



981 Ridder Park Drive, Ste. 100
San Jose, Ca 95118
Ph: (408) 467-9114
Fx: (408) 467-9199
Website: www.bkf.com

RECEIVED
OCT 9 - 2003
LOS GATOS TOWN ATTORNEY

MEMORANDUM

Date: October 8, 2003

BKF No.:

To: Marty Woodworth

Copy To:

From: Davis Thresh

Subject: 20 Dittos Lane

This report concerns the review of Record Documents and Maps pertaining to the Property located at 20 Dittos Lane, Los Gatos, California.

The Title Report of the subject property and the adjoining properties were reviewed and the results are as follows:

20 Dittos Lane

Vested owners - Marko Gera and Klara Gera, husband and wife, as community property
APN 529-29-034

Preliminary Title Report dated March 10, 2003

The Gera's Property is described per their vesting document recorded on October 17, 1985 in Book J489 of Official Records at Page 666, Santa Clara County Records. The document describes their parcel and excepts out 3 areas.

The first excepted area is described in Book 2933 of Official Records Page 648 which is the most northwesterly area of the Gera's property. The title report also states a "lack of abutter's rights to and from Highway 17, lying adjacent to the northwesterly boundary of said land" and records such rights in the same document, Book 2933 of Official Records, Page 648, Santa Clara County Records.

The second excepted area from J489 of Official Records, Page 666, consists of Parcel One in E.A. Maas Title Report.

The third excepted area consists of the Parcel now owned by Todd K. Davis, Alex Freidland and Kathryn Soho Friedland.

The title report lists several easements on the Gera's Property. The first is the "rights of the Public over that portion of said land lying within College Avenue as it now exists". This is not plottable, as no document or Deed is cited.

An easement for Right of Way is reserved to Z. Wheaton by Edward Ditto, by the document recorded on February 23, 1894 in Book 166 of Deeds, Page 461. The two parcels in the Deed are plotted. The right of way is granted to Wheaton, but no mention is made of dedicating either of the areas as a public road.

An easement recorded on April 29, 1914 in Book 413 of Deeds, Page 513 grants to Z.W Wheaton from the San Jose Water Company the right of way over a 30 foot wide strip of land as plotted. The strip of land is 133 feet in length and passes over Parcel 2 granted to the Town of Los Gatos by the State of California in Directors Deed 012333. The southwesterly corner of the 30 foot wide parcel joins the northwesterly line of Gera's property, but not enough to create and overlap sufficient enough for a road to be built within the 30 foot wide strip.

An easement for a public street granted to the Town of Los Gatos recorded on September 8, 1952 in Book 2483, Page 118 of Official Records, is not plotted. This easement resulted in the widening of College Avenue. The easement is described in the above mentioned document and starts at a monument shown in Book F of Maps, Page 23, filed for record March 1, 1894. The monument cannot be located properly on the exhibit and the bearings and distances in the easement do not match the maps or any other document or deed.

Davis Friedland Property

APN 529-29-035

Vested owners – Todd K. Davis, Alex Freidland and Kathryn Soho Friedland
Title Report dated March 14, 2003

The Davis / Freidland property consists of two parcels. The first parcel is the same description of the third excepted parcel to the Gera Property. The second parcel, Parcel Two is "an easement for ingress and egress for driveway purposes over and across that certain strip of land 12.00 feet in width being delineated and designated as 'Dittos Lane' on that certain Record of Survey filed for record in the office of the Recorder of Santa Clara County, California on July 8, 1963 in Book 163 of Maps at Page 37." Dittos Lane as shown on the Map recorded in Book 163 of Maps at Page 37, shows a 24 foot wide lane in the E.A. Maas property. Davis / Friedland Property is not shown on the above map, but would adjoin the E.A. Maas property on the maps most southwesterly property line. The exact location of this strip of land 12.00 feet in width cannot be determined. It is plotted in the exhibit as the northerly half of the 24 foot wide lane.

The Tentative Decision in the case of E.A. Maas vs. Markor Gera et al., Case No 684773, in the Superior Court of the State of California, Santa Clara County, also states that "an easement for use of Ditto Lane was recently granted by Maas to Twidwell who are adjoining landowners". It is presumed that Twidwell was the prior owner of the Davis / Freidland property. Yvonne Twidwell is the beneficiary of a deed of trust for the property as the trustee of the Yvonne Twidwell 1999 Revocable Trust UTA December 6, 1999.

E.A. Maas, Trustee of the Maas Revocable Trust, established January 31, 1998

APN 529-29-033

Title Report dated March 14, 2003

The E.A. Maas Property consists of 2 parcels as shown on the Map recorded on July 8, 1963 in Book 163 of Maps, Page 37, Santa Clara county Records. The parcels owned by E.A. Maas are shown with a dark line on the map and are labeled on the map as "First Baptist Church" and "James F & Millison Thompson". The one difference between the Titles Report description and the Parcels delineated on the map is that the Title Report description does not include the northwesterly 5 feet of Maple Lane as shown on the map as being owned by E.A. Maas.

The area of Dittos Lane is shown on the map but it is not dedicated as public road by means of the map.

A Right of Way for a private road purpose over the northwestern 5 feet of the premises is plotted. Maple Lane, 10' wide lane, having been created by an agreement dated January 2, 1883 between Mrs. Annah C. Miller and Lyman Avery and recorded In Book L of miscellaneous Records at Page 34, is shown on the map in Book163 of Maps, Page 37, but is not a public road and has not been dedicated as such.

The Tentative Decision in the case of E.A. Maas vs. Marko Gera et al., in the Superior Court of the State of California, Santa Clara County, dated September 8, 1994, states simply "that Ditto Lane is not a public road nor is it a public easement.

STEPHEN D. PAHL
THOMAS M. GOSSELIN
FENN C. HORTON, III
JEFFREY M. SULENSKI
LISA N. WALLY
CATHERINE S. ROBERTSON
KENNETH L. KANN
HENRY D. CRUZ
JONATHAN K. LEVY
SHARON L. TIMONER
MARY J. SHEA
DRU ANNE KEEGAN

PAHL & GOSSELIN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
160 WEST SANTA CLARA STREET
FOURTEENTH FLOOR
SAN JOSE, CALIFORNIA 95113-1700

(408) 286-5100
TELECOPIER (408) 286-5722

SAN FRANCISCO OFFICE
ONE EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3607
(415) 362-5100
TELECOPIER (415) 362-1952

December 2, 1994

E.A. Maas
Pacific Hotels
18 East Main Street
Los Gatos, California 95032

Re: Maas v. Gera, et al.

Dear Al:

Enclosed you will find the Judgment which has been entered and recorded in the above-referenced matter. This document has been recorded both against your property and Mr. Gera' property so that record title will be clean and there will be no mistake concerning easements and/or public access.

I would suggest that you keep this document in the Penthouse Apartments Real Property file in the event this question is ever raised before the Town or any subsequent purchaser.

Sincerely,

PAHL & GOSSELIN
A Professional Corporation


Stephen D. Pahl

SDP:tm
Enclosure
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STEPHEN D. PAHL, ESQ. (State Bar No. 95900)
PAHL & GOSSELIN
A Professional Corporation
160 West Santa Clara Street
Fourteenth Floor
San Jose, California 95113
Telephone: (408) 286-5100

Attorney for Plaintiff and
Cross-Defendant E.A. MAAS

FILED
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BY COUNTY CLERK DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

E.A. MAAS,) No. 684473
)
Plaintiff,)
)
v.) JUDGMENT
)
MARKO GERA, et al.,)
)
Defendants.)
)
AND RELATED CROSS ACTIONS.)

The above-captioned matter came on for trial on Tuesday and Wednesday, May 17 and 18, 1994, in the Superior Court of the County of Santa Clara, the Honorable Taketsugu Takei presiding. Plaintiff and Cross-Defendant E.A. MAAS appeared by and through counsel, Pahl & Gosselin and Stephen D. Pahl. Defendants and Cross-Complainants MARKO and KLARA GERA appeared by and through counsel, John A. Colistra. Cross-Defendant and Cross-Complainant TOWN OF LOS GATOS appeared by and through its

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Pahl & Gosselin
A Professional Corp.
160 W. Santa Clara St.
Fourteenth Floor
San Jose, CA 95113
(408) 286-5100

1 counsel, Larry E. Anderson. Cross-Defendants DON and YVONNE
 2 TWIDWELL appeared by and through counsel, Dunn & Ferrari and
 3 William H. Dunn.

4 Based upon the oral testimony provided and other evidence,
 5 and the argument of counsel, the trial briefs and post-trial
 6 briefs filed both on behalf of Plaintiff, Defendants, Cross-
 7 Complainants and Cross-Defendants, and good cause appearing
 8 therefor, judgment is hereby entered in favor of Plaintiff E.A.
 9 MAAS against Defendants MARKO and KLARA GERA; and in favor of
 10 Cross-Defendants TOWN OF LOS GATOS against Cross-Complainants
 11 MARKO and KLARA GERA; and against Cross-Complainants MARKO and
 12 KLARA GERA and in favor of Cross-Defendants E.A. MAAS, TOWN OF
 13 LOS GATOS, and DON and YVONNE TWIDWELL, and each of them, as
 14 follows:

15 1. The Court hereby adopts its tentative decision dated
 16 September 8, 1994 and filed September 4, 1994, and specifically
 17 finds that Dittos Lane is not a public thoroughfare and does
 18 not reside upon public property, and there is no public road
 19 dedication or license for public use. The Court thereby grants
 20 Plaintiff's action to quiet title to Dittos Lane as a part of
 21 Plaintiff's fee simple title and quiets title to Assessors
 22 Parcel No. 529-29-033.

23 2. Plaintiff E.A. MAAS shall be entitled to costs
 24 against MARKO and KLARA GERA in the amount of \$2,047.26.

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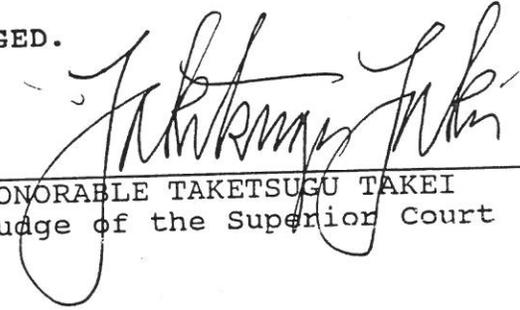
Pahl & Gosselin
 A Professional Corp.
 160 W. Santa Clara St.
 Fourteenth Floor
 San Jose, CA 95113
 (408) 286-5100

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Cross-Defendant TOWN OF LOS GATOS shall be entitled to their costs against MARKO and KLARA GERA in the amount of \$929.55. Cross-Defendants DON and YVONNE TWIDWELL shall be entitled to their costs against MARKO and KLARA GERA in the amount of \$364.00.

IT IS SO ORDERED AND ADJUDGED.

Dated: October 18, 1994


HONORABLE TAKETSUGU TAKEI
Judge of the Superior Court

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MAAS, E.A. v. MARKO, GERA, et al.
GERA, MARKO v. TOWN, et al.
Santa Clara County Superior Court
Action #684473
Property Location – 20 Dittos Lane

ITEM	DATE	DOCUMENT	DESCRIPTION
1	6/8/89	Complaint (Maas) Defendants – Marko & Klara Gera – All Unknown persons claiming legal or equitable right, title, estate, lien or interest in the property	Two causes of action and the judgment as follows: <ul style="list-style-type: none"> • <i>Declaratory Relief</i> - pltf satisfied all adverse possession requirements so as to terminate and extinguish def easement rights to all or a portion of the easement (retaining wall and vehicle parking. If easement still exists that it be limited to the existing use of the property, and that development of the Gera property would constitute a change in the use of dominant tenement so as to qualify as a forfeiture of any easement. • Quiet Title - pltf is owner in fee simple, def have no interest [or reduced interest] • Cost of suit
2	7/28/89	Answer (Gerra)	<ul style="list-style-type: none"> • Deny all allegations • Requests dec that def have easement rights to all roadway known as Dittos OR • Dec that Dittos is a public street or alley and cannot be extinguished or diminished unless lawfully abandoned by the Town
3	3/6/90	Cross-Complaint (Gera) Defendants – E.A. Maas – Town of Los Gatos – Don & Yvonne Twidwell	Cross-Complaint seeks following determination: <ul style="list-style-type: none"> • Dec that Dittos is a public roadway, 24' in width, within the Town limits OR a valid public or private easement, 24' in width existing on the Maas property granted to allow access to Gera and Twidwell • Order directing Maas to remove all encroachments extending from property onto Dittos and to restore Dittos to proper dimensions as surveyed and recorded • Dec of rights and duties concerning nature, extent, size, scope and use of Dittos • Cost of suit
4	3/23/90	Answer Cross-Complaint (Maas)	<ul style="list-style-type: none"> • No information or belief to answer • Take nothing by the complaint
5	6/8/90	Answer Cross-Complaint (Town)	Five affirmative defenses: <ul style="list-style-type: none"> • Fails to state cause of action • Never alleged public road nor performed street maintenance • Dittos does not comply with standards re road construction • Maps and records designate Dittos private road • Not be declared public road because of increased traffic flow would cause dangerous conditions

**MAAS, E.A. v. MARKO, GERA, et al.
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ITEM	DATE	DOCUMENT	DESCRIPTION
6	6/8/90	Cross-Complaint (Town)	Seeks following determination: <ul style="list-style-type: none"> • Dec of rights, responsibilities of parties re the nature, extent, size, scope and use of Dittos • Dec that Dittos is not a public road • Prelim/perm injunction that Gera carry out functions re Dittos if declared public (reconstruction, lighting, off street parking provision) • Prelim/perm injunction that Gera remove all encroachments if declared public road. • Prelim/perm injunction that Tidwell's if public road - reconstruct and remove all enroachments • Cost of suit
7	6/15/90	Answer to Town Cross-Complaint (Maas)	<ul style="list-style-type: none"> • Two affirmative defenses - Fails to state cause of action, not timely filed and barred by SOL • Cross-Complaint be dismissed with prejudice, costs of suit
8	7/13/90	Answer to Town Cross-Complaint (Gera)	Seeks following determination: <ul style="list-style-type: none"> • Dec of rights and duties of nature, extent, size, scope, use • Maas remove all existing encroachments • Costs of suit
9	8/18/93	Answer to Cross-Complaint (Tidwell)	<ul style="list-style-type: none"> • Dittos is a private easement permitting access to property • No info or belief, deny all allegations
10	5/3/94	Trial Brief (Town of LG)	<ul style="list-style-type: none"> • TLG contends that Dittos is not a public road • TLG interest is a limited maintenance access easement • TLG role in the litigation was to facilitate a resolution
11	5/9/94	Trial Brief (Maas)	<ul style="list-style-type: none"> • Dittos is a private driveway which does not meet the requirements of being a public road • Gera, at best, has an easement although no grant of access appears by public records • If an easement previously existed, pltf has satisfied all adverse possession requirements so as to terminate defs easement rights
12	5/17/94	Court - Minute Sheet	<ul style="list-style-type: none"> • Parties rest • Brief scheduling established • Matter submitted as of 6/24/94

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ITEM	DATE	DOCUMENT	DESCRIPTION
13	6/2/94	Post Trial Brief (Maas / Town) Jointly submitted following the trial on 5/117-18/94 -	Assert: <ul style="list-style-type: none"> • Judgment on the complaint in favor of Town and Gera and provide quiet title judgment that Maas is the owner in fee simple of all easement and that Dittos does not constitute a public road • Gera entitled to an easement over current Dittos and that pltf has satisfied all requirements to terminate and extinguish all potential easement rights to the portions that lie within and behind retaining walls for decking and parking on portion of the easement that has been utilized for vehicle parking, and that the remaining easement is limited to the existing def use relating to the Gera property • That a substantial modification of the property will constitute a change so as to qualify as a forfeiture of any extinguishment of said easement on pltf property.
14	6/16/94	Post Trial Brief (Gera) Submitted following the trial on 5/17-18/94	Asset: <ul style="list-style-type: none"> • Court cannot modify the 74 yr old <i>Crim</i> decree • Declaration that Ditto's is a public roadway at least 24" in width • In the alternative that Dittos is a valid public or private easement existing on the Maas property granted to allow access to the Gera and Twidwell properties • Directing Maas to remove any and all encroachment extending from property onto Dittos and restoring Dittos to property dimension determined by Court • Declaration of rights and duties of respective parties concerning nature, extent size and scope of use
15	6/25/94	Post-Trial Brief (Twidwell) Submitted following the trial on 5/17-18/94	Details issues of concern to Tidwell - Fully support contentions made in Maas / TLG briefs. Addresses issues of concern to Tidwell <ul style="list-style-type: none"> • <i>Maas Brief</i> - Dittos Lane is a public thoroughfare by implied dedication to the public by the property owners (<i>Gion v. Santa Cruz</i>, 2 CAL 3d 29) and the <i>Crim</i> decree establishes Dittos a public roadway. • <i>Gion Case</i> - facts in this case are different. No evidence of any general (or even limited) public use. There is a locked gate preventing any public access down to the creek bed. • <i>Crim Decree</i> - Confirms to the Town whatever existing rights of way it may have had at the time over Dittos Lane. • <i>Width of Roadway</i> - If any public roadway exists (with is strenuously denied) it should not exceed in width the portion currently used.

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ITEM	DATE	DOCUMENT	DESCRIPTION
16	9/8/94	Court Judge Taketsugu Takei	<p><i>Tentative Decision</i></p> <ul style="list-style-type: none"> • <i>Crim</i> decree not relevant because the language does not create an interest in the property but merely excepts from the estate of Crim and any possible proposed grant never could be identified without a specific property description • Dittos could not be considered a public road as it has never been accepted by the City pursuant to law • No factual basis for any presumption of public road dedication or license for public use • Court must rule in favor of pltf action to quiet title in Dittos as part of his fee simple and that Dittos is not a public road nor is it a public easement • Rule in favor of Town against Gera in cross-complaint • Prevailing parties recover reasonable costs
17	9/15/94	Correspondence to Court Twidwell	<p>Agrees with decision, but would like 2 additions</p> <ul style="list-style-type: none"> • Add that Twidwell were cross-defendants in Gera cross-complaint • Add that Court rules in favor of Twidwell against Gera in Gera's cross complaint
18	9/26/94	Correspondence to Court Gera	<p>Request clarification of decision and added language -- "Defendants have an easement over Dittos Lane for ingress and egress to their property which is limited to the current extent of it's development"</p>
19	9/28/94	Correspondence to Court Maas	<p>Colistra (Gera counsel) request is outside the statutory limits of CCP and is inappropriate. No evidence produced to the Court during trial whether Gera's use was permissive. Maas allowed the adjacent tenants to utilize Dittos since purchasing property in early 1960's. Permissive use only, not a right. Do not create another confusing cloud on title by granting a formal easement where no evidence of one exists.</p>
20	10/4/94	Objection to Proposed Judgment Gera	<p>Fails to address the question whether the def property has a private easement, license or some other enforceable right to use Dittos</p> <p><i>Fails to Address</i> (consistent with pleadings / evidence at trial)</p> <ul style="list-style-type: none"> • A full and complete disposition of all ?s of rights, status, and legal relations • Resolve all controversies between parties re use of Dittos to access own adjoining property • Judgment for private easement for Gera • Judgment for prescriptive easement in favor of Gera • Court has inherent equitable power to clarify, change or add to Statement of Decision • Hearing on the objections requested

**MAAS, E.A. v. MARKO, GERA, et al.
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ITEM	DATE	DOCUMENT	DESCRIPTION
21	10/7/94	Correspondence to Court Maas	No modification to the judgment was submitted, transmitting the proposed judgment consist with the Court's tentative ruling. No counsel executed within statutory period, the consent as to form and content, but each received a copy. Time to timely object to each party's memo of costs has lapsed.
22	10/27/94	Notice of Entry of Judgment	Judgement entered on October 21, 1994 <ul style="list-style-type: none">• Court adopts tentative decision and specifically finds that Dittos is not a public thoroughfare and does not reside upon public property, and there is no public road dedication or license for public use. Grants pltf action to quiet title to Dittos Lane as a part of pltf fee simple title and quiets title to Assessors Parcel No. 529-29-033• Maas, Town, Twidwell granted costs against Gera