

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

JEFFREY S. MANIACI,  
Plaintiff/Appellant,

v.

THOMAS DIROFF, and  
MANDY DIROFF,  
Defendants/Appellees

and

KENNETH G. SILER AND TONYA L.  
SILER REVOCABLE TRUST DATED  
APR 3, 2013,  
Appellee

Supreme Court Case No.: 158005  
Court of Appeals Case No.: 333952  
Circuit Court Case No.: 14-7559-CH  
Honorable Thomas R. Evans

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**APPELLANT JEFFREY S. MANIACI'S  
REPLY IN SUPPORT OF APPLICATION  
FOR LEAVE TO APPEAL**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iii

REPLY ..... 1

RELIEF REQUESTED ..... 4

**TABLE OF AUTHORITIES**

**CASES**

*Blackhawk Dev Corp v Village of Dexter*,  
473 Mich 33; 700 NW2d 364 (2005)..... in passim

*Carlton v Warner*  
46 Mich App 60; 207 NW2d 465 (1973) ..... 1

*Harvey v Crane*,  
85 Mich 316; 48 NW 582 (1891)..... in passim

*Unverzagt v Miller*,  
306 Mich 260; 10 NW2d 849 (1943)..... in passim

**REPLY**

Appellant/Plaintiff Jeffrey S. Maniaci offers this short reply. The arguments of Appellee Siler Trust make little sense. An express easement was granted “for the temporary mooring *and launching* of watercraft, *including by boat trailer*.” **Application, Exhibit B, ¶2**. Think about that for a second—it expressly means that the easement holders can and do have right to launch their watercraft by boat trailer across the easement into the waters of Secord Lake. Michigan law from this Court is clear: “the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.” *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005). It is necessary or incidental to have a gentle slope of the land to actually and safely launch watercraft by boat trailer. **Application, Exhibit E, ¶17**. It simply takes a slight adjustment to the easement area. The Trust has not argued or suggested that altering the servient parcel to make the proper gentle gradient to exercise the explicitly granted right launch watercraft by boat trailer is unreasonable, damaging, or non-incidental in any way.<sup>1</sup> Making the slope-of-the-land change is merely an improvement to the servient estate necessary for the easement’s effective and explicitly granted use. This is because a “party who enjoys an easement is entitled to maintain it *so that it is capable of the use for which it was given*,” even if not expressly enumerated by the text of the easement. *Carlton v Warner*, 46 Mich App 60, 61; 207 NW2d 465 (1973)(emphasis added). This Court’s

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<sup>1</sup> Instead of applying the plain language of the easement, the Trust tries to argue the lack of a definition of watercraft is somehow relevant to the analysis. But then the Trust concedes that the common definition of watercraft is “*any boat or ship*.” The argument is a non-starter and a clearly bogus attempt to fix the Court of Appeals’ improper application of the *Blackhawk* standards.

decision in *Unverzagt v Miller*, 306 Mich 260; 10 NW2d 849 (1943) is instructive on this principle. In *Unverzagt*, the owners of cottage properties in a summer report had an easement to use the roads, streets, and alleys owned by a private individual named Miller. However, Miller argued that outside merchants and tradesmen who deliver goods needed his permission because the easement did not expressly grant those merchants and tradesman usage right. (His argument was self-serving as he only gave permission for deliveries to be made by the store he owned.) This Court concluded that despite a lack of express grant to the merchants and tradesmen, it is an “unreasonable restriction on the right of the cottage owners to the use of the streets” because “the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.” In other words, the rights of the easement holders “must be measured and defined by the purpose and character of the easement.”

This Court’s decision in *Harvey v Crane*, 85 Mich 316; 48 NW 582 (1891) is similar. An easement owner had right to a private road and erected a fence within the boundary of the private road to help direct cattle. The owner of the servient estate tore down the fence claiming the fence was not expressly provided for in the private road easement. This Court rejected that conclusion and explained that conveyance of an easement gives the easement owner a right to unobstructed passage over the landowner’s land plus all rights incident to the necessary enjoyment of such right of passage. *Id.*, at 322. Despite not being within the plain language of the easement itself, the Court concluded that construction of the fence within rights incident to the necessary enjoyment of such right of passage. In other words, to enjoy the passage of cattle as contemplated by the

easement, a slight alternation to the land in the form of a fence was needed to maintain and enjoy the easement in a matter capable for the use for which it was given.

The same thing has essentially happened here. The Diroffs, as predecessors to the Trust, conveyed to all the lot owners of the plat the right of “temporary mooring and launching of watercraft, including by boat trailer” across Vonda Lane/Parcel B to Secord Lake. **Application, Exhibit B (Consent Judgment), ¶2.** This is undisputed. Appellant/Plaintiff Jeffrey S. Maniaci, as both the settling plaintiff and lot owner in the plat, is entitled to maintain Vonda Lane/Parcel B so that it is capable of the use for which it was given to him and his fellow lot owners, i.e. the temporary mooring *and launching* of watercraft, including *by boat trailer. Id.* To reasonably effectuate that right, a simple change of the land is required—like the fence in *Harvey*. The simple land gradient adjustment is merely incidental to and/or necessary for the reasonable and proper enjoyment of the easement for launching of watercraft by boat trailer. The slope will not (or has never been alleged to) interfere with the Trust’s use of the servient parcel, even when still treating the easement holders’ rights as “paramount.” *Harvey, supra*, at 322. For the Court of Appeals to apply the law of easements differently is a drastic and improper alteration from Michigan’s property law long established by this Court in *Unverzagt, Blackhawk, and Harvey*. Absent correction by this Court, Michigan’s lower courts are effectively ignoring or altering the standards of how easements are interpreted and applied. Unless correctly applied, settlements and conveyances are literally losing their validity on the whims of courts refusing to apply the proper standards of easement

law.<sup>2</sup> The Court of Appeals' decision is clearly erroneous causing the easement holders material and significant injustice in those of their rights to launch watercraft by boat trailer into Secord Lake, and is also detrimentally affecting a legal principle of major significance to the state's property law jurisprudence. Correction is needed for both Appellant/Plaintiff Jeffrey S. Maniaci to enjoy his bargained-for property rights and to command that the clear standards announced in *Unverzagt*, *Blackhawk*, and *Harvey* be followed.

### RELIEF REQUESTED

WHEREFORE, in light of the plain language of the Consent Judgment and the incident or necessary test, this Court is requested peremptorily reverse the Court of Appeals and remand with instructions to the trial court to correct apply to the *Blackhawk* test. As part of those instructions, the Court is requested to direct the trial court to correct its error in not properly deeming it is incident or necessary to adjust/regrade the land near the shore of Secord Lake to allow this easement holder to undertake that which was express provided—"launching of watercraft... by boat trailer" via the Consent Judgment. MCR 7.305(H)(1). Alternatively, the Court is requested to grant full leave to hear this important legal issue. *Id.*

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<sup>2</sup> Contrary to the assertions of the Trust, Appellant/Plaintiff Jeffrey S. Maniaci is not seeking to set aside a consent judgment or rewrite a settlement agreement. He is seeking to apply the easement as written and granted pursuant to *Unverzagt*, *Blackhawk*, and *Harvey*.

Date: August 7, 2018

RESPECTFULLY SUBMITTED:

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