Filed 12/27/16 Emcke v. Holst CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MATTHIAS EMCKE, Plaintiff, Appellant and Cross-Respondent, v. JENS HOLST, et al. Defendants, Respondents and Cross-Appellants.	B264516 Los Angeles County Super. Ct. No. SC120886

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed with directions.

Gaines and Stacey, Fred Gaines, Rebecca A. Thompson, and Alicia B. Bartley for Plaintiff, Appellant, and Cross-Respondent.

Chatten-Brown & Carstens, Douglas P. Carstens, Josh Chatten-Brown and Michelle Black, for Defendants, Respondents, and Cross-Appellants.

INTRODUCTION

This case involves a dispute concerning the right to use Ramirez Canyon Road (Road), a private road in Malibu that intersects with Pacific Coast Highway (PCH). In early November 2012, Mansard Holdings, Inc. (Mansard) conveyed to Norman Haynie an appurtenant easement over the Road (Easement) to provide Haynie access to PCH from his property (Parcel 24). Although Mansard did not own any property traversed by the Road, it purported to hold the right to grant easements over the Road after it acquired real estate interests that belonged to Marblehead Land Company (Marblehead), the company that was once the common owner of the property in the area surrounding the Road.

In late November 2012, Haynie sold Parcel 24, along with his "easement for ingress and egress" over the Road, to plaintiff Matthias Emcke. In 2013, Emcke brought this action to quiet title, naming as defendants a group of individuals and trusts who own parcels that are traversed by the Road and who claim any appurtenant or in gross easement held by Emcke is void.[1] The trial court denied Emcke's claim to quiet title, finding that Mansard lacked the power to grant appurtenant easements over the Road. The court also found that even if Mansard intended to transfer an in gross easement to Haynie, an in gross easement was never transferred by Haynie to Emcke. However, the court found that Mansard generally retained the right to grant in gross

---

[1] The defendants who are also parties to this appeal are the following: Jens Holst; Irving Azoff, the trustee of the Red Oak Trust; Navy Banvard; Bryan Spangle, the trustee of the Henry Spangle Trust; Richard Appel; Greg Winters; and the Sam Simon Charitable Foundation. For the sake of convenience, we will refer to the defendants as "Red Oak."

easements over the Road stemming from its acquisition of Marblehead's real estate interests.

Both Emcke and Red Oak appeal. Emcke claims the court erred in finding that he does not hold an easement, whether appurtenant or in gross, that allows him access over the Road from Parcel 24. While Red Oak does not challenge this finding, it contends the court erred by also stating that Mansard, through a reservation of rights held by its predecessor in interest, retained the right to grant in gross easements over the Road. We affirm the judgment but direct the court to strike any finding that Mansard reserved the right to make grants of appurtenant or in gross easements over the Road.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Ramirez Canyon Development

In the early 1940s, Marblehead owned a large tract of land in Malibu in an area known as Ramirez Canyon, located north (or on the inland side) of PCH, just east of Point Dume. The area currently consists of about 40 individual parcels of land, most of which are traversed by the Road, a private road which connects to, and runs north to south from, PCH. The Road provides the properties it traverses with access to and from PCH.

In 1942, Marblehead began dividing Ramirez Canyon into individual parcels. In March 1942, Marblehead sold the most northern parcel to Hope Ann Goodrich (Goodrich Property). One month later, Marblehead conveyed to Goodrich an appurtenant easement over a strip of land traversing the middle of the property directly to the south of the Goodrich Property, later known as the Road. The easement was created to provide Goodrich access to and from PCH. In addition to expressly granting Goodrich an appurtenant easement over the Road,

Marblehead reserved for itself a similar easement, as well as the right to grant "similar easements" in the future. The easement to Goodrich was conveyed through a separate grant deed (Goodrich Easement Grant Deed), which was recorded on April 30, 1942.[2]

After executing the Goodrich Easement Grant Deed,[3] Marblehead sold the rest of the parcels it owned in Ramirez Canyon, selling the last parcel in July 1943. All of those parcels are located almost directly south of the Goodrich Property, and they are traversed by the Road, with approximately half of the parcels located on the western side of the Road and the remaining half of the parcels located on the eastern side of the Road.[4]

---

[2] Specifically, the Goodrich Easement Grant Deed provides in relevant part: "The purpose of this easement is to enable Grantee herein to use the same for the purpose of ingress and egress to and from [PCH] to and from the lands heretofore conveyed by Grantor herein to Hope Ann Goodrich, the Grantee herein, by deed recorded March 27, 1942 . . . . This easement is appurtenant to said lands conveyed to Hope Ann Goodrich.

"The Grantor reserves the right to make similar use of the easement or easements herein granted and likewise to grant similar easements to others."

[3] Marblehead sold two other properties in Ramirez Canyon before it conveyed the Goodrich Easement Grant Deed. Like the Goodrich Easement Grant Deed, the grant deeds for those properties granted to the purchasers easements over the Road. However, the easements did not explicitly state they were appurtenant to the purchasers' lands. Instead, they were conveyed to provide rights of way for road purposes and for purposes of installing and maintaining pipes and utility lines.

[4] We will refer to the group of parcels that includes those traversed by the Road, as well as the Goodrich Property, as the "Ramirez Canyon Development" or the "Development."

Each of the deeds for the parcels in the Ramirez Canyon Development that were sold after Marblehead executed the Goodrich Easement Grant Deed gave the purchaser an appurtenant easement over the Road for access to and from PCH. Each deed also reserved for Marblehead an easement over the portion of the parcel sold that was within the boundaries of the Road. Each deed stated the purchaser's easement and Marblehead's reserved easement were created for the purposes set forth in the Goodrich Easement Grant Deed. Although each subsequent deed was conveyed "subject to each and all [of] the reservations and conditions" set forth in the Goodrich Easement Grant Deed, none of the subsequent grant deeds contained a reservation reserving for Marblehead the right to grant similar easements in the future.

2. Marblehead's other property near the Ramirez Canyon Development

After Marblehead sold the last parcel in the Ramirez Canyon Development, it continued to own two areas of property immediately to the east and the west of the Development, including a parcel known as Dawson Parcel. When Marblehead later divided and sold those areas of property as smaller parcels, it did not convey any easements over the Road or reference the Goodrich Easement Grant Deed in the grant deeds for those parcels. Instead, the company conveyed to the purchasers of those parcels easements over other roads that would provide access to and from PCH.

3. Marblehead sells its real estate interests in Los Angeles County

In November 1970, Marblehead transferred all of its rights and interests in real estate located in Los Angeles County to

a general partnership named the Adamson Companies. Specifically, Marblehead conveyed to the Adamson Companies through a quitclaim deed all of Marblehead's "rights, title and interest in and to real property located in the County of Los Angeles . . . , including without limitation all fee interests, leaseholds, options, reservations, exceptions, remainders, reversions, beneficial interests, easements, rights-of-way, licenses, mineral rights, surface and subsurface drilling and entry rights, water and riparian rights, rights to use and divert water, rights to lateral support, and rights under or rising out of all existing tract maps, contracts, agreements, warranties, covenants, conditions, restrictions and other encumbrances affecting or relating to such real property."

After acquiring Marblehead's real estate interests, the Adamson Companies became OS Properties, L.P. (OS Properties). In October 2002, OS Properties executed a division agreement (Division Agreement) through which it divided itself into two separate partnerships, OS Properties and the Adamson Companies, L.P. (Adamson). Through the Division Agreement, OS Properties transferred its interests to Adamson. The Division Agreement did not identify each real estate asset being transferred to Adamson; instead, it transferred to Adamson "any and all" of the interests OS Properties owned that were not otherwise identified in the Division Agreement. On October 25, 2011, Adamson quitclaimed to Mansard all of the real estate interests it owned in Los Angeles County, including those interests that were transferred from OS Properties to Adamson via the Division Agreement.

4. Parcel 24

In 1945, Marblehead sold Dawson Parcel, which is located directly to the east of the Ramirez Canyon Development.

Marblehead conveyed to Dawson Parcel's purchaser easements over De Butts Terrace (now Murphy Road) and Winding Way, which provided road access to and from PCH. The grant deed for Dawson Parcel does not include an easement over the Road, nor does it reference the Goodrich Easement Grant Deed.

Dawson Parcel was later subdivided into three separate parcels, one of which is Parcel 24. As a result of dividing Dawson Parcel, Parcel 24 became landlocked and no longer had access to De Butts Terrace and Winding Way.

In 1997, the former owners of Parcel 24 obtained judgments establishing an easement by necessity in favor of the property over one of the other two parcels that originally formed Dawson Parcel. The easement by necessity provided Parcel 24 with an easement for road access to and from De Butts Terrace, which would provide the property access to PCH.

In 1999, Carlton Desert Enterprises, Inc. (Carlton), acquired Parcel 24. In April 2002, Carlton conveyed the parcel to Ellsworth Robert Draper. At the time of the conveyance, Parcel 24's chain of title did not include any document showing Parcel 24 had an interest in an easement over the Road. In December 2002, Draper quitclaimed Parcel 24 back to Carlton. A description of an easement over the Road appeared in the quitclaim deed transferring Parcel 24 back to Carlton, marking the first time such an easement appeared in Parcel 24's chain of title.

In August 2004, Norman Haynie purchased Parcel 24 from Carlton. After purchasing Parcel 24, Haynie began to assert access rights over the Road. Several owners of properties in the Ramirez Canyon Development, many of whom are parties to this appeal, brought an action contesting Haynie's right to use the Road. In 2009, the trial court in that lawsuit entered judgment

against Haynie, finding the portion of the quitclaim deed from Carlton to Haynie purporting to convey an easement over the Road was void. In December 2010, this Division affirmed the trial court's judgment in a nonpublished opinion (*Holst v. Haynie* (Dec. 23, 2010), B217208 [nonpub. opn.]).

5. The Easement

On November 8, 2012, Mansard conveyed to Haynie the Easement, purporting to provide Parcel 24 access to and from PCH over the Road. Mansard claimed it conveyed the Easement "[p]ursuant to Marblehead Land Company's right to grant the Easement to others as described in the [Goodrich Easement] Grant Deed."

On November 27, 2012, Haynie agreed to sell Parcel 24 to Emcke. The purchase agreement provided that the title company insuring title to Parcel 24 would also insure the Easement. The agreement also provided, however, that the title company would not agree to insure the Easement unless it was verified through a quiet title action.

6. The underlying lawsuit

On June 20, 2013, Emcke filed a lawsuit against Red Oak. Emcke sought to quiet title to the Easement and to obtain a judgment precluding the owners of properties in the Ramirez Canyon Development from interfering with his use of the Road.

On October 16, 2013, a group of the Red Oak defendants answered Emcke's complaint and filed a cross-complaint against Mansard and Haynie for slander of title and cancellation of the Easement. On October 24, 2013, a second group of the Red Oak defendants filed a cross-complaint against Mansard and Haynie, also for slander of title and cancellation of the Easement.

On November 24, 2014, the court commenced a two-day bench trial. On November 26, 2014, the court issued a notice of ruling indicating it would rule in Emcke's favor on his complaint and quiet title to an easement over the Road in favor of Parcel 24. The court also indicated it would rule against Red Oak on its cross-complaints.

On December 9, 2014, Red Oak requested the court to issue a statement of decision. On December 29, 2014, Red Oak filed objections to the proposed statement of decision filed by Emcke. The next day, before considering Red Oak's objections, the court issued a statement of decision, finding Emcke owned a valid appurtenant easement over the Road as a result of Mansard's conveyance of the Easement to Haynie in November 2012.

On January 13, 2015, the court withdrew its December 30, 2014 statement of decision after realizing it had not considered Red Oak's objections. Two days later, the court issued an order extending the time to issue a statement of decision and judgment to allow it to consider the following issues: (1) "What was the intent of Marblehead Land Company when it reserved the right to grant easements in the deeds commencing with the Goodrich deed?[;]" and (2) "Can an easement in gross be converted into an appurtenant easement?"

On April 3, 2015, the court issued its final statement of decision and entered judgment on Emcke's complaint in favor of Red Oak and judgment on Red Oak's cross-complaints in favor of cross-defendants. In its final statement of decision, the court found the reservation of rights in the Goodrich Easement Grant Deed provided Marblehead a right to grant in gross easements over the Road. The court concluded the reservation created a right to grant in gross easements, rather than appurtenant easements, because the reservation was included in all of the

grant deeds for the parcels in the Ramirez Canyon Development conveyed after the Goodrich Easement Grant Deed, including the deed for the last parcel in the Development sold by Marblehead. Since it believed the reservation was included in the last parcel's grant deed, the court concluded Marblehead must have intended to continue to grant easements over the Road even after it no longer owned property in the Ramirez Canyon Development.

DISCUSSION

The parties' dispute focuses primarily on how to interpret Marblehead's reservation of rights in the Goodrich Easement Grant Deed. Specifically, the parties disagree about what type of right was created by that reservation (appurtenant vs. in gross), and whether that right passed to Mansard when it acquired Marblehead's real estate interests.

As we shall explain, we conclude that Marblehead's right to grant easements over the Road was appurtenant to the property that the company owned within the Ramirez Canyon Development. As a result, that right attached to the property within the Development, and once Marblehead sold the last parcel in the Development in 1943, the company no longer had an interest in that right. Therefore, that right was not transferred to Mansard in 2011 when it acquired Marblehead's real estate interests. Since Mansard lacked the power to grant Haynie, or his successor in interest, an easement over the Road, the trial court properly entered judgment against Emcke.

1. The law of easements and standard of review

An easement is a nonpossessory interest in the land of another that entitles its holder to a limited use of the other's land. (*Wright v. Best* (1942) 19 Cal.2d 368, 381; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382,

p. 446.) There are two types of easements: appurtenant and in gross. (*Moylan v. Dykes* (1986) 181 Cal.App.3d 561, 568 (*Moylan*); 6 Miller & Starr (4th ed. 2016) Cal. Real Estate § 15:6, p. 24 (Miller & Starr).) An appurtenant easement attaches to, and does not exist independent of, the land of the easement holder. (*City of Anaheim v. Metropolitan Water Dist. of Southern Cal.* (1978) 82 Cal.App.3d 763, 767 (*City of Anaheim*); 6 Miller & Starr, *supra*, Cal. Real Estate § 15:6, p. 25.) The land to which an appurtenant easement is attached, and which is benefitted by the easement, is the dominant tenement; the land burdened by the easement is the servient tenement. (*Wright*, *supra*, 19 Cal.2d at p. 381; 6 Miller & Starr, *supra*, Cal. Real Estate § 15:6, pp. 24-25.) An appurtenant easement cannot be extended to benefit additional property that was not a part of the dominant tenement at the time the easement was created, and it cannot be transferred separately from the dominant tenement. (6 Miller & Starr, *supra*, Cal. Real Estate § 15:6, pp. 25, 29.) "An easement in gross, unlike an appurtenant easement, is merely a personal right to use the land of another. [Citation.]" (*Moylan*, *supra*, 181 Cal.App.3d at p. 568.) Therefore, it is not attached to the holder's land. (*Ibid*.)

An appurtenant easement passes automatically with the dominant tenement. (*Moylan*, *supra*, 181 Cal.App.3d at p. 568.) Thus, "[t]he conveyance of the dominant tenement transfers all appurtenant easements to the grantee, even though the easements are not specifically mentioned in the deed." (*Ibid*.) An easement in gross, on the other hand, does not pass automatically with the easement owner's property because the easement is personal to the owner and is not attached to his or her property. (6 Miller & Starr, *supra*, Cal. Real Estate § 15:7, p. 32.) Therefore, "[a]n owner of an easement in gross intending to

transfer the easement must do so intentionally and expressly." (*Ibid*.)

An easement may be created by an express reservation, deed, agreement, recorded covenant, or any instrument that transfers an interest or estate in real property, or it may be created by implication, prescription, or necessity. (*Cushman v. Davis* (1978) 80 Cal.App.3d 731, 735 (*Cushman*).) Where the easement is created by an instrument, courts generally apply the rules governing the interpretation of deeds, which are similar to the rules governing the interpretation of contracts, to determine what type of easement has been created. (*Moylan*, *supra*, 181 Cal.App.3d at p. 569.)

A court should first look to the terms of the instrument creating the easement to determine the parties' intent. (*Moylan*, *supra*, 181 Cal.App.3d at p. 568.) If it is clear from those terms what type of easement the parties intended to create, the court does not need to look to extrinsic evidence. (6 Miller & Starr, *supra*, Cal. Real Estate § 15:18, pp. 71-73.) " ' " ' "[W]hen the deed does not expressly declare an easement to be appurtenant, or when the language of the deed is ambiguous, and it does not clearly appear whether an easement was intended to be in gross or appurtenant to land, [extrinsic evidence] is admissible to determine the nature of the easement and to establish a dominant tenement. [Citations.]" ' " ' " (*Moylan*, *supra*, 181 Cal.App.3d at p. 569.)

In considering extrinsic evidence, the court should keep in mind " 'the type of rights conveyed and the relationship between the easement and other real property owned by the recipient of the easement.' [Citations.]" (*Moylan*, *supra*, 181 Cal.App.3d at p. 569.) For example, "where a roadway easement provides

access to a particular parcel of real property a court may infer the easement is appurtenant to that parcel." (*Ibid*.)

Generally, "where the grant of an easement is ambiguous and the intent of the grantor cannot be ascertained, the law presumes that the easement is appurtenant. A court will not find an easement to be in gross in any case where it can be construed reasonably to be appurtenant to another parcel of land." (6 Miller & Starr, *supra*, Cal. Real Estate, § 15:8, at pp. 33-34, fns. omitted; see also *Schmidt v. Bank of America, N.A.* (2014) 223 Cal.App.4th 1489, 1498, fn. 6.)

We independently review a trial court's interpretation of the instruments creating an easement where, like the case before us, the evidence is not disputed. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.)

2. Mansard had no right to grant easements over the Road

In determining what type of interest was created by Marblehead's reservation of a right to grant easements over the Road, we first look to the text of the Goodrich Easement Grant Deed. (See *Moylan*, *supra*, 181 Cal.App.3d at p. 568.) The deed does not state what type of interest was created by Marblehead's reservation. However, the deed does expressly grant Hope Ann Goodrich an appurtenant easement over the Road, for "the purpose of ingress and egress to and from the State Highway to and from the lands heretofore conveyed by [Marblehead.]" The deed then reserves for Marblehead a "similar" easement and the right to grant "similar" easements to others, indicating the company intended to reserve for itself an appurtenant easement over the Road, as well as the right to grant appurtenant easements over that road in the future. (See Merriam-Webster <http://www.merriam-webster.com > (as of December 20, 2016)

[defining the term "similar" as: "having characteristics in common;" or "alike in substance or essentials;" or "not differing in shape but only in size or position"]; see also *Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 539 [when construing a term in a contract, courts often will look to a dictionary to ascertain the term's "ordinary" meaning].)

However, the fact that Marblehead reserved for itself the right to grant appurtenant easements over the Road does not end the inquiry. The company may have intended for that right to be personal, allowing it to convey easements over the Road independent of its ownership of land, or it may have intended that right to be appurtenant to all or some of the property it continued to own near the Development, allowing it to convey easements over the Road until it sold that property. Based on the manner in which Marblehead sold the property it continued to own after it executed the Goodrich Easement Grant Deed, we conclude the company intended the right to grant easements over the Road to be appurtenant only to the property it owned within the Development—i.e., the parcels that are traversed by the Road.

After it executed the Goodrich Easement Grant Deed, Marblehead did not dispose of all of the land it owned within and near the Ramirez Canyon Development in a consistent manner. Rather, the company took different approaches to how it disposed of that property, depending on the location of each parcel it sold. For example, with respect to the property located within the Development, Marblehead conveyed to each purchaser an appurtenant easement over the Road for access to and from PCH. With respect to the property located to the west of the Development, Marblehead conveyed to the purchaser a series of easements over roads other than the Road for access to and from

PCH. Finally, with respect to the property located to the east of the Development, which includes Parcel 24, Marblehead conveyed to each purchaser appurtenant easements over two roads—De Butts Terrace and Winding Way—for access to and from PCH.

Notably, there is no evidence that, after Marblehead executed the Goodrich Easement Grant Deed and until it sold its real estate interests in the 1970s, the company ever conveyed an easement over the Road to any parcel located outside the Development. Thus, the manner in which Marblehead divided its property in and near the Ramirez Canyon Development and distributed easements to the parcels it sold, strongly suggests that Marblehead intended for its right to grant easements over the Road to benefit only the property it still owned within the Development at the time it executed the Goodrich Easement Grant Deed. Put another way, Marblehead's method of dividing its property and distributing easements indicates the company intended for its right to grant easements over the Road to be appurtenant to the property it still owned in the Development.

Emcke relies on *City of Anaheim* to argue Marblehead intended to reserve for itself an in gross right to grant easements over the Road that would survive after the company sold all of the land it owned within the Development. In *City of Anaheim*, a private developer owned the Stearns Rancho, a vast area of land including thousands of acres in Orange and Los Angeles Counties. (*City of Anaheim*, *supra*, 82 Cal.App.3d at p. 766.) Between 1887 and 1918, the developer sold all of the land within the rancho as individual parcels. (*Ibid.*) The developer included in each parcel's deed the following reservation, " 'Reserving therefrom for roads, railroads and ditches, a strip of land thirty feet wide, along, adjoining and each side of the Township and

Section lines, and a strip of land fifteen feet wide, along adjoining and each side of the Quarter Section lines. Also, reserving the use and control of Cienagas and natural streams of water if any naturally, upon or flowing across, into or by said granted tract; and reserving the right-of-way for, and to construct irrigation or drainage ditches through said tract, to irrigate or drain the adjacent land.' " (*Ibid*.) The combined effect of these reservations created a vast and orderly grid pattern of easements throughout the rancho. (*Ibid*.) In 1918, after it sold all of the property it owned in the rancho, the developer deeded its interests in the reservations to Orange County. (*Ibid*.)

In an action filed after the developer transferred those interests to Orange County, the Fourth District affirmed the trial court's determination that, through each deed it conveyed, the developer intended to reserve for itself an in gross easement over each parcel within the rancho, and that the developer's interest in each easement continued to exist after all of the parcels were sold. (*City of Anaheim*, *supra*, 82 Cal.App.3d at pp. 766-770.) As a result, the developer was able to transfer its interest in each easement to Orange County in 1918, thereby providing the county the power to develop roads throughout the rancho, even though the county did not own the property within the rancho. (*Ibid*.) The court reasoned that by reserving a uniform grid pattern of easements over an "enormous" area of land, it was clear that the developer intended to establish a "grid roadway scheme" that would benefit not only the parcels in the immediate vicinity of each easement the developer reserved, but also parcels "many miles apart and wholly unrelated to each other." (*Id*. at p. 768.) The court observed that the scheme created by the developer would not be consistent with an intent to "secure to

a small locality rights of roadway access across adjacent or nearby lands." (*Ibid*.)

City of Anaheim is distinguishable from the instant case. The Ramirez Canyon Development is much smaller than the rancho in *City of Anaheim*, and, at the time it was being created by Marblehead, the Development contained only one easement for road purposes (the Road), as opposed to the rancho's numerous easements that were spaced several miles apart. Further, unlike in *City of Anaheim*, where the developer reserved the same easement in every deed it conveyed within the rancho, Marblehead did not reserve the same easement or carve out the same right to grant easements in every deed for the parcels it owned near the Development. Instead, as discussed above, Marblehead conveyed different easements depending on the locations of the parcels with respect to PCH, thereby demonstrating an intent to create distinct areas of property, each of which would have its own means of accessing PCH. Thus, the manner in which Marblehead divided the property it owned in and near the Ramirez Canyon Development demonstrates that, unlike the developer in *City of Anaheim*, the company intended for the easement over the Road to benefit only a small collection of properties, i.e., those within the Development.

We note that in determining that Marblehead reserved for itself an in gross right to grant future appurtenant easements over the Road, the trial court relied on the language of the deed for the last parcel within the Ramirez Canyon Development that Marblehead conveyed. Specifically, the court found that the best evidence of Marblehead's intent to create an in gross right was its inclusion in the last deed of a reservation of a right to grant future easements over the Road.

The court's reliance on the language of the last deed is misplaced. That deed does not contain a reservation of a right to grant easements over the Road. Instead, the deed references the reservation included in the Goodrich Easement Grant Deed, stating that the parcel was conveyed "subject to" that reservation. Although the court determined this language indicates Marblehead intended for its right to grant easements over the Road to survive its ownership of property within the Development, such an interpretation is not consistent with Marblehead's conduct during and after its sale of the parcels in the Development. Specifically, the fact that Marblehead limited its grant of easements over the Road to only those parcels within the Development demonstrates the company did not intend to reserve for itself a right to grant easements over the Road that would survive its ownership of property within the Development. (*Cushman*, *supra*, 80 Cal.App.3d at p. 735 ["Easements are presumed appurtenant unless there is clear evidence to the contrary"].)

In sum, we conclude the right to grant easements over the Road that Marblehead reserved in the Goodrich Easement Grant Deed was appurtenant to the property Marblehead owned within the Development. Once Marblehead sold all of that property, it no longer maintained an interest in that right to grant easements over the Road. Accordingly, Marblehead could not have conveyed any interest in that right when it transferred its real estate interests to Mansard's predecessors. As a result, Mansard never acquired any interest in that right and therefore lacked the power to convey any form of easement over the Road.

3. No easement attached to Parcel 24 when Marblehead reserved for itself an appurtenant easement over the Road

Emcke advances an alternative theory to support his claim that his property benefits from an appurtenant easement over the Road, a theory the trial court rejected. He asserts Dawson Parcel was one of the dominant tenements of the appurtenant easement over the Road that Marblehead reserved for itself in the Goodrich Easement Grant Deed. Emcke reasons that since Marblehead still owned Dawson Parcel at the time the reservation was made, and because Dawson Parcel is "in the vicinity of" of the Goodrich Property, an appurtenant easement automatically attached to Dawson Parcel when Marblehead executed the Goodrich Easement Grant Deed. According to Emcke, when Dawson Parcel was later subdivided to create Parcel 24, that parcel became one of the dominant tenements of Marblehead's appurtenant easement. We are not persuaded by Emcke's theory.

There is no evidence that Marblehead intended for Dawson Parcel to benefit from the appurtenant easement over the Road that the company reserved for itself in the Goodrich Easement Grant Deed. (See 6 Miller & Starr, *supra*, Cal. Real Estate § 15:6, p. 33 [when the instrument creating the appurtenant easement does not expressly define the dominant tenement, a court "can look to extrinsic evidence to determine the nature of the easement and to establish the dominant tenement"].) First, the Goodrich Easement Grant Deed does not identify the property from which Dawson Parcel was sold as a dominant tenement of the appurtenant easement Marblehead reserved for itself. Second, the deed for Dawson Parcel that Marblehead conveyed in 1945 contains no reference to the Goodrich Easement

Grant Deed or the company's reservation of an appurtenant easement over the Road. Third, as explained above, Marblehead's method of disposing of its property in and near the Development demonstrates that the company did not intend for any property outside the Development, including Dawson Parcel, to benefit from an appurtenant easement over the Road. Finally, we find it unlikely that the company would have intended for the parcels that were located near but not within the Development, such as Dawson Parcel, to benefit from an easement over the Road when it did not expressly convey such easements to those parcels. Had Marblehead intended for the parcels outside the Development to benefit from an appurtenant easement over the Road, the company would have expressed such an intent when it sold those parcels, just as it did when it sold the parcels located within the Development.[5]

---

[5] In light of the foregoing, we do not reach Red Oak's contention that Emcke is collaterally estopped from arguing that Parcel 24 benefits from the appurtenant easement Marblehead reserved in the Goodrich Easement Grant Deed.

DISPOSITION

The judgment is affirmed with directions to the trial court to strike any finding that is inconsistent with this opinion, including any finding that Mansard reserved the right to grant appurtenant or in gross easements over the Road. Although Red Oak did not appeal from the court's ruling on the cross-complaints, Red Oak filed a partial notice of appeal from the finding that Mansard has a reserved right to grant easements in gross. We agree with Red Oak that this erroneous finding is material to the judgment entered against Emcke. (*Apple, Inc. v. Franchise Tax Board* (2011) 199 Cal.App.4th 1, 13-16.) Red Oak shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

STRATTON, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.