



Ronald L. Richman
San Francisco,
Shareholder

Direct Dial: 415.352.2722
Fax: 415.352.2701
Email Attorney

"Use it or lose it" principle does not result in partial extinguishment of easement.

By Ronald L. Richman

An easement is the right to use the land of another. An easement can be acquired by adverse use of another's property or by a grant deed, i.e., when a property owner conveys an easement to another by a deed. Once an easement exists, it cannot be extinguished simply because the owner of the easement does not require, or will not require in the future, use of the entire easement.

The California Court of Appeal, in *Cottonwood Duplexes v. Barlow* (2012) 149 Cal. Rptr. 3d 235, held the trial court had no legal ground to extinguish any portion of a deeded easement simply because the owner of the easement did not need, or would not need in the future, the entire easement.

In *Cottonwood*, plaintiff Cottonwood's predecessor granted defendant Barlow a 60-foot roadway and utility easement over his property. After Cottonwood purchased the property, it filed a quiet title action against Barlow asking the court to extinguish all, or in the alternative, a significant portion of the easement, because after the easement was granted, the property was subdivided and Barlow no longer needed the entire 60-foot roadway and utility easement. The trial court agreed with Cottonwood and extinguished a portion of the easement, significantly reducing the size of the easement, on the ground Barlow no longer needed the entire easement.

The Court of Appeal reversed the trial court's decision, holding there was no legal basis for the trial court to partially extinguish a valid, deeded easement. The Court of Appeal held the trial court had no authority to partially extinguish the easement just because, in the court's view, the owner of the easement did not appear to need the entire easement, either at that time or in the future.

The Court of Appeal made it clear that an otherwise valid, deeded easement cannot be extinguished absent proof: (1) the easement is no longer being used; (2) the owner has indicated an intent to abandon the easement; and (3) the easement is causing damage to the property on which it is located.

Ron Richman is the Shareholder-In-Charge of the San Francisco Office of Bullivant Houser Bailey PC. Mr. Richman specializes in title, real estate, construction, general and commercial litigation and counseling. Please e-mail him at ron.richman@bullivant.com or visit www.bullivant.com for more information.