
Virginia: No Bona Fide Purchaser of an Easement; Terms of Revocable Trust May Permit Transfer by Non-Trustee

28 Aug 2018

The recent case of *Kruck v. Krisak*, 2018 WL 2386671 (Fairfax Cir. Ct. 2018) addressed two issues of first impression in Virginia regarding bona fide purchasers and how the transfer of real property to a trust might affect a grant of an easement.

The case began with an easement for a septic field that was granted in 1974 by Austin Foster (the owner of the servient parcel) to his sister (the owner of the dominant parcel). On April 15, 2006, Mr. Foster conveyed his property to himself as trustee for a trust, which was recorded on June 21, 2006. On June 9, 2006, Mr. Foster executed an amendment to the easement in his individual capacity, which was recorded on June 13, 2006. Mr. Foster, as trustee, then sold the servient property, where it ultimately wound up in the hands of the Krisaks. Mr. Foster's sister filed suit to enforce the second easement, arguing that she was a bona fide purchaser for value because the second easement was recorded before the deed conveying the servient property to Mr. Foster's trust was recorded. The Krisaks, by plea in bar, argued that the second easement was unenforceable because Mr. Foster executed it in his individual capacity, and not as trustee.

The Fairfax Circuit Trial Court held that the sister was not a bona fide purchaser for value because she only received an interest in the servient property, and did not actually purchase the property in fee simple. The court noted that there was no clear-cut definition of "bona fide purchaser" under the Virginia Code, but determined that the language of Virginia Code sec. 55-96 and several Virginia Supreme Court opinions limited such a purchaser to one who purchases all rights to a parcel, as opposed to merely an easement. Additionally, the court held that the second easement was valid because the trust was revocable in nature and did not require the trustee to take any action beyond mere notice to himself of the transfer, which was a non-issue. The court also distinguished the case from that of *Austin v. City of Alexandria*, 265 Va. 89 (2003), in which the Virginia Supreme Court invalidated a similar transfer where the trust documents required the trustee to evidence in writing the revocation of the trust and reversion of title to the property held in trust in order to transfer any property from the trust.

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VIRGINIA: NO BONA FIDE PURCHASER OF AN EASEMENT; TERMS OF REVOCABLE TRUST MAY PERMIT TRANSFER BY NON-TRUSTEE

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TAGGED: [Kruck v. Krisak](#), [Fairfax Circuit Trial Court](#), [bona fide purchaser](#), [Virginia Code sec. 55-96](#), [Austin v. City of Alexandria](#) 265 Va. 89