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COURT OF APPEALS  
DIVISION I  
2016 NOV 1 11:04 AM

No. 65814-0

COURT OF APPEALS,  
DIVISION I,  
OF THE STATE OF WASHINGTON

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K. CAROLYN RAMAMURTI, and CAROL E.  
RAMAMURTI,

Appellants,

v.

DAVID ROSER, WASHINGTON MUTUAL BANK,  
TICOR TITLE, and all other persons or parties unknown  
claiming any right, title, estate, lien or interest in the real  
estate described in the complaint herein,

Respondents.

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APPELLANTS' OPENING BRIEF

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**ORIGINAL**

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**A. ASSIGNMENTS OF ERROR**

*Assignments of Error*

Appellants K. Carolyn Ramamurti and Carol E. Ramamurti (“Ramamurtis”) assign error to the following:

1. The Order Granting Defendant’s Motion for Summary Judgment, which dismissed the Complaint for Quiet Title on the grounds that Defendant Roser’s property is benefitted by an easement for purposes of ingress and egress over the vacated portion of Maplewood Place.

2. The Order Dismissing All Claims Against Ticor Title, dated July 2, 2010.

*Issues Pertaining to Assignments of Error*

1. Whether an easement implied by reference to a plat exists where it is neither necessary for ingress and egress nor relied upon by the abutting property owner?

2. If an easement implied by reference to a plat exists, will the further short subdivision of Defendant Roser’s Lot B unduly burden the easement beyond its original scope?

3. Whether Defendant Roser can access his property via Maplewood Place without traversing the Ramamurtis’ property?

**B. STATEMENT OF THE CASE**

The Ramamurtis' lots and Defendant Roser's lot originate from the 1925 subdivision recorded as Westwood by the Sound Addition. CP 122. The Ramamurtis' Lots 8, 9, and 10 are shown on the face of the Westwood by the Sound Addition plat (Westwood plat) and front Maplewood Place. CP 122; CP 190-191. The Westwood plat consists of 63 lots and two "reserve" areas labeled "Reserve No. 1" and "Reserve No. 2." CP 122. Reserve No. 1 is largely composed of steep slopes, with areas of 40% slopes or more, generally not suitable for development. CP 192; CP 201-203. Despite these slope limitations, Reserve No. 1 was subdivided into four lots in 1981. One of the lots created in 1981 is Lot B, currently owned by Defendant Roser. CP 124-128; CP 77-81.

Lot B is bordered on the east by 47th Avenue SW and on the west by Maplewood Place. CP 122. 47th Avenue SW is a public thoroughfare. Maplewood Place is a private drive. CP 191. It was originally publicly dedicated as part of the Westwood plat approval in 1925, but was subsequently vacated by King County in 1927. CP 192; CP 198.

Defendant Roser currently resides in a home on Lot B that fronts upon 47<sup>th</sup> Avenue SW. He accesses his home through 47th Avenue SW. CP 191-192. He has an application pending with the City of Seattle to

subdivide Lot B into two lots. One lot will contain the currently existing home and the second will contain a new home that fronts upon Maplewood Place. CP 74.

Lot B, as all of Reserve Lot No. 1, is constrained with steep slopes that in some places exceed 40% in grade. CP 191-192. The steep slopes prevent vehicular access from the Maplewood Place side of the lot to 47<sup>th</sup> Avenue SW and vice-versa. CP 191-192. The entirety of the lot that will front Maplewood Place is designated as a steep slope hazard by the City of Seattle. CP 199. Defendant Roser will only be able to build upon the lot by acquiring approval for a variance. CP 203. Defendant Roser apparently hopes to acquire approval of the new lot and then argue that he can build nothing upon it without a variance, which the City will then be compelled to grant since he will otherwise have no reasonable use of his property. CP 94-97.

On or about 1959 and 1960, the owners of the properties abutting Maplewood Place granted cross-easements to each other along Maplewood Place in order to maintain joint access over Maplewood Place. CP 100; CP 102-116 (collected easements attached to Olbrechts letter). Defendant Roser's parcel was not granted such an easement, even though

the former owner of his property granted easements across Reserve No. 1 to other property owners abutting Maplewood Place. *Id.*

Maplewood Place is a narrow lane that barely accommodates two-way traffic. CP 191. Maplewood Place is already congested with the traffic generated by its abutting properties. CP 191. Maplewood Place is a dead-end road, so traffic is generally limited to vehicles accessing abutting properties. CP 191.

On July 2, 2010, following oral argument, the trial court entered an Order dismissing the Ramamurtis' Complaint to Quiet Title and an Order dismissing all claims against Ticor Title. CP 239-243. The trial court's ruling in Defendant Roser's favor has cleared the way for additional traffic generated by additional development of Reserve No. 1 along Maplewood Place.

**C. ARGUMENT**

1. Defendant Roser is not entitled to an easement implied from a plat across Maplewood Place because he already has access to his property via 47th Avenue SW and Maplewood Place was never intended to serve his property.

Defendant Roser argues he has an implied easement over Plaintiff Carolyn Ramamurti's property. The trial court agreed that he has a private easement implied by reference to a plat. This type of easement is rooted

in principles of estoppel and contract. Application of these principles to Maplewood Place does not justify an implied easement. Given the absence of any justification for an implied easement in Defendant Roser's situation, and the fact that implied easements are disfavored in the law, the Court should not find an implied easement over Maplewood Place.

Under the doctrine of private easements implied by reference to a plat, parties who purchase property from a common grantor, in reference to a recorded plat, acquire a private easement for (1) the purpose of access over the streets and alleys abutting their property, and/or (2) over the streets and alleys that are reasonably necessary for ingress and egress to their property. *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958).

Defendant Roser's property clearly fails to meet the second prong of the *Capitol Hill* test, and there does not appear to be any dispute on this point. Defendant Roser does not qualify under the second prong because he does not need to use Maplewood Place to access his property. As stated above, Defendant Roser's property, Lot B of the short subdivision of Westwood Reserve Lot No. 1, fronts on both Maplewood Place and 47th Avenue SW. Defendant Roser currently accesses his Lot from 47th Avenue SW and very rarely, if ever, used Maplewood Place for access.

CP 92; CP 191-192. In fact, the one home on the subject lot currently can only be accessed from 47<sup>th</sup> Avenue SW. CP 191-192. The Maplewood Avenue side of the subject lot is completely undeveloped and constrained almost entirely by steep slopes. CP 191-192. Defendant Roser would have no reason to access this side of his lot. He would have to climb up a 40% slope to access the improved portions of his lot from the western side. CP 191-192.

Since there is no question that Defendant Roser's circumstances do not qualify under the second *Capitol Hill* prong, the primary issue of this appeal is whether he qualifies under the first prong. As to the applicability of the first prong of the *Capitol Hill* test, the Court should look to the principles used by the courts to justify implied easements by reference to a plat. As noted previously, these principles do not justify an implied easement in this instance. The basis for implied easements by reference was delineated in detail when the State Supreme Court first formulated the doctrine in *Van Buren v. Trumbell*, 92 Wash. 691, 693, 697, 159 P. 891 (1916). The *Van Buren* court applied estoppel and contract principles to

justify its new implied easement doctrine. *See Id.* at 693, 697.<sup>1</sup> As to estoppel, the *Van Buren* court stated as follows:

Resort must be had to fundamental principles. One who plats property upon which streets have been laid out, and who sells property with reference thereto, cannot, by an act of his own, defeat the right of his vendee to use the platted streets for the *purposes intended*. He is estopped to deny or impeach rights thus acquired.

*Id.* at 693 (emphasis added).

Attention is drawn to the court on the “purposes intended” language quoted above. *See also Hellberg v. Coffin Sheep Co.*, 66 Wn.2d 664, 668, 404 P.2d 770 (1965) (the cardinal consideration in construction of implied easements is the presumed intention of the parties). As shall be discussed, the unique characteristics of the subject property belie any intent to provide access from Maplewood Place.

As a second justification for its new implied easement doctrine, the *Van Buren* Court analogized acquiring an implied easement to a contract

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<sup>1</sup> The *Van Buren* court does not expressly state whether it is applying equitable estoppel, which is based in tort, as opposed to promissory estoppel, which is based in contract. *See 28 Am Jur.2d Estoppel and Waiver* § 35 (2000). It is likely that the *Van Buren* court was applying equitable estoppel, but it is recognized that if it did not, the segregation of the *Van Buren* analysis into estoppel and contract is technically inaccurate, since both principles would be classified as contractual. Ultimately the distinction is not significant, since the points identified as estoppel and contract comprise the entirety of the most significant principles raised by the *Van Buren* court. It is also noted that the *Van Buren* court applied principles of contract and estoppel very loosely without any rigorous application of the criteria that apply to both. This briefing applies these principles in like fashion.

right, stating that access to streets and alleys are given as additional consideration for a higher purchase price:

Here is a contract. The owner of the land proposes to lay out a town. He makes up a map, with the lots, streets, lanes, etc., marked upon it and he not only agrees to dedicate the streets to the public but he sells the lots abutting upon the streets. The public accepts the streets the lot owner buys the lots under these representations, and the owner of the soil gets a consideration for his dedication in the increased price of his lots.

*Van Buren*, 92 Wash. at 697-98. Thus, according to *Van Buren*, the doctrine of easements implied by reference to a plat “has for its object the suppression of fraud and the enforcement of honesty and fair dealing” with respect to the “contract” created. *Id.* at 693.

Given the estoppel and contract principles underlying the adoption of the *Van Buren* implied easement, Defendant Roser is not entitled to an implied easement because (1) under the estoppel principle, given the physical characteristics of the lot, there could be no intent presumed to create the easement when Maplewood Place was platted; and (2) under the contract principle, there cannot be any added compensation presumed for a private easement over Maplewood Place when such access was neither anticipated nor necessary when Maplewood Place was platted.

Reasonable necessity justifies the creation of implied easements in general over vacated roads. In typical implied easement cases, the

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claimant must prove both unity of title and a reasonable necessity for ingress and egress. Reasonable necessity is essential. See *Fossum Orchards v. Pugsley*, 77 Wn. App. 447, 451, 892 P.2d 1095 (citing *Evich v. Kovacevich*, 33 Wn.2d 151, 204 P.2d 839 (1949)). Of course, in the situation of a vacated road, it would place property owners in an untenable position if a street vacation were to suddenly leave them with no access to their property. The *Van Buren* cases prevented this injustice from occurring by manufacturing the concept of implied easements. As noted in the *Capitol Hill* case, “owners of property abutting on a street or alley have no vested right in such street or alley, except to the extent that their access may not be unreasonably restricted or substantially affected.” *Capitol Hill*, 52 Wn.2d at 364 (quoting *Taft v. Washington Mutual Savings Bank*, 127 Wash. 503, 221 P. 604, 606 (1923)). Since Defendant Roser already has access to his property over 47<sup>th</sup> Avenue SW, there is no need and no equitable basis for granting him vested rights to Maplewood Place and burdening the Ramamurtis’ lots with additional rights of ingress and egress.

Furthermore, given the topography of Reserve No. 1 and Roser’s lot in this particular case, it would also not be consistent with the *Van Buren* contract theory to find an implied easement across Maplewood

Place. As previously stated, when the land was originally subdivided in 1925 as Westwood by the Sound, Defendant Roser's property was part of a larger lot called Westwood Reserve No. 1. CP 122, 124-126. Westwood Reserve No. 1 was a long, narrow lot that extended south to north. *Id.* 47<sup>th</sup> Avenue SW, which is approximately 40 feet in width in comparison to Maplewood Place's 20 feet in width, ran along the entire east side of this lot. *Id.* Reserve No. 1 is composed of steep slopes, exceeding 40% grade in some places. CP 191-192; CP 201-203. The western boundary of the Roser property runs from an elevation of 60 feet at its southern end to 150 feet at its northern end over a distance of 162 feet. The eastern boundary of the property runs from 60 feet to 160 feet over a distance of 230 feet. CP 92; CP 201. Due to these slope features, the Roser property is classified in its entirety by the City of Seattle as a steep slope hazard that can only be developed by the granting of a variance. CP 199; CP 203. The slope characteristics of defendant's property apply generally to all of Reserve Lot No. 1. *See* CP 143.

In short, Reserve No. 1 had very little development potential in 1925, and anyone purchasing the lot would have found 47<sup>th</sup> Avenue SW, which was significantly wider than Maplewood Place, to provide more than sufficient access. Moreover, the developer could not have anticipated

in 1925 that the market would improve enough to make development feasible. In point of fact, the short plat of Reserve No. 1 did not occur until 56 years later. Thus, Roser's predecessors, the purchasers of Reserve No. 1, would not have paid a higher purchase price in reliance upon or in consideration for the dedication of Maplewood Place for access, given the constraints of the steep slopes hindering development. The principles of honesty and fair dealing that the *Van Buren* contract theory was created to preserve are not imperiled in this case because the developer and Roser's predecessor could not have intended that access be obtained through Maplewood Place.

Under the *Van Buren* estoppel justification for the implied easement, the absence of intent to provide such an easement is similarly borne out by the physical constraints of the property. The platter would not have seen any need to provide dual access to such a physically constrained lot and a buyer would not have relied upon any such misapprehension. The absence of any such intent or understanding was borne out by a series of access easements granted in 1959 and 1960 for access across Maplewood Place. CP 99-116. It is not immediately apparent why these easements were executed, but it is probably no coincidence that the *Capitol Hill* case was issued just a year before in

1958. The *Capitol Hill* case represented a major development in the *Van Buren* line of cases by clarifying that implied subdivision easements do not extend to every road in a subdivision but are limited to those necessary for access (the “narrow rule”). With this major new development in access rights, the property owners along Maplewood Place probably found it in their best interests to grant each other easements in order to ensure they had full access to their properties.<sup>2</sup>

The access easements are noteworthy on the issue of intent because the owner of Reserve No. 1 (it had not yet been subdivided at the time), granted easements across its fee interest underlying Maplewood Place *without any access easements granted in return*. If the owner of Reserve No. 1 thought he would ever need access to the back end of his property, it is hard to believe that he would have granted an access easement across his property without demanding reciprocal access rights across Maplewood Place.

The fact that Defendant Roser abuts two roads plays a key role in eliminating any justification in contract or estoppel for an implied

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<sup>2</sup> Upon the vacation of a right-of-way, one half of each side of the right-of-way reverts to the abutting property owners. *See* RCW 35.79.040. When Maplewood Place was vacated, the abutting property owners owned to the centerline of the former right-of-way. Consequently, persons wishing to use Maplewood Place needed an easement from adjoining owners.

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easement. It is perhaps no coincidence that no Washington court opinion has addressed whether a lot that has fully adequate access from one abutting street is still entitled to an implied easement across a second abutting street. Under these circumstances the second abutting street is unnecessary. There would be no intended purpose to provide access to the second street under the *Van Buren* estoppel justification and no cause to provide additional compensation under the *Van Buren* contract justification.

A final consideration in assessing the justification of an implied easement is that implied easements are typically disfavored in Washington law because they are in derogation of that rule that written instruments speak for themselves. *MacMeekin v. Low Income Housing Inst. Inc.*, 111 Wn. App. 188, 196, 45 P.3d 570 (2002). *See also American Law of Property* § 8.36, A. James Casner ed., (1952) (While the creation of easements by implication often operates to produce a just result as between the immediate parties to a conveyance, the process is often looked upon by the courts with very considerable disfavor because it is wholly inconsistent with statutory and common law requirements for a writing, either by seal or according to statutory requirements).

Under the strong policies against implied easements, the Court should avoid any temptation to manufacture some marginal justification for an implied easement to burden the Ramamurtis' property. The owners of Maplewood Place have clearly defined easements identifying who is allowed to access their properties. Defendant Roser does not have those express access rights. If the Court finds that Defendant Roser has access rights anyway, it is essentially concluding that access rights that were neither intended nor necessary take precedence over a carefully crafted series of express access easements. Surely the property interests of owners such as the Ramamurtis merit more respect than that. This situation is likely to recur with increasing frequency as properties formerly considered undevelopable are developed and owners such as the Ramamurtis are called upon to unfairly bear the burden of unanticipated issues such as access across secondary access roads. In these circumstances, the Court should not blindly apply implied easement rules formulated almost 100 years ago. It should take a close look at the equities and property interests involved on a case-by-case basis to ensure that the burdens associated with this type of unanticipated development are properly placed upon the person responsible — the developer.

2. The trial court erred in concluding that Defendant Roser's use of Maplewood Place would not exceed the scope of the easement, if one existed.

Summary judgment may not be granted where a genuine issue of material fact exists. CR 56(c). A genuine issue of material fact exists when reasonable minds could reach different factual conclusions after considering the evidence. When reasonable minds could differ, the motion should be denied and the case should go to trial. *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 616 P.2d 644 (1980). A genuine issue of material fact is one upon which the outcome of the litigation depends. *Capitol Hill*, 52 Wn.2d at 363.

The trial court erred in concluding that a genuine issue of material fact did not exist regarding whether Defendant Roser's proposed subdivision and proposed use of Maplewood Place for access to his lot impermissibly exceeds the scope of the implied easement.<sup>3</sup> To determine the scope of an implied easement, the Court "must look to the nature of the use as it exist[ed] at the date of conveyance, to determine the original scope. To some extent, the permitted usage at a given point in time is flexible, so long as no substantially increased burden is placed on the

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<sup>3</sup> The argument that the trial court erred in concluding no genuine issues of material fact existed is of course only relevant assuming this Court concludes an implied easement by reference to the plat should be found in Defendant Roser's favor.  
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servient tenement.” 17 William B. Stoebuck & John W. Weaver, *Washington Practice Real Estate Property Law* § 2.9 (2d ed. 2004).

In 1925, when the Westwood plat was recorded, Maplewood Place only served Lots 1-18 of the subdivision and Westwood Reserve No. 1. CP 122. As previously discussed, Westwood Reserve Lot No. 1 was probably not understood to have any development potential because of its extremely steep slopes. Consequently, no additional traffic would have been expected on Maplewood Place to accommodate the development of Westwood Reserve Lot No. 1. Thus, the scope of the original easement did not include traffic generated by Westwood Reserve Lot No. 1.

Furthermore, as stated in Carolyn Ramamurti’s Declaration, the addition of another single-family residence on Defendant Roser’s property will substantially increase the burden of traffic on an already overburdened, narrow and winding street. CP 191. The street is barely wide enough to accommodate two-way traffic in places and currently serves approximately twenty residences. *Id.* Defendant Roser does not currently use Maplewood Place to access his residence because of his frontage on 47th Avenue SW. CP 191. Because Defendant Roser does not access his residence via Maplewood Place, his assertion that the proposed subdivision will not add any additional parcels with access to Maplewood

Place is simply misleading. The proposed subdivision will increase the traffic burden, as additional traffic will be generated by both the construction of the residence and the daily use by its residents. Thus, the flexibility of the original easement has reached its limit, and the further subdivision of Lot B will substantially burden the servient estates.

3. Defendant Roser must trespass on the Ramamurtis' land in order to access his lot via Maplewood Place.

Defendant Roser claimed at pages 4-5 of his summary judgment motion that he will not have to trespass over the Plaintiffs' property to use Maplewood Place. CP 64-65. Unless Defendant Roser plans on driving on the left side of the road to exit his property, this is an absurd contention.

The Ramamurtis own a triangular portion of the asphalt of Maplewood Place that is a maximum of 5.70 feet on the (north) side closest to Defendant Roser's property and 2.17 feet on the (south) side furthest from the Defendant's property. CP 188. On the north end, the pavement is only 19 feet nine inches wide. CP 192. Unless Defendant Roser's vehicles are less than 4 feet 2.5 inches wide, he will have to drive into the opposite half of the roadway to avoid driving upon the Ramamurtis' property.

**D. CONCLUSION**

In conclusion, neither the principles of estoppel nor contract theory support the *Capitol Hill* assumption that all abutting property owners are entitled to an easement implied by reference to a plat. Rather, the Court should conclude that, in accordance with the doctrine's rationale, the existence of an easement implied by reference to a plat depends upon whether it is both reasonably necessary and whether the purchaser bought in reliance upon the benefit of access through the particular platted street. In the alternative, the Court may conclude that the trial court erred in finding no issue of material fact with respect to Defendant Roser's proposed subdivision exceeding the scope of the implied easement.

RESPECTFULLY SUBMITTED this 1st day of November, 2010.

Respectfully submitted,

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By 

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DECLARATION OF SERVICE

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ORIGINAL

N. Kay Richards hereby makes the following declaration pursuant to CR 5(b)(B) and RCW 9A.72.085: I am now and was at all times material hereto over the age of 18 years. I am not a party to the above-entitled action and am competent to be a witness herein.

I certify that on November 1, 2010, I messengered a copy of Appellants' Opening Brief and this Declaration of Service to the following:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

11/1/10 Seattle, WA  
Date and Place

N. Kay Richards  
N. Kay Richards