

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SUSIE WILSON, DON LOREY, BRENDA  
LOREY, and CHARLOTTE INGLIS WILLIAMS,

UNPUBLISHED  
August 26, 2003

Plaintiffs-Appellants,

and

MICHAEL MOUILLESEAUX, MARGARET  
MOUILLESEAUX, JOHN SPROUT, and  
MICHELLE SPROUT,

Plaintiffs,

v

KURT VANSCHOICK, COLLEEN  
VANSCHOICK, MARY LOUISE HAHN-  
SETTA, JOHN HOULE, and TAMI HOULE,

No. 232531  
Jackson Circuit Court  
LC No. 99-094219-CH

Defendants-Appellees.

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Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

In this action for declaratory judgment, plaintiffs appeal as of right from the trial court's final order granting directed verdict in favor of defendants and dismissing plaintiff's claims following plaintiffs' presentation of proofs at a bench trial. Plaintiff's complaint sought an order declaring the 1994 amendment to the master deed of Koch's Bay Condominium invalid. On appeal, plaintiffs contend that the trial court erred in denying their pretrial motion for summary disposition, in denying plaintiffs' motion to amend their complaint, and in granting defendants' motion for directed verdict. We agree that the trial court erred in denying plaintiffs' motion for summary disposition, and thus need not reach plaintiffs' remaining arguments. We reverse and remand for entry of summary disposition in favor of plaintiffs.

This case arose when several co-owners in the Koch's Bay Condominium Association (the association) discovered an amendment to the master deed that reduced the beachfront and adjacent area that was formerly characterized as general common area for the eight condominium units and in which all co-owners previously had an undivided interest and access. The 1994 amendment to the master deed reduced the shoreline footage designated as general

common area from approximately 120 feet to 55 feet. The approximately 65 feet that previously had been a general common area and on which the community boat dock was located became Unit 8's newly designated limited common area. According to defendants, the revisions were necessary to conform to the county health department's regulations, which defendants maintain require that each individual unit's septic system and drain field be within that unit's limited common area.

Plaintiffs filed suit against defendants seeking a declaratory judgment that the 1994 amendment to the master deed be ruled invalid because it did not comply with provisions set forth in the master deed. Thereafter, both plaintiffs and defendants moved for summary disposition pursuant to MCR 2.116(C)(10). Having heard oral argument, the trial court denied the motions and the case proceeded to a bench trial. At the close of plaintiffs' proofs, defendants moved for a directed verdict, which the trial court granted. This appeal ensued.

Plaintiffs maintain that the trial court erred in denying their motion for summary disposition because the developer lacked authority to record the amendment at issue without the co-owners' consent. We agree.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion" to determine whether a genuine issue regarding any material fact exists. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999).

Deeds should be strictly construed against the grantor so as to give the grantee the greatest estate that the deed's terms will permit; any reservation or exception by the grantor must be narrowly construed. *Stevens Mineral Co v Michigan*, 164 Mich App 692, 697-698; 418 NW2d 130 (1987). As a general rule, courts follow the plain language of an unambiguous deed, but if an ambiguity exists, or if the deed fails to express the obvious intention of the parties, courts will try to arrive at the intention of the parties. *Taylor v Taylor*, 310 Mich 541, 545; 17 NW2d 745 (1945); *Farabaugh v Rhode*, 305 Mich 234, 240; 9 NW2d 562 (1943); *Fry v Kaiser*, 60 Mich App 574, 577; 232 NW2d 673 (1975). The primary object in interpreting deeds is to determine the intention of the parties from the instrument itself. *Thomas v Jewell*, 300 Mich 556, 558-559; 2 NW2d 501 (1942).

Resolution of the issue before us requires interpretation of the master deed. The master deed recognizes the value of the co-owners' vested rights in condominium property and sets forth guidelines to protect those interests. In the paragraph labeled "THIRTEENTH," the master deed provides in relevant part:

Except as provided in preceding paragraphs as set forth above, the condominium project shall not be terminated or any of the provisions of the Master Deed or Exhibits attached hereto amended unless done in compliance with the following provisions.

(1) Prior to the first annual meeting of members of the Association, the Developer may (without the consent of any co-owner or any other person) amend this Master Deed and the plans attached as Exhibit “B” in order to correct survey or other errors made in such documents and to make such other amendments to such instruments and to the By-Laws attached hereto as Exhibit “A” as do not materially affect any rights of any co-owners in the project or impair the security of any mortgagee, including, but not limited to, amendments for the purpose of facilitating conventional mortgage loan financing for existing or prospective co-owners and to enable the purchase of such mortgage loans by the Federal National Mortgage Association, the Government National Mortgage Association, and/or any other agency of the Federal government or the State of Michigan.

According to defendants, they were entitled to summary disposition because “there was no genuine issue of material fact that the developer recorded the amendment prior to the ‘first annual meeting’ to correct survey or other errors.” Defendants assert that the plain meaning of the paragraph in question is that before the first annual meeting of the association members, the developer, without the consent of any co-owner, may amend the master deed in two circumstances, (1) “to correct survey or other errors” made in the master deed and the attached plans, or (2) to make such other amendments to the master deed, attached plans, and attached by-laws “as do not materially affect any rights of co-owners.” In other words, defendants maintain that “the developer had the right to correct survey or other errors made in the [m]aster [d]eed prior to the first annual meeting of the [a]ssociation without the consent of any co-owners even if such corrections materially affected the rights of the co-owners.” In conformity with that interpretation, defendants maintain that the 1994 amendment corrected “survey or other errors” before the first annual meeting of the association.

Contrary to defendants’ position, plaintiffs assert that they were entitled to summary disposition because the amendment to the master deed occurred after the first annual meeting and the amendment materially affected their rights without their consent, contrary to the requirements of paragraph “THIRTEENTH,” and thus the amendment was invalid.

Both parties agree that paragraph “THIRTEENTH” in the master deed makes it clear that, before the first annual meeting of the association members, the developer is entitled to make certain types of amendments to the master deed, the attached plans, and the by-laws without the consent of any co-owner. Their dispute arises from the application of the paragraph’s limiting language that prohibits such amendments under circumstances where they would “materially affect any rights of any co-owners.” The question is whether this limiting language modifies both the right to make amendments that “correct survey or other errors” and “to make such other amendments” or whether it applies to just the latter. We conclude that the plain language of this paragraph prohibits an amendment to the master deed under either provision without the co-owners’ consent if the amendment would materially affect the rights of co-owners. We reach this conclusion because no punctuation exists in the paragraph at issue that would indicate that the modifying language applies to one provision but not the other. Further, to interpret the sentence as defendants do would limit the estate of the grantees and favor the grantors, contrary to the general rule. *Stevens Mineral Co, supra*.

Here, the parties dispute whether the first annual meeting of the association occurred before or after the 1994 amendment. But given the circumstances before us, resolution of this factual dispute is not necessary to a determination of whether plaintiffs were entitled to summary disposition. Rather, the determining factor here is whether the developer's amendment to the master deed materially affected the rights of the co-owners. Contrary to defendants' assertion that the amendment to the master deed only "slightly altered" boundary lines, we are convinced that the 1994 amendment reducing by more than half the beachfront general common area indisputably is one that materially affected plaintiffs' rights and cannot be enforced absent consent. Thus, we conclude that the trial court should have granted summary disposition in favor of plaintiffs because the 1994 amendment to the master deed is invalid and unenforceable.<sup>1</sup>

Reversed and remanded for entry of judgment in accordance with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

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<sup>1</sup> Further, even if we were to accept defendants' argument that the "materially affect any rights" language modifies only "to make such other amendments," but not "to correct survey or other errors," we still conclude that defendants' argument is without merit. Rather than correcting a "survey or other error," the change addressed in the amendment dealt with a newly installed drain field after the master deed had been recorded. In these circumstances, the amendment was not made "to correct a survey or other errors made in such *documents*," but rather the amendment was made to indicate a change made to the *property* after the master deed was recorded.