

MEEB WINS DIRT ROAD EASEMENT CASE

Edmund A. Allcock

MEEB Attorney Edmund A. Allcock recently scored a resounding victory in the Appeals Court in the case of Post v. McHugh. At issue in the case was whether Richard and Virginia Angelo had the right to: (1) use a dirt road private way and a paper street abutting its property in an uncompleted subdivision, (2) to expand the dirt road to its full forty foot width, and (3) to improve and pave the road and clear limbs and trees to which the neighbors staked an ownership claim. Unfortunately for the Angelos, they purchased their house in 2006 unaware of the existence of litigation that had been pending in the Land Court for nearly ten years relative to the use and ownership of a dirt access road, which was the only means of access to their home. The abutters had claimed that they had extinguished all rights of others to use the dirt road and/or that the Angelos' title instruments did not give them explicit easement rights, possibly leaving the Angelos with no access to their home. Furthermore, zoning proceedings instituted by their neighbors required an improved paved street of a sufficient length to allow the Angelos to expand their home, as they had planned, which the neighbors claimed they had no right to do. Not only did the Angelos buy a home, they bought into a nasty lawsuit, which only now, appears to be fully resolved.

In its Decision, the Appeals Court affirmed the Decision of the Land Court relying primarily on the “derelict fee statute”, G.L. c. 183, § 58, which provides in material part that: “Every instrument passing title to real estate abutting a way, whether public or private ... shall be construed to include any fee interest of the grantor in such way....” held that the property owner’s rights were the same as its common grantor, which was traced back as far as 1918. The Appeals Court ultimately adjudicated three fundamental property law issues in favor of the Angelos finding that: (1) ownership of a lot abutting a private way extends to the center of the way, (2) such ownership includes a right to use the way to its full length and width as shown on the plan (known as an easement by estoppel), and (3) that an easement to use a private way includes a right to improve it to its full length and width, to clear trees and limbs and install utilities.

One problem for the Angelos was there were virtually no recorded plans that depicted the location and precise parameters of the dirt road, although there were at least two plans from the turn of the century located in the Town’s planning department. Without a plan showing the dimensions of the dirt road, it is doubtful that the derelict fee statute would have applied. Smartly the Angelos recorded the plans when they purchased their home in 2006. Both the Land Court and the Appeals Court accepted the plans as accurately depicting the dimensions of the road even though they were unrecorded because they were referenced in the neighbors own deed. Another problem for the Angelos was that their lot was comprised of dozens of postage stamp lots (which were actually sold at carnivals in the early 1900’s) and which raised the question of whether the Angelos’ various postage stamp lots were one lot or several. If several, then their rights to use the roadway to access other postage stamp lots might have been viewed as overburdening the easement under the “after acquired property doctrine”. Fortunately, both the Land Court and the Appeals Court rejected the argument that the Angelos were overburdening their own property by traveling from the front yard to the backyard as non-sensical and impractical.

The Appeals Court also rejected the neighbor’s argument that the Angelos’ easement rights were wiped out by a foreclosure in their chain of title, holding that the foreclosure extinction doctrine applied only to easements arising by implication, where property had been split into two parcels while it was burdened by a mortgage, and did not apply where the obvious intent of the original creator of the subdivision and his successors was to create a subdivision in which all of the various lots created therein were to have the benefit of the abutting roadways, whether fully built or not. The Appeals Court also rejected the neighbors argument that the Angelos did not have the power to expand the dirt road, pave it and install utilities finding that: “[W]hen an easement or other property right is created, every right necessary for its enjoyment is included by implication.”

A copy of the Appeals Court’s full opinion can be obtained by accessing the attached link. [[Post v. McHugh](#)]