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RCBA NewsBrief

Volume 11

November 2009

COMMERCIAL LITIGATION ISSUES OF INTEREST

*Submitted by Paul Savad, Esq.
Chair, Commercial and Corporate Law Committee;
Joseph Churgin, Esq., and Susan Cooper, Esq., of
SAVAD CHURGIN, Attorneys at Law*

Your client's deed and his neighbor's deed provide for a common driveway easement over their two properties running from the street to their adjacent back yards. However, for the last thirty years, the two fenced-in back yards were used as patio/sitting areas, and could not be accessed by car. The neighbor parked his cars in a garage, which he built at the front of his property.

One day the neighbor called your client and demanded that your client's fence be removed, so that the neighbor could now use his back yard to park an extra car. Your client refused, and the neighbor sued.

Will you be successful in your motion for summary judgment claiming that the "common driveway" was abandoned?

The answer is no.

In *Butts v. Moreno*, 8/12/09 N.Y.L.J. 26 (col. 3) (Sup. Ct. Kings Co.), Richard and Annette Butts lived next door to Anthony Moreno on 54th Street in Brooklyn, New York. The Butts' deed and Moreno's deed had reciprocal driveway easements over each others' property running from the street to the back of the two properties. The deeds provided:

Said rights of ways shall be used by pedestrians and as a common driveway for the purpose of ingress and egress for pleasure automobiles only to and from East 54th Street and garages or parking areas erected or that may be erected upon the real said premises.

Despite the language in both deeds establishing the reciprocal easements, a fence was constructed on the Butts' property more than thirty years ago, enclosing the Butts' back yard. The Butts constructed a garage in their front yard and parked their cars there. For more than thirty years, both back yards were used as gathering places and children's play areas.

The Butts commenced the lawsuit when Moreno constructed a chain-link gate and fence at the back of his property, obstructing the easement. The Butts intended to take down their own fence and use their back yard for parking now that their children were grown.

The Butts sued for removal of Moreno's fence and sought monetary damages.

Moreno defended by claiming that the Butts had abandoned the easement, at least for use by automobiles, by building and maintaining their fence, which barred automobiles from access into the Butts' backyard, and by building a garage in their front yard.

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We welcome your articles.

****All articles submitted will be reviewed by the Executive Committee for approval****

Justice Jack M. Battaglia ruled that the easement was not abandoned, relying on principles over one hundred years old, holding that “nonuser alone, no matter how long continued, can never in and of itself extinguish an easement granted by an easement created by grant”, quoting *Gerbig v. Zumpiano* 7 N.Y. 2d 327, 330 (1960). Moreover, “a party relying upon another’s abandonment of an easement by grant must produce clear and convincing proof of an intention to abandon”, quoting *Consolidated Rail Corp. v. MASP Equipment, Corp.*, 67 N.Y. 2d 35, 39-40 (1986).

The court cited *Welsh v. Taylor*, 134 N.Y. 450, 459 (1892), which held that the erection of a house and a fence blocking access to an easement to the alley “gives no indication of an intent to abandon the easement”; “it indicates no more than that the owner...did not use the alley.”

The Lesson: Extinguish or modify easements by signed recorded documents, not by fences.

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The Board of Directors and Staff of
The Rockland County Bar Association
Would like to wish
All of our members and their families
A
Happy Thanksgiving

**GRIEVANCE
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ATTORNEY AT LAW**

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Suffern, New York 10901**

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**THE FREE SPEECH and the INTERNET
SEMINAR THAT WAS SCHEDULED FOR
NOVEMBER 5, 2009 HAS BEEN
RESCHEDULED TO
JANUARY 28, 2010
6-9 P.M.
LATERRAZZA**

**ALL ASSIGNED COUNSEL
PANEL MEMBERS**

PLEASE NOTE :

**THE 2009 FISCAL YEAR IS COMING TO A CLOSE.
PLEASE SEND IN YOUR VOUCHERS FOR
CASES COMPLETED.
DO NOT HOLD YOUR VOUCHERS FOR THE 2010
BILLING CYCLE.**

**COMPLIMENTARY
ESTATE
ADMINISTRATION
SERVICES
FOR MEMBERS
OF THE ROCKLAND COUNTY BAR**

Complimentary:

- **Estate Valuations for 706 Schedule B**
(Upon receipt of a list of all items in the estate, we will provide a valuation for purposes of filing the 706 schedule B.)
- **Security Transfers/
Consolidation of Assets**
(We will contact transfer agents, dividend reinvestment plans, financial institutions, etc. and provide you with a list of documentation required to deposit and consolidate all assets to one professionally managed estate account.)
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ATTENTION MEMBERS

ARE YOU HOLDING FILES FOR ATTORNEYS THAT HAS RETIRED OR IS DECEASED? IF SO PLEASE CONTACT THE ASSOCIATION AT 845-634-2149 TO FORWARD THAT INFORMATION.

**CALLING ALL LAWYERS IN PRACTICE 5 YEARS OR LESS
IT IS NOT TO LATE TO JOIN THE NEW LAWYERS COMMITTEE
CALL LESLIE @ 845-634-2149**

DID YOU GET YOUR FLU SHOT?

**LOG ON TO
WWW.NYACKHOSPITAL.ORG
TO FIND A LOCATION IN
YOUR TOWN**

CLE CALENDAR**Wednesday, November 18, 2009****CLE: Designing, Implementing, Drafting & Defending a Sophisticated Estate Plan****Time: 6:00 p.m.– 9:00 p.m. (Registration @ 5:30 p.m.)****Light Dinner**

Level: Transitional/Non-Transitional

Cost: \$75.00 in advance; \$85 at the door; \$95 non-members
\$40 paralegals and studentsPlace: **Good Samaritan Hospital Auditorium
255 Lafayette Ave, Suffern, NY**

Credits: 3 (2.5 Professional Practice; .5 Ethics)

CARDIOVASCULAR TOUR @ 4:30 P.M.

Tuesday, December 1, 2009**CLE: Structured Settlements: Unraveling the Mystery****Time: 6:00 p.m.– 9:00 p.m. (Registration @ 5:30 p.m.)****Light Dinner**

Level: Transitional/Non-Transitional

Cost: \$75.00 in advance; \$85 at the door; \$95 non-members
\$40 paralegals and studentsPlace: **Rockland BOCES, West Nyack, NY**

Credits: 3 (2.5 Professional Practice; .5 Ethics)

*Credit is not given for partial attendance.***LEGAL RESEARCH AND WRITING***Trial and Appellate Courts****Cost Effective***

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SusanCooper@runbox.com**Satisfying attorneys and their clients for over 25 years***"Her services are invaluable in my busy commercial litigation practice. I recommend her without reservation."*

-- Paul Savad, Esq.

Movin' Up, In & Out

**IF YOU HAVE MOVED OR WILL BE MOVING,
PLEASE CALL THE ASSOCIATION @
(845) 634-2149
SO WE CAN UPDATE OUR RECORDS.**

ATTENTION ALL MEMBERS

**AS WE APPROACH THE WINTER MONTHS IT IS
VERY IMPORTANT TO KNOW BEFORE YOU GO.**

LOG ON TO :***www.rocklandbar.org***

**OR CALL THE OFFICE @ 845-634-2149
FOR CANCELLATIONS OR DELAYS.**

12 tips from Lawyer Assistance Program

These tips are offered to aid in one's personal life. The following are the 12 suggested steps of Alcohol Anonymous, a proven self-help organization.

1. Recognize I have a problem. Denial is a barrier to moving on.
2. Accept that another party can assist with the situation. Discuss the situation with a trusted friend. Seek counseling.
3. Trust that another party can handle the responsibility. Let go of ownership of the problem and assign the mechanics to a professional.
4. Examine my self. What are my strengths? What are my weaknesses? What do I wish to keep? What do I wish to change?
5. Recognize my weaknesses by revealing them to a trusted party; communicate my willingness to change.
6. Prepare to make the change. Resolve I will be a different person, for the better.
7. Take the action to change. Move from resolution to doing.
8. List persons to strengthen our relationship. Improve communication with people in our lives.
9. Actually talk, see, and be with people that are in your life. Be active; be personable.
10. Do a regular inventory of myself. Periodically take stock of where I'm at, where I've been and where I'm going. List my plusses and minuses. Recognize where I need to improve.
11. Use mediation. Practice speaking my wishes. Learn to listen to the whispering of serendipity; to hear things I missed in the past.
12. Help others. Be active in community. Offer to do things that contribute to the larger world.

It's not easy to admit there is a problem. It's even harder when you think no one notices. But they do. Asking for help could be difficult. Knowing there is help available makes it a little easier. Understanding the unique needs of our colleagues is crucial that's why we're here for you.

Contact us:

LAWYERS HELPING LAWYERS

Ben Selig, Esq., (845) 942-2222; Barry Sturtz, Esq., (845) 369-3000
 Paul Goldhamer, Esq., (845) 356-2570; Lynn Brustein-Kampel, Esq., (845) 634-4700



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 Broker

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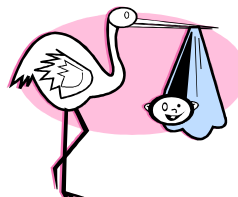
We must have advance notice for closings and depositions.
 A small fee will be charged for any telephone usage,
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Please call (845) 634-2149 in advance for rental



FLAG CEREMONY

On November 10, 2009 at 11:00 a.m. in the lobby of the old courthouse the Hon. C. Scott Vanderhoef will present an American Flag to the Courthouse. This flag flew over an American installation in Iraq last year and will be presented to Steven Lowe, Esq., Law Secretary to the Hon. Thomas Walsh, II and a member of the Board of Directors of the Rockland County Bar Association. We hope you will join us on this memorable occasion.



James Parker LaPerch
 born on

October 21, 2009

7 lbs 5 ounces and 20 inches long

Proud Parents

Frank and Patricia LaPerch



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.....
Name(s) _____ Updated E-mail _____

Sophisticated Estate Plan- November 18, 2009 6:00 p.m.— 9:00 p.m. \$ 75.00

Structured Settlements - December 1, 2009 6:00 p.m.— 9:00 p.m. \$ 75.00

Credit is not given for partial attendance.

Make sure your blue evaluation forms are completed and turned in to CLE Coordinator to receive your certificate.

If you pre-pay but are unable to attend the seminar you will be refunded the full amount only upon advance notice

(3:00 P.M. the day of the seminar) of your non attendance.

***Kosher Meals are dependant on the delivery service available from the caterer. All kosher meals must be ordered in advance and require an extra charge of \$10.00. Call the Association to place an order for a kosher meal. Please give us at least one weeks notice.*

****Hardship Policy****

THE ROCKLAND COUNTY BAR ASSOCIATION WILL WAIVE THE CLE SEMINAR FEE FOR AN INDIVIDUAL WITH APPROPRIATE PROOF OF HARDSHIP. PROOF MUST BE SUBMITTED ONE WEEK PRIOR TO SEMINAR. PLEASE CALL THE ASSOCIATION 845-634-2149 FOR MORE INFORMATION

The views expressed in the articles published in the RCBA Newsbrief are those of the authors and do not necessarily represent the policies of the Rockland County Bar Association.

We welcome your articles

*****All articles submitted will be reviewed by the Executive Committee for approval*****