STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: April 11, 2012)

CYNTHIA CALUORI	:	
	:	
v.	:	**C.A. No. PC 11-5408**
	:	
DEXTER CREDIT UNION	:	

DECISION

TAFT-CARTER, J. In this declaratory judgment action, the parties dispute the ownership and use rights to a paved road that exists on Defendant Dexter Credit Union's ("Dexter") property. Plaintiff Cynthia Caluori ("Caluori") seeks a judgment declaring her right to a prescriptive easement and an implied easement on the paved road. Dexter counterclaims for trespass and quiet title. Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I
Facts and Travel

The Court's findings of fact are based upon the facts as stipulated by the parties and the trial testimony. The material facts are as follow. Caluori is a fee simple owner of a parcel of real property located at the corner of West Greenville Road and Danielson Pike in Scituate, Rhode Island, identified by the Tax Assessor for the Town of Scituate as Plat 16, Lot 18 ("Lot 18"). (Stipulated Facts ¶ 1.) Caluori purchased Lot 18 on March 2, 1981 with her late husband, Anthony Caluori, and held the property as tenants by the entirety. (Stipulated Facts ¶ 1.) Lot 18 houses a multi-family residence and a commercial office building ("Commercial Building"). (Stipulated Facts ¶ 8, 14.)

At the time the Caluoris purchased Lot 18, there was one two-unit apartment house on the southerly end of the property. (Stipulated Facts ¶ 8.) The Caluoris moved into one of the two

units in the apartment house on Lot 18 and rented the other apartment unit to residential tenants. (Stipulated Facts ¶ 9.) On or before August 15, 1983, Anthony Caluori moved a two-unit commercial building onto Lot 18 to the north of the apartment house. (Stipulated Facts ¶ 14.) Anthony Caluori used the building as a Nationwide Insurance business. (Caluori Dep. at 11.) Since 1998, Christopher Caluori, the Caluoris' son who is a Nationwide Insurance agent, has used the building for his own Nationwide Insurance business. (Stipulated Facts ¶ 18.) Caluori does not dispute that Lot 18 has its own entryway, which existed when Caluori purchased Lot 18 in 1981. (Caluori Dep. at 15.)

Dexter is the owner of a parcel of real property located on Danielson Pike in Scituate, Rhode Island, identified by the Tax Assessor for the Town of Sciutate as Plat 16, Lot 19 ("Lot 19"). (Stipulated Facts ¶ 19.) Lots 18 and 19 abut one another and were previously owned by common grantor Dorothy Feeney ("Feeney"), who took title to both Lots 18 and 19 in or about 1973. (Stipulated Facts ¶ 2.) When Feeney conveyed Lot 18 to Caluori, she retained a small portion of Lot 18 as a driveway for Lot 19, which attached to twelve feet of property to the north of the driveway that was originally included in Lot 19 (collectively, "Disputed Property"). (Stipulated Facts ¶ 4.) The Disputed Property runs from West Greenville Road to Lot 19, on the north end of Lot 18. (Stipulated Facts ¶ 4.)

The Disputed Property was utilized by Feeney's Lot 19 tenants and their business invitees for ingress and egress since 1971. (Stipulated Facts ¶ 3.) In addition, Caluori, Christopher Caluori, Christopher's wife, and a part-time employee had been using the Disputed Property as a means of accessing the Commercial Building from West Greenville Road and for the parking of cars at the Commercial Building. Caluori testified that after she purchased Lot 18,

there was no communication with Feeney or any Lot 19 tenants regarding the use of the Disputed Property. (Stipulated Facts ¶ 5; Caluori Dep. at 27.)

On November 24, 2010, Dexter purchased Lot 19 and the building thereon. (Stipulated Facts ¶ 19.) Dexter proposed a Master Plan for demolition of the former Bank of America branch and construction of a new Credit Union branch on Lot 19. (Stipulated Facts ¶ 20.) On September 20, 2011, the Scituate Planning Board approved Dexter's Master Plan. (Stipulated Facts ¶ 20.)

Caluori did not appeal the Scituate Planning Board decision and, instead, filed a complaint in the Superior Court on September 20, 2011, alleging easement by prescription, easement by implication, and injunctive relief. The parties submitted a Stipulation of Facts on January 17, 2012, and the parties appeared before the Court in March of 2012. During the hearings, the parties introduced numerous exhibits and testimony. Following the hearings, the parties submitted post-trial memoranda. The matter is now before the Court for a judgment on the merits of Caluori's request for declaratory judgment.

II
Standard of Review

Rule 52(a) of the Rhode Island Superior Court Rules of Civil Procedure provides that "in all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon . . . ." As a non-jury trial, resolution of the instant dispute requires the trial justice to sit "as trier of fact as well as law," to weigh and consider the evidence, to determine the credibility of witnesses, and to draw inferences from the evidence presented. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984); see also Rodriques v. Santos, 466 A.2d 306, 312 (R.I. 1983) (holding that the question of who is to be believed is one for the trier of fact). Rule 52(a) does not necessitate "extensive analysis and discussion of all the evidence";

rather, "brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (quoting Anderson v. Town of E. Greenwich, 460 A.2d 420, 423 (R.I. 1983)).

III
Analysis

Caluori argues that her use of the Disputed Property was sufficient to establish an easement by prescription. In particular, Caluori maintains that she used the Disputed Property since at least 1981, and her use was of the type that an average owner would make of such a parcel. Caluori also argues that her use of the Disputed Property was sufficient to establish an easement by implication since the Commercial Building tenants would lose most or all of the parking for its staff and clients without access by way of the Disputed Property.

Dexter counters that Caluori's claim for a prescriptive easement is barred since Caluori acknowledged that the conveyance of Lot 18 did not include the disputed area and was subject to the rights of the Lot 19 lessee. Specifically, Dexter argues that Caluori knew from the outset that Feeney carved out the Disputed Property from Lot 18 for Lot 19. As for the implied easement, Dexter argues that the easement does not meet the element of necessity since the Commercial Building was not on Lot 18 at the time when Feeney sold Lot 18 to Caluori.

A.
Easement by Prescription

The Rhode Island Supreme Court has held that to acquire an easement by prescription, a claimant must show actual, open, notorious, hostile, and continuous use under a claim of right for at least ten years. Hilley v. Lawrence, 972 A.2d 643, 651-52 (R.I. 2009); Nardone v. Ritacco, 936 A.2d 200, 205 (R.I. 2007); Carpenter v. Hanslin, 900 A.2d 1136 (R.I. 2006); Altieri v. Dolan, 423 A.2d 482, 483 (R.I. 1980); Russo v. Stearns Farms Realty, Inc., 367 A.2d 714, 716-

17, 117 R.I. 389, 390-91 (1977); Foley v. Lyons, 125 A.2d 778, 778, 85 R.I. 86, 91 (1956). Evaluation of the claimant's case "involves an exercise of the fact-finding power" as "factual determinations are generally necessary to determine whether claimants have established the elements of a prescriptive easement." Nardone, 936 A.2d at 905 (internal quotations omitted). Each element must be proven by clear and convincing evidence, and an adverse claimant may tack on the period of possession of his from whom he derived title. See § 34-71-1; see also Carnevale v. Dupree, 783 A.2d 404, 412 (R.I. 2001). Prescriptive easements, however, are not favored in the law, since they necessarily work corresponding losses or forfeitures on the rights of other persons. See Reitsma v. Pascoag Reservoir & Dam, LLC, 774 A.2d 826, 839-40 (R.I. 2001) (citing 25 Am. Jur. 2d Easements and Licenses § 45 at 615 (1996)).

1.
Open and Notorious

Caluori argues that she and her tenants traveled across the Disputed Property as if it belonged to her and that the use of the property was visible and therefore open. Dexter argues that Caluori's travel across a twelve-foot driveway from West Greenville Road to park against the Commercial Building located approximately seventeen feet from the Caluori's property line is not open and notorious.

The ultimate fact to be proved "is that the claimant has acted toward the land in question as would an average owner taking into account the geophysical nature of the land." Carnevale v. Dupree, 853 A.2d, 1197, 1201 (R.I. 2004) (internal quotations omitted). The open and notorious elements are established by showing that claimant goes upon the land and uses it adversely to the true owner. The owner then becomes chargeable of what is done openly to the land. Id. Thus, to show open and notorious use, a claimant "must show that his [or her] use of the land was sufficiently open and notorious to put a reasonable property owner on notice of [his or her]

hostile claim." Tavares v. Beck, 814 A.2d 346, 352 (R.I. 2003). "The proper inquiry [is] whether the party claiming ownership by adverse possession used the property in a manner consistent with how owners of similar property would use such land and whether these uses were inclined to attract attention sufficient to place the world on constructive notice." Carnevale, 853 A.2d at 1201. Open and notorious use, however, does not necessarily mean ostentatious use. The record owner is "still chargeable with knowing whatever was done openly on the land he owns—whether or not it could be observed from the road or from the boundary of the property." Id. With respect to notorious possession of property, "it is that possession or control evident to others that because it is generally known by people in the area where the property is located gives rise to the presumption that the owner has notice of it." Black's Law Dictionary, (6th ed. 1990).

Here, Caluori claims that it was common knowledge that she and her tenants used the Disputed Property for ingress and egress. Tom Denton, a neighbor and witness who testified on behalf of Caluori, confirmed that from approximately 1999 until the present day he has observed use of the Disputed Property for ingress and egress by Caluori, her tenants, and their guests and invitees. Accordingly, it is clear that the actions by Caluori and her tenants were open, as she and her tenants did not act discreetly nor try and hide their use of the Disputed Property. Indeed, "[n]o particular act to establish an intention to claim ownership is required. It is sufficient if one goes upon the land openly and uses it adversely to the true owner, the owner being chargeable with knowledge of what is done openly on his land." Stone, 786 A.2d at 391.

While the Court finds Caluori and her tenants used the Disputed Property openly, the notoriety or adversity of their use is at issue. Our Supreme Court has held that parties seeking to establish an easement by prescription must show some affirmative act that puts the property

owner on notice that their occupancy was hostile to the owner and that they were claiming the property as their own. Altieri v. Dolan, 423 A.2d 482, 484 (R.I. 1980). The open and notorious elements serve public policy interests by protecting true landowners who have not been put on notice and subsequently prosecute a claim against the trespasser. See Carnevale, 853 A.2d at 1201; Tavares, 814 A.2d at 352. If the use is open but not notorious, public policy is not furthered.

In this case, at trial, Caluori testified that she was only claiming an interest in ingress and egress to the Commercial Building. Specifically, Caluori testified that her claim was not for the ability to park vehicles but to have access to Lot 19. Further, testimony was presented that area residents and the bank invitees and patrons used the Disputed Property as a cut-through. Caluori herself, as well as Tom Denton, testified that the Disputed Property was used by many residents of Scituate as well as bank invitees and patrons as a cut-through to avoid a traffic light. (Caluori Dep. at 21.) It is recognized that use of a particular strip of land in common with the general public will not ripen into an easement by prescription. See Restatement (Third) of Property Servitudes § 2.16 (1993); see, e.g., Burcon Properties, Inc. v. Dalto, 155 A.D.2d 501, 547 N.Y.S.2d 362 (1989) (claimant restaurant's employees' and customers' use of shopping center parking lot also used by general public not open and notorious); Beiser v. Hensic, 655 S.W.2d 660 (Mo. App. 1983) (where road was open to public use, adverse claimant's occupancy of road was not inconsistent with or obviously defiant of real owners' rights). Further, a claimant must show use in a manner calculated to attract attention, thus placing the world on constructive notice of his adverse claim. Tavares, 814 A.2d at 354.

Testimony did reveal that the Commercial Building was moved to its present location onto Lot 18 by Caluori's husband. Thereafter, Caluori's husband paved the Disputed Property

and arranged for the Disputed Property to be plowed. See Taffinder v. Thomas, 381 A.2d 519, 523 (R.I. 1977) (finding that cultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land may be relied on as proof of the required possession). However, the Lot 19 tenant also arranged for the Disputed Property to be plowed. Moreover, Caluori testified that she never spoke to Feeney or Dexter about her use of the Disputed Property. See Carnevale, 853 A.2d at 1201 (explaining that the claimant's uses must be "inclined to attract attention sufficient to place the world on constructive notice"); Altieri, 423 A.2d at 484.

Accordingly, the evidence indicates that Caluori did not take an affirmative act to place Feeney on notice that she was making a claim to the Disputed Property until the commencement of this action. Thus, while Caluori and her tenants' use of the land was certainly open, the Court cannot characterize the use as notorious in nature. This conclusion is consistent with the Supreme Court's previous decisions holding that plaintiffs must "show some affirmative act constituting notice to (defendant) that their occupancy was hostile to the owner and they were claiming the property as their own." Altieri, 423 A.2d at 484 (quoting Picerne v. Sylvestre, R.I., 404 A.2d 476, 480 (1979)). Therefore, the Court finds that Caluori failed to prove by clear and convincing evidence that her use of the Disputed Property was adverse and notorious in nature.

2.
Hostile Use and by Claim of Right

Caluori argues that simply using Dexter's land was sufficient for the hostile use element. Dexter argues that the hostile use element was not met since Caluori and her tenants did not give notice of a claim of right to the Disputed Property, and Caluori and her tenants used the driveway that the public has used for ingress and egress into and out of West Greenville Road. Dexter

argues that Caluori cannot prove her use of the disputed area was "under claim of right" since Caluori was aware that Feeney carved out the Disputed Area from the conveyance.

Our Supreme Court has held in Tavares that "[i]n essence, . . . a claim of right is the same as [] hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner." Tavares, 814 A.3d at 351. In determining hostility, the "pertinent inquiry centers on the claimants' objective manifestations of adverse use rather than on the claimants' knowledge that they lacked colorable legal title." Id. To establish a hostile use, the easement user must "establish a use inconsistent with the right of the owner, without permission asked or given, . . . such as would entitle the owner to a cause of action against the intruder [for trespass]." Id. (internal citations omitted). Our Supreme Court has held that "parties seeking to establish an easement by prescription must show some affirmative act that puts the property owner on notice that their occupancy was hostile to the owner and that they were claiming the property as their own." Stone v. Green Hill Civic Ass'n, Inc., 786 A.2d 387, 390 (R.I. 2001); see also Talbot v. Town of Little Compton, 52 R.I. 280, 286, 160 A. 466, 469 (explaining that where use "was so [substantial] and . . . so regular and for such a long period of time that any person having a claim of title, if he gave any attention whatever to the matter, would have known the use was hostile and under a claim of right[]").

It is important for the Court to distinguish the term "claim of right" or "claim of title" from the term "color of title." In order to hold land under "color of title," a claimant must generally have a written instrument purporting to convey title. See Carnevale, 783 A.2d at 412 (quoting 3 Am. Jur. 2d Adverse Possession § 150). On the other hand, "a claim of right to own or use property will arise by implication through objective acts of ownership that are adverse to the true owner's rights." Reitsma, 774 A.2d at 832. Therefore, the appropriate inquiry in

deciding whether Caluori occupied the Disputed Property under "claim of right" is whether she and her tenants committed objective acts of ownership adverse to the true owner's rights, thus exercising the rights of ownership over the land.

Recently, our Supreme Court significantly changed the hostility and claim of right analysis to be more in line with modern property law. See Cahill v. Morrow, 11 A.3d 82 (R.I. 2011). The Supreme Court stated

> "that an offer to purchase does not automatically invalidate a claim already vested by statute, but we nonetheless hold that the objective manifestations that another has superior title, made after the statutory period and not made to settle an ongoing dispute, are poignantly relevant to the ultimate determination of claim or right and hostile possession during the statutory period." Id.

In Cahill, a neighbor asserted adverse possession against the record owner for a twenty-foot strip of land; however, the neighbor offered to purchase the property before the ten year statutory period had run. The Supreme Court held that this offer constituted an interruption of the neighbor's adverse possession claim. Id. at 90. The Supreme Court distinguished mere knowledge concerning a record owner's superior property right—which does not destroy an adverse possessor's claim of right—from an objective manifestation acknowledging another's superior title in disputed property—which is now fatal to an adverse possession claim. Id. at 91.

In the instant case, Caluori never made an offer to purchase the Disputed Property. However, Caluori made several arrangements illustrating her acknowledgement and acceptance of Dexter's superior title. Cahill, 11 A.3d at 91. For example, Caluori acknowledges in her complaint that Feeney conveyed "a portion of Lot 18" to the Caluoris and that Feeney "retained a small portion of Lot 18, a Lot 19 driveway measuring approximately 21' x 70' x 18' x 7' [which is the Disputed Property]." Further, Caluroi testified that she knew the Warranty Deed provided that the conveyance of Lot 18 did not include the Disputed Property and that Lot 18 was "subject

to the certain lease between [Feeney], lessor, and Industrial National [B]ank of Rhode Island, lessee, dated January 7, 1971 as amended by instrument dated 1980[,] to the extent, if any, that any portion of the demised premises intrude upon the lot conveyed by this deed." (Caluori Dep. at 20.)

In addition, on June 26, 1992, Caluori filed a "Notice of Intent to Dispute" Fleet National Bank's, a Lot 19 tenant, encroachment on her property due to Fleet National Bank's maintenance of the "drive-up window and bank machine or service window." (Caluori Dep. at 29.) Within this "Notice of Intent to Dispute," Caluori again acknowledges that the Disputed Property is part of Lot 19 and owned by Feeney. Caluori's "Notice of Intent to Dispute" specifically includes an admission by Caluori that she did not own the Disputed Property, thereby supporting that Caluori made no claim to ownership. See Cahill, 11 A.2d at 93; 3 Am. Jur. 2d Adverse Possession § 101, at 168-69 (2002). This admission that Feeney owned the Disputed Property also shows that Caluori's possession prior to the "Notice of Intent to Dispute" lacked the hostile use and by claim of right elements necessary for a prescriptive easement. See Reitsma, 774 A.2d at 832. Likewise, Caluori lacked the necessary elements of hostility and by claim of right after bringing the "Notice of Intent to Dispute," as the character of use by Caluori and her tenants did not change, and Caluori did not provide any notice to Feeney of any claim of ownership. See Stone, 786 A.2d at 390 ("[P]arties seeking to establish an easement by prescription must show some affirmative act that puts the property owner on notice that their occupancy was hostile to the owner and that they were claiming the property as their own.")

Based on the above reasoning, this Court finds that Caluori was well aware that her interest in the disputed property was subservient to that of Dexter's. Our Supreme Court has recognized that "even when claimants know that they are nothing more than black-hearted

trespassers, they can still adversely possess the property in question under a claim of right to do so if they use it openly, notoriously, and in a manner that is adverse to the true owner's right for the requisite ten-year period." Tavares, 814 A.2d at 351. However, the Cahill decision allows this Court to examine claims of adverse possession with even more scrutiny. Even though the ten year statutory period had arguably run before Caluori filed her "Notice of Intent to Dispute" on June 26, 1992, this Court emphasizes Caluori's acknowledgements of Dexter's superior title, since they "are poignantly relevant to the ultimate determination of claim of right and hostile possession during the statutory period." Cahill, 11 A.3d at 93.

Given Caluori's acknowledgement of Dexter's superior title in the Warranty Deed and the "Notice of Intent to Dispute," the Court does not find that Caluori met the necessary requirements for hostility and by claim of right during the statutory period, especially when it is required that the evidence for the claim be clear and convincing. See Tavares 814 A.2d at 350. The evidence presented is far from clear, and this Court is not convinced. Accordingly, Caluori has not met her burden.

3.
Actual and Continuous Use for Ten Years

Caluori claims that she used the Disputed Property since at least 1981 and therefore met the statutory period of ten years. Dexter, however, argues that Caluori's use has not been actual or continuous.

The elements of actual and continuous use are present when the claimant can show that "the use to which the land has been put is similar to that which would ordinarily be made of like land by the owners thereof." See Anthony v. Searle, 681 A.2d 892, 897 (R.I. 1996) (internal quotation omitted). Also, the continuity of the possession must be sufficient to alert the owner of

the land that a claim of title contrary to his own is being asserted. See Sherman v. Goloskie, 95 R.I. 457, 464, 188 A.2d 79, 83 (1963).

Here, Caluori did enter and occupy the Disputed Property in the manner in which one would ordinarily enter and occupy a driveway. Caluori's use of the Disputed Property began in 1981. Attorney Michael Marcello testified that he was a residential tenant on Lot 18 from 1996 to 2006, and during that time, he used the Disputed Property consistently for ingress, egress, and parking. As for the Commercial Building, Christopher Caluori testified that he had been a tenant of the Commercial Building since 1998 and he, his staff, and his customers have made continuous use of the Disputed Property for parking. This testimony was corroborated by Gail Lucci, an employee of Christopher Caluori, who had used the Disputed Property during her employment. See Anthony, 681 A.2d at 897; but see Hilley, 972 A.2d at 651-52 (explaining that "[t]he claimant must prove each element by clear and convincing evidence[]"). Accordingly, Caluori has established, by clear and convincing evidence, that her use of the Disputed Property was actual and continuous for the ten year statutory period.

B.
Implied Easement

Caluori also claims an easement by implication over the Disputed Property. Dexter argues that Caluori's implied easement claim must fail since the Commercial Building was not on Lot 18 at the time when Feeney sold the lot to Caluori.

An easement by implication is "an easement not expressed by the parties in writing, but arising out of the existence of certain facts implied in the transaction." 25 Am. Jur. 2d Easements § 19 (2004). Our Supreme Court has recognized that an implied easement may arise in the following circumstances: (1) from a "pre-existing condition," also known as a "quasi easement," Wiesel v. Smira, 49 R.I. 246, 248-49, 142 A.148 148, 149 (1928); see also Catalano

v. Woodward, 617 A.2d 1363, 1367 (R.I. 1992); (2) "by necessity," Bovi v. Murray, 601 A.2d 960, 962 (R.I. 1992); or (3) "by reference to a map or plat," Kotuby v. Robbins, 721 A.2d 881, 883-84 (R.I. 1998). It is well-settled in this jurisdiction that the party claiming the benefit of an implied easement must demonstrate its existence by clear and convincing evidence. Mattos v. Seaton, 839 A.2d 553, 557 (R.I. 2004).

In this case, Caluori alludes to a claim for an implied easement by both necessity and from a pre-existing condition; however, Caluori has argued only an implied easement by necessity in her memoranda and at trial. See Wilkinson v. State Crime Laboratory Commission, 788 A.2d 1129, 1131 n.1 (R.I. 2002) (explaining that "[w]ithout a meaningful discussion thereof or legal briefing," the court will deem an issue waived). Accordingly, the Court will only exam Caluori's claim to an implied easement by necessity.

It is well established that "[a]n implied easement is predicated upon the theory that when a person conveys property, he or she includes or intends to include in the conveyance whatever is necessary for the use and the enjoyment of the land retained." Hilley, 972 A.2d at 650. "[T]he test of necessity is whether the easement is reasonably necessary for the convenient and comfortable enjoyment of the property as it existed when the severance was made." Vaillancourt v. Motta, 986 A.2d 985, 987-88 (R.I. 2009) (quoting Wiesel, 49 R.I. at 250, 142 A. at 150).

Here, the parties stipulate that the property had only a two-unit apartment building at the time it was purchased in 1981, and the Commercial Building was not moved to Lot 18 until 1983. (Stipulated Facts ¶ 8.) Further, Caluori admits that there is another curb cut to allow access to Lot 18. See Ondis v. City of Woonsocket ex rel. Touzin, 934 A.2d 799, 805 (R.I. 2007) (explaining that the proper inquiry to determine the existence of an easement by necessity focuses on the facts and circumstances at the time of severance). Given that there is another curb

cut to access Lot 18 and the "necessity" to access the Commercial Building did not originally exist when Caluori purchased Lot 18, the Court finds that Caluori did not present clear and convincing evidence of an implied easement by necessity.

In addition, Christopher Caluori testified that Dexter's proposed plan will cut off access to the driveway of the Commercial Building and provide a great strain, making it impossible to use his driveway. The testimony also revealed that Christopher Caluori did state that although it would be difficult, there was sufficient land area to park on Lot 18. Our Supreme Court has stated that in addition to determining necessity for an easement by considering the property as it existed when the severance was made, "[a] party is not entitled to an easement by necessity if a substitute [can] be procured without unreasonable trouble or expense." See Hilley, 972 A.2d at 653 (internal quotation omitted). The testimony and record leaves the Court with one conclusion: the parking problems were created by the Calouris when the Commercial Building was moved to its present location. Accordingly, Caluori's claim for an implied easement by necessity fails.

C.
Unclean Hands

Dexter argues that Caluori had actual knowledge that Lot 18 had not been conveyed to her, and therefore, her claim for an easement over the Disputed Property is inequitable and with "unclean hands." Caluori counters that the affirmative defense of unclean hands has been rejected by our Supreme Court in adverse possession claims and thus, Dexter's defense should fail.

Our Supreme Court's decision in Tavares is controlling on this issue. In Tavares, our Supreme Court explained that "bootstrapping oneself into the ownership of property by actions and uses of the land that are adverse to the owner of record is exactly what adverse possession

entails." Tavares, 814 A.2d at 355; see Gardner, 871 A.2d at 953 (explaining that a prescriptive easement claim follows the same analytical framework as an adverse possession claim, except for the element of exclusivity). Accordingly, the Court finds Dexter's unclean hands argument fails.

D.
Quiet Title and Trespass

Because Caluori has failed to establish an easement by clear and convincing evidence, this Court will now address Dexter's counterclaims for quiet title and trespass. A claim for quiet title is governed by G.L. 1956 § 34-16-4.[1] Section 35-16-4 is essentially a mirror image of Caluori's claim for an easement over the Disputed Property. As this Court has already determined, Caluori's claim must be denied for failure to establish an easement by prescription or an easement by implication over the Disputed Property by clear and convincing evidence. Accordingly, judgment shall reflect that Dexter's claim for quiet title is granted as to the Disputed Property.

[1] Section 34-16-4 provides:

> "Any person or persons claiming title to real estate, or any interest or estate, legal or equitable, in real estate, including any warrantor in any deed or other instrument in the chain of title to the real estate, which title, interest, or estate is based upon, or has come through, a deed, grant, conveyance, devise, or inheritance, purporting to vest in the person or persons or his, her, or their predecessors in title the whole title to such real estate, or any fractional part thereof or any interest or estate therein, may bring a civil action against all claiming, or who may claim, and against all persons appearing to have of record any adverse interest therein, to determine the validity of his, her, or their title or estate therein, to remove any cloud thereon, and to affirm and quiet his, her, or their title to the real estate. The action may be brought under the provisions of this section whether the plaintiff may be in or out of possession and whether or not the action might be brought under the provisions of § 34-16-1 or under the provisions of any other statute."

Dexter has additionally asserted that Caluori committed trespass on the Disputed Property. Dexter contends that Caluori has committed trespass by using the Disputed Property for ingress, egress, and parking. Our Supreme Court has held that trespass occurs when a person "intentionally or without consent or privilege enters onto another's property." Ferreira v. Strack, 652 A.2d 965, 969 (R.I. 1995).

In this case, Caluori and her tenants intentionally entered onto Dexter's property without consent. As discussed in detail above, Caluori failed to establish all of the necessary elements of an easement by prescription or an easement by implication. Therefore, Caluori's entry onto the Disputed Property is without privilege. See Ferreira, 652 A.2d at 969. After carefully considering the evidence, the Court finds that Caluori committed trespass by using Dexter's Property for ingress, egress, and parking. See id.

IV
Conclusion

For the foregoing reasons, Caluori's claims for an easement by prescription and easement by implication are denied as to the Disputed Property. In as much as Caluori has failed to demonstrate by "clear and convincing evidence" that she has an easement over the Disputed Property, her prayer for a permanent injunction is denied.

Dexter's claims for quiet title and trespass are granted as to the Disputed Property. Dexter's affirmative defense of unclean hands is denied.

Counsel shall prepare a Judgment in accordance with this Decision.