



BUSINESS & FACILITIES

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Neighbors Use Of Private Recreational Trails Is Insufficient To Establish Public Dedication Of Land

Prior to 1972, a private landowner could dedicate an interest in land to the public impliedly when “the public has used the land for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone.” In 1972, the legislature enacted Civil Code Section 1009, subdivision (b), which effectively abolished implied dedications prospectively.

Martha Company (Martha) owned 110 acres of undeveloped land in the Tiburon peninsula, near the communities of Tiburon and Belvedere, for more than 100 years. The Reed family owns and controls the Martha Company and utilized the property for cattle grazing until 1959. Four roads dead-end at the property and the property has views of Angel Island, San Francisco, and the Golden Gate Bridge.

In 2017, Tiburon/Belvedere Residents United to Support the Trails (TRUST) filed a complaint to quiet title, in favor of the public, of recreational easements over four trails on the property. TRUST argued that, before 1972, the public’s use of trails on Martha’s property established a recreational easement under the doctrine of implied dedication. At trial, TRUST witnesses, mostly comprised of locals living in the neighborhoods immediately surrounding the property, testified that, during the five-year period preceding 1972, the trails were frequently used for various forms of recreation, including hiking, running, dog walking, biking, horseback riding, and picnicking. The majority of TRUST’s witnesses recall gates or old fences of some kind at points where the property intersected with the trails. Although, some witnesses also testified that there were no barriers blocking access to the trails.

On the other hand, Martha’s witnesses, including members of the Reed family, painted a different picture. They testified, that, during the relevant period, fences, gates, and “no trespassing” signs were in place at various trail access points. Trespassers frequently cut wires in the fencing and removed signs, necessitating continual repairs.

The trial court concluded TRUST failed to show that the public’s use of the trails was sufficient “to make a conclusive and undisputable presumption of knowledge and acquiescence.” The court reasoned, “it is a high standard to take away a party’s land in favor of a public dedication.” The trial court entered judgment for Martha and TRUST Appealed.

On appeal, TRUST argued that the trial court applied the wrong legal standard by discounting the testimony of neighbors and of its witnesses during the relevant period. The Court of Appeal disagreed and found that, for the most part, TRUST’s witnesses were a small group of neighbors and not the public at large. The appellate court found that the landowner might have simply tolerated this use as a neighborly accommodation. Even assuming that a significantly large and diverse group of the public used the trails, Martha made adequate bona fide attempts to prevent public use by installing fences and “no trespassing” signs. The Appellate Court found that substantial evidence supported the trial court’s findings of insufficient public use, and Martha’s attempts to deter trespassers demonstrated lack of acquiescence to a public dedication.

Tiburon/Belvedere Residents United to Support the Trails v. Martha Company (2020)
__Cal.App.5th__ [2020 WL 6266312]

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