

The Supreme Court of Virginia has reversed a trial court and upheld a prescriptive easement where the issue of permission was hotly contested in *Kevin Horn v. James Webb*

14 Feb 2023

Christopher A. Glaser

The Supreme Court of Virginia has reversed a trial court and upheld a prescriptive easement where the issue of permission was hotly contested. In *Kevin Horn v. James Webb*, the Court examined the issue of whether prescriptive rights could arise from a pre-1976 grant of permission by the servient estate which was never expressly revoked.

In *Horn*, adjoining lot owners created a 20-foot-wide easement across property owned by the Fidels for the purpose of providing lake access and the construction of a lakefront retaining wall. After construction of the retaining wall, the owners of the dominant estate, with the permission of the Fidels, tied a series of pontoon boats to the wall. The Fidels sold their interest in 1976 and the subsequent owners did not grant similar permission. Instead, the subsequent owners remained silent and acquiesced to the presence of the pontoon boats. Decades later, the Fidels' ultimate successors in interest, the Webb family, demanded that the boats be removed and filed suit for trespass. The dominant estate owners counterclaimed asserting that they had acquired a prescriptive easement.

The trial court held that the permission granted by the original owner continued indefinitely and negated any claim of hostility such that the usage could never ripen into ownership of an easement. The Supreme Court disagreed and noted that permission is personal to the grantor and that the sale of the servient estate to another constituted a change in circumstances and conditions which terminates the original permission. While the Fidels' successor owners did not object to the usage, failure to object is mere acquiescence and is not the same as granting permission. As the permission was terminated upon the Fidel's sale in 1976, hostility immediately began which could form the basis for a prescriptive easement.

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.

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