

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

TIMOTHY EATON, *et al.*

Plaintiffs

v.

CARLA BAER, *et al.*

Defendants.

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Case No. CL-82643

FINAL ORDER

THIS CAUSE CAME TO BE HEARD the 24th day of February, 2017, and was argued by counsel.

By Initial Judgment Decree entered October 27, 2015, Plaintiffs were granted an access easement by necessity across Defendant Carla Baer's parcel (PIN 441-35-8155), but subject to certain requirements, including the establishment of a connecting easement across the land of adjoining landowners Mark and Suzanne Eaton (PIN 441-35-7119), who are not parties to this cause. By Deed of Easement dated April 1, 2016 and recorded as Instrument No. 20160401-0018796, the required connecting easement was granted to the Plaintiffs. This connecting easement through the parcel owned by Mark and Suzanne Eaton (PIN 441-35-7119) is 75' in width along the northern boundary of and 89' in width along the western boundary of the parcel owned by Mark and Suzanne Eaton.

By Order entered March 17, 2016 the Court ruled that in order to be finally granted any easement by necessity across the Baer parcel, the Plaintiffs must first establish that Loudoun County will allow the construction of a roadway within the easement. This ruling was clarified in an order entered December 8, 2016 which provided that the Plaintiffs "need not obtain actual County approval to build the roadway, but must provide a proper expert or person

with authority who will credibly attest that the County would approve construction of a roadway within the confines of the easement,” meaning within the confines of the conditionally granted easement-by-necessity, which crosses the Baer parcel, as well as within the confines of the connecting easement, which crosses the parcel owned by Mark and Suzanne Eaton, to reach the Plaintiffs’ parcels.

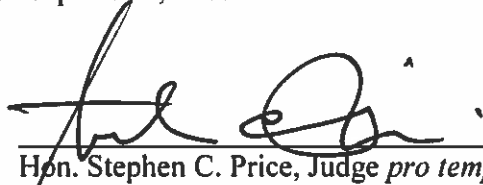
A hearing was held on February 24, 2017 to provide Plaintiffs the opportunity to establish that the County would approve plans for construction of the roadway within the easement. Both parties provided experts who testified as to their opinions regarding the potential issues regarding the construction of the proposed roadway, and reference is made to the Court’s Memorandum Opinion dated August 10, 2017 which is incorporated in this Order for a more detailed review of that testimony. Additionally, Baer offered the testimony of Ryan Reed, County Soil Scientist and the Loudoun County Department of Building and Development Natural Resources Team Leader, and reference is again made to the Court’s Memorandum Opinion for a more detailed summary of his testimony.

Upon consideration of the evidence, the Court finds that the Plaintiffs have failed to adduce sufficient evidence to make the showing previously directed by this Court, that the County would approve plans for construction of the roadway within the easement. Although Plaintiffs’ expert Mr. Quante believed the requirements could be waived, the Court found Mr. Jeffries’ opinion to be the more credible because it was based on more relevant experience and because he attempted to design a roadway within the confines of the Easement that met all the County’s requirements and was unable to do so. The Plaintiffs having failed to carry their burden of proof, the Court finds in favor of the Defendant Carla Baer; and any easement previously conditionally granted across the Baer tract by order of this Court in this cause,

including but not limited to that conditionally granted in the Initial Judgment Decree entered October 27, 2015 should be and hereby is VACATED. There remaining nothing further to be done, this cause should be and hereby is DISMISSED WITH PREJUDICE.

THIS ORDER IS FINAL.

ENTERED this 26th day of September, 2017.



Hon. Stephen C. Price, Judge *pro tempore*

SEEN: IN THE EVENT OF PLAINTIFFS' APPEAL, DEFENDANT BAER PRESERVES ANY AND ALL OBJECTIONS MADE OF RECORD IN THIS CASE, INCLUDING BUT NOT LIMITED TO THOSE APPENDED TO THE COURT'S OCTOBER 27, 2015 INITIAL JUDGMENT DECREE.

WARREN R. STEIN, P.C.

Rule 1:13

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SEEN AND EXCEPTED TO FOR THE REASONS STATED PREVIOUSLY BY COUNSEL, INCLUDING THAT THE COURT HAS GONE BEYOND THE PLEADINGS IN EVEN ADDRESSING THE ISSUES PRESENTED AT THE FINAL HEARING AND THAT THE COURT HAS BOTH FAILED TO FOLLOW THE LAW OR DO EQUITY:

BOSSON LEGAL GROUP, P.C.

Rule 1:13

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