Forman v Two Lions Farm, LLC
2023 NY Slip Op 33307(U)
September 22, 2023
Supreme Court, Saratoga County
Docket Number: Index No. EF20213539
Judge: Richard A. Kupferman

STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

BOB FORMAN and LISA D. FORMAN,

Plaintiffs,

-against-

TWO LIONS FARM, LLC,

Defendant.

DECISION, ORDER & JUDGMENT

Index No.: EF20213539

Appearances:

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KUPFERMAN, J.,

The parties own neighboring properties and share a common driveway. The defendant plans to improve its property with an indoor arena for horse riding and a secondary driveway.[1] Some of the construction work appears to have already begun. The primary issue in this action is whether large construction vehicles may use the common driveway to enter and exit the defendant's property to perform the work.

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[1] In a separate lawsuit, the plaintiffs unsuccessfully challenged the local planning board's approval of the defendant's application to develop its property in this manner.

The plaintiffs contend that the defendant's right to access its property is limited to only the existing 10-foot-wide gravel driveway and that the anticipated use will greatly exceed the prior use and unreasonably burden the common driveway. The plaintiffs contend that they have already observed excavation, grading, and drainage work being performed on the defendant's property, as well as a significant increase in dump truck traffic. The plaintiffs contend that this increase in use of the common driveway has already caused potholes, artificial widening of the driveway, and mud pits.

The defendant has answered the complaint and now seeks summary judgment. The defendant contends that the plaintiffs' position runs contrary to the express grant contained in the parties' deeds, a subdivision map, and a common driveway agreement. According to the defendant, these documents permit full and free access along a 50-foot-wide area for ingress and egress. The defendant further contends that the plaintiffs have improperly installed signs interfering with its use of the common driveway.

When "a written instrument granting an easement is not ambiguous, the parties' intent must be found within the four corners of the document and the question is one of law, which may be decided on a motion for summary judgment" (Acosta v Vincenti, 185 AD3d 763, 765 [2d Dept 2020] [internal quotation marks and citations omitted]). Where "an easement is granted in general terms, without limitation, and the right-of-way is described by its metes and bounds, the dominant estate is entitled to a right-of-way over the entirety of the described area" (id.; see Marsh v Hogan, 56 AD3d 1090 [3d Dept 2008]).

Here, the defendant has established its entitlement to judgment as a matter of law based on the deeds, the subdivision map, and the common driveway agreement (all publicly recorded/filed instruments). Specifically, the defendant has established that its easement rights extend well

beyond the use of just the 10-foot-wide gravel driveway. The easement is expressly identified as being 50 feet wide and 1.82 acres of land. The easement further uses metes and bounds to identify its location/area with specificity. The metes and bounds are set forth in the common driveway agreement and further reflected on the parties' deeds.

This case is similar to Wernicki v Knipper, 119 AD3d 775 (2d Dept 2014). There, the plaintiff submitted deeds demonstrating that she was granted an express easement in a fixed location of the defendants' real property, set forth in metes and bounds. The Second Department concluded that this evidence was sufficient on a cross motion for summary judgment for the plaintiff to establish her prima facie entitlement to judgment as a matter of law.

Similarly, in Rozek v Kuplins, 266 AD2d 445 (2d Dept 1999), the plaintiffs were granted an easement in general terms, with no limitations, which described the right-of-way over a private road by its metes and bounds. The Second Department concluded that "the plaintiffs were granted a right-of-way over the entire 66-foot width of the private road" (id. at 446). The Second Department further held that the trial court "properly directed the defendants to remove a fence from the strip contiguous to the plaintiffs' front yard, a gate placed across the private road, as well as other debris which impeded the plaintiffs' access to the right-of-way" (id. [citations omitted]).

Further, the defendant has also demonstrated that the anticipated use of the common driveway does not exceed the scope of the easement. No language in the easement documents limit the size or number of vehicles permitted to use the common driveway. There is also no language that purports to place any limitation on the defendant's right to access its own property for the purpose of improving it. Nor is such a use objectionable or unusual in any manner. To the contrary, it is an expected use rather than an unforeseen expansion and therefore presumably was included in the grant (see Mohawk Paper Mills, Inc. v Colaruotolo, 256 AD2d 924, 925 [3d Dept

1998] [holding that where "the language of the grant contains no restrictions or qualifications and the purpose of the easement is to provide ingress and egress, any reasonable lawful use within the contemplation of the grant is permissible"]).

Aside from the plain language in the easement documents, the surrounding circumstances also demonstrate that the anticipated use is permitted. In particular, the defendant's submissions indicate that the easement at the time of its creation (through a subdivision in 2006) was necessary to provide access to the defendant's property; that the easement was created in an area used for horses and agriculture; that the defendant's property has historically been used for such purposes; that the defendant's property is approximately 76 acres in size; and that the owners of the two properties are required to share in the cost of maintaining the common driveway. These circumstances indicate that it was entirely foreseeable that large vehicles would eventually use the common driveway; that the very activity complained about by the plaintiffs would occur; and that the common driveway would require maintenance/repairs.

The defendant has also demonstrated that the signs installed by the plaintiffs are impeding its use of the common driveway. The signs read, as follows: "One Lane Only Private Driveway, Visitors be Prepared to Back Up" and "Do Not Drive On the Grass, Visitors Be Prepared to Back Up". These statements are inaccurate and inconsistent with the stated purpose of ingress and egress. The signs attempt to limit the scope of the easement to only the 10-foot-wide gravel driveway and therefore should be removed (see Rozek, 266 AD2d at 446).

The Court is mindful that the plaintiffs also use and share the common driveway. The defendant's use is therefore not unlimited (e.g., the defendant cannot unduly interfere with or unreasonably burden the plaintiffs' enjoyment of the common driveway) (see 49 NY Jur Easements and Licenses in Real Property § 111 [NY Jur 2d, West Group 2023]). Notwithstanding,

the anticipated use alleged in the complaint focuses mostly on the defendant's right to access the common driveway to improve its property. As a matter of law, there is nothing objectionable or unreasonable about this anticipated use, even when such use causes potholes, artificial widening of the driveway, and mud pits (see id.). Such a right unambiguously falls within the plain meaning of the phrase "full and free access."

There arguably could be circumstances where the defendant's use could present an issue of fact as to whether such use exceeds the scope of the easement, for example, if the defendant were to unilaterally alter the gravel driveway in a material way or use the common driveway as the primary means to allow a significant number of new customers to access a new commercial business. The allegations alleged in the complaint on these issues however are either barely pleaded or based on "information and belief." They have since been denied by the defendant in its answer and refuted as baseless by the defendant in its motion papers. The defendant has therefore demonstrated that such allegations in the complaint do not present any actual controversy ripe for adjudication at this time (see CPLR 3001; Long Is. Light. Co. v Allianz Underwriters Ins. Co., 35 AD3d 253, 253 [1st Dept 2006] [holding that a declaratory judgment action "requires an actual controversy ... and may not be used as a vehicle for an advisory opinion" (internal quotation marks and citation omitted)]).

In opposition, the plaintiffs have failed to create an issue of fact. No basis exists to conclude that the defendant has exceeded the scope of the easement based on the allegations set forth in the complaint or the opposition papers to the summary judgment motion. As discussed above, the plain language in the easement documents refute the plaintiffs' claims that the easement is limited to only the 10-foot-wide gravel roadway and that construction vehicles are not authorized to use the common driveway. The record further demonstrates that more than just a 10-foot-wide

gravel roadway is necessary for the ingress and egress of the defendant and its invitees, and that the use of the common driveway by construction vehicles seeking to access the defendant's property to develop it neither has nor will likely unduly interfere with the enjoyment of the easement area by the plaintiffs.

To the extent the plaintiffs allege that the defendant is breaching the common driveway agreement or should be required to pay additional amounts for maintenance costs, the evidence provided on such issues is speculative and undeveloped. Nonetheless, the plaintiffs have not alleged a claim for a breach of the agreement or sought monetary damages in the complaint for any such breach. The common driveway agreement also contains a mediation/arbitration clause, which has apparently not been pursued by the plaintiffs. The Court therefore declines to entertain such issues at this time (almost two years after the commencement of this action) given that other adequate remedies are available (see CPLR 3001; Clarity Connect, Inc. v AT&T Corp., 15 AD3d 767, 767-768 [3d Dept 2005]).[2]

Further, to the extent the plaintiffs are requesting discovery pursuant to CPLR 3212(f),[3] they had ample time to seek discovery and failed to do so. In addition, the plaintiffs have failed to

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[2] The judgment issued in this action is without prejudice to any right the plaintiffs may have to assert a claim based on a breach or non-performance of the terms of the common driveway agreement. The Court is further not deciding which party (if either) must perform the actual maintenance. The common driveway agreement requires both parties to share the cost of maintenance. To the extent the parties cannot agree on these issues, they should submit the dispute to mediation/arbitration, as required by the agreement. Such an issue is also highly fact specific and dependent on the expenditures for reasonable and necessary maintenance. Such issues are therefore more appropriate to consider in connection with a claim seeking monetary damages (which has not been asserted in this case) rather than declaratory relief.

[3] CPLR 3212(f) provides, as follows: "Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just."

identify who they think may have information that will allow them to oppose the motion. They merely speculate that such information might exist. Given the language of the easement documents and the death of the original grantor, the plaintiffs have not shown that any additional discovery will add anything material to their opposition.

Finally, the plaintiffs have asserted a cause of action for trespass. Specifically, the plaintiffs once observed defendant's barn manager leading several horses across the rear of the plaintiffs' property to access one of the defendant's gate paddocks. Even though the defendant has admitted to this trespass, the plaintiffs have not sought any monetary damages for the trespass. Nor have the plaintiffs requested an inquest to obtain any damages. Rather, the plaintiffs have requested only injunctive relief as the remedy on their trespass claim, which the Court considers as inappropriate based on the nature of this single, isolated incident (see Icy Splash Food & Beverage, Inc. v Henckel, 14 AD3d 595, 596 [2d Dept 2005] [holding that a plaintiff must demonstrate irreparable harm to obtain a permanent injunction]; see also Merkos L'Inyonei Chinuch, Inc. v Sharf, 59 AD3d 403, 408 [2d Dept 2009] [holding that injunctive relief is "to be invoked only to give protection for the future to prevent repeated violations, threatened or probable, of the plaintiffs' property rights" (internal quotation marks, alterations, and citation omitted)]). Accordingly, the trespass claim is dismissed.

It is therefore,

ORDERED, ADJUDGED and DECREED that the defendant's motion seeking summary judgment is **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that declaratory judgment is granted in favor of the defendant as to the rights of the parties with respect to a certain easement referenced in the parties' deeds, the deeds of the parties' predecessors, the Common Driveway Maintenance

Agreement (recorded in the Saratoga County Clerk's Office on January 7, 2016 as Instrument Number 2016000481), and the 2006 Subdivision Map (Filed in the Saratoga County Clerk's Office on or about October 31, 2006 as Map Number B575) (collectively, the "Easement Documents"); and it is further

ADJUDGED, DECREED AND DECLARED that the defendant maintains easement rights in the plaintiffs' land to the extent permitted by the Easement Documents, as set forth therein, and that the defendant's access is NOT limited to only the 10-foot-wide gravel driveway located in the easement area; and it is further

ADJUDGED, DECREED AND DECLARED that that the signs installed by the plaintiffs in the easement area are impeding the defendant's use of the common driveway; that the statements on the signs are inaccurate and inconsistent with the stated purpose of ingress and egress; and that the signs improperly attempt to limit the scope of the easement to only the 10-foot-wide gravel driveway and therefore should be removed; and it is further

ORDERED, ADJUDGED and DECREED that any remaining claims asserted in this action are hereby **DISMISSED**, without prejudice to the parties' rights to resolve any future disputes through mediation/arbitration or to otherwise seek reimbursement under the common driveway agreement for the cost of reasonable and necessary maintenance.

This shall constitute the Decision, Order & Judgment of the Court. No costs are awarded to any party. The Court is hereby uploading the original Decision, Order & Judgment into the NYSCEF system for filing and entry by the County Clerk.

So-Ordered.

Dated: September 22, 2023
at Ballston Spa, New York

HON. RICHARD A. KUPFERMAN
Justice Supreme Court