

Day v One Main on the Lake, LLC

2023 NY Slip Op 34106(U)

November 22, 2023

Supreme Court, Essex County

Docket Number: Index No. CV22-0458

Judge: Richard A. Kupferman

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This opinion is uncorrected and not selected for official publication.

PETER E. DAY,

Plaintiff,

DECISION & ORDER

-against-

Index # CV22-0458

**ONE MAIN ON THE LAKE, LLC, SANEL
CECUJANIN d/b/a PLAYERS SPORTS BAR,**

Defendants.

Appearances:

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KUPFERMAN, J.,

The plaintiff, Peter E. Day, owns real property in the Village of Lake Placid, New York. The defendant, One Main on the Lake, LLC (“One Main”), owns the adjoining parcel. The central issue in this case is whether Mr. Day has the right under an easement agreement to cross over the rear of the One Main property to access the rear of his property for purposes of parking his motor vehicle (“ROW”). The parties dispute whether the ROW has been terminated based on the doctrines of frustration of purpose and impossibility.

Both sides have requested partial summary judgment in their favor. On their summary judgment motions, the Court has received the pertinent easement agreements, a prior decision rendered by Justice Muller, various photographs, affidavits from Mr. Day describing his prior use of the ROW and his intention not to abandon it, an affidavit from One Main's property manager, an attorney affidavit describing the history of the subject easement agreements and the prior use of the properties, affidavits from the Superintendent of the Village's Department of Public Works ("DPW Superintendent"), and memoranda of law, among other things.

The Court heard oral argument, received supplemental submissions, and later issued a preliminary decision on the motions from the bench on October 27, 2023. After the preliminary decision, the Court also received and considered additional correspondence from the parties. Both sides have been zealously represented by counsel. The Court is now prepared to issue a written decision on the pending summary judgment motions.

Facts

As discussed above, the central issue in the case is whether the ROW has been terminated. The ROW is set forth in a written agreement by the prior owners from 1982. Specifically, the 1982 agreement (paragraph 6) provides a right of ingress and egress across a portion of the rear of the One Main property for the purpose of parking "personal motor vehicles" on the Day property. The agreement further prohibits any temporary or permanent blocking/obstructing of the easement area at any time (apparently an area 10 feet wide by 29 feet long) ("no-blocking restriction").

To access the ROW by a motor vehicle, however, one must first travel through the adjacent public park.¹ According to the historical recitation provided by One Main's counsel, in 1982 and

¹ Apart from driving across the rear of the One Main building, Mr. Day may alternatively access the rear of his property on foot by traveling down a flight of stairs from a public sidewalk on Main Street and then through a walkway constructed for that purpose.

for numerous years thereafter, no physical or structural changes or improvements were made to the park or to the gravel road in the park that connected to the rear of the One Main building. In addition, during this period, the Village did not object to the prior owners driving their motor vehicles through the park to the rear of the One Main building. According to One Main's counsel, the trees grew, the grass grew and was mowed, the tourists and residents came and enjoyed it, and all was well.

In August 2006, however, the Village sought to close the street/pathway that connected to the rear of the One Main building. The Village placed boulders at the entrance of the park and legally prohibited the operation of motor vehicles in the park. When Mr. Day sought to judicially challenge the Village's actions, Justice Muller ruled against Mr. Day and upheld the Village's closure of the street/pathway in the park. The Village also performed subsequent renovations that presently make it very difficult to physically drive a motor vehicle such as a car or truck through the park to the rear of the One Main building.

Mr. Day also engaged in prior litigation with One Main over his property rights. In January 2013, these parties executed a settlement agreement in which One Main expressly acknowledged the existence of the ROW and its survival. One Main, however, later concluded that the decision from Justice Miller (issued in May 2013) rendered the ROW as unenforceable. As such, sometime in late 2013 or 2014, a fence was installed on the One Main property, allegedly blocking access to the ROW. Mr. Day alleges that One Main's tenant (a co-defendant) has been utilizing the rear of the building for its customers and has installed chairs, tables, and restaurant equipment in the area.

In 2022, Mr. Day allegedly sought to have the fence at the One Main property voluntarily removed, as it allegedly blocked the ROW. When such efforts proved unsuccessful, Mr. Day allegedly removed the fence himself and then commenced this action seeking to quiet title and

obtain a declaratory judgment regarding his rights under the 1982 agreement. His complaint also seeks injunctive relief and asserts a cause of action (intentional nuisance) for monetary damages based on the alleged blocking/obstructing of the ROW by the fence and other items. In response, One Main has asserted affirmative defenses based on the doctrines of frustration of purpose and impossibility, among other things. One Main has also asserted counterclaims seeking a declaratory judgment, injunctive relief, and monetary damages based on Mr. Day's removal of the fence, among other things.

I.
Has the ROW Been Terminated?

One Main contends that the easement set forth in the 1982 agreement has since terminated because the purpose of the easement has been frustrated and rendered impossible to accomplish. Mr. Day, in contrast, disputes that such grounds may be relied upon to terminate an easement. His position is not unfounded. In fact, this State's highest court has held that the law of this State is that "an easement created by grant, express or implied, can only be extinguished by abandonment, conveyance, condemnation, or adverse possession" (Gerbig v Zumpano, 7 NY2d 327, 330 [1960]; accord Camp Bearberry, LLC v Khanna, 212 AD3d 897, 898-899 [3d Dept 2023]; see also Gale v Town of Wilton, 200 AD3d 1168, 1169-1170 [3d Dept 2021]).² On the other hand, some authority exists to the contrary (see Restat 3d of Prop: Servitudes § 7.10 [2000]; see also RPAPL § 1951; Wolski v De Luca, 112 AD2d 220, 221-222 [2d Dept 1985]; Holden v Palitz, 1 AD2d 685, 686 [2d Dept 1955]).

² As a practical matter, even if Mr. Day's legal argument were correct on this issue, Mr. Day's inability to transport a motor vehicle to the rear of the One Main building would still be highly relevant, if not determinative, because Mr. Day would unlikely be able to establish that the defendants interfered with his easement rights, that injunctive relief is necessary, or that he suffered monetary damages (see Restat 1st of Property § 564 [1944]).

Nonetheless, even if these grounds could extinguish an easement, they would still be inapplicable based on the facts presented. Specifically, One Main mistakenly asserts that because Mr. Day may not legally drive or physically walk/carry his personal automobile through the park, the purpose of the ROW has ceased to exist. This argument erroneously assumes that the ROW applies only to automobiles. This is not the case.

“Express easements are construed to give effect to the parties’ intent, as manifested by the language of the grant” (Mitkowski v Marceda, 133 AD3d 574, 575 [2d Dept 2015] [internal quotation marks and citation omitted]; see Abbey Family Trust No. Four v Matthews, 217 AD3d 1158, 1160 [3d Dept 2023]). The extent of the easement “is generally limited by the language of the grant, as a grantor may create an extensive or a limited easement” (Mitkowski, 133 AD3d at 575 [citation omitted]; see Abbey Family Trust No. Four, 217 AD3d at 1160; Stone v Donlon, 156 AD3d 1308, 1309-1310 [3d Dept 2017]). The easement “must be construed to include any reasonable use to which it may be devoted, provided the use is lawful and is one contemplated by the grant” (Abbey Family Trust No. Four, 217 AD3d at 1160 [internal quotation marks and citations omitted]).

Here, the Court disagrees that the prior owners intended to use the term “motor vehicle” in such a limited manner. The term “motor vehicle” is “a flexible term for various devices for the transportation of persons or property over or upon the public highways” (Law Dictionary, Motor Vehicle [Anderson Publishing Co. 2002]). While the term “motor vehicle” may be defined more specifically as just “an automobile,” this is only one of the several definitions for the term (see Ballentine’s Law Dictionary, Motor Vehicle [3d ed 1969]). The other definitions for “motor vehicle” (based on the dictionary definition supplied by One Main) include “any vehicle powered by a motor, such as a truck or bus” and “[a]ny vehicle propelled by power, other than muscular

power, except a traction engine or such motor vehicle as runs only upon rails or tracks” (id.). The meaning of this term is therefore much broader than just an automobile. It may also describe those types of motor vehicles that Mr. Day desires to physically push or carry through the park, including small/light motorcycles, electric bikes, mo-peds, and scooters.

Mr. Day seeks for this Court to adopt the definitions of “motor vehicle” which are set forth in various sections of the New York Vehicle and Traffic Law, the Insurance Law, and the Transportation Law, as well as the meaning of the term used by the New York State Office of Parks and Recreation and Historic Preservation and the Adirondack Park State Land Master Plan. This Court finds this unnecessary as the plain meaning of the term “motor vehicle” is adequate in this context and does not overly complicate what is clearly expressed in the text of the easement.

Further, the prior owners could have certainly sought to limit the use of the ROW more narrowly by using the more specific term “automobile” rather than the broader and more flexible term “motor vehicle.” The prior owners, however, elected to use the broader language rather than the more specific language, thereby evidencing an intent not to limit the ROW to only automobiles. Moreover, even if the Court were to consider extrinsic evidence, the parties’ submissions do not provide any basis to reasonably infer that the prior owners intended to limit the ROW to only automobiles or that they intended to limit such use to only the same types of motor vehicles they owned in 1982.³

Accordingly, given that the term “motor vehicle” is not ambiguous in the context presented, and that no evidence exists that this broad term was intended to apply in a more specific manner,

³ One Main’s contention that the ROW was personal to the prior owners rather than appurtenant to the land is also misplaced. The easement agreement refers to the easement as “permanent” and includes express references to “heirs and assigns” (see Webster v Ragona, 7 AD3d 850, 853-854 [3d Dept 2004]).

the Court considers the resolution of the meaning of “motor vehicle” as a question of law, which may be decided on these motions for summary judgment (see Acosta v Vincenti, 185 AD3d 763, 765 [2d Dept 2020]; Spencer v Connolly, 25 AD3d 832, 833-834 [3d Dept 2006]; see also Elm Lansing Realty Corp. v Knapp, 192 AD3d 1348, 1348-1352 [3d Dept 2021]; Goldman v Emerald Green Prop. Owners Assn., Inc., 116 AD3d 1279, 1280-1281 [3d Dept 2014]; compare Gangl v Cutia, 70 AD2d 969 [3d Dept 1979]).

In addition, Mr. Day has demonstrated that he may still transport smaller/lighter motor vehicles to the rear of the One Main building by carrying them down the stairs in the park or, alternatively, pushing them through other areas of the park to the rear of the One Main building. He therefore has demonstrated that the purpose of the easement has not ceased to exist. In opposition, One Main relies largely on Justice Muller’s decision, an affidavit from the DPW Superintendent, and photographs. None of these are sufficient to create an issue of fact.

Justice Muller’s decision, for example, does not prohibit Mr. Day from walking or carrying such vehicles through the park. The DPW Superintendent also confirmed that walking or carrying a motor vehicle in the park is not prohibited by the Village. In addition, the photographs merely evidence the difficulty (or impossibility) of physically pushing or carrying a standard automobile, truck, or heavy motorcycle through the park. They do not contradict Mr. Day’s assertion that it is physically possible to push or carry other lighter, smaller motor vehicles through the park.

Accordingly, the Court finds that the purpose of the ROW has not been completely frustrated or rendered impossible, given that the purpose of the ROW may still be accomplished. One Main’s conjecture to the contrary is insufficient to create an issue of fact (see Restat 3d of Prop: Servitudes § 7.10 [2000]; see also RPAPL § 1951; Gale, 200 AD3d at 1169 n 1; Wolski, 112 AD2d at 221-222; Holden, 1 AD2d at 686).

Nor has One Main created an issue of fact by asserting that Mr. Day has abandoned the ROW. “A party relying upon another’s abandonment of an easement by grant must produce ‘clear and convincing proof of an intention to abandon it’” (Consolidated Rail Corp. v MASP Equipment Corp., 67 NY2d 35, 39 [1986] [citation omitted]). The non-use of the easement alone is insufficient to establish abandonment no matter how long it continues (id.; see also B.J. 96 Corp. v Mester, 222 AD2d 798, 800 [3d Dept 1995]). The acts relied upon to support abandonment must be unequivocal and “clearly demonstrate the owner’s intention to permanently relinquish all rights to the easement” (Consolidated Rail Corp., 67 NY2d at 39).

Here, no evidence exists from which one may infer that Mr. Day previously had the intention to permanently relinquish all his rights to the ROW (compare People v Byrneses-On-Hudson, 226 AD2d 353, 354 [2d Dept 1996]; Stone, 156 AD3d at 1310-1311). The evidence rather establishes that any non-use has been directly related to the actions of the Village and the defendants rather than through Mr. Day’s acquiescence. In fact, over the years Mr. Day has zealously sought to prevent the loss of his rights. He has fought the Village and his neighbors in various legal proceedings, entered into a settlement agreement preserving his rights to the ROW (as of January 2013), and allegedly engaged in self-help by removing the fence that blocked the ROW. Even now, after having lost the right to operate his motor vehicles in the park, he is willing to push or carry them across the park to preserve his rights.

For these reasons, the Court finds that the ROW continues to exist as a matter of law and that it has not been extinguished.

II.
Should the Restriction on Blocking Be Extinguished?

Notwithstanding, Mr. Day's inability to use the ROW for automobiles raises the issue of whether the no-blocking restriction should be declared unenforceable and/or extinguished. As indicated above, this restriction purports to prohibit any blocking of any portion of the entire easement area at any time, including temporarily. Unlike the ROW, the Court considers this provision as a restrictive covenant that seeks to limit the use of this part of the property for the purpose of only a driveway (see Chisholm v De Rose, 41 AD3d 1158, 1158-1159 [4th Dept 2007]).

RPAPL § 1951 prohibits courts from declaring enforceable a restriction on the use of land created by covenant, promise or negative easement that no longer provides any actual or substantial benefit because changed conditions have rendered its purpose no longer capable of accomplishment (RPAPL § 1951 [1]). When relief against such a restriction is sought, the restriction may be completely extinguished by a court upon payment of such damages, if any, as such person benefitting from the restriction would sustain from the extinguishment of the restriction (RPAPL § 1951 [2]). These provisions provide owners of parcels "burdened with outmoded restrictions an economical and efficient means of getting rid of them" (Orange & Rockland Util. v Philwold Estates, 52 NY2d 253, 265 [1981] [internal quotation marks and citations omitted]; see e.g. Blue Is. Dev., LLC v Town of Hempstead, 143 AD3d 656, 656-659 [2d Dept 2016]).

As explained above, the only vehicles that Mr. Day may now legally and physically transport to the ROW are much smaller/lighter motor vehicles. He therefore does not require the entire easement area to always remain free and clear of any obstacles for him to enjoy the benefits of the ROW. In addition, Mr. Day appears to have used the ROW rather infrequently since his purchase of the property in 2007. While he has recently expressed a renewed interest in using the

ROW, it remains unclear how often, if at all, Mr. Day will push or carry his motor vehicle through the park to access the ROW.

Moreover, to the extent that Mr. Day plans to use the ROW for parking purposes, he may rely on the general rules applicable to similar easements to protect his rights (see e.g. Ironwood, L.L.C v JGB Props., LLC, 99 AD3d 1192, 1194 [4th Dept 2012] [citing cases]). Under the general rules, it is well established that One Main (and its tenants) may not unreasonably interfere with Mr. Day's right to use and enjoy the ROW (see id.). There is therefore no need to continue to require the entire ROW area to always remain free and unobstructed. Such a restriction is overly broad and no longer provides any actual or substantial benefit given the change in circumstances. Accordingly, the Court finds that this no-blocking restriction in the 1982 agreement should not be enforced and that it should be extinguished (as of the date of this decision).⁴

In light of this decision, that Court concludes that One Main may install a movable gate (even one with a lock if a key is provided to Mr. Day) considering the nature of the subject properties, the history of the ROW, and the potential for theft at the properties based on their location in a commercial area with frequent visits by transient tourists (see e.g. Mester v Roman, 25 AD3d 907, 907-908 [3d Dept 2006]; see also 5 Warren's Weed New York Real Property § 40.70 [6] [Bender 2023]). One Main, however, may not maintain, keep, or install a permanent and immovable fence that completely blocks and prevents Mr. Day's access to the ROW (see Wolski

⁴ The parties' submissions create uncertainty regarding whether the no-blocking restriction has already been terminated or modified by the prior usage of the ROW area by the defendants for business purposes. In addition, unlike the ROW, one could reasonably interpret the January 2013 agreement as having extinguished the no-blocking restriction set forth in the 1982 agreement. In any event, these issues have been rendered moot based on this decision and therefore do not require a trial to resolve. The Court also finds that Mr. Day will not incur any damages based on the extinguishment of the no-blocking restriction given that he may still use the ROW free from unreasonable interference, as recognized by the case law.

v De Luca, 112 AD2d 220, 220-221 [2d Dept 1985]; 5 Warren’s Weed New York Real Property § 40.70 [6]). This would unreasonably impede Mr. Day’s right to use the ROW (see 5 Warren’s Weed New York Real Property § 40.70 [6] [“erection of a fence across such a right-of-way, obstructing the dominant owner’s use, would not usually be permitted”])).

Neither side has requested summary judgment on the remaining claims for nuisance and trespass. Nor were sufficient facts presented on these motions to resolve these claims. The Court therefore has not granted any relief regarding these remaining claims. The parties are directed to complete discovery on the remaining claims and advise the Court at the next conference whether they intend to submit additional dispositive motions on the remaining claims or whether they would prefer to resolve them at a trial.

It is therefore,

ORDERED, that the parties’ motions seeking partial summary judgment are **GRANTED** in part and **DENIED** in part to the extent set forth above; and it is further

ORDERED, that the parties are directed to complete all discovery (including depositions) on the remaining claims (specifically, the nuisance and trespass claims) by April 1, 2024; and it is further

ORDERED, that the plaintiff is directed to file a note of issue by April 15, 2024; and it is further

ORDERED, that the parties may, but are not required to, file successive summary judgment motions regarding the remaining claims in this action after discovery is complete or at such earlier time as the parties may mutually agree; and it is further

ORDERED, that the parties' counsel shall appear for a compliance/settlement conference by way of **Microsoft TEAMS** (with their clients readily available to attend or participate by telephone) on **April 25, 2024 at 11:00 a.m.** Counsel should be prepared at the conference to discuss settlement, provide the Court with a witness list, and discuss the anticipated number of days required to conduct the trial.

This constitutes the Decision & Order of the Court. No costs are awarded to any party. The Court is hereby uploading the original Decision & Order into the NYSCEF system for filing and entry by the County Clerk. The Court further directs the parties to serve notice of entry in accordance with the Local Protocols for Electronic Filing for Essex County.

Dated: November 22, 2023
at Ballston Spa, New York



HON. RICHARD A. KUPFERMAN
Justice Supreme Court