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A Review of *Christian vs. Flora*

In this installment of Footsteps we will review a recent court decision from California, *Christian v. Flora*. This case involves a dispute over an access easements to three (3) parcels in a residential subdivision. It has lessons about the legal concept of estoppel, the relationships between maps and deeds, and the steps a court will take to interpret an ambiguous deed created by a mistake.

Before we look at the legal questions raised by this case and consider the court's answers, we need to review the timeline for the dispute.

7/11/1977: The CC&Rs for the Latrobe Hills Subdivision are recorded. They include a preliminary copy of the Latrobe Hills parcel map (subdivision map). The CC&Rs give the parcel owners in the subdivision the right to use roads in the subdivisions, as well as a shared responsibility for road maintenance.

9/26/1977: The Latrobe Hills Subdivision parcel map is filed. The parcel maps shows the easement for Dragon Point Road 1) starting at the north boundary of Parcel 30, 2) running north along the west boundary of Parcel 28 and Parcel 29, and 3) running along the straight boundary common to Parcel 14 and Parcel 15 to its termination point in Latrobe Road (See diagram on next page).

8/1978: PMI, the Latrobe Hills subdivider, sells parcel 30. The conveyance grant deed refers to the 1977 parcel map.

3/02/1979: A parcel map adjusting the boundary common to Parcel 14 and

TIMELINE	
7/11/1977	The CC&Rs for Latrobe Hills Subdivision are recorded.
9/26/1977	The Latrobe Hills Subdivision parcel map is filed.
8/1978	PMI, the Latrobe Hills Subdivider, sells Parcel 30.
3/02/1979	A parcel map adjusting the boundary common to Parcel 14 and Parcel 15.
5/1979	Parcel 28 is sold by PMI. Deed references the 1977 parcel map.
10/18/1979	Parcel 29 is sold by PMI. Deed references the 1977 parcel map.
3/01/1979	Quitclaim deeds to extinguish Dragon Point Road easement shown on the 1977 parcel map are filed.
2001	Use of Dragon Point Road begins.
6/30/2008	The court rules in favor of Christian, the owner of Parcels 28, 29, and 30.

Parcel 15 as shown on the 1977 parcel map is filed. The boundary adjusted by this map is the centerline of Dragon Point Road as shown on the 1977 parcel map.

5/1979: Parcel 28 is sold by PMI. The conveyance grant deed refers to Parcel 28 as shown on the 1977 parcel map.

10/18/1979: Parcel 29 is sold by PMI. The deed refers to Parcel 29 as shown on the 1977 parcel map.

3/01/1979: Four (4) quitclaim deeds are filed by PMI, Bartleson and Fullbeck, the owners of Parcel 8, 14, and 15.

The purpose of the quitclaim deeds is to extinguish the Dragon Point Road easement through Parcels 14 and 15 as it is shown on the 1977 parcel map.

2001: Use of Dragon Point Road begins. (We don't know when Dragon Point Road was constructed.) The physical road is on the new easement shown on the 1979 parcel map, not on the original easement shown on the 1977 parcel map.

6/30/2008: The court rules in favor of the plaintiff, Christian, the owner of Parcels 28, 29, and 30. The ruling is against Flora, the owner of Parcel 14.

Legal Questions

The basic dispute in this case is over Dragon Point Road. The plaintiff in this case, Flora (the owner of Parcels 28, 29, and 30) are using Dragon Point Road, which is built on an easement from the 1979 parcel map, not the easement location shown on the 1977 parcel map, which was later abandoned. The defendant in this case, Flora (the owner of Parcel 14), asserts that the plaintiff, Christian, has no rights to travel on Dragon Point Road as it is constructed.

These are the legal questions raised by this case:

Can Christian claim an implied easement over Dragon Point Road on the Flora Parcel even though their deed didn't include the easement, their deed didn't refer to the 1979 parcel map that created the easement, and they didn't begin to use the easement before their parcels were severed (by subdivision) from the Flora Parcel?

The conflict in this case arose in part because the grant deeds conveying Parcels 28, 29, and 30 from the subdivider refer to the 1977 parcel map, but were recorded after the 1979 parcel map that made modifications to the easement was filed. In essence, the grant deeds referred to a parcel map that no longer reflected accurate boundary and title conditions. What was the relationship between the 1977 parcel map, 1979 parcel map, and the deeds for Parcels 28, 29, and 30?

The Court's Decision

First, the court determines the relationship between the 1977 parcel map and the 1979 parcel map. It states that the only easement shown on the 1979 parcel map is the Dragon Point Road easement. When the 1979 parcel map was filed, deeds were recorded to eliminate the 1977 parcel map easement for Latrobe Road. The court concludes from these facts that the intent of the Dragon Point Road easement created on the 1979 parcel map was to REPLACE the easement on the 1977 parcel map.

Based on this conclusion, the court rejects Flora's argument that the 1979 parcel map had no impact on the grant deeds for Parcels 28, 29, and 30 because they referenced the 1977 parcel map.

On the contrary, the court reasons the failure of the Parcel 28, 28 and 30 grant deeds to mention the boundary adjustment or easement relocation on the 1979 parcel map was a mistake, and wasn't intentional.

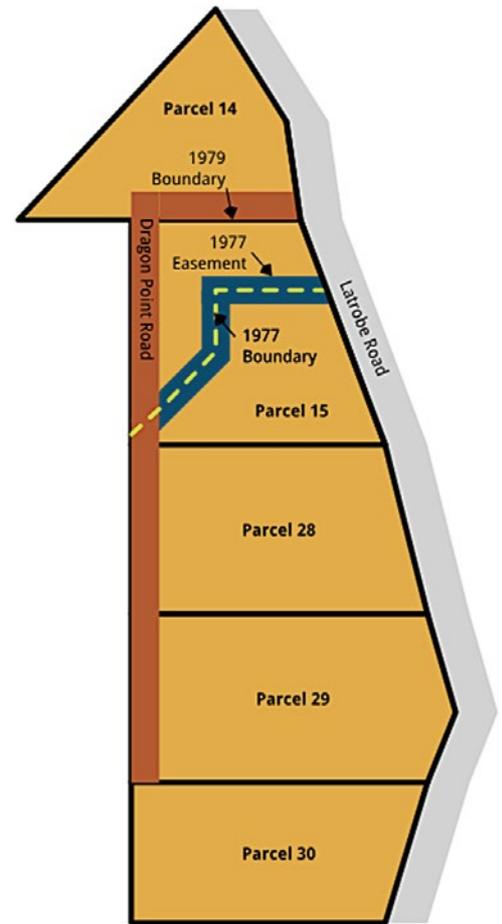
It plainly says: "All of these factors lead us to conclude that when PMI sold Parcels 28 and 29, it intended to convey a single easement across Parcel 14 and 15, and that easement was located across Dragon Point Road. PMI's failure to include the amendment to the subdivision map when referencing the parcel was a mistake."

The court adds: "When PMI sold Parcels 28 and 29 to the original subdivision purchasers, it should have included both the original subdivision map, which described the boundaries of the parcel being sold, and the amended map, which described the appurtenant road easement."

The court finishes its opinion by stating: "We conclude the 1979 amendment was incorporated into the deeds of the subdivision purchasers whose deeds reference the 1979 subdivision map, but who purchased their properties after the 1979 amendment to the map. We therefore hold that the sale of property with reference to a subdivision map incorporates any prior properly recorded amendment of the subdivision map."

To summarize, the court ruled that:

- The 1979 parcel map replaced the Dragon Point Road easement shown on the 1977 parcel map.
- The grant deeds for Parcels 28, 29 and 30 incorporate the 1979 parcel map, even though it is not directly referenced in the deeds.



In this case, the court took the bold step of interpreting grant deeds using a parcel map that the deeds did not reference, either directly or indirectly. It

"This case demonstrates a complete failure of our land division process to protect purchasers of real property."

We don't have time to discuss it in this article, but the court decision includes a good discussion of the legal principles upon which the final ruling was based. This includes the principle of estoppel and the principle of ambiguous deed interpretation. I strongly encourage my readers to review the case for the court's description of these principles and how they apply. They are definitely topics I hope to return to in Footsteps.

did this because a mistake made in the land descriptions for the deeds, and it used external evidence presented at trial to correct the mistake. That is one reason this case interested me as a boundary surveyor.

How Did This Happen?

Clearly this entire legal battle could have been if the subdivider and his consultants had been more careful. We are left with interesting questions about this case

that the court decision doesn't answer. These questions include:

- Did the surveyor who created the 1979 parcel map inform the subdivider about the implications of changing the boundary between Parcels 14 and 15, and the existing access easement for Parcels 28, 29 and 30, or is this something he missed? This would be especially disappointing if

the surveyor that prepared the 1979 parcel map had prepared the previous parcel map in 1977.

- Was there a surveyor involved in the creation of the land descriptions for the grant deeds that conveyed Parcels 28, 29, and 30 from the subdivider to the new owners? Whoever prepared the descriptions made a mistake by referring to the 1977 parcel map without addressing

Who failed to Protect the Land Owners?

1. The land surveyor who created the 1979 parcel map?
2. The land surveyor who created the land descriptions for Parcels 28, 29, and 30?
3. The title insurance company that insured the transaction for Parcels 28, 29, and 30?
4. The public agency that reviewed the 1979 parcel map?

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the issue of the access easement. If there wasn't a surveyor involved in the preparation of these land descriptions, there should have been.

- Did the public agency preparing the review of the 1979 parcel map fail to identify the potential problem with the access easement? Was this review performed by a land surveyor or someone under his direct responsible charge?
- Did a title company provide title insurance on Parcels 28, 29, and 30? If so, why did their review not identify the problem with the easement? If they did identify the problem, was it included as an exception to the title insurance coverage and adequately explained to the purchasers?

There were ample opportunities for this legal conflict to be avoided. The legal conflict in this case arose because (1) a land surveyor was not involved in the subdivision and lot line adjustment process, (2) the land surveyors involved in the process didn't do a diligent job, or (3) the land surveyor's advice was ignored by the subdivider.

Ultimately, the landowners in this case paid for the expenses involved in a court battle because of someone else's mistake.

This case demonstrates a complete failure of our land division process to protect current and future purchases of property. This system only works when the players involved (the subdivider, the land surveyor, the title company, and the public agency) properly fulfill their responsibilities.