MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TENAMPA, INC., ET AL.

APPELLANT-RESPONDENTS,

v.

WILLIAM T. BERNARD, ET AL.

RESPONDENTS;

WESTPORT ULTRA PROPERTIES, LLC,

RESPONDENT-APPELLANT.

DOCKET NUMBER WD83226 Consolidated with WD83243

DATE: October 13, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Thomas N. Chapman, Judge

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Attorneys:

Stephen W. Nichols, Kansas City, MO, for appellant-respondents.

Kim S. Summers, Kansas City, MO, for respondent-appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TENAMPA, INC., ET AL., APPELLANT-RESPONDENTS,
v.
WILLIAM T. BERNARD, ET AL., RESPONDENT;
WESTPORT ULTRA PROPERTIES, LLC, RESPONDENT-APPELLANT.

WD83226 (Consolidated with WD83243) Jackson County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge, and Thomas N. Chapman, Judge

Appellants Tenampa, Incorporated, ("Tenampa") and the Rudolph A. Garcia and Margaret A. Garcia Family Trust ("Trust") appeal from the judgment of the Circuit Court of Jackson County finding that Tenampa owns a parking lot located at 1623 Westport Road ("Parking Lot") in fee simple but subject to an easement in gross owned by Westport Ultra Properties, LLC ("Ultra") for the daytime use of up to two parking spaces located within the Parking Lot and an easement in gross owned by Michael Gatrost and Julie Gatrost, husband and wife, (collectively "the Gatrosts") for the daytime use of up to two parking spaces located within the Parking Lot. On cross-appeal, Ultra asserts that it owns an easement appurtenant for the daytime use of up to four parking spaces located within the Parking Lot.

William Bernard ("Bernard") and Michael Gatrost ("Gatrost") purchased real property located at 1711 Westport Road ("Building Lot") on May 1, 1986. Bernard and Gatrost were attorneys practicing individually but shared office space within the Building. Bernard and Gatrost later purchased the nearby Parking Lot. In 1995, Rudolph Garcia and Margaret Garcia (collectively "the Garcias") entered into the lease agreement with Bernard and Gatrost leasing the Parking Lot for their adjacent restaurant, Tenampa.

In 2000, the Garcias purchased the Parking Lot from Bernard and Gatrost. The deeds provided in relevant part:

> GRANTORS AND OR THEIR HEIRS OR ASSIGNS SHALL RETAIN THE RIGHT TO UTILIZE THE PARKING LOT UP TO FOUR (4) SPACES DURING THE DAY, AND THIS WILL BE A CONTINUING RIGHT AND EASEMENT.

Subsequently, the Garcias conveyed their interest in the Parking Lot to the Trust and the Trust entered into a lease agreement with Tenampa allowing Tenampa to utilize the Parking Lot.

Gatrost moved his law practice from the Building to Lee's Summit in 2003, and the Bernards and Gatrosts sold the Building Lot to Joseph Robison and Nancy Robison (collectively

"the Robisons"). The warranty deed memorializing the transaction did not mention the four parking spaces nor any transfer of any easement in any parking spaces. On that same day, the Robisons conveyed their fee simple interest in the Building Lot to TBD Properties LLC ("TBD"). Bernard continued to practice in the Building leasing office space until leaving the Building sometime in 2015.

On November 20, 2013, TBD sold the Building Lot to Ultra, and the warranty deed pertaining to the sale contained only the Building Lot's legal description. However, after obtaining a title report, Ultra became aware of the August 1, 2002 transfer of the Parking Lot from the Bernards to the Garcias with the retention of the easement in four parking spaces. The Bernards executed an easement conveyance transferring their interest in the four parking spaces to Ultra. Ultra proceeded with the sale and closed on the Building Lot in February 2014, without securing the transfer of easement rights in the four parking spaces from the Gatrosts.

On July 20, 2017, Tenampa and the Trust filed a Petition to Quiet Title to Real Property in the circuit court raising six claims, which essentially alleged that the easements for the four parking spaces in the Parking Lot held by the Gatrosts and the Bernards were easements in gross, which had been extinguished, and that Tenampa and the Trust were entitled to sole unencumbered ownership and use of the entire Parking Lot.

The circuit court entered its final judgment following trial, finding in favor of Ultra and the Gatrosts finding that while Tenampa owns the Parking Lot in fee simple, that ownership is subject to an easement in gross held by Ultra for the daytime use of up to two parking spaces located within the Parking Lot and an easement in gross held by the Gatrosts for the daytime use of up to two parking spaces located within the Parking Lot.

AFFIRMED IN PART, REVERSED IN PART, AND MODIFIED THE JUDGMENT PURSUANT TO RULE 84.14.

Division Three holds:

(1) The circuit court did not err in construing the deed to find that reservation contained within the warranty deed conveying the Parking Lot from the Bernards and the Gatrosts to the Garcias was an easement when the plain language of the deed denominated the reservation "a continuing right and easement." Furthermore, the easement was an easement in gross rather than an easement appurtenant because the easement reservation was not absolutely necessary to use of the Building Lot.

(2) The circuit court did not err in construing the deed to find that the easement in gross was transferrable because the easement reservation's express language provided that "Grantors and or their *heirs or assigns* shall retain the right," and the circuit court did not err in failing to consider parol evidence regarding the easement because the terms contained within the deed are unambiguous.

(3) The circuit court did not err in finding that the Gatrosts' interest in the Parking Lot had not been abandoned or terminated by operation of law, because the Gatrosts' nonuse of the

easement for seventeen years is insufficient on its own to demonstrate abandonment when the Gatrosts' reserved the easement as an investment.

(4) Pursuant to Rule 84.14 we modify the judgment to properly reflect that the Parking lot is owned by the Trust rather than Tenampa.

Opinion by: Gary D. Witt, Judge October 13, 2020

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