STATE OF MICHIGAN

COURT OF APPEALS

CRYSTAL LAKE PROPERTY RIGHTS ASSOCIATION, Plaintiff-Appellant, v BENZIE COUNTY and DEPARTMENT OF NATURAL RESOURCES, Defendants-Appellees.	FOR PUBLICATION September 11, 2008 No. 272587 Benzie Circuit Court LC No. 04-007095-CE Advance Sheets Version

Before: Markey, P.J., and Meter and Murray, JJ.

MURRAY, J. (*concurring*).

I concur with the majority's decision. I am not convinced that what the Department of Natural Resources has done is in violation of the technical terms of the amended settlement agreement,[1] and it is our judicial duty to enforce the plain language of the agreement. However, this result does not sit well with me because, after reading the entire Special Trail Use and Law Enforcement Plan Incorporated in the agreement, it seems clear to me that the DNR is violating the spirit, intent, and purpose of the plan, albeit not its plain language.

As detailed in the majority opinion, in 1996 the parties entered into an agreement that resolved their dispute and set forth in great detail the respective rights, duties, and obligations of the parties to the agreement. A settlement agreement is construed like a contract, *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994), and therefore it must be "'"construed so as to give effect to every word or phrase as far as practicable."'" *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), quoting *Hunter v Pearl Assurance Co Ltd*, 292 Mich 543, 545; 291 NW 58 (1940), in turn quoting *Mondou v Lincoln Mut Cas Co*, 283 Mich 353, 358-359; 278 NW 94 (1938).

[1] The agreement also had attached and incorporated to it a Special Trail Use and Law Enforcement Plan.

As the agreement recognizes, the primary duty of the DNR is to control usage of the trail by the *general public*, and to not control "the usage of adjoining property owners, their guests and invitees." The agreement specifically provides that the DNR "may under no circumstances ease or eliminate any limitations or restrictions imposed by the Plan, except through amendment of the Plan in the manner specified by the Plan." With respect to limitations and restrictions, section D, subsection 3, indicates the following restrictions on public access to the trail[2]:

> Except for adjacent property owners, trail users must stay on the trail surface and shoulders. *Entrance to this portion of the trail by non-resident trail users shall be only at the trail-heads at Benzie Boulevard/Spring Valley Drive in the village of Beaulah on the east, at Mollineaux Road on the west, or other designated public access areas.* Trailhead parking will be designated, with appropriate signage, at the two trailheads.

As already noted, I do not doubt the DNR's ability, as a property owner, to use its property as it sees fit, as long as it is consistent with local zoning ordinances and the plan. And I do not doubt the credibility of the DNR officials who indicate that signs will be posted at the launch to inform the public that the trail is not accessible from that location. However, it is certainly likely that the public when using the boat launch, which has a large parking lot, bicycle rack and other facilities, will decide to use the trail from that location, rather than driving off to another location, and getting on the same trail. In other words, although we must presume that the public will obey the law, see *United States v Norton,* 97 US 164, 168; 24 L Ed 907 (1877), and *DeVries v Owens,* 295 Mich 522, 525; 295 NW 249 (1940), we also know that many will either conveniently ignore a sign, or simply miss the sign, and enter the trail. Thus, without being able to set aside some well-founded skepticism, it seems to me that establishment of the public boat launch will create a third public access point. And, although not in violation of the plain terms of the agreement, the end result is disappointing in that it arises from the state agency that is to restrict public access to the trail as outlined in the plan.[3]

/s/ Christopher M. Murray

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[2] The agreement indicates that the trail will be 10 feet wide, with an eight-foot wide portion for use with a one-foot berm on each side of the trial. Thus, the actual portion of the trail to be used by the public and adjoining landowners for bicycling, hiking, etc., is eight-feet wide.

[3] Although not raised by the parties, it also seems to me that the undefined terms "public" and "guests and invitees" are not synonymous, but instead refer to different groups. The plan envisions the DNR controlling public access to the trail, while leaving alone adjoining property owners and their guests and invitees. Throughout the plan there are references to the "public" and "public access," which I take to be a reference to the general public, the masses. The reference is usually made in regard to where non-property owners, or those who are not guests or invitees of property owners, can access the trail. But, after the DNR's actions, the "public" is now considered the same as a private property owner's "guests or invitees."