

THE MICHIGAN SUPREME COURT REVERSES THE *SUNSEEKERS* DECISION

By Clifford H. Bloom
Law, Weathers & Richardson, P.C.

A group of backlot property owners jointly own a small lakefront parcel on Higgins Lake. Even though the parcel has only 25 feet of frontage on the lake, the backlot group installed a 184-foot-long dock and moored approximately six boats at the dock. Area riparians filed a lawsuit in the Roscommon County Circuit Court to rein in the intense activities occurring on the small lake access property. The riparians raised three legal issues. First, they claimed that the uses and activities occurring on the access lot were unreasonable and violated their riparian rights. Second, they asserted that the way the access property was being used was a violation of the local zoning regulations. Finally, the riparians argued that the backlot property owners should have obtained a marina permit from the Michigan Department of Environmental Quality (“DEQ”). The trial court held that the backlot owners’ uses and activities were unreasonable, violated the riparian rights of nearby lakefront property owners, and constituted a nuisance. On appeal, the Michigan Court of Appeals reversed the decision of the trial court and held in favor of the backlot property owners. The Court of Appeals ruled that it was not enough for the riparians to prove unreasonableness and a violation of their riparian rights. According to the Court of Appeals, the riparian property owners also had to prove that the uses and activities occurring on the access property were an actual nuisance, and the Court placed a fairly high burden on the riparians to prove such a nuisance.

On March 7, 2008, the Michigan Supreme Court summarily reversed the decision of the Court of Appeals and reinstated the decision of the trial court in favor of the riparian property owners as to the unreasonableness issue. The Supreme Court also remanded the case back to the trial court for a determination whether the riparians have “standing” (the ability or qualification of a party to make a particular claim in court) to challenge whether the backlot owners’ uses and actions on the access lot violate the local zoning regulations and the marina permit requirements promulgated by the DEQ. Because the decision of the Court of Appeals was an unpublished opinion, it was not technically binding on anyone other than the parties to the lawsuit. However, by reversing the Court of Appeals decision, the Michigan Supreme Court has removed what could have been a potential obstacle to riparians and other riparian rights lawsuits. See *Kallman v Sunseekers Property Owners Association, LLC*, ___ Mich ___ (2008).