

IN THE KOSCIUSKO CIRCUIT COURT  
KOSCIUSKO COUNTY, INDIANA

KOKOMO GRACE UNITED  
METHODIST CHURCH, INC.,  
Plaintiff

v.

CASE NUMBER: 43C01-1710-PL-105

EPWORTH FOREST ADMINISTRATION  
COMMITTEE, INC.,  
Defendant

**MEMORANDUM OF FACT AND LAW IN SUPPORT OF KOKOMO GRACE  
MOTIONS FOR SUMMARY JUDGMENT**

Kokomo Grace United Methodist Church, Inc. (hereinafter "Kokomo Grace") now presents for the Court the facts and law by which Kokomo Grace is entitled to partial summary judgments on multiple issues in this case.

STANDARD FOR SUMMARY JUDGMENT

Summary judgement is appropriate when there is no genuine issue of material fact and a moving party is entitled to a judgment as a matter of law. Barsz v. Max Shapiro, Inc., 600 N.E.2d 151 (Ind. App. 1992).

The Trial Court is permitted to enter a summary judgment on all of the issues, or "any part thereof". Trial Rule 65(B).

SUMMARY OF THE DISPUTE

In 1994 Richard W. Sand entered a Judgement which, among other things, declared the definition of an "onshore owner" and the rights of each onshore owner. Kokomo Grace is an onshore owner. Kokomo Grace is listed in Exhibit E prepared by the Conference when it was managing pier locations. Kokomo Grace was listed as location number "64".

Kokomo Grace has a history of permitting the Conference to place a group pier at its lakeshore frontage. Kokomo Grace is

listed in Exhibit E as owning fifty feet (50') of frontage. The group pier requires seventy feet (70') of frontage and some of the group pier was located in front Huntington Trinity Church property to the East of Kokomo Grace.

When the Conference decided to remove itself from participation, Kokomo Grace requested relocation of the group pier so that it could use its onshore pier assignment for itself. EFAC has refused to allow Kokomo Grace utilization of its onshore pier location, and has also refused to relocate the group pier to another place. Kokomo Grace is absolutely entitled to an onshore pier location and twenty-four feet (24') of usage.

#### LEGAL HISTORY

As the Court knows, this matter has been pending in one form or another before the Kosciusko Circuit Court going back to its initial iteration and disposition in 1994. In Cause Number 43C01-9109-CP-732 on August 2, 1994 the Honorable Richard W. Sand entered a "Record of Submission, Findings of Fact with Opinion and Judgment". Clearly the Judge's intent was to dispose of multiple issues arising out of the history and legal situation of Epworth Forest. The litigation was brought by numerous individuals against the North Indiana Annual Conference of the United Methodist Church and there were some intervening Defendants.

A number of owners within the plat of Epworth Forest did not intervene or participate. Some of those were because they were members of the Methodist Church or even individual congregations of the United Methodist Church which owned properties within Epworth Forest. In any event, a number of owners declined to participate because they did not feel it was appropriate to litigate with their own church. Nonetheless, the 1994 Judgment covers all of the owners within the plat of

Epworth Forest.

In 1994 the Court found, among other things, that the title to the lands in dispute had changed through the course of years, passed through many organizations bearing different names, and is presently owned by the Conference. (1994 Judgment, Page 3.) (No ownership by Epworth League Institute was mentioned.)

The Honorable Richard W. Sand also resolved the issue of ownership of the strip of land lying between the platted lots and the water's edge. At page 11 of the 1994 Judgment, the Court specifically found that the "...title to the lands underlying the easement being vested in the adjoining onshore owners...", which also vests in the onshore owner's littoral rights underlying the lake and within their boundaries. (See page 11, 1994 Judgment)

The original 1994 Judgment also has a finding addressing appropriate placement of piers. "At reasonable intervals means that offshore owners and Conference piers may not be placed in such proximity to onshore owner piers as to create unreasonable inconvenience to the onshore owners and the use of their own piers" (1994 Judgment, Page 12).

In 1994 the Court entered a Judgment that specifically provided for the establishment of reasonable regulations, such as to assure, first, that the onshore owners may establish a pier at their location of choice upon their lands and then to allow placement of offshore owner piers in a manner which imposes the least possible burden upon any one or group of onshore owners.

The 1994 Judgment contains no references whatsoever to "Community Piers", nor does it vest any rights in such a thing to any party. The Judgment discusses the vesting of title in those parties who are in Court for that particular case as to the lands lying between the lots and the shore of Lake Webster and extending into the waters. The Court did not vest title to

any person or entity not participating in the litigation as there would not have been jurisdiction, but clearly the law of the case does apply to all onshore lot owners.

There was additional litigation culminating in an order of January 21, 2014. That began as a request for the Court to review the pier administration policy currently being applied. The January 2014 Order reiterated the 1994 Order that "the onshore owners get first choice as to where they get to put their piers because they are the owner of the fee..." (January 2014, Page 3).

The January 2014 Order recognizes the Conference regulations and more particularly "a map or list showing pier placements for 2014 developed pursuant to these policies, copies of which are attached hereto and made a part hereof as Exhibit C, D, and E" (January 2014, Page 5). The January 2014 Order does not vest title in any fashion and simply approves a map or list showing pier placements for 2014. The January 2014 Order also confirms that the regulations must be modified to limit offshore owners to the placement of only one pier and the docking of only one boat (January 2014, Page 6).

Of interest is that there is a statement that no onshore owner may have a slip at **a Community Pier** unless offshore owners have been provided for. This is not a vesting of any particular community pier or location, simply a provision with regard to "**a community pier**".

The January 2014 Order very specifically provides that the regulation of the shoreline should strive for 10-foot buffer zones between facilities and equipment and strive for burdening any one onshore owner with only one offshore pier site. (Defined as one pier, one boat.)

The exhibits attached by the Court include "Exhibit E", which is a list of pier locations. For pier location number 64

there are essentially three (3) entries, plus an unnumbered entry. The exhibit shows 64-A (which we have learned designates an offshore owner) for Marcina Schrader; then an entry without a number labeled "Community Pier"; then location number 64 for Huntington Trinity; then location number 64 for Kokomo Grace.

On April 15, 2014 this Court entered an Agreed Order granting relief under Trial Rule 60 and modifying the Judgment. The Conference was removed from administering the shoreline and piers, and a new entity was required to be created. The April 2014 Order includes a requirement that onshore owner's pier assignments will continue from year to year and be presumed permanent.

Pier Assignment 64 is therefore permanent, EFAC claims that the mere mention of the permission community pier makes it permanent, while the listing of assignment makes 64 to Kokomo Grace maybe apparently reassigned. It also contains a bylaw requirement for EFAC that "a presumption will exist of one offshore pier per onshore lot" and that the EFAC will develop, establish, and maintain community piers **where possible**".

#### ADDITIONAL FACTUAL HISTORY

In January 2014 Kokomo Grace, noting the eminent departure of the Conference from administration, submitted an application for use of its pier assignment (new, transfer, or change request) on a form provided by Bradley, the hired administrator for the Conference, by which Kokomo Grace stated its intention to install its own pier in front of the property and requested that the Community Pier be moved for the 2014 season. (EFAC Deposition Exhibit 8 dated 1-28-2014) Typically, the administrator for the Conference, Bradley, apparently did nothing with this.

Although charged with the obligation of taking over all of the pier administration functions from the Conference, EFAC claims no knowledge of the January 28, 2014 request, at least at the outset. However, early on, EFAC did become aware of the desire of Kokomo Grace to have its own onshore pier location, the same as all other onshore owners.

Those ongoing discussions lead to a January 29, 2016 request from EFAC, directed to Kokomo Grace, asking permission to continue to use the present location "for the 2016 summer only" (see Deposition Exhibit 1).

On March 22, 2016 EFAC made a further request via email. It states that the communication is "as a follow up to my conversation with Steve Hart (Kokomo Grace Representative). EFAC wanted a written decision of Kokomo Grace to have the community pier removed during 2017. A response was made on March 28, 2016 by the office manager for Kokomo Grace, attaching February 29, 2016 Board of Trustee's Minutes from Kokomo Grace (Deposition Exhibits 2 and 3).

At that point, EFAC switched from asking permission to simply asserting an intent to continue using the same location for the Community Pier, regardless of ownership, regardless of the request of Kokomo Grace (see Plaintiff's Deposition Exhibit 4), and regardless of Kokomo Grace's right to pier assignment 64.

EFAC decided to base their new position on a claim that the "Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church" was the legal owner of the shoreline. EFAC provided no explanation, of course, as to how that incorrect claim vested any permission to EFAC to use that shoreline. It also ignored EFAC's own records which clearly reflected ownership of 50-feet of shoreline by Kokomo Grace (see Exhibit E to Court proceedings; see also Deposition Exhibit 15,

which is EFAC's pier assignment list from their website, which clearly reflects Kokomo Grace UMC as (presumed permanent) pier location number 64. There is no reason for that listing if Kokomo Grace UMC does not own the right to have that pier location, and somehow it belongs to a non-existent entity of Epworth League Institute.

EFAC then went ahead and placed a Community Pier in front of the Kokomo Grace property and on the Kokomo Grace shoreline without permission during 2017, apparently "because they could". There were communications back and forth, in an effort to sort out the rights of Kokomo Grace and the obligations of EFAC. Ultimately, a final demand was made on August 24, 2017 by a letter from Richard K. Helm to Matthew R. Shipman addressing the issue. (KG Designated Item 8) The response received by email of September 27, 2017 from Matt Shipman to Richard Helm diverted the conversation to a claim that the request was that EFAC "not locate the Community Pier" and ignoring the specific request that Kokomo Grace be allowed to designate its 24-foot accorded to onshore riparian owners. (KG Designated Item 9) The response also did not provide citations to any of the law of the case, but rather to a claimed perception of what the Judge of this Court has supposedly "made perfectly clear" (as a comment, this is the only time undersigned counsel has ever seen a citation to reading the mind of the Judge, rather than to written authority or law).

There was a subsequent response dated October 12, 2017 in which, again, EFAC based its position on a perception of the Court's comments in entirely separate cases. (KG Designated Item 10) Neither of these responses address the fact that Kokomo Grace is an onshore owner, is listed as such in the records of

EFAC, is entitled to designate a pier location, and that none of the "relied upon" perceptions had anything to do with a community pier.

This litigation then commenced.

#### SOME ASPECTS OF THE LITIGATION

Kokomo Grace reserves the right to pursue that part of its Complaint addressed to continuing trespass, slander of title, as well as statutory rights with regard to frivolous litigation. At this point it is simply noted that throughout the course of litigation, EFAC has denied things it knew, claimed it was without knowledge of things it knew, maintained a group pier without a proper DNR permit, made claims about the alleged existence of "Epworth League Institute" when that entity no longer exists and has not existed since 1939 (and was undoubtedly one of entities referred to Judge Sand in his 1994 Judgment as having evolved into ownership by the Conference).

Even after a Rule 30(B)(6) deposition and admissions made by the deponent representative of EFAC, the discovery was supplemented in part by answers that assert that now EFAC will "admit that the deed attached as Exhibit A appears to transfer the parcel of land between Lot 15 and the lake to Plaintiff"... the key word being "appears", which is another evasion apparently done with the deliberate intent to make proofs more difficult and litigation more extensive and expensive.

Interestingly enough, and related, is the fact that correspondence from EFAC to "Epworth League Institute" was purportedly based upon an Assessors record showing the address to be 8379 East Westley Lane, North Webster, Indiana when in fact that property and address is owned by an individual, Bryce P. Cox. (See KG Designated Item 11)



### EFAC INCONSISTANT POSITIONS AND ADMISSIONS

EFAC claims reliance upon a list of pier locations which was included in the January 2014 Order, specifically Exhibit E. That Exhibit has been updated to a pier assignment list maintained by EFAC, Deposition Exhibit 15, which comes from the website maintained by EFAC. In both cases Kokomo Grace is clearly and unequivocally listed as an onshore owner. In Exhibit E, Kokomo Grace is shown as pier location number 64. In Exhibit 15, Kokomo Grace is listed once again as pier location number 64. In Exhibit E there is a clear statement the Kokomo Grace owns fifty feet (50') of shoreline.

Apparently because EFAC is somehow committed to the idea that it is entitled to maintain a community pier at its present location, even without permission of the riparian owner, and without a DNR permit, EFAC has taken exactly contradictory positions with regard to Kokomo Grace, and only with regard to Kokomo Grace.

EFAC asserted that notwithstanding its own records, the shoreline owned by Kokomo Grace is actually somehow owned by Epworth League Institute. Of course EFAC had no permission or communications from Epworth League Institute to support their use of the shoreline even if it were owned by a different entity, which it is not.

EFAC essentially ignores Judge Sand's conclusions and orders to the effect that the shoreline is owned by the adjacent lot owners, with lot lines extended.

EFAC actually has pier locations listed for a number of other owners in like circumstances. Those other owners are currently the owners of parcels which do not abut the water, but which are adjacent to shoreline tracts which the current county records list as owned by the non-existent, Epworth League Institute. Somehow none of those others (Kurley, Kaster,

Fenstermacher by way of example) have ever been told they were not entitled to be treated as an onshore owner and maintain an onshore pier. Apparently EFAC believes Kokomo Grace to be somehow unique in that regard.

EFAC claimed that it was without knowledge as to whether Kokomo Grace was the owner 15 in Block B or of the lakeshore tract, notwithstanding its own records, historical records, and the 1994 Judgement, and assignment number 64 in Exhibit E

EFAC claimed it was without knowledge that the group pier was maintained permissively, notwithstanding its own records from 2014 and 2015 in which it asked permission of Kokomo Grace for the continued location of the community pier. (EFAC Deposition Exhibit 12, KG Designated Items L-1 & L-2)

EFAC answered the complaint without knowledge as to the partial content of the January 2014 Order which provides "the onshore owners get first choice as to where they get to put their piers because they are the owners of the fee" (echoing the 1994 Judgement) apparently also to make the litigation more difficult and make proof more cumbersome. Those words are directly from the 1994 Judgment and the January 2014 Order and it is difficult to understand how EFAC could be "without knowledge" of those things.

EFAC also answered the complaint by asserting it was without knowledge that Kokomo Grace communicated a request for the group pier to be removed and even claimed it was without knowledge that EFAC had asked for additional time to find a new location, notwithstanding, contrary to written documents and communications of EFAC.

For whatever reason, EFAC has contradicted itself repeatedly, litigated issues as to which it was clearly aware by claiming no knowledge or denying them, in bad faith.

After a Rule 30(B) 6 Deposition of EFAC, it finally clearly

admitted that Kokomo Grace owns the shoreline in front of its real estate and that Kokomo Grace is an "onshore owner" as defined by the various Court declarations. Notwithstanding, Kokomo Grace has not been allowed to use its pier location or twenty-four feet (24') of riparian use. EFAC asserts a theory that dicta in the pier administration rules described in the January 2014 Order somehow changes things. The EFAC theory is that because someone inserted a statement that pier locations were chosen in 1995, this somehow precludes Kokomo Grace from being accorded the same rights as every other onshore owner has and is entitled to. This also notwithstanding that EFAC has no records to clearly show who did or did not select onshore pier locations in 1995, notwithstanding acknowledgement that there have been changes in pier locations since 1995, notwithstanding acknowledgment that Kokomo Grace is indeed an "onshore owner". Apparently EFAC thinks this Court will endorse discriminatory treatment of Kokomo Grace from this convoluted construction of dicta, and apparently because it believes it can read the Court's mind with regard to such dispositions.

#### FROM THE POINT OF VIEW OF KOKOMO GRACE

Kokomo Grace is a member the Indiana Conference of the United Methodist Church. Prior to EFAC existing, Kokomo Grace allowed the Conference to locate a community pier in front of shoreline owned by Kokomo Grace and Huntington Trinity. When the Conference decided to leave the pier management and abandon it to others, Kokomo Grace decided to request no further community pier be placed on their shoreline and to request use of their pier location and twenty-four feet (24') of riparian usage. Kokomo Grace asked for exactly the same thing accorded to each and every other onshore owner within Epworth Forest.

Kokomo Grace then graciously gave permission for EFAC to

continue to place the community pier on the shoreline of Kokomo Grace's property during 2015 and 2016. They did so after EFAC **requested permission.**

Kokomo Grace meets every definition of an onshore owner as set forth in the 1994 Judgement, the 2014 Order, the regulations of the Conference ratified by the Court, the by-laws of EFAC, the Articles of Incorporation of EFAC, and general Indiana common law defining a riparian owner.

Kokomo Grace perceives that having an off shore pier on its frontage containing twenty-four (24) boat slips is far in excess of the "one boat / one pier" definition provided elsewhere in the various Court documents and in the EFAC documents as well.

Kokomo Grace perceives that twenty-four (24) slips on a single pier, seventy feet (70') of shoreline being utilized for a community pier (clearly expanding beyond even the Kokomo Grace fifty feet (50') of ownership) and the "to and from usage" by off shore owners over those twenty-four (24) slips, all constitute an excessive burden on the fifty feet (50') of shoreline owned by Kokomo Grace. Such excessive burdens are prohibited by the 1994 Judgement.

Kokomo Grace is absolutely entitled to have its onshore pier location and its twenty-four feet (24') of riparian usage.

One other item of note is that EFAC has billed the Kokomo Grace for the 2018 season as an "onshore owner" and Kokomo Grace has paid the \$150.00 demanded. (KG Designated Items 1 & 2) Surely, it is entitled to be treated as an onshore owner and to have its own pier location and twenty-four feet (24') of usage.

#### ALTERNATIVES AVAILABLE

Although not directly pertinent to the rights of Kokomo Grace, but material to EFAC's motivations, it is interesting to note that EFAC initially applied for two (2) group pier

locations, one (1) on Eagle Point and one (1) at the south end of Second Trail (a cul-de-sac in a platted street at the shoreline). Although it is clearly a viable location, EFAC abandoned the Eagle Point location and the application.

After EFAC decided to abuse Kokomo Grace by refusing its rights as an onshore owner, and caused this litigation to ensue, apparently, EFAC put the group pier application for Second Trail "on hold". Because discovery has not been completed performed by EFAC (A matter for a different application to the Court at a later date.) it is not completely clear but it does seem to appear that at least one board member objected to the Second Trail location. It seems clear that EFAC thought it could continue to abuse Kokomo Grace and did not need to deal with the group pier application for Second Trail. All of this, of course, in the context that a preliminary approval had already been given by the DNR for the Second Trail location. All of this is in the context that the community pier location on the Kokomo Grace shoreline does not have an approval from the DNR nor a group pier license, nor the permission of the riparian owner which is a prerequisite for a group pier.

#### CONCLUSION

Kokomo Grace has been accused of committing excessive litigation in pursuing this matter through proper discovery and presenting it now as a Motion for partial summary judgments, instead of "just set it for trial".

The materials contained in this memorandum should make it clear as to why Kokomo Grace has followed proper procedure rather than pursuing short cuts under which it could be ambushed at a hearing by almost any fiction EFAC might want to present to the Court. Now that we have the facts pinned down to certainty, and notwithstanding the continued evasiveness of EFAC in the

matter, it is appropriate for partial summary judgments to be entered by the Court.

Kokomo Grace respectfully requests that the Court enter the several parcel summary judgments requested in its Motion.

Kokomo Grace does wish to reserve its rights to pursue any and all matters which are not addressed in the summary judgement proceedings pending before the Court.

Respectfully submitted,

ROCKHILL PINNICK LLP

By: 

Richard K. Helm  
Attorney #7646-43  
105 East Main Street  
Warsaw, IN 46580  
574-267-6116  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that the foregoing document is electronically filed using the Indiana E-filing System (IEFS) and that the foregoing document was served upon the following person(s) using the service contact entered in the IEFS via IEFS this 18<sup>th</sup> day of April, 2018:

Matthew Shipman



Richard K. Helm  
105 East Main Street  
Warsaw, Indiana 46580  
(574) 267-6116  
Attorneys for Plaintiff  
Attorney #7646-43

H:\WORDDOC\DELETE\KokomoGraceMemoFact&Law.docx