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## Easements: Going beyond the four corners of the document

In the case of *Athens v. Oliver*, decided in June of 2007, the New Jersey Superior Court-Chancery Division, revisited case law dealing with easements. The facts presented to the Court involved



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neighboring property owners whose individual parcels of land were the result of a 1969 subdivision by a common owner. As part of the 1969 subdivision, the initial owner of the property reserved a "right of way" over the property currently owned by the Defendant for the benefit of the property currently owned by the Plaintiff. In January of 2005, only a few weeks after Defendant purchased the property, Defendant wrote Plaintiff a letter demanding that Plaintiff remove the portion of his driveway that lies within the right of way because Defendant sought to perform construction on this area which Plaintiff used as a method of ingress and egress to his property. As a reaction to the Defendant's letter, Plaintiff filed a complaint seeking to restrain Defendant from interfering with Plaintiff's use of the right of way.

The issues presented to the Court were (1) whether in fact Plaintiff had a valid easement over Defendant's property; and (2) if an easement existed, what was its scope.

As to the first issue, the Court noted that "express easements are created by grant and the language of the grant is controlling." The Defendant urged that because the easement was not recorded in his chain of title that it was not

an express easement and that Plaintiff should not be able to maintain a right of way interest in his land. The Court flat out rejected Defendant's argument and held that language in the deed of Plaintiff's predecessor in title "clearly demonstrates an intent to convey an easement to Henry Millar and his successors in title."

However, the language of the deed conveying the easement to Plaintiff's predecessor in title posed a problem because the drafter failed to set forth the scope of the easement and the intent of the grantor. The deed only stated that a 54.59 ft right of way existed over Defendant's property for the benefit of Plaintiff's property. In order to determine the scope of the easement, and more importantly, whether Plaintiff could continue to use the easement area for vehicular traffic, the Court was forced to analyze "the intent of the parties as expressed in the language of the grant, viewed in light of the nature and reasonably necessary incidents of the permitted use." The Court emphasized that "[where the language of the instrument so viewed does not settle the matter completely -- the question becomes a mixed one of law and fact to be determined within the framework of the universally accepted principle of easement law that the landowner may not, without the consent of the easement holder, unreasonably interfere with the latter's right or change the character of the easement so as to make the use thereof significantly more difficult or burdensome."

Failure of the drafter to demonstrate the grantor's intent forced the Court to look outside the four corners of the deed or other type of conveyance document to discern the intent of the

grantor coupled with the surrounding circumstances, which normally include "the physical condition and character of the property and the requirements of the grantee." With respect to right of way easements, the Court in *Athens* turned to a case from 1907, *Speer v. Erie R.R. Co.*, 72 N.J. Eq. 411 (E. & A. 1907), for guidance. In *Speer*, the Supreme Court discussed how a right of way easement could be interpreted in several ways, such as a right of way for people on foot, for people on horseback, or for people on carts, carriages and other vehicles. However, "where no limitation is placed on the extent of the use of the easement of way, it is available as a general way for all purposes to which the dominant tract might be devoted."

In *Athens*, the Defendant argued that no express rights were granted for ingress and egress in the deed and therefore Plaintiff could not continue to use the right of way for such purpose. Utilizing *Speer* as guiding authority, the Court observed that the character of the properties in *Athens* had essentially remained the same since the 1969 subdivision. Furthermore, no party to the lawsuit alleged that the right of way was ever used for anything but ingress and egress. Finally, the Court took judicial notice that the term "right of way" has the common meaning of a path over which persons and/or vehicles may travel. Thus, the use of the term right of way, although vague, provides the Court with some direction as to the nature of the interest conveyed."

The Court went on to address the issue of whether a deed conveying a "right of way" implied that the right of way's use for vehicular access was permitted.

The Court held that because the deed did not contain any limiting language and "[given the nature of modern residential homes...it would be repugnant to the principles of a court of equity to conclude that such right of way did not imply a right of vehicular access."

It is important to note that although the deed conveying the right of way easement did not contain limiting language, the Court held that the right of way could not be used for any general purpose. The scope of the easement was deemed by the Court to include a "broad right of way for ingress and egress of persons or vehicles consistent with the normal use of a pathway leading to one's home."

The *Athens* case provides an update to the case law from the early part of the 20th Century on easements dealing with right of ways. In addition, there are important lessons to be learned from the *Athens* decision. First, an easement must be carefully drafted in order to properly set forth the intent of the grantor. If the easement at the heart of the *Athens* case had been properly drafted, the litigation would most probably have never ensued because the intent behind the right of way and its scope would have been clear. Furthermore, the *Athens* decision demonstrates that Courts will look beyond the four corners of a document to ascertain the intent of a grantor and combine the intent with all relevant surrounding circumstances, which include how the parties have been utilizing the easement over time.

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