

Daily Journal

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FRIDAY, MAY 21, 2010

VERDICTS & SETTLEMENTS

REAL PROPERTY

EASEMENT

Neighborhood Accommodation

BENCH DECISION: Plaintiffs.

CASE/NUMBER: Nicholas J. Ciliento Jr., Dyanna Uribe Ciliento v. Nancy Jo Dobbs, Robert S. Smith, Trustees, G. Jo Dobbs Trust / BBCHS01006.

COURT/DATE: San Bernardino Superior / July 30, 2009.

JUDGE: Hon. Jules E. Fleuret.

ATTORNEYS: Plaintiff - **Robert E. Muir (Law Offices of Robert E. Muir, San Diego).**

Defendant - David Philipson (Philipson & Erdmier, Big Bear Lake).

FACTS: In 1994, the Cilientos purchased a home in Big Bear and began to use, without permission, a portion of their neighbor, the Dobbs', property to access their driveway.

PLAINTIFF'S CONTENTIONS: The Cilientos contended that the use was hostile to the Dobbs and met the requirements of a prescriptive easement.

DEFENDANT'S CONTENTIONS: The Dobbs contended that the use did not meet the hostile requirement because the use was the type that is

customary for one neighbor to allow another to use land. According to the "Neighborhood Accommodation" doctrine, which the Dobbs argued, a party cannot establish a prescriptive easement if the use was a Neighborhood Accommodation.

SETTLEMENT DISCUSSIONS: Prior to trial, the Cilientos offered to settle by paying the Dobbs for an easement which the Dobbs rejected.

RESULT: Finding that the Neighborhood Accommodation doctrine did not apply because the parties were not on friendly terms and the Dobbs did not consent to the use in 2004, the court ruled that the Cilientos had acquired a non-exclusive prescriptive easement over the portion of the Dobbs' property to permit continued pedestrian and vehicular passage and for vehicle parking and other uses common to a residential driveway. The court awarded the Cilientos, as prevailing party, their costs.

OTHER INFORMATION: Under the Neighborhood Accommodation defense, defendants must present sufficient facts to show that the use was given as a friendly gesture or accommodation in order to defeat the "hostile" requirement for prescriptive easement.