

Kriske v Lewandowski
2006 NY Slip Op 30174(U)
June 15, 2006
Supreme Court, Wayne County
Docket Number: 0058040/2005
Judge: Dennis M. Kehoe
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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

DOROTHY KRISKE, PATRICK CRANE
and CAROL CRANE

Plaintiffs

DECISION

vs

Index No. 58040

PAUL LEWANDOWSKI,

Defendant

Lacy Katzen, LLP
Jennifer A. Mereau, Esq.
Attorney for Plaintiffs

William F. Kocher, Esq.
Attorney for Defendant

The above-named Plaintiffs have moved pursuant to CPLR §3212 for an Order granting their motion for Summary Judgment on their Complaint and awarding monetary damages against the Defendant in an amount to be determined by the Court. The Defendant has opposed the motion, maintaining that there are issues of fact which must await resolution at trial.

The Plaintiffs have brought the instant action pursuant to Article 15 of the Real Property Actions and Proceedings Law to compel the determination of their claims to an easement for ingress and egress by themselves and their successors across real property owned by the Defendant, and to

permanently enjoin the Defendant and his agents from interfering with the Plaintiffs' right-of-way. The Plaintiff Dorothy Kriske is the owner of premises located at 7450 South Ontario Street, Sodus Point, New York. The Plaintiffs Patrick and Carol Crane are the owners of adjacent premises located at 7440 South Ontario Street, Sodus Point, New York. The Defendant is the owner of premises located at 7454 South Ontario Street, Sodus Point, New York. The conveyance to the Defendant was made "subject to all easements, covenants and restrictions of record, if any...." The deed to the Defendant's predecessor-in-title, Richard Kittelberger, recites that the conveyance is subject to "a perpetual easement for ingress and egress by foot or by vehicle" which is thirty feet in width, which easement benefits the Plaintiffs' premises. The easement to which this deed refers is also set forth in the deeds as incident to the Plaintiffs' respective parcels (although the Cranes' deed indicates that the easement is now twenty-five feet in width).

The various conveyances also recite that the expenses associated with the maintenance of the easement shall be shared by the parties. The Plaintiffs have attempted to obtain written proof of such expenses from the Defendant in order to calculate their share of the costs, but the Defendant has refused to provide them with any documentation. Instead, the Defendant has allegedly engaged in an escalating course of conduct designed to prevent the Plaintiffs from exercising their rights under the

easement, by parking vehicles and other large objects so as to obstruct the Plaintiffs' use of the right-of-way. Having no other recourse, the Plaintiffs commenced the instant action.

The Court has reviewed the documentary evidence submitted by the Plaintiffs in support of their motion, consisting of excerpts from the abstract of title and copies of the relevant deeds in the chain of title. Based on that evidence, the Court finds that the Plaintiffs have established their claim to an easement over the Defendant's premises as described in their complaint. The Defendant's allegations are insufficient to raise a triable issue of fact as to his claim that the Plaintiffs have waived their rights to the easement by failing to share expenses. Therefore, the Plaintiffs are hereby granted partial summary judgment, declaring their rights to the easements as set forth in their respective deeds, and awarding them a permanent injunction prohibiting the Defendant from any and all actions which tend to interfere with their use and enjoyment of the easements, and dismissing the Defendant's First Counterclaim.


However, the Court is unable to grant the Plaintiffs' motion for Summary Judgment on the issue of money damages. The Plaintiffs have maintained that they are entitled to reimbursement from the Defendant for expenses such as mortgage payments, taxes, and lost rental value associated with the premises during the period when they were deprived of

their use of the property due to the Defendant's actions. The Court cannot determine the Plaintiffs' claim for damages, if any, on the papers, and therefore that issue must await trial.

Counsel for the Plaintiffs shall submit an order and Judgment determining the Plaintiffs' claim to the easements over the Defendant's premises (including the legal description of the easements as set forth in the relevant portions of the deeds), in accordance with RPAPL §1521 and awarding the Plaintiffs a permanent injunction in accordance with this Decision.

The Judgment shall also provide that the Court will conduct a hearing pursuant to CPLR §3212(c) for the purpose of assessment of damages. In the interest of judicial economy, the Defendant's claim for monetary damages as set forth in the Second Counterclaim will also be tried at that time. Counsel are requested to notify the Court immediately as to whether the parties will consent to the appointment of a Judicial Hearing Officer to hear and determine the question of damages.

Dated: June 15, 2006
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice