

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

County of Dakota,

Plaintiff,

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER AND JUDGMENT**
File No. 19HA-CV-09-1640

V.

**Paul Graffunder, Anchor Bank Saint Paul, N.A.,
Peter Graffunder, Paul's South Cedar Service, Inc., and
City of Apple Valley,**

Defendants.

The above matter came on for hearing before the Court on September 3, 2009.

Plaintiff (the County) was represented by Michael Ring, Assistant Dakota County Attorney.

Defendant City of Apple Valley (the City) was represented by Robert Bauer.

Defendant Paul Graffunder (Graffunder) was represented by David Krco.

Defendant Peter Graffunder did not appear.

Defendant Anchor Bank Saint Paul, N.A. (the Bank) was represented by James Lockhart.

Defendant Paul's Cedar Service was represented by Randy Thompson.

Based upon the file, record, and proceedings, the Court makes the following:

FILED DAKOTA COUNTY
CAROLYN M. RENN, Court Administrator

FINDINGS OF FACT

1. Effective January 1, 1958, pursuant to Order No. 27202 issued by the Commissioner of the Minnesota Department of Transportation Cedar Avenue was established as County State-Aid Highway (CSAH) No. 4.
2. On December 27, 1962 the Dakota County Board passed a resolution renumbering Cedar Avenue as CSAH No. 23.
3. In 1969, owners of land in the east half of the southeast quarter of Section 28, Township 115, Range 20 in Apple Valley, Dakota County, Minnesota, jointly platted the land as the Valley Commercial Park 1st Addition (the Plat).
4. The Plat was recorded on December 31, 1969 in the office of the Dakota County Registrar of Deeds as Document No. 360315.
5. One of the parcels created by the Plat, Lot 4, Block 3 (the Property), is at issue in this case.
6. Graffunder is the fee owner of the Property.
7. Graffunder and his son, Defendant Peter Graffunder, are shareholders of Paul's South Cedar Service, Inc., the tenant and operator of a service station known as Piston Pete's located on the Property.
8. The Bank has two mortgages on the property dated May 5, 2008 and recorded as document numbers 2588637 and 2588638.
9. The Plat states that the owners "donate and dedicate to the public for public use forever the roads, drive and street and easements as indicated."
10. On the east side of the Property the Plat includes a solid-lined box 105 feet wide by 1172.5 feet long that appears to designate street right of way (the Right of Way).

11. On the Plat map the Right Way is divided by a dashed line into a 75 foot wide section labeled "CEDAR AVENUE – COUNTY ROAD NO. 23" and a 30 foot wide section labeled in smaller print: "ROAD RIGHT OF WAY VILLAGE OF APPLE VALLEY".

12. The 30-foot wide section of the Right-of-Way was never used for road purposes.

13. The County contends that dashed lines and print (stipple print) are used on plats to show accessory information only and solid lines and solid print are used for information critical to the plat.

14. The Village Council of Apple Valley meeting minutes from the November 12, 1969 council meeting document that there was a motion for the Council to "accept the Valley Commercial Part 1st Addition plat contingent upon taking the West 30 ft of County Road 23 as shown on the plat, designating it Village right-of-way, with the East line of the West 30 ft being designated as restricted access to County Road #23, except at the entrance of 147th Street, and allow a temporary exit at Penny's existing driveway, until such time as a frontage road is constructed and blacktopped . . . Motion carried."

15. Plaintiff alleges that all other recorded plats along Cedar Avenue in the area of the Property show Cedar Avenue as a 105 foot wide right of way.

16. Plaintiff has provided an Affidavit from Richard L. Little, an experienced title examiner, expressing Little's opinion that the disputed 30 foot wide strip of land continues to be a public right of way.

17. On August 5, 1972, the Apple Valley Village Clerk, Richard Asleson, posted in three public locations a Notice of Public Hearing on Proposal to Vacate a Public Street in the Village of Apple Valley. A public hearing was scheduled for September 6, 1972.

18. Notice of the hearing was also published in the Dakota County Tribune on August 10, 1972 and a public hearing occurred on September 6, 1972.

19. On February 14, 1973 the Village Council of Apple Valley passed a resolution vacating the thirty-foot-wide right of way dedicated to the Village in the Plat.

20. The Village Council's Notice of Completion of Vacation of Public Street states that the resolution was passed "after a public hearing, held pursuant to Minnesota Statutes 412.851."

21. The Council's vacation notice was recorded with the Dakota County Register of Deeds on May 4, 1973 as document number 415804.

22. There is no public record of the Dakota County Board of Commissioners ever requesting or consenting to the Village Council vacation action.

23. Since 1973, each instrument conveying the Property, including the deed to Graffunder and the mortgages to the Bank has described the Property as:

Lot 4, in Block 3, except the West 40 feet thereof, and also including the following vacated street, accruing to said Lot 4, Block 3, by reason of the vacation thereof: Commencing at the Northeast corner of said Lot 4, Block 3; thence South on the East line thereof 225 feet to the Southeast corner thereof; thence East 30 feet; thence North 225 feet; thence West 30 feet to the point of beginning; all according to the plat of Valley Commercial Park First Addition now on file and of record in the Register of Deeds of Dakota County, Minnesota.

24. In 1981, Graffunder leased the Property from the prior owners and on August 26, 1997 Graffunder took title to and became the owner of the Property pursuant to a limited warranty deed dated August 26, 1997 and recorded September 8, 1997 as document number 1443180.

25. Since 1981, Graffunder and his business have used the portion of the Property from the vacated street for parking and for access to and around the service station located on the Property.

26. There are plans to widen Cedar Avenue to accommodate bus rapid transit (BRT). One of the stations for the BRT is proposed to be located at the corner of Cedar Avenue and 147th Street where the Property is located.

27. The County has brought suit asking for declaratory relief to determine who owns the 30-foot strip of land dedicated by the Plat. The County contends the City did not have the authority to vacate the street and that the County is the appropriate road authority over the street.

28. Graffunder has asserted a claim against the City alleging that the City was negligent in its attempt to vacate the 30 foot wide street right of way and that this negligence will result in damages to Graffunder if the County is determined to retain an ownership interest in this right of way.

29. The City has brought a motion for summary judgment against Graffunder's cross-claim.

30. The Bank and Graffunder have brought a motion for summary judgment against the County.

CONCLUSIONS OF LAW

1. The Statute of Limitations does not bar the County's action.
2. The doctrine of laches does not bar the County's action.
3. The Plat dedicated a 30 foot wide right of way for public road purposes in favor of the Village (now the City) of Apple Valley.

4. The City complied with Minn. Stat. 412.851 and properly vacated the 30 foot wide road right of way created by the Plat.

5. As a result of the vacation of the street right of way by the City of Apple Valley, Graffunder is the owner of the 30 foot wide strip of land described as:

Commencing at the Northeast corner of said Lot 4, Block 3; thence South on the East line thereof 225 feet to the Southeast corner thereof; thence East 30 feet; thence North 225 feet; thence West 30 feet to the point of beginning; all according to the plat of Valley Commercial Park First Addition now on file and of record in the Register of Deeds of Dakota County, Minnesota.

ORDER

1. Anchor Bank's and Graffunder's motions for summary judgment against Plaintiff are granted.

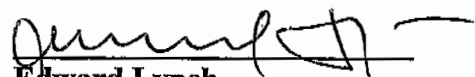
2. The City of Apple Valley's motion for summary judgment against Graffunder is dismissed.

3. All other relief requested is denied.

Let judgment be entered accordingly.

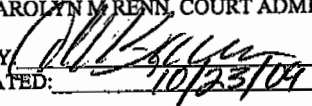
October 16, 2009

BY THE COURT


Edward Lynch,
Judge of District Court

JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT
CAROLYN M. RENN, COURT ADMINISTRATOR

BY 
DATED: 10/23/09 (SEAL)

Memo

"Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Summary Judgment should not be granted if reasonable minds could draw different conclusions from the evidence. *DHL, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). However, the burden falls on the nonmoving party to present evidence sufficiently probative to an essential element of the claim to allow reasonable minds to reach different conclusions. *Id.* at 71.

The Bank and Graffunder seek summary judgment against the County alleging that the County's action is barred by the statute of limitations, that the County's action is barred by the doctrine of laches, and that the 30 foot section of the Property in issue was properly vacated by the City and is now owned by Graffunder in fee simple.

Statute of Limitations. "No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff . . . was seized or possessed of the premises in question within 15 years before the beginning of the action," Minn. Stat. §541.02. The statute of limitation applies to state actions "provided that no occupant of a public way, levee, square, or other ground dedicated or appropriated to public use shall acquire, by reason of occupancy, any title thereto," Minn. Stat. §541.01. The land in question was vacated in 1973 or 36 years ago. While it is well recognized that the statute of limitations can be asserted against public entities, *State v. Bies*, 103 N.W. 2d 228 (Minn. 1960), it is also well recognized that Minn. Stat. 541.01 prohibits an adverse possession claim against public property, *Fischer v. City of Sauk Rapids*, 325 N. W. 2d 816 (Minn. 1982). Since the strip of land in question was dedicated for public road purposes, the statute of limitation would not bar the County's action against a claim of adverse possession. Graffunder asserts that he became the owner of the disputed strip of land by virtue of the vacation of the right of way by the City. Graffunder's assertion that he possesses the disputed strip of land under color of title obtained by the vacation of the right of way by the City does not change the underlying nature of his claim that he has acquired rights to a public right of way by virtue of his adverse possession of the strip of land. The County disputes whether the City was the appropriate road authority and properly vacated the right of way, and so the issue is whether the statute of limitations bars the County from challenging the validity of the original dedication to the City and the validity of the vacation. The County should not be barred from challenging the validity of the dedication and vacation of the public right of way by virtue of Minn. Stat. 541.02 because the only land in dispute was dedicated for public use and absent a valid vacation of the public use, Graffunder has no right to the disputed strip of land except for adverse possession which is specifically excluded from the application of Minn. Stat. 541.02. The County should be able to pursue its action to claim an interest in what it contends is public right of way dedicated to the County.

Laches. The Bank and Graffunder claim that the doctrine of laches bars the County's claim. Laches prevents "the granting of relief to a party who has unreasonably delayed the assertion of a legal right and has thereby prejudiced others and made it inequitable for the court to grant the relief requested." *State ex rel Sviggum v. Hanson*, 732 N.W.2d 312, 317 (Minn. Ct. App. 2007); *see also Melendez v. O'Connor*, 654 N.W.2d 114,117 (Minn. 2002; *Fetsch v. Holm*, 52 N.W.2d 113, 115 (Minn. 1952). Laches "applies to any action or proceeding not governed by an express statute as the distinction between actions at law and suits in equity has been abolished." *Lamprey v. Am. Hoist & Derrick Co.*, 266 N.W. 434, 440 (Minn. 1936). There is no doubt the Bank and Graffunder will be prejudiced if the requested relief is granted in favor of the County. The question is whether the County delayed for an unreasonable time before asserting its claim. Thirty six years after the vacation, the County now asserts a right as the appropriate road authority for Cedar Avenue. Properly recorded documents provide constructive notice to parties, Minn. Stat. §507.32 and to subsequent purchasers but does

not affect those whose titles accrue before the recording, *Faulkenburg v. Windorf*, 259 N.W. 802 (Minn. 1935). Since the County claims title from the original dedication, subsequent recordings did not provide constructive notice to the County of the vacation of the right of way or of Graffunder's claimed interest in the disputed strip of land. Consequently, the County's claim is not barred by laches since there is no evidence that the County unreasonably delayed commencing this action from the date it became aware of Graffunder's claimed interest in the disputed land.

Original Dedication. The Bank and Graffunder next claim that the City was the proper road authority and, consequently, had the authority to vacate the 30 foot public road right of way dedicated by the Plat. There has been a disagreement as to which law applies to this action: the law in effect in 1969 or the current law. It is proper to look at law in effect in 1969 as "amendments to a statute do not apply retroactively." *State v. Basal*, 763 N.W.2d 328, 335 (Minn. Ct. App. 2009). A law may be given retroactive application if it "contain[s] clear evidence of retroactive intent, such as mention of the word 'retroactive.'" *Id* at 335. Minnesota Statute §162.02 does not use the word "retroactive" in it and as such, it is proper to apply the law in effect in 1969 to determine whether the City was the road authority for the disputed strip of land.

The County assumed authority for Cedar Avenue in 1958. The County contends that since it was the proper road authority for Cedar Avenue at the time of the Plat dedication it is the owner of the disputed strip of land. However, "[t]he several counties are vested with all rights, title, easements, and appurtenances . . . held by or vested in any of the towns or municipal subdivision thereof or dedicated to the public use *prior to* the time any such road . . . is taken over by the county as a county state-aid highway," Minn. Stat. §162.02, subd. 1 (1969)(emphasis added). The Plat dedicated the Property *after* the County became the road authority for Cedar Avenue and as a result Plaintiff does not automatically become the proper road authority or owner of the disputed strip of land.

Since the dedication occurred after the County assumed authority for Cedar Avenue, the Plat and the circumstances surrounding its dedication in 1969 determine the proper owner or authority for the disputed strip of land. "Road authority means . . . the county board, as to county state-aid highways and county highways; . . . and the governing bodies of cities when the governing bodies or city streets are specifically mentioned," Minn. Stat. §160.02, subd. 25. The Plat specifically designates a 30 foot wide right of way to the "VILLAGE OF APPLY VALLEY." The County indicated in its memorandum that stipple print, or dotted lines, on plats are only for unessential markings. The dedication: "ROAD RIGHT OF WAY VILLAGE OF APPLE VALLEY" is not in stipple. It is in smaller print but it is also located in a smaller area than the area where "Cedar Avenue" is printed. (Stipple print is used on the Plat to identify two exceptions to the Plat, one on the southeast corner of the Plat and the other on the southwest corner of the plat.)

The language used in the Plat supports Graffunder's and the Bank's position that the dedicators intended that the disputed 30 foot strip of land become a public right of way under the authority of the Village of Apple Valley. The Plat itself furnishes the exclusive means for its own construction, *Cunningham v. Village of Willow River*, 71 N.W. 2d 532 (Minn. 1897). This is further supported by the Village's meeting minutes which state that the Village Council would only agree to accept the plat if the Village was given the 30 foot right of way.

Vacation. Plaintiff also contends that the Village Council did not properly vacate the right of way because the current version of Minn. Stat. §412.851 requires that notice be mailed to each property owner affected by the proposed vacation. However, the law in effect at the time of the vacation provided: "The council may by resolution vacate any street, alley, public grounds, public way, or any part thereof, on its own motion or on petition of a majority of the owners of land abutting on the street, alley, public grounds, public way, or part thereof to be vacated. When there has been no petition, the resolution may be adopted only by a vote of four-fifths of all members of the council. No such vacation shall be made unless it appears in the interest of the public to do so after a hearing preceded by two weeks' published and posted notice. After a resolution of vacation is adopted, the clerk shall prepare and present to the proper county officers a notice of completion of the proceedings in accordance with section 117.19," Minn. Stat. §412.851 (1971). There has been no evidence the Council did not comply with §412.851. The recorded documents related to the vacation are prima facie evidence that the Council complied with the requirements as the Village Council's Notice of Completion of Vacation of Public Street states that the resolution was passed "after a public hearing, held pursuant to Minnesota Statutes 412.851," Minn. Stat. §600.13; *Alvin v. Johnson*, 63 N.W.2d 22, 26 (Minn. 1954); *Ingelson v. Olson*, 272 N.W. 270, 275 (Minn. 1937).

The County also contends that the Village should have complied with Minn. Stat. §505.14 which allows for judicial vacation of plats. An owner can make application to the court and this statute authorizes the court to vacate or alter any recorded plat. However, "[t]he district court shall not vacate or alter any street, alley, or public ground dedicated to the public use in or by any plat in any city or town organized under a charter or special law which provides a method of procedure for the vacation of streets and public grounds by the municipal authorities of the city or town." Minnesota Statute §412.851 provides the proper method to vacate a right of way in question and the Village Council appropriately followed that statute.

Consequently, Graffunder's and Anchor Bank's motion for summary judgment against Plaintiff must be granted.

The City has also brought a motion for summary judgment against Graffunder's cross-claim for negligence. Since Plaintiff's claim is dismissed pursuant to Graffunder's and the Bank's motions for summary judgment, Graffunder's cross-claim is moot and there is no need to address the City's motion for summary judgment.

E. L.