

Winston v Archambeault

2010 NY Slip Op 31030(U)

April 27, 2010

Supreme Court, Wyoming County

Docket Number: 40365

Judge: Mark H. Dadd

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At a term of the Supreme Court held in and for the County of Wyoming, at Warsaw, New York, on the 27th day of April, 2010.

PRESENT: HONORABLE MARK H. DADD
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

DEAN and JUDY WINSTON
Plaintiffs

DECISION and ORDER

v.

Index No. 40365

RONALD J. ARCHAMBEAULT and
ARTHUR T. ARCHAMBEAULT
Defendants

The issues in the above action having duly come on to be heard in a trial before the Court without a jury on March 29, 2010, and having heard the allegations and proofs of the parties.

NOW, after hearing Amy K. Kendall, Esq., attorney for the plaintiffs, and Michael F. McPartlan, Esq., attorney for the defendants, and due deliberation having been had upon the parties' post-trial submissions, including the plaintiffs' notice of motion dated April 14, 2010, supported by the affirmation of Amy K. Kendall, Esq., dated April 14, 2010, together with the annexed exhibits, and her attorney affirmation dated April 23, 2010, and the defendants' written closing statement prepared by Michael F. McPartlan, Esq. and his affirmation dated April 20, 2010, the Court decides as follows.

This action involves a dispute between two parties who own real property and anchorage privileges on the shore of Silver Lake. Defendant Ronald J. Archambeault purchased a parcel in July 1988 which is not adjacent to the shore. He also obtained a "twenty (20) foot

wide boat anchorage on Silver Lake”. The right to use this anchorage was granted at a point off the shoreline of real property later purchased by the plaintiffs. In September 1988, Archambeault constructed a concrete dock on the land which was eventually bought by the plaintiffs. Defendants used this dock to moor and launch boats. They also maintained a wooden dock which extended into the waters of the lake perpendicularly to the shoreline.

In 1990, the plaintiffs purchased their parcel of land next to the shore of Silver Lake. They also obtained “a twenty (20) foot anchorage privilege on the shore of Silver Lake”. This privilege was to be exercised at a point directly to the north of the defendants’ anchorage site. The plaintiffs also used the concrete dock situated on their parcel to store and launch boats and to access the water on their lakefront property. Their testimony shows that the defendants’ use of the dock up to this time did not prevent the Winstons from accessing the lake.

Plaintiffs destroyed the concrete dock located on their land in 2005. The wooden dock was also destroyed. Defendants purchased a twelve foot strip of land adjacent to the shore that same year. This strip, located immediately to the south of the plaintiffs’ parcel, provided them with direct access to the lake. In 2006, they started installing a temporary dock and hoist system for use during the summer. This dock extended from their twelve foot parcel perpendicularly to the shoreline and then extended north parallel to the shoreline towards the plaintiffs’ anchorage. Plaintiffs now contend that this temporary “zig-zag” dock blocks their access to the water along their lakefront parcel and deprives them of the use of their anchorage privileges. Defendants argue that they use the present dock system to exercise the anchorage privileges that they were granted in 1988. They construe this privilege as including the right to maintain a dock off the shore of the plaintiffs’ real property.

The parties initially dispute what rights were conveyed by the grants of anchorage privileges. The Court interprets these grants as conveying a privilege to anchor a boat off the shore of the lake. The grants also conveyed the right of reasonable access to the area in the lake where these privileges could be exercised. The grant did not convey title to any real property

or the right to build and maintain a dock or pier. Reasonable access may be obtained by using a small boat such as a canoe or swimming to the anchorage site.

Thus, the defendants did not obtain title to the concrete dock or the right to build and maintain a dock in 1988. They next contend that they acquired such rights by adverse possession. The record, however, shows that the plaintiffs also used the concrete dock for storing and launching boats after 1990 and that the defendants' use was not exclusive. Furthermore, the defendants' use of the concrete dock did not interfere with the plaintiffs' access to the lake or enjoyment of the waterfront property. Thus, the defendants' exercise of their rights was not hostile or adverse to the plaintiffs' rights until they adopted the present temporary dock and hoist system in 2006. Defendants, therefore, have failed to present clear and convincing evidence to sustain their affirmative defense of adverse possession (see Walling v. Przybylo, 7 N.Y.3d 228, 232 [2006]).

The defendants may continue to erect a dock which extends into the lake from their twelve foot parcel perpendicularly to the shoreline. They could also access the lake to reach the original anchorage spot by swimming or using a small portable boat. However, they do not have a right to erect a dock in order to access the original anchorage site. Furthermore, the proof shows that the "zig-zag" dock and hoist system utilized since 2006 interferes with the plaintiffs' rights. Thus, the plaintiffs are entitled to injunctive relief on their claims.

Plaintiffs', however, have not shown that they are entitled to an award of money damages. They have shown that the defendants' use of the "zig-zag" dock has interfered with their access to the lake. There is no proof of what monetary value should be attributed to such a limitation upon their recreational use of this land during the summer. Their own testimony shows that the defendants' use of the old dock prior to 2005 did not interfere with the plaintiffs' access to the lake. Thus, their assertion that they lost possible sales of the property in 2001 and 2003 may not be attributed to the defendants' later infringement of their recreational use. Furthermore, it appears that damages on the loss of these prior sales would be barred by the

three year Statute of Limitations in CPLR 214 (see Sova v. Glasier, 192 A.D.2d 1069 [1993]). Plaintiffs have not made any attempts to sell the property since 2003 and have abandoned any such plan. They now intend to use the Silver Lake property as their summer residence. Furthermore, the award of injunctive relief will remedy the alleged diminution in the market value of their property supposedly caused by the defendants' use of the "zig-zag" dock.

Plaintiffs have filed post-trial motions seeking leave to reargue on their summary judgment motion and to amend the complaint to conform to the proof at trial. The Court's March 10, 2010 order denied summary judgment on the plaintiffs' theory that they owned the bed of Silver Lake which was adjacent to their parcel. Plaintiffs now seek leave to reargue that they do own the bed of the lake. They also contend that the trial proof shows that the defendants trespassed on their portion of the bed by building the "zig-zag" dock to extend to the original anchorage acquired in 1988. Thus, they seek to amend their complaint to add a cause of action for declaratory judgment establishing their ownership of the bed of the lake. They also seek to add a cause of action for trespass.

Plaintiffs' original complaint did not assert any claim of ownership in the bed of the lake. The issue of ownership was raised in legal arguments on the plaintiffs' summary judgment motion. The Court's March 10, 2010 order denied the motion because the record was insufficient to establish title to the lakebed. It would appear that it is not necessary to address this issue because the Court has already determined that the plaintiffs are entitled to injunctive relief against the defendants. Furthermore, the requested amendments would still not justify an award of damages.

The Court shall deny leave to reargue and the requested amendment of the complaint. It is still not possible to definitely determine title to the lakebed. The instant motion is partly based upon a deed and an exhibit which were not admitted into evidence at trial (see Exhibits C and D annexed to the April 14, 2010 affirmation of Amy K. Kendall, Esq.). Furthermore, at least two deeds in the plaintiffs' chain of title include language which indicates

that title was not granted to the center of the lakebed. The 1873 deed from the Saxtons to the Rochester and Pine Creek Railroad Company conveyed property “to the shore line of Silver Lake thence northerly along said shoreline...” as opposed to running along the lake itself. Other deeds referred to a line “along the bank” (see trial exhibits 13 and 15). The use of the cited language indicates an intent to restrict the grant so as to exclude the lakebed (see Henry v. Malen, 263 A.D.2d 698, 701-702 [1999]; White v. Knickerbocker Ice Company, 254 N.Y. 152, 156-157 [1930]; Fulton Light, Heat and Power Company v. State of New York, 200 N.Y. 400, 417 [1911]; Carlino v. Barton, 76 Misc.2d 240 [1973]; City of Geneva v. Henson, 195 N.Y. 447, 461-464 [1909]). Furthermore, as noted in the March 10, 2010 order of the Court, the plaintiffs’ deed also includes restrictive language indicating that the grant excluded the bed of the lake.

NOW, THEREFORE, it is hereby

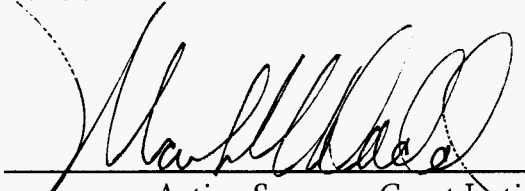
ORDERED that the plaintiffs’ post-trial motions are denied; and it is further

ORDERED that the plaintiffs are entitled to judgment granting the requested injunctive relief; and it is further

ORDERED, ADJUDGED and DECREED that the defendants Ronald J. Archambeault and Arthur T. Archambeault are permanently restrained and enjoined from installing their dock and hoist system so as to extend parallel to the shoreline in front of the Winstons’ real property at 15 June Drive, Perry, New York; and it is further

ORDERED that the plaintiffs’ other claims for relief are denied and dismissed.

DATED: April 27, 2010



 Acting Supreme Court Justice

