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Real Property—Easement by Implication

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the selection was invalid as to the person who was then the title holder, because of want of notice, this invalidity was cured when the title holder, in his grant, recognized the right. The grantee of this later deed was chargeable with notice because the deed was by that time on record in the County Clerk's office.

Easement by Implication

In *Weil v. Atlantic Beach Holding Corp.*,[10] deeds to lots in a beach area referred to cover maps of a subdivision which included proposed streets and a boardwalk. A perpetual right to use the beach for bathing purposes was expressly reserved to the respective owners.

Ten years before this action in equity upon a claim of easement was initiated, the boardwalk fell into disrepair and subsequently closed. The area has since been redeveloped. Before the redevelopment, a party-defendant constructed a fence across one section of the boardwalk although property owners were not interrupted in their free access to the same. In addition, a portion of the walk was removed by said party who constructed an alternative route. Access to this section of the walk was the subject of an appeal by residents of the community.

The Court sustained the easement, and affirmed the holding of the Appellate Division that the defendant must remove the fences barring access to the aforementioned portion of the walk. It further held that property owners in the beach area have implied easements over and upon undeveloped roadways indicated by the cover maps.

An implied easement is an easement resting upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted.[11] It has been held that purchasers upon a representation that land from the lake shore to water's edge should be used in common, could not be deprived of such right.[12]

Although some state courts have indicated that mere convenience is not enough, and have required the easement to be strictly necessary to the principal thing granted,[13] New York supports a more liberal view, holding that so far as their existence adds to the value of the property sold and

10. 1 N. Y. 2d 20, 133 N. E. 2d 505 (1956).
11. *Farley v. Howard*, 33 Misc. 57, 68 N. Y. Supp. 159 (Sup. Ct. 1900); *Sabatino v. Vasarelli*, 264 App. Div. 742, 35 N. Y. S. 2d 635 (2d Dep't 1942).
12. *Boughton v. Baldwin*, 134 Misc. 34, 235 N. Y. Supp. 98 (Sup. Ct. 1929).
13. *McSweeney v. Commonwealth*, 185 Mass, 371, 70 N. E. 429 (1904).

the intent of the parties is manifest, the easement will be sustained.[14] Where a developer of land sells lots with reference to a map on which squares, parks, or beaches are designated, and representations are made by the developer that such areas are for the use of the owners, purchasers of such lots acquire an easement therein by implication.[15]

It appears from the fact that virtually no use was made of the premises during the period in question that the Court is not so concerned with how much use is required in order to determine if the easement be necessary, but rather with giving effect to the grantor's intention and the grantee's reasonable expectations. Such intentions and expectations become especially apparent when in direct reference to a map or plot.

Eminent Domain—Valuation

Evaluation of property in eminent domain proceedings is a process of weighing many variants and intangibles. Certain criteria and formulae have been evolved in an effort to assist the courts in their determinations. One method is "capitalizing the income", used frequently in rent-producing property cases. Here, the rental received is divided by a percentage representing the prevailing local rate of return for the type of property involved. The resultant figure represents the capital amount necessary to yield the same amount of income to the claimant as he has been receiving in the past. To illustrate, where six thousand dollars was the annual rate reserved and the local rate of earning six per cent, one hundred thousand dollars would be the appropriate award.

It should be clear that an increase in the rate employed will cause a decrease in the capital sum and vice versa. The validity of the method is the subject of dispute and has been variously characterized as: "one of the best tests of value",[16] and "barely a rough guess".[17]

In *In Re City of New York (Manhattan Tower)*,[18] Special Term accepted the capitalization sales of the City's expert in arriving at its award, although expressing grave misgivings as to their correctness, stating that the award was at least ten per cent greater than he would have given if the experts

14. *Williamson v. Salmon*, 233 N. Y. 657, 135 N. E. 958 (1922).
15. *Wilkinson v. Nassau Shores*, 304 N. Y. 614, 107 N. E. 2d 93 (1951); *Williamson v. Salmon, supra* note 14; *Erit Realty Corp. v. Sea Gates Ass'n.*, 259 N. Y. 466, 182 N. E. 85 (1932); *White v. Moore*, 161 App. Div. 400, 146 N. Y. Supp. 593 (2d Dep't 1914).
16. 5 NICHOLS, EMINENT DOMAIN §19.2 (3d Ed. 1952).
17. JAHR, LAW OF EMINENT DOMAIN §149 (1953).
18. 1 N. Y. 2d 428, 136 N. E. 2d 478 (1956).