

STATE OF MICHIGAN
COURT OF APPEALS

LAKEWOOD HILLS,

Plaintiff-Appellee,

v

JADE PIG VENTURES—EGR, LLC, and JADE
PIG VENTURES—RAMONA, LLC,

Defendants-Appellants.

UNPUBLISHED

March 29, 2007

No. 271197

Kent Circuit Court

LC No. 04-012561-CH

Before: Sawyer, P.J., and Neff and White, JJ.

PER CURIAM.

Defendants appeal from an order of the circuit court granting summary disposition to plaintiff, and denying summary disposition to defendants, on plaintiff's claim seeking a determination that a certain easement over property owned by it had terminated. We reverse in part and remand.

The trial court summarized the facts of this case as follows:

This action was commenced in December 2004 when Plaintiff filed a Complaint alleging that a twenty-five (25) foot wide easement (the "Easement") over property owned by plaintiff in the City of East Grand Rapids (the "Lakewood Parcel") had terminated. The Easement at issue permitted ingress and egress across the Lakewood Parcel from Lakeside Drive to the former Jacobson's Department Store, which had been located on the parcel known as 2255 Wealthy Street (the "Jacobson Parcel") from 1966 to 2002.

Defendant Jade Pig Ventures—EGR LLC ("JP-EGR") acquired the Jacobson Parcel on October 7, 2002. In May 2002, Defendant Jade Pig Ventures—Ramona, LLC ("JP-Ramona") acquired the property adjacent to the Jacobson's Parcel to the north ("Ramona Parcel").

In February 2004, the Jacobson's Shopping Center was demolished. Plaintiff notified JP-EGR that the particular purposes of the Easement were no longer able to be satisfied and the Easement had terminated. JP-EGR disagreed.

In the Spring of 2004, after Defendants had acquired both the Jacobson's Parcel and the Ramona Parcel, Defendants filed a joint rezoning application with the City of East Grand Rapids seeking to have both properties collectively rezoned to Planned Unit Development ("PUD"). This joint application proposed the development of both the Jacobson's Parcel and the Ramona Parcel as one cohesive mixed use development. According to the proposed site plan, both Parcels were to be served by the Easement. The City of East Grand Rapids Planning Commission approved Defendants' PUD.

The trial court concluded that, with the demolition of the shopping center that had originally been built in the 1960s, "the stated conditions upon which the Easement was granted are no longer able to be met." Accordingly, the trial court concluded "that the Easement has terminated due to the inherent limitation contained within the grant of the Easement."

The easement provided as follows:

J. DAVID BOLAND and wife, ANNE M. BOLAND, . . . First Parties, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to them paid by LAKESHORE PLAZA, INC., . . . Convey to the Second Party, its tenants, business invitees, successors and assigns, FOREVER, a non-exclusive EASEMENT and RIGHT-OF-WAY across the property described in Exhibit A . . . for drive-way purposes of ingress and egress between Lakeside Drive and the parcel of land owned by the Second Party, which is described in Exhibit B

Said easement and right-of-way is granted to Second Party subject to the following terms and conditions to be fulfilled by Second Party:

1. That Second Party will obtain Jacobson Stores, Inc., as the major tenant in the shopping center to be constructed on Second Party's property described in Exhibit B.

2. The easement hereby granted is for pedestrian and vehicular traffic to and from Second Party's Shopping Center only. No through traffic shall be allowed. Trucks and service vehicles shall not be permitted to use said easement for the purpose of entering from Lakeside Drive and no uncovered trucks or garbage trucks shall be allowed to use said easement for exit purposes to Lakeside Drive. Second Party agrees to erect a sign at the Lakeside Drive entrance to prohibit entrance by trucks and service vehicles.

Second Party further agrees to provide and maintain landscaping along the right-of-way consistent with the landscaping of First Parties' property.

3. Second Party, for itself, its successors and assigns, hereby covenant with First Parties, their heirs, grantees, successors, and assigns, that they will, at their own cost and expense, construct, repair and maintain in a proper and workmanlike manner, the private driveway over said easement, together with all fences, lighting and/or any other appurtenances which may become necessary.

Such drive shall be paved with bituminous concrete or asphalt of suitable thickness with proper gravel base and shall be bordered by curbing.

4. First Parties hereby expressly reserve the right to the use of said easement in common with Second Party.

This agreement shall be binding upon the parties hereto, their heirs, grantees, successors and assigns.

Defendants argue that the trial court erred in concluding that the easement was solely intended to benefit a Jacobson's store. But that is not what the trial court concluded. Rather, the trial court concluded that condition number one, that Jacobson be procured as a major tenant, had been met. Unlike defendants, we do not read any portion of the trial court's opinion as concluding that the easement required that the Jacobson's store remain a tenant. Rather, the trial court concluded that it was a failure of condition number two that caused the easement to terminate. Specifically, the trial court concluded that condition number two could no longer be met once "Second Party's Shopping Center" had been demolished.

Defendants argue that the easement simply granted access to the Jacobson Parcel and that the easement's conditions merely limit the manner of its usage, but not the scope or purpose of the easement. We disagree with both defendants and the trial court. That is, we do believe that the conditions impose restrictions on the purpose and scope of the easement, but are not so restrictive as to require that the original shopping center remain in place in order for the easement to remain viable.

We review a trial court's decision on summary disposition de novo. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 368; 699 NW2d 272 (2005). Our goal in interpreting the easement "is to give effect to the parties' intent as manifested in the language of the instrument." *Id.* at 370. The language in the initial paragraph of the easement does broadly grant an easement for access to the Jacobson Parcel. The only restriction contained in that paragraph is that the easement is for purposes of ingress and egress from Lakeside Drive to the Jacobson Parcel. But the second paragraph subjects that easement grant to a number restrictions. The first sentence of the second paragraph, in our opinion, very clearly restricts the scope and purpose of the easement: for pedestrian and vehicular traffic to and from the shopping center located on the Jacobson Parcel.

Defendants argue that the permitted use of an easement may change over time, relying on the dissent in *Carmody-Lahti, supra* at 404 (Kelly, J., dissenting). Rather, as the majority in *Carmody-Lahti, supra* at 378-380, noted, an easement is generally confined to a specific purpose and the court must determine, in light of the plain language of the conveyance, if a specific purpose was intended. If so, then the use of the easement is limited to that specific purpose. *Id.* at 380-381. And an easement is terminated if the purpose for which it was granted ceases to exist, is abandoned or is rendered impossible to accomplish. *Id.* at 381-382.

Certainly the trial court's conclusion is consistent with this principle if the easement is read as having the specific purpose of providing access to the shopping center built in the 1960s. Indeed, we largely agree with the trial court. Specifically, we agree that the easement is limited to providing access to the Jacobson Parcel (along with plaintiff's right to use the easement itself)

for access to a shopping center. But in our de novo review, we read the easement somewhat more broadly than did the trial court. Unlike the learned trial judge, we do not believe that it must be the exact same shopping center that was constructed in the 1960s. The easement, while making reference to tenants in the plural, does not specify any specific tenant (beyond the obligation to obtain Jacobson Stores as the initial main tenant). Similarly, and perhaps at this point most importantly, nothing in the easement specifies any particular restrictions on the building(s) placed on the Jacobson Parcel, its size, shape, height, footprint, etc. The only restriction mentioned, with respect to the use of the Jacobson Parcel, is that the easement provides access to a “Shopping Center” only. Therefore, we conclude that the clear and unambiguous language of the easements limits the purpose of the easement to providing access to a shopping center (but not necessarily the same shopping center from the 1960s) on the Jacobson Parcel.

This then compels the conclusion that once that purpose can no longer be met—access solely to a shopping center—the easement is terminated. Accordingly, so long as defendants make use of the easement so that it only provides access to the Jacobson Parcel and the Jacobson Parcel is only utilized for a shopping center, the easement remains valid. But, if defendants allow the easement to achieve access to any property not part of the Jacobson Parcel (other than plaintiff’s property as provided for in the easement), the easement terminates because of a failure of condition two. Similarly, if defendants permit any use of the Jacobson Parcel inconsistent with that of a “shopping center,” then once again condition two fails and the easement terminates.

What is relevant is the use to which defendants have actually put the property. So long as defendants are content to limit their activity to only allow access to the Jacobson Parcel through the easement and to limit the use of the Jacobson Parcel exclusively to that of a shopping center, despite what approvals may have been obtained, then the easement remains viable.

Because the status of the property is open to question, we decline to grant defendants’ request that we order summary disposition to be granted in their favor. Rather, on remand, the trial court shall determine whether (1) the easement would allow access to any property not owned by plaintiff and not part of the Jacobson Parcel and (2) whether there is any use on the Jacobson Parcel that is inconsistent with that of a shopping center. If either of these questions is answered in the affirmative, then the easement should be deemed terminated. If the answer to both these questions is “no,” then the easement remains in place, until such time as a violation of one of the conditions renders the easement terminated. The trial court may resolve this issue either by way of summary disposition or trial on the merits, whichever is appropriate under the circumstances. The trial court is also, of course, free to consider any remaining arguments for summary disposition not previously addressed.

Reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ David H. Sawyer

/s/ Janet T. Neff