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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MARTIN ROBLES LOPEZ, et al.,

Plaintiffs and Respondents,

v.

AGNES HARUTUNIAN TRUST, et al.,

Defendants and Appellants.

B235154

(Los Angeles County
Super. Ct. No. BC348682)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Rolf M. Treu, Judge. Affirmed as modified.

Ronald K. Granit; Law Office of Amy J. Cooper and Amy J. Cooper for
Defendants and Appellants.

Pistone & Wolder, Thomas A. Pistone and Amy Mousavi for Plaintiffs and
Respondents.

INTRODUCTION

This is the third appeal in this case, challenging the trial court’s entry of judgment entered pursuant to a valid covenant and agreement for parking. We find the judgment is properly modified, and as so modified, affirm.

FACTUAL AND PROCEDURAL SUMMARY

As we summarized in our prior opinion, in their first appeal, “the defendants challenged the trial court’s judgment determining the plaintiffs’ entitlement to an easement for parking on the defendants’ property—both by way of a recorded covenant and agreement and by prescription. The defendants appealed, claiming the original recorded easement was either void or released, the same easement could not be granted both by grant and by prescription and the finding of a prescriptive easement was not supported by substantial evidence. We affirmed the trial court’s judgment to the extent it upheld the validity of the recorded easement but reversed it to the extent it was based on the finding of a prescriptive easement. On remand, the trial court entered an amended judgment, stating the recorded covenant and agreement giving the plaintiffs an easement for three parking spaces was valid. Further, the trial court quieted title to the easement described in the covenant (attached as an exhibit to the judgment) and ordered immediate enforcement of the covenant, specifying that the defendants were permanently enjoined from obstructing the plaintiffs’ use of the easement and ordered to immediately remove pallets blocking the easement and to provide plaintiffs with a key to the gate to allow access to the easement.

“In their second appeal, the defendants claim[ed] the second judgment must be reversed because it does not comply with our prior opinion.” (*Lopez v. Harutunian Trust* (B219689, Feb. 8, 2011 [nonpub. opn.].) We found the judgment was properly modified in certain respects, and as so modified, affirmed. More particularly, we had previously “rejected the Harutunians’ argument the Covenant and Agreement was void (or that the Harutunians have proven it had been terminated).[] However, we agreed the trial court

had erred in concluding Montes de Oca and Lopez had proven a prescriptive easement for the same parking spaces defined in the Covenant and Agreement. Accordingly, we stated as follows: ‘The judgment is affirmed to the extent it upholds the validity of the 1959 Covenant and Agreement, but reversed to the extent it is based on the finding of a prescriptive easement. The matter is remanded to the trial court with directions to enter a new and different judgment consistent with this determination. The parties are to bear their own costs of appeal.’” (*Lopez v. Harutunian Trust* (B219689, Feb. 8, 2011 [nonpub. opn.].)

On remand, the parties’ again submitted their proposed judgments. After hearing argument and taking the matter under submission, the trial court entered judgment.

The judgment entered on June 15, 2011 provides:

“IT IS ORDERED, ADJUDGED AND DECREED that

“1) On the Cross-Complaint, Judgment is entered in favor of Cross-Defendants MARTIN ROBLES LOPEZ and FRANCISCA MONTES DE OCA, and against Cross-Complainants BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST, on all claims.

“2) On the First Amended Complaint, the Judgment is entered in favor of Plaintiffs MARTIN ROBLES LOPEZ and FRANCISCA MONTES DE OCA, and against Defendants AGNES HARUTUNIAN TRUST, dated 1986; BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST (hereinafter collectively ‘DEFENDANTS’), on all claims, except for cause of Action for Easement by Prescription and as specifically set forth in paragraphs three (3) through eight (7) [sic], *infra*.

“3) The Covenant and Agreement Regarding the Maintenance of Off-Street Parking Space (hereinafter ‘Covenant’), dated August 7, 1959 and recorded in Official Records of the County of Los Angeles at Book M335, page 829, attached hereto as Exhibit ‘1,’ **giving Plaintiffs MARTIN ROBLES LOPEZ and FRANCISCA MONTES DE OCA** (hereinafter ‘PLAINTIFFS’), owners of real property located at 1106-1108 South Central Avenue, **an EASEMENT consisting of three usable and accessible eight feet by eighteen feet automobile parking spaces to be maintained on the real property located at 1024 South Central Avenue, legally described as ‘Lot 156 of Alexandre Weill Tract in City of Los Angeles, County of Los Angeles, State of California per map recorded in Book 26, Page(s) 85 and 86 of Miscellaneous Records, in the Office of the County Recorder,’ to serve the users of the buildings located at 1106-1108 South Central Avenue, IS VALID.**

“The Court therefore ORDERS immediate enforcement of the COVENANT.

“4) **SO LONG AS THE COVENANT IS VALID,** Defendants AGNES HARUTUNIAN TRUST, dated 1986; BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, and individual and Co-Trustee of the AGNES HARUTUNIAN TRUST **and their agents, servants, and employees, and all persons acting under, in concert with, or for them, ARE ENJOINED from interfering with and obstructing Plaintiffs’ use of Plaintiffs’ Easement.**

“5) **DEFENDANTS ARE ORDERED to immediately remove any and all pallets blocking Plaintiffs’ Easement and to provide Plaintiffs with a key to the gate for Plaintiffs’ access to their Easement.**

“6) **Plaintiffs are awarded Costs against all DEFENDANTS in the amount of _____.**

“7) This Judgment shall be recorded in the County Recorder’s Office.”

The Harutunians filed a motion to vacate the judgment which the trial court denied, finding the judgment to be in conformity with this court's prior opinion and rejecting the Harutunians' attempts to raise arguments for the first time in reply papers.

The Harutunians appeal.¹

DISCUSSION

According to the Harutunians, paragraph 2 of the judgment should be stricken in its entirety as surplusage. Paragraph 3 should read: "The Covenant and Agreement Regarding the Maintenance of Off-Street Parking Space (hereinafter 'Covenant'), dated August 7, 1959 and recorded in Official Records of the County of Los Angeles at Book M335, page 829, attached hereto as Exhibit '1,' [deleting reference to Lopez and Montes de Oca, the particular property involved, and the accessibility of three usable parking spaces on the property] **IS VALID.**" Paragraph 4 should either be deleted or modified to read: "**SO LONG AS THE COVENANT IS VALID**, Defendants AGNES HARUTUNIAN TRUST, dated 1986; BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, and individual and Co-Trustee of the AGNES HARUTUNIAN TRUST **and their agents, servants, and employees, and all persons acting under, in concert with, or for them,** [deleting language enjoining interference with plaintiffs' use of the easement and inserting the following:] **ARE TO COMPLY WITH THE EXPRESS**

¹ In both prior appeals, the Harutunians insisted the covenant and agreement for parking had been terminated. According to the record, however, the Harutunians' administrative claim of termination was rejected by the Department of Building and Safety, the denial was upheld by the Zoning Administrator after public hearing, that decision became final after a 4-0 vote of the Central Area Planning Commission, and the decision is "[n]ot further appealable" as of March 5, 2012.

TERMS AND CONDITIONS OF THE COVENANT.” Finally, they assert, paragraphs 5 and 6 should be stricken as inconsistent with our prior opinion.²

As stated in our prior opinion, the recorded covenant of easement is made by an owner of real property to a city or county—in this case, the City of Los Angeles (Gov. Code, § 65871, subd. (a) [*easement* created by recorded covenant]; and see subd. (b), italics added [“The covenant shall be effective when recorded and shall act as an *easement* pursuant to Chapter 3 (commencing with section 801) of Title 2 of Part of Division 2 of the Civil Code”]), and by its terms, the Covenant and Agreement “shall run with the land and shall be binding upon ourselves, any future owners, encumbrancers, their successors, heirs or assignees and shall continue in effect so long as said building to be served is maintained without providing off street automobile parking spaces on the same lot and/or another lot as required by the provisions of the Los Angeles Municipal Code or unless otherwise released by authority of the Superintendent of Building of the City of Los Angeles.” (Gov. Code, § 65874 [ordinance shall provide procedure for release of recorded covenant of easement upon determination restriction is no longer necessary to achieve land use goals of city or county].)

Consequently, we agree that the judgment should be modified to provide that the Covenant and Agreement is between the Harutunians and the City of Los Angeles (and not between the Harutunians, on the one hand, and Lopez and Montes de Oca on the other) for three parking spaces on the property specified in the Covenant and Agreement. With respect to the Harutunians’ contention they should be able to restructure their fence to accommodate the required parking spaces, we reiterate that regardless of the manner in which they satisfy this obligation, the Harutunians must immediately provide and

² The Harutunians say they “should be given an opportunity to restructure the fence around their property to accommodate the three parking spaces required by the Covenant, while ensuring that the rest of their property is fenced and protected.”

maintain three “*usable and accessible*” (8 feet by 18 feet) automobile parking spaces as specified in the Covenant and Agreement. (Italics added.)

Further, contrary to the assertions of the Harutunians’ counsel at oral argument that only the City may enforce the Covenant and Agreement, we emphasize that subdivision (d) of Government Code section 65871 specifically provides: “A covenant executed pursuant to this section shall be enforceable *by the successors in interest to the real property benefited by the covenant.*” (Italics added.) Furthermore, section 65875 expressly states: “Nothing in this article shall create in any person other than the city or county *and the owner of the real property* burdened or *benefited by the covenant standing to enforce* or to challenge the covenant or any amendment thereto or release therefrom.” (Italics added.) Clearly, Lopez and Montes de Oca are the owners of the property benefited by the Covenant and Agreement, and unless and until the covenant is released (Gov. Code, § 65874), they have standing to enforce this covenant.

DISPOSITION

The judgment is affirmed as modified.

More precisely, the judgment should be modified as follows (and in all other respects affirmed):

“IT IS ORDERED, ADJUDGED AND DECREED that

“1) On the Cross-Complaint, Judgment is entered in favor of Cross-Defendants MARTIN ROBLES LOPEZ and FRANCISCA MONTES DE OCA, and against Cross-Complainants BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST, on all claims.

“2) On the First Amended Complaint, Judgment is entered in favor of Plaintiffs MARTIN ROBLES LOPEZ and FRANCISCA MONTES DE OCA, and against

Defendants AGNES HARUTUNIAN TRUST, dated 1986; BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST (hereinafter collectively 'DEFENDANTS'), on all claims, except for the cause of action for easement by prescription and as specifically set forth in paragraphs three (3) through six (6), *infra*.

“3) The Covenant and Agreement Regarding the Maintenance of Off-Street Parking Space (hereinafter 'Covenant'), dated August 7, 1959 and recorded in Official Records of the County of Los Angeles at Book M335, page 829, attached hereto as Exhibit '1,' between the City of Los Angeles and Defendants' predecessor-in-interest, agreeing to provide and maintain an off street parking area containing not less than 3 usable and accessible (eight feet by eighteen feet) automobile parking spaces on the property located at 1024 S. Central Avenue to serve the users of the building located at 1108 S. Central Avenue, as more particularly described in Exhibit '1,' **IS VALID**.

“The Court therefore ORDERS immediate enforcement of the COVENANT.

“4) **SO LONG AS THE COVENANT IS VALID, Defendants** AGNES HARUTUNIAN TRUST, dated 1986; BARBARA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; PATRICIA HARUTUNIAN, an individual and Co-Trustee of the AGNES HARUTUNIAN TRUST; SAMUEL HARUTUNIAN, and individual and Co-Trustee of the AGNES HARUTUNIAN TRUST and their agents, servants, and employees, and all persons acting under, in concert with, or for them, **ARE ORDERED TO COMPLY WITH THE EXPRESS TERMS AND CONDITIONS OF THE COVENANT**, including the covenant **to provide and maintain an off street parking area containing not less than 3 usable and accessible (eight feet by eighteen feet) automobile parking spaces on the property located at**

1024 S. Central Avenue to serve the users of the building located at 1108 S. Central Avenue, as more particularly described in Exhibit '1.'

“5) Plaintiffs are awarded Costs against all DEFENDANTS in the amount of _____.

“6) This Judgment shall be recorded in the County Recorder’s Office.”

The parties are to bear their own costs of appeal.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.