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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

WARREN M. LENT et al.,

Plaintiffs and Respondents,

v.

JEFFREY W. PAUL et al.,

Defendants and Appellants.

B263662

(Los Angeles County
Super. Ct. No. SC121734)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa Hart Cole, Judge. Affirmed.

Aaronson & Aaronson and Arthur Aaronson for Defendants and Appellants.

Law Offices of G. Greg Aftergood, G. Greg Aftergood and A. Scott Brown for Plaintiffs and Respondents.

Defendants and appellants Jeffrey W. Paul and Nancy Paul (the Pauls) challenge a judgment entered following the trial court's order granting the motion for summary judgment brought by plaintiffs and respondents Warren M. Lent and Henny S. Lent (the Lents).

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

The Lents and the Pauls have owned homes adjacent to each other in Malibu since 2002. There is a deck between the two houses and a stairway to the beach attached to the deck.¹ Since acquiring their property in 2002, the Lents have regularly used the common deck and stairs to get to and from the beach; they never asked permission from the Pauls to use such improvements and the Pauls never told them that they were being given permission to use the stairs. Likewise, the parties never had an agreement regarding the deck and the stairs.

At some point, the Lents began renting out their property. The Lents' tenants were using the stairs for egress and ingress from the beach.

In September 2013, the Pauls altered and reconfigured the common deck and beach access stairs, essentially preventing the Pauls (and their tenants) from using the stairs to access the beach.

Procedural Background

On December 4, 2013, the Lents filed a complaint seeking to quiet title to real property (appurtenant easement), alleging trespass, and requesting declaratory relief.

The Lents then moved for summary judgment. They argued, inter alia, that they were entitled to an prescriptive easement based upon the undisputed facts that they had used the common deck and stairs openly and notoriously, continuously and uninterrupted, and with hostility and under a claim of right for the prescriptive period.

¹ The stairs are located entirely on the Pauls' property, with the exception of a small part of the first step.

The Pauls opposed the Lents' motion. They claimed that it was disputed whether the Lents' use of the stairs was adverse or permissive. And, even if the use was partially adverse, there was a question of fact as to the period of time such use was adverse.

After entertaining oral argument, the trial court granted the Lents' motion for summary judgment, finding that they "establish[ed] that they [were] entitled to a prescriptive easement based on open, notorious, adverse use of the staircase under a claim of right."

In so ruling, the trial court rejected the Pauls' contention that any easement had been extinguished based on the Lents' leasing of their home to tenants. The trial court quoted *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 594–595: "The allowable usage of the prescriptive easement is defined by its historical usage. In *Confederated Salish & Kootenai Tribes [Etc. v. Vulles* (9th Cir. 1971) 437 F.2d 177, 181], the court said '[the] character and extent of the use (the type and intensity of traffic) determines the nature and extent of the servitude The only limitation [on use of right of way] is imposed by the use made . . . during the statutory period; subsequent use cannot exceed the prior burden.'" It then found that the evidence here did "not support a finding that [the Lents'] decision to lease their single family home as a beach house [had] exceeded the prior burden, particularly since it [was] undisputed that the guests and invitees of the owners [had] used the staircase during the statutory period."

As for the Pauls' argument that the easement was illegal, the trial court found that the Pauls failed to establish that the Lents' "decision to lease their home to tenants violate[d] any particular Malibu ordinance, because there [was] an insufficient showing that [the Lents were] running a 'hotel' and letting to 'transients.'" Rather, the Pauls' evidence only demonstrated that the Lents were leasing their home to tenants. Moreover, "even if [the Pauls] were in violation of an ordinance, the easement itself [was] not illegal because its purpose was not to support [the Lents'] illegal hotel business."

Judgment was entered, and this timely appeal ensued.

DISCUSSION

I. *Standard of Review*

“A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court’s decision de novo.” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

II. *Analysis*

“To establish the elements of a prescriptive easement, the claimant must prove use of the property, for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right.” (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305.)

Here, as the trial court found, all elements were established by undisputed evidence. The Lents and their tenants used the deck and stairway openly and notoriously; their use has been continuous since they purchased the property in 2002 and their use was hostile to the Pauls as their use was exercised under a claim of right.

On appeal, the Pauls argue that the Lents were not acting under a claim of right because there was some sort of agreement, implied or otherwise, that they could use the deck and stairway. As set forth above, it is undisputed that the parties had no agreement regarding the use of the deck and stairway. And, the Lents’ “continuous use [of the deck and stairway] without the landowner’s interference is presumptive evidence of [the easement] and in the absence of evidence of mere permissive use it will be sufficient to sustain a judgment.” (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 571–572.)

Next the Pauls argue that even if there had been a prescriptive easement, that easement was extinguished. According to the Pauls, “whether the Lents’ use of the stairway for . . . short[-]term beach rental tenants goes beyond the extent and scope of the alleged prescriptive easement is a question of fact.” We cannot agree. “When an easement is acquired by prescription, the extent of the right is fixed and determined by the manner of use in which it originated. An easement acquired by prescription cannot be

extended or increased so as to enlarge the burden except by grant or by adverse user which has been acquiesced in for the required statutory time. One who has acquired an easement by prescription or by grant may not use it to impose a substantial increase or change of burden on the servient tenement.” (*Bartholomew v. Staheli* (1948) 86 Cal.App.2d 844, 850 (*Bartholomew*).) Whether used by the Lents or their tenants, there is no evidence that the deck and stairway have been overburdened by use. It follows that there is no factual issue for future determination. (*Sufficool v. Duncan* (1960) 187 Cal.App.2d 544, 550.)

Bartholomew is distinguishable and does not compel a different result. In that case, the subject of the prescriptive easement was a roadway that went from use by a family, its employees, and its guests to use by a nudist resort run for commercial purposes, which vastly increased travel over the roadway. (*Bartholomew, supra*, 86 Cal.App.2d at p. 847.) Here, there is no evidence of a substantial increase or change of burden on the deck and stairway.

Finally, the Pauls assert that there is a triable issue of fact as to whether the Lents are barred from enforcing the easement on the grounds that either it is illegal or its purpose is illegal. First, there is no evidence that the stairs were built in violation of the conditional permit under the California Coastal Commission Deed Restriction. Second, the purpose of the easement is not illegal. According to the Pauls, the illegal purpose is to further the Lents’ unlawful operation of a short term rental business. The problem for the Pauls is two-fold: there is no evidence that the Lents are unlawfully operating a short term rental business, and there is no evidence that the purpose of the prescriptive easement is to further an unlawful business. (*Baccouche v. Blankenship* (2007) 154 Cal.App.4th 1551, 1553.)

DISPOSITION

The judgment is affirmed. The Lents are entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ