

STATE OF CONNECTICUT

DOCKET NO. CV 09 4018663S

SUPERIOR COURT

CHASE & CHASE, LLC.
40 East Farm Street
Waterbury, Connecticut

JUDICIAL DISTRICT

VS.

OF WATERBURY
AT WATERBURY

WATERBURY REALTY, LLC
c/o Edward J. Kelleher
30 Church Hill Road
Newtown, Connecticut

GREAT BROOK REALTY, INC.
c/o Alan H. Hertzmark
76 Center Street,
Waterbury, Connecticut

MAY 23, 2011

PRESENT: HONORABLE JOSEPH H. PELLEGRINO,
JUDGE TRIAL REFEREE

JUDGMENT

This action, by writ and complaint, claiming a temporary and permanent injunction, an order declaring the plaintiff's right, title, and interest to a prescriptive easement over the defendant's property, and money damages, came to this court on March 24, 2009, and was continued thence to June 29, 2009, when the plaintiff filed an

amended complaint, and thence to October 5, 2009, when the defendant Waterbury Realty, LLC filed an answer, special defenses, and a counterclaim, and thence to November 13, 2009, when the plaintiff filed a reply to the special defenses and answer and special defenses to the counterclaim, and thence to December 4, 2009, when the defendant Waterbury Realty, LLC filed a reply to the special defenses to the counterclaim, and thence to October 22, 2010, when the plaintiff withdrew its claim for money damages, and thence to later dates when the plaintiff and the defendant Waterbury Realty, LLC, appeared and were at issue to the court and when the defendant Great Brook Realty, Inc. made default of appearance.

The court, having heard the parties, finds that the plaintiff has established by a preponderance of the evidence that the plaintiff has acquired a prescriptive easement over the East Farm driveway by adverse use and enjoyment thereof for a period of fifteen years.

The court finds that the plaintiff has proven the necessary elements for an implied easement. The court finds that it was the intent of the grantor, Great Brook Realty, to create an easement for the use of the East Farm Street driveway at the time of the subdivision and that the easement was reasonably necessary for the use and normal enjoyment of the East Farm property.

The court further finds that the plaintiff has proven the necessary elements for a permanent injunction. The court finds that Waterbury Realty LLC erected a fence on the North Main Street property which was useless to it and that Waterbury Realty LLC erected the fence with the intention to injure the enjoyment of the plaintiff's East Farm Street property. The court finds that the erection of the fence has impaired the plaintiff's use of its East Farm Street property and its value because the fence prohibits the plaintiff, its tenants, and their customers from accessing the loading docks of the main building.

Whereupon it is hereby adjudged that judgment shall enter for the plaintiff against all defendants declaring that the plaintiff has a legal right and title to the use and enjoyment of the easement described as follows:

Commencing at the northernmost corner of property of Chase and Chase, Inc., said point along the southwesterly street line of East Farm Street and at the northeasterly corner of parcel herein described.

Thence along the following courses:

Line Bearing: S 34d-21'-51" W Length: 136.14 feet,

Line Bearing: S 08-49'-05" W Length: 86.23 feet,

Line Bearing: S 06d-58'-43" E Length: 72.31 feet,

Line Bearing: S 29d-15'-22" W Length: 47.40 feet,

The last four courses along the westerly side of property of Chase and Chase, Inc.

Line Bearing: N 60d-44'-38" W Length: 26.41 feet,

Line Bearing N 20d-47'-19" E Length: 48.98 feet,

Line Bearing N 06d-58'-43" W Length: 57.87 feet,

Line Bearing N 60d-06'-56" W Length: 5.95 feet,

Curve Length: 73.94 feet, Radius: 41.48 feet,
Delta: 102d-07'-37" Tangent: 51.34 feet,
Chord: 64.53 feet, Bearing: N 09d-03'-07" W

Line Bearing: N 38d-07'-48" E Length: 173.07 feet,

Line Bearing: N 20d-42'-57" E Length: 7.64 feet,

The last seven courses within the property of the neighbor to the west.

~~Line Bearing: S 56d-03'-14" E Length: 27.57 feet,~~

The last course along the southwesterly street line of East Farm Street to the point of commencement.

Perimeter: 763.51 feet, Area: 11,961 S.F. 0.27 Ac.

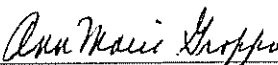
The plaintiff's use of said easement shall include the right to pass and repass and to maneuver and park trucks including trailer trucks within said easement while using the loading docks.

The court grants a permanent injunction barring the defendants from constructing any obstacle that would interfere with the plaintiff's use and enjoyment of said easement.

The court orders that the defendant Waterbury Realty at its own cost and expense remove

the fence that it constructed on the boundary of the North Main and East Farm properties and restore the East Farm Street driveway to its former condition in the area where the fence was constructed.

BY THE COURT
(Pellegrino, JTR.)



Ann Marie Groppo
Assistant Clerk