
1. Can the feedlot be enjoined when it becomes a nuisance because the developer brought residences into the area?

2. If the feedlot is enjoined, may the developer be required to indemnify the feedlot for its losses?

3. The citizens of Sun City?
Spur Industries, Inc. v. Del E. Webb Development Co. Cont’d

1. Can the feedlot be enjoined when it becomes a nuisance because the developer brought residences into the area?

• Private – owners of land
• Public – statute and special injury

Surprise, AZ
Sun City Grand

Public Nuisance in Texas
Texas Health & Safety Code Ann., § 341. 011

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality;

(9) a place or condition harboring rats in a populous area; and

(10) the presence of ectoparasites [parasite that lives on the exterior of its host], including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public.
Spur Industries, Inc. v. Del E. Webb Development Co. Cont’d

2. If the feedlot is enjoined, may the developer be required to indemnify the feedlot for its losses?
   - Fairness
   - Efficiency
   - Forseeability
   - Encroachment, “coming to the nuisance,” and First in Time
   - Internalization

3. What about the residents of Sun City?
   - Fairness
   - Efficiency
   - Forseeability
   - Encroachment, “coming to the nuisance,” and First in Time
   - Internalization
Right to Farm in Texas

Effect of Nuisance Actions and Governmental Requirements on Preexisting Agricultural Operations

Tex. Agric. Code Ann., Chapter 251

Nuisance: Four Outcomes

- Polluter ($P$)
- Receptor/Neighbor ($R$)
- Entitlement/Property Right ($E$)
Nuisance: Four Outcomes

1. **Use continues with no relief to** R. **P** has **E**, protected by a *property rule*, and may keep it (and continue to pollute) or sell it (and stop polluting). (Right to Farm)

2. **Use continues only if** P **pays damages to** R *(Boomer)*. R’s E is protected only by a *liability rule* and may be involuntarily sold if P is willing to pay for it.

Nuisance: Four Outcomes Cont’d

3. **Use is enjoined** *(High Penn Oil & Estancias)*. R has the E, protected by a *property rule*, and may choose to sell it and allow P to continue its use or it may choose not to sell it and P must cease.

4. **Use is enjoined and R must pay P damages** *(Spur)*. The P’s E is protected only by a *liability rule* and may be involuntarily sold if R is willing to pay for it.
Introduction to Private Land Use Controls: the Law of Servitudes—Easements

- Tenements
  - Servient - burdened land
  - Dominant - benefited land
- Easements
  - Appurtenant - serves the owner of land in her use of that land
  - In Gross - serves holder personally without regard to ownership of land
- Quasi-Easements

Easements Created By:

- Express writing
- Implication
  - Prior Existing Use
- Necessity
- Prescription
- Estoppel
Creation of Easements

• May a grantor, in deeding real property to one person, effectively reserve an interest in the property to another (a third party/“stranger to the title”)?

Creation of Easements Cont’d

• Reservations: Conveyances
  • Mistrust of conveyance by deed
    • Revesting in grantor (regrant from grantee back to grantor)
    • Vesting in a third party
  • Applicability today
Willard v. First Church of Christ Cont’d

Creation of Easements Cont’d

• Reservations: Contracts
  • Intent of grantor
  • Lower price (for remote grantee too?)
• Reliance interest
• “subject to” & “is given”

Willard v. First Church of Christ Cont’d

Appurtenant or In Gross?

• Intent to “run with the land”
• For the benefit of “the church”
• “Only so long as the property . . . is used for church purposes”

Van Sandt v. Royster Cont’d

Implied by Prior Existing Use

1. Is there an easement (quasi-easement)?

2. Is Van Sandt a BFP without notice?
Van Sandt v. Royster cont’d

Quasi-Easement

- An easement is an interest in another’s land so an owner cannot have an easement in one’s own land (without a legal fiction).

- But if owner makes use of part of own land to benefit another part of her land, then it is a quasi-easement with a quasi-servient tenement and a quasi-dominant tenement.

- If owner conveys the quasi-dominant tenement, the quasi-easement vests in grantee if the quasi-easement is apparent, continuous, and necessary.

Van Sandt v. Royster Cont’d

Implied Reservations and Grants

- Reservation?
  - Conveyance of quasi-servient tenement
  - Derogation of the plain words of the conveyance.
  - Invalid in England. Must be able to trust the words of the deed.
  - [Strict] Necessity required in the U.S.
Van Sandt v. Royster Cont’d

Implied Reservations and Grants

• Grant?
  • Conveyance of quasi-dominant tenement
  • Adds an additional right ("Lagniappe ").
  • Based upon parties’ inferred intentions as with any other contract.

Van Sandt v. Royster cont’d

Role of Necessity

• Many courts at the time of the case said the need for/degree of necessity was the same for implied grants as for implied reservations.

• But the majority of courts at the time required strict necessity for a implied reservation. Likely not still the majority in the U.S. today.
Van Sandt v. Royster cont’d

Role of Necessity Cont’d

• Court says that whether is it a grant or a reservation should be only one of many factors taken into account.

• Restatement says the degree of necessity should be greater to imply an easement in favor of the grantor (reservation) than in favor of the grantee (grant).

• Texas requires strict necessity for reservations.

Van Sandt v. Royster cont’d

Van Sandt as BFP W/O Notice?

• Easement not in a written document.

• Plumbing was apparent?!?

Costs to Consider

• Moving the sewer.***

• Collecting money from other owners for damages and repairs.

• Continuing friction with the neighbors.
Van Sandt v. Royster cont’d

Can Van Sandt Sue on Warranty Deed?
• Present Covenants
• Future Covenants
• Exception to the Warranty