

23400 Michigan Avenue, Suite 101
Dearborn, MI 48124
Tel: 1-(866) 534-6177 (toll-free)
Fax: 1-(734) 943-6051
Email: contact@legaleasesolutions.com
www.legaleasesolutions.com

Express Easements of Light and Air under New York Law

Easements by express grant are construed to give effect to the parties' intent, as manifested by the language of the grant. *Dowd v. Ahr*, 78 N.Y.2d 469, 473 (1991). The extent and nature of an easement must be determined by the language contained in the grant, aided where necessary by any circumstances tending to manifest the intent of the parties. *Sambrook v. Sierocki*, 53 A.D.3d 817 (3rd Dept. 2008). See also *Oneida County Mobile Home Sales, Inc. v. Niagara Mohawk Power Corp.*, 63 A.D.2d 385, 393 (4th Dept. 1978) (holding that the intention of the parties to an easement can be evidenced by the contemporary interpretation and practical construction which they placed on the agreement by their acts in the use of the right of way).

Easements of light, air and view may be created by express grant and such grants have been upheld in New York. *Irving Trust Co. v. Anahma Realty Corp.*, 281 N.Y. 798 (1939). General rules of construction applicable in other cases involving deeds and other instruments in writing are applicable to express easements of light, air and view; the language of the agreement or deed would be interpreted in the light of the intention or purpose of the parties and of the conditions existing when it was made. *Irving Trust Co. v. Anahma Realty Corp.*, 285 N.Y. 416 (1941).

Restrictive covenants, such as easements for air and light, are commonly categorized as negative easements. *Breakers Motel v. Sunbeach Montauk Two*, 224 A.D.2d 473, 474 (2nd Dept. 1996); *Rahabi v. Morrison*, 81 A.D.2d 434, 438 (2nd Dept. 1981) (noting that a light and air easement is negative because an adjoining landowner has no natural right to light or

air in the absence of a negative easement). Negative easements restrain servient landowners from making otherwise lawful uses of their property. *Breakers Motel*, 224 A.D.2d at 474. In determining the ultimate effect of an easement or restriction on the land of the servient landowner, the general rule is that in the absence of actual notice before or at the time of purchase or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to that owner or that owner's direct predecessors in title. *Id.* The law, however, has long favored free and unencumbered use of real property, and covenants restricting use are strictly construed against those seeking to enforce them. *Id.* Courts will enforce restraints only where their existence has been established with clear and convincing proof by the dominant landowner. *Id.* Moreover, any ambiguities in an easement are to be construed in the manner most favorable to the grantee and its successors. *Lawrence v. 5 Harrison Assocs.*, 295 A.D.2d 131, 132 (1st Dept. 2002).

A servient tenement is prohibited from unreasonably interfering with the rights of the dominant tenement to use the easement. *Green v. Mann*, 237 A.D.2d 566, 568 (2nd Dept. 1997) (holding that the construction of a bulkhead constituted an unreasonable obstruction of the plaintiffs' exercise of their easement rights and that because compensatory damages would be inadequate, the court did not err in ordering removal of the bulkhead and restoration of the area). Whether an obstruction constitutes an unreasonable interference is generally a question of fact. *Id.*

It is also a long-settled rule that where an encroachment is not expressly prohibited by the terms of the grant and has been in place for an appreciable period of time without objection, any uncertainty as to the rights under the easement is to be interpreted by reference to the practical interpretation put upon it by the acts of the parties in the use of the easement. *Oneida County Mobile Home Sales, Inc. v. Niagara Mohawk Power Corp.*, 63 A.D.2d 385, 392 (4th Dept. 1978).

In *Oneida*, 63 A.D.2d at 387, an easement had been granted by property owners to defendant power company for the power company to build power lines across the property. The property owner placed mobile homes under the power lines and then sold the property to plaintiffs. *Id.* at 388. The power company then demanded that the plaintiffs remove the mobile homes, claiming the location of the homes under the power lines was a violation of the terms of the easement. *Id.* at 389. The Appellate Division disagreed, finding that the encroachments were not expressly prohibited by the terms of the easement and that the intent of the parties regarding the terms of the easement had been established by the fact that the mobile homes had encroached on the easement for an appreciable period of time. *Id.* at 392-393.

The owner of land benefited by an easement has two remedies available to seek redress upon a claim that another has interfered with or obstructed his easement rights. *Rahabi v. Morrison*, 81 A.D.2d 434, 438 (2nd Dept. 1981). He can sue at law to recover damages or he can sue in equity for an injunction. *Id.*

Where an obstruction to the enjoyment of the easement is of a permanent or continuous nature and the damages for each day's obstruction are insignificant, the remedy of successive actions at law for such damages is inadequate and an action in equity for an injunction will lie. *Rahabi*, 81 A.D.2d at 438 (holding that plaintiff dominant owner's request for a permanent injunction based upon defendants' interference with his easement by the placement of a fence along the boundary line between the two parcels stated a valid cause of action).

Furthermore, the right to the use of an easement may be lost by adverse possession and where an actual obstruction is continuous, exclusive, open and notorious, so that if continued for more than the prescriptive period, it will destroy the easement by adverse possession, an action for an injunction will lie. *Rahabi*, 81 A.D.2d at 438. In such a case the

damages will be substantial when the adverse possession has extinguished the easement and this is sufficient to justify an injunction to prevent the continued actions which would eventually operate to take a right in real property from the true owner. *Id.* In order to be granted a permanent injunction for interference with an express easement, plaintiff must prove a violation of a right presently occurring, or threatened and imminent; that the plaintiff has no adequate remedy at law; that serious and irreparable injury will result if the injunction is not granted; and that the equities are balanced in the plaintiff's favor. *Elow v. Svenningsen*, 58 A.D.3d 674 (2nd Dept. 2009).

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