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1. The Lane

a. Ed's rights and interests in the lane

Fee Simple Absolute

A property is owned by the owner in fee simple absolute when there are no other present or future interests in the property. Easements may be recorded in the deed but there is not a life estate or a fee simple created by an easement.

Absent any other facts, E owns the land, including the lane, in fee simple absolute.

b. Fran's rights and interests in the lane

Easement

An easement can be implied, express, or by necessity. An express easement is granted by a written agreement. An easement may be appurtenant, which is granted to the land, or an easement in gross, which is an easement granted to a person. The grantor of an easement is free to revoke an express easement at any time, for any reason.

50-lot residential subdivision

Here, E granted Fran an express easement to have right-of-way over the lane to access the highway from her property. However, Fran has changed the nature of the easement because she will no longer be using it just to drive over to get to the highway. Fran used to have a commercial farm with a small bunkhouse for farm workers on her land. Now, Fran is intending to convert her farm into a 50-lot residential subdivision.

It is unclear if Fran is desiring to keep the easement for her own personal use, or if she intends to allow the residents of the subdivision to also use the lane. If Fran intends to allow the residents to use the lane, E will be able to revoke the easement because Fran has changed the nature of its use substantially. E intended for Fran, and perhaps some of her workers occasionally, to drive along the lane to reach the highway. E did not intend for the lane to serve as a road for a 50-lot residential subdivision.

Fiber optic cables and electric lines

Furthermore, Fran indicated to E that she is intending to install new electric lines and a fiber optic cable along the lane. This too was not the intent of the original easement, because E gave F permission to drive on the lane. E did not intend or allow for F to install electric lines and fiber optic cables. This will likely be a burden and inconvenience on E because there will be major construction on his property, disrupting his country inn business and annoying his guests. E will also argue that the guests of a small country inn do not want to look at electric lines and fiber optic cables during their getaway in the country.

E will be justified in revoking the easement from F.

Easement by Necessity

An easement by necessity is created when a property has no access to a main road, a water source, or another necessary feature and therefore the easement is necessary in order for the property to be usable. An easement by necessity can be granted by the court and does not require the consent of the subservient land owner.

If the lane is the only way for Fran to access the highway or the main roads, Fran may be able to argue that she has an easement by necessity on the lane. Furthermore, if the lane is the only place wherein Fran may run electric cables to her property, she may argue that this is a necessity. Fran could argue that in order for her to fully enjoy her property by converting it to a 50-resident subdivision and computer server center, she requires fiber optic cables and electric power lines. However, a court is unlikely to be persuaded by this, absent any relevant facts.

Unless Fran can show her necessity of the lane, she will be unsuccessful in arguing an easement by necessity.

Adverse Possession

In order to show adverse possession, the taking must be exclusive, open and notorious, hostile, actual, and consistent. It must also meet the statutory requirements for adverse possession in the jurisdiction.

Fran has been using Ed's lane for ten years. If the adverse possession statute in this jurisdiction is ten years or longer, F may be able to make an argument for adverse possession of Ed's lane.

Exclusive

Fran's possession of Ed's lane was not exclusive, because Ed and presumably his inn guests

were also able to use the lane.

Open and Notorious

Fran's possession was not open and notorious because she did not make out as the owner of the lane.

Hostile

Fran's possession was not hostile because it was not at odds with Ed's ownership interest. Fran was allowed by the easement to use the lane.

Actual

Fran actually possessed the property by driving over the lane to get to the highway regularly.

Consistent

Fran's possession of the lane was consistent because she used the lane regularly and without any long breaks.

Because F does not meet all of the factors required in order to qualify as adverse possession, she will not be successful in an adverse possession claim.

c. May Fran carry out her plans over Ed's objection?

Fran will likely not be able to carry out her plans over Ed's objections because E will be justified in revoking his express easement to F. F is attempting to substantially changed the usage of the lane from herself and a few workers to the residents of a 50-lot subdivision. Furthermore, she intends to install electric lines and fiber optic cables, which would drastically disrupt E's small country inn and cause major construction on his property.

2. The Garden Property

a. Ed's rights and interests in the garden property

Covenant

A covenant is a promise to do something or refrain from doing something. A covenant may be recorded, but it is not required. A bona fide purchaser of the land on which the covenant runs may have actual notice, inquiry notice, or constructive notice of the covenant.

Here, G and E entered into a signed written agreement that G and her successors in interest would use her property only as a commercial organic garden. In exchange, E would purchase produce from G for use in his country inn.

Inquiry notice

Inquiry notice is notice of the covenant that comes from the bona fide purchaser's observation of the land, or the reasonable observations he should have had of the land.

It is unclear from the facts if H was aware of the covenant on the land when he purchased the land from G. It is unknown if G recorded the covenant in the deed, or elsewhere. However, E will argue that H had inquiry notice of the covenant because E continued to purchase produce from H for the country inn, even after the garden was sold to H.

H will argue, however, that H did not have notice of the covenant and did not have inquiry notice. H will argue that E's purchase of produce from H was not enough to signal to H that there was a covenant on the land in place. H will argue that it was reasonable for him to think that E was continuing to purchase produce from H because he had previously purchased it from G, so it was familiar and routine for E. Further, H will argue that it was reasonable because E and H are neighbors so it would be convenient for him to continue to purchase produce from H.

A court will likely find that H's argument is persuasive and that H did not have inquiry notice of the covenant.

"Run with the land"

If a covenant "runs with the land," then it will be passed down to a bona fide purchaser. In order to "run with the land," the covenant must touch and concern the land.

Here, the covenant touches the land because it is concerned with whether the garden must be kept a garden or may be converted for another use.

b. Henry's rights and interests in the garden property

Fee Simple Absolute

Please see rule above.

Absent any facts to the contrary, Henry owns the garden property in fee absolute.

c. May Henry carry out his plans over Ed's objection?

It is likely that H will be able to carry out his plans over Ed's objection. H will likely be successful in arguing that he is a bona fide purchaser who did not have notice of the covenant and therefore is not bound by it. Therefore, H will likely be able to convert the garden into a truck stop and diner.

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