

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Roger M. Schrimp, State Bar No. 039379
Nicole D. Delerio, State Bar No. 227564
DAMRELL, NELSON, SCHRIMP,
PALLIOS, PACHER & SILVA
1601 I Street, Fifth Floor
Modesto, CA 95354
Telephone: (209) 526-3500
Facsimile: (209) 526-3534

Attorneys for Plaintiff Alameda Boy Scouts Foundation, a
California Non-Profit Public Benefit Corporation

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TUOLUMNE**

ALAMEDA BOY SCOUTS
FOUNDATION, a California Nonprofit
Benefit Corporation

Plaintiff,

vs.

ODD FELLOWS SIERRA RECREATION
ASSOCIATION, INC., OF TUOLUMNE
COUNTY, DEL WALLIS, an individual,
and ALL PERSONS UNKNOWN,
CLAIMING ANY LEGAL OR
EQUITABLE RIGHT, TITLE, ESTATE,
LIEN, OR INTEREST IN THE PROPERTY
DESCRIBED IN THE COMPLAINT
ADVERSE TO PLAINTIFF'S TITLE OR
ANY CLOUD ON PLAINTIFF'S TITLE
THERETO, WILLIAM H. SMITH,
FLOELLEN W. SMITH, JOSEPH
FREITAS, & GLADYS FREITAS and
DOES 1 through 50,

Defendants.

Case No. CV 49802

**PLAINTIFF ALAMEDA BOY SCOUTS
FOUNDATION'S REPLY TO
DEFENDANTS' POST-TRIAL BRIEF
AND CLOSING ARGUMENT**

Trial: June 7-8, 2004
July 6-7, 2004

Dept: One

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. LEGAL ARGUMENT 2

 A. The Boy Scouts Are Entitled To An Easement By
 Prescription Over The Odd Fellows' Property 2

 B. The Boy Scouts Are Entitled To An Easement By
 Necessity Because They Do Not Have Other Means
 Of Ingress To And Egress Frm Their Property 6

 C. The Boy Scouts Are Entitled To An Easement By
 Implication Over The Odd Fellows' Property 8

 1. Consideration Is To Be Given To All Facts And
 Circumstances Evidencing The Grantor's Intent
 To Establish A Pre-Existing Use Of The Easement 8

 2. Use Of Wheeler Road And Jordan Way Is Reasonably
 Necessary To The Enjoyment Of Plaintiff's Property 9

 D. Promissory Estoppel Should Be Invoked To Provide The
 Boy Scouts With An Easement Because They Detrimentally
 Relied Upon The Odd Fellows' Promise To Grant 'Easement
 Rights' 11

 E. The Doctrine Of Equitable Estoppel Bars The Odd Fellows
 From Denying The Boy Scouts Easement Rights Over Its
 Property 12

III. CONCLUSION 14

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Cases</u>	<u>Page(s)</u>
Applegate v. Ota 146 Cal.App.3d 702, 709 (1983)	2
Chapman v. Sky L'Onda etc. Water Co. 69 Cal.App.2d 667, 678 (1945)	2
Fristoe v. Drapeau 35 Cal.2d 5 (1950)	8
Lange v. TIG Insurance 68 Cal.App.4th 1179, 1186 (1998)	11
Leonard v. Haydon 110 Cal.App.3d 263, 266 (1980)	9
Miller v. Johnston 270 Cal.App.2d 289, 294 (1969)	2
Owsley v. Hammer 36 Cal.2d 710, 717 (1951)	9
Reese v. Borghi 216 Cal.App.2d 324, 331 (1963)	6, 8
Twin Peaks Land Co., Inc. v. Billy Leo Briggs 130 Cal.App.3d 587, 593 (1982)	2
 <u>Statutes</u>	
Cal. Evid. Code § 623	13

I.

INTRODUCTION

1
2
3 Plaintiff Alameda Boy Scouts Foundation (hereinafter referred to as "Boy Scouts") owns
4 21.80 acres of real property known as "Camp Cedarbrook," in the Stanislaus National Forest near
5 Long Barn, California. Since approximately 1929, the Boy Scouts have operated Camp
6 Cedarbrook for the benefit of Boy Scout troops and other non-profit youth groups. Defendant
7 Odd Fellows Sierra Recreation Association, Inc. Of Tuolumne County (hereinafter "Odd
8 Fellows"), a for profit corporation, purchased real property contiguous to Camp Cedarbrook in
9 1949.

10 The Boy Scouts assert an easement over Wheeler Road and Jordan Way, which crosses
11 land owned by Odd Fellows from Highway 108 to Camp Cedarbrook. The Boy Scouts and their
12 predecessors have utilized this easement since at least the 1930's. The Boy Scouts' access, by the
13 use of Wheeler Road and Jordan Way ("the roads") on Odd Fellows' property, was uninterrupted
14 for the first time since the 1930's, when Defendant Del Wallis (hereinafter "Mr. Wallis"), who
15 was the president of the Odd Fellows, personally and unlawfully precluded the Boy Scouts' use
16 of the aforementioned roads by changing the access code to an electronically operated gate at
17 Wheeler Road.

18 Defendants stated in their Post-Trial Brief that Mr. Wallis should be dismissed from the
19 case because the Boy Scouts have failed to establish any evidence against him. However,
20 Mr. Wallis is a necessary party to this case as he is not only being sued in his representative
21 capacity as President of the Odd Fellows, but for damages he personally caused to the Boy
22 Scouts by his personal actions. Mr. Wallis should not be dismissed at this late juncture as the
23 Plaintiff's Post-Trial Brief reiterates the Odd Fellows' culpability, and Mr. Wallis' responsibility
24 for his wrongful conduct as well.

25 Since at least the 1930's, the Boy Scouts and their predecessors in interest made
26 continuous and uninterrupted use of Wheeler Road and Jordan Way to access what is now Camp
27 Cedarbrook. The Boy Scouts' use, and that of their predecessors, has at all times been openly
28 visible, notorious and adverse to Odd Fellows' interests. The Boy Scouts' claim has ripened into

1 a prescriptive easement over Jordan Way and Wheeler Road, based on the Boy Scouts' use under
2 a claim of right, and with Odd Fellows' knowledge of the adversity of the claim, for a period of
3 not less than five years. The Boy Scouts also have an implied grant of easement and easement by
4 necessity over Wheeler Road and Jordan Way, since at the time of severance from the common
5 grantor of Mr. E.O. Sylvester there was a pre-existing use and no other reasonable means of year
6 round access available to the property.

7 As demonstrated by the evidence set forth at trial and reconveyed in the Post-Trial Briefs,
8 the Boy Scouts have obtained easements by prescription, implication, and necessity.
9 Furthermore, the Boy Scouts have relied upon promises by the Odd Fellows to their detriment
10 such that the Odd Fellows should be estopped from denying the existence of said easement.

11 II.

12 LEGAL ARGUMENT

13 A. The Boy Scouts Are Entitled To An Easement By Prescription Over The Odd 14 Fellows' Property

15 "The burden of proof as to each and all of the requisite elements to create a prescriptive
16 easement is upon the one asserting the claim." Twin Peaks Land Co., Inc. v. Billy Leo Briggs,
17 130 Cal.App.3d 587, 593 (1982). However, "when one who claims an easement by prescription
18 offers satisfactory evidence that all the required elements existed, the burden of showing that the
19 use was merely permissive shifts to the owner of the land." Id. at 594, citing Chapman v. Sky
20 L'Onda etc. Water Co., 69 Cal.App.2d 667, 678 (1945); see also Applegate v. Ota, 146
21 Cal.App.3d 702, 709 (1983); Miller v. Johnston, 270 Cal.App.2d 289, 294 (1969). Defendants
22 have acknowledged that "the only element in dispute is whether the use of Odd Fellows roads
23 was hostile or by permission." (Defendants' Post-Trial Brief, p. 17: 22-23; see also 6: 10-11).
24 Thus, Defendants have acquiesced to the fact that the Boy Scouts have otherwise established a
25 prescriptive easement. Therefore, it is now the Odd Fellows obligation to rebut the presumption
26 that the use was hostile. Defendants have failed to do so.

27 Mr. Smith testified that the Odd Fellows considered the use of the roads a very
28 important matter. (Record at 473: 11-20). However, the Odd Fellows actions are inconsistent

1 with this statement. The first such inconsistency is the Odd Fellows' assertion that the Boy
2 Scouts "applied" each year for permission to use the roads. (R. at 465: 18-22). Despite this
3 assertion, the Odd Fellows have been unable to provide evidence of any such application. (R. at
4 474: 18-25, 475: 1-6; 829: 17-25, 830: 1-9; 831: 6-7; 845: 15-25, 846: 1-23). Due to their
5 inability to provide evidence of any past applications, the Odd Fellows conveniently claim that
6 the Boy Scouts' applications were verbal. (R. at 466: 3-6). But the claims that the applications
7 were verbal are unsubstantiated and self-serving at most, as no evidence of these purported
8 applications was produced at trial.

9 In fact, the Odd Fellows have provided no evidence that the Boy Scouts ever requested
10 permission to use the roads through an application or otherwise. Although the Odd Fellows
11 stated that the protection of the roads was very important and that all important matters were
12 recorded in the Board minutes, it remains unclear why the Boy Scouts' alleged requests were
13 never recorded in the minutes. Mr. Wallis testified by stating:

14 Q: Were accurate records kept of issues discussed at Board meetings?

15 A: *Those issues that the Board felt important enough to make sure we had*
16 *a record of, we made sure that it was recorded;* but not all issues were
recorded.

17 (R. at 879: 23-25, 880: 1-2). (Emphasis added.) Mr. Hawke made similar statements in his
18 testimony when he stated:

19 Q: And was it the practice of the minutes to reflect requests by third parties
20 for use of the roads and the lakes and things of that nature?

21 A: I don't think I understand the meaning of that question by "third party."

22 Q: By the Boy Scouts.

23 A: Okay. The Boy Scouts made requests and those were reflected in the
24 minutes. *If there was a Board action or if there was a vote, all votes by*
the Board of Directors were in the minutes. Some communications
didn't require votes.

25 Q: All right. *Granting of a right-away to use the roadway, would that be a*
26 *matter that would be voted upon by the Board?*

27 A: *I think it usually was.*

28 (R. at 552: 2-16). (Emphasis added.)

1 Despite the testimony of Mr. Wallis and Mr. Hawke, there remains no documentation to
2 establish that the Boy Scouts ever attended a meeting to request permission to utilize Wheeler
3 Road and Jordan Way. In fact, despite a rigorous search, the Odd Fellows have been unable to
4 locate even a single set of minutes from a meeting held during the last fifty years of ownership
5 which show that the Boy Scouts requested permission to use the roads. (R. at 196: 14-21; 474:
6 18-25, 475: 1-6; 829: 17-25, 830: 1-9; 831: 6-7; 843: 8-17; 845: 15-25; 846: 1-23; 879: 12-19).

7 Defendants attempt to explain the absence of such minutes by stating that it depended
8 upon the discretion of each individual who served as secretary and prepared the minutes. (R. at
9 402: 15-19). However, the Odd Fellows did not locate even one set of minutes containing a
10 request to use the roads by the Boy Scouts. (R. at 196: 14-21; 200: 15-22; 401: 16-18; 474: 18-
11 25, 475: 1-6; 552: 8-16; 829: 17-25, 830: 1-9; 831: 6-7; 843: 8-17; 845: 15-25; 879: 12-25, 880:
12 1-2). It is very unlikely that in the course of fifty years, not a single Odd Fellows' secretary
13 found the Boy Scouts' request for permission to utilize the roads important enough to record.
14 This is especially true given that at least two individuals testified at trial that the use of the Odd
15 Fellows' roads were important. (R. at 473: 11-20; 552: 2-16; 879: 23-25, 880: 1-2). It is also
16 true that the Odd Fellows' minutes appear to have recorded other occasions that the Boy Scouts
17 did appear and request permission to build a parking pad (R. at 254: 5-24; see also Exhibit 37), to
18 use the lake (R. at 195: 1-12; 254: 18-24; 298: 9-12; 391: 7-12; 466: 18-22), to use the toboggan
19 run (R. at 298: 4-8; 391: 18-20), or to park (R. at 195: 1-12; 254: 18-24; 256: 8-20; 298: 13-16;
20 315: 2-6; see also Exhibits 38, 40). Therefore, given the absence of any record in the minutes, no
21 documentary evidence exists that the Boy Scouts requested permission to travel the roads.

22 Moreover, the Odd Fellows contend that the witness testimony alone sufficiently
23 establishes that the Boy Scouts use of the roads was permissive. However, the testimony of the
24 Odd Fellows' witnesses do not establish with any certainty or conclusiveness that the Boy Scouts
25 requested permission to utilize the roads on any one occasion during the past fifty years. In
26 support of Defendants' theory, the Odd Fellows state that Mr. Anderson "acknowledged" that
27 Mr. Steele approached them about access issues. (See Defendants' Post-Trial Brief and Closing
28 Arguments, 17: 25, 18: 1). However, in the testimony cited, Mr. Anderson did not make any

1 statements that could be specifically construed as an “acknowledgment” that the Boy Scouts
2 requested permission to use the roads. (R. at 52: 19-23). Rather, Mr. Anderson vaguely recalled
3 a “discussion” regarding access to the camp. (R. at 52: 19-23).

4 In further support of their position, Defendants state that Mr. Smith and Mr. Hawke
5 testified regarding their memories of the Boy Scouts requesting permission to utilize the roads.
6 Although it is true that both Mr. Smith and Mr. Hawke testified about their memories, such
7 memories are vague and lack sufficient amount of detail, and therefore, cannot be considered
8 credible. Specifically, when Mr. Smith was asked “what personal knowledge do you have where
9 you were there when some Boy Scout representative asked permission to use the road” he could
10 not recall any specific information and stated “I can’t give you a specific time or – you know.”
11 (R. at 466: 13-17). Mr. Hawke’s recollection of the Boy Scouts’ requests for permission was
12 similarly weak as he could not remember any specific details about the alleged requests made by
13 the Boy Scouts. (R. at 542: 13-21).

14 Assuming arguendo, that Defendants’ testimony is sufficient to establish that the Boy
15 Scouts’ use of the roads was permissive during the respective time periods discussed by each of
16 their witnesses, the fact still remains that Defendants’ witnesses do not have personal knowledge
17 of the use of Wheeler Road and Jordan Way for each year of ownership from 1929 until the time
18 of the herein dispute. Mr. Smith admitted that he has no personal knowledge of the Boy Scouts
19 allegedly requesting permission to utilize the roads until 1976. (R. at 471: 15-25, 472: 1-8).
20 Thus, there is at least a forty-seven (47) year period unaccounted for wherein Mr. Smith has no
21 personal knowledge of whether the Boy Scouts requested permission to use the roads. Mr.
22 Hawke also has limited knowledge of the use of the roads as he did not begin living in the Odd
23 Fellows Sierra Park until 1983 on a part-time basis (R. at 541: 13-16) and was not on the board
24 until 1992 or 1993. (R. at 541: 17-22). Therefore, neither Mr. Smith nor Mr. Hawke have
25 sufficient personal knowledge to establish that the Boy Scouts “always” requested permission to
26 utilize the roads. It is apparent that the Odd Fellows have not overcome the burden of
27 establishing that the Boy Scouts use of the roads was permissive instead of hostile.

28 ///

1 Defendants also attempt to justify Mr. Smith's statements in his letter of February 7, 1992
2 to Alvin Kidder (See Exhibit 23) wherein he states "[i]t has never been our position to deny the
3 Scouts access to their property via our roads." Mr. Smith states that this meant the Boy Scouts
4 would have access "[w]ith our permission." (R. at 447: 2-5). It is far too convenient and self-
5 serving for Mr. Smith to claim such interpretation over ten years later after litigation arose. Mr.
6 Smith's letter speaks for itself and it acknowledges the Boy Scouts had acquired an easement
7 over the roads and it was not the Odd Fellows' position to "deny the Scouts access to their
8 property." (R. at 447: 2-4).

9 Accordingly, the Odd Fellows have failed to set forth sufficient evidence to establish that
10 the Boy Scouts sought permission to utilize Wheeler Road and Jordan Way. Without such
11 evidence, the Odd Fellows have not overcome the presumption that the Boy Scouts' continuous
12 use of the road for over fifty years was hostile.

13 **B. The Boy Scouts Are Entitled To An Easement By Necessity Because They Do Not**
14 **Have Other Means Of Ingress To And Egress From Their Property**

15 Defendants' claim that an easement by necessity is unwarranted because "Camp
16 Cedarbrook can be reached by Bottini Apple Ranch Road, Long Barn Sugar Pine Road and the
17 roads to the South and East of Camp Cedarbrook" is unsupported by the evidence. (See
18 Defendants' Post Trial Brief And Closing Argument, 11:2-4). Several witnesses have testified
19 that the alleged alternate routes fail to provide year round means of ingress to and egress from
20 Camp Cedarbrook. The lack of means of ingress to and egress from the Boy Scouts' property
21 renders such property idle and unusable in contravention of strong public policy favoring the
22 occupancy and successful cultivation of land. See Reese v. Borghi, 216 Cal.App.2d 324, 331
23 (1963). Thus, to protect against such idleness and to preserve the utility of the Boy Scouts'
24 property, this Court should grant an easement by necessity to Plaintiff.

25 Bottini Apple Ranch Road does not provide means of ingress to and egress from Camp
26 Cedarbrook. Specifically, Richard Anderson testified that the facilities of Camp Cedarbrook
27 cannot be accessed year round from Bottini Apple Ranch Road. (R. at 22:8-10). Mr. Anderson
28 also testified that the road is not maintained. (R. at 22:8-20). Similarly, Cyrus Hoblitt testified

1 that Bottini Apple Ranch Road is not maintained by the County. (R. at 511:17-25). Indeed, Fred
2 Coleman admitted that said road contains ruts (R. at 639:15-18) and that he would not drive
3 faster than fifteen (15) miles per hour (mph) (R. at 644:19-25; 645:1-2). Furthermore, the weight
4 of Defendants' Exhibit No. 79 is tempered by the facts that Fred Coleman admitted that Bottini
5 Apple Road is not paved and that he did not drive on the road during "impassable" conditions
6 such as rain or snow. (R. at 646:8-10; 647:1-8).

7 Similarly, Long Barn Sugar Pine Road does not provide means of ingress to and egress
8 from Camp Cedarbrook and would compromise the utility of the Boy Scouts' property.
9 Mr. Anderson testified that the terrain to Camp Cedarbrook by way of Long Barn Sugar Pine
10 road is very soft and marshy— inappropriate and unsafe terrain for travel. (R. at 82:21-25; 83:1-
11 8). In fact, Mr. Anderson testified that a road cannot be built on such terrain. (R. at 83:15-24).
12 Mr. Anderson's testimony is further supported and substantiated by that of a long-time resident
13 of neighboring property, Richard Welsh. Mr. Welsh testified that at various times of year, Long
14 Barn Sugar Pine Road "*can be washed out from flooding and overhanging branches.*" (R. at
15 100:21-25; 101:1-9). (Emphasis added.) Mr. Welsh further testified that "*Trees can fall across*
16 *it so that you have to just about carry a chainsaw in the wintertime if you want to make sure*
17 *you get through.*" (R. at 100:21-25,101: 1-9). (Emphasis added.) Such conditions especially
18 warrant an easement by necessity when one considers that the inhabitants of Camp Cedarbrook
19 could be injured and emergency services vehicles need adequate means of ingress to and egress
20 from the Boy Scouts' property. As testified to by Kenneth Blakemore, the conditions of Long
21 Barn Sugar Pine and the surrounding terrain are such that the road does not provide means of
22 ingress to and egress from Camp Cedarbrook for emergency services vehicles, such as
23 ambulances and fire trucks. (R. at 164:2-11). Therefore, Long Barn Sugar Pine Road does not
24 provide means of ingress to and egress from the usable portion of the Boy Scouts' property,
25 Camp Cedarbrook.

26 The lack of means of year round ingress to and egress from the Boy Scouts' property
27 renders Camp Cedarbrook idle and unusable, in contravention of public policy in support of an
28 easement by necessity. Such public policy provides that "*lands should not be rendered unfit for*

1 *occupancy or successful cultivation...*” Reese v. Borghi, 216 Cal.App.2d 324, 331 (1963).
2 (Emphasis added.) Thus, to protect against such idleness and to preserve the utility of the lands
3 comprising Camp Cedarbrook, this Court should grant an easement by necessity to Plaintiff.

4 **C. The Boy Scouts Are Entitled To An Easement By Implication Over The Odd
5 Fellows’ Property**

6 **1. Consideration Is To Be Given To All Facts and Circumstances Evidencing
7 The Grantor’s Intent To Establish A Pre-Existing Use Of The Easement.**

8 Defendants claim that the Boy Scouts failed to set forth sufficient evidence to establish a
9 pre-existing use of the roads during common ownership. However, in determining the intent of
10 the parties at the time parcels are severed from common ownership, consideration is to be given
11 to all facts and circumstances evidencing that intent. The California Supreme Court made it clear
12 in Fristoe v. Drapeau, 35 Cal.2d. 5 (1950), that a prior existing and known use is only one of
13 many factors to be weighed in determining the creation of an easement by implication.

14 In Fristoe, the California Supreme Court explained that while “prior use of the property is
15 one of the factors to be considered, easements of access have been implied in [California] in
16 situations where there was no prior use.” Fristoe at 9. With regard to prior use, the Fristoe court
17 also stated, “it does not follow that *the use authorized is to be limited to such use as was*
18 *required by the dominant tenement*” at the time of conveyance, and that such use “is to be
19 measured ... by *such uses as the parties might reasonably have expected from future uses of*
20 *the dominant tenement.*” (Emphasis added.) The Supreme Court additionally held that
21 “consideration must be given not only to the actual uses being made at the time of severance, but
22 also to *such uses as the facts and circumstances show were within the reasonable*
23 *contemplation of the parties at the time of conveyance.*” Id. at 9-10. (Emphasis added.)

24 Defendants have ignored the fact that actual pre-existing use is only one factor to be
25 considered. The court may also consider the facts and circumstances that were within
26 “reasonable contemplation” of the parties at the time of conveyance. The facts show that the Boy
27 Scouts’ property was transferred to a Boy Scouts group shortly after the severance. (R. at 89: 6-
28 11; See Exhibit 35). Thereafter, the Boy Scouts’ predecessors in interest began using the
property as a camping facility. It was within Mr. Sylvester’s “reasonable contemplation” that the

1 Boy Scouts' predecessors would need to gain access to the property in such a manner that
2 allowed full use of the property. Thus, any roads in existence at the time of severance were
3 impliedly granted for use by the Boy Scouts and their predecessor.

4 Furthermore, in 1948 when Mr. Smith traveled to the Odd Fellows' property he used the
5 current Wheeler Road. (R. at 375: 13-22). However, he testified that Old Wheeler Road was
6 also on the property at that time. (R. at 378: 1-11; See Exhibits 48-56). Given that Old Wheeler
7 Road was in place and had actually been replaced by a new route evidences that Old Wheeler
8 Road was the original route in place at the time the property was granted to the Boy Scouts'
9 predecessor in 1929. Defendants infer that since the 1930's map introduced by Mr. Blakemore
10 does not depict a road on the Odd Fellows' property, that there was not any such road. (See
11 Exhibit 92). However, it is unclear whether the map depicts all private roads in existence at that
12 time. The facts and circumstances when considered as a whole establish that it was reasonably
13 contemplated by Mr. Sylvester that the Boy Scouts' predecessor would access the property by
14 using the access ways that were then available.

15 **2. Use Of Wheeler Road And Jordan Way Is Reasonably Necessary To The**
16 **Enjoyment Of Plaintiff's Property.**

17 Despite Defendants' contentions, it is proper to discuss the Boy Scouts' evidence of
18 reasonable necessity. Defendants do not want the Boy Scouts to set forth such evidence because
19 they are aware of the fact that it is reasonably necessary to use Wheeler Road and Jordan Way to
20 exercise full enjoyment of the Boy Scouts' property.

21 An easement will be implied in a sale or division of property when it is reasonably
22 necessary for the beneficial enjoyment of the quasi-dominant tenement. Leonard v. Haydon, 110
23 Cal.App.3d 263, 266 (1980). However, strict necessity is not required for an easement by
24 implication. Thus, if all of the other conditions are present, an easement may be implied even
25 though it is not essential to the dominant tenement and even though there is another suitable
26 access or easement, or where the grantee could easily establish a substitute for the easement on
27 his or her own property. Owsley v. Hamner, 36 Cal.2d 710, 717 (1951).

28 ///

1 Defendants have mistakenly asserted that the Boy Scouts' basis for contending reasonable
2 necessity is due to changed circumstances. However, it is not necessary for the Boy Scouts to
3 rely upon any such theory. The condition of the alternative routes suggested by the Odd Fellows
4 is so poor that it only demonstrates the need for the Boy Scouts to use Wheeler Road and Jordan
5 Way to access the property.

6 Defendants contend that the Bottini Apple Ranch Road and the Long Barn Sugar Pine
7 Road are still maintained by the County and are a means of "reasonable access" to Camp
8 Cedarbrook. (Defendants' Post-Trial Brief, p. 16). However, several witnesses have testified
9 that these roads are not a reasonable means of ingress to and egress from Camp Cedarbrook. (R.
10 at 22: 2-12; 57: 6-13; 65: 2-7; 82: 18-20; 100: 21-25, 101: 1-9; 116: 7-14; 159: 4-22; 523: 12-20;
11 568: 7-17). With respect to Bottini Apple Ranch Road, Mr. Anderson stated that Camp
12 Cedarbrook cannot be accessed by Bottini Apple Ranch Road as there is no adequate road. (R. at
13 22: 8-20). Mr. Hoblitt also testified that the Bottini Apple Ranch Road is no longer maintained
14 by the County. (R. at 511: 17-25). Mr. Coleman stated that the road contains many ruts (R. at
15 639: 15-18) and is not paved (R. at 646: 8-10; 647: 1-8). Many other witnesses testified that the
16 Long Barn Sugar Pine Road is inappropriate and unsafe for ground travel (R. at 82: 21-25, 83: 1-
17 8), can be washed out due to flooding (R. at 100:21-25, 101:1-9), can have access blocked due to
18 down trees (R. at 100: 21-25, 101: 1-9), and does not adequately provide a means of safe ingress
19 and egress for emergency vehicles (R. at 164: 2-11).

20 Defendants stated in their brief that "it is not impossible, nor even impractical to use
21 Long Barn Sugar Pine Road or the roads to the South and East of Camp Cedarbrook to get
22 access." (Defendants' Post-Trial Brief, 17: 12-14). But, Defendants have clearly misunderstood
23 the requirements of "reasonable necessity." The Boy Scouts do not have to prove that there is
24 strict necessity for use of the roads. Rather, an implied easement may be established even if there
25 is another means of access to the property. The Boy Scouts have established that it is reasonably
26 necessary to use Wheeler Road and Jordan Way given the mentioned inadequacies of the
27 alternatives suggested by the Defendants.

28 ///

1 Accordingly, the Boy Scouts have established that it is reasonably necessary to utilize
2 Wheeler Road and Jordan Way. Although it is true that there are other means of access to the
3 property, the conditions of the roads are so poor that they are rendered impassable. Therefore,
4 the Boy Scouts have met all requirements to establish an easement by implication.

5 **D. Promissory Estoppel Should Be Invoked To Provide The Boy Scouts With An**
6 **Easement Because They Detrimentially Relied Upon The Odd Fellows' Promise To**
7 **Grant 'Easement Rights'**

8 Promissory estoppel should be invoked to grant the Boy Scouts an easement because a
9 clear and unambiguous promise exists between the Boy Scouts and the Odd Fellows regarding an
10 easement over Wheeler Road and Jordan Way. Moreover, such promise was relied upon by the
11 Boy Scouts and was reasonable and foreseeable. Consequently, the Boy Scouts suffered
12 substantial detriment and injury — inter alia, not being able to access and utilize their property.

13 Defendants' reliance on the Lange v. TIG Insurance case is misplaced. The Lange case
14 involves an entirely different set of factual circumstances which Defendants have tellingly failed
15 to mention in their Post Trial Brief And Closing Argument. Specifically, in the Lange case, the
16 insurer provided the brokers with which it had a contract a notice which stated that: "TIG has
17 served notice of termination of its General Agency Agreement on EVE effective July 6, 1996."
18 Lange v. TIG Insurance, 68 Cal.App.4th 1179, 1186 (1998). EVE, the broker, interpreted this to
19 constitute a binding promise that EVE would not be terminated under any circumstances before
20 July 6. The court, however, ruled that such statement was merely a recitation of historical fact
21 that notice of termination had been served and did not constitute a clear and unambiguous
22 promise. Lange v. TIG Insurance, 68 Cal.App.4th 1179, 1186 (1998).

23 Unlike in the Lange case, the correspondence between the Boy Scouts and the Odd
24 Fellows shows a clear and unambiguous promise for access or "easement rights" by the Odd
25 Fellows. Specifically, Exhibits 23 and 28 provide evidence of such a promise by the Odd
26 Fellows. Moreover, the Boy Scouts relied on such promise as evidenced by the language of
27 Exhibits 28 and 85. It is illogical for the Odd Fellows to suggest that no such promise was relied
28 upon by the Boy Scouts when they, as shown by Exhibit 28, conditioned support for
abandonment of the portion of Long Barn Sugar Pine Road upon a grant of easement rights by

1 the Odd Fellows. The Odd Fellows provided a response— a promise— (Exhibit 23) to the Boy
2 Scouts’ December 18, 1991 letter (Exhibit 28) on February 7, 1992. The Odd Fellows conveyed
3 their promise to the Boy Scouts conveniently only a few days before the Feb 11, 1992 Board of
4 Supervisors meeting at which the Odd Fellows’ petition for abandonment of Long Barn Sugar
5 Pine Road was to be considered. The Odd Fellows specifically responded to the Boy Scouts’
6 mention of easements rights and indicated that: *“It has never been our position to deny the*
7 *Scouts access to their property, via our roads.”* (See Exhibit 23). (Emphasis added.)
8 Therefore, a clear and unambiguous promise exists between the Boy Scouts and Odd Fellows
9 regarding easement rights to Camp Cedarbrook.

10 Moreover, the Boy Scouts relied upon the Odd Fellows’ promise to their detriment. Gary
11 Thomas, President of the Alameda Council, Boy Scouts of America, from January 1991 to
12 December 1991, testified that he would not have not have written the letter (Exhibit 28)
13 supporting the abandonment had he known that the Odd Fellows would deny the existence of
14 easement rights through their property to the Boy Scouts. (R. at 766: 4-11; 772:2-24).
15 Furthermore, such reliance was reasonable and foreseeable. (See Plaintiff Alameda Boy Scouts
16 Foundation’s Post-Trial Brief, 18:20-28, 19:1-5). The Boy Scouts, as a result of their reliance
17 upon such promise, suffered injury. (See Plaintiff Alameda Boy Scouts Foundation Post-Trial
18 Brief, 19:6-23). Accordingly, the Court should invoke promissory estoppel to grant the Boy
19 Scouts an easement over Wheeler Road and Jordan Way.

20 **E. The Doctrine Of Equitable Estoppel Bars The Odd Fellows From Denying The Boy**
21 **Scouts Easement Rights Over Its Property**

22 Defendants should be estopped from denying an easement to Plaintiff because the
23 Plaintiff relied upon the representations of Defendants in supporting the abandonment of the
24 Long Barn Sugar Pine Road. The Odd Fellows contend that they did not purposely lead the Boy
25 Scouts to support abandonment of the road or have superior knowledge regarding the facts.
26 However, the facts are to the contrary.

27 **Wherever a party has, by his own statement or conduct, intentionally or**
28 **deliberately lead another to believe a particular thing true and to act upon**
such belief, he is not, in any litigation arising out of such statement or
conduct, permitted to contradict it.

1 Cal. Evid. Code § 623. (Emphasis added.)

2 The Odd Fellows petitioned the County of Tuolumne to abandon a portion of Long Barn
3 Sugar Pine Road in 1991. (See Exhibits 42, 76). Soon thereafter, the Odd Fellows approached
4 the Boy Scouts for support of the petition to close the County Road. (R. at 689: 15-24; 765: 20-
5 25; 766: 5-11; 767: 13-16). The Boy Scouts responded by letter on December 18, 1991 stating
6 "...the Alameda Council has no objection to your proposal providing that we can *maintain*
7 *easement rights through the property* to access our camp facility." (See Exhibit 28). (Emphasis
8 added.) Recognizing the importance of the easement rights, Mr. Smith sent a letter to Mr. Kidder
9 on February 7, 1992 stating "[i]t has never been our position to deny the scouts access to their
10 property, via our roads." (See Exhibit 23). Not only does Mr. Smith's letter acknowledge that
11 the Boy Scouts maintained easement rights through the property, it also further encourages the
12 Boy Scouts to support the abandonment of the County Road based upon this premise.

13 In reliance on the facts presented to the Boy Scouts by the Odd Fellows, the Boy Scouts
14 offered their support for the road closure. Although the Odd Fellows argue that the Boy Scouts
15 would have attempted to abandon this road on their own, it makes little sense for the Boy Scouts
16 to purposely seek to abandon a County Road if that truly is the only available means of ingress to
17 and egress from the property. The Odd Fellows knew that if their petition for abandonment of
18 the County Road was granted there would not be any public access to Camp Cedarbrook. (See
19 Exhibits 42, 71, 76: maps). Nonetheless, the Odd Fellows represented that they would not "deny
20 the scouts access." (See Exhibit 23).

21 Furthermore, Defendants attempt to assert that a heightened fraudulent intent is necessary
22 for estoppel cases relating to real property. However, the Defendants have not set forth any legal
23 authority that this rule is true for easements. An easement holder does not gain title to the
24 property, but merely gains a right to use the property in a certain manner. Therefore, Defendants'
25 attempt to increase the standard is improper and unsupported by any legal authority.
26 Accordingly, Defendants should be equitably estopped from denying the Boy Scouts the
27 easement rights that they have properly obtained.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.
CONCLUSION

In consideration of the foregoing, Plaintiff Alameda Boy Scouts Foundation respectfully requests that this Court enter its Judgment establishing that the Boy Scouts have a prescriptive easement, an easement by necessity, and an easement by implication over Wheeler Road and Jordan Way. Plaintiff also respectfully requests that this Court enter its Judgment that Odd Fellows Sierra Recreation Association, Inc. is barred from denying Plaintiff its easement rights by promissory estoppel and equitable estoppel.

DATED: October 18, 2004

DAMRELL, NELSON, SCHRIMP
PALLIOS, PACHER & SILVA

By: Nicole Delerio
Roger M. Schrimp
Nicole D. Delerio
Attorneys for
Alameda Boy Scouts Foundation

G:\JHFAS\Boy Scouts-14535\Trial\Reply to Post Trial Brief.wpd

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in Stanislaus County, California. I
3 am over the age of eighteen (18) years and not a party to this action; my business address is 1601
I Street, Fifth Floor, Modesto, California 95354.

4 On October 18, 2004, I served the following document: **PLAINTIFF ALAMEDA BOY
5 SCOUTS FOUNDATION'S REPLY TO DEFENDANTS' POST TRIAL BRIEF AND
6 CLOSING ARGUMENT** by placing a true copy thereof enclosed in a sealed envelope and
served in the manner and/or manners described below to each of the parties herein and addressed
as follows:

7 Roger A. Brown, Esq.
8 38 North Washington Street
9 P.O. Box 475
Sonora, CA 95370
Fax: (209) 533-7757

Honorable William H. Polley
Department One
41 West Yaney Street
Sonora, CA 95370
Telephone: (209) 533-5555

10
11 **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business
12 address, addressed to the addressee(s) designated. I am readily familiar with Damrell,
13 Nelson, Schrimp, Pallios, Pacher & Silva's practice for collection and processing of
correspondence and pleadings for mailing. It is deposited with the United States Postal
Service on that same day in the ordinary course of business.

14 X **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the
addressee(s) designated above.

15 **BY OVERNIGHT COURIER SERVICE (Federal Express):** I caused such
16 envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

17 **BY FACSIMILE:** I caused said document to be transmitted to the telephone number(s)
18 of the addressee(s) designated.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

Executed at Modesto, California on October 18, 2004.

21 
22 _____
Linda Caldera