



THE REAL ESTATE BROKERAGE LEGAL NEWS

A newsletter with items of interest to the real estate
brokerage community

(843) 238-5141

www.floydlaw.com

dbfloyd@floydlaw.com

Volume 6, Issue 6

Editors: Dundee W. Carter, Esq. and R. Jeffrey Sawyer, Esq.

Fall 2006

South Carolina Supreme Court "Eases" Some Confusion Over Easements

This article will address a common concern for clients that could potentially have a negative or positive impact on their interest in real estate. Easements affecting property can be either recorded or non-recorded. This article addresses those easements that are not of record in the county in which the property is located.

Black's Law Dictionary defines an easement as "A legal or equitable right acquired by the owner of one piece of land to use another's land for a special purpose."

The South Carolina Supreme Court used *Boyd v. BellSouth* (SC Sup. Ct. Opinion No. 26170, June 19, 2006) to clarify several complex issues in the area of easements. In the case, BellSouth owned a large tract of land which they divided into two parcels. Boyd was eventually deeded the western lot while BellSouth retained ownership of the eastern lot. Boyd used a driveway that went across the eastern tract, retained by BellSouth, to access the rear of the building on her lot. Eventually, BellSouth constructed a fence that denied Boyd the ability to continue using the driveway. No document was ever recorded evidencing an intention by BellSouth to grant an easement to Boyd or her

prior use, necessity, and prescription. The Court affirmed the elements of these easements.

An easement implied by prior use is: "(1)unity of title; (2)severance of title, (3) the prior use was in existence at the time of unity of title; (4)the prior use was not merely temporary or casual; (5)the prior use was apparent or known to the parties; (6)the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7)the common grantor indicated an intent to continue the prior use after severance of title."

An easement by necessity is created when a party shows: "(1) unity of title, (2) severance of title, and (3) necessity." The necessary "must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible."

The elements for a prescriptive easement are: "(1)continued use for 20 years, (2)the identity of the thing enjoyed, and (3)use which is either adverse or under a claim of right."

The SC Supreme Court concluded these three types of easements apply to different sets of facts, and thus retain their distinguishing characteristics. The second issue determined in the case was that the "necessity" required for an easement by prior use can be less than that

The Supreme Court lastly addressed the issue of easement by equitable estoppel: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.": The SC Supreme Court concluded that a properly recorded chain of title will generally defeat an easement by equitable estoppel claim. The Court's rationale was that one cannot be ignorant, or without the means of discovering the state of the title, if the chain has been properly recorded in the public records.

If you have any further questions or would like to schedule an informal seminar on this or any other real estate subject, please call Dundee W. Carter or Dalton B. Floyd, Jr.

If you would prefer to receive this newsletter via email, please forward your email address to

dwcarter@floydlaw.com

THE FLOYD LAW FIRM PC

15 Highway 17 South
Surfside Beach, SC 29587

**Call us for your next
Real Estate Closing!**

The Real Estate Broker Legal News is not intended as legal advice on any issue and recipients should consult with an attorney regarding the applicability of any item here in or a particular fact situation.