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|--------------------|---|---------------------------------|
| PINE VILLAGE, INC. | : | IN THE COURT OF COMMON PLEAS OF |
|                    | : | LYCOMING COUNTY, PENNSYLVANIA   |
| Plaintiff          | : |                                 |
|                    | : |                                 |
| vs.                | : | NO. 02-00,732                   |
|                    | : |                                 |
| H. GENE FEERRAR,   | : |                                 |
|                    | : |                                 |
| Defendant          | : | MOTION FOR SUMMARY JUDGMENT     |

*Date: April 30, 2003*

**OPINION and ORDER**

**Facts/Procedural Background**

Before the Court for determination is Plaintiff Pine Village, Inc.’s Motion for Partial Summary Judgment filed February 19, 2003. The following are the relevant and undisputed facts.

Pine Village, Inc. (Pine Village) and H. Gene Feerrar (Feerrar) own pieces of real estate adjacent to each other. Pine Village’s property is located to the north of Feerrar’s property. Pennsylvania State Highway (S.R.) 4001 forms the western edge of both properties. A private roadway provides access for each property to S.R. 4001. The private roadway runs north to south across the properties in an arch like fashion connecting to S.R. 4001 in the south from the Feerrar property and on the north from the Pine Village property. Charles A. Apple and Iva B. Apple, his wife, were the original owners of a single tract that is now the Pine Village and Feerrar properties. In 1951, the Apples conveyed 54.1 acres of land containing what would be the Feerrar property to Charles H. Elder and Emily J. Elder. The Apple-Elder conveyance included a reservation that stated:

ALSO EXCEPTING AND RESERVING unto the said Charles A. Apple, his heirs and assigns, a right-of-way over the above described premises, from the State Highway leading from Waterville to English Center to other lands of Charles A. Apple, said right-of-way to consist of the present private road existing on the ground, ...said right-of-way to run with the title to said other land of the said Charles A. Apple and to be for the use and benefit of the said Charles A. Apple, his heirs and assigns, as well as patrons and others who may [sic] have occasion to travel said road to the other land of the said Charles A. Apple.

The Feerrar's property was subsequently sub-divided from the Elders tract. At some point in time, Pine Village erected a gate across the right-of way on its property near the southern boundary. Feerrar has also constructed several structures on his property including a gate across the right-of-way near the northern boundary and a wooden shed and a metal garage in close proximity to or within the right-of-way.

Pine Village argues that it is entitled to summary judgment and an order requiring Feerrar to remove the gate, wooden shed, and metal garage. Pine Village asserts that it has an easement to use the right-of-way over Feerrar's property by express grant in the deed. Based on this, Pine Village contends that Feerrar's gate should be removed since it constitutes an unreasonable interference with the use of the easement. Pine Village further argues that Feerrar does not have similar easement rights to use the right of way across the Pine Village property in order to access S.R. 4001. Pine Village contends that there is nothing to suggest that Feerrar has an easement by express grant or reservation of deed. Pine Village asserts that Feerrar has not pleaded sufficient facts to establish an easement by prescription. Pine Village also contends that there is no easement by necessity since the Feerrar property is not landlocked and the fact that the access Feerrar has to S.R. 4001 may be inconvenient does not rise to the level of necessity.

With regard to the wooden shed and metal garage, Pine Village also argues that the structures should be removed. Pine Village contends that part of the wooden shed extends into Pine Village's property and constitutes a continuing trespass. Pine Village asserts that a portion of the metal garage is within the fifty foot setback area from the right-of-way centerline in violation of the restrictions, covenants, easements and rights-of-way in Feerrar's chain of title. As such, Pine Village argues that Feerrar should be required to remove the structures.

In response, Feerrar contends that Pine Village is not entitled to summary judgment, except Feerrar does not dispute Pine Village's easement rights to use the right-of-way over his land to access S.R. 4001. Therefore, the Court will enter summary judgment in favor of Pine Village as to its easement rights concerning the right-of-way across Feerrar's property. As of oral argument, Feerrar still contests the width of the easement as being fifty feet. The Court will not rule on this issue, and the order accompanying this opinion does not prohibit either party from pursuing the issue as to the width or location of the right-of-way.

Feerrar also contests the assertion that his gate is an unreasonable interference with the Pine Village's use of the easement. Feerrar argues that the gate is necessary for safety and security. Feerrar contends that the gate is not an unreasonable interference since it is an easily movable barrier and has offered Pine Village a key to operate the lock on the gate. With regard to the easement rights of Feerrar over the land of Pine Village, Feerrar contends that that the reservation does not expressly limit it to Pine Village since it uses the words "others," which arguably could include Feerrar. Also, Feerrar argues that it has an easement by necessity since

the southern access to S.R. 4001 is difficult if not impossible to access with certain types of vehicles.

Feerrar concedes in his Brief in Opposition to Plaintiff's Summary Judgment Motion that the wooden shed does encroach upon Pine Village's property and that the metal garage does encroach upon the easement setback. However, Feerrar argues that the encroachment does not entitle Pine Village to summary judgment since neither effect the use of the right-of-way and in balancing the equities it would be unfair to require Feerrar to move the structures at this point in time. Feerrar also asserts that the equitable doctrines of laches and clean hands prevent Pine Village from obtaining the relief it seeks.

### **Discussion**

There are three main issues before the Court. The first is whether a gate erected by the owner of the servient tenement on his property across a right-of-way constitutes an unreasonable interference with the use of the right-of-way by the owner of the dominant tenement. The second issue is whether Feerrar has an easement to use the right-of-way across Pine Village's property to gain access to S.R. 4001 by reservation in a deed or by necessity. The third issue is whether Pine Village is entitled to summary judgment and an order requiring the removal of the wooden shed and the metal garage in light of the equitable doctrines of laches and clean hands. The Court will deny Pine Village's motion for summary judgment. There are significant issues of fact that need to be resolved through testimony and presentation of evidence which prevent the Court from ruling as a matter of law on the various issues.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "when the uncontraverted

allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” *Rauch v. Mike-Mayer*, 783 A.2d 815, 821 (Pa. Super. 2001); *Godlewski v. Pars Mfg. Co.*, 597 A.2d 106, 107 (Pa. Super. 1991). The party making the motion has the burden of proving that there are no genuine issues of material fact. *Rauch*, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record “ ‘in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.’ ” *Godlewski*, 597 A.2d at 107 (quoting *Hower v. Whitmak Assoc.*, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that “are free and clear from doubt” and any “doubt must be resolved against the moving party.” *Garcia v. Savage*, 586 A.2d 1375, 1377 (Pa. Super. 1991).

#### **Feerrar’s Gate as an Unreasonable Interference**

An easement appurtenant is “a liberty, privilege or advantage without profit which the owner of one piece of land has in the land of another.” *Ladner on Conveyancing in Pennsylvania*, §11.01, 1 (Clark, Ladner, Fortensbaugh & Young eds., 1979). The land enjoying the privilege is called the “dominant tenement” and the land subject to the privilege is called the “servient tenement.” *Ibid*. Therefore, an “easement is appurtenant when a servient estate exists for the beneficial use of a dominant estate.” *Southall v. Humbert*, 685 A.2d 574 (Pa. Super. 1996). The owner of the dominant tenement has full and free use of the easement as granted and the servient tenement cannot unreasonably interfere with the use of the easement. *Kushner v. Butler County Airport Auth.*, 764 A.2d 600, 603 (Pa. Super. 2000);

*Palmer v. Soloe*, 601 A.2d 1250, 1252 (Pa. Super. 1992). A gate, or other similar movable bar, is not an “ ‘unlawful abridgement of the right of passage under the easement’ ” so long as it is not an unreasonable obstruction. *Matakitis v. Woodmansee*, 667 A.2d 228, 232 (Pa. Super. 1995), *app. denied*, 682 A.2d 311 (Pa. 1996) (quoting *Haig Corp. v. Thomas S. Gassner, Co.*, 63 A.2d 433,435 (Pa. Super. 1949)). Removal of a gate will not be required unless it completely denies the use of the easement or is an unreasonable interference with the use of the easement. *Id.* at 232-33.

Pine Village is not entitled to summary judgment and an order directing that Feerrar’s gate be removed. The facts before the Court do not permit us to conclude as a matter of law that the gate erected by Feerrar across the right-of-way constitutes an unreasonable interference with the use of the easement. The erection of a gate across an easement right-of-way is not a *per se* unreasonable interference. Further facts must be presented to establish what degree of impediment the gate poses to determine if it rises to the level of an unreasonable interference with the right-of-way.

#### **Feerrar’s Easement Rights**

The Court will now address the issue of whether Feerrar has easement rights to use the right-of-way across Pine Village’s property. “An easement may be created 1) expressly; 2) by prescription; 3) by necessity; or 4) by implication.” *Phillippi v. Knotter*, 748 A.2d 757, 758 (Pa. Super. 2000), *app. denied*, 760 A.2d 855 (Pa. 2000). “ ‘The same rules of construction apply to deeds granting easements as to contracts generally.’ ” *Southall v. Humbert*, 685 A.2d 574, 577 (Pa. Super. 1996) (quoting *Potter, Inc. v. Nat. Fuel Gas Supply Corp.*, 449 A.2d 652, 653 (Pa. Supper. 1982)). The intention of the parties at the time the

easement was created governs the interpretation of the easement. *Ibid.* The intention of the parties may be determined by “a fair interpretation and construction of the grant and may be shown by the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made.” *Merrill v. Manufacturers Light & Heat Co.*, 185 A.2d 573, 575 (Pa. 1962); *see, Gateway Motels, Inc. v. Duquesne Light Co.*, 500 A.2d 1230, 1232 (Pa. Super. 1985).

The intention of the original parties to the deed creating the right-of-way is not readily apparent. Further evidence is needed to establish the surrounding circumstances in place at the time the reservation was made to determine the intention of the parties regarding the private right-of-way.

An easement by necessity arises only if there is a strict necessity. *Phillippi*, 748 A.2d at 760. An easement by necessity never exists as a “mere matter of convenience.” *Ibid.* There are three fundamental requirements for an easement by necessity: 1) the titles to the alleged dominant and servient properties must have been held by one person; 2) this unity of title must have been severed by a conveyance of one of the tracts; 3) the easement must be necessary in order for the dominant tenement to use his land, with the necessity existing both at the time of the severance and at the time of the exercise of the easement. *Ibid.* An easement by necessity does not exist when a property owner can gain access to his property through his own land. *Graff v. Scanlan*, 673 A.2d 1028, 1032 (Pa. Cmwlth. 1996).

The Court cannot conclude as a matter of law that Feerrar does not have an easement by necessity to use the right-of-way across Pine Village’s property to gain access to S.R. 4001. There is an issue of fact as to how much of a hurdle the approach to S.R. 4001 from

Feerrar's property poses to Feerrar's access to S.R. 4001. It could very well be that the terrain effectively land locks Feerrar's property, thereby making the only feasible access to S.R. 4001 from his property the right-of-way across Pine Village's property. Also at issue are facts concerning the need for the easement at the time the Feerrar property was severed from the Pine Village property. Therefore, the Court cannot grant Pine Village summary judgment on Feerrar's claim of an easement by necessity.

### **Removal of the Structures**

The Court is confronted with two equitable doctrines, laches and clean hands, that must be addressed in dealing with the removal of the structures issue. "The equitable doctrine of laches bars an action when one party is guilty of want of due diligence which results in prejudice to another." *Building Industry Assoc. v. Manheim Twp.*, 710 A.2d 141, 146 (Pa. Cmwlth. 1998). To establish the defense of laches, a party must demonstrate: "(1) a delay arising from the petitioner's failure to exercise due diligence; and (2) prejudice to the respondent resulting from the delay." *Ibid.* The equity maxim of clean hands states that " ' he who comes into a court of equity must come with clean hands.'" *In re Estate of Pedrick*, 482 A.2d 215, 222 (Pa. 1984) (quoting *Re Cross' Estate*, 179 A. 38 (Pa. 1935)). The doctrine of clean hands does not apply to collateral matters, but to the equitable relationship that exists between the parties. *Id.* at 223. The doctrine of clean hands does not require the party to have led a blameless life as to other matters, but "it does require that [he] shall have acted fairly and without deceit as to the controversy in issue." *Lucey v. Workman's Compensation Appeal Bd.*, 732 A.2d 1201, 1204 (Pa. 1999). The doctrine of clean hands is "a self-imposed ordinance



that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *Ibid.*

Again, the Court cannot grant Pine Village summary judgment on the removal of the structures issue because issues of fact still exist. In order to resolve the removal issue, the Court must address equitable principles. The Court needs testimony and the presentation of evidence to decide the issues of equity. Thus, summary judgment is inappropriate on this issue.

**Conclusion**

The Court will deny Pine Village’s motion for summary judgment. Issue of fact necessary to the resolution of the issues raised by the motion still exist that need to be determined at trial by the trier of fact. Therefore, Pine Village is not entitled to summary judgment.

**ORDER**

It is hereby ORDERED that Plaintiff Pine Village, Inc.’s Motion for Partial Summary Judgment filed February 19, 2003 is denied.

However, summary judgment is entered as to the easement rights of Pine Village, Inc. Pine Village has easement rights for ingress, egress and regress, in perpetuity, in and to the private roadway that crosses the real estate of H. Gene Feerrar and provides access to the state highway. The width or location of the right-of-way is not determined by this order.

BY THE COURT:

William S. Kieser, Judge

|     |  |                             |
|-----|--|-----------------------------|
| cc: | Joseph R. Musto, Esquire                   | Judges                      |
|     | Michael J. Casale, Jr., Esquire            | Christian J. Kalas, Esquire |
|     | Gary L. Weber, Esquire (Lycoming Reporter) |                             |