

Tri System, LLC v Coleman

2018 NY Slip Op 34036(U)

December 7, 2018

Supreme Court, Saratoga County

Docket Number: 2018-3171

Judge: Ann C. Crowell

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ORIGINAL

SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

TRI SYSTEM, LLC,

Plaintiff,

DECISION and ORDER

- against -

RJI # 45-1-2018-1291

Index #2018-3171

GARRETT COLEMAN,

Defendant.

APPEARANCES

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SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY

FILED

ANN C. CROWELL, J

Plaintiff Tri System, LLC ("plaintiff") moves for a preliminary injunction restraining and enjoining the defendant, Garrett Coleman ("defendant") from preventing the plaintiff's use of the ingress/egress and utility easement delineated on a filed subdivision map. Defendant opposes the requested relief.

CPLR § 6301. Grounds for preliminary injunction and temporary restraining order provides as follows:

"A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act,

which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

The party seeking a preliminary injunction must demonstrate: (1) a likelihood of success on the merits; (2) the danger of irreparable injury in the absence of preliminary injunctive relief; and (3) a balance of the equities in the party’s favor. *Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839 [2005]. The weighing of these factors is left to the sound discretion of the court. *Doe v Axelrod*, 73 NY2d 748 [1988].

In 1978, the plaintiff and the defendant’s property was held in a single parcel owned by Allen H. Gooley and Dorothy M. Gooley. On August 24, 2001, a subdivision map entitled “[s]ubdivision of Lands of Allen H. & Dorothy M. Gooley”, dated June 5, 2001 was filed in the Saratoga County Clerk’s Office. The subdivision map divided the Gooley’s property into what are currently plaintiff and defendant’s parcels. The subdivision map depicts a roadway leading from State Route 146 through defendant’s parcel to plaintiff’s parcel. The roadway on the subdivision map contains the surveyor’s written comment: “Ingress + Egress & Utility Easement.” On September 26, 2002, defendant’s parcel was conveyed to Richard M. Allen and Beth A. DeCota. The September 26, 2002 deed describes the property, in part as:

“All that certain tract, piece, or parcel of land situate in the Town of Halfmoon, County of Saratoga, State of New York, lying along the Southerly line of N.Y.S. Route 146, being designated as Lot 42 as shown on a map entitled, ‘Subdivision of Lands of Allen H. and Dorothy M. Gooley’, dated June 5, 2001, prepared by Gilbert VanGuilder & Associates, filed in the Saratoga County Clerk’s Office on August 24, 2001 as Map No. G-330 ...”

On May 12, 2003, plaintiff’s parcel was conveyed to Richard M. Allen and Beth A. DeCota. By deed dated September 24, 2003, Richard M. Allen and Beth A. DeCota merged

the two properties by describing both parcels in a single document, including the reference to the filed subdivision map. The parties appear to agree that the properties were separated into their current separate ownership through two separate foreclosure actions. The specifics of those foreclosure actions and how separate mortgages were held on the two subdivided parcels has not been set forth by the parties.

Plaintiff obtained its property from the County of Saratoga by deed dated November 29, 2017. Defendant obtained his property from Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee for First Franklin Mortgage Loan Asset-Backed Certificates, Series 2005-FF12 by deed dated April 25, 2018. Defendant has erected a gate and placed other obstructions in the roadway that leads from State Route 146 to a storage building on plaintiff's property. The roadway currently provides the only access by vehicle to plaintiff's storage building.

“The grantees of lots abutting a street demarcated on a filed map are entitled to have the street remain as a street forever, absent abandonment, conveyance, condemnation, or adverse possession.” *M. Parisi & Son Constr. Co., Inc. v Adipetro*, 21 AD3d 454, 456 [2d Dept. 2005], citing *Fischer v Liebman*, 137 AD2d 485 [2d Dept. 1988]. Defendant was on constructive notice of a possible easement because there is no other vehicular access to the plaintiff's storage building and the existing roadway continues past his house to the plaintiff's storage building. Defendant, as the owner of the servient estate, was also on notice of the easement through the reference to the filed subdivision map in the legal description of the property attached to his deed. *Johnson v Zelanis*, 113 AD3d 899 [3d Dept. 2014]; *Air Stream Corp. v 330 Lawson Corp.*, 99 AD3d 822 [2d Dept. 2012]; *Corrarino v Byrnes*, 43 AD3d 421 [2d Dept. 2007]. The same description that appears in defendant's chain of title

referenced above. Plaintiff's cause of action has a strong likelihood of success on the merits. Plaintiff may also have a viable claim for an implied easement. *See, Lew Beach Co. v Carlson*, 77 AD3d 1127 [3d Dept. 2010]; *Sadowski v Taylor*, 56 AD3d 991 [3d Dept. 2008].

The Court has considered defendant's contention that the easement was destroyed by the doctrine of merger. The subdivision of the property in 2001 created the easement. Apparently both properties were separately mortgaged to different banks. Neither party obtained title from Richard M. Allen and Beth A. DeCota, who purportedly merged the properties by deed dated September 24, 2003. Separate ownership of the two properties would not be possible without giving the subdivision map full validity. It is unlikely the merger doctrine would destroy the easement set forth in the subdivision map. The Court notes that applying the merger doctrine literally would eliminate the easement between June 5, 2001 and September 26, 2002 while the property remained under the common ownership of Allen H. & Dorothy M. Gooley.

Plaintiff contends that immediate access to the storage building is required to repair the metal roofing and the wood siding on the building. Plaintiff also contends that the building is used to store building materials, supplies, tools, equipment and vehicles that are essential for its daily business activities. Plaintiff does not specify the material, equipment, tools and vehicles needed or how they are essential to its business. The contour of plaintiff's land is not conducive to an alternate means of access to the storage building. Plaintiff's attempt to build an alternate access to the property has been unsuccessful and resulted in many of defendant's complaints of damage to his property. The parties were unsuccessful in arranging a mutual agreeable time for plaintiff to access the property through the roadway. By Order dated November 30, 2018, the Court ordered that defendant allow

plaintiff to access the property on December 5, 2018 and December 6, 2018.

A roadway was clearly created at the time of the subdivision of the property in 2001. The roadway was used to access the storage building on plaintiff's property and the roadway was in existence at the time defendant took ownership of his property. Plaintiff was only denied access to the property after defendant took ownership of his property in 2018. The likelihood of plaintiff's success on the merits; the injury plaintiff has suffered by being denied access to it's property; and the balance of the equities favor a grant of a preliminary injunction to plaintiff. *Nobu Next Door, LLC v Fine Arts Housing, Inc., supra*. A preliminary injunction will more closely return the properties to the *status quo* in effect before this controversy arose.

Plaintiff Tri System, LLC shall be granted a preliminary injunction restraining and enjoining the defendant Garret Coleman from preventing the plaintiff's use of the roadway for ingress and egress to it's property during the pendency of this proceeding. Defendant may leave the gate in place but shall be restrained and enjoined from locking it or preventing plaintiff from opening it. The gate may not be used in any way to limit plaintiff's use of the roadway.

The preliminary injunction outlined hereinabove shall be effective upon the plaintiff posting a bond in an amount fixed by the court. *Rourke Developers, Inc. v Cottrell-Hajeck, Inc.*, 285 AD2d 805 [3d Dept. 2001]. A conference/hearing is scheduled for **December 18, 2018 at 11:00 a.m.** to determine the amount of such undertaking and the date upon which it must be posted.

Any relief not specifically granted herein is denied. No costs are awarded to any party. The original decision and order shall be forwarded to the attorney for the plaintiff for filing

and entry. The underlying papers will be filed by the Court.

Dated: December 7, 2018
Ballston Spa, New York


ANN C. CROWELL, J.S.C.

Papers Received and Considered:

Order to Show Cause, dated October 2, 2018

Affidavit of Anthony Vaccarielli, sworn to September 19, 2018

Summons, dated September 19, 2018

Verified Complaint, sworn to September 19, 2018, with Exhibits A-F

Affidavit of Garret Coleman, sworn to November 14, 2018, with Exhibits A-C

Affirmation of William H. Baaki, Esq., dated November 15, 2018, with Exhibits A-H

Defendant's Memorandum of Law, dated November 15, 2018

Affidavit of Anthony Vaccarielli, sworn to November 27, 2018

Affidavit of David H. Pentkowski, Esq., sworn to November 27, 2018, with Exhibits A-D

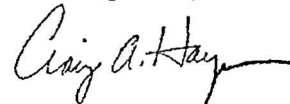
Plaintiff's Memorandum of Law, dated November 27, 2018

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ENTERED

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Craig A. Hayner



Saratoga County Clerk