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Implied Easement May Effectively Preclude Any Practical Use by the Owner of the Burdened Property

The Supreme Court of California held that implied easements may preclude most practical uses by the owner of the property subject to the easement if there is clear evidence of intent to create such an easement at the time of the property division. *Romero v. Shih*, 15 Cal. 5th 680 (2024).

The case involved a dispute over a residential driveway and garden planter that encroached onto a neighboring property in Sierra Madre, California. The issue arose when the plaintiffs discovered that a strip of their property approximately eight feet wide had been used for decades by the neighboring property as a driveway and planter area. The encroachment stemmed from a 1986 sale of the two properties by the original owners, who intended to adjust the legal boundary line but never obtained the necessary lot line adjustment. Plaintiffs sought the removal of the encroachments—relocating the border fence to the legal property line—while defendants claimed an implied easement.

The Court of Appeal concluded that regardless of what the parties to the 1986 sale might have intended, the law prohibits a court from recognizing an implied easement that prevents the property owners from making all or most practical uses of the easement area. Because recognizing the neighbors' right to use the land as a driveway would have that effect, the court concluded the easement could have been created only in a written instrument, not by implication. (Our report on the Court of Appeal case is available [here](#).)

The Supreme Court of California reversed, holding that implied easements may, in some circumstances, preclude most practical uses by the property owners if there is clear evidence of such intent at the time of the property division. The court emphasized that implied easements require "obvious and permanent" preexisting use and substantial evidence of intent, but are not categorically barred simply because they impose significant burdens.

The court also distinguished implied easements from prescriptive easements, rejecting the appellate court's reliance on cases holding that a prescriptive easement cannot be enforced if it leaves the fee title holder with no practical use of the land subject to the easement. Those cases, the Supreme Court explained, reasoned that enforcing such prescriptive easements would enable hostile claimants to "obtain the fruits of adverse possession under the guise of a prescriptive easement." Unlike prescriptive easements, however, implied easements arise from intentional acts in the context of a property transaction, not unilateral conduct, and do not implicate concerns about de facto adverse possession.

Authors

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