

■ Title Policies

What's in a Name? Is Vineyard Lane a "Street"?

A borough sought to condemn a portion of a lane known as "Vineyard Lane". One of the property owners whose land was being condemned filed preliminary objections to the declaration of taking contending that Vineyard Lane was not a "street" for purposes of condemnation, but rather an easement, and therefore the condemnation was unauthorized and improper. HELD: Vineyard Lane was an easement and not a "street" and the Borough Code did not authorize the condemnation of an easement. Moreover, because the borough sought to condemn only a portion of the easement, the condemnation was improper because it was for a private, rather than a public use. Borough of Duncansville v. Beard, 2006 WL 4099766 (Pa. Cmwlth., March 7, 2007).

On June 9, 2004, the Borough of Duncansville ("Borough") filed a declaration of taking seeking to condemn a portion of a roadway known as "Vineyard Lane". The declaration of taking sought to condemn a portion of a property owned by Richard and Beth Ann Beard ("the Beards") located at the intersection of North 13th Street and Vineyard Lane. The Beards filed preliminary objections to the declaration of taking with the Court of Common Pleas of Blair County contending that (1) Vineyard Lane was an easement, and not a "street", for purposes of the condemnation and the Borough Code, 53 P.S. §45101 et. seq. (the "Code"), did not authorize the condemnation of an easement, and (2) the condemnation was for a private rather than a public purpose and therefore was improper. The trial court overruled the preliminary objections and the Beards filed an appeal to the Pennsylvania Commonwealth Court.

In reversing the trial court's decision, the Commonwealth Court began its analysis by reviewing §1501 of the Code which provides:

"In the laying out, opening, widening, extending, vacating, grading, or changing the grades or lines of streets . . . and for other purposes authorized by this act, a borough may enter upon, appropriate, injure or destroy, private lands, property or material, according to the proceedings set forth in law governing eminent domain."

Under the Code, a "street" is defined as:

"... any street, as defined in section 111 of this act [53 P.S. §111] either for or intended for public use, and shall include the cartway, sidewalk, gutter, and/or right of way area, whether or not such street, or any part thereof, is owned in fee by others than the borough." (emphasis added).

§111 of the Code broadly defines "streets" to include "any street, road, lane, court, cul-de-sac, alley, public way and public square." (emphasis added).

The Beards argued that Vineyard Lane did not fall within the Code's definition of "street" because Vineyard Lane was an "easement" and not a "street". In support of that argument, the Beards pointed to a prior decision of the lower court in another case in which their neighbors, the Brennemans, sought to have the court declare that they had a prescriptive easement to use Vineyard Lane. In that case, the lower court concluded that Vineyard Lane constituted a right of way, or easement, which is a "property interest conferred upon one other than the property owner." The Commonwealth Court agreed with the Beards and concluded that Vineyard Lane "has no legal status as a 'street'".

The Borough relied heavily on §111 of the Code which expressly defines "streets" to include a "lane". However, the Commonwealth Court rejected that argument noting that, although the roadway had been given the name "Vineyard Lane", the name given to the roadway is not determinative and the roadway must be "either for or intended for public use" in order to meet the definition of "street" under the Code. Because Vineyard Lane is an easement (i.e., "not intended for public use"), the Commonwealth Court concluded that Vineyard Lane is not a "street" under the Code and, as a result, the condemnation was unauthorized.

The Commonwealth Court also found it noteworthy that the Borough only sought to condemn a portion of the easement. The Court stated that in all proceedings for condemnation of property, the United States and Pennsylvania Constitutions authorize takings "only when they are for public use or purpose." The Court held that, under the "unusual

circumstances" in this case, the proposed taking was not for a public use or purpose. The Court stated that an easement "contemplates no purely public use and establishes only the rights of the owner of the property and the person or persons who have a legal interest in the easement." Accordingly, "only such neighbors who have easement rights to travel across the easement, or Vineyard Lane, may legally do so." A partial condemnation would mean that the public will have access to only a portion of Vineyard Lane and will have no right to drive on any part of the easement except the portion the Borough has sought to condemn.

The Commonwealth Court held that, under these circumstances, the condemnation would benefit only those persons who had property located on the easement, and not other members of the general public who might seek to travel upon the easement. Thus, according to the Commonwealth Court, the condemnation was for a private, rather than a public use, and was improper. ■

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