

## EASEMENTS: USE THEM OR LOSE THEM!

By Donna M. Jennings, Esq. and Luke A. Policastro, Esq.

Any land use application requiring an applicant to obtain an easement from another landowner or a landowner granting such an easement to another developer should be cognizant of its rights under any agreement. This pertains to any easement, whether it is, for example, an access, parking, or drainage easement. Specifically, developers should be aware that they, or a prior property owner, may unknowingly lose easement rights conferred for the benefit of their use. For instance, a property owner or legal beneficiary may lose their easement rights if it is established they had the intent to “abandon” said easement. The courts have established that an easement is not presumably abandoned, however an easement holder may relinquish easement rights with “clear and unequivocal evidence of decision and conclusive acts.”[1] Typically, the act must be “overt.”[2] However, even inaction for an extended period of time can lead to costly consequences.

In a recent unpublished opinion, PC Clark Prop. LLC v. Halstead Realty, LLC, the Appellate Division considered a claim seeking to enforce easement rights over defendants’ property, for the benefit of the plaintiffs, stemming from a 1987 easement agreement. There, the plaintiffs’ predecessor-in-interest operated a nursing facility on property located at 1213 Westfield Avenue (“1213 Property”), which was adjacent to the defendants’ property located at 1219 Westfield Avenue (“1219 Property”).[3] As part of a land use application, the nursing facility required additional parking spaces to operate without a variance, so the defendant property owner granted a parking easement to plaintiffs on the 1219 Property.[4] Plaintiffs and their predecessor never paid taxes or maintained the disputed area. The easement also granted ingress over the 1219 Property to access fourteen (14) parking spaces, which were ultimately improved and demarcated with curbing, fencing and paving.[5]

Once the plaintiff acquired the 1213 Property, it filed the underlying action seeking to enforce rights over five (6) additional specs on the 1219 Property. One of the

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plaintiffs’ executives testified at trial as to the justification for the claim, which was only supported by the 1219 Property defendant’s demand for payment in exchange for using the five parking spaces.[7] In rebuttal, the defendants testified that plaintiffs’ predecessor physically developed only the fourteen spaces, which they segregated with curbing, fencing, and landscaping. [8] Plaintiffs and their predecessor never paid taxes or maintained the disputed area.[9] Instead, defendants “continuously used the disputed area since 2001, maintained it, and had never been approached by the nursing home about the area until after the 2022 sale.”[10]

Ultimately, the trial court found in favor of the defendants because of the plaintiffs’ inability to refute abandonment of the disputed parking area.[11] The trial judge relied on evidence demonstrating that “the



easement as it pertains to the disputed area was **abandoned** by [t]he tenant at the construction phase of the development.”[12] Specifically, the judge found the fact that the fourteen spaces were demarcated with fencing while the disputed area was unmaintained, unused, and “without objection” for thirty years to be persuasive.[13] Simply put, the physical improvements constituted a clear, unequivocal act of abandonment. Alternatively, the trial judge ruled that plaintiffs were equitably estopped from “asserting rights over the disputed area after a prolonged period of acquiescence, active use and reliance by defendants.”[14] The theory of equitable estoppel is a useful protection afforded to a party where it has relied on the action, or inaction, of

another party when acting itself, as shown by the trial judge here.

On appeal, the Appellate Division affirmed.[15] The Appellate Division focused its analysis on the plaintiffs' inaction and absence of any objection to same in the face of opportunity "in connection with site surveys, transactions, and lease renewals . . ."[16] Additionally, the Appellate Division accredited the trial court's findings that the plaintiffs and their predecessor did not pay taxes or maintain the disputed area.[17] As to the equitable estoppel finding, the Appellate Division held that the judge made a reasonable determination to bar relief.[18] Easement rights run with the land, and so plaintiffs were bound by the inaction of their predecessors. The Appellate Division took no exception that the plaintiffs only recently discovered a "stub" of the easement—regardless, the defendants relied on the non-use of the land for decades and incurred expenses while relying on the inaction.[19]

The PC Clark case outlines important lessons for developers and attorneys involved in real estate development. First, when executing an easement agreement, it is important to have a detailed description of the purpose of the easement and specific exhibits to reference the "easement area." Inclusion of a metes and bounds legal description is non-negotiable. To take it one step further, anyone granting or receiving easement rights should have prepared a plan overlaying a survey or site plan clearly demarcating the easement area. Should any dispute arise, as in PC Clark, the easement area will be clearly depicted, making the adjudicator's decision easier, and ultimately assist the disputing party in determining whether any action is worthwhile in the first instance. Also, once recorded, future purchasers will have a clearer understanding of their rights and responsibilities under the easement agreement.

Second, once the easement is in place, PC Clark reaffirms the longstanding notion that a property owner or legal beneficiary cannot sit on their rights. If a party intends to reap the benefits of an easement, they must take action. Otherwise, should enough time pass, their easement rights may lapse on equitable grounds (or inaction, as

here). Even an innocent party like the plaintiffs here may not be afforded relief because of the actions of their predecessors.

At the end of the day, it is prudent to understand the purpose and scope of an easement, and whether the same has been maintained, no matter a party's role.

#### References:

- [1] Nuzzi v. Corcione, 139 N.J. Eq. 339, 346 (1947). [2] Id.  
 [3] PC Clark Prop. LLC v. Halstead Realty, LLC, No. A-3907-23, 2026 WL 90059 (N.J. Super. Ct. App. Div. Jan. 13, 2026) at 1. [4] Id. [5] Id. [6] Id. [7] Id. [8] Id. at 2. [9] Id. [10] Id. [11] Id. (Emphasis added). [12] Id. [13] Id. [14] Id. [15] Id. at 4 [16] Id. at 3. [17] Id. [18] Id. [19] Id.

### About the Authors



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