STATE OF MICHIGAN

COURT OF APPEALS

STEVEN GLENN, Plaintiff-Appellant,	UNPUBLISHED November 2, 2010
v	No. 291950 Leelanau Circuit Court
BAY VALLEY ESTATES CONDOMINIUM ASSOCIATION and BAY VALLEY DEVELOPMENT, INC., Defendants-Appellees.	LC No. 2008-007844-CH

Before: MURPHY, C.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff Steven Glenn appeals as of right the trial court's orders granting summary disposition in favor of defendants Bay Valley Development, Inc. (BVD) and Bay Valley Estates Condominium Association (the Association). Because we conclude that the trial court properly granted summary disposition, we affirm.

Bay Valley Estates is a 24 lot residential condominium development located in Leelanau County. BVD acquired the property from Stanley Silverman, who is BVD's sole shareholder, and began to develop it in the spring of 1994. After BVD acquired the property and platted the proposed development, it hired Elmer's Engineering to design and construct a road and a drainage system. It is undisputed that the road and drainage system were completed in 1995 and that no changes have been made to the system since then. In 1998, BVD transferred control of the common elements of the development, including the road and drainage system, to the Association.

Glenn, who is an architect, purchased Lot 3 of the development in December of 1998. In 1994, part of Lot 3 was determined to be a regulated wetland, and part of it was determined to be upland. According to Glenn, the upland portion was "of sufficient size and adequate location to place a building envelope." In 2007, the Department of Environmental Quality determined that Lot 3 had become entirely wetland.

In July 2008, Glenn sued BVD and the Association alleging that they wrongfully diverted water onto his property through the construction and operation of the road and drainage system. He alleged claims for nuisance, trespass, increase in drainage and flowage onto property, and

interference with drainage and flowage off property. For relief, he sought money damages and an injunction preventing further augmented flow of water onto his property.

BVD and the Association moved separately for summary disposition, which the trial court ultimately granted. In granting the motions, the trial court determined that Glenn's claims for money damages were barred by the three-year statute of limitations, which began to run at the time the augmented water started to enter his property, "soon after the completion of the roads and the drainage system." As to Glenn's claim for equitable relief, the trial court ruled that Glenn failed to state a cause of action that entitled him to equitable relief.

We review de novo a trial court's decision whether to grant a motion for summary disposition. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007).

Whether Glenn characterizes his claim as a trespass, a nuisance, or a "general flowage and drainage law" tort, the gravamen of his complaint remains a cause of action based on a claim that BVD and the Association wrongfully diverted water onto his property. See *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007).

> The owner of the lower or servient estate must accept surface water from the upper or dominant estate in its natural flow. By the same token, the owner of the dominant estate may not, by changing conditions on his land, put a greater burden on the servient estate by increasing and concentrating the volume and velocity of the surface water. [*Lewallen v City of Niles*, 86 Mich App 332, 334; 272 NW2d 350 (1978).]

A cause of action based on this principle presumes there is a dominant estate and a servient estate. It also presumes that the owner of the dominant or servient estate did something to alter the "natural flow" to or from the dominant or servient estate. Here, BVD owned the entire property at issue at the time of the changes to the natural flow of the waters on the property. And there is no evidence that BVD or the Association modified the flow of water onto Glenn's property or otherwise performed wrongful acts causing water to be diverted from its property to Glenn's property after he purchased his lot. Where a common owner establishes a system of drainage for contiguous lots or one tract of land and then later transfers ownership of the lots or tract to different purchasers, the rights to water flowage are governed by the system fixed by the common owner. See 93 CJ, Waters, § 278, p 523; see also *Harrison v Heald*, 360 Mich 203, 207; 103 NW2d 348 (1960) (recognizing an implied grant or reservation of a servitude upon the severance of ownership where, during unity of title, an apparently permanent and obvious servitude is imposed on one part of an estate in favor of another). Because the improvements at issue were readily apparent and fixed by a common owner prior to the sale of the development, Glenn had only those rights to the natural flow of waters that existed after the improvements were made. Because his suit is founded on the changes to the natural flow that

were put in place by the common owner, Glenn's claims fail as a matter of law. Therefore, the trial court did not err in dismissing his claims against BVD and the Association.[1]

Given our resolution of this issue, we need not address Glenn's arguments concerning the applicable period of limitations or the definition of natural flow. As the prevailing parties, BVD and the Association may tax costs. MCR 7.219(A).

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Michael J. Kelly

[1] Glenn also argues that *Terlecki v Stewart*, 278 Mich App 644, 647; 754 NW2d 899 (2008), was wrongly decided in an apparent attempt to argue that the continuing wrongs doctrine and the discovery rule should be reinstated. However, this Court does not have the authority to overrule binding precedent of our Supreme Court. *Estate of Edwards v Clinton Valley Ctr*, 138 Mich App 312; 360 NW2d 606 (1984).