

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

H.A. STEEN INDUSTRIES, INC.,	:	March Term 2011
	:	
Plaintiff,	:	
	:	
v.	:	No. 3423
GABOR S. ANTALICS and SKY TOP ROVER	:	
CO.,	:	COMMERCE PROGRAM
	:	
Defendants.	:	2296 EDA 2011
	:	

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OPINION

This is an appeal from the late Judge Albert W. Sheppard Jr.'s order dated July 25, 2011 granting Plaintiff H.A. Steen Industries Inc.'s Petition for Special Injunction.

I. Background

Plaintiff H.A. Steen Industries, Inc. (hereinafter "Steen") is the owner of property located at 1035-43 Sarah Street, Philadelphia, Pa. Steen utilizes the property for the purpose of maintaining and leasing an outdoor advertising sign. Defendants Gabor S. Antalics and Sky Top Rover Co. (hereinafter "Antal") own, maintain and operate the property located at 1045-49 Sarah Street, Philadelphia Pa. Antal is in the business of repairing cars. Steen and Antal are adjacent landowners who share a common driveway.

Steen and Antal's properties are bordered by Interstate 95 to the North, Sarah Street to the East and Wildey Street to the South. Steen's property is encircled by a seven foot high chain linked fence along Sarah Street. Steen has access to its property through two gates on Sarah Street. The first gate is located solely on Steen's property (hereinafter "Sarah Street entrance"). The second gate, also located on Sarah Street, is a common driveway twelve feet wide shared by Steen and Antal (herinafter "Common Driveway entrance").¹

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¹ City of Philadelphia property survey hearing exhibit "P-1".



The common driveway entrance is common by virtue of an easement created by the parties' deeds for the respective properties. The easement provides that each land owner is entitled to free and common use, right, liberty and privilege of the driveway as a passageway, drive and watercourse.

On Steen's property is a billboard affixed to five vertical struts. In between the fourth vertical strut and the fifth vertical strut is a nine foot high corrugated fence.² On the fifth vertical strut is a control box containing an electric meter, an outlet and a time clock.³ The control box can only be accessed from the common driveway entrance.⁴ Every time service is made on the billboard, Steen is required to access the box.⁵ Service is made on the billboard every thirty days.⁶ Installation of a new billboard requires entrance from the Sarah Street entrance.⁷

On March 30, 2011, Steen filed a complaint and a petition for special injunction against Antal. Steen alleged that Antal were storing unlicensed, unregistered and broken down vehicles on the common driveway blocking Steen's entrance, parking cars on Steen's property blocking access to the control box and parking cars on Sarah Street blocking Steen's Sarah Street entrance.

² P-1.

³ N.T. p. 13.

⁴ N.T. p. 15-16.

⁵ N.T. p. 31.

⁶ N.T. p. 12.

⁷ N.T p. 15. See also, P-1.

On July 5, 2011, the court conducted a hearing on the petition for preliminary injunction where testimony was presented and evidence admitted.⁸ On July 25, 2011, the court entered an order granting plaintiff's petition for injunctive relief and ordered the following:

1. Defendants shall remove all vehicles, trash debris, car parts and any other property or objects that they have placed on plaintiff's property located at 1035 Sarah Street, Philadelphia, Pa.
2. Defendants shall remove all vehicles, trash, debris, car parts or any other property or objects (other than the dog run) that have been placed in the common driveway between 1035 Sarah Street and 1045-49 Sarah Street;
3. Defendants shall remove all vehicles, trash, debris, car parts, or any other property or objects that are blocking or interfering with plaintiff's access to its property at 1035 Sarah Street, either via Sarah Street or via the common driveway;
4. Defendants shall remove all vehicles, trash debris, car parts, or any other property or objects that interfere with plaintiffs' and PECO's access to the electrical meter on the property located at 1035 Sarah Street;
5. Defendants and plaintiffs shall work together and install a joint lock on the gate that provides entry into the common driveway;
6. Failure to comply with the terms of the Order may result in the imposition of contempt sanctions, upon petition to this court;
7. Plaintiff shall post a bond with the Prothonotary of the Court of Common Pleas of Philadelphia County in the amount of \$5,000.00.

On August 19, 2011, Antal appealed the court's order. On September 13, 2011, Antal filed their Statement of Matters Complained of on Appeal. Specifically, Antal claims the court erred in granting injunctive relief because 1) the request for injunctive relief was barred by the doctrine of unclean hands, 2) changed conditions destroyed the original purpose of the driveway easement and enforcement of the restriction is not calculated to provide any benefit to the plaintiff, and 3) defendants' use of the driveway easement to temporarily park cars while in his shop to be repaired did not injure plaintiff in any manner. For the reasons set forth below, this court's order dated July 25, 2011 should be affirmed.

⁸ The hearing was scheduled in July after scheduling conflicts and attempts to settle the matter were unsuccessful.

DISCUSSION

A petitioner seeking a preliminary injunction must establish every one of the following prerequisites:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.⁹

These requisite elements are cumulative, and if one element is lacking, relief may not be granted.

The relief sought by plaintiff, herein, is in the nature of a mandatory injunction. Courts grant a mandatory injunction upon a very strong showing that the plaintiff's right to relief is clear because such an injunction compels the defendant to perform an act, rather than merely restraining the defendant from acting.¹⁰

The vehicles, auto parts and debris placed by Antal in the common driveway and on Steen property blocked and interfered with Steen's only access to the control box on the fifth vertical strut. Steen could not access the control box nor could the electric meter be read without scaling a nine foot fence and potentially placing an employee in danger of falling.¹¹ Steen

⁹ York Group, Inc. v. Yorktowne Caskets, Inc., 924 A.2d 1234 (Pa. Super. 2007).

¹⁰ Sovereign Bank v. Harper, 449 Pa. Super. 578, 674 A.2d 1085, 1092 (Pa. Super. 1996).

¹¹ N.T. p. 26.

requires 24/7 access to the common driveway entrance.¹² Additionally, Antal's vehicles also blocked and interfered with Steen's Sarah Street entrance. Antal parked its vehicles directly in front of the gate preventing Steen from accessing the property with its truck.¹³ Steen's inability to access its property from the only two possible entrances constitutes immediate and irreparable harm.

In granting the injunction the parties were not placed in a position where greater injury would result from refusing the injunction than from granting it. The injunction did not dispossess Antal of any property rights. Although, Antal may no longer use the common entrance driveway to park cars, Sarah Street parking continues to remain available as long as the Sarah Street entrance is not blocked. The issuance of the injunction does not substantially harm Antal. The injunction was crafted to provide Steen access to its property and provide a means for the adjoining property owners to work together to secure the properties by installing a joint lock on the gate that provides entry into the common driveway.

The injunction properly restores the status between Steen and Antal as it existed prior Antal's conduct of blocking the common driveway entrance and the Sarah Street entrance. The easement created by deed gives Steen and Antal joint access to use the driveway as a passageway not as a parking lot. The injunction enforces the easement created by deed.

Steen's right to relief is clear. The easement gives Steen the right to access and use the common driveway as a driveway. Antal argued that the court erred in issuing the injunction because Steen has unclean hands. The Pennsylvania Supreme Court has articulated the doctrine of unclean hands as "a self-imposed ordinance that closes the doors of a court of equity to one

¹² N.T. p. 37.

¹³ N.T. p. 12, 13.

tainted with inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." ¹⁴ Absent from the record is any evidence that Steen engaged in any conduct tainted with bad faith for which the entry of said injunction would be prohibited.

Moreover, Steen continues to have use for the easements. The evidence presented demonstrates that Steen requires 24/7 access to the common driveway entrance and accesses the control panel every thirty days. The evidence also demonstrates that the only access to the control panel is through the common driveway entrance. As such, the easement continues to confer a benefit upon Steen.

The injunction entered by the court is reasonably suited to abate the offending activity and will not adversely affect the public interest.

CONCLUSION

For the foregoing reasons, this court's order dated July 25, 2011 should be affirmed.

Date: 1/3/2012

BY THE COURT,


PATRICIA A. McINERNEY, J.

¹⁴ Jacobs v. Halloran, 551 Pa. 350, 359, 710 A.2d 1098, 1103 (1998) (citing Shapiro v. Shapiro, 415 Pa. 503, 506-507, 204 A.2d 266, 268 (1964)).