



APR 23 1982

SUPERIOR COURT CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MARVIN E. BURKE and ASGERD N.)	
BURKE, his wife,)	
)	
Plaintiffs,)	NO. 81 2 00149 1
)	
vs.)	DEFENDANT FRIES'
)	TRIAL MEMORANDUM
THOMAS D. CHENOWETH, et ux.,)	
et al.,)	
)	
Defendants.)	

NATURE OF THE CASE

Plaintiff Marvin Burke seeks to require his neighbors, Thomas Chenoweth and Don Fries, to remove a dock constructed along the Chenoweth-Fries property line. Burke complains that the dock angles toward his property and was not constructed in accordance with permits granted for the work.

The joint Chenoweth-Fries dock was, however, constructed well within the Chenoweth property on the north and the Fries property on the south. It does not encroach upon the Burke property. The alleged deviation from the permit concerns only a shoreward extension of the pier to span a small cove. The far end of the dock is located exactly as described in the permits. Further, Burke has no standing to complain of deviations from permit requirements. The agencies involved have acquiesced in the extension made inland to reach solid ground.

The diagram on the following page shows the relationship of the pier to the property ownerships.

DEFENDANT FRIES'
TRIAL MEMORANDUM
Page 1 of 4

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S 77° 14' 50" W 137.78

PROPERTY LINE
AS SHOWN ON SURVEY DRAWING BY
H.W. RUTHERFORD DATED JULY 28, 1955

BURKE PROPERTY

117.84
N 18° 24' 20" W 142.44

LAKE WASHINGTON

GOVERNMENT

MEANDER LINE

LINE

SEE DETAIL

ROCK BULKHEAD

(161.94)

N 89° 54' 07" W 161.93

SHORE LINE

CHENOWETH PROPERTY

PILE

PILE

ROCK BULKHEAD

FRIES PROPERTY

DEFENDANT FRIES'
TRIAL MEMORANDUM
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N 10° 54' 20" W

175.00

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FACTS

Fries and Chenoweth agreed to construct a shared dock along their common property line. They contracted with Seaborn, who agreed to design the pier, obtain all necessary permits, and construct the project. At the time, Mr. Fries was living in Louisiana, and Mr. Chenoweth was living in West Germany. Seaborn prepared the drawings for the permit application which were sent to adjoining landowners, and obtained the approval of the City of Mercer Island and the Corps of Engineers. The plans showed the pier extending sixty feet out from the rock bulkhead along the shore. When construction began, removal of logs and brush along the shoreline revealed a small cove which resulted in the dock as planned not meeting the shoreline. The pier was therefore extended shoreward to span the cove area. The as-built drawings were approved by the Corps of Engineers, Department of Fisheries, and Department of Ecology.

The original Seaborn drawings do not show the curve to the shoreline, nor the nearly eight degree angle between the west lines of the Chenoweth and Fries property. Because of the curved shorelines, a pier in front of the Burke property would angle toward the Chenoweth-Fries pier.

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ARGUMENT

The closest the Chenoweth-Fries pier approaches the Burke property is a distance of 8.99 feet. If necessary, 1.01 feet could be removed from the northwest corner of the pier to comply with the ten-foot setback requirement of the City of Mercer Island. However, there is simply no basis for removal of a pier constructed entirely on the property of the owners.

The matter of compliance with permits is not one as to which

1 Mr. Burke may complain. The agencies involved have acquiesced
2 in the change. It does not result in any further interference
3 to Mr. Burke than the original plan, but only in a shoreward
4 extension on the Chenoweth-Fries property line.

5 The Frieses claim indemnity from Seaborn should plaintiff
6 establish that the pier was not constructed in accordance with
7 permits received. The Frieses placed the entire process of
8 obtaining approvals and completing construction in the hands
9 of Seaborn, and were entitled to rely on Seaborn's expertise.
10 If Seaborn has been negligent and involved Frieses in litigation
11 with Burkes, common law principles of indemnity apply, and Frieses
12 should be compensated for any loss and their attorney's fees.

13 CONCLUSION

14 Burkes have no basis on which to seek removal of the pier
15 their neighbors have constructed. The complaint should be dis-
16 missed.

17 DATED this 20th day of April, 1982.

18 Respectfully submitted,
19 BETTS, PATTERSON & MINES, P. S.

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21 By Ingrid W. Hansen
22 Ingrid W. Hansen
23 Attorneys for Defendants Fries
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