

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1856

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

AMERCO REAL ESTATE COMPANY,

PLAINTIFF-APPELLANT,

v.

**525 PROPERTIES LIMITED PARTNERSHIP,
SMART-SMR OF ILLINOIS, INC. AND
SCHNEIDERS-VETTER GLASS COMPANY, INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Amerco Real Estate Company appeals from a grant of summary judgment in favor of 525 Properties Limited Partnership, Smart-SMR of Illinois, Inc., and Schneiders-Vetter Glass Company, Inc. (collectively “525”). Amerco claims the trial court erred because: (1) it held that the permanent

structures erected in the easement area did not violate Amerco's easement rights as a matter of law; (2) the trial court failed to address the affirmative defenses asserted by 525; and (3) the trial court should have granted Amerco an injunction ordering that the structures be removed. Because the structures erected on the easement do not constitute an unreasonable interference with Amerco's easement rights, and because the trial court was not required to address the affirmative defenses, we affirm.

I. BACKGROUND

On February 19, 1979, 525 and Universal Foods Corporation entered into an easement agreement, which created an easement for ingress and egress. Amerco succeeded to the rights of Universal under the easement agreement. The easement provided both Amerco and 525 access to the shared property "for purposes of ingress and egress" and "for the turnaround of vehicles to enable [each party] to fully utilize the loading facilities" The agreement also stated that "[e]ach party hereto agrees that it will not obstruct any portion of the easement area located upon its property so as to unreasonably interfere with the use of the easement area by the other party hereto."

In November 1994, 525 completed construction of a tower, building, and fence within the easement area. 525 also placed certain trailers permanently within the easement area. As a result, Amerco filed this lawsuit seeking injunctive relief. The lawsuit specifically sought an order directing 525 to remove the structures and the trailers from the easement area.

Amerco filed a motion for summary judgment. In response, 525 filed its own motion for summary judgment seeking dismissal of the complaint. The trial court denied Amerco's motion, ruling that the structures and the trailers

in the easement area did not constitute an unreasonable interference and, therefore, did not violate the easement agreement. Based on Amerco's stipulation that it would not be offering any additional evidence on the issue of "unreasonable interference," but rather would solely be relying on its theory that the mere placement of these structures in the easement area constituted a violation of the agreement, the trial court granted summary judgment in favor of 525 and dismissed Amerco's complaint. Amerco now appeals.

II. DISCUSSION

This case comes to us after a grant of summary judgment. The standards governing our review of summary judgments have been repeated often and, therefore, need not be repeated here. *See Transportation Ins. Co. v. Hunzinger Constr. Co.*, 179 Wis.2d 281, 289, 507 N.W.2d 136, 139 (Ct. App. 1993). Our review is *de novo*. *See id.*

The first step in reviewing a case involving an alleged violation of an easement is to review the language of the easement agreement, *see Rikkers v. Ryan*, 76 Wis.2d 185, 188, 251 N.W.2d 25, 27 (1977), to determine the purpose for which the easement was created, *see Hunter v. McDonald*, 78 Wis.2d 338, 342-43, 254 N.W.2d 282, 285 (1977). The easement agreement sets forth the parties' rights. *See id.* As noted, the easement was a reciprocal one between the parties, granting each side access for ingress and egress and for loading. The agreement also specifically provided that each party would not "obstruct any portion of the easement area ... so as to *unreasonably interfere* with the use ... by the other party" (Emphasis added.)

In moving for summary judgment, Amerco has failed to submit any evidence demonstrating that the obstruction created by 525 "unreasonably

interferes” with Amerco’s use of the easement. There was no evidence that the structures or trailers interfered in *any* way, much less in an *unreasonable* way, with Amerco’s use of the easement. Amerco, in fact, stipulated that it would not introduce evidence showing that the structures constituted an unreasonable interference.

Rather, Amerco relies on its contention that the mere placement of the structures within the easement area constituted a violation of the easement agreement. In support of this argument, Amerco cites various cases from other jurisdictions. We see no need to resort to a review of those cases, as Wisconsin law clearly sets forth the relevant standards to be applied.

As noted, Wisconsin case law requires the court to first review the language of the easement agreement to determine the rights of the parties. Moreover, the language utilized in the easement agreement at issue here is consistent with our case law. Wisconsin case law requires a finding of substantial impairment or unreasonable interference with easement rights before a court can find that a violation of the easement occurred. *See Hunter*, 78 Wis.2d at 343, 254 N.W.2d at 285. (“While the owner of property subject to an easement may make all proper use of his land including the right to make changes in or upon it, nevertheless such owner may not unreasonably interfere with the use by the easement holder.”)

Thus, the rule in Wisconsin is whether the holder of the easement can use the easement as the parties intended it would be used or whether the obstruction constitutes an unreasonable interference. This case law, consistent with the language of the specific easement agreement at issue here, controls.

Because Amerco failed to offer any facts demonstrating that 525's obstructions constituted an unreasonable interference and stipulated that it would never be setting forth such proof, the trial court did not err in denying Amerco's motion for summary judgment and granting 525's motion for summary judgment. There was no evidence that 525 violated the easement agreement.

Amerco also argues that the trial court should have addressed 525's affirmative defenses and should have found them deficient as a matter of law. 525 had asserted that even if Amerco had established a *prima facie* case for violation of the easement agreement, it should not prevail because its claim was precluded by consent, estoppel, waiver, laches, unclean hands, and the doctrine of extinguishment. The trial court did not address these affirmative defenses because it ruled, as a matter of law, that Amerco failed to make a *prima facie* showing that there was a violation of the easement. This ruling was based on Amerco's failure to offer any evidence that the structures created an unreasonable interference, together with Amerco's stipulation that it would not, at that time or in the future, be introducing any evidence that the structures placed in the easement area by 525 created an unreasonable interference with Amerco's use of the easement.

We have reached the same conclusion as the trial court. Based on the absence of any evidence that the structures created an unreasonable interference, and based on Amerco's representation that it would not be introducing any such evidence, we hold that there was no violation of the easement agreement. Accordingly, it is not necessary to address any affirmative defenses because Amerco's claim has already been defeated. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938).

Finally, Amerco contends that the trial court should have granted its request for an injunction ordering 525 to remove the structures from the easement. There was no basis for the trial court to do so because the structures' presence did not violate the easement agreement. Therefore, we reject this contention as well.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

