STATE OF MICHIGAN

COURT OF APPEALS

ROBERT J. SCOLLARD, JR., ROBIN ANN AVEDISIAN SCOLLARD, DAVID A. KATCHERIAN, and DORIS M. KATCHERIAN,

Plaintiffs/Counter Defendants-Appellee,

v

LAKE COLUMBIA PROPERTY OWNERS ASSOCIATION,

Defendant/Counter Plaintiff-Appellant,

and

RONALD NIEDZIELSKI and SUSAN NIEDZIELSKI,

Defendants/Counter Plaintiffs.

UNPUBLISHED
October 22, 2015

No. 322574
Jackson Circuit Court
LC No. 12-002925-CH

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Defendant/counter-plaintiff Lake Columbia Property Owners Association (the Association) appeals by leave granted[1] the trial court's order granting partial summary disposition to plaintiffs. We reverse and remand for further proceedings.

I. BACKGROUND

This case concerns a platted subdivision, Riviera Shores No. 2, along the shore of Lake Columbia.[2] The subdivision contains numerous lots, several of which have frontage on the shore

[1] *Scollard v Lake Columbia Prop Owners Ass'n*, unpublished order of the Court of Appeals, entered December 9, 2014 (Docket No. 322574).

of Lake Columbia. The plat survey shows that each of the lots with frontage (the lakeside lots) has a lakeside lot line that is marked with a metes and bounds description and is clearly depicted with a solid black line; however, between the lakeside lot lines and the line depicting the shoreline, i.e., the water's edge, of Lake Columbia, there is an irregular strip of land (hereinafter referred to as the disputed land or the irregular strip of land). Primarily at issue in this appeal is the ownership of the disputed land, which the trial court found belonged to the lakeside lot owners rather than the Association.

Plaintiffs, the Scollards and the Katcherians,[3] own Lot 133 of the subdivision, which is a lakeside lot. Lot 132 (an adjacent lakeside lot) is owned by defendants Ronald and Susan Niedzielski (the Niedzielskis). In May of 2000, plaintiffs installed a light post near the shore of Lake Columbia. The Niedzielskis objected to the installation and complained to the Association that the light post was on their property and should be removed.

The Association ordered a survey of the property. The survey shows that the light post is, without question, on the disputed land between the lakeside lots lines and the water's edge of Lake Columbia. However, at that time, the main question that was being resolved was whether the light post was on the Niedzielskis or plaintiffs' side of their shared *side* lot line. The trial court concluded that, based on the survey, the light post was on the Niedzielskis' side of the side lot lines, i.e., that the light post was on the Niedzielskis' property. That ruling has not been challenged on appeal. Therefore, it is undisputed that the light post is on the irregular strip of land in front of Lot 132, the Niedzielskis' lot.

After the survey was completed, the Association sent a letter to plaintiffs stating that the survey showed that the light post was located on the Association's property. Subsequently, on March 20, 2003, the Association sent another letter to plaintiffs, again indicating that the light post was on the Association's property. The second letter gave plaintiffs permission to maintain the light post until:

> (a) your voluntary action to move the light pole to your own property, (b) such time as repairs to the pole or underground wiring necessitate interruption of its use, (c) when placing your property up "for sale", or (d) upon reasonable alternative notice from the Association. [emphasis omitted.]

Between March 20, 2003 and October 10, 2011, the Niedzielskis continued to request the Association's assistance in removing the light post. Finally, on October 10, 2011, the Association sent a letter demanding removal of the light post.

Plaintiffs did not comply with the demand to remove the light post. Instead, they filed for declaratory judgment on September 14, 2014 against the Association and the Niedzielskis.

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[2] Lake Columbia is a private lake developed by Lake Columbia Development Company (LCDC) and American Central Corporation (ACC) as a private lake. The Riviera Shores No. 2 subdivision was platted by LCDC in 1965.

[3] For ease of reference, plaintiffs will be referred to collectively as either "plaintiffs" or as "the Scollards."

Plaintiffs alleged that the property along the shoreline of Lake Columbia was unplatted and belonged to the property owners of the lakeside property lots. Plaintiffs alleged that, "[i]n accordance with the recorded subdivision for Riviera Shores No. 2, . . . and the clear language of the Declaration of Restrictions, recorded November 8, 1965, in Liber 741, Page 421, Jackson County Records, the authority of [the Association] extends only to the surface waters and bottom lands of Lake Columbia normally flowed and covered by the lake at its highest level." Plaintiffs further alleged that the Association did not own the property that the light post was on and lacked control or authority over the property. Plaintiffs asked for declaratory judgment in its favor that "the lands between the platted subdivision lot lines in Riviera Shores No. 2 Subdivision and the normal high water of Lake Columbia as marked by relevant seawalls is owned in fee" by plaintiffs and that the Association had no ownership of those lands. Plaintiffs also asserted that survey showed that the Niedzielskis did not own the property that the light post was located on.[4]

The Association counterclaimed, asserting that plaintiffs were trespassing on its property, i.e., the disputed strip of land between the lakeside lot lines and the water's edge. The Association asserted that it owned the land and that it had permitted plaintiffs to maintain the light post on its property from 2003 until 2011 when the Association demanded its removal.

The Association also filed for summary disposition on September 23, 2013, alleging that plaintiffs' claims were without merit for various reasons, including the fact that it was "undisputed" that the Association owned the land the light post was on. The motion was noticed for hearing on November 6, 2013; however, before the motion was heard, plaintiffs filed a motion to amend their pleadings, which the trial court granted.

Plaintiffs amended their complaint on December 5, 2013. Again, they asserted that they owned in fee "the lands between the platted subdivision lot lines in Riviera Shore No. 2 Subdivision and the normal high water of Lake Columbia as marked by relevant seawalls." However, unlike the first complaint, this time plaintiffs asserted that the Association lacked title to the disputed land because it had not been properly conveyed from LCDC and ACC to the Association.[5] Also pertinent to this appeal plaintiffs also alleged in the complaint that they had gained possession of the disputed land via adverse possession or acquiescence.[6]

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[4] As explained supra, the trial court subsequently found that the light post was, in fact, on the Niedzielskis side of the side lot lines, and that decision was not challenged.

[5] In 1970, ACC transferred the Riviera Shores No. 2 subdivision to the Association via quit claim deed. Around the same time, an agreement of transfer was signed by LCDC and ACC; the agreement expressly indicated that LCDC joined the "deed to convey whatever rights, titles and interests it may possess" to the Association. The trial court found that "all real property held by" LCDC and ACC was transferred to the Association by virtue of the recorded agreement of transfer and quit claim deed. This finding has not been challenged on appeal.

[6] Plaintiffs had additional counts, which were resolved by the trial court's order; however, as they are not relevant to the issue on appeal, they will not be addressed further.

On March 26, 2014, the Association filed a second motion for summary disposition, asserting in pertinent part that (1) plaintiffs had failed to state a cause of action for acquiescence and adverse possession; (2) there was no genuine issue of material fact precluding summary disposition of the acquiescence and adverse possession claims; and (3) there was no actual controversy over who owned the land that the light post was on.

Shortly thereafter, on April 8, 2014, plaintiffs filed a motion for summary disposition, asserting that the Association did not own the disputed property because title for the property remained with LCDC. The trial court resolved this issue in the Association's favor, finding that "all real property held by" LCDC and ACC was transferred to the Association by virtue of the recorded agreement of transfer and quit claim deed. This finding has not been challenged on appeal.

On April 28, 2014, the trial court heard oral arguments on the motions. Following the motion hearing, the court held that the language of the plat was ambiguous, so the court looked to extrinsic evidence to determine the plattors' intent. As noted supra, the trial court granted relief to plaintiffs, quieting title to the irregular strip of land in favor of the lakeside lot owners. The court also dismissed as moot plaintiffs' claims for acquiescence and adverse possession. Additionally, the court dismissed with prejudice the Association's counterclaims "which are premised upon the assertion that the Association owns the land lying between Plaintiffs' lot and the shore of Lake Columbia." This appeal follows.

II. DUE PROCESS

The Association first argues that the trial court violated its due process rights when it sua sponte decided to construe the plattors' intent. A trial court may sua sponte grant summary disposition if the requirements of MCR 2.116(I) are satisfied, i.e., "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact." *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009) (alteration in original), quoting MCR 2.116(I). However, the court's sua sponte grant of summary disposition must not deprive a party of procedural due process. *Id.* at 485, 489. "Where a court considers an issue sua sponte, due process can be satisfied by affording a party an opportunity for rehearing." *Id.* at 485-486.

In this case, the trial court stated at the motion hearing that it was going to consider the plattors' intent and then allowed argument on the issue that it had sua sponte raised. The Association's attorney never argued that he needed more time to present evidence of intent. Further, the Association was able to present additional information and make additional arguments on reconsideration, which the trial court considered and denied. Finally, although the exact theory that the trial court used was not advanced by either party, the parties knew that there was a dispute about who owned the property, with plaintiffs claiming it was theirs and the Association claiming it was theirs. Accordingly, on these facts, there was no due process violation.

III. PLATTORS' INTENT

The Association next argues that the trial court erred in determining that the plattors intended to extend the lakeside lot line to the water's edge of Lake Columbia.

The interpretation of a plat is subject to well-established rules of construction. *Wiggins v Burton*, 291 Mich App 532, 552; 805 NW2d 517 (2011). When interpreting a plat, we "seek to effectuate the intent of those who created" it. *Tomecek v Bavas*, 482 Mich 484, 490-491; 759 NW2d 178 (2008) (Opinion by KELLY, J.). "The intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant." *Dobie v Morrison*, 227 Mich App 536, 540; 575 NW2d 817 (1998). "Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted." *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). Only when the language in the legal instrument is ambiguous may we examine extrinsic evidence to determine the instrument's meaning. *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 42; 700 NW2d 364 (2005).

Upon review of the plat and the plat survey, we conclude that the trial court erred in finding the plat ambiguous. The trial court concluded that the plat was ambiguous because the plat map showed a strip of land between the lakeside lot lines and the water's edge, but the plat description stated that the lakeside lot lines would be "along the water's edge." The court also found that the ingress and egress easement in the plat dedication could be interpreted as granting an easement over the disputed land or as granting access to the surface of the lake.

The language in the plat description provides that the plat is bound and described as follows:

> *Commencing at the center of* said Section 34; thence North 01 degrees 12 minutes 48 seconds West along the North-South Centerline of said Section 34 a distance of 844.78 feet; thence North 87 degrees 53 minutes 39 seconds East 946.10 feet; and thence North 00 degrees 14 minutes 39 seconds East 475.24 feet to the point of beginning.
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> Thence North 00 degrees 14 minutes 39 seconds East 261.13 feet; thence South 88 degrees 50 minutes 01 seconds East 1,912.99 feet; thence North 36 degrees 36 minutes 31 seconds West 256.34 feet; thence North 50 degrees 51 minutes 29 seconds East 221.14 feet *to the beginning of a meandering line along the water's edge of Lake Columbia; thence along said meandering line*:
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> North 17 degrees 58 minutes 09 seconds West 20.60 feet . . .
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> * * *
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> *to the termination of the meandering line along the water's edge of Lake Columbia*; thence South 19 degrees . . . . [emphasis added.]

In other words, the plat description gives a starting point, then provides a metes and bounds description up to the "beginning of a meandering line along the water's edge of Lake Columbia."

Significantly, it then says "thence along said meandering line" and provides a series of 24 additional metes and bounds descriptions, followed by the language "to the termination of the meandering line along the water's edge of Lake Columbia." The trial court apparently found this language to be ambiguous because of the use of the word "along." However, although the description references a meandering line "along the water's edge," the word "along" can mean either "on" or "beside" the water's edge. See *Webster's New World College Dictionary* (4th ed) (defining "along" as "on or beside the length of.").

Moreover, the plattors clearly marked the boundaries of the lot lines using something other than the natural boundaries of the water's edge. The lakeside lot lines are described in the plat using a metes and bounds measurement. The lines are depicted, using the same metes and bounds measurements, on the survey map that was recorded with the plat. Further, the survey map depicts a strip of land between the lakeside lot lines (which, again, match the metes and bounds description) and the water's edge. Also, the surveyor's certificate clearly denotes that there are permanent markers "at all angles in the boundaries of the land platted . . . ."[7]

Additionally, as noted, the plat dedication includes an ingress and egress easement in favor of the owners with frontage on Lake Columbia. The easement provides:

> Owners of all lots with frontage on Lake Columbia are granted ingress to an [sic] egress from Lake Columbia within the limits of their lots lines extended.

The fact that the plat includes an easement indicates that the plattors intended to retain title to the land over which the easement was granted. See *Bowen v Buck & Fur Hunting Club*, 217 Mich App 191, 192; 550 NW2d 850 (1996) (indicating that an easement requires both a dominant and a servient estate). Moreover, the language "within the limits of their lots lines extended" clearly contemplates that the owners with frontage need their lot lines to be *extended* in order to reach Lake Columbia. If the lots already extended to the water's edge, then there would be no need for the lot lines to be extended. Accordingly, although the trial court found the easement ambiguous—finding that it could be interpreted as providing an easement over the disputed land or it could be interpreted as merely providing access to the surface of Lake Columbia—we disagree.

A contract is ambiguous "when [a term] is *equally* susceptible to more than a single meaning." *Mayor of Lansing v Pub Serv Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) (emphasis in original). However, a contract is not ambiguous if, "although inartfully worded or clumsily arranged," it "fairly admits of but one interpretation." *Holmes v Holmes*, 281 Mich App 575, 594; 760 NW2d 300 (2008) (quotation and citation omitted). Here, although the word "along," standing alone, is susceptible to more than a single meaning, its meaning is unambiguous in the context of the complete language in the plat. Specifically, we find no ambiguity where (1) the plat includes a metes and bounds description for the lakeside lot lines, (2) the metes and bounds descriptions are depicted on the survey map that was recorded with the

[7] The permanent markers are also shown on the survey conducted when the dispute over the light post initially arose.

plat, (3) the survey map shows a strip of land between the lakeside lot lines and the water's edge, and (4) the plat includes an ingress and egress easement to Lake Columbia which would be meaningless if the plattors intended to convey the land to the lot owners. Accordingly, we conclude that the disputed strip of land was retained by the plattor and was transferred in fee to the Association.

This conclusion requires us to remand the case to the trial court for consideration of plaintiffs' remaining claims and the counterclaims of the Association. Given its ruling, the trial court did not reach the merits of plaintiffs' claims for adverse possession or acquiescence. Although the Association invites us to grant summary disposition in its favor on those claims, we decline to do so and instead remand them to the trial court for further proceedings. We also reverse the trial court's dismissal of the Association's counterclaims which were based on the claim that it held the land in fee. In light of our holding, we reinstate the counterclaims and remand them to the trial court for further proceedings.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro