

Hopper v Leogrande
2012 NY Slip Op 30662(U)
March 5, 2012
Supreme Court, Nassau County
Docket Number: 4261/10
Judge: Roy S. Mahon
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SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK****Present:****HON. ROY S. MAHON****Justice****KAREN RIBARO HOPPER,****TRIAL/IAS PART 5****INDEX NO. 4261/10****Plaintiff(s),****- against -****MICHAEL LEOGRANDE, KIM LEOGRANDE,
ROBERT PINTUCCI, FERN PINTUCCI,
JERRY DABROWSKI and ELIZABETH
DABROWSKI,****Defendant(s).****DECISION AFTER HEARING**

On May 8, 2011, the plaintiff Karen Ribaro Hopper appeared with counsel to conduct a contempt hearing against the defendants pro se Robert Pintucci and Fern Pintucci. The hearing was commenced and discontinued shortly thereafter when the defendants pro se indicated their desire to retain counsel. The defendants pro se ultimately did retain counsel and a series of conferences with the Court and counsel were held to determine if the hearing and a companion case pending before another judge could be resolved. After settlement negotiations proved fruitless, a contempt hearing was commenced on November 29, 2011. The hearing continued intermittently until its conclusion on December 6, 2011. After hearing, the Court now makes the following findings of fact and conclusions of law.

Plaintiff alleges that the defendants have violated the temporary restraining order signed by the Hon. Daniel Palmeri on March 16, 2010 and the preliminary injunction signed by the Hon. Daniel Palmieri on May 24, 2010.

The temporary restraining order of March 16, 2010 provides as follows:

"ORDERED, that pending the hearing and determination of this motion and the further order of this court, that the defendants Michael Leogrande and Kim Leogrande, their agents, servants, employees and assigns be preliminarily enjoined from trespassing on plaintiff's property; and it is further, ORDERED, that pending the hearing and determination of this motion and the further order of this court, that the defendants Michael Leogrande and Kim Leogrande, their agents, servants, employees and assigns be preliminarily enjoined from obstructing the Right of Way as more particularly described in

a Declaration of Driveway Easement dated June 10, 1983, recorded on August 26, 1983 in Liber 9496, page 664 in the Nassau County Clerk's office; and it is further,

ORDERED, that pending the hearing and determination of this motion and the further order of this court, that the defendants Michael Leogrande and Kim Leogrande, their agents, servants, employees and assigns be preliminarily enjoined to safety and reasonably remove certain trees, bushes, sprinklers and fencing maintained by the Leogrande defendants on the plaintiff's property and on the Right of Way more particularly described in A Declaration of Driveway Easement dated June 10, 1983, and recorded on August 26, 1983 in Liber 9496, page 664 in the Nassau County Clerk's Office, and it is further,

ORDERED, that pending the hearing and determination of this motion and the further order of this court, that the defendants Robert Pintucci and Fern Pintucci, their agents, servants, employees and assigns be preliminarily enjoined from obstructing the Right of Way including the parking and a storage of vehicle therein as more particularly described in A Declaration of Driveway Easement dated June 10, 1983, recorded on August 26, 1983 in Liber 9496, page 664 in the Nassau County Clerk's Office . . ."

The preliminary injunction of May 24, 2010 provides as follows:

"ORDERED, that the defendants and all persons under their direction and control are restrained and enjoined from obstructing or placing any obstructions in the Driveway, and it is

ORDERED, that the defendants Michael Leogrande, Kim Leogrande, Robert Pintucci and Fern Pintucci, shall forthwith and immediately remove all obstructions in the Driveway, including , without limitation, all grass, trees, bushes, sprinklers and fencing maintained by them on the Driveway , and it is further

ORDERED, that the defendants shall not park in, store upon or allow any motor vehicles to stand in the Driveway nor shall they use or permit the use of the Driveway for any purpose not specifically permitted by the Declaration, and it is further

ORDERED, that the Defendants shall not be required to remove any utility poles, fire hydrants or their appurtenances which are owned or maintained by a utility or a municipality and presently located in the Driveway."

The time period alleged for the violation of both of the aforesaid orders is May 24, 2010 until November 5, 2010.

Plaintiff's testified as her first witness. She testified that she resides at 153 Floral Avenue, Bethpage, NY and has owned that property continuously since March of 1984.

In 2004, according to Ms. Hopper, she encountered difficulty exiting her home which is located on a tract of land through which traffic must traverse a common easement owned by the defendant Robert and Fern Pintucci, herself, and Jerry Dabrowski and Elizabeth Dabrowski who own property abutting the common street. Specifically she indicated that motor vehicles owned by the defendants Robert and Fern Pintucci were parked in said easement impeding her ingress and egress. She subsequently retained counsel and instituted legal proceedings to enforce her right to use the easement.

In support of this application, the plaintiff took photographs of the offending vehicles parked within the aforesaid easement at relevant times within the time alleged for violating the orders (*see plaintiff's 13-36 in Evidence*).

Upon cross-examination, Ms. Hopper indicated that in some of the photographs she had difficulty identifying markers which had been placed in the ground by a surveyor hired by her to demarcate the boundaries of the common easement. In other photographs, she indicated they could be faintly distinguished and in other photographs, they were readily identifiable. (*see Plaintiff's 16A-29, 31-36 in Evidence*). The plaintiff indicated she was never denied access to her property despite her difficulty in entering or leaving her property. Other than attorney's fees and fees for engaging a surveyor, she did not incur any financial loss, nor did experience emotional distress in experiencing these incidents.

Plaintiff's second witness was her attorney Regina Matejka, Esq. She offered detailed testimony regarding time expended in representing the plaintiff in the instant hearing, including research time preparation of motions, client counseling and court appearances. Cross-examination of the witness revealed some overlap of work and appearances for the instant case and work related to a companion case pending in another part. The Court also took judicial notice of the time expended in the courtroom to prosecute the instant contempt action. Billing at a rate of \$275.00 per hour, Ms. Matejka placed the value of her services at \$7,940.84 in the plaintiff's application for attorney's fees.

The plaintiff thereafter rested her case. The defendants elected to present a case. Their first witness was Ms. Elizabeth Dabrowski. She testified that she resides at 151 Floral Avenue in the same plot of land where plaintiff and the defendants maintain their residences. She indicated she has encountered no difficulty entering or leaving the premises. The plaintiff had voiced complaints to her in the past about her or her guests parking in violation of the easement on the roadway. She was personally unaware of any obstruction to the use of the easement.

The second witness to testify for the defense was the defendant Robert Pintucci. He testified that he has resided at 149 Floral Avenue, Bethpage, NY since December 19, 1983. He indicated that the private roadway which constitutes the entrance and exit of the residences located on the intern tract of land is thirty feet wide at the point where it abuts Floral Avenue. The private roadway then widens and turns to provide access for the interior homes located on the lot to Floral Avenue.

In March 2009, he received a letter from the attorney then representing the plaintiff stating her intention to enforce her rights of injuries and egress accorded her under the easement to the private road. Mr. Pintucci then testified that he consulted an attorney and believed the matter to have been resolved at that time. According to Mr. Pintucci, he had been under the mistaken impression that the thirty feet section of the private roadway abutting Floral Avenue had been divided in three 10 foot sections and that he was permitted to park vehicles on the 10 foot section which constituted a grass buffer on the side of the paved roadway as long as he avoid obstructing the remaining 20 feet of roadway reserved for use by the plaintiff and other residents of the lot.

Accordingly, after 2009, he began parking closer to the front of his home located in the corner of the private roadway where it widens and turns to allow access to the home located therein. It was not until September 24, 2010, after a contempt hearing to determine plaintiff's motion to punish for contempt of the temporary restraining order of March 16, 2010, that the defendant learned that plaintiff's easement extended beyond the 20 foot entrance strip of the private roadway to include the circular, bulb like portion of the private roadway at the front of his home where the private roadway both widens and turns.

The defendant stated that after September 24, 2010, newly aware of the plaintiff's easement to

portions of the roadway in front of her home, he altered his parking habits to avoid parking in front of his home and nearer the wall of his house. This was done despite the fact that the defendant had expended the sum of \$1500.00 to remove trees from the 10 foot grass buffer where he had previously been parking so that sap falling from trees would not damage his vehicles. The witness also reviewed a series of photographs purportedly showing his vehicles and the vehicles of family members parked illegally in the easement (see *Plaintiff's #14, 15, 16A, 16B, 17A, 17B, 17C, 18A, 18B, 19A, 19B, 20, 21A, 21B, 22, 23A, 23B, 24A, 24B, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37A, 37B, 38A, 38B, 39A, 39B, 39C, 39D in Evidence*). The defendant indicated that some of the photographs depicted vehicles he thought were properly parked in accordance with previous court orders, some showed vehicles not owned by the defendant or his family, and some were parked momentarily while being moved to different locations. Additionally, Mr. Pintucci testified he has expended the sum of \$5000.00 to engage an engineer to propose redesigning the private roadway to allow easier access for all.

The defendant's third witness was Mrs. Fern Pintucci who offered testimony similar to her husband, Mr. Robert Pintucci.

Thereafter, the defense rested its' case. The plaintiff offered no rebuttal case.

The Court initially observes that the temporary restraining order of March 16, 2010 and the preliminary injunction of May 24, 2010 both reference A Declaration of Driveway Easement dated June 10, 1983. The temporary restraining order of March 16, 2010 further identifies the easement as recorded on August 26, 1983 in Liber 9496, page 664 in the Nassau County Clerk's Office. Notice to the defendant of the limits of the easement and the conduct which was proscribed by the order was clearly conveyed to the defendant's upon service of these orders, which was not disputed by the defendants.

After hearing, the Court credits the testimony of the plaintiff and plaintiff's evidence. The testimony and evidence support plaintiff's allegation that the defendants Robert and Fern Pintucci acted in violation of the aforesaid temporary restraining order and preliminary injunction on multiple occasions between May 24, 2010 until November 5, 2010. Indeed, the defendants Robert Pintucci admitted such violations until September 24, 2010 when he stated he first fully learned of the dimensions of the easement in question. Lack of familiarity with the meter and bounds of the easement in question, advanced by the defendant as mitigating willfulness is not accepted by the Court.

Accordingly, the Court finds that the plaintiff has proven the defendant's contempt of the orders of the Hon. Daniel Palmeri dated March 16, 2010 and May 24, 2010 by clear and convincing evidence. The Court imposes upon the defendants Robert and Fern Pintucci, jointly and severally, for the contempt of court which each of them have been found to willfully commit a fine of two hundred fifty dollars and four thousand seven hundred fifty dollars for actual loss and injury caused by the misconduct of the defendants, for a total fine of five thousand dollars.

The defendants may purge themselves of the contempt by complying with the provisions of this order within 10 days after service of a certified copy of this Order upon the defendants, and paying five thousand dollars to Regina A. Matejka, Esq., attorney for plaintiff, 1122 Franklin Avenue, Suite 406, Garden City, NY 11530, representing four thousand seven hundred fifty dollars for plaintiff's attorney's fees and a fine of two hundred fifty dollars payable to plaintiff Karen Ribaro Hopper.

Upon the failure of Robert Pintucci and Fern Pintucci to purge themselves of their contempt of court within 10 days after personal service upon them of a copy of the order with notice of entry, plaintiff may enter judgment for five thousand dollars with interest from the date of this order, and is further granted leave to

apply for additional relief as may be warranted by law, including further applications to punish upon contempt of court.

This constitutes the decision and order of the Court.

DATED:

3/5/2012

..... *Roy S. Mahon*
J.S.C.

ENTERED
MAR 09 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE