

SJC Extends Flexible Approach to the Alteration of Easements

February 24, 2014

Kevin O'Flaherty and Tristan Foley

In Martin v. Simmons Properties, decided on January 16, 2014, the Supreme Judicial Court of Massachusetts reaffirmed its commitment to flexibility in the interpretation and enforcement of easements. The Court clarified that the new approach to the alteration of easements adopted by the Court in 2004 also applies to registered land. Accordingly, unless prohibited by agreement, easements over either recorded or registered land can be unilaterally altered or relocated by the owner of the land over which the easement runs provided that certain conditions are met.

In MPM Builders, LLC v. Dwyer, 442 Mass. 87 (2004), the Court adopted the more modern approach that allows property owners, at their expense, to alter easements that burden their land in order "to permit normal use or development" of their land. Alterations (including relocations) are allowed as long as they are not prohibited by the terms of the easement agreement itself and the alterations "do not (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, or (c) frustrate the purposes of the easement." This allows a property owner across whose land an easement runs (the servient owner) unilaterally to alter the easement. The former rule required the easement holder (the dominant owner) to first agree to any alteration.

The MPM Builders case involved "recorded" land. Most land in Massachusetts is recorded land; meaning that relevant documents, such as deeds and mortgages, are filed with the registry, but the extra step of registration has not been taken. In Massachusetts, landowners can have their land registered through the Land Court's registration process. The registration process gives a court sanction to title, and, for example, protects the owner's title against claims of adverse possession or other prescriptive rights. However, because the MPM Builders case involved recorded (not registered) land, the question remained as to whether the rule articulated in that case would apply to registered land.

The Court answered that question in Martin v. Simmons Properties, clarifying that the more modern, flexible approach would apply to registered land as well as recorded land. The Court rejected Martin's claims that Simmons Properties was violating Martin's easement, even though Simmons encroached upon Martin's original easement that was included in his registered land. The Court found that Martin was still able to utilize the easement for its intended purpose; the agreement creating the easement did not prohibit alteration; and, therefore the encroachment was an allowable reasonable alteration.

While the Court embraced the modern rule that would allow easements to be altered unilaterally, the Court stated that language in the agreement creating an easement that specifically prohibits alteration or explicitly requires that an easement remain in a certain location in perpetuity can prevent the servient owner from altering the easement. Therefore, if the specific location of an easement is important to an easement holder, the easement itself should be created by language specifying that its extent and location may not be altered.

If seeking to alter an easement, the Court specified in MPM Builders that a servient owner should first seek the permission of the dominant owner. If an agreement cannot be worked out, then the servient owner should seek court approval before making any changes. In disagreements, courts will look to the purpose of the easement and ensure that the dominant owner is able reasonably to utilize the easement for its purpose without an increased burden.

Accordingly, in Massachusetts, unless prohibited by the terms of the easement, servient owners of registered or recorded land are now free reasonably to alter easements at their expense. Courts will allow alterations provided that the easement can still be reasonably used by the dominant owner. If a dominant owner wants to ensure that an easement is never changed, he must specify this in the instrument creating the easement. A servient owner who wishes to alter an easement should first seek the agreement of the dominant owner, and then if needed court approval, before making any changes.

For additional information, please contact your usual Goulston & Storrs attorney, any of the attorneys in Goulston & Storrs' [Real Estate Litigation](#) group, or either of the following attorneys:

Kevin P. O'Flaherty

(617) 574-6413

koflaherty@goulstonstorrs.com

Tristan Foley

(617) 574-4136

tfoley@goulstonstorrs.com

This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.

© 2014 Goulston & Storrs PC All Rights Reserved