SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4833-14T4

MEDFORD LAKES COLONY CLUB t/a
MEDFORD LAKES COLONY,

Plaintiff-Respondent,

v.

DEBRA MAIDA a/k/a DEBRA ZIENIUK,

Defendant-Appellant.

DEBRA MAIDA a/k/a DEBRA ZIENIUK,

Plaintiff-Appellant,

v.

MEDFORD LAKES COLONY CLUB t/a
MEDFORD LAKES COLONY, JOHN
CRANSTON and JOSEPH REESE,
jointly and severally,

Defendants-Respondents.

Argued September 20, 2016 – Decided March 2, 2017

Before Judges Fisher, Ostrer and Leone.

On appeal from the Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. C-80-14 and Law Division, Burlington County, Docket No. L-2348-14.

Mark J. Molz argued the cause for appellant.

Peter R. Thorndike and William J. Martin argued the cause for respondents (Ryan and Thorndike, attorneys for respondent Medford Lakes Colony Club; and Martin Gunn & Martin, attorneys for respondents Medford Lakes Colony Club, John Cranston and Joseph Reese; Mr. Thorndike and Mr. Martin, on the joint brief).

PER CURIAM

Medford Lakes Colony Club (the Club) has owned Upper Aetna Lake in Burlington County since 1931, when it acquired title from the Medford Lakes Corporation. Beginning in 1982, Debra Maida, first with her husband and then by herself, has owned a lakefront home along with a dock extending thirteen feet over the lake and resting on pilings driven into the lake floor.

The problem for Maida is that lakefront property owners need the Club's consent to "erect and maintain wharves or piers on the lake," which unquestionably includes her dock. The consent requirement has been in Maida's chain of title since 1929. Apparently, the Club freely granted such consent to property owners who willingly paid Club dues. The Club used the revenue to maintain the lake and various other recreational facilities for owners' use. However, after Maida ceased paying dues in 1993, the Club decided no longer to tolerate her dock encroaching on the lake.

The Club did not act swiftly by any means, to withdraw its consent. Although it terminated Maida's membership in 1994 soon after she stopped paying dues, the Club waited until 2013 to notify her she was a trespasser. The Club gave her a choice: pay up, or it would remove the part of the dock that extended over the lake. That meant most of the twenty-foot-wide dock, only a small portion of which rested on land.

Maida refused, despite the Club's additional effort to persuade her. So, in June 2014, the Club opted for self-help. It removed the floorboards of the over-the-lake portion of the dock, but had not finished the job when Maida complained to the police.

The dispute quickly landed in court. The Club filed a verified complaint in General Equity, seeking permission to remove the dock and an order enjoining Maida from interfering with its demolition. Maida filed an answer and counterclaim, seeking compensation for the damage done to the dock. Until the court could decide the case in light of a full record, it required the Club to restore the dock because it created an unsafe condition.

Soon thereafter, the Club sought summary judgment. Maida then cross-moved for "partial summary judgment" — partial apparently because she did not ask the court to quantify the

alleged damage to her dock. Maida predicated her claim on her right to keep the dock where it was.[1] After considering the parties submissions and oral argument, Judge Karen L. Suter granted the Club's motion and denied Maida's.

In a cogent written decision, Judge Suter reviewed the undisputed chain of title and found unambiguous the 1929 provision that stated, "Owners of lake front lots may erect and maintain wharves or piers on the lake subject to the consent of the Medford Lakes Corporation and its successors in the title to the lake bed." Judge Suter found Maida had constructive notice of the restriction, which ran with land. Because Maida stopped paying dues, the Club was entitled, under its bylaws and the deed restriction, to withdraw its consent for maintenance of the dock. Once it did so, Maida was a trespasser and had no right to continue encroaching upon the lake.

Judge Suter rejected Maida's arguments that the dock should be preserved in the interest of public safety, as Maida failed to offer supporting evidence. She also rejected Maida's public trust doctrine argument because the doctrine did not apply to

[1] She did not fashion her claim as one for damage only to the land-based portion of the dock, nor did she express an interest in moving the entire dock onto the land. The record includes an estimate Maida obtained for rebuilding an entire dock, but it is unexplained by a certification or other competent evidence. See R. 1:6-6.

private inland lakes. Judge Suter also rejected Maida's counterclaim for monetary damages for the partial removal of the dock. Since she had no right to maintain the dock over the lake, she has no right to damages from its removal. The court granted the Club the right to enter Maida's property to remove the dock. It stayed its decision for forty-five days. No further stay was granted.

On appeal, Maida reprises the arguments she presented to the trial court and presents new ones, including one based on the doctrine of laches.

We review a summary judgment decision de novo, applying the same standard as the trial court. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010). Having done so, we affirm the trial court's order substantially for the reasons set forth in Judge Suter's opinion.

We add the following comments. We discern no merit to Maida's argument that summary judgment was premature. We may assume for argument's sake she did not waive the ripeness argument by filing her cross-motion.[2] Nonetheless, Maida was

[2] Compare O'Keeffe v. Snyder, 83 N.J. 478, 487 (1980) (stating that generally cross-motions do not constitute waivers of trial of disputed fact issues), with Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 450 (2007) ("When both parties to an action move for summary judgment, one may fairly (continued)

obliged to "demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015) (internal quotation marks and citation omitted); see also Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007) ("A party opposing summary judgment on the ground that more discovery is needed must specify what further discovery is required, rather than simply asserting a generic contention that discovery is incomplete."). Maida failed to do so.

We also reject her argument that laches should bar the Club from asserting its rights to the lake property. Notably, Maida did not assert laches as an affirmative defense in her answer. See Fox v. Millman, 210 N.J. 401, 417 (2012) (explaining that laches is an affirmative defense); R. 4:5-4 (requiring affirmative defenses – including laches specifically – to be set forth in a party's responsive pleading). Nor did she raise it before the trial court in opposing summary judgment. See Nieder

(continued)
assume that the evidence was all there and the matter was ripe for adjudication." (internal quotation marks and citation omitted)). A movant may assert that the facts are undisputed according to its theory of the case while contending genuine issues of fact remain if the court adopts the opponent's theory. O'Keeffe, supra, 83 N.J. at 487.

v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1974) ("[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." (internal quotation marks and citation omitted)).

In any event, Maida has failed to demonstrate why the Club's delay should preclude it from obtaining relief. Laches is an equitable remedy granted in the court's discretion when the particular facts warrant. Fox, supra, 210 N.J. at 417-18. They do not here. Maida was a free-rider for twenty years while other residents shouldered the expense of maintaining the lake. We discern only benefit, not prejudice to Maida, from the Club's delay in removing her dock. See id. at 417 (stating that laches precludes relief when one party's inexcusable delay causes the other prejudice).

Finally, we reject Maida's contention that the "law does not suffer waste" and, as a consequence, that she is entitled to compensation for damage to her dock and reinstatement of her cause of action against the Club. There is no waste in granting the Club the right to remove the encroaching dock in order to stop the continuing trespass. See Jersey City Med. Ctr. v.

Halstead, 169 N.J. Super. 22, 25 (Ch. Div. 1979) (stating equity may enjoin a continuing trespass). The only way the Club can restore its property rights is to remove the dock over the lake. The resulting damage is not compensable.

Affirmed.