

Mooring One's Boat Over the RIPARIAN BOTTOMLANDS of Another

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In Michigan, a lakefront property owner typically owns the bottomlands under an inland lake to the center of the lake. See *Hall v Wantz*, 336 Mich 112 (1953) and *Gregory v LaFaive*, 172 Mich App 354 (1988). And, in most cases, only the riparian property owner can install a dock, tether a floating raft and moor, dock or anchor boats or watercraft overnight, seasonally or permanently on their own bottomlands – others cannot do so without the express permission of the owner of the riparian bottomlands. *Ibid*.

There has, however, and remains, somewhat of a question regarding whether the owner of an adjoining waterfront property (or the beneficiary of a lake access easement with dockage rights) can moor or anchor a boat seasonally or overnight that encroaches onto or over the riparian boundary line of the neighboring lakefront property without that riparian owner's permission. The Michigan Court of Appeals appeared to indicate that such encroachments can lawfully occur in some instances in *West Michigan Dock & Market Corp v Lakeland Investment*, 210 Mich App 505 (1995). In that case, the Court of Appeals allowed a commercial vessel to be unloaded and be moored over the bottomlands of a neighboring waterfront property for limited periods of time without permission. It is possible that *West Michigan Dock* is actually a relatively narrow holding by the Court of Appeals regarding overnight or seasonal moorings partially over the bottomlands of another riparian landowner and that the Court did not intend that case's so-called "balancing test" to be applied widely or in all but a few extreme cases. The facts in *West Michigan Dock* were unusual and may limit the "reach" of that appellate decision. In *West Michigan Dock*, for many years a riparian landowner allowed the ships of the adjoining riparian property owner to be docked or moored partially over the consenting riparian's bottomlands. Once permission was later withdrawn, due to the topography of the lakefront and existing docks and wharves, it was difficult for the ships of the encroaching riparian landowner to dock solely over the bottomlands of that party. It should also be pointed out that the trial court (which was upheld by the Court of Appeals) attached conditions to the ability of the one riparian landowner to dock its boats over the bottomlands of the other riparian property owner without permission. The trial court only allowed boats to be loaded and unloaded, prohibited the boats from being anchored to the bottomlands and prohibited an encroaching vessel from docking for more than one week without the permission of the owner of the underlying riparian property. The trial court also required the trespassing riparian landowner to pay the other riparian landowner \$5,000 to allow defendant trespasser's improvements to remain in place as a slight encroachment. The trial court found that the encroachment was only a few feet, at most. The trial court appeared to invoke

equitable principles to allow for the limited boat encroachment on the bottomlands of the other riparian property owner. The Court of Appeals upheld the trial court. Therefore, it is possible that the balancing test mentioned in *West Michigan Dock* could be applied only in highly unusual cases. That would make sense, as a neighbor on dry land is not allowed to encroach on his or her neighbor's land without permission – why should riparian landowners be any different?

Conversely, the Michigan Court of Appeals in *Heeringa v Petroelje*, 279 Mich App 444 (2008) seemed to indicate that no one can anchor or moor a boat or watercraft overnight or seasonally even partially on or over the bottomlands of another without permission. The *Heeringa* Court stated:

Any erection which can lawfully be made in the water within those lines belongs to the riparian estate. And the complete control of the use of such land covered with water is in the riparian owner, except as it is limited and qualified by such rights as belong to the public at large to the navigation, and such other use, if any, as appertains to the public over the water." *Ryan v Brown*, 18 Mich 196, 207 (1869). "And this right to the covered lands in front has always been held to exclude any adjacent claimant from intercepting in any way the full extent indicated by the width at the shore, without reference to whether the tract approaches the shore at right angles or diagonally." *Clark v Campau*, 19 Mich 325, 328 (1869). Although "the private right must yield to the public right," otherwise that private right extends even to considering it a trespass for another party to construct something on that bottomland. *Ryan, supra* at 209. Therefore, a riparian landowner's riparian rights to water-covered bottomlands are, other than the public's right of reasonable access to the water itself, indistinguishable from ordinary fee ownership of dry land. *Heeringa* at p. 451.

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The Michigan Court of Appeals again discussed this topic in the recent unpublished case of *Gunther v Apap* that was decided on October 17, 2017 (Case No. 333169; 2017 WL 4654975). In that case, the lakefront property owner sued several backlot property owners who claimed usage rights in a 9-foot wide strip of land next to the riparian property owner's lakefront lot. The Court of Appeals was unable to ascertain whether the backlot owners actually owned the strip of land, had an access easement right in the land or had no rights in the narrow land strip whatsoever and remanded the matter back to the trial court on those issues. The Court of Appeals noted that it would be improper for an adjoining waterfront property owner or a beneficiary with lake access via an easement to unreasonably interfere with the riparian rights of the neighboring waterfront property owner. The Court of Appeals quoted approvingly from both *Heeringa* and *West Michigan Dock*. Nevertheless, the Court appeared to adopt the reasoning from *West Michigan Dock*, indicating that a boat or watercraft partially moored overnight or seasonally over the bottomlands of the adjoining riparian

land owner without permission is not necessarily unlawful. The Court seemed to indicate that a balancing test should be used. However, that appears to contradict the ruling in *Heeringa*. It will likely take further appellate cases to definitively answer whether a partial boat encroachment over the riparian boundary lines of another riparian without permission is always prohibited or can occur in certain cases if it is "reasonable." 