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CHARTING LEGAL TRENDS AFFECTING BUSINESSES

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Summer Resort Association May Select Perpetual Term of Existence

By Sidney A. Klingler

The Michigan Court of Appeals in *Hogg v Four Lakes Ass'n, Inc., et al.,* _Mich App_; _NW2d_(2014), has issued a published opinion determining that a corporation formed under the Summer Resort Owners Act, MCL 455.201, et seq., may select a perpetual term of existence, notwithstanding a provision of the Act limiting the lifetime of such entities to 30 years. The panel likened entities formed under the Summer Resort Owners Act to homeowners associations with special powers granted by statute. The Defendant Four Lakes Association, Inc. thus provides "basic infrastructure services" such as road maintenance and snow removal.

SECREST WARDLE NOTES:

The Court of Appeals in this case settled an important issue contrary to previous holdings in unpublished cases when it determined that MCL 450.371 permits an entity incorporating under the Summer Resort Owners Act to select a perpetual term of existence. While unpublished cases may constitute persuasive authority and are frequently relied upon by parties to guide their conduct in the absence of published authority, this case brings home the point that ultimately they are not binding authority.

The Four Lakes Association at the time of its formation in 1968 declared a perpetual term of corporate existence. Plaintiff brought suit alleging that the Association was no longer a valid organization because a provision of the Summer Resort Owners Act, MCL 455.202, limited the lifetime of such corporations to 30 years. The trial court rejected Plaintiff's contention, finding that the case was controlled by a provision of the Michigan General Corporation Act allowing "every domestic corporation" incorporating "under any law of this state" to select a perpetual term of existence or a term of existence for a limited period of time, "[n]otwithstanding any other provision of law . . .". MCL 450.371. The trial court granted summary disposition in favor of the Defendants, Four Lakes Association and its officers. Defendants were represented by Secrest Wardle in the trial and appellate courts.

The appellate panel agreed that MCL 450.371 by its plain language superseded the provision of the Summer Resort Owners Act limiting the lifetime of an entity incorporated pursuant to its provisions to 30 years. The Four Lakes Association, as a Michigan Corporation incorporated in 1968 under the Summer Resort Owners Act, clearly fell within the purview of MCL 450.371 which by its terms applies to a "domestic corporation" incorporated "under [a] law of this state". Therefore, the panel held, the Four Lakes Association continues in existence and may carry out the functions specified in its articles. Noting that the Summer Resort Owners Act was enacted in 1929, while MCL 450.371 was enacted in 1963, the panel also relied upon the rule of statutory construction providing that a more recently enacted law has precedence over an older statute.

Two unpublished decisions of the Michigan Court of Appeals had previously held, without mention or analysis of MCL 450.371, that an entity incorporated under the Summer Resort Owners Act was not permitted to have a perpetual term. *American Family Homes, Inc. v Glennbrook Beach Ass'n,* unpublished per curiam decision of the Michigan Court of Appeals, issued May 28, 2013 (Docket Nos. 301489, 302331, 302780, 301490, 301496); *Andreozzi v Stony Point Peninsula Ass'n,* unpublished per curiam decision of the Michigan Court of Appeals, issued June 4, 2009 (Docket No. 281113). Noting that

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unpublished decisions are not binding authority, the panel has now settled this issue by its published and precedentially binding decision in this case.

The Plaintiff also claimed that the Summer Resort Owners Act was unconstitutional as violative of the Title Object Clause of the Michigan Constitution. The panel found that claim without merit, noting that Plaintiff "completely failed" to make the requisite showing that the subjects of the Act mentioned in its title were "so diverse in nature that they have no necessary connection." The panel in a footnote rejected Plaintiff's claim of unconstitutional delegation of legislative authority as "equally frivolous," reasoning that the Legislature may properly delegate administrative functions as it did in this Act.

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We welcome your questions and comments.

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