

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTSEGO

WILDERNESS VALLEY PROPERTY
OWNERS ASSOCIATION, INC., a Michigan
Nonprofit Corporation; JASON CAVERSON,
an individual; BRENT G. TITUS, JR, an individual;
and LEONARD ULLER, an individual,

Plaintiffs,

vs

File No: 24- -CH

CATHERINE M. POSTLEWAIT, an individual,

Defendant.

WM PAUL SLOUGH (P70489)
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COMPLAINT
AND DEMAND FOR TRIAL BY JURY

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in the complaint pending in this court nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

COMPLAINT

Plaintiffs, WILDERNESS VALLEY PROPERTY OWNERS ASSOCIATION, INC., JASON CAVERSON, BRENT G. TITUS, JR and LEONARD ULLER through their attorneys, Kirkpatrick Slough Duitsman-Coy & Mott PLC, state the following as their Complaint against Defendant:

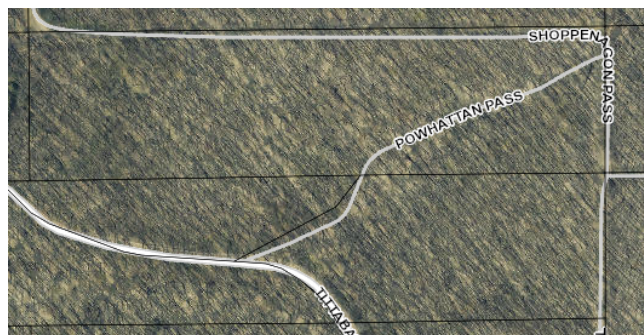
Jurisdiction

1. Plaintiff Wilderness Valley Property Owners Association, Inc. (“WVPOA”) is a Michigan nonprofit corporation, acting as successor to Marcus Land and Oil Company, the developer of the real estate development known as “Wilderness Valley” in Sections 19, 20, 21, 28, 29 & part of 33, Otsego County, Michigan; as recorded at Liber 641, Page 144, Otsego County Records (“Wilderness Valley”).

2. Plaintiffs Jason Caverson, Brent G. Titus, Jr., and Leonard Uller are individuals who own real property within Wilderness Valley. *Exhibit 1 – Plaintiffs’ Deeds.*

3. Defendant Katherine M. Postlewait is an individual who owns parcels of real property in Wilderness Valley, Tax Parcel ID No 070-021-300-065-00, 070-021-300-050-03 & 070-021-300-050-04, Tracts 12-19B, 21-19C, and 21-20, as described in the deed attached deeds as *Exhibit 2* and the survey attached as *Exhibit 3* (“Defendant’s Parcels”).

4. A trail extends across Defendant’s Parcels known as Powhattan Pass:



5. This Court has jurisdiction, and venue is proper, because this is an equitable action to quiet title and obtain a prescriptive easement for land located within Otsego County, all parties are current holders of an interest in the real property at issue, and the amount in controversy exceeds \$25,000 inclusive of attorney fees and costs.

General Allegations

6. All real property in Wilderness Valley is subject to restrictive covenants and the reservation of easements recorded October 23, 1965, as recorded at Liber 108, Page 426, Otsego County Records; as amended on May 23, 1999, recorded at Liber 721, Page 693, Otsego County Records; and as amended on June 28, 2022, recorded at Liber 1607, Page 286, Otsego County Records (“Restrictions”). *Exhibit 1 – Restrictions*.

7. The Restrictions reserve to WVPOA, as successor of the developer, the right to enforce all restrictions. *Restrictions, Paragraph 13*.

8. The Restrictions were made “subject to easements of record, also easements to give ingress and egress to county roads as evidenced by trails now existing or to be provided in the future.” *Exhibit 1, p. 3*.

9. Marcus Land and Oil Company, as developer, and its related entities including Marcus Land and Oil Co. (a Michigan limited partnership) and the George W. Smith Corporation, conveyed all parcels in Wilderness Valley “together with the rights of ingress or egress to the County Road, over and across the existing trails.” For example, see *Exhibit 5 – Deeds of Plaintiffs’ Predecessors in Title*.

10. The Restrictions further reserved to all property owners in Wilderness Valley reciprocal hunting rights.

11. At the time the Restrictions were recorded in 1965, there was an existing trail across Defendant's Parcels called Pawnee Trail (now called Powhattan Pass). *Exhibit 6 – Historical Map of Wilderness Valley*.

12. All members of WVPOA were conveyed an express easement to use Powhattan Pass.

13. Property owners in Wilderness Valley, as members of the WVPOA, have regularly used Powhattan Pass for ingress and egress to their respective parcels; for access public roads; for recreational purposes; as invitees of other owners; and to exercise their reciprocal hunting rights.

14. In the prior month, Defendant Katherine M. Postlewait has caused a gate and signage to be constructed across Powhattan Pass that unreasonably obstructs and hinders owners within Wilderness Valley, including the individual Plaintiffs, from using Powhattan Pass:



Count I
Quiet Title

15. Plaintiffs restate and incorporate by reference the allegations in paragraphs 1. through 14. above.

16. All owners in Wilderness Valley, as members of WVPOA, hold an express easement across Defendant's Parcels for ingress and egress across Powhattan Pass, having received the same in their chain of title from Marcus Land and Oil Company, as developer, and/or its related entities including Marcus Land and Oil Co. (a Michigan limited partnership) and the George W. Smith Corporation.

17. The individual Plaintiffs have received express easements across Powhattan Pass in their chain of title for ingress and egress.

18. Defendant's act of blocking or hindering access to the easement acts as cloud on the other owners' title to the easement.

PLAINTIFFS RESPECTFULLY REQUEST that this Court enter a Judgment quieting title to ingress and egress rights in Powhattan Pass to all owners in Wilderness Valley; awarding Plaintiff its attorney fees and costs; and granting Plaintiff all other legal and equitable relief to which they may be entitled.

Count II
Prescriptive Easement

19. Plaintiffs restate and incorporate by reference the allegations in paragraphs 1. through 18. above.

20. Members of WVPOA, including the individual Plaintiffs, have regularly used Powhattan Pass for ingress and egress to their respective parcels; for access public roads; for recreational purposes; as invitees of other owners; and to exercise their reciprocal hunting rights.

21. Members of WVPOA, including the individual Plaintiffs', use, maintenance, and claim to Powhattan Pass has been actual, visible, open, notorious, continuous, and uninterrupted, since 1965 (being a period in excess of 15 years).

22. Members of WVPOA, including the individual Plaintiffs, have acquired a prescriptive easement across Powhattan Pass, and may do any and all reasonable acts that are necessary for the enjoyment of the roadway.

PLAINTIFFS RESPECTFULLY REQUEST that this Court enter a Judgment granting a prescriptive easement for ingress and egress rights along Powhattan Pass to all owners in Wilderness Valley; awarding Plaintiff its attorney fees and costs; and granting Plaintiff all other legal and equitable relief to which they may be entitled.

Count III Trespass

23. Plaintiffs restate and incorporate by reference the allegations in paragraphs 1. through 22. above.

24. Members of WVPOA, including the individual Plaintiffs, have a lawful right to ingress and egress along Powhattan Pass across Defendant's Parcel.

25. Defendant has no legal right to obstruct or hinder Members of WVPOA from ingress and egress along Powhattan Pass.

26. Defendant's gate and signage illegally obstructs, hinders, or prevents Members of WVPOA from ingress and egress along Powhattan Pass.

27. Defendant's acts are an unauthorized intrusion upon Plaintiff's easement rights and constitute a trespass.

28. Defendant's trespass was done intentionally, recklessly, and wantonly because Defendant knew or should have known that Defendant had no right to block, hinder, or obstruct Members of WVPOA from using Powhattan Pass.

29. Defendant's actions have caused damaged to Plaintiffs and Members of WVPOA, including the inability to use and enjoy the easement, and other damages arising out of the trespass that flow naturally and consequently from those actions.

PLAINTIFFS RESPECTFULLY REQUEST that this Court enter a Judgment in their favor against Defendant for Plaintiffs' actual damages, including the cost of restoring Powhattan Pass and removing the gate, together with costs, interests, attorney fees, and all other legal and equitable relief to which they may be entitled.

Count V Injunctive Relief

30. Plaintiffs restate and incorporate by reference the allegations in paragraphs 1. through 29. above.

31. Members of WVPOA, including the individual Plaintiffs, have been using Powhattan Pass for ingress and egress as set forth above since 1965.

32. Defendant has, for the first time in 60 years, blocked, hindered, and obstructed the easement.

33. Defendant's acts impairs lawful use of the easement.

34. For the reasons stated above, Members of WVPOA, including the individual Plaintiffs', ownership, use, and interest in the Powhattan Pass is lawful, and Defendant has no right to block, hinder, or obstruct the easement.

35. Members of WVPOA, including the individual Plaintiffs, will be irreparably harmed if Defendant continues to block, hinder, or obstruct Powhattan Pass.

36. Plaintiff has been using Powhattan Pass for nearly 60 years; thus, any prejudice to Defendant in enjoining her from blocking, hindering, or obstructing Powhattan Pass is outweighed by the irreparable harm that Plaintiffs will suffer without injunctive relief.

37. Plaintiffs are likely to prevail on the merits of this case.

38. Any injunction prohibiting Defendant from blocking, hindering, or obstructing Powhattan Pass would maintain the status quo and is in the public interest and not contrary to public policy.

PLAINTIFFS RESPECTFULLY REQUEST that this Court enter a Judgment in their favor against Defendant enjoining her from blocking, hindering, or obstructing Powhattan Pass; awarding Plaintiffs their attorney fees and costs; and granting Plaintiff all other legal and equitable relief to which they may be entitled.

DEMAND FOR TRIAL BY JURY

The Plaintiffs, by their attorneys, Kirkpatrick Slough Duitsman-Coy & Mott PLC, demand a Trial by Jury in the above-entitled litigation. The jury fee is being paid simultaneously with the filing of this Demand for Trial by Jury.

Dated: July 25, 2024

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