

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.12 of 1989

BETWEEN

WILFRED MEYER
CHRISTIANA MEYER

Appellants

and

CECIL CHARLES

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Miss Justice Joseph J.A. (Ag.)
The Honourable Mr. Justice Singh J.A. (Ag.)

Appearances: Mr. Gerald A. Watt for the Appellants
Mr. Time Kendall Q.C. and Miss A. Henry for the
Respondent

1992: February 28,
June 9

JUDGMENT

FLOISSAC, C.J.

By an agreement in writing (the primordial agreement) executed on the 5th April 1984, Meylock Inn Guest House Limited (the company) agreed to sell and the respondent agreed to purchase a parcel of land known as parcel 36 together with the hotel known as Meylock Inn erected thereon. The primordial agreement was signed on behalf of the company by the appellants who were then the sole shareholders and directors of the company.

The primordial agreement provided that:-

"(1) The Vendor will sell and the purchaser will buy all that property on Briggins Road known as Meylock Inn all as the same is known in the Land Register and recorded in Registration Section Potters and Belmont 613-1891F and Parcel No.36 together with an additional area of land measuring approximately 1/4 acre adjacent to the said property and owned by Wilfred Meyer, Managing Director of the Vendor for a price of \$490,000.

(2)

(3) The Vendor undertakes:-

(i) To get the additional 1/4 acre referred to above, surveyed as soon as possible the cost of the survey to be paid for jointly by the Vendor and Purchaser in equal portions should the survey cost exceed \$100, otherwise to be met by the Vendor....."

Shortly after the execution of the primordial agreement and in pursuance thereof, the appellants sold or agreed to sell to the respondent the said additional or adjoining 1/4 acre of land which is known as parcel 55 and which belonged to the appellants personally. Parcel 55 was fenced and had been used by the appellants for parties, wedding receptions and other social functions.

Access to parcel 55 was by means of the appellants' own access road which is 20 feet wide and which stretches from parcel 55 to the public highway. The access road had been used for several years to accommodate the transport of heavy musical equipment and garbage to and from the dance floor on parcel 55.

After selling parcel 55 to the respondent, the appellants barricaded the access road to deny the respondent access thereby to parcel 55. Whereupon, the respondent instituted legal proceedings against the appellants. In his Statement of Claim (as amended in the course of the trial), the respondent claimed (1) "A declaration that he is entitled to use the access road to parcel 55 as an incident of his ownership of the said parcel (2) A declaration that the access road is a road declared for the use of the Plaintiff (the Respondent), his invitees and his successors in title (3) An order that the Defendants (the Appellants) do forthwith pull down and remove the said barrier (4) An injunction to restrain the Defendants (the appellants) whether by themselves their servants or agents or otherwise howsoever from preventing the Plaintiff (the respondent) and his invitees from using the said access road (5) damages for nuisance (6) costs."

By judgment delivered on the 25th September 1989, Redhead J. granted the declarations, order, injunction and costs claimed by the Respondent and directed the Registrar of the Supreme court "to enquire into the question of damages, if any, which the plaintiff (the respondent) may have suffered as a result of the defendants'

(the appellants') action in blocking access to parcel 55". The learned judge also dismissed the appellants' counterclaim.

In this appeal against the learned judge's judgment, the issues are (1) whether, under the laws of Antigua, an easement can be created by implied grant (2) whether, by implied grant from the appellants, the respondent acquired over the access road a right of way which was previously a quasi-easement (3) whether the appellants are estopped from denying the respondent's entitlement to a right of way over the access road and (4) whether the learned judge was right to direct the Registrar to enquire into the question of damages.

(1) Recognition of implied grants

Section 93(1) & (2) of the Antiguan Registered Land Act 1975 (No. 17 of 1975) provides that:

- "(1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.
- (2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him."

Counsel for the appellant submitted in effect that section 93 is confined to express grants of easements and that the laws of Antigua do not recognise implied grants. This is non sequitur. Express and implied grants of easements are both products of the common intention of the parties to the grant. In the case of an express grant, the common intention to create the easement is expressed. In the case of an implied grant, the common intention is implied or imported into a conveyance by way of interpretation of the conveyance. Such interpretation is derived from the common intention of the parties to the conveyance and that common intention is derived from the conveyance itself viewed in the light of the surrounding circumstances thereof.

According to **Halsbury's Laws of England** (Fourth Edition) Vol.

14 paragraph 47:-

" An easement may rest either upon an express grant actually subsisting or upon a presumed grant, or upon a grant arising merely by implication. An easement arising merely by implication is virtually created by express grant, since the creation of the easement is affected by the legal construction of the instrument, even though it contains no express mention of the easement."

I respectfully adopt that statement. I must therefore reject the proposition that the statutory recognition of express grants of easements is a statutory denial of implied grants. In my judgment, the Registered Land Act does not preclude the implication of grants where necessity, the existence of quasi-easements or other circumstances warrant such implication.

(2) Implied grant of right of way

In **Wheeldon v Burrows** (1878) 12 Ch.D 31 at 49, Thesiger L.J. said:

" The first of these rules is, that on the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, I mean quasi easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted."

In **Bayley v Great Western Railway Co.** (1884) 26 Ch. D 434 at 456 & 457, Fry L.J. said:

" The first question, and I think the whole question is one of construction. It appears to me that the cases of *Watts v Kelson* and *Kay v Oxley* have laid down a general principle of construction which I think may be stated in this way, that if one person owns both *Whiteacre* and *Blackacre*, and if there be a made and visible road over *Whiteacre*, and that has been used for the purpose of *Blackacre* in such a way that if two tenements belonged to several owners there would have been an easement in favour of *Blackacre* over *Whiteacre*, and the owner aliened *Blackacre* to a purchaser, retaining *Whiteacre*, then the grant of *Blackacre* either 'with all rights usually enjoyed with it' or 'with all rights appertaining to *Blackacre*', or probably the mere grant of *Blackacre* itself without general words, carries a right of way over *Whiteacre*. That appears to me to be the result of those cases."

Guided by these principles, I would conclude that all the prerequisites to the implication of a grant of an easement in the

form of a right of way over the access road have been satisfied. Firstly, the appellants were the common owners of parcel 55 and the access road. Secondly, during the common ownership, the appellants used the access road as the sole means of access to parcel 55 from the public road and vice versa. Thirdly, the user of the access road was continuous and apparent (in the sense that it was exercised over a visible access road) and was evidently necessary for the reasonable enjoyment of parcel 55. Fourthly, had parcel 55 and the access road belonged to different owners, the user of the access road would have been indicative of an easement or right whereby parcel 55 would have been classified as the dominant tenement and the access road would have been classified as the servient tenement.

In these circumstances, when the appellants severed their ownership by selling parcel 55 (the quasi-dominant tenement) to the respondents and by retaining the access road (the quasi-servient tenement), the grant of an easement or right of way over the access road for the benefit of parcel 55 had to be implied.

(3) Promissory Estoppel

The learned judge found as a fact that during the negotiations between the first-named appellant and the respondent for the sale and purchase of parcel 55, the first named appellant represented to the respondent that a right of way over the access road would be available for the benefit of parcel 55. The appellant was evidently induced by that assurance to purchase parcel 55.

According to **Halsbury's Laws of England** (Fourth Edition) Vol. 16 paragraph 1514:

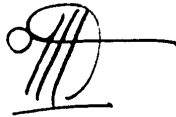
" When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations

subject to the qualification which he himself has so introduced."

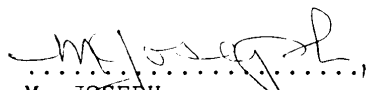
On the authority of that statement of the law of promissory estoppel, I would conclude that as a result of the assurance given by the first named appellant and acted upon by the respondent, the appellants are estopped from denying that the respondent has a right of way over the access road for the benefit of parcel 55. But even if the assurance does not engender an estoppel, it is certainly one of the surrounding circumstances by reference to which the common intention to create the right of way might be inferred or implied.

(4) Damages

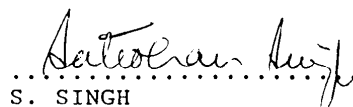
At the trial, no evidence was led as to the damage suffered by the respondent as a result of the appellants' obstruction of the right of way. The learned judge therefore erred in directing the Registrar to enquire into the question of damages. That direction must therefore be reversed. Subject to that reversal, I would dismiss the appeal with costs to the respondent.



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V.F.FLOISSAC
Chief Justice



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M. JOSEPH
Justice of Appeal (Acting)



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S. SINGH
Justice of Appeal (Acting)