

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

PLS SPECIALTIES,	:	
Plaintiff,	:	
v.	:	No. 99-00,535
VILLAGE WATER COMPANY, INC.,	:	
Defendant	:	
VILLAGE WATER COMPANY, INC.,	:	
Plaintiff,	:	
v.	:	No. 99-00,553
PLS SPECIALTIES and INDUSTRIAL	:	
PROPERTIES CORPORATION,	:	
Defendants	:	
CONFAIR COMPANY, INC.,	:	
Plaintiff	:	
v.	:	No. 99-00,552
PLS SPECIALTIES and INDUSTRIAL	:	
PROPERTIES CORPORATION,	:	
Defendants	:	

OPINION and ORDER

In this case the court must decide whether two easements exist in Fairfield Township. PLS Specialties claims that an easement it granted to Bella Vista Water Company, predecessor to Village Water Company, has been extinguished, and that it acquired a right of way in Fairfield Road when purchasing land from Lycoming Better Homes because that road was shown on a subdivision map. We find against PLS on both counts.

Findings of Fact

The court adopts the facts as presented in the document entitled, “Stipulation of Facts and Joint Statement of Issues Presented.”

Conclusions of Law

1. Village Water Company, Inc. has the right to use the ten foot wide easement or road across PLS Specialties' property for ingress, egress and regress to and from State Route 2014 (formerly Old Route 220) to land now owned by Village Water Company, which is described in Lycoming County Deed Book 983, Page 188.
2. PLS Specialties has no rights of any nature whatsoever with respect to the use of the unopened road known as Fairfield Road depicted on the subdivision plans of Bella Vista Village.

DISCUSSION

A. Extinguishment of Easement

On 9 November 1987, Lycoming Better Homes, Inc. (LBH) and PLS entered into an agreement of sale whereby LBH agreed to sell and PLS agreed to purchase a 16.77 acre parcel of land in Fairfield Township, Lycoming County. Paragraph 2 of the Agreement provides:

The premises are to be conveyed free and clear of all liens, encumbrances, easements excepting existing easements, covenants and restrictions of record or those which are visible or an inspection of the ground would reveal, including, but not limited to utility easements and right of way between Old Rt. 220 and a parcel of ground located within Exhibit "A" owned by Bella Vista Village Water Co, Inc., as well as a pipeline easement from said parcel of ground owned by Bella Vista Village Water Co., Inc. to property owned by Lycoming Better Homes, Inc. for the purpose of maintaining, replacing and adding water lines, and subject also to certain utility easements as are set forth in the subdivision of Lycoming Better Homes, Inc. Provided, that BUYER agrees to permit SELLER to reserve an easement for the purpose of obtaining access to SELLER's existing water pump and tank.

On 29 July 1988, LBH conveyed the land to PLS, and the deed was recorded

in Lycoming County Record Book 1301, page 327. The deed contained the following clause:

Excepting and reserving therefrom utility and planning easements along the western, northern and eastern lines, easements for visible utility lines, and a 10 foot wide easement or road for ingress, egress and regress to and from State Route 2014 (formerly Old Route 220) to land at the Bella Vista Village Water Co., Inc.

PLS argues the Agreement shows the parties intended the easement to be limited to the purpose of gaining access to a water pump and tank on the water company's property, and the easement has been extinguished now that the pump and tank have been removed. We need not decide whether the language of the Agreement actually limits the use of the easement to obtaining access to the water pump and tank because according to the doctrine of merger, an agreement of sale merges into the deed and no recovery may be had based upon the earlier agreement. Elderkin v. Gaster, 447 Pa. 118, 288 A.2d 771 (1972).

PLS claims the doctrine of merger does not apply in this case because that doctrine does not foreclose inquiry into matters that are not intended to be controlled by the deed. Here, however, the matter is clearly intended to be controlled by the deed, for the deed specifically addresses the use of the easement and states that its use is very broad: "for ingress, egress and regress to and from State Route 2014 (formerly Old Route 220) to land at the Bella Vista Village Water Co., Inc."

PLS also claims the doctrine of merger does not apply because the future use of an easement is an area the courts have recognized as not merging into a deed. It cites the case of Perrige v. Horning, 440 Pa. Super. 31, 654 A.2d 1183 (1995), citing Valvano v. Galardi, 363 Pa. Super. 584, 526 A.2d 1216 (1987). Perrige itself provides no support at all for PLS' argument; it merely cites Valvano for the

proposition that “an agreement of sale is not merged as to matters not to be consummated by the deed, or which are collateral to it, such as future use of an easement.” Perrige, supra, at 1187 fn. 5. Furthermore, a glance at Valvano clearly reveals that the statement “future use of an easement,” is not as broad and far-reaching as it seems. Rather, it refers to a situation where the actual easement and its use are to be determined in the future.

In Valvano, the buyers were purchasing a plot sandwiched in between land owned by the sellers, and the parties entered into an agreement whereby the buyers had an option to purchase additional land in the future within two years. In the meantime, the buyers granted the sellers an easement to that additional land. The boundaries of the easement were to be determined by the buyers in the future, and the easement was to terminate if the buyers exercised the option. The court found that it was the expressed intention of the parties that the agreement not be merged in the deed, and there was no need to refer to the easement in the deed to the buyers because for all practical purposes it would not come into fruition if the buyers exercised their option. Id. at 1220-21, fn. 2.

These facts are obviously distinguishable from the case before the court. Here, the easement was clearly intended to be addressed in the deed and actually was addressed in the deed. Therefore, the agreement merged into the deed.¹

¹ The court realizes that due to the merger, testimony regarding the intent of the parties is not relevant. However, because we reserved our ruling on this legal issue, we permitted Lance Spitler of PLS to testify, cognizant that we could disregard his testimony if necessary. Mr. Spitler’s testimony turned out to be completely unhelpful to PLS’ case, because he testified only as to his own understanding as to the use of the easement, and did not present any evidence regarding what LBH said or did to make him arrive at that conclusion.

B. Fairfield Road Easement

PLS also claims it is entitled to use Fairfield Road because that road was shown on the Bella Vista development map.² It relies on the line of cases stating that when a conveyance is made referring to a map or subdivision plan calling for streets and alleys, those streets and alleys are available for use to the purchasers as public ways.

Here, however, although the plan shows Fairfield Road within the property slated to become Bella Vista Village subdivision, the parcel conveyed to PLS is not within that subdivision. Furthermore, the map does not show Fairfield Road as leading into PLS' land, and in fact shows a twenty foot planting easement along the northeastern boundary of where Fairfield Road was to have been located. This planting easement is also specifically mentioned in the deed from LBH to PLS. Therefore, there is no implied easement, as PLS clearly was not one of the intended property owners and PLS had no reason to believe it would have any right to use the road for access to its property. This conclusion is supported by the fact that the Agreement of Sale of the property was conditioned upon PLS obtaining approval from Penn Dot for access to the property from Old Route 220, which demonstrates that PLS relied on that access, and not access through Fairfield Road.

² Fairfield Road was never opened.

ORDER

AND NOW, this 21st day of March, 2000, after a non-jury trial, for the reasons stated in the foregoing opinion, the court finds in favor of Village Water Company, Inc. and Confair Company, Inc., and against PLS Specialties.

Specifically, we hold:

1. Village Water Company, Inc. has the right to use the ten foot wide easement or road across PLS Specialties' property for ingress, egress and regress to and from State Route 2014 (formerly Old Route 220) to land now owned by Village Water Company, which is described in Lycoming County Deed Book 983, Page 188.
2. PLS Specialties has no rights of any nature whatsoever with respect to the use of the unopened road known as Fairfield Road depicted on the subdivision plans of Bella Vista Village.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
William Knecht, Esq.
Fred Holland, Esq.
Gary Weber, Esq., Lycoming Reporter