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August 5, 2021

Ryan Weibye
9708 Robin Road
Horace, ND 58047

RE: Dock Storage Proposal with City of Vergas
Our File No.: 95680k

Dear Mr. Weibye,

The city has asked me to respond to information Mr. Buhr, a realtor purporting to represent your interests, provided to the City Council at its July 13th meeting.

The City agrees that you are now subject to the easement in favor of the City. The easement allows the City to "construct and maintain a pedestrian and non-motorized vehicle trail 8 feet in width within the easement...." In order to construct a safe and functional trail, a retaining wall was built adjacent to the trail, and within the easement, to correct the slope for the trail base, to retain the uphill soil from washing out the trail and to prevent erosion damage to the Goettel property.

The City, in a separate agreement, allowed the Goettels to store their dock and lift on city property, but intentionally did not give them an easement to do so.

Mr. Buhr makes at least four points in his letter, to which I will respond:

1) That the City had no right to build a retaining wall;

2) That the agreement Goettels had with the City to store their lift and dock on City land was automatically transferred to you when you purchased the Goettel property;

3) That Goettels have right to store their dock and lift on City property since, apparently, title to those items have not been transferred and they still own the lakeshore part of their property.

4) Otter Tail County had no authority to issue a permit to the City because the County's highway easement, derived from the State's easement once the highway was transferred to the county, gives it no authority to allow the building of a retaining wall within the County's easement.

First, the retaining wall is integral to the structure of the trail. Also, Goettels not only knew it would be built, but negotiated with the City to fund, in part, the building of steps, (now a landing) consistent with County requirements, to allow Goettels safe access to their lakeshore. Courts have consistently allowed the owner of the dominant estate (the City holding the easement rights) to burden the servient estate (you, the property owner subject to those rights) to make improvements that are reasonably necessary to enjoy the easement, as long as those improvements do not unreasonably burden the servient estate. See, e.g., Keller vs. Cochran, 425 S.E.2d 432, 434 (1993), a North Carolina case (attached). I believe a Minnesota Court will following its reasoning.

Second, the City did not grant Goettels an easement to store their dock and lift on City property indefinitely nor agree to allow that right to be transferred to a third party buyer. Your purchase agreement with Goettels recognizes that you knew this when you included a damage clause in the agreement which was apparently contingent upon Goettels obtaining this right for you.

Third, your deed from Goettels did not reserve land to them so that they might continue to enforce the storage agreement with the City.

Fourth, Otter Tail gave permission to have the trail and wall constructed within its easement, as these structures do not impact the use to which the easement is put (highway use and maintenance). There is no requirement that the county have authority to grant these uses. It simply allowed them.

You may certainly ask the City for permission to use the trail to remove your dock and lift and to store the same on City property. It will be up to the City to decide if it will give permission. I suggest you ask the City for permission instead of threatening litigation.

Very Truly Yours,

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108 N.C.App. 783

Joseph W. KELLER, III, Plaintiff,
v.
Hazel A. COCHRAN and David S. White and wife Jean C. White,
Defendants.

No. 9129DC1070.

Court of Appeals of North Carolina.

Feb. 2, 1993.

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Prince, Youngblood, Massagee & Jackson by Sharon B. Ellis and Roy D. Neill, Hendersonville, for plaintiff-appellant.

Ramsey, Hill, Smart, Ramsey & Pratt, P.A. by Michael K. Pratt and Angela M. Skerrett, Brevard, for defendants-appellees.

WELLS, Judge.

The sole issue of this appeal is to determine whether the trial court committed reversible error when it found plaintiff in violation of N.C.Gen.Stat. § 1A-1, Rule 11 of the North Carolina Rules of Civil Procedure and imposed a sanction. The trial court's decision to grant or deny motions to impose sanctions under Rule 11 is "reviewable de novo as a legal issue." Turner v. Duke University, 325 N.C. 152, 381 S.E.2d 706 (1989). A pleading violates Rule 11 if (1) it is not "well grounded in fact," (2) it is not "warranted by existing law or [by] a good faith argument for the extension, modification, or reversal of existing law" or (3) it is interposed for an "improper purpose." Rule 11 of the North Carolina Rules of Civil Procedure.

In North Carolina, it is an established principle that the possessor of an easement has all rights that are necessary to the reasonable and proper enjoyment of that easement. Shingleton v. State, 260 N.C. 451, 133 S.E.2d 183 (1963) (quoting 12A Am.Jur., Easements, s. 113, pp. 720, 721). "[A]n easement in general terms is limited to a use which is reasonably necessary and convenient [108 N.C.App. 785] and as little burdensome to the servient estate as possible for the use contemplated." Id. Whether a specific use of an easement constitutes a reasonable use is a question of fact and is not a matter of law. Id.

Because the determination of reasonable use is a question for a fact-finder, plaintiff's attempt to limit defendants' use of their easement is well-founded in law, if plaintiff presented competent evidence which could lead a reasonable fact-finder to determine that defendants' excavations and construction of a retaining wall do not constitute a reasonable use of the easement. Although the jury in this case determined that the construction of the restraining wall was, in fact, a reasonable use, Rule 11 sanctions would not be appropriate unless it can be said that the evidence dictated a finding of reasonableness as a matter of law.

At trial, plaintiff presented evidence which would support the conclusion that there were several alternative methods by which defendants' easement could be kept reasonably accessible. The evidence showed that the uneven slope could have been corrected by either excavation or fill and that, while some approaches offered more benefits than others, the access could have been made or kept accessible without the construction of a retaining wall. While the jury found the construction of the retaining wall to be a reasonable approach to maintaining use of the right-of-way, the existence of other less obtrusive options established that a valid issue of fact existed and that the plaintiff was not in violation of Rule 11 when he pursued this case.

Therefore, we hold that it was error for the trial court to reach the conclusion that plaintiff's pleadings were not well grounded in fact or warranted by existing law.

Having found plaintiff's pleadings to be sufficiently grounded in law and fact, we discern no sufficient basis in the record to support the finding that plaintiff brought this action in bad faith. We therefore hold that plaintiff's pleadings were not interposed for an improper purpose.

The trial court's imposition of Rule 11 sanctions are

Reversed.

EAGLES and LEWIS, JJ., concur.