

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

TWO M PROPERTIES, LLC,

Plaintiff,

Case No. 2014-1068-CB

vs.

SLA-MI-UTICA, LLC and TALMER
BANK & TRUST, the successor in interest to
COMMUNITY CENTRAL BANK,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition in lieu of filing an answer. Plaintiff has filed a response and requests that the motion be denied.

Factual and Procedural Background

Plaintiff and Defendant SLA-Utica, LLC (“SLA”) own adjoining parcels of commercial real property in Utica, MI. In 1977, Plaintiff’s predecessor in title erected a fence/barrier that created a boundary between the two properties. However, the fence is not located on the actual property line; rather, the location of the fence has acted to separate approximately 459 square feet of SLA’s property (“Disputed Property”) from the remainder of SLA’s property. Due to the barrier, Plaintiff, and its predecessors in title and tenants have had exclusive access to the Disputed Property for the last 36 years.

In its complaint, Plaintiff seeks to quiet title to the Disputed Property in its favor based on the doctrine of adverse possession and/or prescriptive easement.

On April 21, 2014, Defendants filed their instant motion for summary disposition on statute of limitation grounds in lieu of filing an answer. Plaintiff has since filed a response and requests that Defendants' motion be denied.

Standard of Review

While Defendants purport to seek summary disposition pursuant to MCR 2.116(C)(8) and (10), the sole basis for their motion is that Plaintiff's claims violate the applicable statute of limitations. As a result, their motion actually seeks summary disposition pursuant to MCR 2.116(C)(7).

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id.*

Arguments and Analysis

In support of their motion, Defendants contend that Plaintiff's claim violates the 15 year catch-all statute of limitations set forth in MCL 600.5801. Section 5801 provides, in pertinent part:

No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

(4) In all other cases under this section, the period of limitations is 15 years.

Case law has interpreted this statute in the following manner:

A claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736; 463 NW2d 190 (1990). These are not arbitrary requirements, but the logical consequence of someone claiming by adverse possession having the burden of proving that the statute of limitations has expired. To claim by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. A cause of action does not accrue until the property owner of record has been disseised of the land. MCL 600.5829. Disseisin occurs when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership. Black's Law Dictionary (4th ed.), pp. 558-559. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993).

While Defendants contend that Plaintiff was required to file an action to quiet title to the Disputed Property within 15 years after its claim to the property accrued (i.e. 15 years after the fence was erected), the applicable statute of limitations is actually imposed on the property owner of record rather than the party who has adversely possessed the property at issue. Indeed, once a party adversely possesses the property owner of record's land, the property owner has 15 years to file an action and recover the land. *Beach v Lima Twp*, 283 Mich App 504; 770 NW2d 386 (2009). Accordingly, contrary to Defendants' assertion, the applicable statute of limitations actually runs against them rather than against Plaintiff.

In their motion, Defendants' rely on this Court's Opinion and Order in *Ludwig v Benefield, et al.*, Macomb Circuit Court Case No 2012-3370-CH. However, the Court has reviewed *Ludwig*, but does not find its holding persuasive in this case. *Ludwig* involved a situation where both parties had used the land at issue for over 15 years, which created a dispute over which party possessed the property. That dispute prevented plaintiff from satisfying the exclusivity requirement needed to establish adverse possession. In this case, it appears undisputed that Plaintiff has had sole possession of the Disputed Property for 36 years. Accordingly, this case is clearly distinguishable from the facts presented in *Ludwig*. Consequently, Defendants' contention is without merit and their motion must be denied.

Conclusion

For reasons as stated above, Defendants' motion for summary disposition is DENIED. Pursuant to MCR 2.602(A)(3), the Court states that this matter remains OPEN.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 30, 2014

JCF/sr

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