IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

HOLY DONUT, LLC	)	**CASE NO. CV 12 790472**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	
	)	
MO UN YEE GEE*, et al.*	)	**JOURNAL ENTRY OF THE VERDICT**
	)	**AFTER A BENCH TRIAL**
Defendants.	)	
	)	

John P. O'Donnell, J.:

This is a lawsuit by a property owner, Holy Donut, LLC, for a declaratory judgment that it is entitled to an easement over part of the property owned by its neighbor to the east, defendant the Mo Un Yee Gee Trust, and once occupied by defendant Dervish Grill, LLC.

On December 26, 2013, the plaintiff's motion for summary declaratory judgment was granted in part and a declaratory judgment that Holy Donut is entitled to an easement for ingress, egress and parking over some portion of the north-south boundary between the parties' parcels was entered. That declaration left for a trial the exact dimensions of the easement. The question to be answered by the evidence at trial was what portion of the servient estate is reasonably necessary for the beneficial use of the dominant estate.

History of the property[1]

In Ohio, easements may be implied from an existing use at the time of the severance of ownership in land. *Trattar v. Rausch*, 154 Ohio St. 286, 291-292 (1950).

[1] The evidence supporting this recitation of the history of the property is a combination of the trial evidence and the evidence of record on summary judgment. To the extent any of the evidence – whether presented by way of the summary judgment briefing or in open court at trial – is disputed, then this recitation should be construed as findings of fact after a bench trial.

Plaintiff Holy Donut, LLC owns the property at 27624 Lorain Road in North Olmsted. The property has permanent parcel number 232-10-067. The land is on the north side of Lorain just east of Porter Road. The building there has been used as a doughnut shop since 1965 and it sits essentially on the middle of the parcel but the east side of the building is very near the eastern edge of the parcel so, as a practical matter, access to the side and rear of the building requires traveling over the western edge of the neighboring property.

The neighboring property at 27600 Lorain is permanent parcel number 232-10-056. It is owned by defendant the Mo Un Yee Gee Trust and leased to defendant Dervish Grill, LLC. The building on parcel 56 is closer to the eastern edge of its property, leaving a swath of asphalt about 50 feet wide between the two buildings.

The plaintiff's implied easement is over an as yet undefined area on the western portion of this patch of asphalt.

The two separate parcels were originally part of a single parcel owned by Gizella Johnson. She owned the land when a doughnut shop first opened in the building on what is now parcel 67 in 1965. Johnson sold the single parcel in 1974 to Rose and Raymond Jenne. The unity of ownership of the parcels was severed two years later when the Jennes divided the single parcel into its current configuration and the new parcel 67 was deeded to Rose Jenne alone while parcel 56 remained under Rose and Raymond Jenne’s joint ownership.

The deed of parcel 67 to Rose Jenne did not include an easement over parcel 56 even though the doughnut shop was so close to the eastern edge of the new parcel.

In 1981, the Jennes leased parcel 56 to Angelo Karouzos. That lease included a 20-foot wide easement in favor of parcel 67 running the length of the north-south boundary between the two parcels. The Jennes divorced in 1984 and ownership of parcel 56 went to Raymond Jenne

only. The documents evidencing that transfer did not reserve an express easement in favor of parcel 67 but the lease to Karouzos remained in effect – with the easement in favor of the doughnut shop – until 1994. In August 1995, Raymond Jenne transferred parcel 56 to Christopher and Traudel Moore and Daniel J. Fronczak. Simultaneously, the Moores and Fronczak deeded the property to Ming Sun Gee and Mo Un Yee Gee. Neither deed reserved an easement for the doughnut shop.

Ming Sun Gee and Mo Un Yee Gee were husband and wife.[2] On October 11, 1996, Ming Sun Gee transferred his ownership in parcel 56 to Mo Un Yee Gee by a quitclaim deed. The parcel was transferred to its current owner – defendant the Mo Un Yee Gee Trust – by Mo Un Yee Gee through a quitclaim deed dated February 24, 2011. The quitclaim deeds did not mention an easement in favor of parcel 67.

Despite there being no express easement in the deed giving her title to the property, sometime in late 1996 or early 1997 Mo Un Yee Gee leased parcel 56 to Minotti Beverage subject to the 20-foot easement.[3] Then, in 1999, Mo Un Yee Gee conducted herself as if the easement were in effect by approaching the Donut Connection, then the tenant at parcel 67, with a request that the Donut Connection pay a portion of "recent repairs made on the drive areas of common usage."[4] Finally, on February 7, 2012, Mo Un Yee Gee, as trustee of the trust, negotiated a lease of parcel 56 to Dervish Grill, LLC. That lease includes, at page 7, an acknowledgment that "the leased premises are subject to two twenty (20) foot driveway easements."[5] The lease also attached as an exhibit a diagram showing a 20-foot driveway

[2] Ming Sun Gee has since died.
[3] The evidence of this is a January 20, 1997, letter from Mo Un Yee Gee's counsel to counsel for Minotti, attached as exhibit F to the plaintiff's motion for summary judgment. The letter references an "existing lease" and "the lease which your clients signed." The lease itself is not in evidence, but the letter is important because it shows that Mo Un Yee Gee was aware that "the previous owners of the Gee property and Mr. Donut have observed the easement."
[4] Plaintiff's motion for summary judgment, exhibit G.
[5] *Id*., exhibit A.

easement on the border between parcels 67 and 56 that was first created more than 30 years earlier as part of the lease between the Jennes and Karouzos.

Based on all of these facts I found that an implied easement existed on the western boundary of the Gee trust's property in favor of the plaintiff's property, and I found that the easement was binding on the trust because it had constructive notice of the easement when acquiring the property. But unlike an express easement, which details the bounds of the area of the servient estate subject to the dominant estate's use, a prior use easement, because it arises by implication, does not have specific boundaries. As a result, the easement is limited to the area of the servient estate "reasonably necessary to the beneficial enjoyment of the" dominant estate. *Shangrila Ohio, L.L.C. v. Westridge Realty Co.*, 8th Dist. No. 99784, 2013-Ohio-3817, ¶18.

Summary of the parties' arguments

Holy Donut claims that it is necessary to take the historical uses of the easement into account when determining its current bounds. The plaintiff offered evidence that the western portion of the defendant's property has always been used for ingress to and egress from the doughnut shop, and as parking for doughnut shop customers. Accordingly, the plaintiff claims that the portion of the defendant's land reasonably necessary for the beneficial enjoyment of its own land is the amount of square feet needed 1) to allow access to and from its property – including access to the rear of the current building – and 2) to park at least 30 cars.

The basis for the latter assertion is that in order to use the premises as a doughnut shop, or other similar business, North Olmsted's municipal ordinances require a minimum of 30 spaces, calculated according to the restaurant building's square footage.

The defendant argues that the best evidence of the easement on its property reasonably necessary for the beneficial use of Holy Donut's own property is the use to which the servient

estate was put to in 1976, when the two parcels were severed. The defendant points to evidence showing that the servient estate was used only for ingress and egress as of 1976 to support its contention that the implied easement only needs to be big enough to accommodate going in and out and should not include any extra area for doughnut shop parking.

Evidence of the easement on the Gee trust's property reasonably necessary for Holy Donut's beneficial enjoyment of its own property

Rose Jenne is the sole member of Holy Donut, LLC. Her ex-husband is Raymond Jenne. Both the Jennes testified at trial. Raymond was familiar with the two properties as early as the mid-1960s because he worked at a hamburger stand on the parcel now owned by the Gee Trust.[6] At that time the parcel now owned by Holy Donut was a doughnut shop leased to Mister Donut and Raymond testified that patrons of the doughnut shop parked "[a]nywhere they wanted" on the lots surrounding the two buildings. This permissive parking arrangement was reciprocal because customers of the hamburger stand would also park anywhere.

Raymond testified that the lot split was done only to make it clear which business was responsible for property taxes but that the split was not intended to affect the parking arrangement, which he intended to be permanent. But even though cars visiting either business were allowed to park "anywhere," when the restaurant was leased to Karouzos in 1981 the lease included a drawing entered into evidence as page HD 0048 of Exhibit C. That diagram showed diagonal parking spaces along the east side of the doughnut shop that jutted over the border between the two parcels and onto parcel 56. Raymond confirmed that in 1976 there were parking spaces painted on to the property at approximately the locations shown in that drawing. He also agreed that nothing changed from then until he sold parcel 56 in 1995 and that it was a mistake not to include the easement in the deed to the Moores and Fronczak.

[6] I use the Jennes first names for clarity. No disrespect is intended.

Rose's testimony about the historical use of the properties was consistent with Raymond's. She agreed that in the 1960s customers of each business parked "everywhere" on the two parcels and that that remained the case even through 2010.

The plaintiff's final witness was the architect Brian Fabo. His testimony revealed that: 1) North Olmsted's municipal ordinances require a dumpster to be located behind the doughnut shop; 2) a garbage truck could not reach the dumpster to empty it without driving over the Gee trust's parcel. Fabo also testified that a restaurant is the best use of this piece of property and the doughnut shop cannot be used as a restaurant today if it does not have at least 30 dedicated parking spaces. Fabo calculated that 15 spaces could be made to fit on Holy Donut's parcel (11 in the front and four in the back). The rest of the spaces would not only all be on the Gee trust's property but would necessitate a reconfiguration of the traffic flow and the other parking spots on the Gee trust's property.

Conclusion

The plaintiff argues that the correct dimensions of the easement are whatever is needed to install 14 spaces along the west side of the defendant's property, with another 24 feet behind those spaces for ingress and egress. According to the plaintiff this will preserve "the interplay between the two parcels to maximize parking spots." Trial transcript, p. 115, lines 22-23. That "interplay" is customers for both businesses parking anywhere on either parcel.

But the plaintiff's solution is unworkable. First, it contemplates an easement on the plaintiff's property – the right to park "anywhere" – that the defendant hasn't asked for and probably doesn't want. I am loath to declare an easement in the defendant's favor that it is not seeking. Second, I can find no authority for the proposition that the easement needs to be of a size that will permit the plaintiff's proposed use of its building and land under the current

municipal ordinances. The maximum extent of the easement over the defendant's land available to the plaintiff is that amount of space which is reasonably necessary for the plaintiff's beneficial use of its own land.

Historically, the plaintiff enjoyed the beneficial use of its own land by having diagonal parking spaces along the east side of its building, with room behind those spaces to come in and out. As a result, the implied easement here has dimensions sufficient to allow those diagonal parking spaces and the access area behind them. Those dimensions are portrayed on page HD 0048 of trial exhibit C, the only diagram of the easement area, but one that is nearly contemporaneous with the date of severance of the two parcels.

Accordingly, having declared on summary judgment that an implied easement for ingress, egress and parking in favor of the plaintiff exists on the north-south boundary between the two parcels, I find on the trial evidence that the easement runs the length of the north-south boundary between the properties and extends 40 feet to the east, on to the defendant's property, where the first 16 feet may be used for diagonal parking and the remainder for ingress and egress.

But this is a non-exclusive easement only, and the servient estate (the defendant's property) retains the right to allow customers of any business on parcel 56 to park in whatever spaces are ultimately created along the north-south boundary of the properties, even if a fraction of those parking spaces is on parcel 67.[7]

[7] I recognize that this may seem in conflict with my expressed hesitancy on page 6 to order an easement on the plaintiff's property in favor of the defendant. Yet the trial evidence did not make it clear exactly whether the diagonal parking spaces *circa* 1976 were on any portion of the plaintiff's land or were solely on the defendant's property. I am left with the impression, however, that at least the first few feet of the spaces was on the plaintiff's land, so the 16-foot measurement is an estimate of how much of the defendant's property is needed to accommodate the spaces.

The defendant is ordered to forthwith remove the asphalt curb currently on or near the north-south boundary between the parcels because it impedes the plaintiff's use of the easement.

The plaintiff is ordered to file a copy of this judgment entry – cross-referenced to parcels 232-10-056 (the servient estate) and 232-10-067 (the dominant estate) – with the real property department of the Office of the Cuyahoga County Fiscal Officer (formerly the recorder's office).

The entry of summary judgment dated December 26, 2013, established that an implied easement exists and this entry establishes the bounds of easement. The plaintiff's second amended complaint includes a cause of action for the defendant's interference with the easement and that claim still remains to be resolved after a trial. By a separate entry, I will set a pretrial conference for the purpose of scheduling a trial on the interference claim.

IT IS SO ORDERED:

_____ Date: January 3, 2016

Judge John P. O'Donnell

SERVICE

A copy of this journal entry was sent by email, this _____ day of January, 2016, to the following:

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Judge John P. O'Donnell