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THE HONORABLE RICHARD EADIE

FILED
KING COUNTY WASHINGTON

MAR 01 2013

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WILLIAM GARTZ and ROBIN HOLT,

Plaintiffs,

v.

GEORGE LEWIS,

Defendant.

No. 09-2-44702-1 SEA

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This action involved the parties' competing claims and counterclaims to a parking space located on Plaintiffs' upland property and a boat moorage site located, in part, on Plaintiffs' shoreland property. On October 7, 2010 the Court entered an order granting Defendant George Lewis's motion for summary judgment on his counterclaims with regard to the parking space. The Court confirmed Mr. Lewis's right to use the parking space pursuant to a recorded easement and ruled that Plaintiffs had breached the easement. The Court also granted Mr. Lewis's motion to dismiss Plaintiffs' Shoreline Management Act claim and Plaintiffs' nuisance claim based on Defendant's use of the parking space.

As to Defendant's adverse possession counterclaim over a portion of Plaintiffs' shoreland property, the Court found that Defendant had established three of the four elements required for an adverse possession claim as matter of law: (1) exclusive possession; (2) actual and uninterrupted possession; and (3) open and notorious possession all for a period of more

Defendant's Findings of Facts and Conclusions of Law - 1

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1 than ten years. The Court reserved ruling on the fourth element of the adverse possession
2 claim, hostility, stating that it remained uncertain as to the evidence required to establish the
3 hostility element with regard to privately owned shoreland property. The parties subsequently
4 filed cross-motions for summary judgment on the hostility element.

5 On May 27, 2011, the Court entered an order granting summary judgment in favor of
6 Defendant on his adverse possession counterclaim as to the portion of Plaintiffs' shoreland
7 property that falls within the four corner posts of Defendant's boat canopy. The Court also
8 dismissed Plaintiffs' nuisance claim regarding the boat moorage area pursuant to the parties'
9 stipulation. The remaining issues for trial concerned Defendant's adverse possession claim as
10 to area covered by the portion of the boat canopy that extends beyond the canopy corner posts
11 and the area covered by the bow of the boat that extends beyond the front of the canopy on the
12 shoreline side. The case was tried to the Court on July 14, 2011 and February 7, 2012. On
13 December 29, 2011, the Court made an on-site inspection of the properties, boat canopy and
14 boat at issue.

15 On June 4, 2012, the Court heard closing argument. On June 15, 2012, the Court
16 entered a Decision and Order. On July 20, 2012, the Court entered its Order Granting
17 Defendant's Motion for Partial Award of Attorney's Fees and awarded fees in the amount of
18 \$36,177.15. Defendant acknowledges that Plaintiffs have made payment in full of that
19 amount. Having considered the evidence presented by the parties, the briefs of counsel, and
20 the arguments of counsel, this Court makes the following:

21 **FINDINGS OF FACT**

22 1. Plaintiffs William Gartz and Robin Holt (collectively "Gartz/Holt") are the
23 owners of real property located at 7703 West Mercer Way in the City of Mercer Island,
24 Washington, which is legally described as follows:

25 Lot B, City of Mercer Island Boundary Line Adjustment Number MI-88-03-03
26 (I-2) recorded under recording number 8804139001, being a revision of
27 Mercer Island Short Plat number MI-81-2-02, recorded under recording
28 number 8105070620, in King County, Washington.

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2 Together with an undivided interest in Tract X of said Mercer Island short plat
number MI-81-2-02;

3 Together with shorelands adjoining.
4 (the "Gartz/Holt Property").

5 2. Defendant George Lewis is the owner of real property located at 7701 West
6 Mercer Way in the City of Mercer Island, Washington, which is legally described as follows:

7 Lot C, Mercer Island Boundary Line Revision No. MI-88-03-03 (I-2),
8 according to the plat thereof recorded under King County Recording No.
9 8804139001, being a revision to Mercer Island Short Plat No. MI-81-2-02,
10 recorded under King County Recording No. 8105070620, records of King
County, Washington.

11
12 Together with an undivided one-quarter interest in tract x of said Plat No. MI-
81-2-02.

13 Together with shorelands adjoining.
14 (the "Lewis Property").

15 3. The Lewis Property and the Gartz/Holt Property are two of the four lots in a
16 short plat developed by Mr. Lewis. In 1981, Mr. Lewis recorded a survey of the short plat
17 (the "1981 Plat Survey"). Trial Exhibit 7.

18 4. The Lewis Property is adjacent to the northerly boundary line of the Gartz/Holt
19 Property. The westerly boundaries of both the Lewis Property and the Gartz/Holt Property
20 front on Lake Washington.

21 5. In 1982, Mr. Lewis sold the Gartz/Holt Property to Michael Mumm.

22 6. In 1983, Mr. Lewis obtained Mr. Mumm's written consent to build a dock for
23 the Lewis Property on the boundary line of the Lewis Property and the Gartz/Holt Property.
24 That document dated September 29, 1983 was recorded under King Count Recording No.
25 8309290878 (hereinafter "Dock Location Notice").
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1 7. In January 1984, Mr. Lewis and Mr. Mumm recorded a boundary line revision
2 survey that realigned a portion of the northerly boundary line between the Lewis Property and
3 the Gartz/Holt Property (hereinafter, "1984 BLR Survey"). Trial Exhibit 8.

4 8. The 1984 BLR Survey realigned the boundary line between the Lewis Property
5 and the Gartz/Holt Property running from Lake Washington then upland to the east. The
6 boundary line, as revised, is described as 112.03 feet in length on a bearing of N 88° 49' 04"
7 W. The westerly boundary of the Gartz/Holt Property is described as 86.59 feet in length on a
8 bearing of N 40° 37' 07" W.

9 9. The 1984 BLR Survey notes that the NW and SW exterior corners of the short
10 plat were found "staked with "G-4 ½ rebar."

11 10. Mr. Lewis completed construction of his dock in late 1983 or early 1984.

12 11. Mr. Lewis began mooring a boat on the south side of his dock shortly after he
13 completed its construction. Mr. Lewis has moored a boat on the south side of his dock for
14 over 25 years.

15 12. In 1984, Mr. Mumm told Mr. Lewis that he wanted to build a dock for the
16 Gartz/Holt Property and requested that Mr. Lewis agree to waive a City of Mercer Island
17 ordinance that required a new dock be located at least 35 feet away from an existing dock.

18 13. Mr. Lewis agreed to waive Mercer Island's 35 foot setback requirement as
19 long as the new dock for the Gartz/Holt Property would be at least 20 feet away from the dock
20 on the Lewis Property. Mr. Mumm agreed to that condition. In February 1984, Mr. Lewis
21 signed a Waiver of Waterfront Setback Requirement that was recorded in July 1984 under
22 King County Recording No. 8407020717 (hereinafter, "Setback Waiver").

23 14. Mr. Lewis required that there be at least 20 feet between the two docks so that
24 there would be enough room to moor a boat on the south side of the Lewis dock and on the
25 north side of the dock for the Gartz/Holt property.

26 15. Mr. Mumm constructed a dock for the Gartz/Holt Property in the mid 1980's.
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1 16. In November 1987, Mr. Lewis recorded a survey to correct some erroneous
2 distances contained in the 1984 BLR Survey under King County Recording No. 8711099005
3 (hereinafter, "1987 Short Plat Survey"). Trial Exhibit 9.

4 17. The 1987 Short Plat Survey did not make any corrections to that portion of the
5 boundary line between the Lewis Property and the Gartz/Holt Property depicted in the 1984
6 BLR Survey running from Lake Washington and then upland. The distance and bearing for
7 that boundary line remained the same at 112.03 feet and N 88° 44' 04" W. The distance and
8 bearing for the westerly line of the Gartz/Holt Property also remained the same at 86.59 feet,
9 N 40° 37' 07" W. The 1987 Short Plat Survey continued to hold the NW and SW short plat
10 corners as staked with "1/2 RB/C [rebar with plastic cap] G-4."

11 18. In January 1988, the owner of Lot A of the four lot short plat recorded a
12 boundary and A.L.T.A. survey for Lot A under King County Recording No. 8801139007
13 (hereinafter, "1988 Lot A Survey"). Trial Exhibit 13. Lot A is adjacent to the southerly
14 boundary of the Gartz/Holt Property.

15 19. The 1988 Lot A Survey held the southwest corner of the short plat, which is
16 also the southwest corner of Lot A, as marked by an "Existing Iron Rod w/cap G-4." The
17 surveyor noted that he set "1/2" Iron Rod w/cap "WEBB LS 16230" at the NW corner of
18 Lot A which is also SW corner of the Gartz/Holt Property.

19 20. The distances and bearing for Lot A set forth in the 1988 Lot A survey
20 conform to the distances and bearing set forth in the 1988 Short Plat Survey. The distances
21 and bearing for the Gartz/Holt Property set forth in the 1988 Lot A survey also conform to the
22 distances and bearings set forth in the 1988 Short Plat Survey.

23 21. On April 13, 1988, Mr. Lewis and Mr. Mumm recorded a boundary line
24 revision under King County Recording No. 8804139001 (hereinafter, "1988 BLR Survey").
25 The 1988 BLR Survey revised a portion of the boundary line lying between the garages on the
26 Lewis Property and the Gartz/Holt Property as depicted in Detail A to the 1988 BLR Survey.
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1 22. The 1988 BLR Survey reduced the length of the portion of the boundary line
2 between the Lewis and Gartz/Holt Property from 112.03 feet to 107.03 feet at the upland end
3 of that line. The bearing of that line remained unchanged from prior surveys at N 88° 49' 04"
4 W. The distance and bearing for the westerly line of the Gartz/Holt survey Property remained
5 unchanged from the 1984 BLR Survey and the 1987 Plat Survey at 86.59 feet and N 40° 37'
6 07" W.

7 23. In the late 1980's Mr. Lewis constructed a shore station for the boat he moored
8 at the south end of his dock. The shore station includes a mechanical lift set on the lake bed
9 that raises the boat above the water when not in use. The other component of the shore station
10 is a canopy, approximately 30 feet by 10 feet, supported by metal pipe framework. The
11 support posts for the canopy are embedded in the lake and attached to the Lewis dock. The
12 shore station is a permanent improvement.

13 24. Mr. Lewis has used the shore station exclusively and continuously for the boats
14 he has moored at that location for over twenty years.

15 25. The shore station is plainly visible from the Gartz/Holt Property.

16 26. A portion of the canopy, the boat lift, and the boat at moorage are located on or
17 above shorelands of the Gartz/Holt Property as legally described in the 1988 BLR Survey.
18 The remaining portion of the canopy, the boat lift and the boat at moorage, are located on or
19 above shorelands of the Lewis Property as legally described in the 1988 BLR Survey.

20 27. In April 1988, Mr. Mumm sold the Gartz/Holt Property to Philip R. Loshin and
21 Nancy L. Loshin.

22 28. In September 2006, Gartz/Holt purchased the Gartz/Holt Property from Nancy
23 L. Loshin and Philip R. Loshin, Trustees of the Nancy L. Loshin and Philip R. Loshin
24 Revocable Trust.

25 29. Gartz/Holt received a commitment for title insurance from Chicago Title
26 before purchasing the Gartz/Holt Property. The title insurance commitment listed special
27 exceptions that included the 1983 Dock Location Notice and the 1984 Setback Waiver. The
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1 statutory warranty deed that Gartz/Holt received for the Gartz/Holt Property also listed these
2 documents as special exceptions.

3 30. In about August 2007, Gartz/Holt retained EMS Consulting Engineers, LLC to
4 perform a survey of the Gartz/Holt Property (the "2007 EMS Survey"). Trial Exhibit 12. The
5 2007 EMS Survey conforms to the distances and bearings for the Gartz/Holt Property set
6 forth in the 1988 BLR Survey.

7 31. The 2007 EMS Survey located the rebar and cap set at what is the SW corner
8 of the Gartz/Holt Property and NW corner of the adjacent Lot A in connection with the 1988
9 Lot A Survey with the notation "FOUND REBAR AND CAP STAMPED "WEBB 16230."

10 32. The EMS surveyor set a rebar and cap at what is the NW corner of the
11 Gartz/Holt Property and the SW corner of the Lewis Property. The distance and bearing for
12 the boundary line running from that rebar stake to another rebar stake set by EMS are the
13 same as set forth in the 1988 BLR Survey: 107.03 feet and N 88° 49' 04" W. The distance
14 and bearing for the westerly boundary line of the Gartz/Holt Property set forth in the EMS
15 Survey, is the same as set forth in the 1988 BLR Survey: 86.59 feet and N 40° 37' 07" W.

16 33. The boundary line between the Lewis Property and the Gartz/Holt Property as
17 depicted in the 2007 EMS Survey conforms with the legal description of those properties as
18 set forth in the 1988 BLR Survey.

19 34. The boundary line between the Lewis Property and Gartz/Holt Property as
20 staked by EMS ties into previous surveys, including the 1984 BLR Survey, the 1987 Plat
21 Survey and the 1988 Lot A Survey, that held the southwest corner of the short plat as staked
22 with the "1/2 G-4" rebar.

23 35. Mr. Lewis has moored a boat 32 feet in length or longer under the boat canopy
24 for over 10 years before Gartz/Holt filed their lawsuit in December 2009. He began mooring
25 the 35 foot boat currently at the site in 2005.

26 36. The 35 foot boat imposes little, if any, additional burden on the Gartz/Holt
27 Property than the 32 foot boat previously moored at the site.
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1 37. Mr. Lewis's surveyor, Robert Winters, prepared a survey depicting the location
2 and position of Mr. Lewis's boat at moorage under the canopy and the portion of the boat
3 canopy and boat located on the Gartz/Holt shorelands. Trial Exhibit 11.

4 38. Gartz/Holt's surveyor, Daniel Roupe, also prepared a survey depicting the
5 location and position of Mr. Lewis' boat at moorage under the canopy and the portion of the
6 boat canopy located on the Gartz/Holt shorelands. Trial Exhibit 6.

7 39. The surveys prepared by Mr. Winters and Mr. Roupe differ with regard to the
8 location of the boundary line between the Lewis Property and Gartz/Holt Property. Mr.
9 Roupe's survey depicts the property line approximately 1.2 feet north of the location depicted
10 by Mr. Winters. The surveys also differ in that Mr. Roupe's survey shows the boat to be in
11 contact with the SE canopy corner post.

12 40. The Court finds Mr. Winters's testimony to be creditable and that Mr.
13 Winters's survey accurately depicts the location of the property line and the location of the
14 boat at moorage. The existing survey stakes from the 2007 EMS Survey relied upon by Mr.
15 Winters are tied to original plat staking and existing on-site staking as depicted in the previous
16 recorded surveys including Trial Exhibits 7, 8, 9, and 13.

17 41. The Court finds that Mr. Roupe's survey fails to accurately depict the location
18 of the property line. Mr. Roupe created his survey by applying GPS technology to King
19 County Aerial Survey data and state-planned coordinate values to create his boundary line
20 between the Lewis Property and the Gartz/Holt Property. Mr. Roupe's survey is not tied to
21 the original plat staking or on-site staking documented in subsequently recorded surveys. Mr.
22 Roupe's survey also fails to accurately depict the location of the boat at moorage and the
23 shape of the bow of the boat extending beyond the front of the canopy. The photographs,
24 Trial Exhibit 1 and 2, show that the boat is not in contact with the corner post and the Court
25 confirmed the location of the boat in relation to the canopy posts at its December 29, 2011 site
26 inspection.

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CONCLUSIONS OF LAW

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2 1. This Court has jurisdiction over the parties and the subject matter of this
3 action. Venue was proper in this Court because this action involves issues pertaining to real
4 property located in King County, Washington.

5 2. The summary judgment orders previously entered by the Court ruled that
6 Defendant George Lewis had acquired title through adverse possession of that portion of the
7 Gartz/Holt shorelands lying within the four corner post supporting the canopy. The Court
8 confirms those orders and concludes that Mr. Lewis has also acquired title to all of the
9 Gartz/Holt shoreland Property covered by the boat canopy and additional Gartz/Holt
10 shoreland Property lying between the front, or easterly edge, of the boat canopy and the line
11 of ordinary high water.

12 3. Mr. Lewis has treated the Gartz/Holt shorelands as a true owner would, given
13 the nature and character of the property. He has possessed and used the property in such a
14 manner that any reasonable person would have thought he owned it. The construction and
15 maintenance of a shore station comprised of a boat canopy and boat lift, as well as the
16 mooring of a boat, are the types of uses typically made by an owner of shoreland property.

17 4. Courts may create a penumbra of ground around areas actually possessed when
18 reasonably necessary to carry out the objective of settling boundary disputes. *Lloyd v.*
19 *Montecucco*, 83 Wn. App. 846, 853-54 (1996). A triangular shaped portion of the Gartz/Holt
20 shorelands lying between the southeast corner of the canopy and the intersection of the line of
21 ordinary high water with the property line of the Gartz/Holt and Lewis Properties constitutes
22 such a penumbral area. This penumbral area is reasonably necessary for Defendant to
23 perform maintenance and repair of the boat and shore station, as has been done in the past,
24 and to accommodate the portion of the bow of the boat that extends beyond the front edge of
25 the canopy.

26 5. Defendant, George Lewis, has acquired title by adverse possession to all of
27 Plaintiffs' shoreland property lying beneath the boat canopy and the shoreland property lying
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1 north of a line running from the southeast corner of the boat canopy on a northeasterly course
2 back to the intersection of the ordinary high water mark and the property line of the
3 Gartz/Holt and Lewis Properties (the "Boat Moorage Area"). The Boat Moorage Area is
4 depicted as the cross hatched area on Exhibit A attached hereto which is a detail from Trial
5 Exhibit 11.

6 6. Title to the following described Boat Moorage Area should be quieted in
7 Defendant George Lewis.

8 THAT PORTION OF THE SECOND CLASS SHORE LANDS
9 ABUTTING LOT B, CITY OF MERCER ISLAND, BOUNDARY LINE
10 REVISION NO. MI-88-03-03 (I-2), KING COUNTY RECORDER'S NO.
11 8804139001, BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

12 COMMENCING AT A REBAR WITH SURVEYOR'S
13 IDENTIFICATION CAP MARKED "ESM", LOCATED NEAR THE
14 SHORELINE OF LAKE WASHINGTON, AND WHICH IS ALSO
15 LOCATED ON THE BOUNDARY COMMON TO LOTS B AND C OF
16 THE ABOVE REFERENCED BOUNDARY LINE REVISION, AND
17 WHICH ALSO BEARS N 88°49'09" W FROM A REBAR WITH
18 SURVEYOR'S IDENTIFICATION CAP MARKED "ESM" LOCATED
19 ON SAID COMMON BOUNDARY OF LOTS B AND C;

20 THENCE N 88°49'04" W ALONG SAID COMMON BOUNDARY FOR
21 A DISTANCE OF 4.41 FEET TO TH LINE OF ORDINARY HIGH
22 WATER OF LAKE WASHINGTON AS IT EXISTED ON JULY 20,
23 2011, AND THE POINT OF BEGINNING.

24 THENCE CONTINUING N 88°49'04" W ALONG THE EXTENSION
25 OF SAID COMMON BOUNDARY OF LOTS B AND C FOR A
26 DISTANCE OF 43.44 FEET TO THE WESTERLY LIMITS OF A
27 BOAT CANOPY;

28 THENCE S 02°19'16" E 5.07 FEET TO THE SOUTHWEST CORNER
OF SAID CANOPY;

THENCE N 87°26'29" E 29.90 FEET TO THE SOUTHEAST CORNER
OF SAID CANOPY;

THENCE N 77°59'59" EAST 13.65 FEET TO THE POINT OF
BEGINNING.

