Part II: EASEMENT LAW in NEW YORK

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Introduction

- Definitions:
- Servient Estate Holder: Owner of the land burdened sometimes referred to as the Landowner
- Dominant Estate Holder: Owner of the benefited or Dominant Parcel sometimes referred to as the Easement Holder
Use of Easements: Rights of the Parties

- Landowners generally owe a duty to people on their property that their property is in a reasonably safe condition considering all of the circumstances including the purpose of the person's presence and the likelihood of injury.

Use of Easements: Rights of the Parties

- Landowners who are burdened by an easement:
  - Have a PASSIVE DUTY to refrain from interfering with the rights of the Dominant Estate holder.
  - Have NO DUTY to maintain the easement for the Dominant Estate holder unless by agreement/arrangement.
Use of Easements: Rights of the Parties

- Landowners with respect to an easement on their land have the right:
- "to have the natural condition of the terrain preserved, as nearly as possible” and
- "to insist that the easement enjoyed shall remain substantially as it was at the time it accrued, regardless of whether benefit or damage will result from a proposed change." *Lopez v. Adams*, 69 A.D.3d 1162 (3d Dept 2010).

Use of Easements: Rights of the Parties

- Landowners can use their property, even that part burdened by the easement, in any way they deem fit so long as it does not interfere with the use of the easement by the Dominant Estate holder.
Use of Easements: Rights of the Parties

- Landowners can:
  - Narrow the easement
  - Cover the easement
  - Gate the easement
  - Fence the easement
  - And sometimes, relocate the easement

Use of Easements: Rights of the Parties

- Landowner may unilaterally Relocate an easement when:
  - the landowner bears the expense of the relocation, and
  - the change does not frustrate the parties’ intent or object in creating the right of way,
  - does not increase the burden on the easement holder, and
  - does not significantly lessen the utility of the right of way
Use of Easements: Rights of the Parties

- Easement Holder:
  - “One does not possess or occupy an easement or any other incorporeal right.”
  - Owning an easement ≠ Owning the land where the easement is located nor does it give a right of exclusive possession of the land where the easement exists
  - “An easement derives from use, and its owner gains merely a limited use or enjoyment of the servient land.”
  - *Di Leo v. Pecksto Holding Corp.*, 304 NY 505 (1952)

Use of Easements: Rights of the Parties

- Easement Holder has the right to:
  - Maintain their easement
  - Use the easement without interference
Use of Easements: Rights of the Parties

- Easement holder cannot:
  - Improve the easement (Widen, pave, install ditches)
  - Materially increase the burden on the servient estate (frequency of use)
  - Impose new or additional burdens on the easement (add utilities to a right of ingress and egress)
  - Use the easement to benefit another parcel not appurtenant (no piggy-backing)

Use of Easements: Rights of the Parties

- Easements “in common with others”
- Easement holders of these types of easements cannot:
  - Cut down the grade or impair the easement to the detriment of the other easement holders
  - Interfere with the reasonable use of the easement by his or her co-owners, or
  - Make alterations that will render the easement appreciably less convenient and useful to any one of the cotenants
Use of Easements: Rights of the Parties

- Liability for Injuries on the Easement:
  - Landowner owes a duty, but
    - If an injury results not from any unsafe condition the landowner left uncorrected on his land, but as a direct result of the course the easement holder takes in attempting to maintain the easement, then the easement holder is liable

Use of Easements: Maintenance Duty

- As the dominant owners, Easement Holders are responsible for maintaining and repairing the roadway
- in the absence of an agreement to do so, landowners are not obligated to make repairs or contribute to the cost of maintaining a roadway for the benefit of the Easement Holder
- Public Utility Easements often set forth their right to maintain the easement within the easement agreement itself → greater clarity between the parties
Use of Easements: Maintenance Duty

- “Together with the right to trim, cut, spray, and remove trees and brush to the extent necessary to clear said wires, cables and pole lines by at least 4 feet.”

Use of Easements: No Improvements

- Once fixed in character an easement cannot be improved

- The servient landowner has the right: “to insist that the easement enjoyed shall remain substantially as it was at the time it accrued, regardless of whether benefit or damage will result from a proposed change.” Lopez v. Adams, 69 A.D.3d 1162 (3d Dept 2010).

- Once a gravel right of way, Always a gravel right of way.
Relocating Easements: Lewis v. Young

92 N.Y.2d 443 (1998)
Lewis v. Young

- Original Lot divided into 3 Lots
- Back 2 lots given access over the front lot retained by grantors (the Browns) to reach South Ferry Road
- It provided for “the perpetual use, in common with others, of the [Browns’] main driveway, running in a generally southwesterly direction between South Ferry Road and the [Browns’] residence premises.”

Lewis v. Young

- The Youngs purchased the property (from the Browns) with the intention of substantially improving it by razing the then-existing small cottage and replacing it with a large new residence, adding an in-ground swimming pool and building a tennis court.

Halsey House, Southampton NY by Kforce at en.wikipedia
Lewis v. Young

- The renovations included relocating the existing driveway in order to make room for the tennis court.
- The new driveway, still “running in a generally southwesterly direction between South Ferry Road and the [Youngs’] residence premises,” actually overlapped at some points with the original driveway.
- At its point of greatest deviation, the relocated driveway was 50 feet from the original driveway.

Lewis v. Young

- As a rule, where the intention in granting an easement is to afford only a right of ingress and egress, it is the right of passage, and not any right in a physical passageway itself, that is granted to the easement holder.
- Mere use of a particular path in accordance with an explicit right to do so is neither hostile nor adverse.
- Continued usage of the same path does not in and of itself fix an otherwise undefined location so as to enlarge the interest of the easement holder or reduce the interest of the landowner.
Lewis v. Young

- the indefinite description of the right of way suggests... that the parties intended to allow for relocation by the landowner. Notably, the parties themselves in the same deed described two additional easements by explicit reference to metes and bounds. Had they intended the right of way to be forever fixed in its location, presumably they would have delineated it in similar fashion.
- The provision manifests an intention to grant a right of passage over the driveway-wherever located-so long as it meets the general directional sweep of the existing driveway.

Lewis v. Young

- Balancing Test:
- “In the absence of a demonstrated intent to provide otherwise, a landowner, consonant with the beneficial use and development of its property, can move that right of way, so long as the landowner bears the expense of the relocation, and so long as the change does not frustrate the parties' intent or object in creating the right of way, does not increase the burden on the easement holder, and does not significantly lessen the utility of the right of way”.
Lewis v. Young con’t

- “a landowner, consonant with the beneficial use and development of its property, can move that right of way, so long as the landowner
  - bears the expense of the relocation, and
  - so long as the change
    - does not frustrate the parties' intent or object in creating the right of way,
    - does not increase the burden on the easement holder, and
    - does not significantly lessen the utility of the right of way”

Altering Easements
Route 30 pull off near Indian Lake
Altering Easements

- Narrowing,
- Gating,
- Fencing,
- Covering

- an easement are all permitted alterations to an undefined easement ingress and egress so long as the right of passing to and fro was not impaired.

As a matter of policy, affording the landowner this unilateral, but limited, authority to alter a right of way strikes a balance between the landowner’s right to use and enjoy the property and the easement holder’s right of ingress and egress. *Lewis v. Young, Supra*
Interference with Easements

Threshold Question: Whether the obstruction or encroachment frustrates the purpose of the easement.

- the erection of a portico, which extended a short distance into the road, so as to reduce it at that point to somewhat less than forty feet, did not lessen the enjoyment of the right of way. *Grafton v. Moir*, 130 N.Y. 465 (1892).
Obstructions and Encroachments

- “It follows that the act of the defendant in destroying or removing them (water pipes) was unlawful, and that the plaintiff was entitled to recover his damages, and to have the equitable remedies awarded by the judgment.” Spencer v. Kilmer 151 N.Y. 390 (1897)

Gates and Fences

- By its language the grantee is entitled, not only to a right of way, but one which carries with it a free and unobstructed use of the described land for passage of horses and vehicles of every kind and ‘for all other lawful purposes’ in common with the owners of other abutting lands.

- here the use granted is free and unobstructed. The erection of a gate, even if kept unlocked, to some extent interferes with and obstructs defendant’s right of passage, and is inconsistent with the grant. Missionary Society of Salesian Congregation v. Evrotas, 256 N.Y.86 (1931)
Gates and Fences

Before Lewis v. Young:

- the general rule was that "**whether or not the servient owner may (erect fences on or gates or bars across the right of way) depends upon the intention of the parties connected with the original creation of the easement, as shown by the circumstances of the case, the nature and situation of the property subject to the easement, and the manner in which the way has been used and occupied. Such is a question of fact and is to be determined as such." Sprogis v. Silleck, 223 N.Y.S.2d 979 (Sup. Ct. Putnam Co., 1961)

Gates and Fences

- "In the rural past, when the most common forms of travel were by foot and horse, and when the user of a right of way through agricultural or pasture land was not discommoded to any great degree by the erection of movable fences or gates, the Courts did not consider that such obstructions were unlawful where the reasonableness of their maintenance was shown by establishing long uses or necessity." Sprogis Supra.
Gates and Fences

Later decisions too, recognize the right of an owner to maintain gates or fences across a right of way where there appears a reasonable basis for their existence and the user of the right of way is not substantially inconvenienced thereby.

Gates and Fences

In *Sprogis* the Defendant had fenced in the ROW and pastured his animals in the roadway, despite having 20 other Acres of land he could have used for pasture

“The plight of these plaintiffs, confronted by gates which must be opened and closed upon entering or leaving Peekskill Hollow Road, together with the additional burden of walking or driving through the lot populated by defendant’s animals, with the responsibility of preventing the straying of those animals on to a heavily travelled public highway when the gates are opened, is readily seen.” *Id.*
Gates and Fences

- Implied Easements can be fenced and gated
  - “It has been held that, in the case of express grants of easements in existing ways which are obstructed by fences and gates, then physically present upon the ground, the enjoyment of the easement granted is made subject to the right of the grantor reasonably to limit access and egress by maintaining the obstructions...
  - If this be the correct doctrine in reference to easements expressly granted, its correctness in the case of easements resting in implication must be all the more apparent.” Erit Realty Corp. v. Sea Gate Ass’n., 249 N.Y. 52 (1928) [paper street was fenced and gated at time of conveyance]

Damages for Interference

- Compensatory:
  - Taxes paid while could not use easement
  - Lost value to property due to destruction of easement
  - Taxes, insurance and upkeep
- Punitive:
  - conduct was found to be malicious, vindictive, morally culpable, wanton or reckless
- Attorneys Fees: only in limited instances
- Liquidated Damages: By agreement only
Transfer of Easements

- Easements in Gross:
  - Cannot be transferred
  - Personal to the individual
  - Extinguish when the individual dies

Sylvan Beach on Oneida Lake
Transfer of Easements

- Transfer of the Dominant Estate (the property benefited by the easement)
- If the common grantor conveys both the dominant and servient properties, the easement must be provided for in the deed to the dominant property and in the deed conveying the servient property.
- Often the Dominant Estate will be transferred “together with an easement” but the Servient Estate will not be transferred “subject to” the easement.
- → Problem
Transfer of Easements

- Division of the Dominant Estate
- A has an Easement over B
- A divides their land into A1, A2, and A3.
- All new lots, A1, A2 and A3 have the same easement rights over B so long as they don’t overburden B
- Since further division of the property is deemed a future possibility contemplated by the original parties, B usually cannot complain
Transfer of Easements

- Reserved Easements:
  - Reserved easements create a dominant parcel in those lands retained by the Common Grantor over the lands conveyed to the grantee
  - Grantor may also reserve an easement in gross

Transfer of Easements

- Reservation
  - is something taken back from what has been granted
  - “A reservation is a clause in a deed, whereby the grantor doth reserve some new thing to himself out of that which he granted before.”

- Exception
  - that which is excepted is not granted at all
  - “an exception is of some part of the estate not granted at all.”
Transfer of Easements

- Transfer of the Servient Estate
- Deed must state the property is “subject to” or otherwise burdened by an easement in favor of the dominant parcel
- The easement must be recorded somewhere in the servient estate's chain of title
- “a deed conveyed by a common grantor to a dominant landowner does not form part of the chain of title to the servient land retained by the common grantor” Witter v. Taggart, 78 N.Y.2d 234 (1991).

Transfer of Easements

- RECORD NOTICE:
- A servient estate holder is bound by what is recorded as an encumbrance against their property when that encumbrance is in their direct chain of title
- Map, deed, easement, mortgage, lien.
Transfer of Easements

- CONSTRUCTIVE or INQUIRY NOTICE
- Something in the chain of title that makes you question whether there is an encumbrance against your property

- If there is sufficient contained in any deed or record which a prudent purchaser ought to examine, to induce an inquiry in the mind of an intelligent person, he is chargeable with knowledge or notice of the facts so contained.” The Cambridge Valley Bank v. Delano, 48 N.Y. 326 (1872) [regarding a mortgage]

Transfer of Easements: Inquiry Notice
Transfer of Easements

- **ACTUAL NOTICE**
- Upon inspection of the property pre-purchase you observe an encumbrance physically on the property
- Held to having actual knowledge and are thus burdened with the encumbrance

Transfer of Easements

- **COMMON PLAN or SCHEME**
- Purchaser will be bound by community restrictions when they had actual or constructive notice of a common plan or scheme of development by a common grantor
Extinguishment of Easements

Rule:

- An easement acquired by grant “remains as inviolate as the fee favored by the grant, unless conveyed, abandoned, condemned or lost through prescription” *Gerbig v. Zumpano*, 7 N.Y.2d 327 (1960).

Remember:
- Implied Easements are Impliedly Granted and
- Easements by Prescription are premised upon a “lost grant”
  - this rule applies to all easements
By Adverse Possession

- the party seeking to extinguish the easement must establish that the use of the easement has been
- 1) adverse to the owner of the easement,
- 2) under a claim of right,
- 3) open and notorious,
- 4) exclusive and continuous
- 5) for a period of 10 years.”
- *Spiegel v. Ferraro, 73 N.Y.2d 622 (1989)*

By Adverse Possession

- Hostility/Adversity is NOT presumed as in typical AP situations
- The servient landowner must INTERFERE with to the point of EXCLUDING the easement holder from using the easement for the statutory period
- Because uses of the servient land by the landowner are not adverse to the easement holder’s easement until they interfere with the easement holder’s ability to use the easement for the purpose for which it was granted
By Adverse Possession

- Servient Landowner:
  - used the easement to hike, take nature walks and cross-country ski, and while they also planted and mowed near it, such uses were not inconsistent with the easement itself or adverse to the easement holder.

PAPER STREET Exception

- Adverse Possession cannot extinguish a paper street easement or one that has yet to be located.
- Rational: because the owner of the easement has had no occasion to assert the right of way during part of the prescriptive period.
- "Paper" easements may not be extinguished by adverse possession absent a demand by the owner that the easement be opened and a refusal by the party in adverse possession. Spiegel Supra.
By Abandonment

- Public Highway Easement:
- Abandonment by operation of law:
  - Non-use by the public
  - Non-maintenance by the public authority
  - For six years
  - NY High §205

By Abandonment

- Private Easement:
- Intent to Abandon the Easement
- Overt Act(s) demonstrating the intention to Abandon the Easement
- Heavy burden to prove/difficult
By Abandonment

- NONUSE, no matter how long continued does not extinguish a private easement, whereas NONUSE is an element for the abandonment of a public hwy.

- EXAMPLES:
  - Alternate access to a public hwy + blocked easement + built garden partially in the easement = abandoned
  - Alternate access to a public hwy + unchecked growth of trees obstructing the easement → perhaps showed abandonment

By Conveyance

- Merger of Title
- Agreement of all the Parties
- Conveyance to a Bona Fide Purchaser (BFP) for Value who has no actual or constructive notice of the easement
By Conveyance: Merger

- Merger Doctrine: An easement is extinguished when the Dominant and Servient Estates become vested in (owned by) the same person.
- “At that point, the easement no longer serves a purpose and the owner may freely use the servient estate as its owner.” *Will v. Gates*, 89 N.Y.2d 778 (1997).

By Conveyance: Merger

- “Once extinguished, an easement is gone forever and cannot be revived”
- If the property is split back up again, the easements must be re-created.
By Conveyance: Agreement

- All parties benefited by the easement can agree to extinguish the easement
- Release of Easement
- Paper Streets: All property owners on the subdivision map which shows the paper street have to sign agreements releasing their easement rights

By Conveyance: BFP without Notice

- “A grantor may effectively extinguish or terminate a covenant when, as here, the grantor conveys retained servient land to a bona fide purchaser who takes title without actual or constructive notice of the covenant because the grantor and dominant owner failed to record the covenant in the servient land's chain of title.” *Witter v. Taggart* 78 N.Y.2d 234 (1991).
- “…a narrow exception to this rule has been carved out in counties where a “block and lot” indexing system is used.” *Terwilliger v. VanSteenburg*, 33 A.D.3d 1111 (3d Dept 2006).
Cessation of Purpose/Demolition

- Express easement of Ingress and Egress “to the garage” was extinguished when garage was demolished.
- Reference to the back of the house (which had been demolished) indicated location of the easement, not the purpose of easement.

Cessation of Purpose/Demolition

- Party Wall Easement was extinguished by the demolition of the building and the lack of necessity for the continuation of the easement.
- See *357 East Seventy-Sixth Street Corp. v. Knickerbocker Ice Co.*, 263 N.Y. 63 (N.Y. 1933)
By Condemnation

- Eminent Domain


By Condemnation


- “When Absolute acquired title at the tax sale, a description of the property was limited to its tax grid number..... In order to determine the boundaries of its holdings, Absolute should have searched the County Clerk’s property records until it found the subdivision plat that created its parcel. Had Absolute examined the plat, it would have discovered the open space restriction.” Id.
The End.

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