

FILED

Case No. 15446

Dept. No. 2

APR 22 1987

J. Saley

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

* * *

DONALD M. SCHULZ, et al,

Plaintiffs,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

vs.

ZEPHYR COVE PROPERTY OWNERS
ASSOCIATION, INC., a Nevada
corporation, et al,

Defendants.

LAW OFFICES OF
HENDERSON & NELSON
164 HUBBARD WAY
SUITE B
RENO, NEVADA 89502
(702) 825-7000

This matter having come on regularly for hearing before this Court on April 21 and 22, 1987, Plaintiffs having appeared and been represented by Frank W. Daykin and Noel Manoukian of the firm of Thorndahl, Backus, Maupin & Manoukian, Defendant ZEPHYR COVE PROPERTY OWNERS ASSOCIATION, INC. and Plaintiffs-in-Intervention ZEPHYR COVE PROPERTY OWNERS ASSOCIATION, INC. having appeared and been represented by James M. Walsh and James L. Morgan of the firm of Henderson & Nelson, the Court having heard all of the evidence, reviewed the exhibits and considered the arguments of counsel, it does hereby enter the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

1
2 1. That Plaintiffs are the fee owners of that
3 certain real property described as Lot 3 in Block F as shown
4 on the Amended Map of Zephyr Cove Property in Section 10,
5 Township 13 North, Range 18 East, M.D.B. & M., which was filed
6 in the office of the recorder of Douglas County, Nevada on
7 August 5, 1929.

8 2. That Zephyr Cove Properties, Inc. was the
9 developer and owner of the Zephyr Cove Subdivision and did
10 cause to be recorded, that certain map entitled, "Amended Map
11 of Zephyr Cove Property in Section 10, Township 13 North,
12 Range 18 East, M.D.B. & M., which was filed in the office of
13 the recorder of Douglas County, Nevada on August 5, 1929.

14 3. That by virtue of Quitclaim Deed dated November
15 20, 1982, recorded on November 29, 1982 in Book 1182, Page
16 1266 as Document No. 73526 of the official records of Douglas
17 County, Defendant ZEPHYR COVE PROPERTY OWNERS ASSOCIATION,
18 INC. is the grantee of Zephyr Cove Property, Inc. as to that
19 certain real property described as:

20 "The beach area at Zephyr Cove in front
21 of Lots 1-A through Lot 11, and to the
22 low water mark as delineated on that
23 certain map entitled, 'Amended Map of
24 Zephyr Cove Property in Section 10,
Township 13 North, Range 18 East' filed
for record on August 5, 1929 in the
office of the County Recorder of Douglas
County, State of Nevada."

25 Said Quitclaim Deed was admitted as Exhibit "A" to
26 these proceedings.

27 4. That by covenants running with the land recorded
28 by Zephyr Cove Properties, Inc. dated November 1, 1982,

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1 recorded November 29, 1982 in Book 1182, Page 1262, as
2 Document No. 73525 of the official records of Douglas County,
3 the aforementioned beach area was to remain continuously open
4 for use by the property owners and/or residents of ZEPHYR COVE
5 PROPERTIES OWNERS ASSOCIATION, INC.

6 5. That Plaintiffs-in-Intervention are owners of
7 real property within the Zephyr Cove subdivision, as set forth
8 by the Amended Map of Zephyr Cove Property which was filed for
9 record in the official records of Douglas County on August 5,
10 1929.

11 6. That Plaintiffs-in-Intervention or their
12 predecessors have occupied and used the fine sandy beach area
13 below the seawall as designated on the Amended Map of Zephyr
14 Cove Properties for a period in excess of five (5) years
15 before the filing of the Complaint-in-Intervention.

16 7. That Plaintiffs have occupied and used the area
17 between the seawall and the platted boundaries of Lot 3, and
18 their possession has been exclusive, open and notorious.

19 8. That Plaintiffs have not paid any real property
20 taxes on the fine sandy beach area below the seawall adjacent
21 to Lot 3 in Block F of the Zephyr Cove Property as shown on
22 the Amended Map, nor have they paid real property taxes on the
23 portion of the fine sandy beach area lying between the seawall
24 and the platted boundaries of Lot 3 in Block F as shown on the
25 Amended Map of the Zephyr Cove Subdivision.

26 9. That Plaintiffs have not actually and adversely
27 possessed the fine sandy beach area below the seawall adjacent
28 to Lot 3 in Block F in a manner adverse and hostile to the

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1 interests of the true owners, nor in a manner exclusive of the
2 rights of all others continuously and non-interrupted.

3 10. That Plaintiffs have not occupied the fine
4 sandy beach area below the seawall adjacent to the platted
5 boundaries of Lot 3 in Block F as shown on the Amended Map in
6 a manner that was open, notorious and visible and exclusive of
7 the rights of all others.

8 11. That Defendants and Plaintiffs-in-Intervention
9 have been required to retain the services of an attorney to
10 defend this action and assert their claim, and have therefore
11 incurred attorneys fees and costs.

12 CONCLUSIONS OF LAW

13 1. That the conveyances to Plaintiffs granted them
14 no interest in fee to any real property other than the
15 property within the platted boundaries of Lot 3 in Block F as
16 shown on the Amended Map of Zephyr Cove Property in Section
17 10, Township 13 North, Range 18 East, M.D.B. & M. which was
18 filed in the office of the recorder of Douglas County, Nevada
19 on August 5, 1929.

20 2. That that certain Grant, Bargain and Sale Deed
21 dated June 4, 1979, recorded October 27, 1980, in Book 1080,
22 Page 2061, as Document No. 50079 (Exhibit "13" to these
23 proceedings), granted no interest in the fine sandy beach area
24 to Plaintiffs or their predecessors-in-interest.

25 3. That Plaintiffs enjoy the same right to use the
26 fine sandy beach area below the seawall as all other owners in
27 the Zephyr Cove Subdivision as shown on that Amended Map of
28 Zephyr Cove Property in Section 10, Township 13 North, Range

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1 18 East, M.D.B. & M. which was filed in the office of the
2 recorder of Douglas County, Nevada, on August 5, 1929.

3 4. That Plaintiffs have not paid taxes on any
4 portion nor have they adversely possessed in an open, hostile,
5 notorious, continuous and exclusive manner, the portion below
6 the seawall of the area designated as fine sandy beach
7 adjacent to the platted boundaries of Lot 3 in Block F of the
8 Amended Map of Zephyr Cove Property.

9 5. That ZEPHYR COVE PROPERTY OWNERS ASSOCIATION,
10 INC. is the grantee of Zephyr Cove Properties, Inc. under that
11 certain Quitclaim Deed dated November 26, 1982, which
12 transferred the beach area at Zephyr Cove in front of Lots 1-A
13 through Lot 11 and to the low-water mark, as delineated on
14 that certain map entitled "Amended Map of Zephyr Cove Property
15 in Section 10, Township 13 North, Range 18 East", filed for
16 record on August 5, 1929 in the office of the County Recorder
17 of Douglas County, State of Nevada.

18 6. That Plaintiffs have a prescriptive right to use
19 that portion of land adjacent to Lot 3 in Block F lying
20 between the platted boundaries of Lot 3 in Block F and the
21 seawall.

22 7. That Defendant ZEPHYR COVE PROPERTY OWNERS
23 ASSOCIATION, INC. and Plaintiffs-in-Intervention are entitled
24 to their attorneys fees and costs.

25 8. That Judgment be entered in favor of Defendant
26 ZEPHYR COVE PROPERTY OWNERS ASSOCIATION, INC. and
27 Plaintiffs-in-Intervention, and against Plaintiffs, denying

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1 the relief sought by Plaintiffs and awarding Defendants and
2 Plaintiffs-in-Intervention their attorneys fees and costs.

3 9. That all owners of property within the area
4 covered by the Amended Map of Zephyr Cove Property in Section
5 10, Township 13 North, Range 18 East, M.D.B. & M., which was
6 filed in the office of the recorder of Douglas County, Nevada,
7 on August 5, 1929, have an irrevocable license to use the fine
8 sandy beach below the seawall.

9 DATED this 29th day of May, 1987.


10 
11 _____
12 DISTRICT JUDGE

13 LAW OFFICES OF
14 HENDERSON & NELSON
15 164 HUBBARD WAY
16 SUITE B
17 RENO, NEVADA 89502
18 (702) 825-7000

19 **CERTIFIED COPY**

20 The document with this certificate is attached is a
21 full, true and correct copy of the original on file and of
22 record in my office.

22 DATE: February 7, 2003
23 Clerk of the 9th Judicial District Court
24 of the State of Nevada, in and for the County of Douglas,

24 By  **SEAL** Deputy

25 REQUESTED BY
26 **FIRST AMERICAN TITLE CO.**
27 IN OFFICIAL RECORDS OF
28 DOUGLAS CO., NEVADA

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WERNER CHRISTEN
RECORDER

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