

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 02/03/17

DEPT. 39

HONORABLE ELIZABETH R. FEFFER

JUDGE

R. CASTLE

DEPUTY CLERK

HONORABLE  
#17

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. BITUIN, C.A.

Deputy Sheriff

NONE

Reporter

10:06 am

BC576506

Plaintiff  
Counsel

MESERVE, MUMPER & HUGHES  
BY: MICHAEL A. ANGEL [X]

SUNSET RANCH HOLLYWOOD STABLES  
VS  
CITY OF LOS ANGELES ET AL

Defendant  
Counsel

CITY OF LOS ANGELES  
DEPUTY CITY ATTORNEY  
BY: MICHAEL S. KAPLAN [X]

**NATURE OF PROCEEDINGS:**

COURT TRIAL

Trial resumes from February 2, 2017 with all counsel and parties present as heretofore.

On the Court's own motion, a Case Management Conference/Trial Setting Conference On Bifurcated Issues is set for hearing on March 13, 2017, at 8:45 a.m., in Department 39.

Notice is waived as to the above date.

Cause is argued.

The court now comes on and rules as follows, on the bifurcated issues: (1) Plaintiff's request for declaratory relief, regarding the Right of Way Agreement; (2) Plaintiff's request for a preliminary injunction.

It is undisputed that on or about August 2, 1940, Plaintiff's predecessor (Eben Coe) and Defendants' predecessor (M.H. Sherman Company; "Sherman") entered into a "Right of Way Agreement." (Exhibit 2; "ROW Agreement".) Under the ROW Agreement, the parties acknowledged that the property conveyed by Sherman to Coe, a 2.05 acre parcel, was part of a larger parcel of land, owned by Sherman; and that there was no means of ingress and egress to and from

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the real property. Sherman therefore granted to Coe "the right to use as a roadway in common" with Sherman, "its lessees, grantees, licensees, successors, and assigns, for the purpose of ingress and egress from the parcel of land" upon which the Sunset Ranch Hollywood stables ("Sunset Ranch") are located, "but not for any other purpose." The land subject to the right of way easement was a 20-foot-wide strip of land.

The ROW Agreement states that "The right of way hereby granted is in lieu of any other easements or rights of way for ingress and egress to or from said 2.05 acre parcel of land," and Coe "release[d] and relinquish[ed]" to Sherman, it successors and grantees, any easements or rights of way over the lands of Sherman, "excepting only the right of way hereby granted."

In 1945, Sherman sold the surrounding land to the City of Los Angeles, and the land is now part of Griffith Park.

The court received testimony that there has essentially always been a gate at Beachwood Canyon Drive ("Beachwood"), where the public roadway ends and the easement begins. Until approximately 2013, the gate was a T-bar design (Exhibit 4). The gate was open during the day, so, through 2013, even vehicles unaffiliated with Sunset Ranch could drive through the gate and park on the right of way.

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The pre-2014 gate also allowed unfettered access to pedestrians. There was no known attempt by either Sunset Ranch or by the City to prevent pedestrians from walking up Beachwood Canyon and then onto the easement.

Pedestrians walk along the easement to get to the City's Hollyridge Trail. The Hollyridge Trail is a public trail that is located such that hikers can walk close to the world-famous "Hollywood" sign. Until approximately 2001, hikers wishing to access the Hollyridge Trail could access the trail more or less where the easement begins, by taking Beachwood to Hollyridge Drive. In approximately 2001, the owner of the private property where this trail access was located built a house, which cut off pedestrian access to the public trail.

Because that access point to the Hollyridge Trail closed in 2001, at around that same time the City of Los Angeles cut an access trail further up the easement, which connected the paved easement and the Hollyridge Trail. This had the effect of channeling pedestrians up the easement towards Sunset Ranch. The parties stipulated that, at the time of the trial, approximately 15,000 pedestrians per month walk on the access road.

The court received testimony that in recent years, largely due to information available on social media and other internet sites, and not due to actions of

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the City of Los Angeles, hiking has become popular, and many people want to walk the Hollyridge Trail, to access the Hollywood sign on foot. According to testimony, the City of Los Angeles has encouraged pedestrian access to the Hollywood sign via the Griffith Park Observatory parking lot, and not via Beachwood.

In approximately April 2014, the City of Los Angeles closed off access to the easement by motorists and pedestrians when it began construction on a new, electric gate located at the end of Beachwood. Construction continued until approximately December 31, 2014. During construction, the City posted a guard south of the construction area, to advise pedestrians and motorists that there was no access past the end of Beachwood. The City also posted an electronic sign indicating that access to all was closed.

The City of Los Angeles announced the completion of the gate and reopening of pedestrian access in a press release dated January 2, 2015. (Exhibit 3.) The gate has a keypad system that enables Sunset Ranch users, vendors, boarders, and employees to open the gate. The court received testimony that this new gate has essentially eliminated cars parking on the access road itself. The new gate also contains a pedestrian gate. This gate is referred to herein as the "Beachwood gate," and is depicted in Exhibit 5.

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The City has continued to post a guard at the gate area. The Court received testimony that the guard has turned paying Sunset Ranch customers away, to the present time.

Plaintiffs seek a declaration that the ROW Agreement creates an exclusive easement, thereby precluding members of the public (including hikers) from walking on the easement; and an injunction enjoining the public from using the easement, and also enjoining certain conduct of the City of Los Angeles.

An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land. (Eastman v. Piper (1924) 68 Cal.App. 554, 600.) A right-of-way is an easement that is attached to the land. (Civil Code § 801.) An easement creates a nonpossessory right to enter and use land in another's possession, and obligates the possessor not to interfere with the uses authorized by the easement. An easement is an interest in the land of another, and is not an estate in land. The land to which an easement is attached (i.e. Plaintiff's) is the dominant tenement; the land upon which a burden or servitude is laid (i.e. City's) is the servient tenement. (Civil Code § 803.) The owner of occupant of a dominant tenement may bring an action to enforce the easement. (Civil Code § 809.)

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Every incident of ownership not inconsistent with the easement and the enjoyment of the same, is reserved to the grantor. (Dierssen v. McCormack (1938) 28 Cal.App.2d 164, 170.) Thus, the easement holder must exercise his right so as not to impose an unnecessary burden on the servient tenement, and the owner of the servient tenement may make any use of the property that does not unduly or unreasonably interfere with the easement. (Atchison, Topeka & Santa Fe Ry. Co. v. Abar (1969) 275 Cal.App.2d 456, 464.) Whether a particular use of the land by the servient owner, or by someone acting with his authorization, is an unreasonable interference is a question of fact. (City of Pasadena v. California-Michigan Land and Water Company (1941) 17 Cal.2d 576, 579.)

The issues litigated in this bifurcated court trial phase are as follows:

1. Does the ROW Agreement preclude members of the public from using the easement? That is, may the only users of the easement be the City of Los Angeles (servient tenement owner) and Sunset Ranch (the dominant tenement owner)?

The court finds that it does not. Here, the subject right of way easement was created by an express grant, i.e. the ROW Agreement. The City of Los Angeles owns the land itself. By its own terms, the

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ROW Agreement is not exclusive. Indeed, Sunset Ranch's use is limited to ingress and egress only. The ROW Agreement does not convey upon the owner of the dominant tenement the ability to limit use by the owner of the servient tenement.

Therefore, under the ROW Agreement, members of the public (i.e. pedestrians/hikers) cannot be excluded from using the easement.

2. Has the City of Los Angeles, as the owner of the servient tenement, unreasonably or unduly interfered with the right of way easement?

The court finds that the City has unreasonably and unduly interfered with Sunset Ranch's right of way easement, in two ways: by its agents (the guards) turning away Sunset Ranch-related motorists (including customers); and (2) by taking the affirmative step, in approximately 2001, of channeling pedestrian traffic further along the easement road, to access the Hollyridge Trail.

As to the first point, the court received undisputed evidence (including the testimony of Sunset Ranch manager and resident Jason Pitti) that, subsequent to the opening of the new gate in January 2015, and continuing through the present, the City's guards have turned away paying customers of Sunset Ranch. This is an express violation of the ROW Agreement,

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and constitutes unreasonable interference with the easement. Because the violations are ongoing, and an action for damages would not adequately remedy the violations, injunctive relief is appropriate.

Second, when the City created a new pedestrian access point to the Hollyridge Trail in 2001, it affirmatively channeled the pedestrian traffic to a point further along the easement, towards Sunset Ranch. The court received evidence that these 15,000 pedestrians per month do block access to and from Sunset Ranch. The City has channeled the pedestrians down the easement, past approximately three turns in the road (Exhibit 1), to a point where the pedestrians do walk over the City-cut access connecting the easement to the Hollyridge Trail. The City's channeling pedestrians to the 2001 access point does block ingress and egress for Sunset Ranch, and, as such, constitutes an unreasonable interference with Sunset Ranch's use of the easement.

The court did not receive evidence as to the actual distance between the pre-2001 access point to the Hollyridge Trail, and the location of the Beachwood gate, depicted in Exhibit 5. An aerial photograph of the vicinity (Exhibit 1) reflects that the two locations are close to each other.

The court therefore grants Plaintiff's request for a preliminary injunction, and enjoins the City of Los



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Angeles as follows:

1. The City of Los Angeles, and its agents, and employees, including guards, are preliminarily enjoined from precluding ingress or egress of vehicles relating to Sunset Ranch (i.e. its employees, vendors, customers, and boarders); and
2. The City of Los Angeles is preliminarily enjoined and ordered to provide public pedestrian access to the Hollyridge Trail, at a location as closest to the start of the subject easement (i.e. the location of the Beachwood gate, as depicted in Exhibit 5) or at the pre-2001 access point (from Hollyridge Drive), as is practicable.

The court requested that the City of Los Angeles provide the court with an update as to site selection and other logistics pertaining to the new pedestrian access point at the March 13, 2017 Case Management Conference.

The clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am

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not a party to the cause herein, and that on this date I served the minute order of February 3, 2017 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: February 3, 2017

Sherri R. Carter, Executive Officer/Clerk

By: \_\_\_\_\_

R. Castle, Deputy

Angel, Michael A., Esq.  
Meserve Mumper & Hughes LLP  
800 Wilshire Blvd., Ste. 500  
Los Angeles, CA 90017-2611

Feuer, Michael N., City Attorney

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Los Angeles, CA 90012