



CITY COUNCIL AGENDA ITEM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LG*
 Nicole MacMillan, City Attorney Assistant *NM*
DATE: November 18, 2014
SUBJECT: DiMario v. City of Troy, et al. Lawsuit

The City has recently been served with a copy of the enclosed lawsuit, filed by Susan and Joseph DiMario. Count One of the lawsuit is an adverse possession claim, under which the DiMarios claim that they are entitled to the disputed land because they have used and occupied the land in a visible, exclusive, and continuous fashion for seventeen years. Count Two of the lawsuit is an acquiescence claim, where the DiMarios allege that they are entitled to the disputed land because they have used the land in a manner that was obvious to all interested parties, yet the interested parties failed to object to the DiMario's use of the land.

This case has been filed in Oakland County Circuit Court, and assigned to Judge Chabot. The City of Troy and all other persons/entities with a property ownership interest in the disputed land are named as Defendants, including Oakland County Treasurer, D&T Construction, and Emerald Lakes Pointe Associates.

The disputed land is adjoined to the DiMario's home on 1619 Delta Drive, Troy, Michigan 48085, which is located south of South Boulevard and west of John R. Road. The City of Troy has retained an easement on the disputed land for storm drains. There is also a conservation easement on the northern portion of the disputed land, which protects the natural habitat, and prohibits any building on that portion of the land.

The DiMarios are not claiming any rights against the City of Troy's easements. Instead, the City of Troy has been named as a defendant out of an abundance of caution. The real dispute in this case is between the DiMarios and the titleholder of the disputed land. However, we will represent the City and ensure protection of the easements.

A resolution authorizing our office to defend the City's interest in this matter is proposed for your consideration. Please let us know if you have any questions about this new lawsuit.

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/efiling.

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2014-143962-CH
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Court address

1200 N. Telegraph Rd., Pontiac, Michigan 48341

Court telephone no.

(248) 858-0344

Plaintiff's name(s), address(es), and telephone no(s).
Suzett D'Marcio and Robert D'Marcio
 1619 Della Drive
 Troy, Michigan 48065

Defendant's name(s), address(es), and telephone no(s).
D&T Construction, Emerald Lakes Rosters Association,
City of Troy, Oakland County Treasurer

Plaintiff's attorney, bar no., address, and telephone no.
Jonathan Tappan (P22195)
Jonathan W. Tappan, PLLC
 2849 Somerset Blvd., #102
 Troy, Michigan 48064
 (248) 622-0206

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued NOV 05 2014	This summons expires FEB 04 2015	Court clerk Lisa Brown
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*This summons is hereby being served on or before its expiration date.
This document must be filed by the seat of the court.

COMPLAINT Instruction: The following is information that is required to verify the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

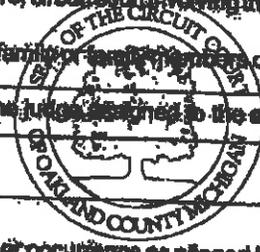
Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.



General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village) Troy, Michigan	Defendant(s) residence (include city, township, or village) Shelby Township, Livonia, Troy and Pontiac, Michigan
Place where action arose or business conducted Troy, Michigan	

Date: 11/5/14 Signature of attorney/plaintiff:

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

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This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/efiling.

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

SUSAN DIMARIO and JOSEPH DIMARIO,

Plaintiff,

Case No.: 14-143902CH

v.

Hon.: JDG CHABOT

D&T CONSTRUCTION, EMERALD LAKES
POINTE ASSOCIATES, CITY OF TROY,
OAKLAND COUNTY TREASURER,

Defendants.

JONATHAN W. TAPPAN (P72195)
Jonathan W. Tappan, PLLC
Attorney for Plaintiffs
2549 Somerset Blvd. #102
Troy, Michigan 48084
Phone: (248) 622-0206
Email: tappanj@comcast.net

There has been no other civil action arising out of the same transaction or occurrence as alleged in this Complaint.

COMPLAINT TO QUIET TITLE

NOW COME SUSAN DIMARIO AND JOSEPH DIMARIO (the "DiMarios"), husband and wife, by and through their attorney, Jonathan Tappan, and state as follows for their complaint against the Defendants:

VENUE, JURISDICTION & THE PARTIES

1. Plaintiffs Susan DiMario and Joseph DiMario are a married couple and are individuals who reside in the City of Troy, Oakland County, Michigan.
2. Upon information and belief, Defendant D&T Construction ("D&T"), is a partnership existing under the laws of the State of Michigan, conducts and/or conducted business

in Oakland County, Michigan and maintains its principal place of business at 45343 Market Street, Shelby Township, Macomb County, Michigan 48315.

3. Upon information and belief, Defendant Emerald Lakes Pointe Associates ("Emerald") is/was a partnership existing under the laws of the State of Michigan, conducts and/or conducted business in Oakland County, Michigan and maintained its principal place of business at 37793 Professional Center Drive, Suite 109, Livonia, Michigan 48154.
4. Upon information and belief, non-party Vincent DiLorenzo ("DiLorenzo") is an individual who resides at 978 Knob Creek Drive, Rochester, Oakland County, Michigan. DiLorenzo is believed to be a principal, partner and/or registered agent of D&T and Emerald.
5. Upon information and belief, non-party Angela Tinervia ("Tinervia") is an individual who resides at 13991 Grouse Lane, Shelby Township, Macomb County, Michigan. Tinervia is believed to be a principal, partner and/or registered agent of D&T and Emerald.
6. This action is brought with respect to a certain parcel of real property (the "Property"), and title thereto, located in the City of Troy, County of Oakland, State of Michigan, and more particularly described as:

T2N, R11E, SEC 2 EMERALD POINTE SUB NO 2 LOT 54 EXC W 70 FT, ALSO EXC E 183.28 FT THEREOF 7-20-95 FR 064.

Tax Parcel I.D. # 20-02-201-067.
7. This Court has jurisdiction over this cause of action pursuant to MCL §§ 600.605 and 600.2932. Plaintiff seeks equitable relief pursuant to MCL § 600.2932.
8. Venue is proper in this Court pursuant to MCL § 600.1605.

GENERAL ALLEGATIONS

9. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth fully herein.
10. Plaintiffs purchased the property commonly known as 1619 Delta Drive, Troy, Michigan 48085 (the "Adjoining Property") in 1997 (see Warranty Deed for Corporation attached hereto as Exhibit 1). This property adjoins the Property at issue in this action.
11. Since purchasing the Adjoining Property, Plaintiffs have used, possessed, exercised dominion over and/or occupied the Property visibly, openly, notoriously, exclusively, continuously and uninterrupted for the last seventeen (17) years. See Affidavit of Susan DiMario attached hereto as Exhibit 2.
12. On or about March 19, 1990, Defendant Emerald purchased the Property from the City of Troy for sum of \$1.00. Fee title to the Property was conveyed to Emerald pursuant to a certain quit claim deed dated March 19, 1990 and recorded on April 20, 1990 in the Oakland County Records (the "Emerald Deed"). A copy of the Emerald Deed is attached hereto as Exhibit 3.
13. When Emerald took title to the Property, such title was "Subject to the City of Troy retaining an easement for public purposes over the entire area of the property being conveyed." See Emerald Deed attached hereto as Exhibit 3.
14. After Emerald failed to pay the property taxes owed on the Property, the Oakland County Treasurer, on April 14, 2005, caused a Certificate of Forfeiture of Real Property to be recorded in the Oakland County Records at Liber 35315, Page 717. See Certificate of Forfeiture of Real Property attached hereto as Exhibit 4.

15. On October 11, 2005 Defendant D&T paid the amount required to redeem the Property from forfeiture by the Oakland County Treasurer, and, on December 29, 2005 a Certificate of Redemption was recorded in the Oakland County Records at Liber 36858, Page 412. See Certificate of Redemption attached hereto as Exhibit 5.
16. Defendants may claim, or appear of record in the Oakland County Register of Deeds to have some interest in the Property.
17. Pursuant to MCL § 600.5801(4) and having maintained dominion over the Property for over fifteen (15) years, Plaintiff's interest in the Property is superior to any interest in the Property of the Defendants, and such dominion over the Property extinguished Defendants' interests in the Property.
18. The Statement of Title on which Plaintiff relies as to its interest in the Property is attached to this Complaint pursuant to MCR 3.411(C)(2).

COUNT I – QUIET TITLE – ADVERSE POSSESSION

19. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth fully herein.
20. The claim of title to the Property of Plaintiffs has been established by Plaintiffs' adverse possession of the Property, and is superior to that of Defendants' as Plaintiffs' dominion, use, possession and/or occupation of the Property in a visible, open, notorious, exclusive, continuous and uninterrupted fashion for the last seventeen (17) years has extinguished the interest of Defendants in the Property and establishes such superior claim of title for Plaintiffs.
21. Given the facts and circumstances alleged herein, this Court should order that any and all actual, claimed or purported right, title and/or interest of Defendants has been

extinguished by Plaintiffs' adverse possession of the Property for over fifteen (15) years.

COUNT II – QUIET TITLE – ACQUIESCENCE

22. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth fully herein.
23. Defendants' active and passive acquiescence to Plaintiffs' dominion, use, possession and/or occupation of the Property in a visible, open, notorious, exclusive, continuous and uninterrupted fashion for the last seventeen (17) years has extinguished the interest of Defendants in the Property and establishes such superior claim of title for Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests Judgment and relief as follows:

- 1) Judgment for Plaintiffs against Defendants establishing and verifying Plaintiffs' superior claim of title to the Property, determining that Plaintiffs hold full legal and equitable title to the Property in fee simple absolute, free and clear of any and all claims of Defendants, and quieting title in favor of Plaintiffs;
- 2) Judgment for Plaintiffs against Defendants, declaring that Defendants' claims of interest in and/or title to the Property have been extinguished; and
- 3) Any other and further relief in the premises that this Court may deem just and equitable under the circumstances.

DATED: November 5, 2014

Respectfully submitted,

By: /s/ Jonathan Tappan
JONATHAN W. TAPPAN (P72195)
Jonathan W. Tappan, PLLC
Attorney for Plaintiffs
2549 Somerset Blvd. #102
Troy, Michigan 48084
Phone: (248) 622-0206
Email: tappanj@comcast.net

**STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT**

SUSAN DIMARIO and JOSEPH DIMARIO,

Plaintiff,

v.

Case No.: -CH

Hon.: 14-143902-CH
JDG CHABOT

D&T CONSTRUCTION, EMERALD LAKES
POINTE ASSOCIATES, CITY OF TROY,
OAKLAND COUNTY TREASURER,

Defendants.

JONATHAN W. TAPPAN (P72195)
Jonathan W. Tappan, PLLC
Attorney for Plaintiffs
2549 Somerset Blvd. #102
Troy, Michigan 48084
Phone: (248) 622-0206
Email: tappanj@comcast.net

PLAINTIFF'S STATEMENT OF TITLE

Plaintiffs Susan and Joseph DiMario (the "DiMarios"), by their attorney, for their Statement of Title pursuant to MCR 3.411(C), state as follows:

1. The subject matter of this Statement of Title is the real estate located in the City of Troy, County of Oakland, State of Michigan, (the "Property") and more particularly described as:

T2N, R11E, SEC 2 EMERALD POINTE SUB NO 2 LOT 54 EXC W 70 FT, ALSO EXC E 183.28 FT THEREOF 7-20-95 FR 064.

Tax Parcel ID. # 20-02-201-067.

2. Plaintiffs, for their claim of title to the Property, rely on their having exercised dominion over, and their use, possession and/or occupation of the Property in a visible, open, notorious,

exclusive, continuous and uninterrupted fashion for the last seventeen (17) years, and the Affidavit of Susan DiMario in Support of Complaint to Quiet Title, dated October 23, 2014.

Respectfully submitted,

DATED: November 5, 2014

By: /s/ Jonathan Tappan
JONATHAN W. TAPPAN (P72195)
Jonathan W. Tappan, PLLC
Attorney for Plaintiffs
2549 Somerset Blvd. #102
Troy, Michigan 48084
Phone: (248) 622-0206
Email: tappanj@comcast.net

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EXHIBIT 1

17661135

19723993

FILED
OAKLAND COUNTY

19723993
10-3-14
10-3-14
10-3-14

10-3-14
10-3-14

WARRANTY DEED FOR CORPORATION - 902 (State Bar of Michigan Form)

The Grantor, **Glenn's Construction**

Michigan, corporation, whose office is 1612 Sibley, Troy, Michigan 48068

conveys and warrants to **JOSEPH W. BARKER AND
SUSAN G. BARKER, ITS WIFE**
whose address is 3710 Waterford Dr, Flint, MI 48931

The following description appears in the City
of Troy, County of OAKLAND
and State of Michigan:

THE PART OF PART OF LOT 24, COLUMBIAN HEIGHTS SUBDIVISION NO. 2, ACCORDING TO
THE PLAN THEREOF, RECORDED IN BOOK 315, OF MAPS, PLANS & MAPS OF OAKLAND
COUNTY, MICHIGAN.

200,000.00
934,007

For the sum of \$200,000.00

subject to easements and holding and the restrictions of record and further subject to:

If the land being conveyed is improved, the following is deemed to be included: "The property may be
located within the vicinity of Oakland or a large operation. Generally, residential, agricultural and
recreational purposes shall not be permitted, and other, and other stipulated conditions may be
used and are protected by the title insurance right to form."

Dated this 2nd day of September, 19 97

Signed in Presence of:

[Signature]
[Signature]

[Signature]
Name of Grantor: **Glenn's Construction**

By: **Glenn's Construction**

By: **Resident**

By: _____

By: _____

OK - ML

000126



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STATE OF MICHIGAN

COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 23rd day of September, 2014.

By: *[Signature]*
The President
Construction

and *[Signature]* of *[Signature]*
Michigan, on behalf of the corporation,

[Signature]
Notary Public
Michigan

County Treasurer's Certificate:

10/13/14
City Treasurer's Certificate:

When received Return Tax
Amount: \$ 48007

Drawn By:
Al Wynn
Royal Selection, Inc
Business Address
42700 Schumaker, Suite 1
Sterling Heights MI 48313

1018 Date
Nov, 05 48007

Tax Parcel

Recording Fee: 15.00
County Fee: 4811

Taxable Fee

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EXHIBIT 2

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

SUSAN DIMARIO and JOSEPH DIMARIO,

Plaintiff,

Case No.: -CH

v.

14-143902-CH
Hod.: JDG CHABOT

D&T CONSTRUCTION, EMERALD LAKES
POINTE ASSOCIATES, CITY OF TROY,
OAKLAND COUNTY TREASURER,

Defendants.

JONATHAN W. TAPPAN (P72195)
Jonathan W. Tappan, PLLC
Attorney for Plaintiffs
2549 Somerset Blvd. #102
Troy, Michigan 48084
Phone: (248) 622-0206
Email: tappanj@comcast.net

AFFIDAVIT OF SUSAN DIMARIO IN SUPPORT OF COMPLAINT TO QUIET TITLE

STATE OF MICHIGAN)

ss:)

COUNTY OF OAKLAND)

SUSAN DIMARIO, being duly sworn, hereby attests and states:

I am the owner of the property commonly known as 1619 Delta Drive, Troy, Michigan 48085 (the "Adjoining Property"), and have been since purchasing the Adjoining Property in 1997. This Adjoining Property adjoins and is located directly adjacent to the property at issue in this action, that being the property legally described as T2N, R1E, SEC 2 EMERALD POINTE SUB NO 2 LOT 54 EXC W 70 FT, ALSO EXC E 183.28 FT THEREOF 7-28-95 FR 064, Tax Parcel I.D. # 20-02-201-067 (the "Property"). Since purchasing the Adjoining Property, I, my

husband and co-Plaintiff Joseph DiMario, and my family have used, possessed and/or occupied the Property visibly, openly, notoriously, exclusively, continuously and uninterrupted for the last sixteen (16) years.

Since purchasing and moving in to the Adjoining Property we have cleared the majority of the Property of live trees, fallen trees, shrubs, wild animals and garbage. We also leveled part of the Property with a backhoe so as to render the Property better situated for our use. We have stored, place and/or utilized personal property on the Property, held gatherings, events and/or social functions on the Property, and otherwise openly and exclusively used and maintained dominion over the Property as our own since moving in to the Adjoining Property in 1997.

Further affiant saith naught.


Susan DiMario.

Subscribed and sworn to before me on October 23, 2014


Notary Public
Oakland County, Michigan
My commission expires: 12-12-16

Date: October 23, 2014



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EXHIBIT 3

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EXHIBIT 4

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EXHIBIT 5

STATE OF CALIFORNIA
COUNTY OF OAKLAND
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

COUNTY TREASURER RECEIPT CERTIFICATE

ISSUED _____ COUNTY TREASURER RECEIPT CERTIFICATE

Property No. 16-02-201-007 in the City of the Village of _____
TWP

Property Description:
THE 1/2, 1/4, 1/8 & 1/16 ACRES MORE OR LESS OF THE S/4 CORNER TO THE 1/2 ACRES IN 189.28
BY CHANCE 7-20-02, 22 042

Certificate of Purchase filed in other 189.28 page 111
189.28 County Register of Deeds

Total amount of delinquent taxes, penalties, interest and fees necessary
to redeem this parcel totaled: \$122.18

Under the provisions of PCS 211.776(3), I hereby certify, that on 12/14/2008
the sum stated above was the amount necessary to redeem the
foregoing described parcel of land and that said amount
has been paid in full to my office.

This redemption certificate is issued to remove the parcel in question
from the Certificate of Purchase previously issued and recorded.

Dated this Day: 12/14/2008

Received and paid to me
the sum of _____

Julius M. Rice
County Clerk

Patrick M. Doherty
Patrick M. Doherty
Oakland County Treasurer

Witness my hand and seal
this _____ day of _____ 2008

DEPOSITED FOR _____

12/14/08

12/14/08

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STATE OF CALIFORNIA DEPARTMENT OF REVENUE