

Client Alert: Easement Decisions in the Court of Special Appeals of Maryland

17 Sep 2020

[Christopher A. Glaser](#)

The Court of Special Appeals of Maryland has issued two new easement decisions of importance to real estate practitioners. Both decisions provide rare detailed analysis from the Court of Special Appeals into easements and are worth review.

In *Hejazi v. Sears*, Hejazi's predecessor-in-title conveyed an easement "over, upon and across" the subject property to Sears granting "exclusive rights to the use and occupancy of said easement area ...". When Sears proposed to erect a fence on the easement, Hejazi objected claiming that the subject easement providing exclusivity to the use and occupancy of the land was against public policy as it was a "back-door attempt" to convey the easement area in fee and, as such, void.

The Court of Special Appeals examined various accepted definitions of "easement" noting that each defined an easement as a non-possessory right. However, the Court also determined that grants of an easement should not be construed to be more expansive than the granting language unless it was apparent that the parties otherwise intended. While Hejazi asserted that the easement conveyed a possessory right, the Court noted that the possessory right conveyed was merely a right within the confines of the "over, upon and across" language. As such, the exclusivity provided for in the easement was not a conveyance in fee and did not violate public policy.

In *Skillman v. Paulen Industrial Center, Inc.*, owners of two neighboring parcels disputed whether or not either an implied or prescriptive easement was created following the abandonment of a dedicated and accepted road. In 1891, the owner of both parcels recorded a subdivision plat depicting a number of proposed streets. The plat was again recorded following the 1907 codification of land use laws in Prince George's County, which had the effect of rendering the streets both dedicated to, and accepted by, Prince George's County. In 1960, the owner of both parcels obtained a judgment closing portions of the streets and merging the closed streets—to their center line—into the titles of the abutting lots. In 1997, the sole remaining relevant portions of the previously dedicated and accepted streets were vacated by the County.

The Skillmans contended that their deed, which referenced the prior plats, implicitly conveyed an easement to use the streets shown on the plats which now crossed the servient estate owned by the Paulen Industrial Center. In Maryland, absent an express provision contrary in the deed, "those who purchase a lot with reference to a plat depicting an abutting street acquire a private easement in that street regardless of whether it has been dedicated to the public and accepted by the local government." However, the deeds in the Skillmans' chain of title referenced "former" lots as shown "on a former plat of subdivision ... said property having been abandoned." The deed to the Skillmans did not clearly manifest an intent to grant an easement in any street depicted in any existing subdivision plat.

The Skillmans next contended that their use of the closed portion of the street for more than twenty years gave rise to a prescriptive easement. While there was little dispute over the existence of an easement by prescription, the parties disputed the scope of the prescriptive easement. The Paulen Industrial Center contended that a proposed change in use of the Skillman property would give rise to an increase in traffic beyond the Skillmans' prescriptive rights. The Court of Special Appeals held that a prescriptive easement may be expanded where such expansion is both reasonable and reasonably foreseeable based on the use during the prescriptive period. The matter was remanded to the trial court to determine whether the resulting traffic from the proposed change in the Skillmans' property would be the result of a

(CONTINUED)

CLIENT ALERT: EASEMENT DECISIONS IN THE COURT OF SPECIAL APPEALS OF MARYLAND

reasonable expansion.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

Client Alert: Easement Decisions in the Court of Special Appeals of Maryland

17 Sep 2020

Christopher A. Glaser

The Court of Special Appeals of Maryland has issued two new easement decisions of importance to real estate practitioners. Both decisions provide rare detailed analysis from the Court of Special Appeals into easements and are worth review.

In *Hejazi v. Sears*, Hejazi's predecessor-in-title conveyed an easement "over, upon and across" the subject property to Sears granting "exclusive rights to the use and occupancy of said easement area ...". When Sears proposed to erect a fence on the easement, Hejazi objected claiming that the subject easement providing exclusivity to the use and occupancy of the land was against public policy as it was a "back-door attempt" to convey the easement area in fee and, as such, void.

The Court of Special Appeals examined various accepted definitions of "easement" noting that each defined an easement as a non-possessory right. However, the Court also determined that grants of an easement should not be construed to be more expansive than the granting language unless it was apparent that the parties otherwise intended. While Hejazi asserted that the easement conveyed a possessory right, the Court noted that the possessory right conveyed was merely a right within the confines of the "over, upon and across" language. As such, the exclusivity provided for in the easement was not a conveyance in fee and did not violate public policy.

In *Skillman v. Paulen Industrial Center, Inc.*, owners of two neighboring parcels disputed whether or not either an implied or prescriptive easement was created following the abandonment of a dedicated and accepted road. In 1891, the owner of both parcels recorded a subdivision plat depicting a number of proposed streets. The plat was again recorded following the 1907 codification of land use laws in Prince George's County, which had the effect of rendering the streets both dedicated to, and accepted by, Prince George's County. In 1960, the owner of both parcels obtained a judgment closing portions of the streets and merging the closed streets—to their center line—into the titles of the abutting lots. In 1997, the sole remaining relevant portions of the previously dedicated and accepted streets were vacated by the County.

(CONTINUED)

CLIENT ALERT: EASEMENT DECISIONS IN THE COURT OF SPECIAL APPEALS OF MARYLAND

The Skillmans contended that their deed, which referenced the prior plats, implicitly conveyed an easement to use the streets shown on the plats which now crossed the servient estate owned by the Paulen Industrial Center. In Maryland, absent an express provision contrary in the deed, “those who purchase a lot with reference to a plat depicting an abutting street acquire a private easement in that street regardless of whether it has been dedicated to the public and accepted by the local government.” However, the deeds in the Skillmans’ chain of title referenced “former” lots as shown “on a former plat of subdivision ... said property having been abandoned.” The deed to the Skillmans did not clearly manifest an intent to grant an easement in any street depicted in any existing subdivision plat.

The Skillmans next contended that their use of the closed portion of the street for more than twenty years gave rise to a prescriptive easement. While there was little dispute over the existence of an easement by prescription, the parties disputed the scope of the prescriptive easement. The Paulen Industrial Center contended that a proposed change in use of the Skillman property would give rise to an increase in traffic beyond the Skillmans’ prescriptive rights. The Court of Special Appeals held that a prescriptive easement may be expanded where such expansion is both reasonable and reasonably foreseeable based on the use during the prescriptive period. The matter was remanded to the trial court to determine whether the resulting traffic from the proposed change in the Skillmans’ property would be the result of a reasonable expansion.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation’s most noteworthy cases and national trends following the spring and fall American Land Title Association’s Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

TAGGED: easements, Court of Special Appeals of Maryland, Maryland Real Estate News, Skillman v. Paulen Industrial Center Inc, Hejazi v. Sears