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“An easement is unenforceable insofar as it would allow a use in violation of municipal ordinances.”

Unenforceable Granted Easements**THIS ISSUE**

When are valid granted easements unenforceable? ¹

FACTUAL SCENARIO

Mr. Baccouche purchased approximately 40 acres of land that, many years earlier, had been burdened with a deeded easement for equine use by his neighbor. The neighbor had only a small parcel, and for many years used a portion of Mr. Baccouche’s 40 acres to keep his horses, consistent with the granted easement.

But Mr. Baccouche intended to subdivide the property and develop or sell the lots. The equine easement interfered with his plan for subdivision, so Baccouche sued his neighbor to eliminate the easement. He argued that the equine-use easement violated a municipal ordinance that restricts the keeping of horses on residential property. In support of his argument, he relied upon a municipal code that allows a landowner to keep horses on his land “in conjunction with residential use of the land.” Baccouche contended that because *his* lot was vacant, his neighbor’s keeping of horses on it was not “in conjunction with residential use.” Thus, he argued, using the granted easement would violate a municipal code, making the easement unenforceable.

His neighbor countered that the “equine use is *accessory* to use of his residential property,” and thus valid. Essentially, he argued, the municipal code does not require that the land burdened by the easement be developed, but rather that the equine use be associated with a residential use.

¹ *Baccouche v. Blankenship*

The trial court agreed with Baccouche's neighbor, finding the easement valid and that the neighbor could continue to lawfully keep horses on the portion of the Baccouche lot burdened by the easement. The trial court reasoned that the neighbor's use of the easement was in conjunction with the residential use of his own lot. It was not necessary that the Baccouche lot, which is burdened by the easement, have a residence on it for the easement to be lawful, so long as the neighbor's use of the easement is residential"

The Court of Appeal reversed the trial court's decision. The Court aptly noted, "The easement is appurtenant to the Blankenship property, so that both it and the horses there may run with the land." But while it agreed that there is a valid easement, the Court found that since applicable zoning ordinances prohibit keeping horses on a lot that is not developed for residential use, the easement is unenforceable insofar as it would allow a use in violation of municipal ordinances. Interestingly, the decision did not discuss whether the equine easement could be used after the Baccouche property was developed.

IN BRIEF

The Court's decision relies upon a long-established legal principal that a contract for an illegal purpose is unenforceable. This is true even with regard to an easement, which can be viewed as like a contract.

What are Easements?

In its simplest form, an easement is the right of one landowner to use the land of another for a specific, non-exclusive, purpose. Easements can be deeded between landowners, deemed "necessary" at the time land is subdivided, or acquired by open and obvious use of the land over time (five years in California), without the permission of the landowner. In the case at hand, the equine-use easement allowed Mr. Baccouche's neighbor to keep his horses on the Baccouche land, illustrating the fact that easements can be given for many different purposes. These include access to water or minerals, entry and exit from a neighboring property or public place (such as a beach), views, parking, and even overhanging signs. Essentially, any non-exclusive use of land can be the subject of an easement.

Why is this Case Important?

This case is by no means limited to the free run of horses over land. Many easements may well exist, the use of which may violate some municipal code. Land development is big business, and the increasing value of land justifies risks such as the one Baccouche took in acquiring land burdened by an easement that could have prevented its development. But developers may now take a new look at undeveloped land encumbered by old easements. If those developers can find, as Mr. Baccouche did, a law that would be implicated by the use of the easement, they may well be able to develop the encumbered land.

CONCLUSION

Land developers and lawyers will find this case to be very important, and may well be justified in poring over municipal codes that might assist them in obtaining relief from easements of record. Of course, those on the other side of the fence – literally – should also consult with an attorney to protect their longstanding easement rights. And those considering the purchase of land, where easement rights are an important factor in determining the value of the property, would do well to research the possibility that the easement – even a recorded easement – may not be as valuable if the use of it might violate a local ordinance.

NEXT ISSUE

Bonding requirements of the Equity Home Sales Contracts Act: A recent reversal of a previous R.E.A.C.H. newsletter opinion.

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