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A “Balancing Conveniences” . . . Court Of Appeal Affirms Trial Court’s
Grant Of Equitable Easement Without Monetary Compensation For
Roadway On Valuable Parcel In Santa Barbara County

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In a fact intensive decision, the California Court of Appeal, Second District, recently affirmed a trial court’s exercise of its power to create an equitable easement without monetary compensation. That decision took place in the matter of Linthicum v. Butterfield (2009) WL 1782954 (“Linthicum Case”) which was issued on June 24, 2009.

In the Linthicum Case, the plaintiffs bought a parcel of land in Santa Barbara County on which defendant owners of neighboring parcels used a roadway, the only access to their land. The plaintiffs sought an injunction to prevent the defendants from using the roadway. The defendants cross-complained to quiet title to an easement for the roadway. The trial court quieted title to an equitable easement in favor of defendants and awarded no damages to the plaintiffs. On appeal, the Court of Appeal affirmed the trial court’s decision although it remanded for the trial court to specify the width of the roadway easement.

The facts of the Linthicum Case are somewhat complex. The matter concerned a large tract of mountainous land located near the Los Padres National Forest in Santa Barbara County. Originally, the entire tract belonged to the United States Government (sometimes herein referred to as the “Forest Service”). In 1891, the government patented nine parcels and retained one (the parcel retained by the government is referred to herein as “parcel 1”).

In 1943, an investor named Griswold obtained the nine parcels which the government did not retain. Griswold wanted access to a public road over a portion of parcel 1 (which the government had retained). In 1947, Griswold obtained a special use permit (“SUP”) from the government to grade a roadway over the government’s parcel. In 1949, Griswold conveyed his nine parcels to a third party, named Hyde, and the government reissued the SUP in Hyde’s name. Beginning in 1958, Hyde conveyed the nine parcels to third parties at various times.

The government (the Forest Service) retained parcel 1 until 1998, when it conveyed the parcel to an investor in exchange for another parcel. None of the property owners who acquired the parcels from Hyde had the SUP reissued in their names - a fact which they admitted. However, all claimed that they had used the roadway on parcel 1, one claiming as long as 50 to 55 years. All claimed their parcels had no value without the roadway.

The plaintiff, Linthicum, and another person acquired parcel 1 in 2000. Linthicum had substantial knowledge of the area dating back to at least 1974 and investigated the Forest Service files prior to acquiring parcel 1. Linthicum sued to quiet title for the roadway and suggested that another area could be used as a route to the nine parcels which had been conveyed over the years by Hyde. Linthicum also claimed he could not develop parcel 1 (which he subdivided into parcel 1 and parcel 1-a after acquiring it) if the defendants continued in their use of the roadway.

At trial, the trial court conducted a site visit. After viewing the terrain where Linthicum's proposed alternative roadway would be situated, the trial court concluded that the disputed roadway over parcel 1 was the only possible access way to the defendants' parcels, an alternative access way could not be developed and the plaintiffs would be able to enjoy the full use of parcel 1 with the roadway remaining where it was. Finding the "balance of equities" favoring the defendants' continued use of the roadway, the trial court rendered a judgment which quieted title to a 66-foot-wide right-of-way over parcel 1 and awarded no damages to the plaintiffs.

Linthicum appealed arguing that the doctrine of "balancing conveniences" or "relative hardship", where the trial court may create an easement by refusing to enjoin an encroachment or nuisance, see, 13 Witkin, Summary of Cal. Law (10th.ed 2005) "Equity" § 172, did not apply unless a weighing of the three factors set forth in Christensen v. Tucker (1952) 114 Cal.App.2d 554 ("Christensen Case") so required. Those factors are (i) the defendant must be innocent, i.e. the encroachment must not be the result of defendant's willful act; (ii) if plaintiff will suffer irreparable injury by the encroachment, the injunction should be granted regardless of the injury to defendant, except where the rights of the public will be adversely affected and (iii) the hardship to defendant by the granting of the injunction must be greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant.

In its decision, the Court of Appeal embraced the three Christensen Case factors and even noted that the Christensen Case holds that doubtful cases should be decided in favor of granting the injunction (or denying the claim for easement). However, it upheld the trial court's judgment based on a number of factors including the "devastating" loss to the defendants should they lose access to a public road and because Linthicum acquired the parcel 1 knowing that the defendants had used the right of way for a number of years. Moreover, the Court of Appeal acknowledged that the defendants were negligent in not obtaining an SUP but stated that such conduct did not amount to wrongdoing under the Christensen Case factors.

Linthicum also appealed the trial court's failure to award damages. In that regard, the Court of Appeal noted that when the trial court creates an easement by denying an injunction, the plaintiff is ordinarily entitled to damages (citing the Christensen Case), but disregarded Linthicum's claim of \$900,000 in damages on the basis that the claim was based on the theory that the roadway prevented all development of parcel 1 (a theory which the trial court and Court of Appeal rejected). Holding that the trial court could not "award damages in the abstract", it affirmed the zero dollar judgment on the basis that Linthicum had not carried his burden of proof.

The Linthicum Case is an important decision. While it applies the half century old holding on point (the Christensen Case), the Court of Appeal is clear in ruling that the party attempting to quiet title to an easement can be negligent and no damages may be awarded unless the plaintiff owner carries its burden of proof.

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