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IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO

Harbor Island Association, Inc.)	Case No. 17CV160
Plaintiffs,)	Judge Bruce Winters
v.)	<u>DECISION AND JUDGMENT</u>
Stecks Buckeye Storage Units, LLC)	<u>ENTRY</u>
Defendants.)	

This cause comes before this Court upon Motion for Summary Judgment as to Count III of Plaintiff's Amended Complaint, filed by Plaintiff.

Harbor Island is an island within West Harbor in Catawba Island Township. The real estate on Harbor Island consists of Harbor Island Subdivision Plats 1-3, Waterford Way Subdivision, Nor'Easter Cove Condominium, B & V Condominium, M & S Condominium and a parcel owned by Defendant Steck Buckeye Storage Units, LLC ("Steck"). Harbor Island Bridge ("the Bridge") is owned by Steck. The Bridge is the sole means of vehicular access to Harbor Island.

Each of the Defendants own property on Harbor Island. Plat 1 was recorded in 1959 and included lots 1-35, a parcel known as "Reserve A" and the Bridge. The Plat granted lot owners the right and privilege to use the ways shown thereon. Plat 1 was also subject to a Declaration of Restrictions which included the right to assess each lot to repair and maintain, enlarge if needed and replace improvements serving lot owners. The Bridge is part of Reserve A, is owned by Stecks and is excepted from the premises described on the recorded plat. Plat 2 and Plat 3 contain lots 36-59 and are located within Reserve A. Waterford Way, Harbor Island

Condominium and Nor'Easter Cove Condominium is located on land within Reserve A. B & V Condominium and M & S are located on Lots 56 and 57 of Plat 3, respectively. Part of the 8.4272 acres owned by Steck is located on Reserve A. Harbor Island Association, Inc. ("the Association") is the owner of a Common Lot within Plat 1 and the following roads: Shad Row, Perch Row and North Shore Boulevard.

This case is on remand from the Sixth District Court of Appeals. This Court had previously decided that the Bridge should be replaced instead of repaired and that all owners in Harbor Island owed a fair share for maintenance and replacement costs. The case was remanded for this Court to decide the issue of who has the right to direct the Bridge replacement. The Association claims it has the right to do so based on language in the Declaration of Restrictions; Steck claims it has the right to do so based on its ownership of the parcel upon which the Bridge is located.

Civ.R. 56(C) provides that before summary judgment may be granted, the court must determine that (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. Osborne v. Lyles (1992), 63 Ohio St. 3d 326.

In reviewing a motion for summary judgment, the court must construe the evidence and all reasonable inferences drawn therefrom in a light most favorable to the party opposing the motion. Morris v. Ohio Cas. Ins. Co. (1988), 35 Ohio St. 3d 45; Harless v. Willis Day Warehousing (1978), 54 Ohio St. 2d 64.

The burden of establishing that no genuine issues to any material fact remain to be litigated is on the party moving for summary judgment. Turner v. Turner (1993), 67 Ohio St. 3d 337; Fyffe v. Jenos Inc. (1991), 59 Ohio St. 3d 115, 120.

Once a party moves for summary judgment and has supported his or her motion by sufficient and acceptable evidence, the party opposing the motion has a reciprocal burden to respond by affidavit or as provided in Civ.R. 56(C), setting forth specific facts explaining that a genuine issue of material fact exists for trial. Jackson v. Alert Fire & Safety Equip., Inc. (1991), 58 Ohio St. 3d 48,52; Mitseff v. Wheeler (1988), 38 Ohio St. 3d 112, 115.

R. C. 2721.02 provides,

Subject to division (B) of this section, courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for under this chapter. The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree.

R.C. 2721.02. "In a declaratory judgment action, the trial court has a duty to construe the document under consideration and thereafter declare the rights of the parties under that document." Assn. of Cleveland Firefighters, # 93 v. Campbell, 2005 Ohio 1841.

An easement is the interest in the land of another, created by prescription or express or implied grant, that entitles the owners of the easement, the dominant estate, to a limited use of the land in which the interest exists, the servient estate. Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC (2000), 138 Ohio App.3d 57. An implied easement is established by reference to a subdivision plat depicting and dedicating a private street to the lot owners of the subdivision. Clagg v. Baycliffs Corp., 1998 Ohio 414.

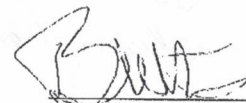
The grant of an easement includes the grant of all things necessary for the dominant estate to use and enjoy the easement. Day, Williams & Co. v. RR. Co. (1884), 41 Ohio St.

392. Generally, whoever has an easement, like a right-of-way for instance, in or over another's premises, is the one to keep it in repair. National Exchange Bank v. Cunningham (1889), 46 Ohio St. 575. Further, every grantee of a right-of-way, to be exercised and enjoyed over or through the land of the grantor, must himself repair the way, if he desires to have it repaired and kept in repair for his use, or if repairs are necessary to prevent the enjoyment of the right becoming an annoyance and nuisance to the owner of the servient tenement, unless the grantor himself has expressly undertaken the performance of that duty. Id. The owner of the dominant estate does not have the authority to do anything desired with the property as it does not belong to the dominant estate. Goralske v. Parsell, 2016 Ohio 531.

In the present case, the Declarations create an assessing authority to collect funds for repair and maintenance of the ways and boat channels and to provide utilities, but it does not grant authority to direct the manner in which those things occur. The Bridge is located on property owned by Steck and Steck has always been the overseer and director of the Bridge repairs. There is nothing presented by the Association that would grant it the authority to control the Bridge, a property that it does not own. As such, the Motion for Summary Judgment is DENIED.

THIS MATTER IS SCHEDULED FOR TELEPHONE STATUS CONFERENCE ON June 24, 2022 AT 9:45A.M. ATTORNEYS AND SELF-REPRESENTED LITIGANTS SHALL CALL THE CONFERENCE LINE AT 419-734-7555, OPTION 1, BRIDGE 434522 AT THE DESIGNATED DATE/TIME.

Clerk of Courts shall send copies of this Decision and Judgment Entry to all counsel of record and pro se parties by regular U.S. Mail forthwith.



Judge