

Bond Case Briefs

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EASEMENTS - VIRGINIA

Robinson, Trustee for Jane Washburn Robinson Living Trust v. Nordquist

Supreme Court of Virginia - July 18, 2019 - S.E.2d - 2019 WL 3227503

Landowner brought action against neighbors, seeking declaration that neighbors improperly denied access to easement, and seeking damages and injunctive relief for intentional trespass and private nuisance.

The Circuit Court granted neighbors' plea in bar and demurrer, and denied landowner's petition for a rule to show cause. Landowner appealed.

The Supreme Court held that:

- Issue of whether trespass and nuisance claims were barred by five-year statute of limitations could not be resolved by plea in bar;
- Easement was not unenforceable for vagueness;
- The Circuit Court erred in defining "open yard" in deed as "free of all buildings and structures;"
- Landowner was not entitled to rule to show cause; and
- The Circuit Court's procedure for landowner to access easement was reasonable.

Issue of whether landowner's trespass and nuisance claims against neighbors were barred by five-year statute of limitations could not be resolved by plea in bar, where it was not clear from face of amended complaint when first measurable damage occurred or whether water encroachments were continuous or intermittent, as landowner described water encroachments as "on-going" and "continuous," but also stated that they were "repeated and intermittent," and landowner alleged that water discharges were intentional, suggesting separate volitional acts.

Perpetual easement, which granted access to neighboring property to keep and maintain openings overlooking premises for purpose of admitting light and air through openings, was not unenforceable because term "light and air" was vague, ambiguous, or without dimensions; language of easement described its purpose, and thus easement's dimensions could be inferred to be such as were reasonably sufficient for accomplishment of this object.

Deed, which affirmed and enlarged prior easement, required median to be both "open yard" and "free of all building and structures," and thus trial court erred in defining "open yard" as "free of all buildings and structures;" trial court disregarded conjunction between phrases and rendered term "open yard" meaningless.

Landowner was not entitled to rule to show cause, despite contention that neighbors violated trial court's order on easement by refusing to provide pest control company with access; order granted landowner access to enter the yard for purpose of maintaining the openings and ventilation outlets, and order neither addressed manner in which access should be provided nor addressed whether easement could be used for pest control purposes.

Trial court's procedure for landowner to follow in order to access neighboring property pursuant to easement was reasonable and permissible, despite contention that procedure improperly added restrictions to landowner's right of access; procedure required landowner to provide neighbors statement of purpose for which she needed entry, name of company that would be accessing property, and three proposed dates, while requiring neighbors to respond within 48 hours, easement was silent regarding how landowner could access relevant area, and no language established unfettered right of access.