

Conservation Easement: Supreme Court of Virginia Addresses Whether Tree Removal/Grinding Work Constituted a Breach



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The Supreme Court of Virginia (“Court”) in a March 2nd opinion addressed whether a conservation easement provision was breached by certain forestry operations. See *Mount Aldie, LLC v. Land Trust of Virginia, Inc.* 2017 WL 160305.

Conservation easements generally involve the voluntary restriction of the future use of property preservation and/or conservation of its natural condition.

A predecessor to Mount Aldie, LLC (“MA”) conveyed in 2008 a conservation easement (denominated Deed of Gift Easement [“Easement”]) to Land Trust of Virginia, Inc. (“LTV”). The Easement encompassed a 60-acre tract of forested land bounded in part by the Little River in Virginia. The Easement designated a 100 foot wide strip of the property running along the edge of the Little River (“as measured from the top of [its] bank as a riparian buffer”).

MA acquired the property in 2009. It subsequently conducted certain commercial forestry operations within the easement. The activities included tree removal and grading work within the buffer for a distance of approximately 1100 feet along what is referred to as a “Indian Spring Trail.”

LTV filed an action against MA in Loudoun County Circuit Court seeking an injunction. The desired injunction would require MA to return the property to its prior condition. The basis for the request was a contention that the work breached the Easement. Money damages were also requested.

LTV argued MA violated the Easement by failing to provide notice/receive permission:

...before proceeding within the buffer to destroy “the historic primitive footpath” constituting the Indian Spring Trail “in order to construct some sort of road in its place.”

LTV asserted in support of a motion for partial summary judgment on the issue of liability that the undisputed facts demonstrated that MA had violated certain provisions of the Easement. The provision allegedly violated included a portion of Article II, Section 5(i), which is stated to have provided in addressing grantor/landowner’s reservation of non-commercial management rights:

No more than one new opening or clearing, and no new opening or clearings greater than 1,000 square feet, in the forest are permitted for noncommercial purposes, unless approved in advance and in writing by [LTV].

MA’s alleged breach was argued to have been established based on admissions that it:

. . .(i) gave no notice to nor received any permission from LTV prior to performing the disputed buffer work and (ii) disturbed more than 1,000 square feet of earth within the buffer long the Indian Spring Trail in completing this work.

The Indian Spring Trail was stated to have been obliterated and replaced by “something.”

MA responded that “merely disturbing more than 1,000 square feet of earth does not constitute the creation of a new opening or clearing in the context of forest management under the terms of Article II, Section 5(i) of the Easement, and thus this provision is not controlling in this case.” Instead, MA contended that Article II, Section 3 controlled. It was stated to establish the buffer in subsection (i) and then set forth in subsection (ii), in relevant part, the limitation and exceptions governing landowner’s activities within the buffer which read as follows:

Within the buffer strip there shall be no . . . earth disturbing activity conducted, except as may be reasonably necessary for . . . (c) removal of individual trees presenting a danger to persons or property and removal of diseased, dead or invasive trees, shrubs or plants . . . or (d) creation and maintenance of foot or horse trails with unimproved surfaces.

The cited provision contained no requirement for land owner notice or needed permission regarding the excepted activities.

The Court reviewed prior case law in which it analyzed the conservation easement noting that its function in construing a deed is to give effect to the parties’ intention as expressed by them in the words they have used.

The Court then looked at the various disputed provisions which included:

Article II, Section 5(i)

The Court agreed with MA that the term “new opening or clearing” as used in Section 5(i) means a newly created area that has been cleared of standing timber and/or brush and not merely the act of disturbing the earth or doing so while in the act of selective cutting and/removing dead and diseased trees from an existing clearing or opening, i.e., an existing path, trail or road. Therefore, MA’s admissions that it disturbed more than 1,000 square feet of earth within the buffer without giving prior notice to or receiving permission was not dispositive of LTV’s claim that MA breached Section 5(i).

Article II, Section 3(ii)

The Court found that the trial court’s ruling rejecting MA’s argument that Section 3 (ii) is a stand-alone provision in governing the landowner’s permitted activities within the buffer is contrary to the plain language of these provisions. The Court determined that “the necessary implication in the court’s ruling that Section 5(i) controls in this case is that Section 3(ii) is subject to Section 5(i). Whether MA conducted permitted activities within the buffer pursuant to Section III(ii), disturbed the earth only as reasonably necessary in the process was deemed disputed issues of material fact.

Article V, Section 2

LTV was deemed wrong in asserting that the Indian Spring Trail is “the one place [on the property] that [MA] is not permitted to do any construction or maintenance work [but] is the one place [MA] chose to do it.” The Court held that the issue is not whether MA had a right to perform work within the buffer along the Indian Spring Trail. Instead, the issue was held to be whether the nature of that work was in compliance with the Easement.

In summary, the Court held that the case presented genuine issues of disputed material fact over whether MA breached the Easement. Therefore, an ward of partial summary judgment to LTV was deemed precluded.

[A copy of the opinion can be downloaded here.](#)

