IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	)	No. 462,2013
Certain Defendants-Below Appellants,	)	
v.	)	Trial Court Below: Court Of Chancery of the State of Delaware C.A. No. 7439-VCL
GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

MOTION FOR REARGUMENT

The Appellants move for reargument of the Order dated February 27, 2014, as follows:

1. The Order Did Not Decide The Issue Of Whether Mary Lou Black Could Be Found Personally Liable.

In Argument V.C.3. of Appellants' Opening Brief, Mary Lou Black argued that she could not be held personally liable since the uncontraverted trial evidence established that she was not involved in any interference with the easement. Since she did nothing which could conceivably cause her to incur personal liability for the award of attorneys fees and litigation costs under the Bad Faith Exception To The American Rule, reversal is warranted.

2. The Order Did Not Decide Whether The Three (3) Other Individual Appellants Could Be Held Personally Liable.

Argument V.C.3. also squarely presented the issue of whether any legal basis existed to find Henry Black, Raymond Buchta, and W. Scott Black individually responsible for attorneys fees and litigation costs

under the Bad Faith Exception. Trial evidence proved that the parking roll stops and fence which impacted the easement were installed by the 3 individuals in their capacities as the sole members of Blackball Properties, LLC ("Blackball"), which held title to 1703 Concord Pike. Only Blackball could have rights regarding driveway use. If the 3 individuals acted in their personal capacities, they would have been trespassing and the Staffieris could have removed the obstructions. Under 6 *Del. C.* § 18-303, no member of a limited liability company may be found personally liable in contract, tort, or otherwise for acts taken within the scope of the LLC.

3. The Order Did Not Decide The Issue Of Whether The Driveway May Be Used For Parking Purposes.

In Argument IV of Appellants' Opening Brief and Argument IV of Appellants' Reply Brief, they squarely presented the appeal issue of whether the Trial Court erred in concluding that an area set aside exclusively for driveway purposes could also be used for parking purposes. And because the clear and unequivocal language of the Deed establishes that the driveway area may only be used for "driveway purposes," reversal is appropriate.

4. The Order Adopted A New Basis For Concluding That Counterclaims Were Decided, Which Appellants Can Rebut.

The Order concluded that there was no need for the Trial Court to decide the Counterclaim for Abandonment of easement on the grounds that "abandonment of an express easement appurtenant requires clear proof that the owner of the easement intended to relinquish any claim to the easement, which was not the case here as the Staffieris were

attempting to exercised their rights to the easements." Order at 6-7. The Appellants' argument, however, was that the easement was abandoned in 1980 when the successor to Concord conveyed title to 1707 without expressly reserving any easement rights in the Deed and after 34 years of non-use. In addition, the Staffieris owned 1707 for 11 years before they ever asserted any easement rights.

5. The Order Adopted A New Rationale For Finding An Easement Appurtenant Existed, Which Appellants Can Rebut.

On the issue of whether the 1946 Deeds created an appurtenant easement, this Court relied upon a new basis for concluding that such an easement existed: "Concord's reservation of easement rights for its successors and assigns 'forever' clearly reflects that the express easements are appurtenant to and run with the land… ." Order at 6. No significance should be attributed to the use of the word "forever." Corporations like Concord have perpetual existence (8 *Del. C.* § 122), thereby rendering use of the term "forever" nothing more than lawyerly "belt and suspenders" language.

6. The Order Adopted A New Rationale For Finding Bad Faith Existed, Which The Appellants Can Rebut.

The Order's affirmance of the Trial Court's finding of Bad Faith was pinned solely on a *post hoc* Order dated August 8, 2013, not the Post-Trial Order dated October 24, 2012 on appeal. Order at 8. The Post-Trial Order's finding of Bad Faith was based on the theory that the Appellants had exercised self-help. The Order improperly bootstrapped post-dated matters.

7. The Order Failed To Decide Numerous Discrete Legal Challenges To The Extent And Amount Of Attorneys Fees And Litigation Costs Awarded.

On the subject of the extent of fees/costs awarded, the Order only addressed the hourly rates of counsel, finding them to be reasonable. Order at 9. It failed to address the arguments that: 1) tens of thousands of dollars in fees were based on unexplained, block billings; and 2) tens of thousands of dollars more in fees and costs were incurred in litigating losing damages and easement claims. Even assuming that bad faith existed, such bad faith can only be attributed to the express easement claim. The fees/costs incurred to prosecute the express easement claim were but a fraction of the total amount of fees/costs. Thus, reversal is warranted.

WHEREFORE, the Appellants respectfully request that this Court enter one or more of the proposed forms of Order attached, granting them Reargument.

ABBOTT LAW FIRM

Richard L. Abbott, Esquire (#2712)
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529

Attorneys for Appellants

Dated: March 13, 2014

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	)	No. 462,2013
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GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

NOTICE OF MOTION FOR REARGUMENT

TO: Gary Staffieri
Andrea Charles Staffieri
100 Sackville Mills Lane
Wallingford, PA 19086

PLEASE TAKE NOTICE that Appellants Henry Black, Mary Lou Black, Raymond Buchta, W. Scott Black, and Blackball Properties, LLC will present the attached Motion For Reargument to this Honorable Court at the Court's convenience.

ABBOTT LAW FIRM

Richard L. Abbott, Esquire (#2712)
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
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Attorneys for Appellants

Dated: March 13, 2014

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

ORDER

AND NOW this _____ day of _____, 2014, Appellant Mary Lou Black having moved this Court for reargument of the Order dated February 27, 2014 based upon its lack of decision on her appeal issue as to individual liability, and it appearing that the Order did not decide the issue which was raised by her in this appeal,

IT IS ORDERED that the Motion for Reargument is **GRANTED**, and that the Court shall decide the issue of Mary Lou Black's personal liability.

_____
Justice

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	)	No. 462,2013
Certain Defendants-Below Appellants,	)	
v.	)	Trial Court Below: Court Of Chancery of the State of Delaware C.A. No. 7439-VCL
GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

ORDER

AND NOW this _____ day of _____, 2014, Appellants Henry Black, Raymond Buchta, and W. Scott Black having moved this Court pursuant to Supreme Court Rule 18 for reargument of the Order dated February 27, 2014 based upon the fact that it did not decide their appeal argument regarding individual liability for acts of Blackball Properties, LLC, and it appearing that the Order did not decide that appeal issue,

IT IS ORDERED that the Motion for Reargument is **GRANTED**, and that the Court shall decide the issue of individual liability of Appellants Henry Black, Raymond Buchta, and W. Scott Black.

_____
Justice

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	)	No. 462,2013
Certain Defendants-Below Appellants,	)	
v.	)	Trial Court Below: Court Of Chancery of the State of Delaware C.A. No. 7439-VCL
GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

ORDER

AND NOW this _____ day of _____, 2014,

IT IS ORDERED that the Motion for Reargument is **GRANTED**, and that

_____

_____.

_____

Justice

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	)	No. 462,2013
Certain Defendants-Below Appellants,	)	
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GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	)	
Plaintiffs-Below Appellees.	)	

CERTIFICATE OF COUNSEL
PURSUANT TO RULE 18

I, Richard L. Abbott, Esquire, hereby certify that the Motion For Reargument to which this Certificate is appended is presented in good faith and not for purposes of delay.

ABBOTT LAW FIRM

Richard L. Abbott, Esquire (#2712)
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(302) 489-2529

Attorneys for Appellants

Dated: March 13, 2014

EFiled: Feb 27 2014 01:33PM EST
Filing ID 55065033
Case Number 462,2013

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.

ORDER

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....
>
> 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....
>
> 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

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[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

CERTIFICATE OF SERVICE

I, Richard L. Abbott, Esquire, do hereby certify that on this 13th day of March, 2014, I caused the foregoing **Motion For Reargument** to be served upon the below-listed individuals by U.S. Mail:

Gary Staffieri
Andria Charles Staffieri
100 Sackville Mills Lane
Wallingford, PA 19086

Richard L. Abbott, Esquire (#2712)