

CASE SUMMARY – TIMPERLEY v. KRKPOA

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED & THE CASE DISMISSED

1. Approval of Plat 74-85 by the Borough Planning Commission is a material fact. The extension of Sockeye Lane is the only roadway platted and is dedicated to public use.
2. Plaintiff named the wrong defendant. The Association has no alternative by law other than reliance on plats approved by the Borough, and there is no genuine issue in this reliance.
3. The Association does not claim or hold an interest in title to land adjacent to the platted boundary of Lot 11, and no such interest is created by disputing Plaintiff's claim of title.

INTENT OF THE PARTIES

4. Plaintiff's understanding of what was conveyed to her in purchase of Lot 11, does not create a title interest in land beyond the platted boundaries depicted for Lot 11 on Plat 72-62.
5. The Developer's intent depicted on Plat 72-62 was to reserve title to land adjacent to the eastern boundary of Lot 11 for future use to access Tract A. This intent is evidenced by subsequent actions of the developer certifying ownership of the land and requesting approval of Plat 74-85 depicting access to lots created in resubdivision of Tract A.

PLAT INTERPRETATION

6. Plat 72-62 does not show lot line extensions for Lot 11 into the temporary turnaround, as are clearly depicted for lots where extensions into road easements were intended.
7. Shorelines for manmade channels are not depicted on Plat 72-62 and are inferred by lot line extensions to center of channel. Solid lines depict lot boundaries and the sidelines of streets; solid lines do not depict shorelines.
8. The platted boundary for Lot 11 does not include the shoreline of a manmade channel.
9. Sockeye Lane extended cannot be accessed by road without use of private road easements. Distinguishing Sockeye Lane extended as a public or private roadway has no relevance.

VALIDITY OF THE DEDICATION

10. The Association has no authority to defend approval of the roadway dedication appearing on Plat 74-85 or the public interest created by this dedication.
11. Ambiguity asserted by the Plaintiff on Plat 74-85 contradicts the plain depiction appearing on this plat and its unanimous approval by the Borough Planning Commission.
12. When Plat 74-85 was approved by the Borough Planning Commission, the subdivision owners had a clear understanding of roadway dedication, having obtained an exception for lots shown on Plat 72-62 to the Borough requirement that each lot abut a dedicated road.

PLAINTIFF'S REQUEST FOR DECLARATORY JUDGMENT SHOULD BE DENIED

13. Plaintiff's assertion that her intent in the purchase of Lot 11 "must be given great weight," creates a genuine issue of whether her understanding at the time of purchase supersedes jurisdiction of the Borough over form and approval of plats.
14. Plaintiff relies on her interpretation of Plat 72-62 at the time of purchase and wrongly renders this as good title.
15. As land properly dedicated to public use, Plaintiff does not meet the possession requirement in Alaska Statute to bring quiet title action (AS 09.45.010).
16. Sockeye Lane extended is the only recorded road access connecting lots created in resubdivision of Tract A to the entrance of the subdivision. By dedication to public use, this portion of access is protected from adverse actions of the Plaintiff.

AFFIRMATIVE DEFENSE OF LACHES

17. Plaintiff's unreasonable delay in action to quiet title creates prejudice clouding resolution of her claim.