Filed 12/19/12 Spencer & Morin Properties v. Johnson CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SPENCER & MORIN PROPERTIES, INC., Plaintiff and Appellant, v. DAVID P. JOHNSON, Individually and as Trustee etc., et al., Defendants and Respondents.	B238911 (Los Angeles County Super. Ct. No. BC467020)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dunn, Judge. Affirmed.

Kelley•Semmel, Paul M. Kelley, and Amy Semmel for Plaintiff and Appellant.

Raskin Law, Gary S. Raskin, Michael T. Anderson, and Tracy R. Roman for Defendants and Respondents.

INTRODUCTION

Plaintiff Spencer & Morin Properties, Inc. (SMP) appeals from a judgment of dismissal following the trial court's sustaining of a demurrer without leave to amend filed by defendants David P. Johnson and Susan P. Leifield, individually and as trustees of the Johnson Leifield Family Trust (Johnson-Leifield). In sustaining the demurrer, the trial court found that SMP could not state a cause of action for declaratory and injunctive relief by which it sought a declaration of its right to use as a driveway an easement held by adjoining landowners. Because we agree with the trial court's interpretation of the language of the grant deed as creating an exclusive easement in favor of Johnson-Leifield, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This action for declaratory relief, injunction, and damages was brought by SMP, successor to the grantor and owner of the servient estate, Lot 14, against Johnson-Leifield, successors to the grantees and owners of the dominant estate, Lot 13 and the appurtenant easement thereto, to determine the rights of the parties in the easement created over Lot 14 under a quitclaim deed dated November 9, 1960. Johnson and Leifield acquired fee title to Lot 13 on November 4, 1997. They transferred their individual interests in Lot 13 to the Johnson-Leifield Family Trust on July 16, 2010. Westwind Tiburon Associates, LLC (Westwind) purchased lots from Southern California Gas Company (SCGC) on August 24, 2006, including Lot 14, intending to build and sell residential housing on the lots. Westwind transferred some of these lots, including Lot 14, to SMP on October 17, 2007.

Lot 13 is improved by a single-family residence that was built in 1960. Owners of Lot 13 have use of the easement strip, which is improved by a driveway. Lot 14 is vacant land on which SMP plans to build a single-family residence and use the easement strip as a driveway. Johnson-Leifield maintains it has the exclusive use of the easement strip and

refuses to permit shared use of the easement. SMP alleged it would suffer damages to the extent defendants' position might cause delay in construction of the residence on Lot 14 or diminish in any manner the size of the residence to be constructed on Lot 14. More specifically, SMP sought a declaration that Johnson-Leifield's rights were not exclusive, and that SMP has the right to use the 15-foot by 100-foot easement strip for a driveway for Lot 14.

Johnson-Leifield demurred to the complaint.

After hearing the matter, the court found that the easement was created for the sole use and benefit of Johnson-Leifield's predecessors in interest and that the exclusive use thereof by Johnson-Leifield was not a violation of SMP's rights. The court sustained without leave to amend Johnson-Leifield's demurrer and entered a judgment of dismissal in favor of Johnson-Leifield.

This timely appeal followed.

DISCUSSION

I. Introduction

"Generally speaking, '"[a]n easement is a restricted right to specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership." [Citation.]' (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702.) The question here is the degree of exclusivity of the easement described in the [granting document]. 'The term "exclusive" used in the context of servitudes means the right to exclude others. The degree of exclusivity of the rights conferred by an easement . . . is highly variable and includes two aspects: who may be excluded and the uses or area from which they may be excluded. At one extreme, the holder of the easement . . . has no right to exclude anyone from making any use that does not unreasonably interfere with the uses authorized by the servitude. . . . At the other extreme, the holder of the easement . . . has the right to exclude everyone, including the servient owner, from

making any use of the land within the easement boundaries.' (Rest.3d Property, Servitudes (2000) § 1.2, com. c., p. 14).

"'Under section 806 of the Civil Code "the extent of a servitude is determined by the terms of the grant . . ." . . . .' (*Pasadena v*
. California-Michigan etc. Co. (1941) 17 Cal.2d 576, 578.) 'In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply.' (*Scruby v. Vintage Grapevine, Inc.*, *supra*, 37 Cal.App.4th at p. 702 [(*Scruby*)]; see also Civ. Code, § 1066 [grants interpreted as contracts].) The instrument, 'unless it is ambiguous, must be construed by a consideration of its own terms. The meaning and intent thereof is a question of law and the reviewing court is not bound by the trial court's findings and conclusions regarding such intent and meaning. [Citations.]' (*Keeler v. Haky* (1958) 160 Cal.App.2d 471, 474.)" (*Gray v. McCormick* (2008) 167 Cal.App.4th 1019, 1023-1024 (*Gray*).)

II. Easement Language

The 1960 deed at issue here provided that, "For a valuable consideration, receipt of which is hereby acknowledged, Southern California Gas Company, a California corporation, does hereby remise, release and forever quitclaim to West Manchester Corporation, a California corporation, the right to use the surface of the easterly 15.00 feet of Lot 14, Book 6, Tract No. 9578, as per map recorded in Book 173, pages 32 and 33 of Maps, in the office of the County Recorder of [Los Angeles] County, for the parking of automobiles and the planting of grass and shrubs, providing, however, that no structure, including fences, shall be built upon said property, excepting a rock and oil driveway, which, if built, shall be graded so as to drain northerly into the abutting street. [¶] Such use, however, shall be subordinate to the right of Southern California Gas Company, its successors or assigns, to enter and re-enter said property for examination, repair and/or re-activation of abandoned oil wells located on or adjacent to said property. [¶] Southern California Gas Company hereby represents that the real property hereby

quitclaimed is not useful or necessary to it in the performance of its duties to the public." (Unnecessary capitalization omitted.)

III. Analysis

In *Pasadena v. California-Michigan Land & Water Co.* (1941) 17 Cal.2d 576, at pages 578-579, the Supreme Court said in dictum that an "'exclusive easement' is an unusual interest in land; it has been said to amount almost to a conveyance of the fee." The court continued: "No intention to convey such a complete interest can be imputed to the owner of the servient tenement in the absence of a clear indication of such an intention." But there, no serious claim was presented that an exclusive easement had been conveyed. "[E]xclusive easements, while rare, are possible . . . ." (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 769, fn. 11 [cf., regarding implied express easement].)

In *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, the owner of a dominant tenement created by way of a 1979 grant deed successfully sought a declaration that he was entitled to build a garage on the easement appurtenant to his property and enjoy exclusive use of the garage. The adjoining landowners, owners of the servient tenement, appealed from the judgment, arguing that the easement, as construed by the trial court, amounted to an award of a fee simple ownership interest. On appeal, this court rejected that notion, finding that "'[t]he owner of an easement is not the owner of the property, but merely the possessor of a "right to use someone's land for a specified purpose . . . ."' [Citations.]" (*Id.* at p. 1598.) Because the terms of the grant deed determined the burden imposed on the servient tenement's property, and the deed conveyed "'[a]n easement for parking and garage purposes,'" we observed that although "[a]ppellants thus retain 'every incident of ownership not inconsistent with the easement and the enjoyment of the same[,]' [citation]," "[n]onetheless, appellants may not use their property 'in a way that obstructs the normal use of the easement.' [Citation.]" (*Id.* at p. 1599.) We found that nonexclusive use of the garage would interfere unreasonably with respondent's rights to which he was entitled pursuant to the terms of the easement. (*Ibid.*, citing *Scruby, supra,*

37 Cal.App.4th at p. 703 ["Whether a particular use by the servient owner of land subject to an easement is an unreasonable interference with the rights of the dominant owner is a question of fact for the trier of fact," whose findings are binding upon the appellate court if properly supported by the evidence.].)

In *Blackmore*, as is the case here, there was no language in the deed about exclusivity; rather, exclusivity was implied from the fact the easement permitted construction of a garage, and it would be nonsensical to construe a garage as being for anything other than exclusive use. Thus, we construed the easement as granting certain exclusive rights—by necessity—given the nature of the rights granted. (See *Gray*, *supra*, 167 Cal.App.4th at p. 1030.)

Precisely the same analysis applies here. We are governed by the language of the grant that created an easement "for the *parking of automobiles* and the planting of grass and shrubs, providing, however, that no structure, including fences, shall be built upon said property, excepting a rock and oil driveway." (Italics added.) *Parking* of automobiles on a driveway implies exclusive use. The rights granted by the easement are not simply of ingress and egress over the easement strip; they permit Johnson-Leifield to *park* cars, anywhere on the 15-foot by 100-foot strip, or plant grass and shrubs (which apparently it has done on the rear 40 feet of the easement strip). Thus, Johnson-Leifield holds an exclusive easement and SMP is not permitted to burden that easement by using any portion of the easement strip as a driveway at any time. The exclusive easement is an express easement of record and was known to SMP at the time it purchased the property. We thus conclude that SMP cannot state a claim, and the trial court properly granted Johnson-Leifield's demurrer, without leave to amend, and entered a judgment of dismissal against SMP.

Finally, we note that SMP argues, without citation of any authority, that the subordination provision in the grant deed ("Such use, however, shall be subordinate to the right of Southern California Gas Company, its successors or assigns, to enter and re-enter said property for examination, repair and/or re-activation of abandoned oil wells located on or adjacent to said property") "changes that equation." It argues that the law

prohibiting unreasonable interference with the rights of the owner of the dominant tenement does not apply given the existence of the subordination provision. It asserts that, for certain uses, the use right granted the dominant owner is subordinate to the access rights of the servient owner, as follows: Without the subordination provision, SMP could not unreasonably interfere with Johnson-Leifield's right to use the easement "for the parking of automobiles and the planting of grass and shrubs"; with the subordination provision, SMP *can unreasonably interfere* with those use rights for its own access. SMP cites no authority for this proposition because none exists.

SMP continues, stating in a footnote: "Though not necessary to the resolution of this appeal, SMP does not concede that the scope of the Subordination Provision is limited to use of the easement for entry and re-entry 'for emanation, repair, or reactivation of abandoned oil wells . . . .' As the natural evolution of the area has continued from an oil field to a suburban location, the prior subordinate use—oil well activities, has disappeared and evolved to [allow] access to the servient parcel for other reasons. *Cf. Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 866. [Superseded by statute on other grounds, as stated in *Pacific Bell v. Public Utilities Com.* (2000) 79 Cal.App.4th 269, 281.]" The case cited by SMP does not support its position. We do not find it necessary to discuss this assertion further, other than to reject it as unsupported by adequate argument or authority.

DISPOSITION

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

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J. MANELLA, J.