ICSC Michigan Continuing Education Program for Real Estate Professionals

State of the Law

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I. Michigan Supreme Court Cases

Bank of America, NA v First American Title Ins Co, No. 149599 (Mich. Apr. 13, 2016)

Facts:

- Bank of America financed four loans in exchange for mortgages on four properties.

- Unbeknown to the bank, the values of the property were inflated by fraudulent appraisals and straw buyers who immediately flipped the properties to obtain loans that exceeded the true value of the properties.

Bank of America, NA v First American Title Ins Co, No. 149599 (Mich. Apr. 13, 2016)

Facts:

- The bank foreclosed by advertisement, made "full-credit-bids," and purchased all of the properties at sheriff's sales.

- Bank of America sued third parties involved in the transaction for fraud and breach of contract to recover $7 million in losses.

Bank of America, NA v First American Title Ins Co, No. 149599 (Mich. Apr. 13, 2016)

Analysis:

- The "full-credit-bid" resolves the question of value for determining whether the mortgage debt is satisfied, but does not cut off all remedies that a mortgagee-lender might have against third parties.

Holding:

- If the mortgage-lender bids the full amount of the debt in a foreclosure sale, the lender can still sue third parties for any loss caused by the fraud or breach of contract in closing on the defaulted loan.

Ronnisch Construction Group, Inc v Lofts on the Nine, LLC, No. 150029 (Mich. July 26, 2016)

Facts:

- The plaintiff lien claimant contracted with the defendant to build condominiums. A dispute arose resulting in a payment deficiency of approximately $600,000.

- The arbitrator issued a net award in the plaintiff's favor in the amount of $450,000 but reserved the issue of attorney fees and costs for the trial court.

Ronnisch Construction Group, Inc v Lofts on the Nine, LLC, No. 150029 (Mich. July 26, 2016)

Holding:

- Pursuant to the Construction Lien Act, the plaintiff was a "lien claimant" who was a "prevailing party" in an action to enforce a construction lien through foreclosure.

- A lien claimant who succeeds on a breach of contract claim may be considered a "prevailing party" entitled to attorney fees under the Construction Lien Act.

II. Sixth Circuit Cases (Published)

Burniac v. Wells Fargo Bank, N.A., No. 15-1230 (6th Cir. 2016)

Facts:

- Burniac sued Wells Fargo Bank, N.A. in state court to prevent a foreclosure sale.
- Burniac requested that the state court enter a default judgment against the Bank, and preliminarily enjoin the foreclosure sale.
- However, the default judgment was never actually entered by the state court.
- Wells Fargo removed the case to the United States District Court for the Eastern District of Michigan which later granted Wells Fargo's motion for summary judgment.

Burniac v. Wells Fargo Bank, N.A., No. 15-1230 (6th Cir. 2016)

Holding:

- A preliminary injunction does not preclude a subsequent entry of summary judgment.

- A plaintiff must show that he was prejudiced by the violations by showing that he or she would have been in a better position to preserve his or her interest in the property absent defendant's noncompliance with the statute.

Burniac v. Wells Fargo Bank, N.A., No. 15-1230 (6th Cir. 2016)

Holding:

- Once the case was removed to the United States District Court, the request for the entry of the default judgment in the state court, or the issue of a preliminary injunction in the state court does not preclude a subsequent entry of a summary judgment in the federal court.

III. Michigan Court of Appeals Cases (Published)

NL Ventures VI Farmington, LLC v City of Livonia, No. 323144 (Mich. App. Feb. 1, 2016)

Facts:

- Pursuant to a local ordinance, the City of Livonia placed the taxpayer's delinquent water service charges on the City's tax rolls.

- The taxpayer sued, challenging placement of the water service charges on the tax rolls.

NL Ventures VI Farmington, LLC v City of Livonia, No. 323144 (Mich. App. Feb. 1, 2016)

Analysis:

- Under MCL 123.161 et seq., a municipality can provide a lien on property to which water is supplied and has discretion in the manner it utilizes to collect on these liens.

- Under MCL 141.101 et seq. (the Bond Revenue Act) free service furnished by a public improvement is prohibited and gives discretions to the municipality to adopt ordinances to provide for adequate operation of such public improvement.

NL Ventures VI Farmington, LLC v City of Livonia, No. 323144 (Mich. App. Feb. 1, 2016)

Holding:

- A municipality may enact an ordinance that allows the municipality to place delinquent water service charges on municipal tax rolls.

- The City of Livonia had statutory authority to enact its ordinance, which allows the City to take a water/sewage lien and place it on the City's tax roll.

Department of Environmental Quality v. Morley, No. 323019 (Mich. App. Feb. 9, 2016)

Facts:

- The MDEQ filed a complaint seeking an injunction and civil fines for dredging, filling, and draining of a wetland.

- The trial court ordered defendant to restore the wetland to its prior condition, cease farming on the wetland, and pay a statutory fine of $30,000.

Department of Environmental Quality v. Morley, No. 323019 (Mich. App. Feb. 9, 2016)

Holding:

- An owner of land is presumed to have notice of the statutory ramifications of his or her land being designated as a wetland.
- As a result, when a court orders a landowner to cease all activity on land properly designated as a wetland, the order does not constitute a taking.
- Since no evidence was presented to show that the property had an economically viable use, the trial court's order did not constitute a taking.

Ronald E Johnston v Sterling Mortgage and Investment Co, No. 324855 (Mich. App. June 14, 2016)

Facts:

- Homeowners defaulted on their mortgage in 2013. Their home was purchased at a foreclosure sale by the defendant.

- Homeowners found a purchaser, had several communications with the purchaser regarding the payoff, but on the last day of the redemption period the purchaser failed to wire the money to pay off the loan and the homeowners were evicted.

Ronald E Johnston v Sterling Mortgage and Investment Co, No. 324855 (Mich. App. June 14, 2016)

Facts:

- On the last day of the redemption period, the homeowners sent a fax to the defendant indicating that they intended to pay off the loan that day, and asking for a payoff amount and wiring instructions.

Ronald E Johnston v Sterling Mortgage and Investment Co, No. 324855 (Mich. App. June 14, 2016)

Holding:

- Michigan's foreclosure by advertisement statute requires that a party seeking to redeem a property from foreclosure actually pay the redemption amount, in accordance with the statute, before expiration of the redemption period.

- A mere tender during that time is not enough.

Sau-Tuk Industries, Inc v Allegan County, Nos 324405, 325926 (Mich. App. June 28, 2016)

Facts:

- Tenant assumed the obligation to pay all utilities under a lease and contacted Board of Public Works to provide utilities to the leased property.

- After paying several utility payments, the tenant finally fell behind on the payments and the Allegan County Treasurer served landlord with a notice of forfeiture based on those delinquent charges.

Sau-Tuk Industries, Inc v Allegan County, Nos 324405, 325926 (Mich. App. June 28, 2016)

Facts:

- A local ordinance provides that if written notice from the landlord had been received by the Department of Public Works notifying them that the tenant was responsible for paying the charges, along with a copy of the lease showing same, then charges after the date of the notice would not have become a lien against the premises.

- Landlord never gave written notice under the ordinance.

Sau-Tuk Industries, Inc v Allegan County, Nos 324405, 325926 (Mich. App. June 28, 2016)

Holding:

- A landlord's failure to comply with a local ordinance requiring written notice to the municipality that a tenant has occupied the premises and is responsible for utilities will not prevent utilities liens from arising by operation of law on the subject property at the time that services are furnished, regardless of actual notice.

Stock Bldg Supply, LLC v Crosswinds Communities, Inc, No. 325719 (Mich. App. Sept. 13, 2016)

Facts:

- Church was one of many contractors hired by developer to construct a condominium project.
- Church performed the work, and had to assert a construction lien on two units, and for four units Church was provided separate mortgages in the amount of $20,000 each.
- Citizens Bank moved for appointment of a receiver, which a trial court granted, and the receiver sold all four condominium units in which Church held an interest between 2009 and 2010, conveying the property "free and clear of all liens and encumbrances."
- Church's attorney signed the order without objection.

Stock Bldg Supply, LLC v Crosswinds Communities, Inc, No. 325719 (Mich. App. Sept. 13, 2016)

Facts:

- Even with the sale, Citizens Bank's mortgage remained unsatisfied.

- Three years later, Church filed to reopen the case alleging that the mortgages were not discharged and the trial court lacked authority to discharge a mortgage other than to foreclosure.

Stock Bldg Supply, LLC v Crosswinds Communities, Inc, No. 325719 (Mich. App. Sept. 13, 2016)

Analysis:

- The court addressed the questions of whether the trial court had power to discharge Church mortgages by a sale by a receiver, and whether the term "free and clear of all encumbrances" included the mortgage sale by Church.

Holding:

- The Court affirmed a trial court's authority to order a receiver sale of mortgaged property, free and clear of liens and encumbrances including the mortgages of Church.

Charter Twp of Lyon v. Petty et al., No. 327685 (Mich. App. Oct. 13, 2016)

Facts:

- Since the 1970's, the Hoskin and Petty families conducted commercial operations on their lots situated on a total of 18 acres in Lyon Township.

- The business was for storage of landscaping equipment and material and a pole barn on a property and a trenching and power washing company from the property, storing trucks, commercial equipment and landscaping materials on site.

Charter Twp of Lyon v. Petty et al., No. 327685 (Mich. App. Oct. 13, 2016)

Facts:

- These uses were not permitted by the zoning ordinance, and it is undisputed that the township did not interfere with this business for several decades.

- Neighbors began to complain and the township issued zoning enforcement letters to cease the operations.

Charter Twp of Lyon v. Petty et al., No. 327685 (Mich. App. Oct. 13, 2016)

Analysis:

- The primary defense asserted against the Township was laches/estoppel.

- Standing alone, an historic failure to enforce a zoning ordinance is insufficient to preclude enforcement in the present absent proof that the lack of enforcement prejudiced the land owners in a substantial way.

- No such evidence was provided in this case.

Charter Twp of Lyon v. Petty et al., No. 327685 (Mich. App. Oct. 13, 2016)

Holding:

- The fact that a township failed to enforce its zoning ordinance for two decades with respect to a commercial use in a residential zone will not preclude an enforcement action, absent a showing of substantial prejudice.

Trinity Health-Warde Lab, LLC v. Charter Twp of Pittsfield, No. 328092 (Mich. App. Nov. 3, 2016)

Facts:

- Trinity Health-Warde Lab, LLC (the "Lab"), is a wholly owned subsidiary of Trinity Health Michigan.

- The Lab owns and operates a building in Pittsfield Township, used solely as a medical laboratory.

Trinity Health-Warde Lab, LLC v. Charter Twp of Pittsfield, No. 328092 (Mich. App. Nov. 3, 2016)

Facts:

- Trinity and other nonprofit hospitals use the Lab's facilities under a co-tenancy laboratory agreement.

- The Lab filed a petition with the tax tribunal alleging it was exempt from the taxation on the basis that Trinity, a charitable institution, has complete control over the lab and the lab is a charitable institution.

Trinity Health-Warde Lab, LLC v. Charter Twp of Pittsfield, No. 328092 (Mich. App. Nov. 3, 2016)

Holding:

- The Lab is precluded from claiming an exemption as a charitable institution as the exemptions require that the taxpayer be a nonprofit institution, and the Lab was not.

- An LLC set up on a for-profit basis that is wholly-owned and controlled by a non-profit hospital does not qualify for a tax exemption under MCL 211.7r or 211.7o(1).

Petersen Financial LLC v. Twin Creeks LLC, No. 329019 (Mich. App. Nov. 22, 2016)

Facts:

- Lots were conveyed by Twin Creeks Development to Carla Wolterstoff between 2002 and 2004.
- In 2006, the neighboring subdivision developed by Twin Creeks, LLC recorded a document titled "deed restrictions" covering all of the lots in that development.
- Carla Wolterstoff lost the property in a tax foreclosure and the lots were purchased by plaintiff in 2011.

Petersen Financial LLC v. Twin Creeks LLC, No. 329019 (Mich. App. Nov. 22, 2016)

Facts:

- When plaintiff put the Wolterstoff lots on the market, a neighbor in the Twin Creeks LLC subdivision notified the real estate agent for the plaintiff that the properties being sold in the Twin Creeks development were subject to deed restrictions.
- The neighbor also stated that the Twin Creeks LLC residents were intent on enforcing the restrictions against the Wolterstoff property.
- Plaintiff sued defendant for slander of title and defendant counter sued to enforce the deed restriction in a quiet title action.

Petersen Financial LLC v. Twin Creeks LLC, No. 329019 (Mich. App. Nov. 22, 2016)

Holding:

- A neighbor falsely telling another neighbor's realtor that their property is subject to deed restrictions does not meet the publication requirement for a slander of title claim, because a representation made to an agent is not a third-party communication.
- Defendants failed to establish that the deed restrictions were binding, because the restrictions at issue were not in the Plaintiff's chain of title.

Petersen Financial LLC v. Twin Creeks LLC, No. 329019 (Mich. App. Nov. 22, 2016)

Holding:

- Defendants could not meet the elements of the reciprocal negative easements doctrine.

Analysis of reciprocal negative easement:

- The elements of the doctrine of reciprocal negative easement are (1) a common ownership, (2) a general plan and (3) common ownership must have conveyed other lots with expressed deed restrictions before conveying the lot at issue.

Wells Fargo Bank v. SBC IV REO, LLC, No. 328186 (Mich. App. Nov. 29, 2016)

Facts:

- Wells Fargo held a senior mortgage, and SBC held a junior.
- The junior mortgage was to be discharged and replaced under a subordination agreement.
- The subordination agreement with the junior lienholder was conditioned on (1) no new money being loaned, and (2) recordation of the replacement mortgages.

Wells Fargo Bank v. SBC IV REO, LLC, No. 328186 (Mich. App. Nov. 29, 2016)

Facts:

- Neither condition was met and the junior lender failed to properly record the original discharge of the junior mortgage.

Wells Fargo Bank v. SBC IV REO, LLC, No. 328186 (Mich. App. Nov. 29, 2016)

Holding:

- The doctrine of equitable subrogation was applied to the senior mortgage of Wells Fargo as the doctrine is available in a quiet title action to place a new mortgage in the same priority as a discharged mortgage if the new mortgage was the original mortgagee and holders of any junior liens are not prejudiced as a consequence.

- The junior lien holder (SBC) was only prejudiced by equitable subrogation to the extent that money was added to an otherwise ordinary refinancing situation.

Port Sheldon Beach Ass'n v. Dep't of Envtl. Quality, No. 328483 (Mich. App. Dec. 13, 2016)

Facts:

- The Association attempted to remove dune grass from a portion of the lakeward boundary of a critical dune area ("CDA") due to the shoreline of Lake Michigan moving westward by 150 feet.

- The Association wanted to groom that portion of the property, but was advised by the MDEQ that it could not because it was within the CDA.

Port Sheldon Beach Ass'n v. Dep't of Envtl. Quality, No. 328483 (Mich. App. Dec. 13, 2016)

Facts:

- The Association argued that the lakeward boundary of the CDA was fixed and the MDEQ asserted that the boundary extended to the shore of the lake.

Port Sheldon Beach Ass'n v. Dep't of Envtl. Quality, No. 328483 (Mich. App. Dec. 13, 2016)

Holding:

- The lakeward boundary of a critical dune area located in Port Sheldon Township extends to the water's edge, thereby subjecting the boundary to the Sand Dune Protection and Management Act (the "SDPMA").
- The court reasoned that there are areas other than this one within the map that contained fixed boundary lines and if the legislature intended for a disputed area to contain a fixed boundary line its intent would have been evidenced on the map. It was not.

IV. Michigan Court of Appeals Cases (Unpublished)

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Facts:

- The developer and its two officers developed a 20 lot subdivision.
- They recorded an initial declaration of easements, covenants and restrictions in May 2006, which was amended and recorded by the developer on June 9, 2006.
- The amended declaration provided that each owner was responsible for paying a proportionate share of dues "upon deed transfer from the developer."

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Facts:

- Article VIII of the Declaration gave developer a unilateral right to amend the declaration, but IX provided that the Declaration could only be amended by following the voting procedure in the Association's bylaws.

- The amendment stated that it did not take effect until it was recorded.

- Each of the three Plaintiffs purchased a lot in the subdivision.

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Facts:

- One lot closed prior to the June 9th recording of the amended Declaration, and the other two lots were closed after the recording of the amended Declaration.

- The Developer sought payment of association dues from 2006 to 2011, which indicated that pursuant to the amendment, the dues were divided between only 4 homeowners, and developer was exempt from payment of any such assessments or dues.

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Analysis:

- The Plaintiff who closed prior to the recording of the amendment was not subject to the terms of the amended Declaration.
- The amendment was not properly amended according to its terms and was invalid to the extent it purported to alter division of maintenance assessments for private roads and common areas.
- Plaintiffs' alleged that the developer was also liable under the Michigan Consumer Protection Act and was not immune as a "residential home builder."
- Note, there was no contract between developer and plaintiffs for building a home for any of the Plaintiffs.

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Holding:

- The developer, as "owner" or several lots, was held to be responsible for its proportional share of dues and assessments.
- The Court defined "the owner" to refer to the record owner of fee simple title.
- The amendment was invalid as it did not follow the procedures for amending the document set forth in the original declaration.

Pedinelli et al v Turnberry Park Estate, Inc, et al, No. 324331 (Mich. App. Jan. 28, 2016)

Holding:

- The court also stated that the developers in this case were subject to the Michigan Consumer Protection Act, although often residential home builders are exempt from MCPA because the general transaction of residential home building is specifically authorized by the Michigan Occupation Code.

- However, in this case the developer did not act as a residential home builder nor did it have any form of an agreement with the plaintiffs to build homes for them.

Bethel Deliverance Tabernacle Int'l v. Vigneron, No. 326245 (Mich. App. Apr. 28, 2016)

Facts:

- Plaintiff financed its purchase of property by obtaining a purchase money mortgage from Defendant.
- Plaintiff alleged that Defendant orally promised to modify the loan and not proceed with foreclosure.
- Plaintiff didn't attempt to redeem the property during the one-year redemption period but filed a lawsuit to set aside the foreclosure less than one month before the expiration of the redemption period.

Bethel Deliverance Tabernacle Int'l v. Vigneron, No. 326245 (Mich. App. Apr. 28, 2016)

Holding:

- Filing a lawsuit before the expiration of the redemption period following a foreclosure sale does not toll the redemption period.

- A plaintiff lacks standing to challenge or set aside a foreclosure sale if he or she fails to redeem the property within the redemption period.

Exclusive Auto, Inc. v. Mattawan Holdings, LLC, No. 327045 (Mich. App. Apr. 21, 2016)

Facts:

- Plaintiff's owner testified that defendant promised to execute a land contract in the future, so plaintiff agreed to sign a one year lease, however no land contract was executed.

- Upon expiration of the one year lease, and continued promises to enter into a land contract, plaintiff signed a new one year lease with identical clauses.

Exclusive Auto, Inc. v. Mattawan Holdings, LLC, No. 327045 (Mich. App. Apr. 21, 2016)

Holding:

- The terms in a lease control a dispute where: 1) the lease expressly provides that any repairs to the property are "at tenant's expense" and alterations and improvements "shall be maintained in place upon the termination or non-renewal" of the lease; 2) the lease contains an integration clause; and 3) evidence indicates that the provisions at issue were negotiated.

Exclusive Auto, Inc. v. Mattawan Holdings, LLC, No. 327045 (Mich. App. Apr. 21, 2016)

Holding:

- Estoppel cannot be applied to impose a land contract as an exception to the statute of frauds because title to real estate may not be created by estoppel.

Chem. Tech., Inc. v. Berkshire Agency, Inc., No. 326394 (Mich. App. July 26, 2016)

Facts:

- Plaintiff sustained damages of over $5.3 million, plus an undetermined amount of "business income interruption damages" after a fire occurred in a building owned by plaintiff.

- Plaintiff was not fully insured, so it brought suit against its insurance agency alleging that the insurance agency failed in its duty to "properly advise Plaintiff regarding the types and amount of commercial insurance that should be purchased for its building and for its business personal property."

Chem. Tech., Inc. v. Berkshire Agency, Inc., No. 326394 (Mich. App. July 26, 2016)

Analysis:

- Plaintiff argued that the Insurance agent established a legal "duty" by admitting that advising Plaintiff to get better insurance was his responsibility, and that the insurance company admitted same in its reply brief.

Chem. Tech., Inc. v. Berkshire Agency, Inc., No. 326394 (Mich. App. July 26, 2016)

Holding:

- The court rejected the argument that an apparent admission gives rise to a legal duty.
- The court affirmed the trial court's finding that the insurance agency did not have a duty to plaintiff.

Sturgis Bldg. L.L.C. v. Kirsch Indus. Park L.L.C., No. 327454 (Mich. App. Aug. 9, 2016)

Facts:

- Three parties are involved:
  - Sturgis (Lender) loaned money to Kirsch (Borrower/Landlord) to purchase property.
  - Lennard Ag (Tenant) leased part of the property from Kirsch

- Kirsch (Landlord) provided Sturgis (Lender) with an assignment of rents and a security interest in the Leases.

Sturgis Bldg. L.L.C. v. Kirsch Indus. Park L.L.C., No. 327454 (Mich. App. Aug. 9, 2016)

Facts:

- Kirsch defaulted on the loan to Sturgis and the Tenant began forwarding the rental payments to Sturgis.
- Sturgis sought and received a judgment of foreclosure.
- Tenant notified assignee that the foreclosure order converted its leases into month-to-month leases and that it intended to terminate its leases at the end of the following month.

Sturgis Bldg. L.L.C. v. Kirsch Indus. Park L.L.C., No. 327454 (Mich. App. Aug. 9, 2016)

Holding:

- The Court affirmed the trial court's findings that: 1) a tenant's obligation to the assignee of an assignment of rents terminates at the end of the original mortgagor's redemption period; and 2) the assignor and assignee of the assignment of rents owe each other nothing after taking into account surpluses received through rental income.

Methner v. Vill. of Sanford, No. 326781 (Mich. App. Aug. 23, 2016)

Facts:

- Mid-Valley Agency, Inc. ("Mid-Valley") owned two parcels of land adjacent to one another.
- One parcel, a vacant parcel, was an "access parcel" that provided access to the rear of the building on the third parcel.
- This third parcel was owned by the plaintiff and housed a photography studio.

Methner v. Vill. of Sanford, No. 326781 (Mich. App. Aug. 23, 2016)

Facts:

- In 2011, the Village of Sanford began a project to improve its downtown. As part of that process, it put a curb in front of the access parcel that restricted the plaintiff's use of the parcel to access the back of plaintiff's building.

Methner v. Vill. of Sanford, No. 326781 (Mich. App. Aug. 23, 2016)

Analysis:

- The Plaintiffs established an easement that had been in use for at least 60 years – well beyond the statutorily required time period.

- This use was "hostile" and any permission by Mid-Valley to use the easement was given long after the prescriptive period had run in favor of the Plaintiff.

Methner v. Vill. of Sanford, No. 326781 (Mich. App. Aug. 23, 2016)

Analysis:

- During the prescriptive period the plaintiff's use had been hostile, and the use was acquiesced to by Mid-Valley and Mid-Valley did not give permission for the use.

Holding:

- The court reversed the trial court's finding and found that the plaintiff did, in fact, have a prescriptive easement and granted partial summary disposition in favor of plaintiffs and against the Village.

Pesola v. Golden, No. 327185 (Mich. App. Oct. 13, 2016)

Facts:

- Plaintiff was granted a right of first option to purchase defendant's real property, which housed an ice cream shop.

- Defendant received an offer for the purchase of the property for $485,000 but did not reveal that the price included $274,000 for inventory, goodwill, and a non-compete agreement, with the remaining $211,000 reflecting the offer for the real property alone.

Pesola v. Golden, No. 327185 (Mich. App. Oct. 13, 2016)

Facts:

- Plaintiff failed to file suit within the six-year period of limitations, but alleged that defendant fraudulently concealed the facts giving rise to the breach of contract claim.

Holding:

- A plaintiff may not rely on the fraudulent concealment statute to toll the statute of limitations for a breach of contract claim, where plaintiff could have discovered the facts giving rise to the claim by examining a readily discoverable warranty deed.

Morse v. Colitti, No. 328212 (Mich. App. Oct. 18, 2016)

Facts:

- Richard Morse and the Colitti's live in a platted development with the "streets, alleys, and parks" dedicated to "the use of the present and future lot owners."

- In 2009, the Colitti's decided to improve their property by creating a pathway on the lake access walk, building a stairway along the walk and erecting a wooden fence on the walk within 6 inches of Morse's home.

Morse v. Colitti, No. 328212 (Mich. App. Oct. 18, 2016)

Facts:

- Morse filed suit to remove the dock and structures Colliti built in the walk and for an order enjoining access by the back-lot tenants.

Morse v. Colitti, No. 328212 (Mich. App. Oct. 18, 2016)

Holding:

- A plaintiff who owns the dominant estate of an easement in a park has a substantial interest that would be detrimentally affected in a manner different from the general public, and thus has standing to sue a property owner who overburdens the park.

- Because plaintiff had a fee interest to the midpoint of the walk and was entitled to access it from all points along the boundary between his property and the walk, and defendants' fence impeded his access to the walk, plaintiff was entitled to summary disposition on that issue.

Morse v. Colitti, No. 328212 (Mich. App. Oct. 18, 2016)

Holding:

- The court held plaintiff had a substantial interest in determining the defendants' right to build a dock and moor a boat because plaintiff had an easement across the park.

- The defendant property owners' tenants do not, by merely using the walk, impose an unreasonable burden on the servient estate and therefore should not be precluded from using the walk to access the lake.

Woodland Estates v. City of Sterling Heights and County of Macomb, No. 328617 (Mich. App. Dec. 15, 2016)

Facts:

- Woodland applied to the City of Sterling Heights and Macomb County to develop property into condominiums.

- Sterling Heights and Macomb approved the application but reserved a 92-foot-wide tract of land across one edge of Woodland's property for the extension of a road (the "right-of-way property").

Woodland Estates v. City of Sterling Heights and County of Macomb, No. 328617 (Mich. App. Dec. 15, 2016)

Facts:

- The legal descriptions in the recorded 2003 land contract and in the 2006 master deed for the condominium project did not include the right-of-way property.

Woodland Estates v. City of Sterling Heights and County of Macomb, No. 328617 (Mich. App. Dec. 15, 2016)

Holding:

- It is constitutional to apply a statute of limitations to an inverse condemnation claim, and the six-year limitations period applies because the master deed for a condominium project clearly encompassed the property at issue as a common element, owned by the unit owners and not the plaintiff developer.

UP Hydro, LLC v. Artibee, No. 329710 (Mich. App. Dec. 29, 2016)

Facts:

- Plaintiff sent a letter offering to sell certain land to defendant pursuant to an agreement to be signed by plaintiff. Defendant accepted the offer in writing.

- The land was described as the land "your home and garage occupy (subject to survey and creation of a legal description acceptable to both parties)..."

- A separate purchase agreement was not signed.

UP Hydro, LLC v. Artibee, No. 329710 (Mich. App. Dec. 29, 2016)

Holding:

- A contract to make a subsequent contract for the sale of land was enforced because the facts indicate an intent to be bound, the writings identified the property, the parties and the consideration.

V. Other Jurisdictions

In re Deepwater Horizon, 470 S.W.3d 452 (Tex. 2015)

Facts:

- The parties entered into a Drilling Contract that provided for the scope of insurance coverage available to BP as an additional insured.

- Pursuant to the Drilling Contract, Transocean agreed to indemnify BP for above-surface pollution regardless of fault.

In re Deepwater Horizon, 470 S.W.3d 452 (Tex. 2015)

Facts:

- Transocean also agreed to acquire various types of insurance, and add BP as an additional insured in each of its policies "for liabilities assumed by [Transocean] under the terms of [the Drilling] Contract."

In re Deepwater Horizon, 470 S.W.3d 452 (Tex. 2015)

Holding:

- The incorporation by reference doctrine allows underlying transactional documents to alter the existence and scope of insurance coverage if the insurance policy manifests the parties' intent to include the document as part of the policy.

- The Drilling Contract's indemnity provisions limited Transocean's scope of liability in this instance, BP was not covered for the damages at issue.

VI. Legislative Updates

Recovery of Land by Local Unit of Government – PA 52 (HB 4747) (Rep. Hughes):

- This bill amended the Revised Judicature Act to clarify that in an action for recovery of any land to which the state—including municipalities, political subdivisions of the state, or county road commissions—is a party, the state is not subject to statutes of limitation, laches, claims for adverse possession or prescriptive easements.

Repeal of Dower Rights – PA 378 (HB 5520, SB 558, SB 560) (Rep. Kesto, Sen. Jones):

- This package of bills repeals dower rights.
- Transfers of real estate are no longer subject to potential dower claims (with the exception of property owned by men who die before the effective date).
- HB 5520, effective Dec. 22, 2016, eliminates the requirement in marriage and divorce law that a judgment of divorce contain provisions for a wife's dower rights.

Repeal of Dower Rights – PA 378 (HB 5520, SB 558, SB 560) (Rep. Kesto, Sen. Jones):

- SB 558, effective April 6, 2017, repeals dower rights. SB 560 revises sections of the Michigan's Estates and Protected Individuals Code to reflect the abolition of dower.

Electronic Signatures for Covenants – PA 355 (HB 5591) (Rep. Cole):This package of bills repeals dower rights.

- This law amends the Uniform Electronic Transactions Act to allow the owner of a lot or parcel that was subject to restrictive covenants to consent to amend, reaffirm, or repeal them, in whole or in part, by an electronic signature, if the covenants applied to more than 250 lots or parcels in a single development and state law allowed the owners to amend, reaffirm, or repeal them.

Recording and Filing Fees – PAs 224–232 (SB 599–603, 737, HB 5164–5165) (Sens. MacGregor, Zorn, Booher; Reps. Chatfield, Moss):

- This package of bills enacted changes to recording fees—specifically, it modified the amounts of recording and filing fees (i) under Section 2567 of the Revised Judicature Act, (ii) relating to the recording of a lien against oil and gas wells, (iii) under the Uniform Federal Lien Registration Act, (iv) under the State Tax Lien Registration Act, (v) under the Michigan Employment Security Act, (vi) under Article 9 of the Uniform Commercial Code, (vii) under the Land Division Act, and (viii) for recording of judgments affecting titles to realty.

Recording and Filing Fees – PAs 224–232 (SB 599–603, 737, HB 5164–5165) (Sens. MacGregor, Zorn, Booher; Reps. Chatfield, Moss):

- The bills also amend the Revenue Act to allow the state treasurer or the treasurer's authorized agent to recover recording or filing fees and other costs when it sells property to satisfy a tax deficiency.

Domestic Asset Protection Trusts - PAs 330–331 (SB 597, HB 5504):

- On March 8, 2017 (the effective date), Michigan will become one of fifteen States to permit Domestic Asset Protection Trusts (a "DAPT").

- A DAPT will permit a person to create a trust, transfer some of their assets to the DAPT and have those assets for used for their own benefit but NOT be subject to the claims of the claims of their creditors.

Domestic Asset Protection Trusts - PAs 330–331 (SB 597, HB 5504):

- This law provides a reversal of prior law and common law.
- One important limit is that the conveyance to the DAPT may not be done with "actual intent to hinder, delay or defraud any creditor."

Improved Brownfield Funding - PA 471-476 (SB 908-913):

- These bills will improve brownfield funding for cleanups using grants, loans and TIF financing.

- The changes are intended to streamline, simplify and speed up the process for loans, grants and TIF approvals and permit a greater range of eligible funding activities.

VII. Pending Legislation

Broker Licensing and Regulation – SB 26 (Sen. Kowall) (enrolled by legislature, unsigned by governor) (proposed effective date: Jan. 1, 2017)

- Article 25 of the Occupational Code regulates real estate brokers, real estate associate brokers, and real estate salespersons. Among other things, these professionals must:
  - Be licensed by the Department of Licensing and Regulatory Affairs (LARA); and
  - Successfully complete pre-licensure courses, and must comply with continuing education requirements.
- SB 26 would amend Article 25 in a number of ways as set out in the materials.