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15 POINTERS, PRACTICE TIPS, AND REMINDERS REGARDING EASEMENTS: HIGHLIGHTS OF 2010 MICHIGAN APPELLATE DECISIONS

An easement is a right to use another's property for a specified purpose, such as for ingress and egress, utility access, a pedestrian right-of-way, or riparian rights. Easements are frequently found in the chain of title to both residential and commercial property, and so purchasers of realty may succeed to easements that they do not fully appreciate or understand. Where two parties both have rights in the same piece of property, there is a prospect of tension arising between the parties, such as the tension between a developer who wants to improve an ingress/egress easement and the owners of the underlying parcel; the tension between lakefront owners and backlot owners as to whether an easement grants only pedestrian access to the lake or full-blown riparian rights; or the tension between a utility company and the owner of a parcel subject to a utility easement as to what type of equipment may be placed in the easement.

Such tension can often spill over into the courtroom, and litigation concerning easements is both common and multifaceted. The parties may dispute whether an easement was properly created by a written instrument. (E.g., did an express grant of easement comply with the Statute of Frauds?) The parties may dispute whether an easement has come into being by operation of law, such as by prescription. Prescriptive easement cases generally turn on whether all of the elements of adverse possession have been satisfied. (E.g., did the party claiming the prescriptive easement really make adverse use of the property, if he mistakenly believed he had an easement that entitled him to use the property?) Frequently, the parties will dispute the proper burden or duration of the easement. (E.g., did a driveway easement to access "the garage on the property" last beyond the destruction of the original garage?)

All of these issues appeared in Michigan appellate case law during 2010. Summarized here are 15 of the most interesting and substantive easement law decisions of the past year, which include a number of practical pointers and reminders for transactional and litigation attorneys.

1. **An easement that merely conveys a pedestrian right-of-way does not include riparian rights.** In *City of Novi v Evers*, [1] the parties disputed the proper construction of the following language granting an easement to backlot owners: "Lot 12 of Bentley Subdivision adjoining this Subdivision is to be used for pedestrians' right of way to the lake for all purchasers of lots on Poplar Street and Pine Street, each purchaser to pay his proportion for dock improvements and taxes[.]" [2] The trial court held that the conveyance granted only a pedestrian right-of-way and nothing more, and the defendants appealed. Defendants argued that the reference to payments for "dock improvements" suggested that the easement included the right to erect docks, which is a riparian right. The Court of Appeals rejected this argument. "The trial court correctly read the conveyance's last words as imposing a limitation on the easement; if there are any taxes or dock improvement fees, the easement holders must contribute their share of these expenses or lose their right to the easement. ***49** The easement conveys only a right-of-way. A right-of-way does not convey riparian rights." [3] This case reflects the perennial tension between lakefront and backlot owners, when it comes to lake access. What the backlot owners wanted was full riparian rights, including the right to erect a dock, permanently moor boats, and sunbathe and picnic in the easement. What the Court of Appeals found the backlot owners had was the right to pedestrian ingress and egress to the waters of the lake only, meaning that they could only use the easement for the purpose of walking to and from the lake. *Evers* is also a good reminder of the duality of easements, which may be acquired permissively or adversely; having determined that riparian rights were not included within the backlot owners' express grant of easement, the Court of Appeals remanded the case to the trial court for a determination whether any of the backlot owners had gained a prescriptive easement for docking and permanent boat moorage.

2. **To achieve the 15-year period necessary to establish a prescriptive easement, a party may tack on the possessory periods of predecessors in interest by showing privity of estate; however, a group of subdivision owners may not tack onto one another's uses, because there is no privity of estate between them.** In order to establish a prescriptive easement, successive periods of adverse possession by different owners may be aggregated, or tacked, to meet the 15-year requirement, but only if there is privity of estate between the successive owners. In *Keiser v Feister*, [4] defendants-a group of current subdivision owners--claimed a prescriptive easement over an unplatted waterfront parcel. The trial court entered judgment in favor of the defendants. On appeal, the Michigan Court of Appeals held that the trial court had improperly allowed subdivision owners to tack onto one another's uses to achieve the 15-year period. "[D]efendants and the trial court believed that the neighborhood could collectively use the unplatted waterfront property, to establish the prerequisites for prescriptive easements. Michigan law has never approved such 'collective tacking[.]' Tacking has specific requirements, and defendants cannot tack onto one another's uses, because there is no privity of estate between them." [5] Because none of the defendants were able to show use for the necessary period, the Court of Appeals held that the trial court erred in holding that defendants established the required elements of a traditional prescriptive easement. The Court of Appeals acted appropriately to protect the requirement of privity of estate, which ensures that those successive owners who have adversely used the alleged servient parcel all have the same legal relationship to the alleged dominant parcel. Without privity of estate, then a community could establish a prescriptive easement by showing that any number of people used the servient parcel for different time periods that in the aggregate satisfied the 15-year requirement, but instead of a single dominant parcel there would be a plethora of dominant parcels. Such communal tacking would simply make it too easy to establish a prescriptive easement.

3. **Michigan law does not recognize an easement by necessity for utilities.** The plaintiffs in *Boyle v Lofgren* [6] possessed an express easement for ingress and egress over the defendants' parcel; however, the grant of easement was silent as to utilities. The plaintiffs sought imposition of an easement by necessity for utilities, which the trial court denied. On appeal, the plaintiffs requested that the Court of Appeals re-adopt the reasoning of *Tomecek v Bavas (Tomecek I)* [7] despite its vacation by the Michigan Supreme Court. In *Tomecek I*, the Court of Appeals held that the common-law doctrine of easement by necessity includes not only physical access to landlocked property but also access to utilities "unless [t]he parties to the conveyance that left the property without such access clearly indicated that they intended a contrary result." [8] However, the Michigan Supreme Court subsequently vacated the Court of Appeals' holding in *Tomecek I* regarding easement by necessity. [9] In *Boyle*, the Court of Appeals "decline[d] the plaintiffs' invitation to adopt anew the holding of *Tomecek I*" because the facts of the present case were distinguishable from those in *Tomecek I*. "In *Tomecek*, there was substantial evidence that the original grantors, as well as the plaintiffs, envisioned that the subject parcel would be used for residential purposes and ***50** have utility access." [10] "However, in the present case, there is no evidence showing any indication that the [original grantors] intended that plaintiffs' lots would ever be used for residential purposes or have access to utilities." [11] Therefore, the Court of Appeals declined to recognize an easement by necessity for utility access. *Boyle* is significant because it means that owners of parcels lacking access to utilities cannot claim such access rights as a matter of law ("by necessity"); instead, they must obtain additional easements for utility access, which is an added cost of development. The decision is also a good reminder that the terms of an express grant of easement are paramount. The scope of an easement for ingress and egress will not ordinarily be broadened by the Court, and so drafters should ensure that all potentially desired uses are included in an easement conveyance.

4. **A planer may grant an easement for riparian rights to backlot owners by dedicating a riparian lake-end road to the use of plat owners.** *Kircos v Waslawski* [12] involved a dispute as to whether backlot owners in a platted subdivision had an easement over Highland Avenue, a road within the subdivision which ended at a lake, for riparian purposes. The basis for the alleged easement was the plattor's dedication of all roads and alleys in the plat "to the use of the property owners of said plat." The trial court entered judgment for defendant backlot owners, ruling that they had a riparian rights easement that permitted them to use Highland Avenue to moor and dock boats, and for lounging, sunbathing, and picnicking. On appeal, the Court of Appeals recognized that a platter could grant such a riparian rights easement in the plat. "'Michigan taw clearly allows the original owner of riparian property to grant an easement to backlot owners to enjoy certain rights that are traditionally regarded as exclusively riparian.'" [13] The Court of Appeals affirmed the trial court's finding that the plat's dedication of all roads and alleys to the use of plat owners was ambiguous as to whether it included Highland Avenue's riparian rights. "The language of the dedication in the plat is not confined to granting an easement for ingress and egress, i.e., simple access to the lake. By the same token, the language does not explicitly grant riparian rights either. Therefore, the trial court did not err in finding that the plat dedication was ambiguous. Accordingly, the court was entitled to consider extrinsic evidence concerning the scope of the easement." [14] The plattor's dedication of all roads and alleys in the plat "to the use of the property owners of said plat" is

language typically employed on plats. It is interesting that the Court of Appeals found that such language was facially ambiguous as to whether it included any riparian rights attached to the roads and alleys within the plat. In other words, the dedication was equally susceptible to two different interpretations, one where "use" included riparian rights and one where "use" did not include such rights. This scenario could be replayed in numerous other plats with similar lake-end roads dedicated to public use.

5. **A particular use of an easement is not necessarily permissible merely because the easement owner obtained a building permit for the use.** In *D'Andrea v AT&T Michigan*, [15] plaintiffs brought a trespass action against defendant utility, alleging that its construction of additional crossbox cabinets on the utility easement overburdened the easement. The trial court granted summary disposition to the utility, finding that "AT&T obtained building permits from the city of Grosse Pointe Farms and Wayne County before it placed the additional crossbox cabinets on the easement" and concluding that "the city and county would only have issued building permits for 'reasonable' construction within the easement[.]" [16] On appeal, the Court of Appeals ruled that there was no evidence that the building permit application process considered the proper scope of the utility easement. "However, AT&T provided no legal basis, facts, or documentary evidence to establish that the city or county has the legal authority to decide on the nature, size, or scope of equipment a utility may install in a utility easement or whether the city or county actually considers those questions when it issues a building permit." [17] *D'Andrea* stands for the proposition that a utility does not have an unlimited right to erect equipment within a utility easement. Instead, the utility's use of an easement must be confined strictly to ***51** the purposes for which it was granted, as determined by the terms of the easement. Activities by the utility that go beyond the reasonable exercise of the use granted by the easement may be found to constitute a continuing trespass against the owner of the burdened parcel.

6. **An easement may not be created by operation of the doctrine of acquiescence.** The legal doctrine of acquiescence typically applies to the resolution of boundary line disputes. "The theory of ownership to an agreed boundary proceeds upon the ground there has been a *bona fide* dispute as to the true boundary line and the parties have by peaceful agreement made a friendly settlement of - this dispute which has been acquiesced in, carried out and performed by the respective parties." [18] However, in *John Guidobono II Revocable Trust Agreement v Jones*, the Court of Appeals initially ruled that the easement at issue had been created by both the doctrines of acquiescence and prescriptive easement. [19] But on appellants' application for leave to appeal, the Michigan Supreme Court vacated the Court of Appeals' judgment in part. "The Court of Appeals erred in concluding that the doctrine of acquiescence applies to easements." [20] The dissimilarity between the creation of an easement and the location of a boundary line makes the application of the doctrine of acquiescence to easements awkward, to say the least, and so the Supreme Court's decision that the doctrine actually does not apply to easements is a welcome clarification.

7. **For purposes of tacking, proof of privity of estate may be dispensed with where the buyers of the disputed realty had been visiting and using the parcel for years and it was always understood that the only means of access to the parcel was to travel across the disputed realty.** *Matthews v Dep't of Natural Resources* [21] involved the question whether the landlocked property owners could show privity of estate with their predecessors in order to establish the 15-year period necessary to establish a prescriptive easement over the defendant's property. Ordinarily, "[t]racking requires privity of estate, which can be shown either by (1) proof that the tacker had a description of the disputed acreage in her deed; or (2) proof that an actual transfer or conveyance of possession of the disputed acreage by parol statements was made, at the time of the conveyance." [22] In *Matthews*, the current owners did not have either type of proof of privity of estate. However, the current owners argued that they did nonetheless have privity of estate because "they had been visiting and using the property since [their predecessors] first purchased it in 1969 and that it was always understood that the only means of access to the landlocked parcel was to travel across the [defendant's] land." [23] The trial court ruled that the current owners did have a prescriptive easement, and the Court of Appeals affirmed. "We are [h]olding that the parol transfer requirement can be satisfied in the limited circumstances where the tacking property owners are well acquainted and there is clear and cogent evidence that the predecessors-in-interest undoubtedly intended to transfer their rights to their successors-in-interest, for example, by showing that the successors had visited and remained on the property and had used it for many years prior to their acquisition of the title to the property." [24] On its face, *Matthews* effectively contravenes the parol statement requirement. However, given the unique circumstances of the case, the decision was entirely proper. Where buyers and sellers are so intimately acquainted, it would not be reasonable to expect the sellers to make express parol statements about easement rights that all parties had in fact used for years. Indeed, to rigidly insist on enforcing the parol statement requirement under such circumstances would work to deprive buyers of rights that they believed - they were purchasing.

8. **An express easement for ingress and egress includes the right to extend a roadway on the servient parcel to connect the roadway to the dominant parcel.** In *Irvin v Ville-du-Lac Townhouses Condominium Ass'n,* [25] the Court of Appeals concluded that a deed expressly reserved an easement appurtenant for ingress and egress over the "roadways" of the defendants parcel for the benefit of the plaintiffs' parcel. The Court of Appeals reached this conclusion despite the fact that the ***52** roadways on the defendant's parcel did not extend all the way to the plaintiffs' parcel. "Although this roadway over the [defendants] property ends a short distance from the [plaintiffs'] property, we find that the [plaintiffs'] easement rights necessarily incorporate the right to extend the roadway and join the two parcels together." [26] The Court of Appeals recognized the principle "'that 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.'" [27] "In addition, an easement holder can make improvements to the servient estate that are necessary 'for the effective use of the easement' that do not 'unreasonably burden' the servient estate." [28] *Irvin* is a classic example of the real powers that attach to a valid easement, including the power to physically alter the servient estate in order to make effective use of the easement consistent with its purposes. The fact that the roadways on the servient parcel did not extend all the way to the dominant parcel did not impede the easement owner's right of ingress and egress; instead, the simple solution was to extend the road. Those drafting easements should bear in mind whether the purpose of the easement may entail alterations to the servient estate. For instance, even an easement that is limited to a pedestrian right-of-way may allow for the construction of steps or a walkway, depending on the grade and surface quality of the underlying realty.

9. **For purposes of establishing a prescriptive easement, a party's mistaken belief that an easement exists does not necessarily destroy the adverse or hostile nature of the party's use of the property. In** *Bacha v Ross Properties Inc,* [29] the original owner entered into a lease and easement agreement with the owner of the servient parcel for a driveway to reach the dominant parcel. Subsequently, the agreement lapsed because of non-payment of rent and property taxes. Nonetheless, subsequent owners of the dominant parcel believed they had an easement for a driveway across the servient parcel. Plaintiffs (the current owners of the dominant parcel) brought suit to establish a prescriptive easement across the servient parcel. The trial court granted summary disposition for the defendants, on the grounds that plaintiffs' belief that they were using the driveway permissively (i.e., under the supposed easement agreement) was inconsistent with the adversity required to establish a prescriptive easement. The Court of Appeals held that the trial court had erred, because the adversity or hostility required to create a prescriptive easement "merely means a use that is inconsistent with the rights of an owner." [30] Therefore, "a party's belief that an easement exists, where one does not actually exist[,] does not destroy the adverse or hostile nature of the party's use of the property." [31] The decision in *Bacha* makes a subtle distinction between permissive use (which will not result in a prescriptive easement) and use that is erroneously believed to be permissive (which may result in a prescriptive easement). It is questionable whether this distinction withstands scrutiny, and the logic of the dissent from the case that the *Bacha* court cited as precedent for its decision is persuasive: "Plaintiffs' belief that an easement existed and that therefore their use was lawful is tantamount to use by permission, which can never result in a prescriptive easement[.]" [32]

10. **The failure of one joint owner to sign an express grant or conveyance of easement will invalidate the easement.** In *Nash v Great Lakes Energy Coop*, [33] plaintiffs brought a quiet title action against defendants, alleging that the easement claimed by defendants was invalid because it was based on an express conveyance that lacked the signature of one of the joint owners of the underlying parcel. After a bench trial, the trial court dismissed the plaintiffs' action, and the plaintiffs appealed. The Court of Appeals held that the easement was invalid under the statute of frauds because it was missing the signature of one of the joint owners. "Plaintiffs argue that because an easement is an interest in property, and as such, must be conveyed by a signed writing in order to be valid, and plaintiff Cheryl Yeck, one of the owners of Parcel 1, did not sign the conveyance of easement, the easement is void under the ***53** statute of frauds. We agree." [34] "[W]hen the property in question is held jointly, all owners must sign, or the contract is void. [I]t is not disputed that there was no writing signed by Yeck, nor is it disputed that she is and at all relevant times was an owner of Parcel 1." [35]

11. **An easement may not be created by reservation in a deed, in favor of a stranger to the conveyance.** *Metropoulos Family Limited Partnership v Eugenio* [36] involved four contiguous parcels of land. Historically, the Woodhouse family owned lots 1 and 2, and the Woodhouse Land Company owned lots 3 and 4. When the Woodhouse Land Company deeded lot 4 to the Gralewskis, its conveyance was "subject to [an] easement for roadway purposes in favor of adjoining owners." The present-day owner of lots 1 and 2 brought suit, seeking to establish that this historical conveyance had reserved an easement over lot 4 for the benefit of lots 1 and 2. The trial court found no cause of action against the plaintiff, and it appealed. The Michigan Court of Appeals noted the rule that "[a] n easement may not be reserved in favor of a stranger to a deed or grant," and that "[a]t the time a parcel of property is conveyed by its owner, the owner may [only] reserve an easement over it or for the benefit of other

property he owns."[37] The Court of Appeals ruled that the historical conveyance could not have reserved an easement in favor of lots 1 and 2 because they were owned by third parties. "[B]ecause members of the Woodhouse family owned [lots 1 and 2] in 1954, the Woodhouse Land Company could not, in conveying [lot 4], reserve an easement in favor of [lots 1 and 2]. At most, the 1954 conveyance of [lot 4] to the Gralewskis created an easement over [lot 4] in favor of [lot 3]."[38]

12. **An easement may be created by an exception in a deed, in favor of a stranger to the conveyance.** In *Sneideraitis v Austin*,[39] the plaintiffs sought declaratory relief that their property was not burdened by an easement for the benefit of defendants' adjoining property. The trial court granted summary disposition for defendants. On appeal, the Michigan Court of Appeals observed the distinction between an easement created by deed reservation and deed exception. "Plaintiffs correctly cite [t]he rule that a grantor cannot by *reservation* create an easement for a third party. However, the law is clear that easements benefiting strangers to the conveyance may be created by *exception*."[40] Because the easement language in the conveyances at issue ("Excepting therefrom an easement by right-of-way for ingress and egress ...") created an exception rather than a reservation, the easement was valid.[41]

13. **For wild and unenclosed lands, a higher burden of notice is required of a party seeking to establish a prescriptive easement because permissive use is presumed.** In *Smith v Ciaramitaro,*[42] the plaintiff sought to establish an easement by prescription over the defendant's wild and unenclosed property, and the trial court entered judgment for the defendant. The Court of Appeals noted that the case was governed by the wild and unenclosed lands doctrine: "The tacit permission to use wild lands is a kindly act which the law does not penalize by permitting a beneficiary of the act to acquire a right in the other's land by way of legal presumption, but it requires that he bring home to the owner, by word or act, notice of a claim of right before he may obtain title by prescription."[43] The plaintiff's evidence showed that he had used and maintained a two-track across the defendant's land to access his own property, and that he had sometimes used the defendant's land for hunting. The Court of Appeals held that the plaintiff's use of the property had failed to give notice to defendant that plaintiff was using the property under a claim of right and therefore that the prescriptive easement claim failed.[44]

14. **In order for an easement to be limited to a particular narrow purpose, the language of the grant must be specific and limiting.** In *Wootton v Carlson,*[45] ***54** defendant claimed that the driveway easement was limited to the purpose of accessing the original garages on the parties' respective parcels, and that, because the original garages had been destroyed, the purpose of the easement had terminated. The easement in question read as follows: "It being further understood and agreed that the said spaces shall not be used for parking purposes or obstructed in any way whatsoever and shall be kept free and clear so as to be available at all times for use of the parties herein mentioned, their heirs and assigns, for the purpose of ingress and egress to the respective garages located in the rear of the aforesaid dwellings." The trial court granted summary disposition to the plaintiffs, upholding the continued existence and purpose of the easement. The Court of Appeals recognized that "[a]n easement limited to a particular purpose terminates when the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment."[46] However, the Court of Appeals found that the purpose of the easement was not limited to accessing the original garages. "The language of the deed does not support a finding of a 'specific purpose' because it fails to contain any limiting language."[47] Moreover, reading the grant of easement as a whole supported the conclusion that it was not limited to accessing the original garages. "The trial court correctly determined that, when read as a whole, the easement was plainly created to allow ingress/egress to the burdened properties, while ensuring that neither party used the joint driveway as a parking area. Although both properties originally had garages, the existence of the easement did not cease upon their removal."[48]

15. **An easement may be terminated by adverse possession.** In *Bishop v Knox,*[49] the Court of Appeals held that the defendants had adversely possessed an easement by constructing a fenced, asphalt tennis court that completely blocked the easement and maintaining the court for a period in excess of 15 years. "'To establish adverse possession, the claimant must show that his or her possession was actual, visible, open, notorious, exclusive, hostile, under cover of a claim of right, continuous, and uninterrupted for the statutory period of 15 years.'"[50] "'[U]se of an easement by the owner of the servient estate will not ripen into adverse possession unless such use is inconsistent with the easement, thus leading to application of a heightened level of scrutiny in regard to a claim of adverse possession of an easement.'"[51] "'[T]he deeded easement could not be used for its intended purpose for the statutory period; therefore, it was adversely possessed.'"[52]

Footnotes

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1 *City of Novi v Evers*, unpublished opinion per curiam of the Court of Appeals, issued May 6, 2010 (Docket No. 290079), 2010 WL 1818946.

2 *Id*, 2010 WL 1818946 at *1 (Mich App).

3 *Id* at *2 (affirming in part and reversing in part trial court's judgment and remanding for further proceedings).

4 *Keiser v Feister*, unpublished opinion per curiam of the Court of Appeals, issued Mar 2, 2010 (Docket No. 282531), 2010 WL 716095.

5 *Id*, 2010 WL 716095 at *5 (Mich App).

6 *Boyle v Lofgren*, unpublished opinion per curiam of the Court of Appeals, issued Sept 28, 2010 (Docket No. 291818), 2010 WL 3767615.

7 *Tomecek v Bavas*, 276 Mich App 252; 740 NW2d 323 (2007) (*"Tomecek I"*).

8 *Id* at 278 (quotation and alteration omitted).

9 *Tomecek v Bavas*, 482 Mich 484; 759 NW2d 178 (2008) (*"Tomecek II"*).

10 *Boyle*, 2010 WL 3767615 at *3 (Mich App).

11 *Id.*

12 *Kircos v Waslawski*, unpublished opinion per curiam of the Court of Appeals, issued May 11, 2010 (Docker No. 288894), 2010 WL 1930947.

13 *Id.* 2010 WL 1930947 at *4 (Mich App), quoting *Dyball v Lennox*, 260 Mich App 698, 703; 680 NW2d 522 (2004).

14 *Id*, 2010 WL 1930947 at *5 (affirming trial courts judgment in favor of defendants).

15 *D'Andrea v AT&T Michigan*, 289 Mich App 70;--NW2d-- (2010).

16 *Id.* 289 Mich App 70; 2010 WL 2595015 at *3 (Mich App June 29, 2010).

17 *Id* (reversing trial courts judgment and remanding for further proceedings).

18 *Warner v Noble*, 286 Mich 654, 662; 282 NW 855 (1938).

19 *John Guidobono II Revocable Trust Agreement v Jones*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2010 (Docket No. 290589).

20 *John Guidobono II Revocable Trust Agreement v Jones*, 488 Mich 989; 791 NW2d 288 (2010).

21 *Matthews v Dep't of Natural Resources*, 288 Mich App 23; 792 NW2d 40 (2010).

22 *Killips v Mannisto*, 244 Mich App 256, 259; 624 NW2d 224 (2001).

23 *Matthews*, 288 Mich App at 39.

24 *Id* at 41-42 (internal quotes and alterations omitted) (affirming in part and reversing in part).

25 *Irvin v Ville-du-Lac Townhouses Condominium Ass'n*, unpublished opinion per curiam of the Court of Appeals, issued Sept 14, 2010 (Docket No. 291534), 2010 WL 3564818.

26 *Id*, 2010 WL 3564818 at *4 (Mich App).

27 *Id*, quoting *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005).

28 *Id* (reversing trial court's judgment for defendant and remanding for entry of judgment in favor of plaintiffs).

29 *Bacha v Ross Properties Inc*, unpublished opinion per curiam of the Court of Appeals, issued Feb 4, 2010 (Docket No. 286632), 2010 WL 395652.

30 *Id*, 2010 WL 395652 at *6 (Mich App) (internal quotation omitted).

31 *Id* (reversing and remanding for trial).

32 *Killips v Mannisto*, 244 Mich App 256, 262; 624 NW2d 224 (2001) (Hockstra, J., dissenting).

33 *Nash v Great Lakes Energy Coop*, unpublished opinion per curiam of the Court of Appeals, issued Feb 9, 2010 (Docket No. 286569), 2010 WL 446916.

34 *Id*, 2010 WL 446916 at *1 (Mich App).

35 *Id* (reversing trial court's judgment for defendants and remanding for further proceedings).

36 *Metropoulos Family Limited Partnership v Eugenio*, unpublished opinion per curiam of the Court of Appeals issued Oct 12, 2010 (Docket No. 293361), 2010 WL 3984636.

37 Id. 2010 WL 3984636 at *1 (Mich App).

38 *Id* (affirming trial court's judgment for defendants).

39 *Sneideraitis v Austin*, unpublished opinion per curiam of the Court of Appeals, issued Nov 23, 2010 (Docket No. 294620), 2010 WL 4774405.

40 *Id* at *2, 2010 WL 4774405 (Mich App).

41 *Id* (affirming trial court's judgment).

42 *Smith v Ciaramitaro*, unpublished opinion per curiam of the Court of Appeals, issued Sept 2, 2010 (Docket No. 291538), 2010 WL 3447916.

43 *Id*, 2010 WL 3447916 at *2 (Mich App) (internal quotation omitted).

44 *Id* (affirming trial court's judgment).

45 *Wootton v Carlson*, unpublished opinion per curiam of the Court of Appeals, issued Oct 19, 2010 (Docket No. 293435), 2010 WL 4106704.

46 *Id*, 2010 WL 4106704 at *3.

47 *Id.*

48 *Id* (affirming trial court's judgment).

49 *Bishop v Knox*, unpublished opinion per curiam of the Court of Appeals, issued Sept 16, 2010 (Docket No. 292486), 2010 WL 3604741.

50 *Id*, 2010 WL 3604741 at *1 (Mich App), quoting *Beach v Lima Twp*, 283 Mich App 504, 524; 770 NW2d 386 (2009), lv gtd 485 Mich 1036 (2010).

51 *Id.*

52 *Id.* quoting trial court's judgment (affirming trial court's judgment granting summary disposition in favor of defendants).

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