

Park Throop, LLC v Rider

2023 NY Slip Op 34108(U)

November 21, 2023

Supreme Court, Wayne County

Docket Number: Index No. 89221

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
1st day of November, 2023.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

PARK THROOP, LLC,

Plaintiff

DECISION
Index No. 89221

-vs-

ROBERT E. RIDER AND
TODD J. RIDER AS TRUSTEE OF THE
ROBERT E. RIDER INVERVIVOS TRUST
DATED FEBRUARY 2, 2009

Defendants

The Plaintiff, Park Throop, LLC, has filed a Motion seeking four forms of relief:

1. Monetary sanctions including attorney's fees against the Defendants for violating the prior Court Order relative to Plaintiff's use of the easement/driveway area;
2. Extending the Court's previous Order dated October 25, 2023 to enjoin, restrain, prohibit the Defendants, and all other person acting on their behalf, from interfering with or preventing Plaintiff from using the driveway and the easement area which provides access to Plaintiff's property located at 216 Park Drive, Palmyra, New York pending resolution of the instant action;

3. Granting Plaintiff leave to supplement and amend its Complaint pursuant to CPLR §3025 to include additional causes of action for claims seeking a prescriptive easement over additional property owned by the Defendants which has been used by the Plaintiff in excess of ten years and to assert claims based upon Article 12 of New York's Navigation Law;
4. To compel Defendants to respond to Plaintiff's discovery demands served on May 8, 2023.

EXPANDING THE AREA BOUND BY THE EXISTING PRELIMINARY INJUNCTION

Previously in this action, this Court issued an Order granting a preliminary injunction against the Defendants prohibiting them from interfering with the Plaintiff's use of a driveway as allowed by a recorded easement. The width of the easement is ten (10) feet. In this application the Plaintiff desires to extend the coverage of the preliminary injunction to the full width of the driveway which is approximately six (6) feet wider than the area covered by the existing preliminary injunction.

Since the initial preliminary injunction was issued, Defendants state they have placed concrete blocks adjacent to the existing easement but not in the easement area. Plaintiff asserts that prior to the institution of this action the entire sixteen (16) feet driveway has been used without permission or objection from Defendants since at least 1998.

In 1998, or thereabouts, Plaintiff paved the remaining portion of the driveway from the "grassy" island to the rear of the building. This is set forth in an instrument survey attached to the Plaintiff's Affidavit as Exhibit A. This paving extension was done without the permission of the Defendants. In 2002 or 2003 Plaintiff repaved the driveway. The driveway was re-surfaced by the Plaintiff in 2012. Since 1987 Plaintiff has provided snow removal and have maintained the driveway area. From 1998 until the

present time Plaintiff was regularly and routinely using the full width of the driveway. The driveway is the only means of access to the rear of the building and is used in excess of twenty (20) vehicles per day. Restricting the width of the preliminary injunction to ten (10) feet will negatively affect the Plaintiff's tenants' business operation as the ten (10) feet easement area with the concrete block structures which have been installed by the Plaintiff since the initial preliminary injunction was issued will no longer permit access for eighteen wheel tractor trailers that require access to the parking lot and loading docks on Plaintiff's property.

At this juncture it is not for this Court to determine finally the merits of an action upon a motion for preliminary injunction; rather the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits. (See Moody v Filipowski, 146 A.D. 2d 675 [2nd Dep't 1989]; Young v Crosby, 87 A.D. 3d 1308 [4th Dep't 2011]).

Also, to demonstrate a likelihood of success on the merits, as required to obtain a preliminary junction, it is sufficient for the Plaintiff to make a prima facie showing of its right to relief, and the actual proving of the case should be left to the full hearing on the merits. (Cangemi v Yeager, 185 A.D. 3d 1397 [4th Dep't 2020])

While the Defendants' submissions may raise factual questions, that does not prevent the Plaintiff from establishing the likelihood of success as "success need not be a certainty to obtain a preliminary injunction". (Cooperstown Capital LLC v Patton, 60 A.D. 3d 1251, 1252-1253 [3rd Dep't 2009]; Biles v Whisher, 160 A.D. 3d 1159 [3rd Dep't 2018])

The Plaintiff has satisfied the requirements for a preliminary injunction expanding the coverage of the initial preliminary injunction by approximately six (6) feet for the length of the driveway by clear and convincing evidence: (1) probable success on the merits; (2) danger of irreparable injury in the absence of an injunction; (3) a balance of equity in its favor. (See Cangemi v Yeager, 185 A.D. 2d 1397 [4th Dep't 2020])

Based on the foregoing the Court is granting an extension of the area of the preliminary injunction to cover the entire driveway not just the ten (10) feet as set forth in the existing easement.

VIOLATION OF EXISTING ORDER

The Defendants acknowledge that they constructed the concrete block structures on the driveway and assert that these structures do not impinge on the easement area. The Defendants assert that they are not in violation of constructing the block structures on the driveway outside of the ten (10) feet easement area and thus are not in violation of the pre-existing Order. The Plaintiff submitted an instrument survey which shows that two of the block structures do impinge on the easement area covered by the first preliminary injunction. At this point this Court is not going to sanction the Defendants nor award attorney's fees against them for structures that impinge into the easement area. A large portion of these obstructions are on a portion of the driveway not governed by the previous injunction. However, since the Court is granting an expansion of the area covered by the preliminary injunction, the Defendants will be required to remove all of obstructions from the driveway area, the driveway being about sixteen (16) feet wide, by December 1, 2023. And the Defendants shall not interfere with the Plaintiff's use of the driveway during the pendency of this action.

AMEND COMPLAINT

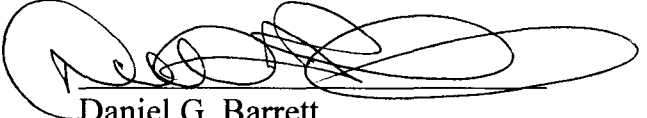
Both parties recognize that amendments are freely allowed at this point of the proceeding. The Plaintiff is permitted to amend the Complaint asserting two causes of action: (1) for prescriptive easement; (2) for violation of Article 12 of the New York's Navigation Law.

DISCOVERY

At oral argument the parties seem to be in agreement that discovery demands have been responded to and that if they had any issue counsel could work them out. This does not preclude the parties from making an application at a later time on this discovery issue.

This constitutes the Decision of the Court. Counsel for Plaintiff to prepare an Order consistent with this Decision.

Dated: November 21, 2023
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice