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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2304-16T4

MAYWOOD REALTY ASSOCIATES,
LLC, and VANGUARD SURGICAL
CENTER, LLC,

Plaintiffs-Appellants,

v.

JOS. L. MUSCARELLE INVESTMENT
CO., INC.,

Defendant-Respondent.

Argued telephonically April 20, 2018 –
Decided May 1, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-6308-16.

Bob Kasolas argued the cause for appellants
(Brach Eichler, LLC, attorneys; Bob Kasolas,
of counsel and on the briefs).

Joseph B. Fiorenzo argued the cause for
respondent (Sills Cummis & Gross, PC,
attorneys; Joseph B. Fiorenzo, of counsel and
on the brief; Michael J. Sullivan, on the
brief).

PER CURIAM

Maywood Realty Associates, LLC (MRA) and Vanguard Surgical Center, LLC (VSC), (collectively plaintiffs) appeal from an August 22, 2016 order granting Jos. L. Muscarelle Investment Co., Inc. (JLM) summary judgment on count one of plaintiffs' amended complaint. We affirm.

MRA owns 113 West Essex Street, Maywood, New Jersey (MRA property). VSC is a tenant of the MRA property, and operates a medical surgical practice in the building situated on the property. JLM owns 99 West Essex Street, Maywood, New Jersey (JLM property). The MRA property and JLM property are adjacent and contiguous to one another along West Essex Street.

As a result of various condemnation actions by the State, JLM and MRA share a driveway that provides ingress to and egress from both properties. MRA and MRA's predecessor were granted easement rights to access the property by means of the shared driveway. The easement also entitled JLM to shared use of the driveway and charged it with maintaining the shared driveway. MRA is obligated to reimburse JLM for all reasonable maintenance costs.

The shared driveway is perpendicular to West Essex Street and is marked by a traffic light. An entrance ramp to Route 17 is in close proximity to the intersection of the shared driveway and

West Essex Street. Motorists have mistakenly entered the shared driveway, believing that it was the Route 17 entrance ramp.

JLM placed large planters to create a median in the shared driveway to prevent motorists from mistaking the easement for the Route 17 entrance ramp. In 2011, JLM replaced the planters with three removable bollards.

In February 2015, plaintiffs filed their complaint against JLM alleging that the installation of the bollards breached their rights to the easement, and that JLM failed to properly maintain the shared driveway.¹ JLM filed a counter-claim alleging trespass.

Plaintiffs moved for partial summary judgment on JLM's breach of easement rights claim, and JLM moved for summary judgment.² The judge granted JLM's motion for summary judgment by dismissing plaintiffs' allegation that JLM breached their easement rights.³

Plaintiffs allege that the judge erred in granting JLM summary judgment because the undisputed facts show that the installation of the bollards unreasonably changed the character of the easement

¹ Plaintiffs amended their complaint to add a third count for nuisance; yet later amended the complaint, and removed the nuisance claim.

² JLM agreed to dismiss its counter-claim for trespass.

³ The judge denied JLM's motion for summary judgment regarding JLM's failure to properly maintain the easement. The issue was transferred to the Law Division where the parties settled and filed a consent order.

and burdened plaintiffs' use. Plaintiffs also contend that the judge erred in admitting and referencing improper evidence.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div. 2013). We owe no deference to the motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We review the evidence presented in the light most favorable to the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Plaintiffs argue that JLM provided improper lay witness testimony regarding a reduction in trespassing vehicles entering the shared driveway. N.J.R.E. 701 permits lay witness testimony to be admitted if it "(a) is rationally based on the perception of the witness and (b) will assist in understanding the witness' testimony or in determining a fact in issue." "[A] lay witness may give an opinion on matters of common knowledge and observations." State v. Bealor, 187 N.J. 574, 586 (2006) (quoting State v. Johnson, 120 N.J. 263, 294 (1990)). Expert testimony is required when the topic in controversy involves a subject matter that is "so esoteric that jurors of common judgment and experience cannot form a valid judgment." Butler v. Acme Markets, Inc., 89 N.J. 270, 283 (1982).

Both JLM's president and employee testified that in their opinion, based upon personal observation, they believed that less vehicles entered the property partially due to the installation of the bollards. The testimony is not beyond the common knowledge of any fact-finder, and does not require an expert to determine if less cars have entered the property. The judge did not err in considering the testimony.

Plaintiffs also contend that the judge improperly relied upon hearsay statements by the Maywood Fire Department Chief and evidence of a fire truck entering the property that was not disclosed during discovery. We agree with plaintiffs that both the hearsay statements and evidence were improperly considered in granting JLM's summary judgment motion. We exclude the evidence in our de novo review.

An easement is a "nonpossessory incorporeal interest in another's possessory estate in land, entitling the holder of the easement to make some use of the other's property." Leach v. Anderl, 218 N.J. Super. 18, 24 (App. Div. 1987). The landowner burdened by the easement, or the servient owner, "may not, without the consent of the easement holder, unreasonably interfere with the latter's rights or change the character of the easement so as to make the use thereof significantly more difficult or burdensome." Tide-Water Pipe Co. v. Blair Holding Co., 42 N.J.

591, 604 (1964). "Equally well recognized is the corollary principle that there is, arising out of every easement, an implied right to do what is reasonably necessary for its complete enjoyment, that right to be exercised, however, in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner." Ibid.

A landowner should "not be burdened to a greater extent than was contemplated or intended at the time of the creation of the easement . . . and the use of the easement must not unreasonably interfere with the use and enjoyment of the servient estate." Hyland v. Fonda, 44 N.J. Super. 180, 189 (App. Div. 1957) (quoting Lidgerwood Estates, Inc. v. Public Serv. Elec. & Gas Co., 113 N.J. Eq. 403, 407 (Ch. 1933)).

Plaintiffs assert that the installation of the bollards have altered the traversable width of the shared driveway and the turning radius, making it difficult for vehicles to enter the properties. Plaintiffs also contend that many vehicles have hit the bollards, or have been forced to back up onto West Essex Street before entering the properties.

The record reveals that the bollards are six inches wide and placed in the center of the shared driveway. The bollards are located within the pre-existing double yellow lines that divide the ingress and egress lanes, and if necessary, may be removed by

one person. Although the record evinces that the bollards have been occasionally struck by vehicles, plaintiffs have failed to demonstrate that any patients, vendors or employees of MRA, VSC, or JLM have been unable to enter the properties due to the bollards. Lastly, plaintiffs also failed to provide expert traffic testimony regarding the traversable width of the shared driveway, and the effect of the bollards in accessing the properties.

The language of the easement is clear and unambiguous. JLM has the right to maintain the easement. Although the language of the easement does not expressly state that the installation of the bollards is permitted, JLM argues the installation was necessary to maintain the easement from being confused as the Route 17 entrance ramp. Thus, JLM has exercised its "implied right to do what is reasonably necessary for its complete enjoyment, . . . in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner." Tide-Water Pipe Co., 42 N.J. at 604. The record fails to show any material evidence to demonstrate that the bollards have "unreasonably interfere[d] with [plaintiffs'] rights or change[d] the character of the easement so as to make the use thereof significantly more difficult or burdensome." Ibid. Reviewing the record in the light most favorable to plaintiffs, we conclude the judge properly granted JLM's motion for summary judgment.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

A handwritten signature in black ink, appearing to be 'JWA', is written over the text 'file in my office'.

CLERK OF THE APPELLATE DIVISION