IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HARALAMBOS HIONIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 270-S
	)	
DONALD W. SHIPP, JR. and SUSAN S. SPENCER,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: April 28, 2005
Date Decided: June 16, 2005

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STRINE, Vice Chancellor

Plaintiff Haralambos Hionis and defendants Donald W. Shipp, Jr. and Susan S. Spencer have filed cross-motions for summary judgment on the question of whether certain property that Hionis purchased from Charles Kauffman and Frank Rickards is encumbered by an access easement favoring Shipp (and Spencer as Shipp's successor-in-interest). Although documents filed with the Recorder of Deeds for Sussex County purporting to grant the contested easement are technically defective, I find that the easement Shipp claims has been created by estoppel. Shipp has presented clear and convincing evidence demonstrating that Hionis' predecessors-in-interest represented to Shipp that he had been granted an easement, that they intended the easement granted to Shipp to be permanent, and that Shipp relied upon their promise to his detriment. Accordingly, Shipp's and Spencer's motions for summary judgment are granted and Hionis' motion for summary judgment is denied.

I. Factual Background

The following facts of record are undisputed.

On December 27, 1999, plaintiff Haralambos Hionis purchased a 1.5-acre parcel of land located in Sussex County, Delaware (the "1.5-acre Parcel"). The land that Hionis purchased adjoins lands owned by defendants Donald W. Shipp, Jr. and Susan S. Spencer. The 1.5-acre Parcel is situated between Shipp's and Spencer's parcels and a nearby road. Consequently, Shipp and Spencer can enter their respective properties only by crossing the 1.5-acre Parcel.

Shipp, a retired general contractor, has done precisely that for almost twenty years. After purchasing his land in 1986, Shipp improved an existing footpath that bisected the

1.5-acre Parcel, constructing a gravel driveway by which he could enter his property. Shipp claims that he was granted an easement to maintain and use that driveway by Hionis' predecessors-in-interest in the 1.5-acre Parcel. Hionis responds that the easement recorded by his predecessors-in-interest refers only to a thirty-foot corner of his triangular parcel, noting that a second easement, purporting to convey an interest in the driveway maintained by Shipp, was not validly recorded. Shipp and Spencer reply that, even absent a validly recorded easement, Shipp has an easement over the 1.5-acre Parcel because there is undisputed testimony that Hionis' predecessors-in-interest intended to create a permanent right for Shipp to cross the property.

On October 17, 1972, Charles Kauffman and Frank Rickards, Hionis' predecessors-in-interest bought the 1.5-acre Parcel from George and Gladys Moore. The land in that conveyance was titled to Kauffman and Rickards as individuals.[1] The 1.5-acre Parcel is shaped like a right triangle oriented with the hypotenuse facing west, the short side facing northeast, and the intermediate side facing southeast. The entire length of the hypotenuse borders a road called Moore's Way and the northeast- and southeast-facing sides border what was at that time a single 6.2-acre parcel of unimproved land owned by Linwood and Ellen Banks (the "6.2-acre Parcel"). The 1.5-acre Parcel was also unimproved, but a short path, described by the parties as a "deer hunter's path," extended a short distance into the center of the property from a point bordering Moore's

[1] Kauffman and Rickards owned several pieces of land together. Some were owned through their legal partnership, Kauffman & Rickards; others were owned by Kauffman and Rickards in their individual capacities as cotenants.

Way at the northern tip of the Parcel. Importantly, the 6.2-acre Parcel does not abut Moore's Way or any other road.

On April 9, 1986, Shipp (and his then-wife) bought the 6.2-acre Parcel from Linwood and Ellen Banks. Before closing on the sale, Shipp sought permission from Kauffman to extend and use the deer hunter's path as a means of entering the 6.2-acre Parcel. Kauffman agreed, noting that he believed an easement across the 1.5-acre Parcel had already been conveyed in Shipp's deed. Kauffman was at least partially correct. Shipp's deed refers to a "thirty [foot] easement for ingress and egress." The deed was filed with a survey, prepared in March 1986 by McCann, Inc. (the "March 1986 McCann Survey") showing a road, labeled as the "30' Ingress & Egress Easement," which crosses the northern tip of the 1.5-acre Parcel. But the easement conveyed in Shipp's deed did not actually track the course of the deer hunter's path, as Kauffman believed. Kauffman did not execute or file a formal easement at that time, although he has sworn by affidavit that both he and Rickards agreed to Shipp's improvement and use of the deer hunter's path, and that both he and Rickards believed a corresponding easement across the 1.5-acre Parcel had already been reserved for Shipp in his deed for the 6.2-acre Parcel.[2]

Immediately after the sale, consistent with his belief that he had been granted an easement by Kauffman and Rickards, Shipp extended and improved the deer hunter's path, building a gravel driveway that connected his property to Moore's Way. Shipp later built a home in the southwestern corner of his property, bordering the 1.5-acre Parcel, and has maintained and used the driveway to travel to and from his house ever since.

[2] Kauffman Aff. ¶¶ 6-7.

In 1993, Shipp subdivided his 6.2-acre Parcel into two one-acre lots and a larger 3.7-acre parcel. As part of the subdivision plan, Shipp carved out a fifty-foot right-of-way to provide access to all of the subdivided lots, beginning from the point where the gravel driveway across the 1.5-acre Parcel crossed onto Shipp's property — essentially extending the driveway another 300 feet into the center of the 6.2-acre Parcel. Shipp's subdivision plan was approved by the Sussex County Planning and Zoning Commission and recorded on May 17, 1993.

On May 18, 1993, Ann M. Couch, Kauffman's assistant, prepared an easement agreement (the "May 1993 Easement") purporting to grant Shipp a permanent easement across the 1.5-acre Parcel tracking the course of the gravel driveway. Importantly, the May 1993 Easement lists Kauffman & Rickards, a partnership, as the owner of the 1.5-acre Parcel. Kaufmann executed the Easement as Chairman of the partnership, but Rickards did not execute the Easement. Because Kauffman and Rickards actually owned the 1.5-acre Parcel jointly, as cotenants, the May 1993 Easement was technically defective. Further complicating matters, Kauffman neglected to file the May 1993 Easement with the Recorder of Deeds until 1999, more than six years after he executed it.

In October 1996, D. Stephen Parsons prepared a second easement agreement (the "October 1996 Easement") granting Shipp a right-of-way across the 1.5-acre Parcel.[3] That easement correctly named Kauffman and Rickards individually as the grantees, and was properly executed by both Kauffman and Rickards on October 3 and October 1,

[3] Also in 1996, Shipp's ex-wife, who originally held an interest in the 6.2-acre Parcel, conveyed her entire interest in the 6.2 acres, as subdivided, to Shipp.

1996, respectively. Unlike the May 1993 Easement, however, the October 1996 Easement did not track the course of the gravel driveway. Instead, the October 1996 Easement granted Shipp "a 30' ingress and egress easement" with reference to the March 1986 McCann Survey.[4] That survey — the same that was originally filed with Shipp's deed for the purchase of the 6.2-acre Parcel — shows only the thirty-foot easement crossing the northernmost tip of the 1.5-acre Parcel. The October 1996 Easement was promptly filed with the Recorder of Deeds.

Hionis contracted with Kauffman and Rickards to purchase the 1.5-acre Parcel in October 1997. At that time, Hionis was aware of the gravel driveway that Shipp had built across the 1.5-acre Parcel, and knew that Shipp was using the driveway. The only recorded easement encumbering the 1.5-acre Parcel at that time, however, was the October 1996 Easement, which did not track the gravel driveway. Hionis commissioned a survey of the 1.5-acre Parcel in December 1997 (the "December 1997 Survey"). The December 1997 Survey reflects only the thirty-foot easement shown in the March 1986 McCann Survey, as described in the October 1996 Easement. After receiving the December 1997 Survey, Hionis sent Shipp a letter, dated January 9, 1998, informing Shipp that the gravel driveway did not conform to the recorded easement across the 1.5-acre Parcel. Shipp, believing that he had a valid easement, made no reply to Hionis' letter, and continued to use the driveway.

[4] The 1996 Easement describes an easement "as shown on a plot prepared by McCann, Inc., Registered Surveyors, dated March, 1996" and filed with the Sussex County Recorder of Deeds in Plot Book 57, Page 212. The referenced survey is misdated; there is no March 1996 McCann survey. The 1996 Easement intended to reference the March 1986 McCann Survey, which is filed, as described, in Plot Book 57, Page 212.

Although Hionis contracted with Kauffman and Rickards for the conveyance of the 1.5-acre Parcel in 1997, the sale did not close until more than two years later, in 1999. Because several outstanding judgments had been entered against Kauffman, the sale could not close until the judgments were resolved. During this intervening period, on May 24, 1999, Frank Rickards died. The only easement encumbering the 1.5-acre Parcel that Rickards had executed was the October 1996 Easement.

On October 27, 1999, defendant Spencer contracted with Shipp to purchase the easternmost one-acre lot and the larger 3.7-acre parcel that were created through the subdivision of Shipp's 6.2-acre Parcel. On November 3, 1999, the October 1996 Easement — executed by Kauffman alone and unfiled for more than six years — was filed with the Recorder of Deeds. Immediately thereafter, Shipp closed on his land sale to Spencer.

Hionis finally closed on his purchase of the 1.5-acre Parcel on December 27, 1999 — more than two years after contracting to purchase the parcel, but less than two months after the October 1996 Easement was filed. Because Frank Rickards had died earlier that year, the heirs of Rickards' estate, along with Kauffman, executed the deed for the conveyance of the 1.5-acre Parcel to Hionis.

II. Legal Analysis

The defendants have moved for summary judgment arguing that, even absent a technically valid easement, Shipp's reliance upon Kauffman's representations that Shipp could improve and use the deer hunter's path, coupled with Kauffman's and Rickards' actual intent to grant Shipp an enduring right to do so, effectively created an easement

interest in the 1.5-acre Parcel favoring Shipp. Hionis counters with his own motion for summary judgment, arguing that his predecessors-in-interest afforded Shipp only a revocable license to cross the 1.5-acre Parcel, and that absent a validly recorded instrument, no easement was created.

In considering cross-motions for summary judgment, the court applies the familiar standards applicable under Court of Chancery Rule 56. Summary judgment will be granted if, making all inferences in favor of the non-moving party, no material factual dispute remains, and the moving party is entitled to judgment as a matter of law.[5]

Here, the factual record is not in dispute. At oral argument on April 28, 2005, counsel for Hionis conceded that the outcome of the cross-motions turns purely on a legal question, admitting that the following facts were, as a matter of record, not in dispute:

1. that Charles Kauffman and Frank Rickards intended to convey an easement tracking the deer hunter's path to Shipp;

2. that Shipp incurred substantial expense and entered into other commercial transactions in reliance on Kauffman's representations concerning that easement; and

3. that the only basis for contesting Shipp's easement is the failure of Kauffman and Rickards to properly document their grant of the easement to Shipp during Rickards' lifetime.

Counsel for Hionis further admitted that these facts suffice to establish an easement by estoppel for Shipp under the literal teaching of this court in *Hammond v.*

[5] *See, e.g., Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (summarizing standards for summary judgment).

Dutton[6] and *Carriage Realty Partnership v. All-Tech Auto*.[7] Under the rules set forth in *Hammond*, an easement by estoppel is created when 1) a promisor's representation that an easement exists has been communicated to a promisee; 2) the promisee believes the promisor's representation; and 3) the promisee acts in reliance upon the promisor's representation.[8] Consistent with *Hammond*, this court stated more recently in *Carriage Realty* that a parol agreement granting an easement must be treated as a revocable license, but only "absent evidence of intent to create an enduring privilege or fraud."[9] In so holding, both *Hammond* and *Carriage Realty* were consistent with venerable Delaware precedent, which indisputably suggests that an oral grant of a license to use land can vest enforceable rights in the grantee if the court is convinced that the grant of use was reasonably relied upon and that the parties intended the grant to be permanent.[10]

Hionis relies on the primacy of the statute of frauds, which requires that agreements for the conveyance of interests in real estate, including easements, be

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[6] 1978 WL 22451 (Del. Ch. Dec. 20, 1978)
[7] 2001 WL 1526301 (Del. Ch. Nov. 27, 2001).
[8] *Hammond*, 1978 WL 22451, at *3 (citing *Exxon Corp. v. Schutzmaier*, 537 S.W.2d 282, 285 (Tex. Civ. App. 1976)).
[9] 2001 WL 1526301, at *8.
[10] *See Jackson & Sharp Co. v. Philadelphia, Wilmington & Baltimore R.R. Co.*, 1871 WL 2084, at *5 (Del. Ch. Sept. 1871) (holding that the grant of a privilege the use of real property may be treated as a permanent contractual right, that is, an easement, when expenditure is made in reliance upon the grant, if the parties intented the grant as "a right, *in all events* and not as an arrangement depending upon the will of the parties for its continuance." The analysis of the parties' intent to create a permanent right is "controlled by the circumstances of the particular case, and may be wholly countervailed by evidence demonstrative that the privilege in question was in fact granted and accepted not as a perpetual, indefeasible right, but as a voluntary accommodation, to abide the good will and mutual interests of the parties.") (emphasis in original); *see also Baynard v. Every Evening Printing Co.*, 77 A. 885, 887 (Del. Ch. 1910) (relying heavily on the *Jackson* opinion in denying the existence of easement by estoppel, citing a lack of evidence that the parties intended to create an "enduring privilege").

formalized in a written contract.[11] Hionis argues that the court's interpretation of the doctrine of easement by estoppel as an exception to the statute of frauds in both *Hammond* and *Carriage Realty* was erroneous, asserting that an easement by estoppel should only be found to exist when the person claiming the easement was victimized by fraud. Accordingly, he asks that I deviate from the rulings in *Hammond* and *Carriage Realty*, and adhere to his more narrow — and, he claims, more historically accurate — reading of the required elements of easement by estoppel. Otherwise, he says, the court will undermine the valuable function served by the normal requirement that interests in land be formalized through a validly recorded contract, allowing the statute of frauds to be circumvented so easily as to render it meaningless, and thereby opening the door to countless challenges to real property conveyances in the future.

I do not find Hionis' arguments persuasive. As to his claim that this court's *Hammond* and *Carriage Realty* opinions misread past precedent by concluding that an easement by estoppel could arise in the absence of fraud, Hioinis is, in my view, simply mistaken. Fraud is just one circumstance that might justify finding an easement by estoppel. The *Hammond* factors accurately outline another historically recognized set of circumstances that give rise to easements.[12]

Further, the dangers of adhering to this court's prior precedent are not nearly as dire as Hoinis suggests. The common law has long recognized equitable exceptions to the application of the statute of frauds that can form the basis for a claim of ownership, in

[11] 6 *Del. C.* § 2714(a).
[12] *See* cases cited *supra* note 10.

whole or in part, of real property. For example, oral contracts for the sale of land have been upheld under the equitable doctrine of part performance.[13] Such exceptions are not easy avenues around the statute of frauds, however; a party seeking to enforce a parol contract faces an enhanced evidentiary burden, and must demonstrate by clear and convincing evidence that such an exception is applicable. The heightened evidentiary burden recognizes that non-compliance with the regular formalities required of real estate transactions should not be lightly tolerated, and that one seeking to claim an interest in land based on an oral agreement or a course of dealing should prove her claim with very strong evidence, which leaves the court with the same degree of certainty that a formal written contract ordinarily provides.

Hionis' "sky is falling" argument must also be considered in light of what is at risk here. Shipp seeks to enforce a parol easement agreement that will merely permit him to cross Hionis' property. In light of the fact that parol agreements transferring fee simple ownership of real property have often been upheld by Delaware courts under exceptions to the statute of frauds, there is no discernable policy justification to preclude a similar cause of action seeking to demonstrate that a lesser property interest — here, an access easement — exists by estoppel, so long as the existence of the agreement to create that

[13] *See, e.g., Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988). Parol contracts for the conveyance of real property have also been upheld where the parties to the contract do not dispute its existence. *See Wolf v. Crosby*, 377 A.2d 22 (Del. Ch. 1977).

lesser interest is also demonstrated by clear and convincing evidence.[14]

Shipp has met his stringent evidentiary burden here. Shipp has introduced uncontroverted evidence that Kauffman and Rickards intended to grant Shipp an enduring privilege to access his property via the deer hunter's path. Charles Kauffman states in his affidavit that:

> It was my intent and the intent of Mr. Rickards to grant Mr. Shipp access to his property with an ingress/egress easement of thirty feet (30'), matching the width of the other roads in the George C. Moore Subdivision. . . . We granted him permission to cross our property and knew that he was using our property to access his land.[15]

Kauffman's testimony clarifies that his reference to "an ingress/egress easement of thirty feet" refers to what was by then the gravel driveway: "[t]he Shipps' easement actually crossed our property as shown on the 1993 subdivision map."[16] The 1993 subdivision map clearly shows the gravel driveway, which is labeled "30' INGRESS & EGRESS EASEMENT TO BE CONVEYED TO DONALD SHIPP."[17] Finally, Shipp's actual placement, improvement, and use of the gravel driveway — an obvious incursion, but one that was never objected to by either Kauffman or Rickards — is a critical fact supporting Shipp's claim that he was given an easement. So, too, is Shipp's inclusion of the easement in his recorded subdivision plan.

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[14] *See Bielo v. Delaware Wild Lands, Inc.*, 1995 WL 106302, at *5 (Del. Ch. Feb. 8, 1995) ("In those instances in which a legal interest in land might be recognized without proof of a signed writing creating such interest, the law will require clear and convincing evidence of the facts that create that interest.").
[15] Kauffman Aff. ¶ 10.
[16] Kauffman Aff. ¶ 9.
[17] Def. Shipp's Opening Br. Supp. Mot. for Summ. J. App. A-9.

Shipp's introduction of clear and convincing evidence that Kauffman and Rickards intended to grant an enduring privilege, and that Shipp detrimentally relied upon their promise, shifts the burden to Hionis to present rebuttal evidence. But Hionis has presented no countervailing evidence to rebut Kauffman's testimony that he and Rickards intended to grant Shipp a permanent easement to cross the 1.5-acre Parcel via the gravel driveway.[18] Indeed, Hionis made no effort to depose Kauffman or otherwise challenge Kauffman's testimony. Nor has Hionis rebutted Shipp's proof of reliance. Hionis chose instead to rely solely on his legal argument that, except when actual fraud is proven, the absence of a valid written instrument defeats any claim that an easement by estoppel exists.

In sum, all of the evidence suggests, and Hionis concedes, that Kauffman and Rickards represented to Shipp that he had an ingress/egress easement across the 1.5-acre Parcel tracking the gravel driveway; that Shipp, believing the representations of Kauffman and Rickards, incurred expenses in reliance on those representations by 1) building the driveway, 2) recording a subdivision plan reflecting that easement, and 3) entering into a commercial transaction with Spencer that contemplated the existence of an easement for the use of the gravel driveway; and that Kauffman and Rickards intended to create an enduring privilege. Under this court's long-standing precedent, these

[18] Kauffman's uncontroverted affidavit testimony to the effect that both he and Rickards intended to grant Shipp a permanent easement tracking the gravel driveway is important in this regard. That testimony suggests that the confusing array of easement documents resulted from mistakes made by Kauffman and his partner, Rickards. This explains why the only instrument executed by Rickards, the October 1996 Easement, refers to a thirty-foot triangular easement rather than an easement tracking the driveway, and why Kauffman himself never straightened out the situation until he recognized, after Rickards' death, that they had not formally granted Shipp the easement they had promised him — and that Shipp had long been using.

undisputed facts prove Shipp's entitlement to an easement by estoppel across the 1.5-acre Parcel tracking the gravel driveway, as shown in the 1993 subdivision map.

III. Conclusion

For the foregoing reasons, Shipp's and Spencer's motions for summary judgment are granted and Hionis' motion for summary judgment is denied. Shipp, upon notice as to form to the other parties, shall submit a conforming final judgment. Each party shall bear his or her own costs.