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IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

FIRST AMERICAN TITLE INSURANCE )  
CO., )

Plaintiffs, )

v. )

Civil Action No. 05-C-94

THOMAS FIRRIOLO, EVAN LEFEVER and )  
BETH L. LEFEVER, and ANNE P. )  
CHIAPELLA, )

Defendants. )

**ORDER OF COURT**

AND NOW, this 21<sup>st</sup> day of March, 2008, the following individuals; William B. Carey, Esquire, on behalf of Defendants Evan and Beth LeFever; Ryan J. King, Esquire, on behalf of Plaintiff First American Title Insurance Company; Braun Hamstead, Esquire, on behalf of Defendant Anne P. Chiapella; and R. Greg Garretson, Esquire, on behalf of Defendant Thomas Firriolo, having appeared before this Court to present oral argument on the Motion for Summary Judgment filed on behalf of Defendants Evan and Beth LeFever and the Motion for Summary Judgment filed on behalf of Plaintiff, First American Title Insurance Company this Court does hereby make the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. The parties agree that the chain of title recited in Plaintiff's Motion for Summary Judgment together with the recorded instruments attached to Plaintiff's Complaint in the above referenced matter are accurate representations of the chain of title to the property which is the subject matter of this proceeding (the "Property") and the Court accepts the same as accurate.

2. The chain of title as accepted by the parties and as accepted by this Court establishes that a prior easement encumbering the Property and benefiting property previously owned by LeFever and now owned by Firriolo, was released and no other replacement easement was granted or conveyed to replace the released easement.

3. More specifically, this dispute relates back to a Deed of Partition dated October 31, 1988. wherein several property owners, James and Helen Clark, Fred Orr, Carrie Carmichael, and Dona Jean Wilcox partitioned off a 4.22 acre tract of undeveloped land (hereinafter the "4.22 Acre Tract") and deeded the 4.22 Acre Tract to defendant Evan LeFever.

4. At the time of partition, an easement was granted benefiting the 4.22 Acre Tract (hereinafter, the "Original Easement"). The easement was described as follows:

Together with a 20 foot wide right-of-Way, for ingress and egress, more particularly described as follows:

BEGINNING at a point on the east side of W.Va. County Route 13; thence, with the center of the 20 foot wide Right-of-Way, S 70 deg. 04' 27" E, 148.99 feet; thence, With the Arc of a curve to the left for distance of 275.47 feet (the central angle = 52 deg. 52' 36" and the Radius = 289.49 feet); thence, N 57 deg. 02' 57" E, 345.68 feet; thence, With the Arc of a curve to the right for a distance of 299.09 feet (the central angle = 93 deg. 13' 42" and the radius = 183.82 feet) to a point 10 feet from the line of Philip W. Harmison; thence running 10 feet from and parallel to said Harmison, S 29 deg. 43; 20: E, 259.88 feet to the west line of the above described 4.22 acres, as shown on the attached plat.

5. The Original Easement ran from the 4.22 Acre Tract across a larger 14.33 acre tract of land (hereinafter the "14.33 Acre Tract").

6. By Quit-Claim Deed dated, acknowledged and recorded February 6, 1990, Defendant, Evan LeFever (hereinafter "LeFever"), the then owner of the 4.22 Acre Tract, released all of his right, title and interest in and to the Original Easement to Fred Orr, the then owner of the 14.33 Acre Tract.

7. No subsequent easement was ever granted to LeFever with respect to the 4.22 and/or 14.33 Acre Tracts.

8. By Deed dated and recorded on February 6, 1990, Fred Orr conveyed all of his right, title and interest in and to the 14.33 Acre Tract to Robert L. Dunker and Hermina P. Dunker.

9. The February 6, 1990 Deed from Fred Orr to the Dunkers was not modified to reflect the previous termination of the Original Easement.

10. All subsequent deeds to the 14.33 Acre Tract contained the description of the Original Easement which had previously been released.

11. On March 9, 2000, the Dunkers conveyed all right, title and interest in the 14.33 Acre Tract to Defendant Firriolo.

12. By Deed dated September 11, 2003, LeFever conveyed all right, title and interest in and to the 4.22 Acre Tract to Defendant Firriolo by Fee Simple General Warranty deed with no reservation or exceptions.

13. As of September 11, 2003, Firriolo was the Fee Simple owner of both the 14.33 Acre Tract and the 4.22 Acre Tract.

14. On October 21, 2003, Firriolo executed and delivered a Deed in Fee Simple conveying all right, title and interest in and to the 14.33 Acre Tract to Anne Chiapella (hereinafter "Chiapella").

15. In connection with her purchase of the 14.33 Acre Tract, Chiapella purchased a title insurance policy from Plaintiff (the "Title Policy"), First American Title Insurance Company of America ("First American").

16. The Title Policy issued to Chiapella, specifically excepted the Original Easement from coverage.

17. By Order dated November 26, 2007, this Court ruled in an ancillary case that the Original Easement had been released prior to Firriolo purchasing the 14.33 Acre Tract and as a result, the settlement reached between Defendants Evan and Beth LeFever and Defendant Thomas Firriolo was predicated on a mutual mistake.

18. First American has alleged that there is no cloud upon the title of the 14.33 Acre Tract resulting from the existence of the Original Easement since:

- a. the Original Easement had previously been released; and
- b. the common ownership of the 14.33 Acre Tract and the 4.22 Acre Tract caused the Original Easement to terminate pursuant to the Doctrine of Merger.

#### **CONCLUSIONS OF LAW**

19. The Court, having reviewed the record of title to the 14.33 Acre Tract agrees with the arguments raised by First American and concludes that the arguments made in Plaintiff's Motion for Summary Judgment are well supported by the law in West Virginia and the Court's prior rulings.

20. The February 6, 1990 Quit Claim Deed from Evan LeFever to Fred Orr extinguished the Original Easement.

21. Because no subsequent easement was recorded and there has been no judicial determination that a subsequent easement by necessity or any other easement was created, there was no easement servicing the 4.22 Acre Tract at the time Ms. Chiapella purchased the 14.33 Acre Tract.

22. As of September 11, 2003, Defendant Firriolo owned both the 14.33 and 4.22 Acre Tracts in Fee Simple as evidenced by the respective deeds.

23. In West Virginia, the doctrine of merger provides that when the owner of a dominant estate acquires the fee simple title to the servient estate, an easement appurtenant to the dominant estate is extinguished.

24. Furthermore, the law of West Virginia establishes that no owner can use one part of his or her estate adversely to another part of his estate.

25. Even assuming, *arguendo*, that the Original Easement or any other easement existed after February 6, 1990, which the Court has concluded was not the case, the 14.33 Acre Tract and 4.22 Acre Tract merged under the ownership of Thomas Firriolo and, therefore, any easement in existence was extinguished pursuant to the doctrine of merger as of September 11, 2003.

26. At the time Chiapella purchased the 14.33 Acre Tract, there were no easements across the 14.33 Acre Tract to the 4.22 Acre Tract.

~~27. The specific exceptions and general exceptions contained in the Title Policy expressly exclude coverage for any claims premised upon either the Original Easement or any other easement not appearing of record or any other easement either apparent or not apparent upon an inspection of the Property and, therefore, the Court concludes that the Title Policy in question does not provide coverage for claims based upon the existence of an easement.~~

28. On September 11, 2003, the date, Firriolo became the owner of the 4.22 acre tract, there were no valid easements effecting either the 4.22 acre tract or the 14.33 acre tract as a result of LeFevers' February 6, 1990 Quit Claim Deed.

29. There are no genuine issues of material fact remaining for a trier of fact and Plaintiff is entitled to summary judgment as a matter of law.

30. Contrary to Defendant LeFever's allegations there is currently no easement servicing the property and Defendants have failed to adduce sufficient evidence from which this Court can determine that an easement by necessity existed at the time Ms. Chiapella purchased the 14.33 Acre Tract.

31. Defendant Evan LeFever has failed to establish that he is entitled to summary judgment as a matter of law.

**WHEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED and DECREED that Defendants', Evan LeFever and Beth LeFever, Motion for Summary Judgment is DENIED and Plaintiff's, First American Title Insurance Company, Motion for Summary Judgment is GRANTED.

It is further ORDERED that the Circuit Clerk for Morgan County, West Virginia, shall mark this matter as DISMISSED in its entirety and remove this case from the docket.

BY THE COURT

  
Thomas W. Steptoe, Jr., Judge

Entered: 4/30/08

CC: 5-2-08  
all attop

The Clerk is directed to retire this action from the active docket and place it among causes ended.

TRUE COPY, ATTEST:

  
Circuit Clerk  
Morgan County, West Virginia  
By Helen W. Morris

THE CLERK WILL ENTER THE FOREGOING AS AND FOR THE DAY AND DATE FIRST ABOVE WRITTEN AND FORWARD ATTESTED COPIES HEREOF TO ALL COUNSEL AND PRO SE PARTIES OF RECORD.

THOMAS W. STEPTOE, JR.  
JUDGE

GUARDIAN  MAS   
DOM  MH   
JUVENILE   
ADM   
BOOK 32  
INITIAL  
5-2-08