

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AFFORDABLE APARTMENTS, LLC, Plaintiff	:	DOCKET NO. 13-02,339
	:	
vs.	:	CIVIL ACTION
	:	
THE ALLEGHENY APARTMENTS, LLC, Defendant	:	NON-JURY TRIAL

OPINION and VERDICT

AND NOW, this 24th day of April, 2015, after a non-jury trial held on April 14, 2015, and an opportunity for the parties to submit further briefing, and such having been submitted on or before April 21, 2015, the matter is ripe for decision and the Court enters verdict in favor of The Allegheny Apartments, LLC and against Affordable Apartments LLC. All other claims and counter-claims are dismissed for insufficient proof and credible evidence.

Findings of Fact

1. The Plaintiff, Affordable Apartments LLC (Affordable) owns a rental property identified as Tax Parcel 65-001-306 located in the City of Williamsport which was acquired by deed dated July 31, 2006 and recorded in record book 5741, page 88, referred to hereinafter as the “Affordable Parcel.”
2. The Defendant, The Allegheny Apartments, LLC, owns a rental property identified as Tax Parcel 65-001,307 that is adjacent to the above-mentioned parcel owned by Plaintiff located in the city of Williamsport, which was acquired by deed dated May 20, 2013, and recorded in record book 8001, page 321, referred to hereinafter as the “Allegheny Parcel.”
3. Appurtenant to the Allegheny Parcel is an easement (“Easement”) along the eastern and southern boundaries of the Affordable Parcel that was acquired by a grant from Plaintiff’s

predecessor in title to Defendant's predecessor in title dated September 28, 1986, and recorded in record book 1164, page 50.

4. The description of the Easement in the above-mentioned grant is as follows:

All the free and uninterrupted use, liberty and privilege of, and passage in and along a certain existing passageway or roadway along the eastern and southern boundaries of land purchased by the Grantors herein by deed from the Moriah Corporation dated the 2nd day of September, 1986 and Recorded the 12th day of September, 1986 at Lycoming County Deed Book 1162, Page 4, which existing road or passageway leads from Second Street to property now owned by the Grantees. (Plaintiff's Exhibit 9.)

5. The verbiage used in the description of the above mentioned easement includes the term "road" and "roadway" which Webster's Dictionary, 2nd Edition, defines as "the part of the road that is used by vehicles." The Court further notes that Section 102 of the Vehicle Code, 75 Pa. C.S. § 102, defines the term "roadway" as "[t]hat portion of a highway improved, designed or ordinarily used for vehicular travel."
6. The plain meaning of the words used in the description of the Easement permit vehicle traffic.
7. No evidence was produced regarding the exact width or volume for traffic to utilize the easement.
8. Daniel A. Vasallo, Professional Engineer and Professional Licensed Surveyor credibly opined that he could put a roadway across the Affordable Parcel.
9. The driveway would not present a risk to fire escape stair tower.
10. 11.1 feet of travel lane is needed to make a right turn on the Affordable Parcel to turn east to the Alleghany Parcel.
11. A drive or roadway consistent with a path labeled DRIVE 1 on the Vasallo report, Defendant's Exhibit 18, with such easement not to exceed 20' feet, is a width that is suitable

and convenient for the ordinary uses of free passage for a vehicle to access the Allegheny Parcel.

12. The report and testimony of Daniel A. Vasallo is credible.

Conclusions of Law

1. On the face of the deed containing the Easement in this case, the words of the easement are plain and unambiguous and no doubt arises as to their primary sense so that only the deed containing the Easement may be looked at to discover the extent and nature of the terms of the Easement.
2. The words used to describe the Easement in this case, specifically the use of the word “roadway” and “road,” mean that the reasonable use of the easement includes use by vehicles.
3. Construing the Easement in favor of the grantee, the owner of the Allegheny Parcel, favors use by vehicles to access the Allegheny Parcel.
4. Since the width of the easement is not specified in the grant, the easement is of such width as is suitable and convenient for the ordinary uses of free passage for a vehicle to access the Allegheny Parcel.
5. The Easement permits a drive or roadway consistent with path or drive # 1 as labeled on the Vasallo report, Defendant’s Exhibit 18.
6. The easement is not to exceed 20’ feet, as such width is suitable and convenient for the ordinary uses of free passage for a vehicle to access the Allegheny Parcel.
7. Permitting access by motor vehicles as described above does not expand the Easement from the original description or expand to unreasonably burden the servient estate.

Discussion

This matter involves a dispute between adjacent landowners about the nature and scope of the Easement located on the Affordable Parcel. On April 7, 2015, the Court granted partial summary judgment in favor of Defendants, concluding that the Easement included access by motor vehicles. The Court agrees with Defendant's discussion of the legal requirements for interpretation of an easement. The Court may only look at the document itself initially to determine whether the words are plain and unambiguous. "If on the face of the document no doubt arises that the words are used in their primary sense, and if, read in that sense, they are plain and unambiguous, the matter is concluded[.]" Witman v. Stichter, 149 A. 725, 726-727 (Pa. 1930). "[W]hen the terms of an express grant of an easement are general, ambiguous, and not defined by reference to the circumstances known to the parties at the time of the grant, the express easement is to be construed in favor of the grantee." See, Lease v. Doll, 403 A.2d 558, 562 (Pa. 1979). See also, Duquesne Light Co. v. Longue Vue Club, 63 A.3d 270, 280; 2013 PA Super 8 (Pa. Super. 2013). "[W]hen the width of an easement is not specified in the grant, the easement "will be held to be of such width as is suitable and convenient for the ordinary uses of free passage and if the particular object of the grant or the way is stated, the width must be suitable and convenient with reference to that object." Zettlemyer v. Transcontinental Gas Pipeline Corp., 657 A.2d 920, 924 (Pa. 1995)(Further citations omitted.). An easement cannot be expanded to unreasonably burden the servient estate. Smith V. Fulkroad, 305 Pa. Super. 459, 451 A.2d 738 (1982).

In looking at the document itself in the present case, the Court concluded the plain language provided for use by motor vehicles. Furthermore, the use of the word road and roadway expressed the intent of the parties that the Easement included use for motor vehicle access across

the Affordable Parcel to the Allegheny Parcel. Furthermore, even if the terms were ambiguous, the Court would be required to interpret it in favor of the grantee, which would be in favor of motor vehicle access to the Allegheny Parcel. Lastly, since there was no width specified in the grant, the Court defined the width as suitable and convenient for vehicles to access the Allegheny Parcel. As such, the Court set parameters that do not unreasonably burden the servient estate.

ORDER AND VERDICT

AND NOW this 24th day of **April, 2015**, following a non-jury trial in this matter, it is ORDERED and DIRECTED that verdict is entered in favor of The Allegheny Apartments, LLC and against Affordable Apartments LLC.

1. The Easement on the Affordable Parcel is approved for vehicle traffic to access the Allegheny Parcel consistent with the diagram labeled DRIVE #1 on the Vasallo report, Exhibit 18.
2. The Easement is not to exceed 20' feet, as such width is suitable and convenient for the ordinary uses of free passage for a vehicle to access the Allegheny Parcel. It is noted that the intended volume of traffic would be that suited for limited parking for a limited number of vehicles on the Allegheny Parcel.
3. The Counterclaims are dismissed; the Easement is not for access to parcel 65-001-309.
4. Plaintiff, The Affordable Apartments, LLC, request for reconsideration of the partial summary judgment entered in this matter is hereby DENIED.

BY THE COURT,

April 24, 2015

Date

cc: William P. Carlucci, Esq.
Martin A. Flayhart, Esq.

Richard A. Gray, J.