

Bond Case Briefs

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EASEMENTS - GEORGIA

Donald Azar, Inc. v. Mucbe

Court of Appeals of Georgia - March 7, 2014 - S.E.2d - 2014 WL 888885

Landowner brought action against company that provided surface parking services on company's adjacent property, seeking to enjoin company's obstruction of a private way and asking for damages. Company answered and filed counterclaim for judgment declaring that it owned alley abutting both its own property and landowner's property and that landowner did not have any easement in alley. The trial court referred action to special master, who held evidentiary hearing and prepared proposed order in favor of company. The trial court adopted special master's report and proposed order. Landowner appealed.

The Court of Appeals held that:

- Special master was authorized to find that landowner abandoned any implied easement that it may once have had in alley, and
- Special master was authorized to reject landowner's contention that it had parol license to use alley.

Evidence showed that alley was neither maintained nor used by city for approximately 20 years before company first improved areas in alley and blocked its open use, that landowner consented to company's improvements in alley and supported re-zoning plan advanced by company that included fencing and other encroachments in alley, and that landowner failed to voice any objection to company's use of or improvements to alley until approximately 20 years after company's use of and improvements to alley began.