

STATE OF MICHIGAN
IN THE SUPREME COURT

JEFFREY S. MANIACI,
Plaintiff/Appellant,

Supreme Court Case No. 158005

Appeal No: 333952

v.

Lower Court No. 14-7559-CH

THOMAS DIROFF and MANDY DIROFF,

Defendants/Appellees

and

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

Appellee.

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APPELLEE SILER TRUST'S APPENDIX

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Hearing Transcript Settlement – April 28, 2015 #1b

STATE OF MICHIGAN
55TH JUDICIAL CIRCUIT COURT, GLADWIN COUNTY

JEFFREY S. MANIACI,

Plaintiff/Counter-Defendant,

v

File No. 14-7559-CH

THOMAS DIROFF and MANDY DIROFF,

Defendants/Counter-Plaintiffs,

SETTLEMENT

BEFORE THE HONORABLE THOMAS R. EVANS, CIRCUIT JUDGE
Gladwin, Michigan - Tuesday, April 28, 2015

APPEARANCES:

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For the Defendants:

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Mandi S. Bergman
Certified Electronic Recorder
55th Judicial Circuit Court - Family Division
17th Judicial District Probate Court
Gladwin, Michigan

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WITNESSES:

PAGE

None

EXHIBITS:

IDENTIFIED

ADMITTED

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Gladwin, Michigan

Tuesday, April 28, 2015 - 10:48 a.m.

COURT OFFICER CHERRY: All rise. Fifty-fifth Circuit Court for the County of Gladwin is now in session, the Honorable Thomas R. Evans presiding.

THE COURT: Good morning, you may be seated. Calling the case of Jeffrey Maniaci, et al versus Thomas Diroff and Mandy Diroff, et al, file number 14-7559-CH. Would counsel identify for the record please?

MR. ELLISON: Philip Ellison appearing on behalf of the plaintiff, your Honor.

MR. CAREY: Your Honor, William Carey appearing on behalf of the Diroffs who are here both as a defendant and a counter-plaintiff.

THE COURT: Thank you sir. Today is the date and time scheduled for a bench trial in this matter, but the attorneys have been working diligently with their respective clients throughout the morning and it's my understanding there's a settlement that the parties wish to place on the record?

MR. CAREY: Yes. It will be easier for me to do that with a demonstrative exhibit and I've asked my client to grab it for me.

THE COURT: Okay. Thank you.

MR. CAREY: So it'd just be that long of a delay.

1 THE COURT: Thank you sir. And Mr. Maniaci, would
2 you please stand and raise your right hand to be sworn?

3 CLERK MISHLER: Do you solemnly swear the testimony
4 you're about to give will be the truth, the whole truth and
5 nothing but the truth?

6 MR. MANIACI: Yes, I do.

7 THE COURT: Could you tell us your name sir?

8 MR. MANIACI: Jeffrey S. Maniaci.

9 THE COURT: You may be seated. And ma'am, would
10 you please raise your right hand to be sworn?

11 CLERK MISHLER: Do you solemnly swear the testimony
12 you're about to give will be the truth, the whole truth and
13 nothing but the truth?

14 MS. DIROFF: Yes.

15 THE COURT: Could you tell us your name?

16 MS. DIROFF: Mandy Diroff.

17 THE COURT: You may be seated ma'am. And sir,
18 would you please raise your right hand to be sworn?

19 CLERK MISHLER: Do you solemnly swear the testimony
20 you're about to give will be the truth, the whole truth and
21 nothing but the truth?

22 MR. DIROFF: Yes.

23 THE COURT: Could you tell us your name?

24 MR. DIROFF: Thomas Diroff.
25

1 THE COURT: You may be seated as well. You may
2 proceed Mr. Carey.

3 MR. CAREY: Thank you, your Honor. Your Honor,
4 this matter involves property located in the Supervisor's
5 Plat of Baker's Resort and this is a enlarged copy of the
6 plat.

7 In particular, your Honor, there's a portion of the
8 plat known as Vonda Lane that sits approximately between lots
9 45 and 46 in that same subdivision. And there is an
10 additional parcel that is the subject of this litigation that
11 lies between Vonda Lane and the water's edge of the
12 Tittabawassee River, and that parcel, your Honor, has been
13 described as Parcel B.

14 THE COURT: Parcel B?

15 MR. CAREY: Parcel B.

16 THE COURT: As in boy?

17 MR. CAREY: As in boy. Parcel B of course has a
18 meets and bounds description and that meets and bounds
19 description will be repeated in the consent judgment that we
20 will prepare for the Court.

21 THE COURT: Thank you sir.

22 MR. CAREY: Parcel B is going to be the subject of
23 a nonrecreational ingress and egress easement. Fee title to
24 Parcel B will vest in the counter-plaintiffs Diroff.
25 However, fee title will be subject to this nonrecreational

1 ingress and egress easement. The easement will be pertinent
2 and will run in perpetuity. The easement will be in favor of
3 the lot owners within the platt--Supervisor's Plat of Baker's
4 Resort.

5 With respect to that easement, routine maintenance
6 of the easement will be both the right and the responsibility
7 of the fee title holder Diroff. However, the--to the extent
8 that any allowed usage of the easement creates damage to the
9 surface of the easement the party creating that damage is
10 responsible for restoring the surface of the easement to its
11 current status quo.

12 At the junction of the east boundary of Vonda Lane
13 and the west boundary of Parcel B, which is a common line,
14 there will be a f--there is a fence and there will continue
15 to be a fence. The current fence is a wire type of
16 structure, the Diroff's contemplate replacing that wired
17 structure fence with a split rail fence at that common
18 boundary line. And that split rail fence will run north and
19 south across the width of Vonda Lane, which is approximately
20 50 feet plus or minus. But that fence will have a 20 foot
21 wide opening so as to allow the ingress and egress over
22 Parcel B.

23 The 20 foot opening is specifically provided so
24 that if a party easement holder wishes to, as part of the
25 rights of ingress and egress, to launch a watercraft at that

1 location a 20 foot wide opening would accommodate a trailer
2 and the reasonable backing up abilities of the operator.

3 There will not be, at the water's edge of Parcel B,
4 which would otherwise be the east boundary of Parcel B, there
5 will not be any nontemporary mooring of watercraft, nor will
6 there be any form of docke--of dock or wharf at that
7 location.

8 There is, your Honor, currently a north--and
9 east/west fence that is located approximately, but perhaps
10 not precisely, on the common boundary line between lot 45 and
11 platted Vonda Lane. If and when--I should say when that
12 fence is replaced, the Diroffs will locate it so that it is
13 on the boundary line between Vonda Lane and lot 45. It may
14 or it may not be there now. There is a disagreement over
15 that but the current fence may remain in its location. When
16 it is replaced it will be located at that common line.

17 There are, on both sides, the north and the south
18 side of Vonda Lane, there are ditches and those ditches serve
19 from time-to-time to facilitate drainage from the
20 neighborhood and no party will be allowed to utilize those
21 drains in any manner that would preclude reasonable drainage
22 from those drains to the Tittabawassee River--no blockage of
23 those drains.

24 If I could have just a moment to consult with my
25 client?

7

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Gladwin, Michigan

Appendix #7b

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THE COURT: Sure.

MR. CAREY: We're satisfied that that sets forth the terms of the proposed consent judgment, your Honor.

THE COURT: And Mr. Ellison, is that your understanding of the settlement agreement as well?

MR. ELLISON: Mr. Carey, I think has accurately proffered the broad terms of the agreement here. I would just add one additional note just to clarify a point that he made and he is talking about the replacement fence on we call--what we're calling the north/south fence with the 20 foot gap, that that would be--he may have said it, I didn't catch it--it would be a split rail fence so that goal of this type of fence was that it would be the views of the area would re--remain reasonably open for purposes of ingress and egress on this.

MR. CAREY: To--

MR. ELLISON: Other--

MR. CAREY: Go ahead.

MR. ELLISON: I'm sorry. Other than that I think he's accurately put forth the broad strokes and it is the intention of the parties to reduce this with the assistance of counsel to a consent judgment for entry by this Court.

THE COURT: Is that correct Mr. Carey?

MR. CAREY: Yes, sir.

1 THE COURT: Do you wish to inquire of your clients
2 Diroff or not?

3 MR. CAREY: Yes, please.

4 THE COURT: You may proceed sir.

5 MR. CAREY: May I address them collectively?

6 THE COURT: Sure.

7 MR. CAREY: Mr. and Mrs. Diroff, have you said--
8 have you heard everything that I've placed on the record?

9 THE COURT: Ms. Diroff, would you please come
10 forward and have a seat at the table.

11 MR. CAREY: She's trying hard to avoid the front
12 row.

13 THE COURT: Thank you.

14 MR. CAREY: Mr. and Mrs. Diroff, have you heard the
15 terms of our agreement that I placed of record?

16 MS. DIROFF: Yes.

17 MR. DIROFF: Yes.

18 MR. CAREY: And did you hear Mr. Ellison, counsel
19 for plaintiff make the modification or make more specific
20 that consent agreement?

21 MR. DIROFF: Yes.

22 MS. DIROFF: Yes.

23 MR. CAREY: Do you agree with that which has been
24 placed of record?

25 MS. DIROFF: Yes.

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MR. DIROFF: Yes.

MR. CAREY: And you'll sign a consent judgment to that effect when prepared?

MS. DIROFF: Yes.

MR. DIROFF: Yes.

MR. CAREY: Thank you.

THE COURT: Thank you sir. And Mr. Ellison, did you wish to inquire of your client?

MR. ELLISON: I do, your Honor. Cou--again, very similar questions as Mr. Carey just proffered his client, you've been here today working on a settlement negotiation with the opposing parties regarding the issues in the Baker's Resort, correct?

MR. MANIACI: Correct.

MR. ELLISON: And--and today you have reached a settlement and have directed me to place the settlement on the record today, correct?

MR. MANIACI: Correct.

MR. ELLISON: And the settlement that you heard Mr. Carey recite and as well as I clarified slightly, represents the broad strokes of the agreement that the--that you intended to put on the record today and will agree to abide by those terms?

MR. MANIACI: Yes.

1 MR. ELLISON: And if--when presented with a consent
2 judgment reflecting those terms, that you would sign the
3 consent judgment accordingly, correct?

4 MR. MANIACI: Yes.

5 MR. ELLISON: I'm satisfied, your Honor.

6 THE COURT: And sir, could you tell us your name
7 once again?

8 MR. MANIACI: Jeffrey S. Maniaci.

9 THE COURT: Thank you, sir. Well, very well then.
10 This will be reduced to a consent judgment, is that correct,
11 Mr. Carey?

12 MR. CAREY: Yes, your Honor, it is.

13 THE COURT: Will you be preparing that document?

14 MR. CAREY: I'll certainly make the first draft and
15 make it available to counsel for any corrections he sees
16 necessary.

17 THE COURT: All right. Mr. Maniaci and Mr. and Ms.
18 Diroff, I have no idea how this case would have turned out if
19 there had been a trial because I did not hear any of the
20 evidence. But I do know that the three of you, with the able
21 assistance of your lawyers, came up with a very, very
22 detailed agreement. And I think it's highly unlikely that
23 this Court would have come up with such a highly detailed
24 ruling. So, in other words, I'm just commenting, I think the
25 three of you took advantage of the opportunity that you had

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to tailor an agreement that really suited the needs of all three of you. And in that regard, you certainly were very ably assisted by experienced and very learned and zealous attorneys who gave you good advice. But I think it's a credit to the three of you that you were able to sit down together and reason together and reach an agreement that all three of you can live with even if you're, perhaps, not 100 percent satisfied. Because I think it's highly unlikely anybody would have been 100 percent satisfied with the decision of this Court either. So, good luck to all three of you. I'll sign the order or judgment on presentation. Good-good luck to all of you.

MR. CAREY: Thank you, your Honor.

UNIDENTIFIED SPEAKER: Thank you.

MR. ELLISON: Thank you, your Honor.

COURT OFFICER CHERRY: ALL RISE.

(At 11:02 a.m., proceedings concluded)

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STATE OF MICHIGAN)
)
COUNTY OF GLADWIN)

I certify that this transcript, consisting of 13 pages
is a complete, true, and correct transcript, to the best of my
ability, of the proceedings and testimony taken in this case on
Tuesday, April 28, 2015.

May 15, 2015

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