

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

HARB REALTIES, LLC,

Plaintiff,

v.

Case No. 2025-001085-CB

KIZY REAL ESTATE DEVELOPMENT, LLC,
DELUXE DENTAL ASSOCIATES, PLLC, and
DELUXE DENTAL ASSOCIATES #8 -
ROSEVILLE, PLLC,

Defendants.

OPINION AND ORDER

This matter is before the Court on Defendants' motion for summary disposition under MCR 2.116(C)(8).

I. Background

This is a dispute between neighboring property owners over a parking easement for the use of a parking lot located on real property owned by Defendant Kizy Real Estate Development, LLC. ("Kizy Real Estate"). Plaintiff Harb Realities LLC ("Harb Realities") alleges that it and nonparty Elie Harb own real property commonly known as 16235-43 E. Eleven Mile Road in Roseville ("Parcel B"). They purportedly purchased the property from non-parties Norbert Kaminski and his wife, Nancy Kaminski, in July 2020. (Compl. Ex. B.) Kizy Real Estate allegedly owns the neighboring parcel of real property commonly known as 16211 and 16217 E. Eleven Mile Road. ("Parcel A"). It has purportedly owned the property since September 27, 2023, when it was purchased from Norbert Kaminski. (Compl., Ex. A.) According to Harb Realities, Defendants Deluxe Dental Associates and Deluxe Dental Associates #8 – Roseville (collectively, the "Deluxe Dental Defendants") are the tenants of Parcel A.

Harb Realities alleges that in 1960, the then common owner of Parcels A and B recorded an easement that granted the “employees, tenants, occupants, invitees, and customers” of the owner of Parcel B the right to use the parking lot located on Parcel A. (Compl., Ex. C.) Harb Realities (owner of Parcel B) allegedly recorded a “Notice of Preservation of Real Property Interest” on September 29, 2023, that provides notice of its ownership of the 1960 parking easement. (Compl., Ex. D.) According to Harb Realities, the easement remains in force and as the owner of Parcel B, it has the right under the easement to use the parking lot located on Parcel A, currently owned by Kizy Real Estate.

Harb Realities further alleges that in 2023, Kaminski tried to get it to release the easement before selling Parcel A to Kizy Real Estate. It further alleges that when Kizy Real Estate purchased Parcel A in 2023, it knew the easement existed, that the easement was specifically listed as an exception to the title insurance policy, that Kizy Real Estate negotiated a lower purchase price with Kaminski after it discovered the easement, and that Harb Realities was benefiting from the easement.

In November 2023, the Deluxe Defendants notified Harb Realities that its employees were trespassing on Parcel A by parking in its parking lot. (Compl., E.) They informed Harb Realities that they did not believe the parking easement was valid, so Harb Realities no longer had any parking rights on Parcel A. (Id.) Harb Realities counsel responded by disputing the Deluxe Defendants’ assertions. (Compl., Ex. F.) This lawsuit followed.

In its March 13, 2025 complaint, Harb Realities alleges three counts against all three Defendants: a declaratory judgment that the parking easement is valid and enforceable (Count I); injunctive relief barring Defendants from interfering with its rights

under parking easement (Count II); and tortious interference with a contract or business relationship or expectancy (Count III). It also alleges a claim of unjust enrichment against Kizy Real Estate (Count IV).

On April 29, 2025, Defendants filed a motion for summary disposition under MCR 2.116(C)(8) in lieu of answer. Harb Realities filed its response on April 29, 2025. The Court heard oral arguments on June 2, 2025, and took the matter under advisement.

II. Standard of Review

A motion for summary disposition under MCR 2.116(C)(8) that the opposing party “has failed to state a claim upon which relief can be granted” must be granted “if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). It tests the legal sufficiency of the complaint based on the pleadings, including any written agreement that is the basis of action. *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); MCR 2.116(G)(5). All factual allegations in the pleadings are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Eason v Coggins Mem Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). Where resolution of the motion requires examining evidence beyond the pleadings, summary disposition under (C)(8) is inappropriate. See *Blair v Checker Cab Co*, 219 Mich App 667, 670; 558 NW2d 439 (1996) (“MCR 2.116(G)(5) provides that the trial court may not consider documentary evidence when considering summary disposition motions brought pursuant to MCR 2.116(C)(8).”) Because both Kizy Real Estate’s motion and Harb Realities’ response rely on evidence

outside the pleadings,¹ the Court will construe the motion as a motion for summary disposition under MCR 2.116(C)(10).

A motion filed under MCR 2.116(C)(10) “tests the factual sufficiency of a claim.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors*, 469 Mich 177, 183; 665 NW2d 468 (2003). The court considers the documentary evidence submitted by the parties in the light most favorable to the non-moving party. *Maiden*, 461 Mich at 120. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West*, 469 Mich at 183. The initial burden is on the moving party to support its position “by affidavits, depositions, admissions, or other documentary evidence.” *Smith v Globe Life Ins*, 460 Mich 446, 455; 597 NW2d 28 (1999). The burden then shifts to the opposing party to set forth specific facts via admissible evidence that establish a genuine issue of disputed fact exists. *Maiden*, 461 Mich at 121.

III. Law and Analysis

A. Merger of Title

Defendants first argues that each of Harb Realities’ claims fails as a matter of law.² Specifically, they argue that because Kaminski held title to both Parcel A and Parcel B,

¹ Both Kizy and Harb Realities rely on the 1982 deed transferring both parcels from Academy Realty Company to Kaminski to show Kaminski’s common ownership of both parcels. The 1982 deed was not an exhibit to the complaint; it is Exhibit A to Harb Realities’ response.

² It is unclear how Kizy Real Estate’s arguments that the parking easement has been extinguished, if correct, would warrant dismissal of all Harb Realities’ claims—in particular, its unjust enrichment claim. Kizy Real Estate has not addressed this issue.

the pre-existing 1960 parking easement was extinguished, and he did not recreate the easement when he conveyed the parcels to Harb Realities and Kizy Real Estate. In response, Harb Realities argues Kaminski's common ownership did not extinguish the parking easement because when he purchased both parcels in 1982, the deed for both parcels preserved the easement and that "subsequent transfers to [Harb Realities and Kizy Real Estate] continued to reference and honor [the easement]." (Resp., ¶16.)

Michigan Courts have long held that "[t]he union of dominant and servient estates in the same owners [also known as merger of title] extinguishes prior easements." *Penrose v McCullough*, 308 Mich App 145, 150; 862 NW2d 674 (2014), quoting *von Meding v Strahl*, 319 Mich 598, 605; 30 NW2d 363 (1948); see *Bricault v Cavanaugh*, 261 Mich 70, 72; 245 NW 573 (1932). This is because "[o]ne cannot have an easement in one's own land." *Penrose*, 308 Mich App at 150, quoting *von Meding*, 319 Mich at 605.

Here, the deeds attached to the complaint show that both Norbert Kaminski and his wife, Nancy Kaminski, conveyed Parcel B to Harb Realities in July 2020, (Compl. Ex. B), but only Norbert Kaminski conveyed Parcel A to Kizy Real Estate in 2023, (Compl. Ex. A). There's no evidence that explains how Nancy Kaminski became a co-owner of Parcel B but not Parcel A, and, more importantly, neither party has provided any argument or analysis as to what effect, if any, Nancy Kaminski's co-ownership only of Parcel B had on the status of the parking easement. Given the lack of evidence and analysis on this factual issue, Defendants' request for summary disposition is premature.

Even if Nancy Kaminski's co-ownership of Parcel B did not negate Norbert Kaminski's common ownership of both parcels such that the parking easement was extinguished when he purchased the property in 1982, summary disposition would still be

inappropriate because Kizy Real Estate failed to address whether the easement was recreated as asserted by Harb Realities.

While the merger of title of both the dominant and servient estates through a common owner extinguishes prior easements, this does not mean that an identical easement cannot be recreated when the common ownership is severed. See *Bricault v Cavanaugh*, 261 Mich 70, 72; 245 NW 573 (1932); *Morgan v Meuth*, 60 Mich 238, 252; 27 NW 509 (1886); *Schmidt v Eger*, 94 Mich App 728, 736; 289 NW2d 851 (1980); Restatement (First) of Property § 497, comment h. (1944); Restatement (Third) of Property (Servitudes), § 7.5 comment b. The easement may be recreated upon severance by express provision or by implication.

In *Chapdelaine v Sochocki*, 247 Mich App 167, 170; 635 NW2d 339 (2001), the Court of Appeals explained the standard for creating an express easement:

To create an express grant or reservation of an easement, there must be language in the instrument of conveyance manifesting a clear intent to create the easement. It is not necessary that the party reserving the easement right use any particular words as long as the intent to claim an easement is apparent and it is described sufficiently so that the easement and the parcel of land to which the right is attached can be determined, using parol evidence if necessary. [internal citations omitted.]

Here the July 20, 2020 quit claim deed conveying Parcel B from Norbert Kaminski and his wife to Harb Realities stated, “Together with all and singular tenements, hereditaments and appurtenances thereunto belong to or in anywise appertaining.” (Compl., Ex. B, p. 1.) The June 9, 2023 quit claim deed for Parcel B from Norbert Kaminski and his wife to Harb Realities stated, “Together with all and singular tenements, hereditaments and appurtenances thereunto belong to or in anywise appertaining. SUBJECT to easements and restrictions of record, zoning laws and ordinances affecting the premises” (Id.,

p. 2.)³ And the September 27, 2023 warranty deed conveying Parcel A from Norbert Kaminski to Kizy Real Estate states, “[T]ogether with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto . . . And subject to building and use restrictions and easements of record, if any, . . .” (Compl. Ex. A.) However, Kizy Real Estate has failed to elucidate any argument or cite any authority to establish that the various deeds did not expressly recreate the parking easement. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (“It is not sufficient for a party ‘simply to announce a position . . . then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’”) Similarly, beyond Harb Realities’ bare assertion that the deeds expressly recreate the easement, it has not cited any authority that supports that assertion. *Id.*

The second method of creating an easement upon the severance of the common ownership is by implication—known as an implied easement. *Schmidt*, 94 Mich App at 732-733. “An implied easement may arise in essentially two ways’: (1) an easement by necessity and (2) an easement implied from a quasi-easement⁴.” *Charles A Murray Tr. v Futrell*, 303 Mich App 28, 41; 840 NW2d 775 (2013) quoting *Schmidt*, 94 Mich App at 732-733. The Court of Appeals has explained the difference between the two as follows:

An easement by necessity may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel. An easement by necessity may arise either by grant, where the grantor created a landlocked parcel in his

³ The parties have not provided any explanation why there are two quit claim deeds from the Kaminskis for Parcel B.

⁴ A quasi-easement is also known as an implied easement from prior use. See Restatement (Third) of Property (Servitudes) § 2.12 (2000) (defining and listing the factors to determine the existence of an implied easement from prior use).

grantee, or it may arise by reservation, where the grantor splits his property and leaves himself landlocked. A right of way of necessity is not a perpetual right. It ceases to exist when the necessity for its continuance ceases.

In contrast, an easement implied from a quasi-easement requires that at the severance of an estate, an obvious and apparently permanent servitude already exists over one part of the estate and in favor of the other. It also requires a showing of reasonable necessity. Thus, three things must be shown: (1) that during the unity of title an apparently permanent and obvious servitude was imposed on one part of an estate in favor of another, (2) continuity, and (3) that the easement is reasonably necessary for the fair enjoyment of the property it benefits. [*Id.* at 41-42 (internal quotations and citations omitted).]

It is unclear whether either type of implied easement applies here as neither party has addressed this issue.

Due to the lack of evidence and analysis from the parties on the effect, if any, of Nancy Kaminski's co-ownership only of Parcel B, and the parties' failure to address whether a new parking easement was created by the severance of Norbert Kaminski's ownership of both parcels, Defendants' request for summary disposition based on its merger argument must be denied. Moreover, because discovery is still ongoing summary disposition under MCR 2.116(C)(10) is inappropriate. See *Townsend v Chase Manhattan Mortg Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002) ("Where discovery has not yet closed, a motion under MCR 2.116(C)(10) is generally premature.")

B. Abandonment of the Easement

Kizy Real Estate next argues the parking easement has been abandoned due to nonuse of the parking lot after fence was erected separating the two parcels. In *Ludington & N R Co v. The Epworth Assembly*, 188 Mich App 25, 33; 468 NW2d 884 (1991), the Court of Appeals stated the rule for abandonment of an express easement:

To prove abandonment, both an intent to relinquish the property and external acts putting that intention into effect must be shown. Nonuse, by

itself, is insufficient to show abandonment. Rather, nonuse must be accompanied by some act showing a clear intent to abandon.

The only evidence Kizy Real Estate has provided regarding abandonment of the easement is what appears to be a Google Maps photo showing a fence between the parcels. (Mot. Ex. E.) Nothing in the photo provides any evidence that establishes both non-use of the easement and a clear intent to abandon the easement. See *Smith*, 460 Mich at 455 (the initial burden under MCR 2.116(c)(10) is on the moving party to support its position “by affidavits, depositions, admissions, or other documentary evidence.”) Given Kizy Real Estate’s failure to support this argument with sufficient evidence and the fact that discovery has only just begun in this case, its request for summary disposition based on abandonment must be denied.

IV. Conclusion

For the reasons set forth above, Defendants’ motion for summary disposition is DENIED. This Opinion and Order neither resolves the last pending claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: July 3, 2025



Kathryn A. Viviano

Signed by KATHRYN VIVIANO 07/03/2025 09:07:24 QmCkuFng

Hon. Kathryn A. Viviano, Circuit Court Judge