NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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June 7, 2020

LETTER OPINION

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Counsel for Defendants / Counter-Plaintiffs

Re: *Atul Rustgi v. James Webb and Hong Webb*
Case No. CL-2019-10190

Dear Counsel:

This case is before the Court on Plaintiff's action for declaratory judgment, and Defendants' counterclaims for trespass, nuisance, and injunctive relief, all stemming from the question whether an easement in favor of Plaintiff affords him the right to dock a boat

permanently alongside a sea wall occupying roughly one third of the frontage of Defendants' servient property on Lake Barcroft. Plaintiff owns Lot 613 and Defendants own Lot 612. This case presents a number of interlocking issues regarding land and water use, to wit, the scope of the easement, whether extrinsic evidence may be considered in its interpretation, whether an easement by prescription has been established, and whether the docking of the boat and the installation of an electrical outlet on the sea wall are trespassory or a nuisance. This court finds the following: A) As the express easement agreement is unambiguous on its face, resort to parol evidence to delineate further the intent of the drafting parties is not permitted, particularly as the evidence would serve to contradict the narrowly tailored written terms of the agreement; B) The scope of the 1966 written easement agreement grants only "ingress and egress to Lake Barcroft," within a twenty-foot wide corridor extending to the lake through Defendants' Lot 612 property, and therefore does not convey riparian rights to Plaintiff; C) Although the agreement states the sea wall was constructed for the "use" of the parties in the "whereas" preamble, that language did not further expand "use" to include storage of objects, like a boat lashed to such wall, but rather at most qualified that the sea wall may be used to effect ingress and egress to the lake from within the easement area; and D) While the agreement reserves Defendants' right to also use the easement area, their own riparian rights are similarly limited by the terms expressed, which do not permit them to interfere with Plaintiff's easement by blocking reasonable access to the lake, which the Defendants have not heretofore done.

Consequently, the Court thus holds: 1) Plaintiff must remove his boat as its dockage alongside Defendants' sea wall is incongruous with the expressed terms of the

easement agreement, and is an improper expansion of the grant; 2) Plaintiff's claim of easement by prescription is denied as he has failed to demonstrate the requisite adversity to establish an easement by prescription for docking his boat, but instead has proven a long history of permissive use granted by previous owners of the servient Lot 612; and 3) Plaintiff's docking of his boat, and electrification and use of the electrical outlet are both trespassory and a nuisance, and in violation of the riparian and easement agreement rights of the Defendants.

This Court has the authority to award injunctive relief stemming from improper use of an easement and to abate nuisances. Therefore, this Court directs that Plaintiff is permanently enjoined from docking a boat alongside the property of Defendants and shall also disconnect the electrical line running from his property to the sea wall along which his boat has been stored. Plaintiff has disclaimed being responsible for storing other smaller boats and boogie boards on Defendants' property, therefore Defendants are free to dispose of such items, in addition to the trespassory electrical outlet and line, as they deem fit. However, Defendants are not permitted to block permanently any portion of the easement area so as to interfere with Plaintiff's reasonable "ingress and egress to Lake Barcroft."

BACKGROUND

On September 23, 1966, in Fairfax County, Virginia, the owners of Lots 612, 613, and 615 in Section 6 of Barcroft Lake Shores Subdivision recorded the easement that is the subject of this litigation. As Lots 613 and 615 do not directly abut Lake Barcroft, the easement granted the owners of Lot 613 and 615 access to a twenty-foot shaded portion

of Lot 612 "for the purposes of ingress and egress to Lake Barcroft." Pl.'s Ex 1. In this easement, the owners of Lot 612 "reserve the right to use said area on said plat for their own use and their heirs and assigns." Id. The owners of Lot 615, although parties to the original easement, are not parties to this action. At the time of the easement, Lot 612 was owned by John and June Fidel, and Lot 613 was owned by Floyd I. Robinson and Charlotte H. Robinson. During the Robinsons' nearly fifty years of ownership of Lot 613 after the grant of the easement, they were involved in building a retaining wall, dredging significant portions of Lake Barcroft at the edge of the easement, installing an electrical outlet outside of the easement area, and docking a pontoon boat habitually at the retaining wall.

In 2013, Plaintiff Atul Rustgi purchased Lot 613 and continued to make use of the easement and dock a twenty-eight-foot pontoon boat at the retaining wall on Lot 612, the battery of which he charged via the electrical outlet constructed by the Robinsons near the wall. In June of 2017, Defendants James and Hong Webb purchased Lot 612 and spent the next eighteen months constructing a new home on the land. On January 26, 2019, Defendants wrote a letter to Plaintiff and the owner of Lot 615, requesting that they "mak[e] arrangements in order to conform with the original obligations of the easement," which Defendants asserted did not permit boat docking, electrical wiring, or personal property storage. On February 1, 2019, Plaintiff and the owner of Lot 615 wrote a letter to Defendants, claiming boat docking was within his right under the easement. Plaintiff further asserted the previous owners of Lot 613 had been using Lot 612 in this way in excess of twenty years, and therefore Plaintiff did not remove his property from the easement area. On July 25, 2019, Plaintiff filed a complaint, seeking declaratory judgment

that the original easement permitted his use, or alternatively, that he and his predecessors in interest had established a prescriptive easement. Defendants filed a demurrer, claiming the easement was unambiguous and did not include such rights as docking, electrical use, or personal property storage. The demurrer was overruled on October 4, 2019, at which point Defendants amended their counterclaim to allege trespass and nuisance and sought injunctive relief regarding the original easement. Plaintiff answered, denying both claims and asserting the statute of limitations and doctrine of laches as affirmative defenses. Trial in this cause was held on May 26, 2020, via video conferencing technology, at the conclusion of which the Court took the matter under advisement in contemplation of the parties' briefs.

ANALYSIS

I. The Scope of the Easement is Limited to Its Express Terms

> An easement is a privilege held by one landowner to use and enjoy certain property of another in a particular manner and for a particular purpose. . . . [T]his privilege . . . [encompasses] an affirmative right to use and enjoy the encumbered property free from interference by the grantor of the easement or by other persons. Easements can be created by express grant or reservation, or by implication, estoppel, or prescription.

Anderson v. Delores, 278 Va. 251, 256–257 (2009) (citations omitted). "[W]here [t]he language in the deed . . . is clear, unambiguous, and explicit . . . a court called upon to construe such a deed should look no further than the four corners of the instrument under review." *Irby v. Roberts*, 256 Va. 324, 329 (1998) (internal quotations and citations omitted).

Plaintiff posits that the terms of the easement should be expanded in scope by a long history of docking of the boats of Plaintiff and of his predecessors in interest

alongside the sea wall of the Defendants' servient estate. Plaintiff maintains the clear purpose of the creation of the sea wall and improvements on Lot 612, constructed in large measure by the previous owners of Lot 613 and 615, was to facilitate the permanent docking and use of the boat owned by Plaintiff. To the extent this extrinsic evidence is permissible at all, it must be limited to clarification of the written deed, as "[p]arol *contemporaneous* evidence is, in general, inadmissible to contradict or vary the terms of a valid written instrument[.]" *Camp v. Camp*, 220 Va. 595, 598 (1979) (emphasis in original).

In this case, however, the easement expressly delineates its purpose to be "ingress and egress to Lake Barcroft," and expanding the easement to include the right to dock a boat would not be a mere clarification of its terms, but rather a contradiction of the stated limitations. *See* Pl.'s Ex 1. Extrinsic evidence cannot be used to contradict the express agreement by attempting to expand the grant where the plain language does not invite a broader interpretation. If the parties intended a wider easement to be binding on their successors, it was incumbent on them to express such desire in the deed rather than relying on permissive use beyond the stated terms. *See Hoffman Family, L.L.C. v. Mill Two Associates*, 259 Va. 685, 695 (2000). While there clearly was consistent permissive use beyond the delineated scope of the easement as a product of apparent friendship among the previous landowners, the Court is limited by precedent to enforce the expressed terms of the easement, which are clear, definite, and limited.

Having determined extrinsic evidence may not be considered by this Court in qualifying the express terms of the easement, the question before the Court is whether the express terms nevertheless permit Plaintiff to dock his boat permanently along Lot

612. Ingress involves "[t]he act of entering," egress "[t]he act of going out or leaving." *INGRESS* and *EGRESS*, *Black's Law Dictionary* (11th ed. 2019). The phrase "ingress and egress" thus implies motion, whereas "docking" indicates stagnation, a lack of motion, or staying put.

The question whether an easement allows the parking of a vehicle is analogous to the question of whether this easement implies the right to dock a boat. Parking of land vehicles, when not explicitly enumerated in an easement, is not implicit in an easement for ingress and egress. *See London Towne Homeowners Ass'n v. Greene*, 27 Va. Cir. 504 (Fairfax 1990) (listing ingress and egress as a grant separate from parking in an easement); *Kwolek v. Swickard*, 944 N.E.2d 564, 567 (Ind. Ct. App. 2011) (holding that an easement expressly for ingress and egress does not include the right to park). Moreover, the physical nature of this particular easement area indicates that long-term docking of a boat of this size inherently hinders the ability of others to ingress or egress from the lake, a right which was expressly reserved to the owners of Lot 612 in the original easement. The Plaintiff's boat is twenty-eight feet long, and visibly of such width it effectively blocks Defendants even from wading into the water at the easement area. Because the easement grants the right for ingress and egress to the owners of Lot 613 while reserving similar rights to the owners of Lot 612, this Court finds neither party may block the other's access to the lake through the twenty-foot wide corridor of the easement to the lakeside.

Plaintiff suggests riparian rights were conveyed to his predecessors in interest implicitly by the easement and by mention in its "whereas" clause that the sea wall was constructed for the purpose of the use of both the servient and dominant estates.

> Every riparian owner has the right to the water frontage belonging by nature to his land. This right includes, among others, the right of access from the front of his land to the navigable part of the water course, and also the right to the soil under the water between his land and the navigable line of the water course, whereon he may erect wharves, piers, or bulkheads for his own use, or the use of the public, subject to such rules and regulations as the Legislature may see proper to impose for the protection of the public.

Groner v. Foster, 94 Va. 650, 651 (1897). "[R]iparian rights are severable from the property to which the rights were originally appurtenant. Further, such severance need not be explicit, and may be accomplished by clear implication when one party conveys to another the right to build a wharf or pier by easement, or by lease[.]" *Burwell's Bay Improvement Ass'n v. Scott*, 277 Va. 325, 329 (2009) (citations omitted).

The easement in this case does not explicitly address riparian rights in use of the sea wall, and is qualified by its express terms to direct only travel to and from the lake along the twenty-foot wide corridor. In the absence of a statement to the contrary, landowners generally retain those rights which are not expressly conveyed. These rights include Defendants' right of ingress and egress freely from Lot 612 to the waters of Lake Barcroft, and to make use of the easement area, a right which is expressly reserved in the easement itself. Although the dominant estate has an unchallenged right to make use of the easement for ingress and egress, that use cannot totally restrict the servient estate's use of its own property. *See Langley v. Meredith*, 237 Va. 55, 62 (1989) (holding that the riparian owner has a right of access to the water). As the easement designates a twenty-foot wide area for ingress and egress, Plaintiff's pontoon boat obstructing a large portion of those twenty feet is impermissible, as he is effectively taking a portion of the easement for his exclusive use, despite a clear reservation for Defendants' concurrent use. Plaintiff's lacks the right to narrow a jointly used area unilaterally to exclude use by

the Defendants, as "where a reservation is of a certain width, that width cannot be encroached upon." *Snead v. C & S Properties Holding Co.*, 279 Va. 607, 615 (2010) (quoting *Willing v. Booker*, 160 Va. 461, 465 (1933)).

In *Irby,* the Supreme Court of Virginia held the term "riparian rights" need not be stated to be within the scope of the language included in an easement, but the situation in the instant case is not analogous. *Irby*, 256 Va. at 330. The easement in *Irby* specifically concerned the building of a pier. The logical jump required to construe riparian rights as included with in-water construction is significantly less liberal than the leap required to believe ingress and egress includes the right to dock a boat indefinitely. *See Id.* Furthermore, the conveyance of riparian rights to Plaintiff in this way would almost entirely deprive Defendants of the riparian rights inherent to their property, an inference that is antipodal to the plain terms of the easement which direct concurrent use. Although the easement requires the mutual maintenance of a retaining wall at the edge of the easement, this does not create a new set of rights to the grantee, but rather merely commits the parties to continued maintenance of the access corridor so that the retained land does not collapse into the lake impeding ready access. *Irby* cannot be applied as Plaintiff urges, to equate the construction of a retaining wall with a conveyance of exclusive riparian rights.

Ancillary to the boat docking issue, the installation of the electrical outlet by the Robinsons constituted an improper expansion of the easement, as it is neither a permitted use within the express terms, nor even located within the physical bounds of the easement area. "[I]njunctive relief may be awarded for the unlawful use of an easement. . . . The use of an easement must be restricted to the terms and purposes on

which the grant was based." *Nishanian v. Sirohi*, 243 Va. 337, 339 (1992) (citing *Robertson v. Bertha Min. Co.*, 128 Va. 93, 101, 104 (1920)). It stretches credulity to conclude the terms "ingress and egress" to the lake include the installation or use of an electrical line and outlet. Therefore, any use of the outlet by Plaintiff is impermissible.

In sum, the scope of the express easement may not be expanded by extrinsic evidence, does not convey riparian rights, and has been exceeded by the permanent docking of the boat and installation and use of the electrical line and outlet.

II. A Prescriptive Easement Has Not Been Established

Plaintiff asserts in the alternative that if the scope of the express easement is too narrow to allow the docking of his boat, he has instead acquired the right to dock and use of the electrical outlet by prescription.[1] The standard for establishing a prescriptive easement is well-settled and unbending:

> [T]he claimant must prove, by clear and convincing evidence, that his use of the [property in question] was adverse, under a claim of right, exclusive, continuous, uninterrupted, and with the knowledge and acquiescence of the

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[1] Plaintiff does not assert he has an easement by implication and the elements in support thereof are not herein present.

> Such an easement is based on the legal principle that when one conveys land, he is presumed to transfer all that is necessary to the use and enjoyment of the land conveyed. While one cannot have an easement on land he owns, if, before severance, one part of the land was used for the benefit of another part, a "quasi-easement" exists over the "quasi-servient" portion of the land. That easement is conveyed by implication when the dominant tract is severed; the grantee of the dominant tract obtains an easement over the servient tract, based on the previous use.
>
> While the extent of the easement right is determined by the circumstances surrounding the conveyance which divides the single ownership, the existence of the easement is established on a showing that (1) the dominant and servient tracts originated from a common grantor, (2) the use was in existence at the time of the severance, and that (3) the use is apparent, continuous, and reasonably necessary for the enjoyment of the dominant tract.

Russakoff v. Scruggs, 241 Va. 135, 138–139 (1991) (citations omitted).

> owners of the land over which it passes, and that the use has continued for at least 20 years.

Ward v. Harper, 234 Va. 68, 70 (1987). The claimant does not need to be the only party using the area in order to establish exclusivity:

> It is not essential, however, in order to satisfy the latter principle, that the claimant shall be the only one to enjoy the right of way, since other persons may likewise acquire a prescriptive right to use it; nevertheless, claimant's right must be exclusive in the sense that it does not depend for its enjoyment upon similar rights in others.

Davis v. Wilkinson, 140 Va. 672, 677 (1924) (quoting *Kent v. Dobyns*, 112 Va. 586, 587–588 (1911)). However, permission destroys prescription, and the "[u]se of property, under the mistaken belief of a recorded right, cannot be adverse as long as such mistake continues." *Chaney v. Haynes*, 250 Va. 155, 159 (1995). Moreover, if "the original entry on another's land was by agreement or permission, possession regardless of its duration presumptively continues as it began, in the absence of an explicit disclaimer." *Kim v. Douval Corp.*, 259 Va. 752, 756 (2000) (quoting *Matthews v. W. T. Freeman Co., Inc.*, 191 Va. 385, 395 (1950)).

During the trial, Plaintiff presented testimony from Floyd Robinson, Jr., whose parents had owned Lot 613 and arranged for the original easement with the previous owners of Lot 612, the Fidels. Robinson detailed a history of use of Lot 612 by his parents spanning well over twenty years, which included docking a boat of similar size and style to the boat Plaintiff currently has docked alongside the retaining wall, with the apparent consent of Lot 612's contemporaneous owners, who on rare occasions were even guests on the boat maintained by the Robinsons. As to the electrical outlet, Robinson indicated neither he nor his parents believed the outlet to be physically outside of the easement

and was rather surprised to learn during the course of the litigation that the installation was not within the easement corridor. He related his belief that docking the boat was consistent with the easement and permission[2] from the previous owners of Lot 612. As it is Plaintiff's burden to prove the elements of a prescriptive easement by clear and convincing evidence and insufficient supporting evidence has been presented, this Court finds prescription fails for lack of demonstrated adversity.

III. Trespass and Nuisance Claims Against Plaintiff are Proven

Having determined the scope of the easement is exceeded by docking the boat and the installation and use of the electrical outlet, the Court turns to the counterclaims of Defendants for trespass and nuisance. While statutory criminal trespass is limited to acts done by a person, Va. Code § 18.2-119, Virginia common law establishes civil "trespass is an unauthorized entry onto property which results in interference with the property owner's possessory interest therein," and includes invasions by objects. *Cooper v. Horn*, 248 Va. 417, 423 (1994). "[I]n order to maintain a cause of action for trespass to land, the plaintiff must have had possession of the land, either actual or constructive, at the time the trespass was committed." *Id.* "In addition, to recover for trespass to land, a

[2] Although generally "'a license is personal between licensor and licensee and cannot be assigned.' . . . [T]he authority in Virginia equates an irrevocable license with an easement." *Maplefield Homeowners Ass'n v. Basham*, 34 Va. Cir. 43 (1994) (quoting *Bunn v. Offutt*, 216 Va. 681, 683 (1976); citing *Hodgson v. Perkins*, 84 Va. 706 (1888)). Therefore, if there had been evidence of such an agreement that the previous owner of Lot 613 made improvements to Lot 612, "which would not have been made but for the permission having been given" by the owners of Lot 612, then the agreement "coupled with an interest" could be seen as "creating an interest in the land, and which, as it is believed, the great weight of authority holds to be, in equity, at least tantamount to, if not technically, an easement." *Buckles v. Kennedy Coal Corp.*, 134 Va. 1, 17 (1922). *See also Kent,* 112 Va. at 590. Plaintiff cannot, however, rely on a separate oral agreement he has not proven existed.

plaintiff must prove an invasion that interfered with the right of exclusive possession of the land, and that was a direct result of some act committed by the defendant." *Id.*

Plaintiff's boat is docked in Lake Barcroft and attached at two points to the retaining wall partially within the easement. Because the lake itself is communal property, the boat itself is not trespassing, but the use of the retaining wall on Lot 612 is trespassory, as the right to dock is not within the scope of the easement. For "every action for injury to property" a claim "shall be brought within five years after the cause of action accrues." Va. Code § 8.01-243(B). Although Plaintiff and his predecessor in interest docked their pontoon boat in the same place habitually for more than five years, Plaintiff's repeated acts of trespass during the last five years were temporary rather than continuous. The boat is removed for use on the lake, which is not Defendants' property, creating a new cause of action each time it is redocked at the retaining wall on Lot 612. *See Forest Lakes Cmty. Ass'n v. United Land Corp. of Am.*, 293 Va. 113, 127–128 (2017) (holding that a series of repeated actions causing temporary injuries to property restart the limitation period anew with each such action). By the same standard, the statute of limitations for nuisance regarding the boat's presence has not yet run. Va. Code § 8.01-243(B). As Robinson's testimony indicated that the electrical outlet had been installed more than five years ago, the statute of limitations has run on its installation, but not on its repeated use by Plaintiff to charge his boat, as the outlet is on Defendants' property and its use represents a temporary trespass.

Defendants complained additionally of miscellaneous other personal property, such as small boats and boogie boards, being stored on their lot. Plaintiff alleges they are not his personal property and Defendants have clearly indicated a desire to remove the

items via their January and February 2019 letters. As the items were disclaimed by the Plaintiff, the Court granted his Motion to Strike as to being held responsible for the removal of those items. The Defendants are thus free to dispose of those objects as they deem fit.

In sum, Plaintiff's acts of tying the boat to the sea wall and plugging into the electrical outlet are trespassory and also a nuisance, interfering with Defendants' full use and enjoyment of their property. The Plaintiff must therefore remove his boat. As the original installation of the outlet was not done by Plaintiff and the statute of limitations for its installation has passed, he need not remove it but he must abate the nuisance of electrifying the outlet which prevents the Defendants from effecting safe outlet removal. Defendants may thereafter dispose of the electrical line as they deem fit.

IV. Plaintiff's Defense of Laches is Inapplicable

"Laches has been defined as an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party." *Finkel Products v. Bell*, 205 Va. 927, 933 (1965). Laches is an equitable defense which may be considered to defeat easement claims. *See Russakoff,* 241 Va. at 141–142 (considering laches in the context of an easement by implication). Laches "operates as the time limitation" on certain equitable claims where no statute of limitations is denoted. *See Westwood Ltd. Partnership v. Grayson*, 96 Va. Cir. 312 (2017) (discussing availability of laches as a defense to untimely claims for fraudulent conveyance which unlike voluntary conveyance have no specified statute of limitations). However, the Plaintiff asserts laches in defense to Defendants' trespass and nuisance claims. "Laches, a

species of estoppel, is an equitable defense. . . . A proceeding to enforce a legal right is not subject to the equitable defense of laches." *City of Portsmouth v. City of Chesapeake*, 232 Va. 158, 164 (1986). Here there is a statutory time limitation on the asserted claims, Code § 8.01-243(B). *See Forest Lakes Cmty. Ass'n,* 293 Va. at 115. "[T]he five-year statute of limitations, of course, is a statute — not a principle of common-law trespass. There was no such thing, after all, as a limitation of actions at common law." *Id.* at 132 (internal quotations and citations omitted). With respect to statute of limitations, "*equity follows the law.*" *Coles' Adm'r v. Ballard*, 78 Va. 139, 149 (1883) (emphasis in original). The doctrine of laches can thus not operate to defeat the intent of the General Assembly expressed in Code § 8.01-243(B), to provide a time window within which litigants may bring their trespass and nuisance claims.

Even if the defense were available to Plaintiff, in this instance laches is inapplicable due to a lack of demonstrated prejudice, and the apparent timeliness of Defendants' filings. In *Klackner,* the plaintiff was not barred from making a claim when she was unaware of her interest in the property. This is analogous to the situation at hand, wherein Defendants did not purchase the land until 2017 and lacked standing to bring a claim prior to ownership. *See Klackner v. Willis*, 15 Va. Cir. 67 (1988). "Lapse of time, standing alone, does not give rise to laches," but is applicable instead where there is "prejudicial delay in asserting a right, by one who is knowledgeable of his rights or has means of knowing his rights," which Plaintiff has not demonstrated to be the case. *Id*. Furthermore, generally the doctrine of "laches cannot be set up as a bar to legal title to land," or used as "a sword for the investiture of title," and is therefore inapplicable to establish an easement by prescription. *Id.*

Defendants proceeded to improve their land and build a new house, and to eject multiple trespassers using their small dock. By January 2019, they turned their full attention to requesting Plaintiff conform his use of the easement to its limited terms so they could make full use and enjoyment of their property. Defendants' conduct was methodical, timely and not impolitic, and their claims are not subject to the defense of laches.

CONCLUSION

The Court has considered Plaintiff's action for declaratory judgment, and Defendants' counterclaims for trespass, nuisance, and injunctive relief, all stemming from the question whether an easement in favor of Plaintiff affords him the right to dock a boat permanently alongside a sea wall occupying roughly one third of the frontage of Defendants' servient property on Lake Barcroft. Plaintiff owns Lot 613 and Defendants own Lot 612. This case presents a number of interlocking issues regarding land and water use, to wit, the scope of the easement, whether extrinsic evidence may be considered in its interpretation, whether an easement by prescription has been established, and whether the docking of the boat and the installation of an electrical outlet on the sea wall are trespassory or a nuisance. This court finds the following: A) As the express easement agreement is unambiguous on its face, resort to parol evidence to delineate further the intent of the drafting parties is not permitted, particularly as the evidence would serve to contradict the narrowly tailored written terms of the agreement; B) The scope of the 1966 written easement agreement grants only "ingress and egress to Lake Barcroft," within a twenty-foot wide corridor extending to the lake through Defendants' Lot 612 property, and

therefore does not convey riparian rights to Plaintiff; C) Although the agreement states the sea wall was constructed for the "use" of the parties in the "whereas" preamble, that language did not further expand "use" to include storage of objects, like a boat lashed to such wall, but rather at most qualified that the sea wall may be used to effect ingress and egress to the lake from within the easement area; and D) While the agreement reserves Defendants' right to also use the easement area, their own riparian rights are similarly limited by the terms expressed, which do not permit them to interfere with Plaintiff's easement by blocking reasonable access to the lake, which the Defendants have not heretofore done.

Consequently, the Court thus holds: 1) Plaintiff must remove his boat as its dockage alongside Defendants' sea wall is incongruous with the expressed terms of the easement agreement, and is an improper expansion of the grant; 2) Plaintiff's claim of easement by prescription is denied as he has failed to demonstrate the requisite adversity to establish an easement by prescription for docking his boat, but instead has proven a long history of permissive use granted by previous owners of the servient Lot 612; and 3) Plaintiff's docking of his boat, and electrification and use of the electrical outlet are both trespassory and a nuisance, and in violation of the riparian and easement agreement rights of the Defendants.

This Court has the authority to award injunctive relief stemming from improper use of an easement and to abate nuisances. Therefore, this Court directs that Plaintiff is permanently enjoined from docking a boat alongside the property of Defendants and shall also disconnect the electrical line running from his property to the sea wall along which his boat has been stored. Plaintiff has disclaimed being responsible for storing other

smaller boats and boogie boards on Defendants' property, therefore Defendants are free to dispose of such items, in addition to the trespassory electrical outlet and line, as they deem fit. However, Defendants are not permitted to block permanently any portion of the easement area so as to interfere with Plaintiff's reasonable "ingress and egress to Lake Barcroft."

Accordingly, the Court shall enter an order incorporating the holdings in this opinion and until such time THIS CAUSE CONTINUES AND IS NOT FINAL.

Sincerely,

[redacted]

David Bernhard
Judge, Fairfax Circuit Court