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COURT OF APPEALS
DIVISION ONE

MAY 16 2014

No. 71115-6

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

WHITE WATER INVESTMENT, LLC,
a Washington limited liability company,

Appellant

vs.

COOL BEANS EASTLAKE, LLC,
a Washington limited liability company,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE CATHERINE SHAFFER

BRIEF OF APPELLANT

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DIVISION ONE
STATE OF WASHINGTON
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MILLS MEYERS SWARTLING P.S.

By: Bruce Winchell
WSBA No. 14582
Nikki C. Carsley
WSBA No. 46650

1000 2nd Avenue, 30th Floor
Seattle, WA 98104-1064
(206) 382-1000

Attorneys for Appellant

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I. INTRODUCTION

This appeal involves a claim for recovery of property rights created by an easement agreement between two adjoining properties. The easement conveyed reciprocal access and mutual use rights to each parcel. Unfortunately, the easement was almost immediately encroached upon by one party (the predecessor to Cool Beans, LLC (“Cool Beans”)), which built a structure outside of the easement’s building restrictions in 2004. This impermissible action eliminated a row of parking stalls and a drive aisle required by the easement.

Cool Beans purchased the encroaching property in 2006, knowing that its as-built condition violated the easement. White Water Investment, LLC (“White Water”) purchased the adjoining property in 2012 and filed suit four months later for recovery of its property rights under the easement. Ruling on a series of motions for summary judgment, the trial court held that the construction violated the easement as a matter of law. The court, however, refused to enforce the easement and recognize White Water’s property rights on the grounds that a six-year statute of limitations for contract actions applied, rather than the 10-year statute that governs actions to recover property rights. Contrary to the terms of the easement, the trial court’s decision functionally means that the easement fully applies to only one party. In essence, the trial court awarded Cool Beans the

property rights granted to White Water in the easement in less than the period required for adverse possession.

The trial court committed error because this is an action for the recovery of real property, which has a 10-year statute of limitations. In making its ruling, the court ignored the analysis of Professors William B. Stoebuck and John W. Weaver that a mutual easement “*is not essentially a contract but a conveyance of interests in land.*” 17 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE § 2.3 (2d ed. 2004) (emphasis added). It also failed to recognize that the closest analogous case supports White Water’s position. *See Mnuuk v Harmony Homes, Inc.*, 329 Wis.2d 182, 790 N.W.2d 514 (2010).

The trial court further erred when it refused to grant injunctive relief, holding it would be inequitable to do so. In Washington, removal of a non-conforming structure to protect an easement is the correct remedy when the offending party has knowledge that the structure interferes with another party’s property rights. Accordingly, this Court should reverse and remand with instruction to the trial court to enjoin the offending structure from violating the easement.

II. ASSIGNMENTS OF ERROR

White Water assigns error to the following orders:

1. Order Granting Defendant Cool Beans Eastlake, LLC’s Motion

for Summary Judgment entered on October 11, 2013 (CP 605–07); and

2. Order Denying Plaintiff White Water Investment, LLC’s Motion for Summary Judgment entered on October 11, 2013 (CP 608–10).

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Is an action to recover property resulting from one party’s violation of an easement subject to the 10-year statute of limitations for the recovery of real property set forth in RCW 4.16.020(1), rather than the six-year statute of limitations for breach of contract provided in RCW 4.16.040(1)?

2. Does the defense of balancing of the equities preclude White Water from seeking any equitable relief when Cool Beans’ predecessor knowingly violated the easement and Cool Beans purchased the encroaching property knowing that the as-built condition of the property violated the easement?

IV. STATEMENT OF FACTS

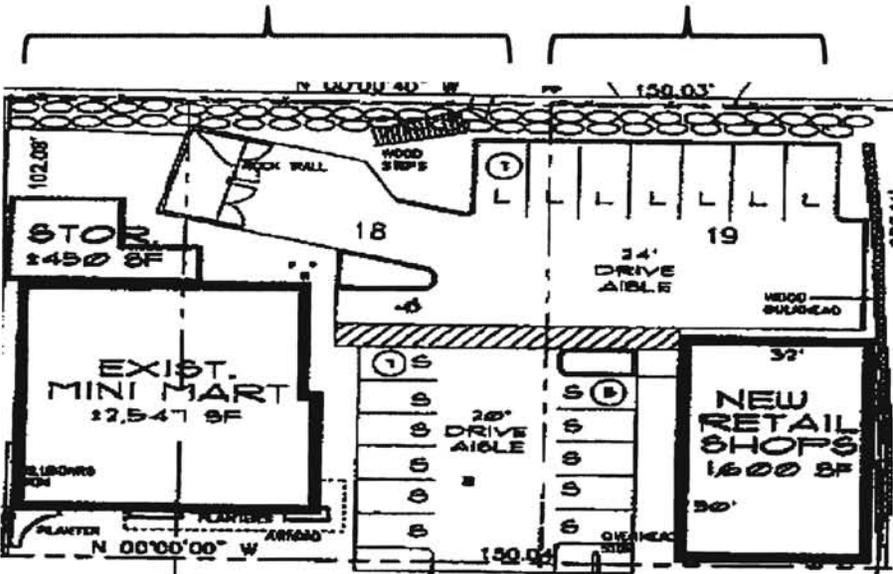
A. The Easement Created Mutual Property Rights that Limit the Manner in Which the Properties May Be Developed and Used.

This dispute concerns the enforcement of an Easement recorded on June 18, 2003, by the predecessors in interest of both parties, for adjoining properties located in Seattle on the east side of Eastlake Avenue between Louisa and Lynn Streets. (CP 44–58) The fundamental purpose of the

Easement was and remains to create shared space “for parking for the customers, invitees and employees of those businesses conducted within the [properties] and for the servicing and supplying of such businesses.” (CP 47) To that end, the Easement created and continues to require mutual use rights of common areas “for roadways, walkways, trash enclosures, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and for driveway purposes.” (CP 46)

To achieve its purposes, the Easement limits the development of each property according to the site plan below. (CP 45–48, 57) This plan dictates the size, shape, and location of the parking stalls, drive aisles, and buildings permitted on each property. (CP 57)

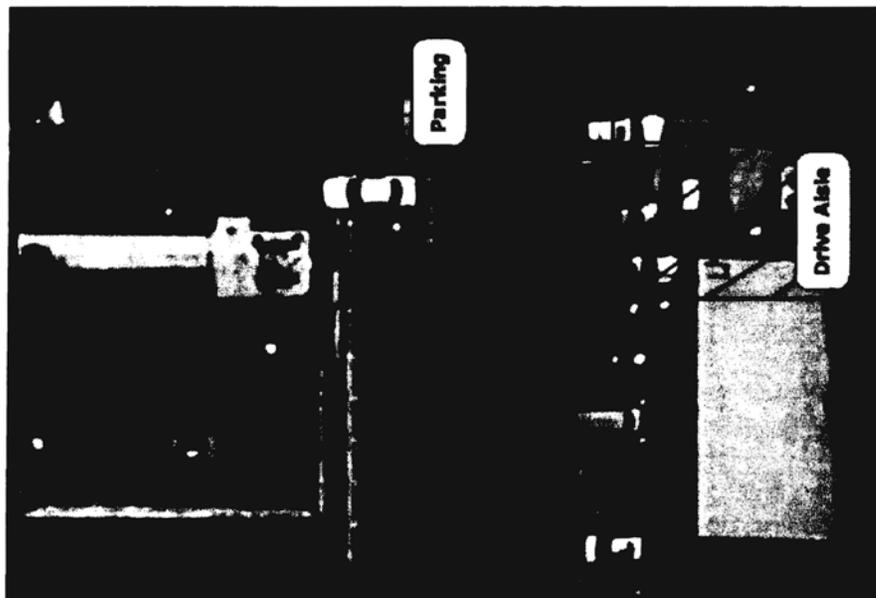
Parcel II, “White Water Parcel” Parcel I, “Cool Beans Parcel”



(CP 185 excerpt (annotations added))

B. Cool Beans Is Violating the Easement.

An annotated satellite image of the properties as currently developed follows. (The cross-hashed areas in red show the areas in dispute in this litigation.)



(CP 90 excerpt annotations added)). The structure built on Cool Beans' property on the right side of the image does not have a 32-foot-by-50-foot footprint as the Easement requires. (See CP 57, 88) Instead, the structure is 22 feet by 72 feet. (CP 88, 283) As shown, the non-conforming building eliminates the 24-foot drive aisle and an entire row of parking stalls expressly provided in the Easement.

Accordingly, as requested in White Water's April 23, 2013, motion

for partial summary judgment, the trial court held “that the Easement agreement is unambiguous and the 2004 construction [on Cool Beans’ property] violated [it].” (CP 246–48; *see also* CP 520–25, 529) Cool Beans’ has not appealed this ruling.

C. Cool Beans’ Predecessor Developed the Property in Violation of the Easement, Without White Water’s Predecessor’s Consent.

The properties subject to the Easement were originally a single parcel owned by Barber Development, LLC (“Barber Development”).¹ (*See* CP 282, 293, 319-320) In May 2003, Barber Development sold the White Water Parcel to Castellum LLC (“Castellum”). (*See* CP 293, 320) About a month later, Castellum and Barber Development executed the Easement. (*See* CP 282, 293, 321) At that time, the Cool Beans Parcel was undeveloped. (*See* CP 283, 293, 321–23, 337) The White Water Parcel had the same building on it as it does today. (*See* CP 57, 293, 337)

Barber Development then successfully marketed the Cool Beans Parcel to Starbucks Corporation as a prospective tenant. (*See* CP 293–94, 322) As part of the development of the Cool Beans Parcel, several drafts of site plans were prepared and circulated. (CP 294, 324-25) During this time period, Castellum’s attorney sent Barber Development’s attorney a

¹ SHDP Associates, LLC (“SHDP”) co-owned the Cool Beans Parcel with Barber Development as tenants in common. (CP 323) Unless otherwise noted, “Barber Development” as used herein refers to both Barber Development and SHDP.

letter noting that the most recent site plan for the Cool Beans Parcel violated the Easement, but that Castellum would “refrain from objecting to the new configuration *at this time . . .*” (CP 463 (emphasis added)) In the same letter, Castellum “reserve[d] its right under [the Easement] to withhold consent to the changes in the site plan . . .” (CP 463)

Despite hiring the lawyer who drafted the Easement and receiving notice that Castellum did not consent to the non-conforming construction drawings, Barber Development chose to develop the property in violation of the easement and Castellum’s property rights. (*See* CP 283) Barber Development completed construction of the building in August 2004. (CP 294–95)

D. Cool Beans’ Predecessor Unsuccessfully Attempted to Amend the Easement.

The Easement prohibits the size and arrangement of the common areas as depicted in its site plan from being altered absent written, recorded agreement. (CP 48) The Easement further provides that it will remain in full force and effect regardless of any ownership changes. (CP 50)

In March 2006, Barber Development attempted to amend the Easement with Castellum to modify the attached site plan to conform to the as-build construction. (*See* CP 466–79, 491) Castellum refused to

agree to the proposed change.

E. Cool Beans Purchased Its Parcel Knowing that It Violated the Easement.

Before purchasing its parcel, Cool Beans learned that the development by Barber Development violated the Easement and the property rights that it created.² (CP 483–84, 486–488, 490–91) Cool Beans even asked why Barber Development had tried to amend the agreement. (CP 491) Knowing that Barber Development and Castellum tried and failed to alter the Easement, Cool Beans purchased the parcel from Barber Development on August 22, 2006. (CP 283) Like its predecessor, Cool Beans took a calculated risk by purchasing property that violated a recorded easement which provided property rights to an adjoining landowner.

F. White Water Purchased Its Parcel with the Understanding that the Easement Was Valid and Enforceable.

White Water became interested in the White Water Parcel in 2012. White Water's due diligence process also revealed the Easement and Cool Beans Parcel's encroachment. (CP 348-51) During the negotiation and sale of the property, Castellum represented and warranted that it never

² Before purchasing the Cool Beans Parcel, Cool Beans retained Alan Sternberg and Century Pacific Properties, Inc. to evaluate the property, conduct due diligence, and negotiate the sale. (CP 281, 283) Commercial Realty Group, Inc. and Terry Moss acted as Cool Beans' real estate agents during its purchase of the Cool Beans Parcel. (CP 281, 284)

agreed to permit the adjoining property owner to violate the Easement and that it had not waived its property rights under the Easement. (CP 494) On March 26, 2012, White Water purchased the White Water Parcel. (CP 1)

G. The As-Built Condition of the Cool Beans Parcel Is Prejudicial to the White Water Parcel.

As the Easement's site plan and satellite image provided above demonstrate, the construction of the Cool Beans Parcel denies the owner of the White Water Parcel the benefit of its property rights to the 24-foot drive aisle. (*See* CP 57, 90) This drive aisle should be available to delivery trucks for unloading and turnaround. In July 2006, Castellum's attorney complained that delivery trucks servicing the Cool Beans Parcel "occup[ied] the parking lot, making any ingress and egress essentially impossible." (CP 481) Additionally, to maintain the number of parking stalls provided in the Easement, the White Water Parcel is forced give up precious space to host excess stalls. (*See* CP 57, 90) This results in high volume Starbucks traffic moving from the Cool Beans Parcel to the White Water Parcel to park. (*See* CP 481)

Castellum's attorney also complained that employees and customers of the Cool Beans Parcel were using the majority of the parking available. (CP 481) Had the Cool Beans Parcel been built in compliance

with the Easement, access to the White Water Parcel would have been greatly improved. (*See* CP 57) Similarly, if two of the three rows of parking stalls were located on the Cool Beans Parcel as the Easement's site plan depicts, the Cool Beans Parcel's employees and customers could primarily use those parking stalls. (*See* CP 481) The loss of maneuvering room for deliveries and parking for customers undoubtedly diminishes the usability of the White Water Parcel.

H. On Summary Judgment, the Trial Court Held Incorrectly that White Water's Claims Are Barred by the Six-Year Statute of Limitations for Contracts.

White Water moved for summary judgment on April 23, 2013, seeking an order that Cool Beans violated the Easement and its property rights and that the Easement is enforceable. (CP 22–34) The trial court granted White Water's motion, in part, ruling that the terms of the Easement are unambiguous and that the Cool Beans Parcel's build-out violates the Easement. (CP 246-48; *see also* CP 520-25, 529)

Before ruling on the enforceability of the Easement, the trial court requested briefing on three issues that Cool Beans had never raised: statute of limitations, laches, and balancing the equities. (CP 519–20, 525–28) Cool Beans subsequently amended its answer and third-party complaint to assert these defenses. (CP 278–90)

Despite its earlier ruling, the trial court ultimately dismissed the

action on statute of limitations grounds. (RP 24) The trial court erroneously held that Cool Beans' breach of the recorded Easement and violation of White Water's property rights is subject to the six-year statute of limitations that applies to contracts found at RCW 4.16.040(1), not the 10-year statute of limitations that applies to the recovery of real property set forth in RCW 4.16.020(1). (CP 605–10; RP 24–26)

The trial court further ruled that even if the longer statute of limitations for the recovery of real property applies, balancing the equities precluded granting White Water equitable relief either in the form of enjoining Cool Beans encroachment or in providing White Water relief from the requirements of the easement. (RP 29–31) In effect, the court held that Cool Beans was free to violate the easement but White Water had to comply with it.

V. ARGUMENT

A. **This Court Applies a De-Novo Standard of Review to the Trial Court's Summary Judgment Orders.**

This Court reviews a trial court's orders on summary judgment de novo, conducting the same inquiry as the trial court. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009) (citations omitted); *see also Nickell v. Southview Homeowners Ass'n*, 167 Wn. App. 42, 49–50, 271 P.3d 973, *review denied*, 174 Wn.2d 1018, 282 P.3d 96 (2012).

B. White Water’s Claim Is an Action to Recover Real Property.

Because White Water’s claim for its easement rights is an action to recover an interest in real property, it is governed by a 10-year statute of limitations under Washington law. The applicable statute, RCW 4.16.020 provides in relevant part:

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

This statute applies because it is well-established in Washington that “[e]asements are interests in land.” *Rainier View Court Homeowners Ass’n, Inc. v. Zenker*, 157 Wn. App. 710, 719, 238 P.3d 1217 (2010) (citations omitted); *see also MacMeekin v. Low Income Hous. Inst., Inc.*, 111 Wn. App. 188, 207, 45 P.3d 570 (2002) (“[E]asements, however created, are property rights . . .”). Under Washington law easements run with the land, “regardless of whether it is specifically mentioned in the instrument of transfer.” *Kirk v. Tomulty*, 66 Wn. App. 231, 239, 831 P.2d 792 (1992) (citations omitted). There is no legal authority in Washington that would shorten this 10-year statute.

Here, the essence of White Water's claim is for the recovery of real property. Specifically, White Water seeks injunctive relief against Cool Beans to prevent its encroachment on the missing drive aisle and parking stalls. (See CP 389) Such an action falls squarely within the language of RCW 4.16.020(1). Because the structure on the Cool Beans Parcel was built on top of the 24-foot drive aisle and encroached on the third row of parking stalls that the Easement created, White Water's property interests granted in the Easement were taken. To access these parts of the common areas and to use the property rights to which it is entitled, White Water first must *recover* the land on which the non-conforming structure lies.

The fact that the parties' predecessors documented the Easement's mutual access rights in a writing does not remove the dispute from RCW 4.16.020(1)'s limitation period. This is an action regarding property rights, not a contract dispute. The Easement conveyed to both White Water and Cool Beans *property interests*, in the form of certain mutual use and access rights, in the other's parcel. (See CP 46) "Even when the instrument creates mutual easements, . . . it should be borne in mind that ***the instrument is not essentially a contract but is a conveyance of interests in land.***" 17 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE § 2.3 (2d ed. 2004) (emphasis

added).

The issue raised in this case was squarely addressed in *Mnuk v. Harmony Homes, Inc.*, 329 Wis.2d 182, 790 N.W.2d 514 (2010). In *Mnuk*, adjoining landowners granted access easements to each other for the purpose of building a joint driveway. *Id.* at 185. After more than six years, one owner filed a lawsuit to enforce the easement agreement and allow construction of the driveway. *Id.* The other owner unsuccessfully argued that the six-year statute of limitations for breach of contract applied, not the longer statute of limitations regarding enforcement of property rights. *Id.* at 186. The *Mnuk* court held that the longer statute of limitations governing easements applied. *Id.* at 192–93.

The *Mnuk* court compared the nature of an easement agreement with that of an ordinary contract to determine which of multiple statutes of limitations should govern. *Id.* at 192 (“An easement is ‘an interest that encumbers the land of another’ and ‘is a liberty, privilege, or advantage in lands, without profit, and existing distinct from the ownership of the land.’”) (citations omitted); *see also Terre Du Lac Prop. Owners’ Ass’n, Inc. v. Wideman*, 655 S.W.2d 803, 805 n.1 (Mo. Ct. App. 1983) (noting that Missouri’s 10-year statute of limitations for the recovery of real property applies to easements, not the state’s two-year statute of limitations for breach of covenant restricting land use). The *Mnuk* court

held that the fact that an easement was created by agreement did not change the essential dispute from one involving property rights to an ordinary contract claim. 329 Wis.2d at 192 (“The label of the documents—“access easement *agreement* ” (emphasis added)—and *the fact that each document is signed by both parties does not transform the grant of easement in each document into a contract subject to contract law.*”) (second emphasis added).

The analysis is set forth in *Mnuk* applies here. A property right was conveyed. Cool Beans seeks to extinguish that right by adverse possession. A 10-year statute governs a claim to recover property held by adverse possession.

C. Cool Beans’ Encroachment Amounts to an Attempt to Terminate the Easement by Adverse Possession Subject to the 10-Year Limitation Period.

Just as easements may be created by prescription (*i.e.*, open, notorious, adverse use), they may be terminated by adverse possession. *City of Edmonds v. Williams*, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989); *see also Littlefair v. Schulze*, 169 Wn. App. 659, 665–68, 278 P.3d 218 (2012), *as amended* (Sept. 25, 2012), *review denied*, 176 Wn.2d 1018, 297 P.3d 706 (2013). To terminate an easement by adverse possession, a claimant must show open, notorious, continuous, uninterrupted, adverse, and hostile use of the express easement for ten

years. *Cole v. Lavery*, 112 Wn. App. 180, 184, 49 P.3d 924 (2002) (citations omitted); RCW 4.16.020(1).

Cool Beans' seeks to terminate White Water's property rights created by the Easement (or to re-acquire exclusive use and possession) by adversely possessing the rear drive aisle and row of parking stalls. At the date suit was filed, only eight years had passed since the build-out of the Cool Beans Parcel was completed (*i.e.*, when the adverse use and possession began). Accordingly, White Water's claim falls squarely within the 10-year limitation period. There is no exception to otherwise shorten the period required for Cool Beans to terminate White Water's property rights.

D. When in Doubt, Washington Courts Apply the Statute with the Longest Limitation Period.

Although White Water does not concede that there is any real question as to whether the statute of limitations for the recovery of real property or contracts applies to the violation of an easement, if there were, Washington courts routinely apply the longer limitation period. See *Stenberg v. Pac. Power & Light Co., Inc.*, 104 Wn.2d 710, 715, 709 P.2d 793 (1985) ("When there is uncertainty as to which statute of limitation governs, the longer statute will be applied."); see also *Shew v. Coon Bay Loafers, Inc.*, 76 Wn.2d 40, 51, 455 P.2d 359 (1969) ("If it were

questionable which of the two statutes applied, the rule is that the statute applying the longest period is generally used.”).

Moreover, Cool Beans cannot establish any prejudice that would result from applying the 10-year statute of limitations for the recovery of real property rather than the six-year limitation period for contracts. The build-out of the Cool Beans Parcel was completed in August 2004. (CP 294) The six-year limitation period would have expired in 2010. Cool Beans has provided no evidence of any activity between 2010 and the date suit was filed in 2012 that would result in additional prejudice from application of the longer limitation period. For example, there is no evidence in the record that Cool Beans undertook additional permanent improvements from 2010 to 2012 to somehow counsel against applying the statute of limitations for the recovery of real property.

E. The Trial Court Erred When It Determined that the Equitable Defense of Balancing the Equities Barred White Water’s Claim for Injunctive Relief.

When determining whether to grant injunctive relief that requires the removal of a structure, a trial court may, in certain limited circumstances that do not apply here, balance the equities of the parties, “weighing factors such as the character of the interest to be protected and the relative hardship likely to result to the defendant if an injunction is granted or to the plaintiff if it is denied.” *Green v. Normandy Park*, 137

Wn. App. 665, 698, 151 P.3d 1038 (2007), *review denied*, 163 Wn.2d 1003, 180 P.3d 783 (2008). However, the “benefit of the doctrine of balancing the equities . . . is reserved for the innocent defendant who proceeds without knowledge or warning that his structure encroaches upon another’s property or property rights.” *Peterson v. Koester*, 122 Wn. App. 351, 359, 92 P.3d 780 (2004) (alteration in original) (internal quotation marks omitted) (citing *Bach v. Sarich*, 74 Wn.2d 575, 582, 445 P.2d 648 (1968).) Cool Beans (and its predecessor) is not “an innocent defendant who proceed[ed] without knowledge.”

Barber Development constructed a structure on the Cool Beans Parcel with full knowledge that it violated the Easement. (CP 463; *see also* CP 512–13) Cool Beans then purchased the property knowing that the as-built condition of the Cool Beans Parcel did not conform to the Easement. (CP 483–84, 486–488, 490–91) Here, both Barber Development and Cool Beans took a calculated risk that Castellum and any future owners of the White Water Parcel would not enforce property rights that run with the land, as easements do. In such a scenario, Cool Beans cannot avail itself of the defense of balancing the equities to preclude injunctive relief.

When a party knowingly violates another’s property rights, the proper remedy is to enjoin the violation and order that the portion of the

offending structure be removed without regard to any hardship. *See, e.g., Bach*, 74 Wn.2d at 580–82 (holding that removal of portion of apartment complex completed was appropriate remedy despite monetary losses associated with doing so because defendants constructed complex knowing it might encroach on neighboring riparian owners’ property rights); *Peterson*, 122 Wn. App. at 359–61 (requiring modification of mechanical room and rejecting argument that defendants could innocently rely on their own architect to deliver correct plans); *Radach v. Gunderson*, 39 Wn. App. 392, 398–400, 695 P.2d 128 (1985) (ordering removal of home at city’s expense due to city’s failure to enforce setback regulations); *Mahon v. Haas*, 2 Wn. App. 560, 564–65, 468 P.2d 713 (1970) (upholding trial court’s order to remove commercial greenhouse when plaintiff constructed it on prescriptive easement after receiving notice that its construction may interfere with others’ property interests); *see also Littlefair*, 169 Wn. App. at 666 (“It follows that a dominant estate owner has the right to protect his rights in the easement by requiring the servient estate owner to remove any structure that could deny the easement owner his full easement rights.”).

Here, the offending party vis-a-vis White Water is Cool Beans because Cool Beans had actual and constructive notice of the Easement violation when it purchased the Cool Beans Parcel. *See generally* **810**

Props. v. Jump, 141 Wn. App. 688, 699, 170 P.3d 1209 (2007) (“[A] successor in interest to the servient estate takes the estate subject to the easements if the successor had actual, constructive, or implied notice of the easement”). When Cool Beans purchased the Cool Beans Parcel, it had constructive notice of the Easement via public records. (CP 44–58) Moreover, Cool Beans had actual notice of the Easement and the Easement’s violation via its due diligence process. (CP 483–84, 486–88, 490–91)

The proper remedy in a case in which one party has committed wrongdoing by knowingly violating an easement is to enjoin the violation and order removal of any encroaching portions of the structure. *See* discussion *supra*. It was error for the trial court to refuse do so. However, if this Court refuses to grant injunctive relief, the only equitable alternative is to terminate the Easement. Otherwise, Cool Beans will be permitted to encroach on the Easement while White Water is prohibited from doing so.

The RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 7.10 (2000) discusses termination of servitudes due to changed conditions. It provides:

(2) If the purpose of a servitude can be accomplished, but because of changed conditions the servient estate is no longer suitable for uses permitted by the servitude, a court may modify the servitude to permit other uses under

conditions designed to preserve the benefits of the original servitude.

Id.; see also 28A C.J.S. *Easements* § 159 (“An easement may be extinguished by acts rendering its use impossible.”).³

Here, the build-out of the Cool Beans Parcel prevents the fundamental purpose of the Easement from being fulfilled. Because there is not a secondary drive aisle, ingress, egress, and parking on both properties is difficult, if not impossible, during the servicing of and deliveries to each property. (See CP 481) Accordingly, if Cool Beans’ encroachment is not enjoined, then the Easement could be terminated.

Termination of the easement would be analogous to Washington cases addressing material breach of contract. See, e.g., *Jacks v. Blazer*, 39 Wn.2d 277, 285, 235 P.2d 187 (1951) (“A breach or non-performance of a promise by one party to a bilateral contract, so material as to justify a refusal of the other party to perform a contractual duty, discharges that duty.”); see also *Wilhelm v. Beyersdorf*, 100 Wn. App. 836, 843, 999 P.2d 54 (2000) (“A trial court has equitable power to reform an instrument if there is clear, cogent and convincing evidence of a mutual mistake or a

³ Washington courts have evaluated § 7.10 of the RESTATEMENT in the context of relocating prescriptive easements and adhered to the general rule that relocation requires consent of both parties. See *MacMeekin*, 111 Wn. App. at 207. However, no controlling Washington decision has limited a court’s discretion to modify an easement’s restrictions in response to a party’s wrongful violation of another’s property rights.

unilateral mistake coupled with inequitable conduct.”). Therefore, White Water alternatively seeks relief of release from the Easement restrictions.

VI. CONCLUSION

The trial court erred by applying the six-year limitation period for contract actions, rather than the 10-year limitation period for the recovery of real property, to Cool Beans’ violation of the Easement. White Water seeks to recover property necessary to the enjoyment of its property rights under the Easement and filed its claim well within the 10-year prescriptive period to terminate an easement by adverse possession. Additionally, the injunctive relief requested—removal of the structure on the Cool Beans Parcel to the extent it interferes with the Easement—is fair given the calculated risk Cool Beans took when it purchased property that violated a publically recorded easement. This Court should reverse the trial court’s summary judgment orders and remand with instruction to the trial court to order Cool Beans to remove of any aspect of its property not in conformity with the Easement.

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RESPECTFULLY SUBMITTED this 16th day of May 2014.

MILLS MEYERS SWARTLING P.S.

By: 

Bruce A. Winchell

WSBA No. 14582

Nikki C. Carsley

WSBA No. 46650

Attorneys for Plaintiff/Appellant

CERTIFICATE OF FILING AND SERVICE

I, Kendra Brown, hereby certify that I filed the foregoing with the Court of Appeals, Division 1, and served same upon the following counsel of record as indicated below:

Counsel for Defendant:
Douglas K. Weigel
Amber L. Pearce
Floyd, Pflueger & Ringer, P.S.
200 W. Thomas St., Ste. 500
Seattle, WA 98119

- Via first class mail, postage prepaid
- Via facsimile 206-441-8484
- Via Legal Messengers
- Via Email:
dweigel@floyd-ringer.com
apearce@floyd-ringer.com
tbrandon@floyd-ringer.com

Christopher I. Brain
Adrienne D. McEntee
Tousley Brain Stephens PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101

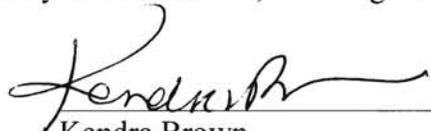
- Via first class mail, postage prepaid
- Via facsimile
- Via Legal Messengers
- Via Email:
cbrain@tousley.com
amcentee@tousley.com

*Counsel for Defendant Century
Pacific Properties, Inc.:*
Craig S. Sternberg
Sternberg Thomson Okrent & Scher,
PLLC
500 Union St. Ste. 500
Seattle, WA 98101

- Via first class mail, postage prepaid
- Via facsimile 206-374-2868
- Via Legal Messengers
- Via Email: craig@stoslaw.com

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Kendra Brown