

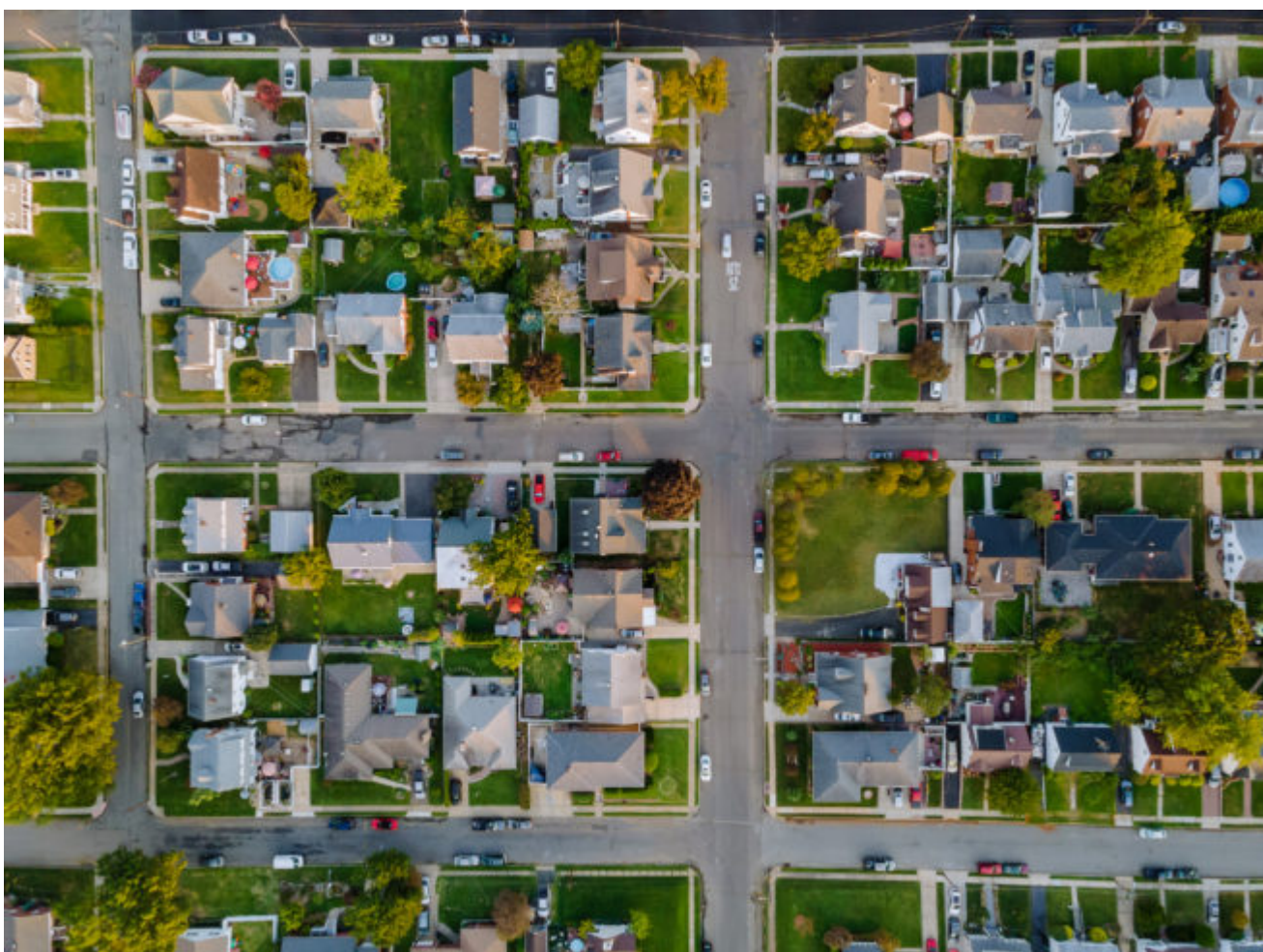
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### Court Upholds Equitable Easement Between Neighbors in Property Line Dispute

The court reversed a decision to grant an implied easement between two homeowners but upheld granting an equitable easement. *Romero v. Shih*, 78 Cal. App. 5th 326 (2022).

The two parcels in question were owned originally by the Cutlers, who initiated a boundary line adjustment in 1985 and built a fence along the new property line. However, there was no evidence the city ever approved the lot line adjustment or issued a certificate of compliance. Decades later, a dispute arose when new homeowners (appellants) discovered that the fence did not sit upon the city-certified property lines but encroached on 1,296 square feet of their lot. After a five-day trial, the trial court granted respondents an exclusive implied easement and, alternatively, an equitable easement over the entire 1,296-square-foot encroachment.



Appellants argued that the court erred in granting an exclusive implied easement and abused its discretion by creating an equitable easement that was not narrowly tailored to promote justice and was "significantly greater in scope and duration than what is necessary to protect [respondents'] needs."

The appellate court reversed the exclusive implied easement as the facts of the case did not follow precedent for granting such an easement. The court observed that an exclusive implied easement generally cannot be granted unless the encroachment is de minimis or is necessary to protect the health and safety of the public or for

essential utility purposes. Here, the encroachment, totaling 1,296 square feet of appellants' 9,815-square-foot property, could not reasonably be qualified as de minimis and nothing in the record suggested the encroachment was necessary for essential utility purposes or to protect general public health or safety. The court rejected respondents' argument that the implied easement would be non-exclusive since both parties and the trial court agreed that the easement would be "essentially for exclusive use." The court found no evidence that the subsurface of the 1296 sq ft was usable for any "practical purpose" for the appellants; therefore, the easement could not be understood as a non-exclusive.

The court affirmed the creation of an equitable easement in favor of the respondents because the ruling adhered to all required elements for an equitable easement. First, there was substantial evidence that neither respondents nor their real estate agent had prior knowledge of the encroachment. Second, appellants were not irreparably injured by the easement as there was no evidence of any concrete plans to utilize the land, undue tax burden, or likelihood of "premises liability within connection with the encroachment area." Third, not granting an equitable easement would result in disproportionate hardship on respondents, evidenced by the diminution in their property value of more than \$130,000 and the reduction of their driveway width that would severely limit most vehicles from using the driveway and would preclude individuals from opening car doors to exit or enter a vehicle. Finally, the court ruled that the scope and duration of the equitable easement were narrowly tailored, providing that the easement would terminate if respondents "were to cease [their] continued use of that land for a driveway, planter and wall/fence." The court noted that appellants were given multiple chances at trial to narrow the scope further yet chose not to do and "opted for an all-or-nothing approach."

## **Authors**