

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Marsh v. Hogan

81 A.D.3d 1241 (3d Dep't 2011) · Decided February 24, 2011

SUMMARY

The court affirmed a judgment denying a landowner’s request for a mandatory injunction requiring removal of a house encroaching approximately 10 feet onto an express easement. Applying RPAPL 871 and equitable considerations, the court concluded that the remaining access, the hardship of moving the residence, the defendants’ lack of willfulness, and the plaintiff’s delay weighed against injunctive relief. The court also declined to remit the case for damages because the plaintiff presented no evidence of damages at trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Egan, Jr., J.; Rose, J.; Kavanagh, J.; McCarthy, J.
JURISDICTION	New York
DECIDED	February 24, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a nonjury trial that denied injunctive relief and resolved the action in defendants' favor.
STANDARD OF REVIEW	The Appellate Division reviewed the trial court's equitable determination after a nonjury trial and assessed whether Supreme Court properly weighed the equities in denying a mandatory injunction.
PRECEDENTIAL VALUE	Published Appellate Division decision
PARTIES	Marsh v. Hogan

TOPICS

- easements
- easement by necessity
- equitable relief
- remedies
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff was entitled under RPAPL 871 to a mandatory injunction requiring defendants to remove the portion of their house encroaching on plaintiff's easement.
2. Whether the easement could be relocated to an alternate location requiring removal of defendants' barn without an agreement of the parties.
3. Whether the action should be remitted for a trial on damages allegedly caused by the encroachment and interference with access.

HOLDINGS

1. Plaintiff was not entitled to a mandatory injunction because, after weighing the equities, the benefit of removing the approximately 10-foot encroachment did not outweigh the hardship to defendants, particularly where plaintiff retained a nearly 40-foot-wide access strip.
2. Plaintiff could not unilaterally move the easement to an alternate location because the easement was established at a definite location and relocation required an agreement.
3. Remittal for a trial on damages was unwarranted because plaintiff failed to introduce evidence of damages at trial and thereby abandoned those claims.

KEY QUOTATIONS

“In order to obtain the injunctive relief [he or she] seeks, however, the [plaintiff is] required to demonstrate not only the existence of the encroachment, but that the benefit to be gained by compelling its removal would outweigh the harm that would result to the defendants from granting such relief” (1243)

“Whether an injunction should issue depends on all the equities between the parties” (1243)

FACTUAL BACKGROUND

Plaintiff owned a landlocked parcel adjoining defendants' property and held an easement created by a 1985 settlement agreement. Defendants later built a house that encroached approximately 10 feet onto the 50-foot-wide easement and constructed a barn on the opposite side. The encroachment left plaintiff with a nearly 40-foot-wide access strip, and defendants testified that moving the house would impose a substantial burden on them and their extended family.

PROCEDURAL HISTORY

Plaintiff, owner of a landlocked parcel, sued for damages, a permanent injunction, and removal of encroachments on an easement. The Supreme Court previously granted plaintiff partial summary judgment declaring the easement valid, and the Appellate Division affirmed that determination. After a nonjury trial, Supreme Court denied an injunction requiring defendants to remove the encroaching portion of their residence. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Marsh v. Hogan, 56 A.D.3d 1090, 1092 (2008)
- Hullar v. Glider Oil Co., 219 A.D.2d 825, 825-826 (1995)
- Town of Fishkill v. Turner, 60 A.D.3d 932, 933 (2009)
- Matter of Angiolillo v. Town of Greenburgh, 21 A.D.3d 1101, 1104 (2005)
- Mylott v. Sisca, 168 A.D.2d 852, 854 (1990)
- 487 Elmwood v. Hassett, 83 A.D.2d 409, 414 (1981), appeal dismissed, 55 N.Y.2d 1037 (1982)
- Forstmann v. Joray Holding Co., 244 N.Y. 22, 32 (1926)
- Lawrence v. Mullen, 40 A.D.2d 871, 871 (1972)
- Estate Ct., LLC v. Schnall, 49 A.D.3d 1076, 1077 (2008)
- Garvey v. Long Is. R.R. Co., 159 N.Y. 323, 332 (1899)

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