

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOARD OF SUPERVISORS OF :
CHARLESTOWN TOWNSHIP AND :
FRENCH AND PICKERING CREEKS :
CONSERVATION TRUST, INC., :
: :
Appellants :
: NO. 659 C.D. 2018
v. : NO. 707 C.D. 2018
: :
RUSSELL NAYLOR AND :
SUZANNE NAYLOR, H/W, :
: :
Appellees :

**BRIEF OF *AMICUS CURIAE*, PENNSYLVANIA LAND TRUST
ASSOCIATION, IN SUPPORT OF THE DESIGNATED APPELLANTS**

Appeal from the Order of the Common Pleas Court of Chester County,
Pennsylvania entered on January 12, 2018

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. STATEMENT OF INTEREST OF AMICUS CURIAE1

II. STATEMENT OF THE ISSUES ADDRESSED BY AMICUS CURIAE2

III. STATEMENT OF THE CASE.....3

IV. SUMMARY OF ARGUMENT4

V. ARGUMENT6

A. The Court Erred In Interpreting the Easement In A Manner that
Nullifies The Trust’s Authority to Assess Violations Of And Enforce
The Terms Of The Easement.

B. The Court’s Interpretation of the Easement Fails to Comply with the
Conservation and Preservation Easements Act.

VI. CONCLUSION.....12

CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATION

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

Bartschi v. French and Pickering Creeks Conservation Trust, CCP Chester Co. No. 07-08580.....6

LJL Transp., Inc. v. Pilot Air Freight Corp. 962 A.3d 639 (Pa. 2009)..... 7

Ray v. W. Pa. Conservancy, 2011 Pa. Dist. & Cnty. Dec. Lexis 367, affirmed 68 A. 3d 368 (Pa. Super. Ct. 013).....7

Zettlemyer v. Transcontinental Gas Pipeline Corp., 657 A.2d 920 (Pa. 1995)6, 7, 9

STATUTES

Conservation and Preservation Easements Act (“Easements Act”), Act of June 2001, P.L. 390, 32 P.S. §§ 5051 - 5059.5, 9

 32 Pa. C.S. § 50525, 9

 32 Pa. C.S. § 5055(c)(2).....9, 10

I.STATEMENT OF INTEREST OF AMICUS CURIAE

The Pennsylvania Land Trust Association (PALTA) files this brief pursuant to Pa. R.A.P. 531, which provides that anyone interested in questions in a pending appeal may file a brief *amicus curiae* regarding those questions without leave of court.

PALTA consists of seventy-five of Pennsylvania's most active conservation organizations that collectively seek to conserve Pennsylvania's special places – the farms, forests, parks, and other green spaces – that help to ensure healthy, prosperous, and secure communities. PALTA's member organizations count more than 100,000 Pennsylvanians as members and contributors. In addition to acquiring land, PALTA's member organizations conserve land by purchasing or accepting donations of conservation and preservation easements — real property interests that empower the easement holder to prevent uses of the land that are inconsistent with the easement's conservation purposes.

For this reason, any ruling that impacts the right and duty of easement holders to determine whether the conservation easement is being violated is of utmost import to PALTA and its membership organizations.

II. STATEMENT OF ISSUES ADDRESSED BY *AMICUS CURIAE*

Whether the court erred by interpreting the Easement in a manner that precludes the Trust from determining, as an initial matter, whether the proposed reconstruction and relocation of a house on the encumbered property constitutes a violation of the Easement?

Answered in the affirmative.

III. STATEMENT OF THE CASE

Amicus Curiae adopt the Statement of the Case provided by the Board of Supervisors of Charlestown Township and French and Pickering Creeks Conservation Trust, Inc.

IV. SUMMARY OF ARGUMENT

The Court erred In interpreting the Easement in a manner that nullifies the provision That Grants The Trust The Express Power To Assess Violations of the Easement. The purpose of the Easement was to “maintain the Baughman Property in its physical condition at the date the Easement was granted: a Victorian dwelling, a mill and a barn and the remainder of the Baughman Property as open space.” The express terms of the Easement grant the Trust, its holder, the authority to inspect the property for violations of the Easement, and to remove any violations on the property. By granting the property owner the right to construct a house of any size, style or color of its choosing, and to put that house at any location on the property, without the prior review of the Trust, the Court effectively writes out the Easement the Trust’s rights and duty to enforce its terms by precluding it the opportunity to assess whether the proposed reconstruction of the house is consistent with the Easement’s purpose. In short, the Court’s ruling defeats one of the most critical aspects of any conservation easement, that is, the holder’s right to and duty to enforce the terms of the Easement.

Second, the Court’s interpretation of the Easement fails to comply with the Conservation and Preservation Easements Act (“Easements Act”). In order to promote the effectiveness of conservation easements, the Easements Act commands that conservation easements “shall be liberally construed in favor of the grants contained therein to effect the purposes of those easements and the policy

and purpose of this act.” 32 P.S. § 5055(c)(2). As such, the Easements Act requires an expansive view of the holder’s rights to enforce what it views as protected by the easement. Unless the easement holder’s position is arbitrary and capricious, its interpretation of the Easement should be enforced and followed by the court. By not allowing the Trust the right to review the reconstruction project and location before its development, there is simply no way to determine, except after the fact, whether and how the proposed project would violate the Easement. For that reason, the Court’s ruling failed to liberally construe the Easement in favor of grant and purposes.

V. ARGUMENT

A. The Court Erred In Interpreting the Easement In A Manner that Nullifies The Trust's Authority To Assess Violations Of And Enforce the Terms Of The Easement.

The Easement that was entered by Mr. Bartschi benefited the Trust and granted the Trust the power to assess whether a violation occurred, and to initiate a legal action in court to enforce its terms. The Court's interpretation of the Easement precludes the Trust from reviewing the property owner's plans and location at which the owners intend to build the new house. The Court's interpretation strips the Trust of its right to enforce the terms of the Easement.

In the prior proceeding concerning this Easement, Judge Sugerman correctly recognized that the primary purpose of the Easement was "to maintain the Baughman Property in its physical condition at the date the Easement was granted: a Victorian dwelling, a mill and a barn and the remainder of the Baughman Property as open space." Even Judge Griffith, below, acknowledged that the Easement "repeatedly" demonstrates Mr. Bartschi's desire "to preserve the rural character of the area, the scenic quality of the farm, the diversity of wildlife in a variety of settings, and the historic and cultural value of the property." Memorandum Opinion at 13.

The rules regarding construction of an easement are the same as the rules governing construction of a contract. *Zettlemoyer v. Transcontinental Gas Pipeline Corp.*, 657 A.2d 920 (Pa. 1995); *Ray v. W. Pa. Conservancy*, 2011 Pa. Dist. &

Cnty. Dec. Lexis 367, affirmed 68 A.3d 368 (Pa. Super. Ct. 2013). When interpreting the language of a contract, the Court must first attempt to ascertain the intent of the parties and give that intent effect. *LJL Transp., Inc. v. Pilot Air Freight Corp.* 962 A.3d 639 (Pa. 2009). When the words are clear and unambiguous, the intent of the parties is ascertained from the language of the agreement. *Id.* In addition, when determining the intent of the contracting parties, all provisions in the agreement will be construed together and each will be given effect. *Id.*

In order to provide for enforcement of its terms, Subparagraph H of the Easement granted the Trust the right to “inspect for violations of the aforesaid provisions; to remove or eliminate any such violations; and to perform such restoration as may be deemed necessary to restore the land after removal of said violations.” Easement, Subparagrah H. The Easement further provided that the “Grantee shall have the right to seek any legal action or remedy at law or in equity to enforce the provisions set forth herein and granted hereunder, including, without limitations, by the remedies of specific performance or injunction.” *Id.*

The Court’s interpretation of the Easement effectively writes out the Trust’s right and duty to enforce its terms by precluding it the opportunity to assess whether the proposed reconstruction of the house is consistent with the Easement’s purpose. The Court below held that the property owner was not required to provide the Trust with an opportunity to review the planned construction of the new house or its location on the Baughman Farm. The Court’s ruling means that,

without any facts, and not knowing the size or design of the new structure, or its proposed location of the Baughman Farm, that there is no set of facts that would lead a Court to conclude that the proposed development would violate the terms of the Easement. However, one could imagine any number of scenarios involving construction of the new house — whether it be design, color or size of the project — that would be viewed by the holder as inconsistent with the conservation purposes of the Easement. Nonetheless, the Court’s holding effectively precludes the Trust from making that determination, as an initial matter, as expressly authorized by the Easement.

In this case, the Easement provides the Trust with the right and obligation to determine, as an initial matter, whether the terms of the Easement are being violated and to seek review of that determination in court. The Court’s ruling precludes the Trust from exercising that power because it allows the property owner to design and construct a house anywhere on the property without allowing the Trust an opportunity to assess whether the project would conflict with the purposes of the Easement. As such, the Court’s ruling fails to give effect to all of the provisions in the agreement, including perhaps the most important term, which is the provision granting the Trust the power to determine, as an initial matter, what constitutes a violation of the Easement.

For that reason, the Court’s determination that the Trust does not have a right to review the plans and location for reconstruction of the Victorian house before its construction should be overturned.

B. The Court’s Interpretation of the Easement Fails To Comply With The Conservation And Preservation Easements Act.

The Court failed to comply with the Conservation and Preservation Easements Act (“Easements Act”) by preventing the Trust from assessing whether the proposed reconstruction project and location violates the terms of the Easement.

When enacting the Easements Act, the General Assembly recognized the important public and economic benefits that conservation and preservation easements provide in protecting and managing the use of the natural, historic, agricultural, open space and scenic resources of this Commonwealth. 32 P.S. § 5052. In order to promote the effectiveness of conservation easements, the statute further commands that such easements, “shall be liberally construed in favor of the grants contained therein to effect the purposes of those easements and the policy and purpose of this act.” 32 P.S. § 5055(c)(2).

The Easements Act modified the Supreme Court’s analysis in *Zettlemyer v. Transcontinental Gas Pipeline Corp.*, 657 A.2d 920 (Pa. 1995). In *Zettlemyer*, the court held that a pipeline company could to clear additional land beyond the historic one hundred foot right-of-way without paying for a *de facto* taking of the

land because the clearing was reasonably necessary to achieve the purposes of the agreement, namely the installation of a third pipeline within the right-of-way.

In deciding the case, the Court recited the oft-used principle that the same rules that apply to contracts apply to construction of easement grants. *Id.* at 924. When the easement is unambiguous, the language of the easement controls. Whereas, when it is ambiguous, the court strives to ascertain and further the intention of the parties. "Such intention [of the parties] is 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." *Id.*

In contrast, the Easements Act commands that the easement "shall be liberally construed in favor of the grants contained therein to effect the purposes of those easements and the policy and purpose of this act." 32 P.S. § 5055(c)(2). As such, the Easements Act requires an expansive view of the holder's rights to enforce what it views as protected by the easement. Thus, unless the holder's position is arbitrary and capricious its interpretation should be enforced and followed by the court.

The Easement at issue in this case has been reviewed by two Common Pleas Court judges in two different proceedings. In both cases, the judges found that the document was eminently clear in articulating its purpose to "maintain the Baughman Property in its physical condition at the date the Easement was granted:

a Victorian dwelling, a mill and a barn and the remainder of the Baughman Property as open space,” and “to preserve the rural character of the area, the scenic quality of the farm, the diversity of wildlife in a variety of settings, and the historic and cultural value of the property.”

While the Trust agreed, below, that the grantor reserved the right to repair or reconstruct the fire-damaged Victorian house that was on the property when the Easement was entered into, it did not agree that any form, shape, size or color of reconstruction, in any location on the property, would be consistent with the Easement’s primary purpose of preserving the Baughman Property as it existed when the Easement was granted to the Trust. Indeed, without knowing any of the specifics of the planned construction project, it is impossible to know whether the newly planned structure would be consistent with the Easement. Such an interpretation fails to comply with the Easements Act because it fails to “liberally construe” the Easement in a manner that favors the grants contained in the Easement. Specifically, the court’s interpretation, below, fails to give effect to the grant of power to the Trust to determine, as an initial matter, whether a violation of the Easement has occurred, and the Easement’s purpose of preserving “the rural character of the area, the scenic quality of the farm, the diversity of wildlife in a variety of settings, and the historic and cultural value of the property.”

By not allowing the Trust the right to review the reconstruction project and location before its development, there is simply no way to determine, except after

the fact, whether and how the proposed project would violate the Easement. For that reason, the Court's ruling failed to interpret the Easement in a manner that was most likely to give effect to its purposes.

VI. CONCLUSION

For the reasons set forth above, PALTA requests that this Court reject the decision of the Common Pleas Court that allows the property owner to construct a house on any portion of the Baughman Farm without the prior review of the holder of the Easement that encumbers the property.

Respectfully submitted,

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DATED: October 17, 2018

CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATION

In accordance with Pa. R.A. P. 2135(d), I, George Jugovic, Jr., hereby certify that this brief complies with length limitation in Pa. R.A.P. 2135(a)(2) in that it contains 2883 words, excluding the supplementary matter exempted by Pa. R.A.P. 2135(b), as determined by the word counting function in the word processing system used to prepare this brief.

Dated: October 17, 2018

/s/ George Jugovic, Jr.
George Jugovic, Jr. (ID No. 39586)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief of *Amici Curiae*, Pennsylvania Land Trust Association and Pennsylvania Recreation and Park Society, was filed electronically using the PACFile system. Service will be made on the persons and in the manner set forth on the Proof of Service generated by the PACFile system, which service satisfies the requirements of Pa. R.A.P. 121. The Proof of Service generated by the PACFile system will follow this Certificate of Service in the paper copy of this brief filed with the Court.

Dated: October 17, 2018

/s/ George Jugovic, Jr.
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