriate as a matter of equity. *Kent, supra* at 658.

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin

[1] At trial, Lorenzo Coveyou testified that the minutes of this meeting were incorrect because he was ready to give his proposals to the Association, but that "I didn't have it with me at that time" and had left the proposals "in our home file" in his house located on his farm.

[2] Lorenzo Coveyou could not remember whether his wife or son discussed with him what took place at the meeting, at which plaintiffs' counsel was present to discuss the resolution of the outstanding issues concerning the dedication of common properties. He acknowledged that he agreed to permit plaintiff Association's installation of a larger dock in 1989.

[3] Defendants claim that the second new parcel 005 contained 100-150 feet of remaining land to the south and east of tax parcel 004 that was the subject of a separate assessment action and appeal. However, Lorenzo Coveyou testified that defendants never owned the tract of land identified as tax parcel 005, but also testified that they might have owned it.