

Developments in California Easement Law

by Kenneth R. Styles



In the recent case of *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593 (“*Blackmore*”), the court delved into the rarely-decided area of “exclusive” easements. It upheld an exclusive easement to construct a garage on a neighbor’s property. The court’s decision centered on two issues. First, the easement was created by a grant deed, not by prescriptive use. Second, the affected land was limited in size. While one could argue about the legal significance of these two factors, the court’s decision continues a trend away from bright-line rules and towards a generalized “reasonableness” standard of easements. □ Legally, an easement is the right to “use” the property of another landowner. Importantly, it is a “non-possessory” right, distinguished from estates in land (such as ownership in fee title) and leaseholds, which are forms of possession of land. □ In a majority of cases, easements are “non-exclusive.” The difficulty presented by an “exclusive” easement is that if the exclusive use prohibits the owner’s use of property, then how does an exclusive easement differ from fee title ownership? Indeed, the California Supreme Court in *Pasadena v. California-Michigan etc. Co.* (1941) 17 Cal.2d 576, 578-79, referred to an “exclusive” easement as, “an unusual interest in land; it has been said to amount almost to a conveyance of the fee.”

THE PRIOR CASES OF RAAB, SILACCI AND MEHDIZADEH

In *Raab v. Casper* (1975) 51 Cal.App.3d 886, the defendants had mistakenly constructed a cabin on the plaintiff’s property. The trial court concluded that the defendants were “good faith improvers” and

realigned the property line to adjust for the cabin and surrounding land. The trial court also held that the defendants had acquired a prescriptive easement, at least covering their driveway, utility lines and yard.

The court of appeal rejected both findings. It focused on the difference between

“a prescriptive use of land culminating in an easement (i.e., an incorporeal interest) and adverse possession which creates a change in title or ownership (i.e., a corporeal interest); the former deals with the use of land, the other with possession.” The court concluded that because the defen-

dants sought to exclude plaintiffs from their “domestic establishment,” they were in fact seeking fee title, but they had not satisfied the elements of adverse possession.

In *Silacci v. Abramson* (1996) 45 Cal. App.4th 558, the defendants fenced in a portion of the plaintiffs’ property. The court rejected an exclusive prescriptive easement. Concerned that an exclusive prescriptive easement would preclude the landowner from using his or her land, the court held that an exclusive prescriptive easement, “has no application to a simple back yard dispute like this one.”

In *Mehdizadeh v. Mincer* (1996) 46 Cal. App.4th 1296, the defendants obtained a survey, discovered that their fence line was not on the property line, and moved the fence. Plaintiffs filed suit, and the trial court ruled in favor of the plaintiffs both on the agreed-boundary doctrine and on the creation of a prescriptive easement. The court of appeal reversed on both grounds. It focused on the difference between obtaining title to the property through adverse possession, and obtaining an easement to use property through prescription.

THE ANOMALY OF OTAY WATER DISTRICT

For every rule, there is an exception. In *Otay Water Dist. v. Beckwith* (1991) 1 Cal. App.4th 1041, Otay Water District filed suit seeking quiet title to a prescriptive easement. Twenty-five years earlier it had mistakenly built its water reservoir over a part of defendant’s property.

The defendant argued that, “an exclusive easement is tantamount to a fee estate.” The court concluded that the easement granted was “sufficiently less than a fee title” in part because plaintiff could only use the property for reservoir purposes — “[i]f Otay stops using the property as a reservoir or increases the burden on [defendant’s] property, Otay’s easement can be taken away.”

Subsequent cases, including *Silacci*, *Mehdizadeh*, have attempted to limit *Otay* to its facts as a “public policy” case relating to a public interest in securing water for public use. ►

BLACKMORE UPHOLDS AN EXCLUSIVE EASEMENT FOR A GARAGE

In *Blackmore*, our lead case, the plaintiff sought and obtained declarative relief to build a garage on an easement appurtenant to his property. The defendants argued that the court misinterpreted the express appurtenant easement (essentially awarding plaintiff fee title ownership of the property) and that the easement violated the Subdivision Map Act.

The express easement derived from a 1979 grant deed, stating that the easement was for "parking and garage purposes" over a defined area. The plaintiff later purchased the dominant tenement, obtained a building permit to erect a two-car garage covering "roughly 11 percent" of the easement.

The court concluded that the parties intended to grant an easement, "for parking and garage purposes," and that, for all practical purposes, the construction and use of the garage must be "exclusive." "In view of the evidence presented at trial, we see no error in the determination that nonexclusive use of the garage would interfere unreasonably with respondent's rights."

The court's decision to uphold the exclusive written easement was based on three grounds. First, the court concluded that the conveyance constituted an easement, as opposed to fee title ownership, because: (1) the rights created under the 1979 deed were circumscribed, and (2)

the grant of exclusive control over the garage was intended solely to protect these restricted rights. Though the court never fully explained its reasoning, it most likely focused on the fact that the land would be used for one purpose — i.e., a garage.

Second, the court relied on the case of *Heath v. Kettenhofen* (1965) 236 Cal.App.2d 197, 200 (1st Dist. 1965), though arguably that case involved more "balancing of equities" or an injunction between two landowners' use of a joint street easement as opposed to an exclusive easement.

Third, the court rejected defendant's argument, based on *Silacci* and *Mebdizadeh*, that the exclusive control over the garage was inconsistent with the grant of an easement. It held that the prior cases involved acquisition of easement rights by prescription and were "factually distinguishable." The court did not explain why it believed that an easement created by "conduct" is afforded lesser rights than an express grant of easement.

NO VIOLATION OF THE SUBDIVISION MAP ACT

The court disagreed with the argument that the easement violated the Subdivision Map Act ("Act") by constituting a subdivision. Relying on statutory interpretation and legislative intent, the court focused on statutory language that a "subdivision" related to the division of land, "for the purpose of sale, lease or financing." The court's holding here is arguably circular.

The court's initial conclusion that the interest was an easement would, by definition, preclude a Subdivision Map Act violation.

Finally, the court noted the case of *Robinson v. City of Alameda* (1987) 194 Cal.App.3d 1286 (1st Dist. 1987), where the court held that an agreement to allow one neighbor to "use a rear portion" of the other neighbor's property did not violate the Act. The court also rejected the holding in *Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, and four opinions of the Attorney General, noting that they were "factually distinguishable." Acknowledging that parties could attempt to circumvent the Map Act through the use of the exclusive easements, the *Blackmore* court encouraged future courts to be vigilant, but concluded that "no such scheme is presented here."

The take away message from *Blackmore* is that a specifically-intended, express easement that is limited in scope may be exclusive and does not violate the Subdivision Map Act. But the court left room to reject schemes intended to violate the Subdivision Map Act. More and more with each new decision, California law on easements is deviating from bright-line rules towards a generalized "reasonableness" standard. ♦

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