

“2000 Baum Family Trust v Babel”—R.I.P.

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Late summer of 2009 appeared to be a bleak time for many riparian property owners throughout Michigan, although few of them knew it at the time. The Michigan Court of Appeals had just confirmed the Charlevoix County Circuit Court’s abysmal decision in *2000 Baum Family Trust v Babel*, and held that first tier lot owners along platted public road rights-of-way that run parallel to a lake are not riparian. 284 Mich App 544; 733 NW2d 44 (2009). Prior to the Michigan Court of Appeals’ disastrous decision on June 23, 2009, over a century of Michigan appellate decisions had held that where a public road right-of-way is created in a plat, the road runs parallel to the lake, and there is no intervening land shown on the plat between the lake and the public road right-of-way, the first tier platted lot owners are riparian.

After the Court of Appeals decision in 2009, the first tier lot owners in the *2000 Baum Family Trust v Babel* case likely felt downtrodden. They had spent significant sums on attorneys and court costs and had lost at both the trial court and Michigan Court of Appeals levels. Furthermore, there were no further appeals as of right. The only option left was to file an application with the Michigan Supreme Court asking that Court to take a further appeal of the case, knowing that the Michigan Supreme Court only agrees to hear a small percentage of the appeals sought.

Luckily for countless riparians around the state, the first tier lot owners in the *2000 Baum Family Trust* case were determined to vindicate their riparian rights, not only for themselves, but also for likely tens of thousands of property owners in similar situations throughout Michigan. Attorney Bill Carey of Grayling and I immediately recognized the profound implications that the Court of Appeals’ decision in *2000 Baum Family Trust v Babel* would have if that decision were allowed to stand. Based on our recommendations, both the Michigan Lake and Stream Associations, Inc. and the Michigan Waterfront Alliance stepped in to help the former riparians. Ultimately, Bill Carey took over legal representation of the first tier lot owners at the Michigan Supreme Court level, and I authored the amicus curiae brief filed in

support of the first tier lot owners on behalf of the Michigan Waterfront Alliance and the Higgins Lake Property Owners Association.

The Michigan Supreme Court issued an order on January 27, 2010, agreeing to hear a further appeal of the *2000 Baum Family Trust v Babel* case. The Court heard oral arguments on October 5, 2010. Although matters were looking up somewhat for the first tier lot owners just by the Michigan Supreme Court agreeing to hear the case, statistically, most decisions of the Court of Appeals are ultimately upheld by the Michigan Supreme Court on further appeal. On December 29, 2010, the Michigan Supreme Court issued a landmark decision in *2000 Baum Family Trust v Babel* (Supreme Court Case No. 139617). A copy of that decision can be found on the Michigan Lake & Stream Associations, Inc.’s website at www.mlswa.org. The Michigan Supreme Court reversed both the trial court and Court of Appeals decisions and held that the first tier lot owners are, in fact, riparian. The case was decided on the thinnest of margins—four to three. Interestingly, one liberal justice joined three conservative justices in the majority opinion.

While the *2000 Baum Family Trust v Babel* case directly involved only platted parallel roads along lakeshores in Michigan, it also had implications for public road ends as well. Some of the language used by the Michigan Court of Appeals in its 2009 decision was so broad that it cast doubt upon decades of appellate case law involving public road ends at lakes, including *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667; 502 NW2d 382 (1993), and related cases. Essentially, the Michigan Court of Appeals said that the local road commission can do anything it wants with regard to public roads at lakes (whether parallel or perpendicular), thus implying that local road commissions could allow private dockage, permanent boat moorage, lounging, camping, picnicking, and sunbathing at road ends at lakes. The decision by the Michigan Supreme Court this past December effectively confirms the longstanding appellate case law in Michigan, including *Jacobs*, regarding public road ends (no private docks, permanent boat mooring, lounging, sunbathing, picnicking, etc.).

Three Michigan Supreme Court justices dissented in the *2000 Baum Family Trust* case. It will undoubtedly be disturbing to some how cavalierly those three justices dismissed longstanding (and universally relied upon) principles of real property law in Michigan. Before the Court of Appeals’ decision in *2000 Baum Family Trust*, at least four published Michigan Court of Appeals decisions—issued over several decades—clearly stated that first tier lot owners in the exact same situation as those in *2000 Baum Family Trust* were riparian landowners. Countless realtors, title insurance companies, property owners, and others relied on those clear, binding cases for many years. Proponents of private property rights throughout Michigan should be alarmed that just under a majority of the Michigan Supreme Court could attempt to so easily rewrite longstanding real estate principles.

But for the perseverance of the first tier lot owners in the *2000 Baum Family Trust* case, with the urging and assistance of the Michigan Waterfront Alliance, the Michigan Lake & Stream Associations, Inc., and the Higgins Lake Property Owners Association, countless riparian property owners throughout Michigan would have lost their riparian rights without even realizing it (until it was too late). Had the Michigan Supreme Court not reversed the erroneous decision by the Michigan Court of Appeals, former riparians statewide would have likely learned the dire consequences of the Court of Appeals’ decision only in the coming years. Happily, that is one nightmare scenario that will not occur.

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We will be discussing the *2000 Baum Family Trust v Babel* case at the annual Michigan Lake and Stream Associations convention at Boyne Mountain scheduled for April 15 and 16, 2011. You can attend the entire convention or just one day if you prefer. For more information about the annual convention (and if you have never been to one of the MLSA conventions, you should consider attending, as they are fantastic!), please go to www.mlswa.org or call (989) 831-5100. ♦