

STATE OF MICHIGAN
COURT OF APPEALS

LAKESHORE OWNERS ASSOCIATION, INC.,
FRANK JAKUBUS, LINDA D. JAKUBUS,
GERALD A. SITKIEWICZ, DIANE C.
SITKIEWICZ, GEORGE E. SHAFFER,
MARYLYN S. SHAFFER, DIANNE E.
PROULX, DONNA DEWEESE, SHIRLEY
DEWEESE a/k/a WAYNE DEWEESE,
WILLIAM E. CLOUITIER, DIANE LASK,
BRIAN P. NUFER, SUSAN M. NUFER, ROGER
L. SCHROEDER and CARA-LEE SCHROEDER
as Trustees of the SCHROEDER LIVING TRUST
UAD 6/2/00, MARK A. WEST, DENNIS E.
LANGLOIS, TONY KLISCH, MICHELE
KLISCH, GARY L. HANER, SUE E. HANER,
JACK SERGE, ANNA SERGE, LARRY L.
BURGESS, LINDA BURGESS and BRUCE
BOSMAN,

Plaintiffs-Appellants,

v

SUGAR SPRINGS PROPERTY OWNERS
ASSOCIATION, INC., GLADWIN COUNTY
DRAIN COMMISSIONER, DEPARTMENT OF
LABOR & ECONOMIC GROWTH, BUTMAN
TOWNSHIP, CONSUMERS ENERGY, DTE
ENERGY, SBC, GERALD DZIURMAN, ZORA
DZIURMAN, SALVATORE PACE,
ALEXANDER BOSSIDIS, JR., LARRY
MADOLSKI, CARL PHALIN, NANCY PHALIN,
RICHARD TOLER, MARSHA TOLER,
LAWRENCE DUBEY, DONNA DUBEY, EDITA
CULANGO, HARE PATNIAK, JAMES
STRATTON, KATHY STRATTON,
ALEXANDROS BOSSIDIS, PATRICIA
HOFBAUER, LORI SCAPPATICCI, ANTHONY
MODICA, LINDA MODICA, KRYSTAL
YOUNG, NICOLE MODICA, MICHAEL
O'MEARA and MARYANN O'MEARA,

Defendants-Appellees.

UNPUBLISHED
September 25, 2008

No. 278688
Gladwin Circuit Court
LC No. 04-001511-CH

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Plaintiffs appeal following the trial court's grant of summary disposition in favor of defendants on plaintiffs' Fifth Amended Complaint seeking title to a strip of land lying between their lots and the water's edge. We affirm.

The individual plaintiffs are property owners in the Sugar Springs development located along Lake Lancer in Gladwin County. According to plaintiffs, their lots were originally classified as "lakefront" for purposes of property tax and homeowners' association dues assessments. But, they allege, their lots were reclassified as "lake view" in 2003 in recognition that their lots did not, in fact, go to the water's edge. Rather, there is land, apparently owned by the homeowners' association, between plaintiffs' lots and the water's edge. Plaintiffs further allege that the homeowners' association had not maintained this property and that the various plaintiffs over the years took it upon themselves to mow the area, install seawalls, beaches, sprinkler systems and otherwise maintain and improve the property. According to plaintiffs, the instant dispute arose following the reclassification of their lots as "lake view" and the homeowners' association's demand that plaintiffs remove the private docks that they had installed and assessed plaintiffs a fee to use the association's docks located away from plaintiffs' property. Indeed, plaintiffs concede that the Sugar Springs Declaration of Covenants and Restrictions includes a provision that no docks shall be maintained anywhere along commonly owned shoreline except as established or maintained by the Association.

Plaintiff's Fifth Amended Complaint contains seven counts, alleging adverse possession (Count I), promissory estoppel (Count II), trespass on alleged common areas (Count III), trespass on plaintiffs' lots (Count IV), quiet title (Count V), misrepresentation (Count VI), and seeking revision of the plat (Count VII). The trial court granted summary disposition to defendant, relying on both MCR 2.116(C)(8) and (C)(10), as to all counts except IV and VI. Counts IV and VI were later dismissed without prejudice and are not issue in this appeal.

Plaintiffs first argue that the trial court erred in granting summary disposition on the adverse possession claim on the basis that plaintiffs failed to state a claim. MCR 2.116(C)(8). We disagree.

We review a grant or denial of summary disposition de novo. *Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006). The *Wengel* Court also reviewed the principles of adverse possession:

Generally, an action for the recovery or possession of land must be brought within 15 years after it accrues. MCL 600.5801(4); *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993). The *Kipka* panel, addressing the principles of adverse possession, stated:

"A claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. These are not arbitrary requirements, but the logical consequence of someone claiming by adverse

possession having the burden of proving that the statute of limitations has expired. To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. A cause of action does not accrue until the property owner of record has been disseised of the land. MCL 600.5829. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership. [*Kipka, supra* at 439 (citations omitted).]

Other cases additionally indicate that the possession must be hostile and under cover of a claim of right. *McQueen v Black*, 168 Mich App 641, 643; 425 NW2d 203 (1988), quoting *Connelly v Buckingham*, 136 Mich App 462, 467-468; 357 NW2d 70 (1984). “The term ‘hostile’ as employed in the law of adverse possession is a term of art and does not imply ill will”; rather, hostile use is that which is “inconsistent with the right of the owner, without permission asked or given,” and which “would entitle the owner to a cause of action against the intruder.” *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).

Turning to the case at bar, plaintiffs do not adequately state a claim upon which relief may be granted. As this Court explained in *Golec v Metal Exchange Corp*, 208 Mich App 380, 382; 528 NW2d 756 (1995), “a mere statement of conclusions that are not supported by allegations of fact will not suffice to state a cause of action.” The extent of plaintiffs’ allegations under Count I of its Fifth Amended Complaint are as follows:

101. Plaintiffs reallege as if fully incorporated herein the allegations of paragraphs 1 through 100.

102. Defendant Sugar Springs Property Owners Association acquired its interest, if any, in the property on June 6, 1977, by a Plat recorded at Liber 15, Pages 6-11, Gladwin County Records.

103. Plaintiffs, together with their predecessors in title, have adversely, continuously, exclusively, notoriously and openly maintained hostile possession of the land.

104. Defendant Sugar Springs Property Owners Association assessed its association fees against the Plaintiffs as though they were lakefront owners.

105. Said claim of Plaintiffs is superior to that of Defendant Sugar Springs Property Owners Association because Plaintiffs have acquired titled to said premises by adverse possession thereof for a period of more than fifteen (15) years prior to filing the Complaint herein.

This constitutes little more than a “statement of conclusions.” *Golec, supra*. Indeed, it does not even state a conclusion as to all of the elements of adverse possession, merely some of

them. Thus, ultimately, plaintiffs merely allege the conclusion that they have acquired title through adverse possession without pleading any facts in support of that conclusion.¹ As pointed out in *Golec*, this is insufficient to state a claim. Accordingly, the trial court correctly granted summary disposition on MCR 2.116(C)(8) as to Count I.

Taking plaintiffs' arguments slightly out of order, we turn next to plaintiffs' argument that the trial court erred in granting summary disposition on Count V (action to quiet title) under MCR 2.116(C)(8). Again, we disagree because the pleadings are inadequate. First, plaintiffs allege that the homeowners' association's claim through the plat constitutes a cloud on plaintiffs' title. But plaintiffs have no title, nor does the complaint allege how plaintiffs do have title. Second, plaintiffs' prayer for relief under this count never actually requests that title be quieted, merely that defendants be ordered to cease trespassing on plaintiffs' property. In any event, plaintiffs could successfully maintain a quiet title action only if they can prevail on the adverse possession theory. As discussed above, they cannot. Therefore, defendants were also entitled to summary disposition on this count.

Plaintiffs also argue that the trial court erred in granting summary disposition under MCR 2.116(C)(8) on Count II, promissory estoppel. We disagree. The extent of plaintiffs' allegations on this count are as follows:

107. Plaintiffs were promised by Defendant Sugar Springs Property Owners Association the use and enjoyment of the real property located between their lot lines and the Lake Lancer.

108. In reliance on the Defendant Sugar Springs Property Owners Association promises, Plaintiffs improved their property and the property claimed by Defendant Sugar Springs Property Owners Association.

109. In reliance on the Defendant Sugar Springs Property Owners Association promises, Plaintiffs made improvements for the benefit of Defendant Sugar Springs Property Owners Association.

110. Defendant Sugar Springs Property Owners Association assessed its association fees against the Plaintiffs as though they were lakefront owners.

¹ Although we have not set out in detail the allegations contained in the first 100 paragraphs of plaintiffs' complaint, which plaintiffs "reallege" in paragraph 101, they do little or nothing to improve plaintiffs' case. For the most part, those paragraphs merely identify the parties, which lots they own, and the fact that the homeowners' association claims title through the recorded plat. The only allegations which even arguably lend themselves to an adverse possession claim is (1) that the plaintiffs had paid property taxes on the land between their lots and the water's edge and (2) that there is no visible distinction between their lots and the strip owned by the homeowners' association. The first point is of little significance to this claim and the second is of no significance.

111. Defendant Sugar Springs Property Owners Association are now attempting to modify, prevent, or control the use of the disputed areas formerly made by Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- A. Order that the Plaintiffs may continue to enjoy use of the real property
- B. Award Plaintiffs their actual reasonable attorney fees;
- C. Grant such other relief as this Court finds equitable and just.

Plaintiffs' allegations fail to identify what use and enjoyment they had been promised and upon which promise they relied that the homeowners' association is now attempting to prevent them from exercising. Accordingly, plaintiffs have failed to state a claim for promissory estoppel and the trial court properly granted summary disposition.²

This brings us to the remaining three issues raised by plaintiffs on appeal. Plaintiffs argue that the trial court also erred in granting summary disposition on the adverse possession issue under MCR 2.116(C)(10) (no genuine issue of material fact), in granting summary disposition on Count III (trespass on the disputed strip of land) under MCR 2.116(C)(8), and on Count VII (revision of the plat). However, our resolution of the above issues renders it unnecessary to resolve these remaining issues. Because we conclude that Count I was properly dismissed under MCR 2.116(C)(8), it does not matter whether it was also proper to dismiss it under (C)(10). Similarly, Count III is moot because if plaintiffs cannot establish title to the disputed strip, there can be no trespass upon it by the homeowners' association and Count VII is moot because if there is no change in title, there is no need to revise the plat.

Affirmed. Defendants may tax costs.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Jane M. Beckering

² We also note that this claim actually serves to defeat plaintiffs' adverse possession claim. In the promissory estoppel count, plaintiffs alleged that they were promised by the homeowners' association the use and enjoyment of the disputed strip of land. If so, then their use of the land was not hostile and, therefore, there could be no adverse possession.