P.E.T.E.L. Properties, Inc. v. Belock, No. 396-6-07 Rdcv (Teachout, J., Aug. 29, 2008)

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STATE OF VERMONT
RUTLAND COUNTY

P.E.T.E.L. PROPERTIES, INC.		
Plaintiff,	)	**Rutland Superior Court**
	)	**Docket No. 396-6-07 Rdcv**
v.	)	
	)	
ANTHONY BELOCK et al.	)	
Defendants.	)	

DECISION
Cross Motions for Summary Judgment on Counts II and III
(Declaratory and Injunctive Relief)

On June 1, 2007 Plaintiff P.E.T.E.L. Properties, Inc. filed a four–count complaint against Defendants Anthony Belock, Joyce Belock, and John McDonnell.[1] On June 8, 2007, the court approved the dismissal of the action as to Anthony Belock and Joyce Belock, leaving John McDonnell as the sole defendant.

Before the court at this time are cross-motions for summary judgment on Counts II and III of the complaint in which the Plaintiff seeks declaratory and injunctive relief, respectively. Oral argument was heard on June 16, 2008. Plaintiff was represented by Attorney Michelle A. Kenny. Defendant represented himself.

The undisputed material facts are as follows:[2]

Prior to June 30, 1988, Anthony and Joyce Belock owned property located on Dorr Drive in Rutland Town on which they created a seven parcel subdivision. The Belocks' property was bisected by U.S. Route 4. Parcels 2 and 7 are located south of Route 4, which forms their northerly border. The remaining parcels are located on the northern side of Route 4.

On June 30, 1988, the Belocks conveyed Parcels 2, 3, and 7 by Warranty Deed to Properties of America, Inc., Plaintiff's predecessor in title. The conveyance to Properties of

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[1] In the complaint, the Plaintiff cited "John McDonald" as the Defendant. This apparent error was not repeated in subsequent pleadings.

[2] The Plaintiff and Defendant are not in agreement as to all the facts, but there are no material facts in dispute necessary for Counts II and III. Therefore, summary judgment is appropriate. See V.R.C.P. 56(c)(3).

America, Inc., would have resulted in Parcel 6 becoming landlocked, but for an easement over Lot 7 that the Belocks reserved in the deed to Properties of America, Inc. The reservation reads as follows:

> Excepting and reserving unto the said Grantors, their heirs and assigns a right of way twenty feet (20') wide for agricultural purposes across "Parcel 7" to "Parcel 6," said right-of-way running parallel and adjacent to the northerly line of "Parcel 7" from Creek Road ("Dorr Drive") to a right of way under U.S. Route 4 to "Parcel 6."

As a result, Parcel 7 was subject to an easement leading to the landlocked Parcel 6, the easement being 20' wide and limited to use for agricultural purposes.

After the conveyance to Properties of America, Inc, ownership of Parcel 7 changed a number of times. The last such conveyance was a Warranty Deed, dated April 28, 1993, in which Pasquale Patorti, Jeffrey Elnicki, Jeffrey Lloyd and Frank Trombley conveyed title to Parcel 7 to the Plaintiff P.E.T.E.L. Properties, Inc. The Plaintiff uses the property primarily as a horse farm. It keeps 11 horses on the property, some of which it owns and others of which are boarded for other people.

On April 9, 2007, Anthony and Joyce Belock executed a Quitclaim Deed conveying Parcel 6 to the Defendant John McDonnell. Parcel 6 had been used by the Belocks for agricultural purposes. Shortly after McDonnell came into possession of Parcel 6, he and his family and friends began using the right-of-way across Parcel 7 to gain frequent access to Parcel 6 for a variety of activities, including gardening, camping, and the riding of dirt bikes.

In its motion for summary judgment, the Plaintiff seeks a declaration that "the running of dirt bikes, known as Motocross, is not an 'agricultural purpose'," and a declaration that the Defendant and his heirs and assigns are "prohibited from using the right-of-way to transport recreational vehicles, including dirt bikes, to Parcel 6." They also seek an injunction enjoining the Defendant from using the right-of-way "in any manner except for that which is agricultural," as well as an injunction enjoining the Defendant from "traveling outside the twenty-feet permitted by the Right-of-Way."[3]

In his response and cross-motion for summary judgment, the Defendant McDonnell seeks to have this court declare that the activities that the Plaintiff complains of are permitted uses of the right-of-way. The thrust of McDonnell's argument is that in reserving the right-of-way, the Belocks did not say that the right-of-way was for agricultural purposes only and that, therefore, other uses are permitted so long as Parcel 6 is being used to some extent for an agricultural purpose. He maintains that his principal intended uses are agricultural (gardening and the eventual construction of a ring for horseback riding), and he argues that allowing his children

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[3] The Defendant does not claim that he has a right to travel outside the 20' boundaries of the right-of-way. In his response to the Plaintiff's statement of undisputed facts, the Defendant simply states that he never drove outside those boundaries. Since there does not appear to be a dispute with respect to Defendant's duty to stay within the right-of-way, no declaration or injunction on this subject is necessary. To the extent that the parties are in disagreement as to whether the Defendant has, in fact, driven outside the 20' boundary, this is an issue that is appropriately considered in the trial on Count I, in which the Plaintiff seeks damages.

and their friends to ride dirt bikes while the adults are engaged in agricultural activities is not a violation of the restriction on the right-of-way. He also argues that modern agricultural activities involve the use of many types of motor vehicles, including tractors, trucks, all terrain vehicles, dirt bikes, and trailers.

To resolve this dispute, the court starts with the language of the deed that created the right-of-way. "The permissible extent of the use of the easement must be determined from the language in the deed." *DeGraff* v. *Burnett*, 2007 VT 95, ¶ 26, 18 Vt.L.W. 323 . **"**Our first responsibility in a deed construction case is to determine whether the deed is ambiguous. This is a question of law. …. In reaching this decision, we may look to the plain meaning of the language as well as the object, nature and subject matter of the writing and the circumstances surrounding its making." (Citations omitted.) *Thomas* v. *Farrell*, 153 Vt. 12, 16 (1989).

Applying these principles, the court concludes that there is no ambiguity in the language of the deed. The use of the right-of-way is restricted to agricultural purposes only. "If an easement is created for a particular purpose, it is limited to the purpose stated. . . . . A limited right of way and [its] use ... [can] not be extended into a general easement greater than that contemplated or intended by the parties to the indenture." (Citation omitted.) *Hamouda* v. *Harris*, 66 Mass. App. Ct. 22, 29 n.4, 845 N.E.2d 374, 380 (2006).

Based on the unambiguous language of the deed that restricts the use of the right-of-way to use for agricultural purposes, the court concludes that only those vehicles that are used directly in carrying out an agricultural purpose may be driven on, or be transported over, the right-of-way, and such use of the right-of-way shall be permitted only when these vehicles are actually going to be used for agricultural purposes. Recreational use of dirt bikes is unrelated to an agricultural purpose. While McDonnell is correct that agricultural activities on Parcel 6 could reasonably entail the use of various kinds of motorized vehicles (e.g., berry pickers could come to work on motorcycles across the easement), that does not mean that such vehicles may be driven or transported across the easement when they are not to be used in furtherance of an agricultural purpose.

In his response to the Plaintiff's motion for summary judgment, McDonnell claims that restricting the use of the right-of-way in the manner set out in this opinion would amount to an illegal taking of his property. It is axiomatic that one cannot lose what one does not have, and McDonnell never acquired the right to use the easement on Parcel 7 in the manner he claims. The quitclaim deed from the Belocks to McDonnell referenced the right-of-way and made mention of the Book and Page of the Rutland Town Land Records where the easement was recorded and fully described. McDonnell is charged with having known of the agricultural purpose restriction on the right-of- way, and if he based his decision to purchase Parcel 6 on the notion that the restriction might be construed broadly, he did so at his peril.

This opinion should not be understood to restrict McDonnell's use of Parcel 6 in any way. The Defendant may pursue non-agricultural activities on Parcel 6. He may, for example, purchase an unrestricted right-of-way from another abutter to provide access to Parcel 6, and take dirt bikes for recreational use to Parcel 6 that way. The instrument creating the easement did not blanket Parcel 6 with an easement limiting the use of the whole parcel to agricultural

purposes; it only limits the use of the easement across Parcel 7. Thus, if the Defendant chooses to engage in the non-agricultural use of dirt bikes on Parcel 6, he may do so, but he may not drive, or transport, the bikes over the right-of-way in order to get them to Parcel 6.

Based on the above, the court hereby declares that the right-of-way over Plaintiff's Parcel 7 may be used for agricultural purposes only. The Defendant is enjoined from driving or transporting any vehicle over the right-of-way unless that vehicle is to be used in conjunction with an agricultural purpose.

Order

For the foregoing reasons,

1) Plaintiff's Motion for Summary Judgment on Counts II and III, filed October 4, 2007, is *granted,*

2) Defendant's Motion for Summary Judgment filed June 16, 2008 is *denied,* and

3) A status conference will be scheduled to address pretrial planning for Counts I and IV.

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Dated at Rutland, Vermont this ____ day of August 2008.

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Mary Miles Teachout
Superior Court Judge