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Spectra Site Communications, Inc. v. Lawrence Appellant's Brief Dckt. 43082

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STATEMENT OF CASE

Nature of Case

This case centers around a road dispute between the appellants and the respondents. This case has had a long history and began on November 2, 2002, when Plaintiff, Spectra Site Communications Inc.'s. ("Spectra Site") predecessor in interests, Tower Asset Sub Inc. ("Tower"), filed its Complaint. The complaint alleged six causes of action: (1) the existence of an express easement, or in the alternative; (2) easement by implication; (3) easement by necessity; (4) easement by prescription; (5) an injunction permanently enjoin the Defendants, Douglas and Brenda Lawrence ("Lawrences"), from interfering with the easement road that crosses their property; and (6) breach of contract. (Aug. R. p. 82, L. 11-5). Spectra Site set forth four easement theories: (1) Express Easement; (2) Implied Easement; (3) Easement by necessity; and (4) Prescriptive Easement.

Course of Proceedings

On August 17, 2004, Tower filed its first motion for summary judgment only with respect to the express easement claim. (Aug. R. p. 82, L. 6-7). The trial court found there was an express easement and granted summary. The Lawrences appealed this decision to the Idaho Supreme Court. (Aug. R. p. 82, L. 8-13). In *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 152 P.3d 581 (2007) (*Tower I*), this Court ruled that Tower did not have an express easement and remanded the case back to the District Court for determination as to the other theories. (Aug. R. p. 82, L. 8-13).

Tower filed a motion to substitute the real party in interest, Spectra Site, LLC. (Aug. R. p.

82, L. 17-19). Tower also renewed its Motion for Summary Judgment on its three remaining easement theories. (Aug. R. p. 82, L. 14-16). The District Court granted summary judgment as to all three of the alternative theories. (Aug. R. p. 82, L. 20 to p. 83, L. 1-5). The Lawrences appealed, and in *Tower Asset Sub Inc. v. Lawrence*, 149 Idaho 621, 238 P.3d 221 (2010) (*Tower II*), this Court dismissed the appeal because no final judgment had been entered.

A six day bench trial began on June 11, 2013 and concluded on June 18, 2013. (Aug. R. p. 83, L. 10-12). The trial was combined with *Capstar Radio Operating Co. v. Lawrence*, Kootenai County Case No. CV 02-7671 because there were common issues, common witnesses, and the same defendants in each action. (Aug. R. p. 83, L. 13-16). At the conclusion of the trial the District Court granted Spectra Site an easement over and across the Lawrence property based on Spectra Site's implied easement theories. The Lawrences have filed this appeal. (R. p. 44).

Statement of the Facts

Douglas and Brenda Lawrence, appellants, own real property on Blossom Mountain, which is located in Kootenai County, Idaho. (Aug. R. p. 84, L. 2-9). Spectra Site, respondent, is a lessee of the Halls, who own real property on Blossom Mountain. (Aug. R. p. 84, L. 2). The Lawrence property is located in the southeast quarter of Section 21, and the Spectra Site leasehold property is located to the east of the Lawrence parcel in the southwest quarter of Section 22. (Aug. R. p. 84, L. 3-5). Harold and Marlene Funk owned both the Lawrence property and the Hall property at one time. (Aug. R. p. 84, L. 6-8). The Funks purchased their parcel in 1969 and it consisted of land in

Section 15, Section 21, and Section 22, all of which is located in Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho. (Aug. R. p. 84, L. 6-8).

Both properties are accessed by a private road that is accessed by using Signal Point Road, a public road. (Aug. R. p. 84, L. 14-16). The private road that connects to Signal Point Road has been referred to as Blossom Mountain Road, West Blossom Road, or Ski Hill Road. (Aug. R. p. 84, L. 16-17).

Both the Lawrence property and the Hall property were part of a larger tract of property that was purchased by Harold and Marlene Funk in 1969. (Aug. R. p. 84, L. 6-8). On November 7, 1972, Wilber and Florence Mead and Ethel Blossom conveyed an easement for ingress and egress across the Blossom/Mead's real property for the benefit of all the land the Funks were purchasing. (Aug. R. p. 85, L. 12-14). In 1975 the Funks entered into seven purchase and sales agreements with Human Synergistics to sell the bulk of their real property on Blossom Mountain. (Aug. R. p. 85, L. 15-16).

The Funks moved to Aberdeen shortly after entering into the purchase and sales agreement and was only on the property two or three times in the following five years. (Tr. P. 325, L. 9 - P. 328, L. 2). The Funks never returned to the property after 1981. (Tr. P. 328, L. 9-15). The Funks conveyed the real property to Human Synergistics on October 29, 1992. (Aug. R. p. 87, L. 3-7). The deed failed to reserve or except an easement for the benefit of the Funks, their successors, or assigns to provide access to the remaining property in Section 22. (Aug. R. p. 87, L. 7-8)

The essential chain of title to the Lawrence property is: Funks to Human Synergistics; Human Synergistics to Johnson and McHugh; Johnson and McHugh to National Associated Properties; National Associated Properties to Farmanians; and the Farmanians to the Lawrences. (Aug. R. p. 88, L. 19-21). The essential chain of title to the Hall property is: Funks to Rasmussen and Chamberlain; Rasmussen and Chamberlain to Van Sky; Van Sky to Switzer Communications; Switzer Communications to Term Corp.; and Term Corp. To the Halls. (Aug. R. p. 88, L. 22-25)

ISSUE PRESENTED ON APPEAL

1. Did the District Court error in determining that Spectra Site has an ingress and egress easement by implication across the Lawrence's real property?
2. Did the District Court error in determining Spectra Site has an ingress and egress easement by necessity across the Lawrence's real property?
3. Did the District Court error in determining the scope easement for egress and ingress and utilities is for unlimited reasonable use?
4. Did the District Court error in that the Lawrences and their heirs, successors and assignees shall be enjoined from interfering with Spectra Site's use or maintenance of the road traversing the Lawrence's real property?

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING RESPONDENT AN EASEMENT FROM PRIOR USE.

The District Court erred in finding that respondents had an implied easement from prior use and erred in finding that the purchase and sales agreement between Mr. and Mrs. Funk and Human

Synergistics was sufficient to constitute an intent to grant an implied easement. The District Court failed to recognize the rest of the language in the purchase and sales agreement and the rest of the testimony that clearly showed the respondents failed to show the Funks use of the servient estate prior to severance was apparent and continuous.

A. Standard of Review

The proper standard of review was summarized by this Court in *Machado v. Ryan*, 153 Idaho 212, 280 P.3d 715 (2012). This Court reviews factual findings made after a trial without a jury for clear error. *Id.* P.3d at 720. Findings of fact that are supported by substantial and competent evidence will not be disturbed even if there is conflicting evidence. *Id.* Substantial evidence is that which a reasonable trier of fact would accept and rely upon it in determining findings of fact. *Id.* However, this Court freely reviews conclusions of law. *Id.*

B. The District Court Erred in Finding that Spectra Site did not Need to Show Apparent Continuous Use Prior to the Separation of the Dominant Estate to Show that the Use Was Intended to be Permanent.

A party attempting to prove the existence of an implied easement by prior use must show: (1) unity of title or ownership and subsequent separation by grant of the dominant estate; (2) apparent continuous use long enough before separation of the dominant estate to show that the use was intended to be permanent; and (3) that the easement must be reasonably necessary to the proper enjoyment of the dominant estate. *Akers v. Mortensen*, 147 Idaho 39, 45, 205 P.3d 1175, 1181 (2009).

The Lawrences do not dispute that Spectra Site proved the existence of the first element, unity of title and subsequent separation. However, the record is devoid of any facts showing apparent continuous use long enough before separation of the dominant estate to show that the use was intended to be permanent. Mr. Funk testified, through introduction of his deposition, that prior to 1975 he did not continuously use the property. When asked how often he accessed the property prior to severance Mr. Funk testified that he would “always go up to pick huckleberries and stuff and target practice and – I don’t know. I would have to guess maybe, I don’t know, 20, 30 times.” (Tr. P. 323, L. 2-5).

The Funks’ use of the property servient property became even less frequent after he entered into the Purchase and Sales Agreement to sell the Lawrence property to Human Synergistics. The Funks moved to Aberdeen shortly after entering into the purchase and sales agreement and was only on the property two or three times in the following five years. (Tr. P. 325, L. 9 - P. 328, L. 2). The facts do not show that Funks use of the property in its altered state was enough to give notice that the change was intended to be permanent. Nor does the record, or the District Court’s decision mention any facts that would show that Funks use of the property was apparent and continuous.

The District Court relied on the purchase and sales agreements entered into between Human Synergistics and the Funks. (Aug. R. p. 99, L. 10-22). The sale agreement between Funk and Human Synergistics included the following:

5. Subject to and including an ingress egress easement over this and adjoining property in said sections 21 and 22 owned by the grantor and including an

ingress egress easement over portions of Section 21 heretofore granted to the grantors. Said easement shall be over existing roads until such time as all record owners shall agree to the relocation, improvement and/or abandonment of all or any portions of any roads. This easement is also over similar lands in Section 15.

(Aug. R. p. 86, L. 5-11).

The District Court's reasoning that the purchase and sales agreement proves the parties intended to reserve/grant a permanent easement is flawed for several reasons. First, the District Court's reasoning ignores the fact that the Warranty Deed that Funks gave Human Synergistics in 1992 parties later does not constitute an easement. See, Plaintiffs Exhibit 19. The District Court draws the inference that this was a mistake on the part of Funks. The District Court reasoning for conclusion can be found in the following section of his Memorandum Decision and Order:

The Funks and Human Synergistics knew of the only existing easement and intended by their contract to make it permanent. There is no need to resort to inferences, presumptions, or legal fiction to imply an easement when the parties' actual intent is proven.

(Aug. R. p. 100, L. 4-6). However, there was no testimony from the Funks that they accidentally failed to grant an easement to Human Synergistics. Nor did Human Synergistics testify that they believed they were to receive an easement. Further, the District Court is inconsistent in its reasoning.

The Purchase and Sales Agreement clearly indicates that any easement given was over all existing roads (including the existing roads in Section 15) until the record owners agreed to relocate, improve, and/or abandon of all or any portion of the roads. Mr. Funk testified that he did not go

back to the property after 1981 and that he no longer needed access to the property in 1992. (Tr. P. 328, L. 9-15).

The burden is on the respondent to show the necessary elements of an implied easement. The District Court's conclusion that Funks and Human Synergistics intended to create an easement is not supported by substantial and competent evidence.

C. The District Court Erred in Finding that Spectra Site Proved that the Implied Easement was Reasonably Necessary to the Proper Enjoyment of the Dominant Estate.

In order to prove the existence of an implied easement, the plaintiff needed to show reasonable necessity. *Akers v. Mortensen*, 147 Idaho, 39, 45 205 P.3d 1175, 1181 (2009). Reasonable necessity is something less than great present necessity required for an easement by necessity and is based upon the circumstances in existence at the time of severance. *Id.* at 46, 205 P.3d at 1182.

The District Court found that the only access to the real property in the southeast corner of Section 22 at the time of severance in 1975 was the private road in dispute. (Aug. R. p. 100, L.13-17). The District Court found that Mellick Road, as it existed as a developed road in 1975 did not provide ingress and egress to any of the Funk Property in Section 21 or 22 without going outside the Funk property boundaries. (Aug. R. p. 89, L. 21-23).. This finding was contradicted Mr. Funk who testified that he could access this section of his property in 1975. (Plaintiff's Exhibit 68, P. 58, L 11- P. 59, L. 24). Mr. Funk's testimony was supported by the Funk to Human Synergistics purchase

and sales agreements that mentioned roads, *plural*, existing on Section 15 of his property he was retaining.

The District Court placed great weight on the testimony of Mr. Darius Ruen. (Aug. R. p. 89, L. 23-25 to p. 90, L. 1-3). Mr. Ruen testified that Mellick Road, as it was currently developed did not extend to the northern portion of Section 15, but stopped just north of the halfway mark. (Tr. P. 738, L. 1-8). However, on cross-examination, Mr. Ruen acknowledged that the Mellick Road Alignment, or public right of way, extended all the way to Funks retained property in Section 15. (Tr. P. 767, L. 1-24). Mr. Ruen testimony was clear that Mellick Road as a public road was not developed to reach Funks property, but that the public right of way and accompanied undeveloped logging roads on Funks property could be used or developed to access the property now owned by the Halls and used by Spectra Site. This testimony is consistent with what Mr. Funk testified to, and what Mr. Lawrence testified too.

The District Court appears to have discredited this testimony because it was not a developed public road. However, reasonable necessity does not require one to have access to a developed public road. This ignores this Courts holding in *Capstar III*, 153 Idaho 411, 418, 283 P.3d 715, 735 (2012) where the Court warned that Mr. Funks could not create a necessity by his own actions. This is exactly what Mr. Funk did. He, by his own testimony, failed to clear the logging road prior to severance of the estates. He knew the logging roads accessed the property he was retaining. This testimony was clear from his deposition and the plain language of the purchase and sales agreement

he entered into with Human Synergistics. However, when it was time for the conveyance of the Warranty Deed to Human Synergistics, Mr. Funk failed to reserve an easement for himself and his heirs. The only reasonable explanation for this is because he did not feel he needed to. Mr. Funk was no longer accessing the property he was retaining at the time he deeded the property to Human Synergistics, and Mr. Funk knew he could access the property from Mellick Road.

II. THE DISTRICT COURT ERRED IN GRANTING SPECTRA SITE AN EASEMENT BY NECESSITY.

The District Court erred in finding that respondents had an implied easement from by necessity and erred in finding that great present necessity exists when a public right-of-way known as Mellick Road gives access to Spectra Site's leasehold property.

A. Standard of Review

The proper standard of review was summarized by this Court in *Machado v. Ryan*, 153 Idaho 212, 280 P.3d 715 (2012). This Court reviews factual findings made after a trial without a jury for clear error. *Id.* P.3d at 720. Findings of fact that are supported by substantial and competent evidence will not be disturbed even if there is conflicting evidence. *Id.* Substantial evidence is that which a reasonable trier of fact would accept and rely upon it in determining findings of fact. *Id.* However, this Court freely reviews conclusions of law. *Id.*

B. The District Court Erred in finding that there was Necessity of the Easement at the Time of Severance.

In order to establish the existence of an implied easement by necessity the claimant must

prove first, that there was unity of title and subsequent separation of the dominant and servient estates; second, that there was necessity of the easement at the time of severance; and finally, a great present necessity for the easement. *Machado*, at 219, 280 P.3d at 722. In order to determine whether there was necessity of the easement at the time of severance the courts determine if there was reasonable necessity at the time of severance. *Id.* Reasonable necessity did not exist at the time of the severance.

The District Court found that the only access to the real property in the southeast corner of Section 22 at the time of severance in 1975 was the private road in dispute. (Aug. R. p. 100, L.13-17). The District Court found that Mellick Road, as it existed as a developed road in 1975 did not provide ingress and egress to any of the Funk Property in Section 21 or 22 without going outside the Funk property boundaries. (Aug. R. p. 89, L. 21-23).. This finding was contradicted Mr. Funk who testified that he could access this section of his property in 1975. (Plaintiff's Exhibit 68, P. 58, L 11- P. 59, L. 24). Mr. Funk's testimony was supported by the Funk to Human Synergetics purchase and sales agreements that mentioned roads, *plural*, existing on Section 15 of his property he was retaining.

The District Court placed great weight on the testimony of Mr. Darius Ruen. (Aug. R. p. 89, L. 23-25 to p. 90, L. 1-3). Mr. Ruen testified that Mellick Road, as it was currently developed did not extend to the northern portion of Section 15, but stopped just north of the halfway mark. (Tr. P. 738, L. 1-8). However, on cross-examination, Mr. Ruen acknowledged that the Mellick Road

Alignment, or public right of way, extended all the way to Funks retained property in Section 15. (Tr. P. 767, L. 1-24). Mr. Ruen testimony was clear that Mellick Road as a public road was not developed to reach Funks property, but that the public right of way and accompanied undeveloped logging roads on Funks property could be used or developed to access the property now owned by the Halls and used by Spectra Site. This testimony is consistent with what Mr. Funk testified to, and what Mr. Lawrence testified too.

The District Court appears to have discredited this testimony because it was not a developed public road. However, reasonable necessity does not require one to have access to a developed public road. This ignores this Courts holding in *Capstar III*, 153 Idaho 411, 418, 283 P.3d 715, 735 (2012) where the Court warned that Mr. Funks could not create a necessity by his own actions. This is exactly what Mr. Funk did. He, by his own testimony, failed to clear the logging road prior to severance of the estates. He knew the logging roads accessed the property he was retaining. This testimony was clear from his deposition and the plain language of the purchase and sales agreement he entered into with Human Synergistics. However, when it was time for the conveyance of the Warranty Deed to Human Synergistics, Mr. Funk failed to reserve an easement for himself and his heirs. The only reasonable explanation for this is because he did not feel he needed to. Mr. Funk was no longer accessing the property he was retaining at the time he deeded the property to Human Synergistics, and Mr. Funk knew he could access the property from Mellick Road.

Finally, assuming *arguendo*, that Mellick Road did not reach Funk's property, the access over

the Lawrence property at the time of severance did not give Spectra Site's predecessor legal access to a public road. Funk never obtained legal rights to cross the property in Section 28 prior to segregating his property. (Plaintiff's Exhibit 68, p. 52-55). The record is clear that at the time of severance Spectra Site's predecessors lacked legal access across Section 28.

C. The District Court Erred in finding that there was Great Present Necessity Where Spectra Site has a license agreement with the Lawrences.

In order to establish the existence of an implied easement by necessity the claimant must show a great present necessity for the easement. *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 419, 283 P.3d 728, 736 (2012). Great present necessity exists where the claimed easement is the only access to the claimant's property. *Machado*, at 220, 280P.3d at 723. The requirements of great present necessity requires that there be some public access to the parcel. *Id.*

The District Court held found that the element for great present necessity for the easement was established. (Aug. R. p. 103, L. 14-17). The District Court further found that no other road or easement provided access to the Hall (Spectra Site) property other than the private road in dispute. (Aug. R. p. 103, L. 14-17). The District Court also found that the "easement" across the Lawrence property provided Spectra Site with access to a public road. (Aug. R. p. 104, L. 7-12).

The District Court based its conclusion that Spectra Site had access to a public road based on the Idaho Forest Industries agreement with Nextel West Corp. (Aug. R. p. 103, L. 14-17). The District Court characterized this agreement as a grant of an easement, however, the agreement is clearly a license agreement. Not the grant of an easement. (Plaintiff's Exhibit 87). The Idaho Forest

Industries Agreement does provide Spectra Site legal access to a public road. However, the District Court ignored the fact that Spectra Site has a license agreement with the Lawrences to gain access across the Lawrence property. (Plaintiff's Exhibit 86).

Spectra Site cannot have it both ways. A license agreement cannot be used to satisfy the "access to a public road" element and ignored when considering the great present necessity element. If the Idaho Forest Industries to Nextel Access License Agreement gives Spectra Site legal access to their property over Idaho Forest Industries property then the Lawrence to Nextel Access License Agreement gives Spectra Site legal access over the Lawrence's property and "great present necessity" element has not been met. If the Lawrence to Nextel Access License Agreement does not give Spectra Site legal access over the Lawrence property, thereby meeting the great present necessity element, then the Idaho Forest Industries to Nextel Access License Agreement does not give Spectra Site legal access to their property over Idaho Forest Industries property. Thence, Spectra Site does not have legal access to their property even with an easement over the Lawrence property and the great present necessity element has not been met as Spectra Site is still legally landlocked.

Finally, necessity is determined at the time of severance. *Machado v. Ryan*, 153 Idaho 212, 219, 280P.3d 715, 722 (2012). The record is clear that at the time of severance Funk did not have legal access across Section 28 and could not legally access a public road. (Plaintiff's Exhibit 68, p. 52-55). Spectra Site's predecessor, Nextel, did not get legal access over Idaho Forest Properties land

until October 1997, and cannot establish necessity at the time of severance. (Plaintiff's Exhibit 87).

III. THE DISTRICT COURT ERRED IN DETERMINING THE SCOPE OF THE EASEMENT FOR EGRESS AND INGRESS AND UTILITIES IS FOR UNLIMITED REASONABLE USE.

Assuming for arguments sake the District Court was correct in finding the respondents proved they are entitled to a prescriptive easement and an implied easement by prior use the District Court erred in determining the scope of the easement to be for unlimited reasonable use.

Prescriptive easements are to be closely scrutinized and limited by the courts. *Id.* The holder of the prescriptive easement may not use it to impose a substantial increase or change of burden on the servient tenement. *Id.* The testimony of the Spectra Site property users is that there use was limited to maintenance of radio towers on the property. The scope of the easement should be limited for egress and ingress for purposes of maintaining radio towers on the Spectra Site property. The courts general easement for unlimited reasonable use is extreme given the limited nature of use prior to this point.

The appellant was unable to find authority for restricting the scope of an implied easement, but the rationale remains the same. The Lawrences did not have actual knowledge of the alleged Spectra Site easement across their property. The use of the alleged easement to this point has been limited to egress and ingress for purposes of maintaining radio towers on the sight. The District Court's scope of the easement to be for unlimited reasonable use is overly broad and restricts the

Lawrences rights as the servient estate.

IV. THE DISTRICT COURT ERRED IN FINDING THAT SPECTRA SITE HAD STANDING TO ESTABLISH AN EASEMENT.

Only a landowner has standing to bring a quiet title to an easement appurtenant in favor of a dominant estate. *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 713, 152 P.3d 581, 584 (2007). It is true that a tenant has the right to enforce the right to use an easement. However, the right to enforce the use of an easement is different than establishing the existence of an easement. In this case Spectra Site is trying to enforce the right to use an easement that has not been established. Only Hall can establish an easement appurtenant in favor of the dominant estate. Once the easement is established then Spectra Site would have the right to enforce the easement.

Allowing Spectra Site the right to “enforce” the right to use an easement that has not been established, and that cannot be recorded, creates the opportunity for clouds to be created on the title. A tenant could successfully seek to “enforce” an easement that has not been established and many years later a landowner could unsuccessfully seek to establish the existence of the same easement. It seems to reason that Spectra Site could not seek to enforce the easement right until Hall had established the easement right.

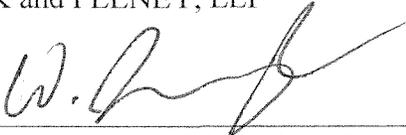
CONCLUSION

For the reasons stated above the Lawrences respectfully request this Court to reverse the District Court's Amended Final Judgment which issued an injunction enjoining the Lawrences, agents, and heirs from interfering with, impeding, or preventing Spectra Site Communications, Inc., a tenant of Robert Hall, its agents, servants, contractors, employees, tenants, successors, or assigns from using or maintaining the road traversing the Lawrence property more commonly known as Blossom Mountain Road. The Lawrences request this Court vacate the District Court's award of costs and remand this case back to the District Court with instruction to enter a judgement denying the injunctive relief requested by Spectra Site.

Respectfully submitted this 16th day of October, 2015.

CLARK and FEENEY, LLP

By: _____

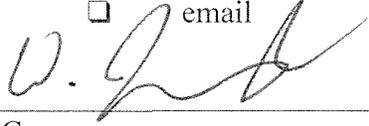

W. Jeremy Carr, a member of the firm
Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2015, I caused to be served two true and correct copies of the foregoing document by the method indicated below, and addressed to the following:

Susan P. Weeks
James Vernon and Weeks
1626 Lincoln Way
Coeur d'Alene ID 83814

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- email

By: 
W. Jeremy Carr

PRICE
\$100.00

P. W. REYNOLDS

METROPOLITAN
INTG. & SEC.
CO. INC.

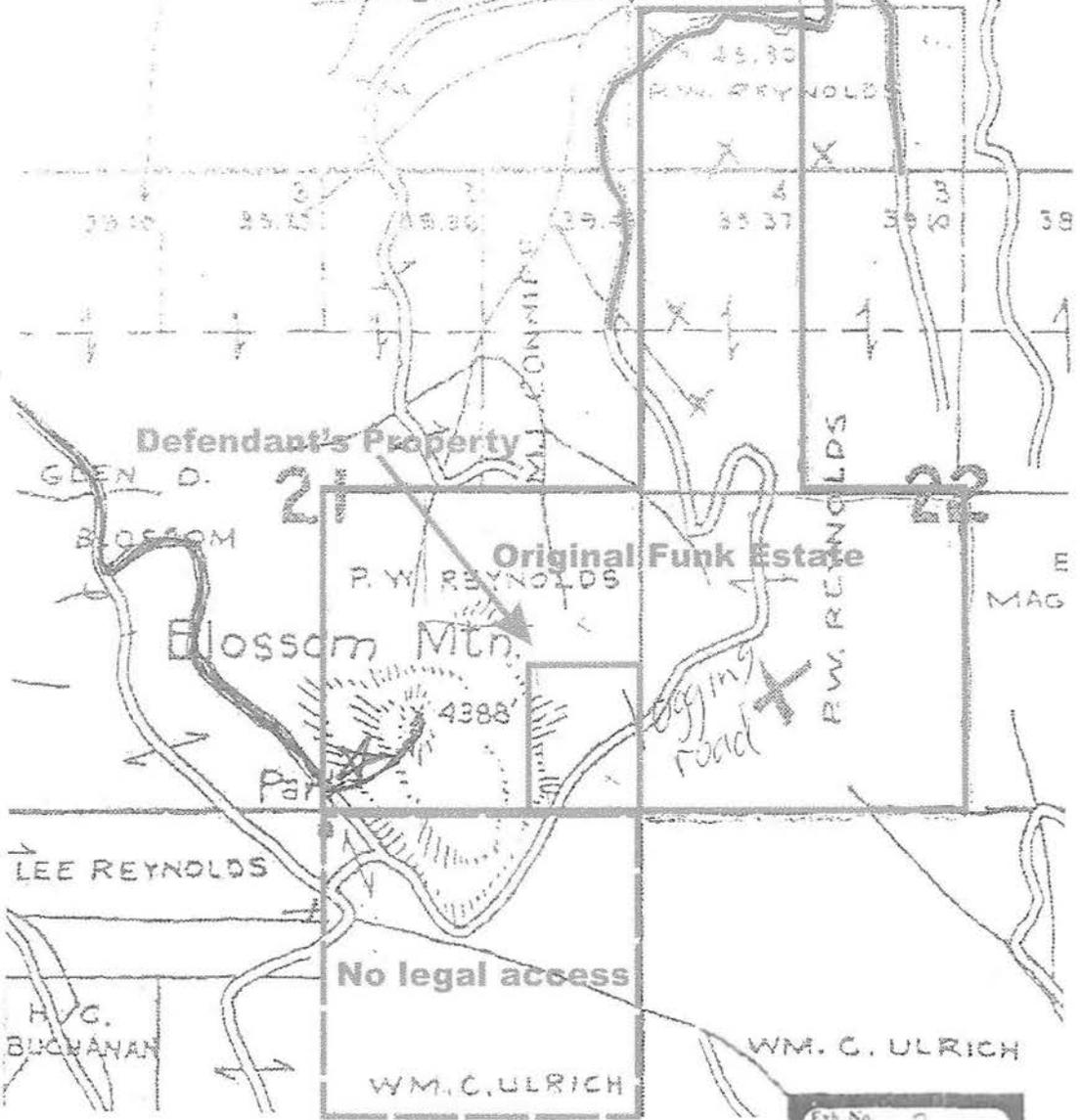
16

15

STATE

WILLIAM L.
VIACES

Legal Access - Mellick



Defendant's Property

GLEN D.
BLOSSOM

21

Original Funk Estate

P. W. REYNOLDS

Blossom Mtn.

4388'

Park

Logging
Road

P. W. REYNOLDS

22

E
MAG

LEE REYNOLDS

No legal access

H. C.
BUCHANAN

WM. C. ULRICH

WM. C. ULRICH

Exh. No. 2
 Date 8-17-07
 Name Funk
 M & M Court Reporting