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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PETER W. KRAUS et al.,

Plaintiffs, Cross-defendants,
and Respondents,

v.

2251 SKYCRIBS, LLC, et al.,

Defendants, Cross-
complainants, and Appellants.

B276544

(Los Angeles County
Super. Ct. No. BC554171)

APPEAL from a judgment of the Superior Court of Los Angeles County, Samantha P. Jessner, Judge. Affirmed.

Jeffer Mangels Butler & Mitchell, Matthew D. Hinks and Andrew I. Shadoff for Defendants, Cross-Complainants, and Appellants.

Gordon Kemper and Kevin M. Kemper for Plaintiffs,
Cross-Defendants, and Respondents.

2251 Skycribs, LLC and Matthew Elliott Green (collectively Skycribs) appeal from the trial court's judgment after an order granting summary judgment, ruling that Skycribs did not hold the rights to an easement over the property of Peter W. Kraus, Daniel Taheri, and Khaneh Holdings, LLC (Khaneh). We affirm.

BACKGROUND

I. The land

The litigation that led to this appeal centers on an easement dispute between the owners of four contiguous parcels of land in a hillside area of Los Angeles. Skycribs owns Parcels 18 and 19, which front on Sunset Plaza Drive. Parcel 19 is two undeveloped acres of steep hillside, and Parcel 18 is a narrow 36-foot-wide strip of land next to Parcel 19. Parcels 18 and 19 are directly north of Parcel 9, which is owned by respondents Taheri and Khaneh, and Parcel 10, which is owned by Kraus. Parcels 9 and 10 front on Blue Jay Way and each is developed with a single-family home.

When the Title Insurance and Trust Company (TITC) subdivided the land in 1961 it created Tract 26232, which included parcels 9, 10, and 18, but not parcel 19 (although TITC owned the land that became Parcel 19). The subdivision map shows that the entirety of Parcel 18 is included in the dedication of a 36-foot wide easement to the

City of Los Angeles for “‘sanitary sewer, public utility, drainage, water line and fire road purposes.’” The easement continues from the boundary of Lot 18 to Blue Jay Way, running through the easterly 18 feet of Parcel 10 and the westerly 18 feet of Parcel 9. The declaration of restrictions recorded in 1962 provides that all lots in Tract 26232 are to be subject to all easements shown on the recorded subdivision map.

Parcels 9 and 10

In 1963, TITC recorded a grant deed conveying Parcel 10 to Robert and Marjorie Jensen, with an express reservation of an easement (the express reservation): “EXCEPTING and reserving to the Grantor herein [TITC], an easement for road, foot travel, drainage, and utility purposes, together with the right to install, operate, maintain and repair any utility therein, drainage facility, and repave any portion thereof, together with the right to lease or grant the same to others without further consideration, over that portion of lot 10 of Tract No. 26232, lying within the area of that certain easement granted to the city of Los Angeles for sanitary sewer, public utility drainage, water line and fire road purposes, as shown on said recorded map of said Tract No. 26232.” The deed also provided that TITC owned adjacent acreage to the north. TTIC retained the right to change the grade and contour during development of that acreage and to divert the flow of water, “which may cause water therefrom to flow upon lands herein conveyed to Grantees,” who agreed not to make any

claim against TITC regarding that drainage water (the drainage provision).

Kraus subsequently purchased parcel 10 and lives in the single-family residence on the property. The express reservation and drainage provision remain in the property report, as contained in the 1963 deed.

In 1967, TITC recorded a grant deed conveying Parcel 9 to Carl Leipzig containing the identical express reservation (as to Lot 9) and the identical provision regarding TITC's future development of the land to the north and drainage rights over Parcel 9.

Khaneh purchased Parcel 9 in 2013, and Taheri lives in the single-family residence on Parcel 9. The express reservation and drainage easement remain in the title history and appeared on the title reports.

Parcels 18 and 19

In 1977, TITC conveyed Parcel 19 (which was not part of Tract No. 26232) to J. Hanford Gerber and L. Hillquit Gerber by a grant deed which did not contain the express reservation or convey any easement, but did contain the drainage provision. An "Addendum to Deposit Receipt" (addendum) provided that TITC "makes no warrant or representation as to the buildability of this lot," which was being sold as acreage, and "Seller and buyer agree that it is the interest of the parties, and binding upon their heirs, successors and assigns, that Blue Jay Way not be extended or connected in any way with Sunset Plaza Drive. [¶] In furtherance of that intent, Seller and Buyer agree that in the

event any structure is placed upon said acreage that the access thereto will only be from Sunset Plaza Drive and that no vehicular access will be attempted, either now or at any future date, from Blue Jay Way.” Any structure to be built on Parcel 19 would be at least 1600 square feet, with the Seller retaining the right to approve the architectural design. “Seller and Buyer agree that the above restriction shall be included upon any deed to said property.”

Also in 1977, TITC conveyed Parcel 18 to the Bev-Hi Development Company, in a grant deed which, like the deed for Parcel 19, described the parcel as hillside property, did not contain the express reservation or describe any easement, and contained the drainage provision.¹

Green purchased Parcels 18 and 19 in 2013, and conveyed the land to his LLC, Skycribs.²

II. The litigation

After acquiring Parcels 18 and 19, Skycribs represented to third parties and prospective purchasers that the parcels, which fronted on Sunset Plaza Drive, had an easement across Parcels 9 and 10 that also gave Parcels 18

¹ Both deeds provide in general language that the land is conveyed subject to taxes, “covenants, conditions, restrictions, reservations, rights, rights of way and/or easements, if any.”

² Before purchasing Parcel 19, Green did not obtain or review the 1977 deed in which TITC conveyed Parcel 19 without any grant of access rights.

and 19 a right of access to Blue Jay Way.³ Green made personal use of a fire road over the easement on Parcels 9 and 10, installing paving and removing gate locks. On January 30, 2014, Kraus's attorney sent Green a letter, stating: "[Y]ou do *not* possess a legal right of access from you[r] property to Blue Jay Way. While a limited purpose easement across Parcels 9 and 10 exists as a matter of record (in favor of the city of Los Angeles), this easement does not benefit Parcels 18 or 19 and you have no right to utilize it." The letter demanded that Green cease and desist his efforts to claim or use the easement, and set out in detail the applicable law and the conveyance history of the four parcels, including TITC's express reservation of the easement to itself in the deeds conveying lots 9 and 10 to the initial purchasers in the 1960's.

The parties did not reach an agreement and in August 2014, Kraus and Khaneh filed a complaint for quiet title and other claims. Skycribs filed a cross-complaint asserting a claim for quiet title among other claims, in October 2014. In February 2015, Kraus and Khaneh filed a motion for summary judgment, and in March 2015, Skycribs filed a motion for summary adjudication. The trial court heard both motions on May 19, 2015, after issuing a tentative ruling denying Skycribs' motion and granting in part Kraus

³ Skycribs' opening brief states that the road over Parcel 18 and the easement would be "a shortcut [that] drastically reduced the time to drive down the mountain to Sunset Boulevard from 20 minutes to only about 6 minutes."

and Khaneh's motion. The trial court adopted the tentative ruling in its final order filed on May 20, 2015 (the May 20 order).

III. The May 20 order granting summary judgment

The May 20 order granted summary judgment in Kraus's favor as to the quiet title cause of action in Kraus's complaint, and as to the quiet title, declaratory relief, slander to title, and intentional interference with easement causes of action in the Skycribs cross-complaint. The court found it was undisputed that the express reservation in the deeds conveying Parcels 9 and 10 from TITC to Leipzig and Jensen created an easement over Parcels 9 and 10. "The parties dispute whether the easement was appurtenant, giving Skycribs the right to utilize the easement, or in gross, which would deny Skycribs lawful access." When TITC transferred title to Parcel 19 to Gerber, the deed made no specific reference to the easement (stating merely that the transfer was subject to any easements), and the deed also contained the addendum.⁴ When TITC conveyed Parcel 18, no reference was made to TITC's reserved easement or to the addendum. Finally, when Green purchased parcels 18 and 19, the grant deeds made no reference to the reserved easement or the addendum.

⁴ During the settlement of Green's title insurance claim in 2014, Chicago Title Insurance company as successor by merger to TITC, executed an agreement relinquishing all rights under the addendum, including the right to prohibit vehicular access to Blue Jay Way.

The trial court concluded that the easement was “in gross” (personal, and conveyable independent of the land), rather than appurtenant (tied to and transferred with the land whether or not specifically mentioned in the deed). The express reservation in the 1963 and 1967 grant deeds for Parcels 10 and 9 which reserved the easement to TITC unambiguously stated that TITC retained the easement, and reserved “the right to lease or grant the same to others without further consideration,” establishing that the easement was in gross. As the easement language was not ambiguous, the subsequent addendum was extrinsic language the court did not consider. “The easements granted over Parcels 9 and 10 were easements in gross as a matter of law. They did not pass with the land and Skycribs has no legal right to enforce them.”

IV. Subsequent amendment, settlement, and judgment

Following the order granting summary judgment, in September 2015 Skycribs filed a second amended cross-complaint with causes of action alleging fraud and misrepresentation by Chicago Title Insurance Company (Chicago Title) and Leimert Realty Company (Leimert), the successor to Bev-Hi Development Company. Skycribs alleged that when it purchased the property, “Leimert falsely represented . . . that Parcel 18 held appurtenant easement rights over Parcels 9 and 10,” and that Chicago Title made misrepresentations during the 2014 settlement of a title insurance claim brought by Skycribs. The parties

entered into a settlement of the new causes of action, and upon the parties' request the trial court entered a dismissal on April 15, 2016. The court entered judgment on May 27, 2016 in accordance with the May 20 order, and Skycribs filed a timely notice of appeal from the summary judgment order.

DISCUSSION

We review the grant of summary judgment de novo, and we independently interpret the language of the deeds to determine whether the language creates an appurtenant easement or an easement in gross. (*Wiener v Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142; *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1598, fn. 2.)

“ ‘An easement is *appurtenant* when it is attached to the land of the owner of the easement, and benefits him as the owner or possessor of that land. The land to which it is attached is called the *dominant tenement*, and the land which bears the burden, i.e., the land of another which is used or enjoyed, is called the *servient tenement*. . . . An easement *in gross* is not attached to any particular land as dominant tenement, but belongs to a person individually.’ ” (*City of Anaheim v. Metropolitan Water Dist. of Southern Cal.* (1978) 82 Cal.App.3d 763, 767.) If an easement is appurtenant, it is transferred to the grantee of the dominant tenement even if the easement is not specifically mentioned in the deed. (*Moylan v. Dykes* (1986) 181 Cal.App.3d 561, 568.) As the deeds granting Parcels 18 and 19 to Skycribs

make no mention of the easement, Skycribs holds the easement only if it is appurtenant.

“[W]hether this easement is in gross or appurtenant to the land. . . . requires an interpretation of the deed.” (*Elliott v. McCombs* (1941) 17 Cal.2d 23, 28–29.) The deeds in which TITC conveyed Parcels 9 and 10 to the initial purchasers contained an express reservation of an easement, “excepting and reserving to the Grantor herein [TITC] an easement [over Parcels 9 and 10] . . . *together with the right to lease or grant the same to others without further consideration*” and as shown on the map of Tract No. 23262. (Italics added.) This language expressly severs the easement from any land, reserving to TITC the ownership of the easement over Parcels 9 and 10, and retaining the right to grant or lease the easement to others, which right belonged to TITC personally and individually. No language describes any property to be benefitted by the easement (any dominant tenement to which the easement was appurtenant). Further, TITC did not reserve the easement to itself “ ‘and [its] successors’ ” (*Whitson v. Goudeseune* (1955) 137 Cal.App.2d 445, 447) or “ ‘heirs or assigns,’ ” so as to “necessarily create an easement appurtenant, since words of such import are inconsistent with the . . . character of an easement in gross.” (*Eastman v. Piper* (1924) 68 Cal.App. 554, 568.) Finally, “ ‘a reservation in any grant, . . . is to be interpreted in favor of the grantor.’ ” (*Moylan v. Dykes*, *supra*, 181 Cal.App.3d at p. 569.) The easement thus was in gross, not attached to any parcel or parcels as dominant

tenement, and owned by TITC, which expressly reserved the right to grant or lease the easement to another.

TITC did not grant the easement over Parcels 9 and 10 to the initial purchaser of Parcel 18, pursuant to a deed that did not mention the easement. When TITC conveyed Parcel 19, which was never part of Tract No. 26232, the deed also contained no mention of the easement. Although TITC could have granted the easement to the initial purchasers of Parcels 18 and 19, it did not do so. Even if TITC had done so, it could have conveyed only what it owned, mainly an easement in gross, which would have been personal to the initial purchasers and not appurtenant to the parcels, requiring an express conveyance in deeds conveying the land to subsequent purchasers such as Skycribs. (*Glass v. Gulf Oil Corp.* (1970) 12 Cal.App.3d 412, 428.) When Skycribs purchased Parcels 18 and 19, it did not also purchase an easement over lots 9 and 10.

Skycribs argues that we should presume that the easement was appurtenant. “[W]hen the language of a deed is ambiguous, and it does not clearly appear whether the easement was intended to be in gross or appurtenant to land, it is never construed as personal when it may fairly be construed as appurtenant to some other estate,” and extrinsic evidence may determine the nature of the easement. (*Elliott v. McCombs, supra*, 17 Cal.2d at p. 29.) Cases finding an appurtenant easement based on extrinsic evidence have involved deeds with ambiguous language, from which “it did not ‘clearly appear’ from the deed that the

parties intended the easement to be of a particular character.” (*Moylan v. Dykes, supra*, 181 Cal.App.3d at p. 571; see *Elliot v. McCombs*, at p. 29; *City of Anaheim v. Metropolitan Water District, supra*, 82 Cal.App.3d at p. 768.) Here, the deed’s language is not ambiguous, and therefore we do not presume the easement is appurtenant, nor do we consider evidence extrinsic to the deed, such as the addendum to the 1977 deed conveying Parcel 19.⁵

The trial court was correct to conclude that the easement was in gross and to grant summary judgment in favor of Kraus.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.

⁵ This is not a case in which unless the easement is appurtenant to Parcels 18 and 19, there is no clear access to Skycribs’ property. (*Moylan v. Dykes, supra*, 181 Cal.App.3d at p. 574.) Parcels 18 and 19 are directly accessible from Sunset Plaza Drive.