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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
CHANCERY DIVISION, GE PART
DOCKET NO. BER-C-39-21

Shaknoza Rasulova.
Plaintiff,

v.

Wendy Aguila.
Defendants.

Decided: June 11th 2021

Appearances:

Shakhnoza Rasulova, Plaintiff *pro se*.
Ana Maria Meizys, attorney for Defendant (Law Offices of Ana Maria Meizys, Esq., LLC).

The Honorable Edward A. Jerejian, P.J.Ch. Div.

This matter was tried before the Court May 10th, 2021 by Shaknoza Rasulova (*pro se*) for Plaintiff and by The Law Offices of Ana Maria Meizys Esq., LLC (Ana Maria Meizys Esq., appearing) for Defendant Wendy Aguila.

Factual Background

This action arises out of an unfortunate neighborhood dispute over an easement purportedly delineating the respective limited access to parking between two formerly amicable neighbors.

The easement that is the subject of this action comprises less than half of the driveway which adjoins Lots 57 and 58. (Def. Ex. 1). Said driveway was previously a public road and known as Avenue B. On or about July 26, 1973, all public rights in the public area, which is now a driveway, were vacated by Mahwah Ordinance 477. (“Def. Ex. 21). On December 26, 1978, the Township of Mahwah conveyed 15 feet of the public roadway to then owners of Lots 57, 58, 59 and 60. (Verified Counterclaim (“VC”) at ¶12). Jonathan Gregg Lesko and Marisa Lesko purchased 116 Grove Street on or about June 21, 2000 and bought 118 Grove Street on or about August 31, 2000. (“VC” at ¶13).

By a Deed of Easement recorded on December 12, 2005 by the Bergen County Clerk in Book 8974 on page 183, Lots 59 and 60 were granted an easement in perpetuity “Easement” by Jonathan Gregg Lesko and Marisa Lesko. (“Def. Ex. 1).

The Deed of Easement sets forth “WHEREAS Lots 59 and 60 do not front on a legally dedicated street” and “WHEREAS the Grantor as owner of Lots 57 and 58 desires to grant and easement in favor of Lots 59 and 60 NOW THEREFORE”:

Grant of Easement: For an in consideration of the sum of One Dollar (\$1.00) Grantor has granted, and by these presents does hereby grant to Grantee, an easement in perpetuity for the purposes set forth hereinafter set forth, upon those lands located in the Township of Mahwah, County of Bergen, and State of New Jersey... hereinafter referred to as “the Easement Area”.

Id.

The Deed of Easement set forth in the legal description the location of the Easement in Schedule A and further described the true intent and purpose of the easement as:

[D]edicate to Grantee the non-exclusive easement (subject to the limitations herein contained) to use the Easement Area for a right-of-way for roadway purposes, which shall include the construction, installation, repair, maintenance, operation and use of improvements related to such roadway, limited to within the Easement Area. The Grantor hereby reserves unto itself and Grantor's successors and assigned the right to use the Easement Area for any purposes not inconsistent with the terms here of, including, but not limited to, the right to use the easement area for ingress and egress to and from other lands owned by Grantor which may be served by the Easement Area herein contemplated, (ii) the construction, installation and use of lines, pipes and conduits to facilitate the delivery of utilities to the lands other than the Easement Area owned by Grantor and (iii) the construction, installation and use of pipes and conduits to facilitate the delivery of utilities to the lands other than the Easement Area owned by Grantor, and (iii) the construction, installation and use of pipes and conduits to facilitate drainage of storm waters from other lands owned by Grantor.

Id.

The properties in question are subdivisions of a previously single owned parcel by one Jonathan Lesko, who subdivided the property into two residential homes before selling them and moving on. Plaintiff's property (Lots 57 and 58) is on the corner of the former Avenue B and Grove Street, with the front of the property facing Grove Street. Plaintiff's property contains a minimum of four car driveway at the front of their property as well. Due to the subdivision by Mr. Lesko, Plaintiff's property has no backyard. Defendant's property (Lots 59 and 60) has no driveway, does not have access to Grove Street (other than via access through the easement area), and the front of Defendant's property faces the back of Plaintiff's residence. Defendant's residence is solely accessible via a paved walkway from back corner of Avenue B to their residence.

Off street parking is prohibited on Grove Street by Mahwah Ordinance § 7A-1. ("Def. Ex. 5). Off street parking on Grove Street has been prohibited since May 27, 1976 when Mahwah Township enacted the Vehicle and Traffic Ordinance. (Id.). Per Mahwah Township Ordinance §

22-6.2A, residential dwellings in Mahwah, such as 118 Grove Street, require a minimum of two off-street parking spots. (Def. Ex. 5). Ordinance section § 22-6.2A has been in effect since at least February 4, 1977. (“VC” at ¶20). No waiver has been filed by any party exempting 118 Grove Street from the minimum requirement of two off-street parking spaces. (“VC” at ¶22).

On January 30, 2006, Jonathan Gregg Lesko and Marisa Lesko conveyed 118 Grove Street (back property) and the Easement at issue to Michael Mehnert, Ms. Aguila’s ex-husband. (“VC” at ¶24). On March 14, 2006, Jonathan Gregg Lesko and Marisa Lesko conveyed 116 Grove Street (front property) subject to the easement at issue to Chitta and Aida Parker. (“VC” at ¶25). On November 25, 2013 Aida Parker, widowed, conveyed 116 Grove Street subject to the Easement at issue to Plaintiff. (“VC” at ¶26). Pursuant to a Property Settlement Agreement, on February 24, 2020, via a quitclaim deed, Michael Mehnert conveyed his interest in 118 Grove Street to Defendant. (Aguila Certification ¶5). Plaintiff has a large driveway on the other side of 116 Grove Street with a walkway that connects to her front door. (Aguila Certification ¶8). The cutout that Plaintiff seeks to use for parking leads to the basement of 116 Grove Street. (Aguila Certification ¶9). Ms. Aguila has lived at 118 Grove Street since February 2006.

Plaintiff bought the property 116 Grove Street, Mahwah NJ 07430, otherwise known as lots 57 and 58 on the Township of Mahwah tax map, in November 2013. Issues began to rise as to the scope and intent of the easement in July 2020, at the intersection of the Covid-19 pandemic and respective increases in sizes of the two households that are the subject of this dispute.

As stated by Plaintiff, “Defendant [was] consistently parking on that easement area since November 2013...” Plaintiff continued “Recently, starting [s]ummer 2020, July-[A]ugust I have a need to use that easement area to access [] a parking lot that is located next to the easement area.” (Plaintiff’s Verified Complaint (“PVC”) at Attach. 1). Plaintiff contended in their verified

complaint that Defendant parks three cars in the easement area, however Defendant denies parking three cars in the subject easement area in question. (VC at ¶7).

During trial the Court heard testimony from the grantor of the easement Jonathan Lesko, testimony from Defendant, testimony from Plaintiff's son, and testimony by a neighbor that lives across Avenue B, the easement area in question.

Mr. Lesko, the grantor of the easement testified:

I lived at 116 Grove Street and I actually remodeled both houses and -- the history was that there was a street that went through and there was an easement and the Town gave the owners of both sides property, but the rear house had no access to Grove Street so it's called a flag lot and the easement, both easements should have been given to the back house, not the front house. The front house has parking for cars and I did pave that parking and I made it large enough to put all the cars at one time on the driveway. So the back house, they needed an easement to go to Grove Street. You can't sell a house, I don't know in any state that doesn't have access to a street so that's why I'm here, some kind of misunderstanding. But that easement should have been given -- both pieces should have been given to the back house for access.

(Transcript of Record at 9, Rasulova v. Aguila, BER-C-39-21 (2021)).

When asked to clarify what exactly he meant by access Mr. Lesko responded:

Well, like I said before, that easement was access to Grove Street from the rear house. The front house didn't need any of that easement that the Town had given. It's a flag-shaped lot. That was the only access to the rear house.

Id.

Further, when asked by Defendant's attorney, "Was it your intention that the house, the 118 Grove Street, have a driveway for parking?" Mr. Lesko answered in the affirmative "that was the driveway [the easement on Avenue B] yes, yes." Id.

Defendant's attorney concluded her direct examination of Mr. Lesko regarding intent as follows: "So just to reiterate, you testified that you created this easement, had the

assistance of an attorney ... you intended it not only for ingress and egress, but it also was for parking?”

Mr. Lesko: “Yes.”

Defendant’s Attorney: “... you [testified] if they want to park three cars on that property all the way up to Grove Street they are entitled to do that?”

Mr. Lesko: Yes.

Defendant’s Attorney: Whoever owns 118 Grove Street? [defendant’s property]

Mr. Lesko: Yes, that’s correct.

Id.

Mr. Lesko concluded his testimony by stating that when he subdivided the property and sold the back lot to Michael Mehnert, Mr. Lesko and his family remained living in the front house for some time. During that period of time Mr. Lesko treated the easement area as if it was the back lot’s “driveway”. Mr. Lesko stated “this should be clear-cut” and that “[t]he easement was given to the back house. Period.” (Transcript of Record at 18-21, Rasulova v. Aguila, BER-C-39-21 (2021)).

Plaintiff’s son, Farahod Khikmatov, testified that he recently switched bedrooms, giving rise to a need to use the side driveway that would otherwise be blocked if Defendants use the subject easement for parking. He further explained he now lives in the finished basement, with a door from his new basement bedroom that opens out into the side driveway abutting the former Avenue B and the easement area at issue in this case.

Mr. Khikmatov testified that it was inconvenient to be forced to use his mother’s driveway at the front of the property facing Grove Street:

I'm going to say this from the beginning, when I park in the front it's inconvenient because if the car parks behind me they block me off and I didn't want to tell them, Hey, can you please move your car? To my mom or -- do you know what I mean? If they come in from behind the car I don't want to ask them hey, can you move the car so it's inconvenience to me. I want to park right here where we have another driveway. Literally it's empty, another parking lot, but it's all blocked off.

(Transcript of Record at 30-31, Rasulova v. Aguila, BER-C-39-21 (2021)).

The witness further reiterated the burden of asking Plaintiff to move the cars around several times, including the testimony that if he were to use the front driveway on Plaintiff's property facing Grove Street he would be burdened as his family parks multiple cars in the front driveway. The witness testified in pertinent part: "They [his family] have to wake up and it's a simple inconvenience. I would like to park the car in the back-parking lot where I can get simple access. That's it." Id.

As a result of having his bedroom in the basement right next to the side driveway the witness believes he should "be able to easily get out – [but], I can't get out right now because it's [the side-driveway abutting the easement area] blocked so I have to go upstairs to the parking in the front to exit ... because every time I try to park here it's always blocked off." Id.

Mr. Khikmatov repeatedly stressed that Plaintiff's side driveway, abutting the easement area, was essential as Plaintiff's family was not "storing cars" but rather "it's an everyday commute thing. we have to leave in the morning. It's always an inconvenience to try to tell hey, can you move the car if the other person's [within Plaintiff's household] shift is different, work shift is different. They ... wake up and it's a simple inconvenience." (Transcript of Record at 35, Rasulova v. Aguila, BER-C-39-21 (2021)).

Ms. Betty Gerace, a neighbor across the former Avenue B, testified on behalf of Plaintiff, noting that Defendant regularly throws parties and Plaintiff is entitled to park in her side driveway,

as the easement was just for “right of way not for parking”. The Court notes Ms. Gerace began speaking over Mr. Lesko during his testimony, but as the crosstalk between witnesses was garbled and improper the Court did not fully hear, much less consider Ms. Gerace’s statements during Mr. Lesko’s testimony. (See Transcript of Record at 16, Rasulova v. Aguila, BER-C-39-21 (2021)).

Defendant testified as to the history of her time at the property, the quitclaim deed executed by her husband that gave her full title to the property, and that she would not have room to park her two cars in the very back section of the former Avenue B, as suggested by Plaintiff. The space suggested by Plaintiff allegedly would at most fit one car and would “block the one walkway into her house.” (Transcript of Record at 54, Rasulova v. Aguila, BER-C-39-21 (2021)).

Analysis

“An easement is a ‘nonpossessory incorporeal interest in another’s possessory estate in land.’” Borough of Princeton v. Bd. of Chosen Freeholders, County of Mercer, 333 N.J. Super. 310, 324 (App. Div. 2000) (internal citations omitted). “A holder of an easement . . . has ‘the right to use someone’s land for a specified purpose.’” Borough of Harvey Cedars v. Karan, 214, N.J. 384, 390 n. 1 (2013) (internal citations omitted).

An easement appurtenant is created when the owner of one parcel of property (the servient estate) grants rights regarding that property to the owner of an adjacent property (the dominant estate).” Rosen v. Keeler, 411 N.J. Super. 439, 450 (App. Div. 2010). Where the easement comes into being by way of an agreement the “universally accepted principle” is that “the landowner may not, without the consent of the easement holder, unreasonably interfere with the latter’s rights or change the character of the easement so as to make the use thereof significantly more difficult or burdensome. See Kline v. Bernardsville Ass’n, Inc., 267 N.J.S. 473, 478 (App. Div. 1993).

The intent in granting an easement is determined by the language of the conveyor, read as an entirety, and [considering] surrounding circumstances. See Hammett v. Rosensohn, 26 N.J. 415 (1958). In construing a document creating an easement, “the intent of the conveyor is normally determined by the language of the conveyance read as an entirety and in the light of the surrounding circumstances.” Id. at 423.

Here, the Court finds that the easement in question is an easement appurtenant, as Mr. Lesko granted rights in Plaintiff’s property, to the dominant estate—Defendant’s property.

The Courts finds that the explicit language of the easement alone is not wholly dispositive, and as a result the Court proceeds with the framework set forth in Hammett v. Rosensohn, 26 N.J. 415 (1958), and must consider all the relevant circumstances and intent of the grantor.

Therefore, the Court looks to the intent of the grantor Mr. Lesko, a witness with factual knowledge and no ties to either party. As Mr. Lesko testified, and was found credible by Court, it was his intent to have the easement be used as parking for Defendants, and he is not aware “of any jurisdiction that allows a house to not have access to the street.” (Transcript of Record at 9, Rasulova v. Aguila, BER-C-39-21 (2021)). Mr. Lesko’s testimony as to the nature of his ownership and subdivision of the two parcels indicate, along with the express terms of the easement, an intent to allow Defendant to park two cars within the subject easement.

Looking beyond just the words of the easement itself, or the testimony of the grantor after the fact, the Court looks to the surrounding circumstances concerning the easement area, as set out in by the New Jersey Supreme Court in Hammett v. Rosensohn, 26 N.J. 415 (1958). Here, Mahwah Ordinance § 7A-1, in pertinent part provides “No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule of Chapter 7A.” Though Plaintiff argues that

this ordinance is not enforced, the Court must look to the law and take note of the street parking prohibition present at the location of this dispute. Further, pursuant to Mahwah Township Ordinance § 22-6.2A, residential dwellings in Mahwah, such as 118 Grove Street, require a minimum of two off-street parking spots.

As such, the surrounding circumstances indicate that if Defendant is not permitted to park in the subject easement, she would have not have the statutorily required parking for the parcel, and her home would be in violation of Mahwah ordinance, an ordinance that was in effect when the parcels were subdivided. Assuming arguendo that the intent of the grantor as testified to at trial was not sufficient to convince the Court that Defendant had a right to park at least two cars within the subject easement; Mahwah town ordinance gives rise to the types of surrounding circumstances, as described in Hammet that, when combined with the express language of the easement, require the easement to be interested so as to allow Defendant to park along the right side of the former paper street, formerly known as Avenue B. The fact that Plaintiff and her household is “inconvenienced” is regrettable, but remedying said inconvenience by finding Defendant is not entitled to use the easement is wholly inequitable.

As a result, the Court finds in favor of Defendant, and finds that the subject easement is a driveway, including the right to park thereon, for at least two of Defendant’s vehicles along the right-hand side (when viewed from Grove Street) of the easement area (the paper street formerly known as Avenue B), pursuant to Mahwah Township Ordinance § 22-6.2A that requires a minimum of two off-street parking spaces for each residence. 118 Grove Street (Defendant’s property) is entitled to the right of ingress, egress, and parking of at least two vehicles in the easement area, as was intended by the grantor, and as was the practice of the parties until recently when the Plaintiff’s household needed increased access for parking in their side-driveway. Any

other result would be illogical given all the facts and circumstances presented to the Court. The grantor never intended to give 116 Grove Street two driveways and 118 Grove Street no parking lots.

Therefore, Plaintiff, or any subsequent property owner, is prohibited from blocking ingress, egress, or parking of at least two vehicles belonging to or authorized by Defendant, or any subsequent owner of 118 Grove Street, within the easement area, which consists of the right-side of the former paper street Avenue B. However, if Plaintiff or any other member of Plaintiff's household tries to access their side driveway or is blocked within their side driveway, the Court expects that the parties will continue to cooperate as they have for many years prior to accommodate the movement of Defendant's respective cars so Plaintiff or her family members may exit the side driveway, when possible

An order accompanies this decision.

This Order has been prepared and filed by the Court.

SHAHKNOZA RASULOVA,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
Chancery Division
Bergen County

v.

Docket No. C-39-21

WENDY AGUILA,
Defendant

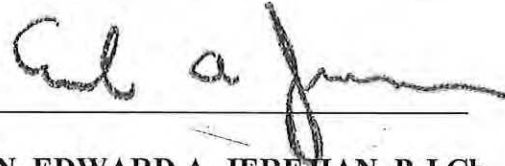
ORDER OF JUDGEMENT

THIS MATTER, having been tried before the Court May 10th, 2021 by Shakhnoza Rasulova *pro se* Plaintiff and the Law Offices of Anna Maria Meizys Esq. (Anna Maria Meizys, Esq. appearing) attorneys for Defendants and the Court having considered the testimony and documentary evidence; and pursuant to the written opinion that accompanies this order, and for good cause shown:

IT IS on this 11th day of June 2021, hereby **ORDERED**:

1. Plaintiff's claims are denied in their entirety;
2. The subject easement in question, located on the right side of the former paper street known as Avenue B, is confirmed as a driveway for ingress, egress, and parking of at least two cars for the benefit of Defendant's, 118 Grove Street Mahwah, property. Plaintiff's property, 116 Grove Street Mahwah, is restrained from interfering with the use of the easement as a driveway; however, if Plaintiff or any other member of Plaintiff's household tries to access their side driveway or is blocked within their side driveway, the Court expects that the parties will continue to cooperate as they have for many years prior to accommodate the movement of Defendant's respective cars so Plaintiff or members of her household may exit the side driveway, when possible.
3. No attorney's fees are awarded to either party;

4. A copy of this Order shall be served upon all parties within seven (7) days of the date hereof;

A handwritten signature in cursive script, appearing to read "Ed A. Jerejian", is written above a horizontal line.

HON. EDWARD A. JEREJIAN, P.J.Ch.