IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, AND BLACKBALL PROPERTIES,	§	No. 462, 2013
Defendants Below-Appellants,	§	Court Below—Court of Chancery of the State of Delaware C.A. No. 7439
v.	§	
GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	§	
Plaintiffs Below-Appellees.	§	

Submitted: January 17, 2014
Decided: February 27, 2014

Before **HOLLAND**, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 27th day of February 2014, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendants-appellants (referred to collectively as "the Blacks") have filed this appeal from several post-trial decisions of the Court of Chancery. Among other things, the Blacks contend that the trial court erred in determining that express easements existed on their property and in awarding the plaintiffs-appellees ("the Staffieris") nearly all of their costs and attorney's fees under the bad faith exception to the American Rule. After careful consideration of the

parties' contentions on appeal, we find no reversible error and thus AFFIRM the Court of Chancery's judgment.

(2) The record at trial reflects that Concord Development Corporation ("Concord") held the deeds to four lots presently identified as 1701, 1703, 1705, and 1707 Concord Pike. In 1946, Concord executed deeds transferring title to the three lots identified as 1701, 1703, and 1705 Concord Pike to three different purchasers ("the 1946 Deeds"). A two-story triplex building spans lots 1701, 1703, and 1705. One third of the triplex stands on each lot. In front of the triplex is a seventy-two foot wide, twenty-seven foot deep paved area containing seven parking spots ("the Front Parking Area"). In back of the triplex is an equally wide and deep paved area ("the Back Parking Area"), which is accessed by a nine foot wide driveway north of the triplex ("the Common Driveway") and located on lot 1705. The Blacks are the current owners of those three lots.

(3) The 1946 Deeds contained two sets of granting and reserving clauses. The first set granted:

> [t]he free and uninterrupted right, use and privilege forever in common with [Concord], its successors and assigns, of the hereinafter described twenty-seven foot wide Common Parking and Driveway Area, for parking and driveway purposes. Subject, however, to a proportionate share of the expense of keeping said area in good order and repair….
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> RESERVING, however, unto [Concord], its successors and assigns, the free and uninterrupted right, use and privilege in common with others entitled thereto, forever, for parking and driveway purposes of the whole of the hereinabove described common parking and driveway area.

> Subject, however, to a proportionate share of the expense of keeping said area in good order and repair.

The second set granted:

> [t]he free and uninterrupted right, use and privilege forever in common with [Concord], its successors and assigns, of the hereinafter described common driveway for driveway purposes. Subject, however, to a proportionate share of the expense of keeping said area in good order and repair….
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> ALSO RESERVING, however, unto [Concord], its successors and assigns, the free and uninterrupted right, use and privilege in common with others entitled thereto, forever, for driveway purposes of the whole of the hereinabove described common driveway. Subject, however, to a proportionate share of the expense of keeping said area in good order and repair.

(4) In 1955, Concord merged with W. Percival Johnson & Son, Inc. In 1980, that entity conveyed 1707 Concord Pike ("the 1980 Deed"), which was subsequently conveyed to the Staffieris in 2000. The 1980 Deed did not refer to any easement or reserve any driveway or parking rights. A single story building sits on lot 1707. After renting out 1707 Concord Pike for nearly a decade, the Staffieris decided to open an auto detailing shop there. The Blacks opposed the new business and petitioned New Castle County to enforce all possible permitting and zoning regulations against the Staffieris. While the Staffieris were working with County officials to address infractions, the Blacks erected a fence along the property lines between 1705 and 1707 Concord Pike. Weeks later, the Blacks

installed roll-stop parking barriers along the edge of the Common Driveway, making it very difficult to enter lot 1707 safely.

(5) The Staffieris filed suit against the Blacks alleging breach of easement, tortious interference with an easement, trespass, private nuisance, and civil conspiracy. The Staffieris sought damages and a declaratory judgment. After a three day trial at which the two experts and eleven fact witnesses testified, the Court of Chancery held that the plain language of the 1946 Deeds created express easements appurtenant to the Common Driveway, Front Parking Area and Back Parking Area for the benefit of lot 1707, subject to the sharing of maintenance expenses. The trial court permanently enjoined the owners of lots 1701, 1703, and 1705 from interfering with the owner of lot 1707's easement rights. Because the Blacks had resorted to self-help rather than seeking a judicial declaration of their rights, the trial court granted the Staffieris' request for attorney's fees and costs. The trial court further held, however, that the Staffieris had failed to prove damages.

(6) The Blacks raise five arguments in their opening brief on appeal. First, they contend that the trial court erred in construing the 1946 Deeds. Second, they assert that the trial court erred in awarding attorney's fees because the Blacks acted in good faith. Third, they argue that the trial court failed to decide their claims for abandonment or reformation of the easement. Fourth, they contend that

the trial court erred in denying their motion to clarify the post-trial order. Finally, the Blacks contend that most of the attorney's fees and litigation expenses awarded to the Staffieris are not awardable as a matter of law.

(7) The construction of a deed is a question of law that is reviewed *de novo*.[1] When interpreting a deed, the fundamental goal "is to ascertain and give effect to the intent of the parties as reflected in the language they selected."[2] If there is no reasonable doubt as to the meaning of the words, then the deed is unambiguous and the Court's role is limited.[3] A finding of an express easement is proper if the deed "contain[s] plain and direct language evidencing the grantor's intent to create a right in the nature of the easement."[4] No specific words are required so long as the writing clearly reflects the grantor's intent to create a right in the nature of an easement.[5]

(8) In this case, we find no reasonable doubt that the granting and reserving clauses of the 1946 Deeds reflected Concord's clear intent to burden lots 1701, 1703, and 1705 by reserving express easements to the Front Parking Area, the Back Parking Area, and the Common Driveway for the benefit of lot 1707.

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[1] *Rohner v. Niemann*, 380 A.2d 549, 552 (Del. 1977).

[2] *Smith v. Smith*, 622 A.2d 642, 646 (Del. 1993).

[3] *Id.*

[4] *Judge v. Rago*, 1989 WL 25802, at *5 (Del. Ch. Mar. 16, 1989), *aff'd Judge v. Rago*, 570 A.2d 253 (Del. 1990).

[5] *See* 25 AM. JUR. 2d. *Easements and Licenses* § 15 (2013).

Moreover, Concord's reservation of easement rights for its successor and assigns "forever" clearly reflects that the express easements are appurtenant to and run with the land and were not simply for Concord's personal benefit or that of its corporate successors, as the Blacks argue.[6] Therefore, we find no merit to the Blacks' first claim on appeal.

(9) Furthermore, the Court of Chancery's finding of express easements appurtenant was a rejection of the Blacks' counterclaims for abandonment of the easement or reformation of the 1946 Deeds based upon a scrivener's error. The Court of Chancery found the language of the deeds to be clear and unequivocal. We agree. The language, thus, was not subject to reformation. Once the Court of Chancery determined that the easements in the 1946 Deeds were appurtenant and ran with the land, the Blacks no longer had a counterclaim for abandonment because abandonment of an express easement appurtenant requires clear proof that the owner of the easement intended to relinquish any claim to the easement, which

[6] *See generally Tubbs v. E&E Flood Farms, L.P.*, 13 A.3d 759 (Del. Ch. 2011); JAMES W. ELY, JR. & JON W. BRUCE, THE LAW OF EASEMENTS AND LICENSES IN LAND (2013 ed.). There are two broad categories of easements. The first, an easement appurtenant, benefits a dominant estate and burdens a servient estate. The second, an easement in gross, does not benefit a dominant estate but rather is personal to the easement holder. Easements appurtenant run with the land, pass with the dominant estate to successors in interest, and transfer with the dominant property even if not mentioned in the documents transferring title. *See* ELY & BRUCE, *supra*, § 9:1. Public policy favors the construction of easements as appurtenant rather than in gross. *Tubbs v. E&E Flood Farms, L.P.*, 13 A.2d at 768.

was not the case here as the Staffieris were attempting to exercise their rights to the easements.[7]

(10) The Blacks next argue that the Court of Chancery erred in awarding the Staffieris their attorney's fees. We review an attorney's fee award for abuse of discretion.[8] Normally, under the American Rule and Delaware law, each party is responsible for payment of their own attorney's fees regardless of the outcome of the litigation.[9] The Court of Chancery, however, may award attorney's fees as an exercise of its inherent equitable powers.[10] Fees may be awarded, among other instances, when litigation was brought or maintained in bad faith or when a party's prelitigation conduct is so egregious that it warrants fees as a form of damages.[11]

(11) Contrary to the Blacks' assertion, we find the decision in *H&H Brand Farms, Inc. v. Simpler* to be instructive.[12] In awarding plaintiffs their attorney's fees because of defendants' prelitigation conduct, the Court of Chancery stated:

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[7] *See* AM. JUR. 2d *Easements and Licenses*, § 98 (noting the general rule that an easement acquired by grant or reservation cannot be lost by mere nonuse for any length of time, no matter how great).

[8] *William Penn P'ship v. Saliba*, 13 A.2d 749, 758 (Del. 2011).

[9] *SIGA Technologies, Inc v.. PharmAthene, Inc.*, 67 A.3d 330, 352 (Del. 2013).

[10] *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 687 (Del. 2013).

[11] *Arbitrium (Cayman Islands) Handles AG v. Johnston*, 705 A.2d 225, 231 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998) (affirming trial court's reliance on pre-litigation conduct as evidence that action was defended in bad faith).

[12] *H&H Brand Farms, Inc. v. Simpler*, 1994 WL 374308 (Del. Ch. June 10, 1994).

> "[I]t is clear that the defendants knew . . . that they did not have an uncontroverted legal right to develop [the property]. . . . Defendants, knowing that they did not have a clear legal right to develop . . . should have sought declaratory or similar relief regarding to their rights . . . . Taking matters into their own hands . . . can only be described as acts of bad faith and wanton disregard for the rights of others."[13]

(12) Here, the evidence shows that the Blacks knew that they did not have an uncontroverted legal right to place barriers and otherwise obstruct the Staffieris' use of the easement. The Court of Chancery also took into account the Blacks' conduct as a whole, which the Court described as a "campaign to use their superior financial and technological resources to bully, intimidate, and wear down [the Staffieris] without regard to [the Staffieris'] legal rights."[14] The trial court engaged in a full and careful evaluation of the Blacks' bad faith conduct. Under the circumstances, we find no abuse of the trial court's discretion in shifting attorney's fees in this case.

(13) We also find no error or abuse in the amount of the attorney's fee award.[15] The trial court has broad discretion in determining the amount of fees and expenses to award.[16] The Staffieris requested fees and expenses of $184,320.47,

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[13] *Id.* at *6

[14] *Staffieri v. Black*, C.A. No. 7439-VCL, at ¶ 2 (Del. Ch. Aug. 8, 2013). For a full and careful evaluation of the Appellee's bad faith conduct, see *id*. at ¶ 3 – 13.

[15] The amount of legal fees awarded is reviewed under an abuse of discretion standard. *Versata Enters v. Selectia, Inc.*, 5 A.3d 586 (Del. 2012).

[16] *Kaung v. Cole Nat'l Corp*, 884 A.2d 500, 506 (Del. 2005).

which the Court of Chancery found to be reasonable. The matter was litigated extensively and culminated in a three-day trial. The principal attorney charged $300 per hour, and local Delaware counsel charged a reduced rate of $250 per hour. Plaintiffs did not engage in extensive discovery, and in fact, did not take a single deposition. The Court of Chancery carefully analyzed the fees and expenses, as evidenced by the removal of specific billed hours. We find no abuse of discretion in the amount of the Court of Chancery's fee award or in the entry of the award against all of the Blacks, jointly and severally.

(14) Finally, we find no abuse of the Court of Chancery's discretion in denying the Blacks' motion for relief from judgment under Rule 60(a), (b)(1), or (b)(6).[17] The Blacks' motion, which was filed nine months after the post-trial order, argued that the trial court's use of the term "Back Parking Area" in the post-trial order was a mistake and should be substituted by the term "Common Driveway." Essentially, the Blacks' motion raised issues of fact concerning events alleged to have occurred post-trial and argued that the Staffieris were not complying with their interpretation of the Court of Chancery's judgment. Under the circumstances, we find no abuse of the trial court's discretion in concluding that the matters raised in the Blacks' motion were not appropriately addressed through a Rule 60 motion.

[17] *See Hoffman v. Hoffman*, 616 A.2d 294, 297 (Del. 1992) (holding that trial court's ruling on a Rule 60 motion is reviewable on appeal for abuse of discretion.).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice