



Real Estate

MICHIGAN SUPREME COURT CLARIFIES APPLICATION OF THE LAND DIVISION ACT TO ACTIONS SEEKING TO ESTABLISH SUBSTANTIVE PROPERTY RIGHTS

by Phillip J. DeRosier
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The Michigan Supreme Court recently clarified the interplay between Michigan's Land Division Act ("LDA"), MCL 560.101 *et seq.*, and actions seeking to establish substantive property rights. In *Beach v Lima Township*, ___ Mich ___ (Docket No. 139394, June 3, 2011), the plaintiffs filed an action to quiet title to certain undeveloped property in Lima Township based on the doctrine of adverse possession. Because the property at issue had been designated as streets on the recorded plat, the township intended to use and develop the property for access to a planned fire department substation. The plaintiffs, however, claimed that they had acquired title to the property by farming it and by maintaining private trails and fences on the property.

The township sought to dismiss the action, arguing that the plaintiffs' action should have been brought under the LDA, MCL 560.221, which allows a circuit court to vacate, correct, or revise a plat. The circuit court disagreed, finding that the plaintiffs "had established the elements of adverse possession" and "were not required to proceed under the LDA." The Court of Appeals affirmed, concluding that because the plaintiffs' adverse possession action "did not expressly seek . . . 'to vacate, correct, or revise a dedication in a recorded plat,'" they were not required to file an action under the LDA. The Court of Appeals reasoned that "akin to quieting title, resolution of underlying disputes regarding the nature, character, and scope of existing property rights that could potentially lead to plat revisions may be undertaken in the context of an LDA action, but is not mandatory."

A majority of the Supreme Court affirmed the Court of Appeals' decision, holding that "an action that seeks to establish a substantive property right arises independently of an LDA action to vacate, correct, or revise a recorded plat," and that "[i]t is only after such a property right has been recognized that the need arises under the LDA to revise a plat that does not reflect the newly recognized property right." The five-justice majority explained that the "creation, termination, and vacation of plats are controlled by the statutory authority of the LDA." As a result, the LDA serves as the exclusive means for seeking to vacate, correct, or revise a dedication in a recorded plat. "However, [t]he LDA was never intended to enable a court to establish an otherwise nonexistent property right. Rather, the act allows a court to alter a plat to reflect property rights already in existence." The majority thus found that the plaintiffs' action to quiet title based on adverse possession "was the appropriate action to establish their entitlement to hold record title to the property at issue." Because the plaintiffs' action "established a substantive property right that was not reflected in the plat or traceable to the platting process," it involved "more than merely correcting the plat to reflect a preexisting interest in land."

In support of its conclusion, the majority turned to the "plain language of the LDA." The majority observed that the LDA defines a plat merely

as a "map or chart of a subdivision of land," MCL 560.102(a), and that a party seeking to vacate, correct, or revise a plat must set forth the "reasons for seeking the vacation, correction, or revision of the plat." MCL 560.223(b). Accordingly, the majority reasoned, "without a judicial decree showing that plaintiffs validly obtained record title to the property, there is no legal or record basis for plaintiffs to seek a vacation, correction, or revision of the plat. Thus, the plat *accurately* reflected the underlying substantive property rights until the change in ownership rights was established by plaintiffs' adverse possession action." The majority also found its conclusion to be consistent with the Court's prior caselaw addressing the LDA, including *Martin v Beldean*, 469 Mich 541; 677 NW2d 312 (2004), and *Tomecek v Bavas*, 482 Mich 484; 759 NW2d 178 (2008). In *Martin*, the plaintiffs were required to proceed under the LDA only because they sought to have a plat dedication declared "null and void," whereas an LDA action was necessary in *Tomecek* because it involved the scope of easement rights that were found to have already existed in a plat.

Justice Markman, joined by Justice Cavanagh, dissented. The dissent argued that because the result of the plaintiffs' action was to require that the plat be "vacated, corrected, or revised," they were required to proceed with an action under the LDA. According to the dissent, the majority's interpretation of the LDA introduced "uncertainty and instability into Michigan property law" because it enabled parties to file actions altering substantive property rights as reflected in a plat without ensuring that the plat itself is changed accordingly. Such a result, the dissent argued, "undermines the primary purpose of the LDA, which is to ensure that plats on file remain accurate."

Until its decision in *Beach*, the Supreme Court had never clearly addressed whether an action under the LDA is required when a party seeks to alter substantive property rights reflected in a recorded plat. It is now clear that although an LDA action *may* be brought, it is not required. Proceeding under the LDA is only *required* when the plat itself is sought to be "vacated, corrected, or revised."

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