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STATE COURT OF RHODE ISLAND
PROVIDENCE, S.C

SUPERIOR COURT

TABATHA GLAVIN,
PLAINTIFF

CASE NO:

v.

CITY OF EAST PROVIDENCE,

PETER GRACZKOWSKI,

AND UNKNOWN
PARTIES OF INTEREST,

DEFENDANTS

CIVIL COMPLAINT

Tabatha Glavin (“Glavin” or “Plaintiff”), by and through her undersigned counsel, Lorelei Flanagan, Esquire and The Phillips Law Offices, LLC, hereby brings this civil action against City of East Providence, Peter Graczykowski, City Manager, and all other unknown parties of interest (“Defendants”), RI Gen Laws §8-2-14 RI Gen Laws §§ 9-4-2 and 9-11-8, et seq, and states as follows:

JURISDICTION AND VENUE:

1. This Court has jurisdiction over this matter pursuant to RI Gen Laws § 8-2-14.
2. Venue is proper pursuant to RI Gen Laws §§ 9-4-2 and 9-11-8.

PARTIES

3. Plaintiff, Tabatha Glavin, is a resident of Rhode Island and owns the property located at 61 White Avenue, Riverside, RI 02915.

11-29-11

4. Defendant, City of East Providence, is a city of Rhode Island with its City Hall located at East Providence City Hall, 145 Taunton Avenue, East Providence, RI 02914.

5. Defendant, Peter Graczykowski, City Manager of East Providence, is the City Manager of the City of East Providence and is the enforcing agent for the City of East Providence on this matter.

6. Due to the uncertainty of records on this matter, Plaintiff is presenting this complaint with unknown potential parties to ensure that this matter is noticed appropriately and that all parties are provided an opportunity to be heard.

FACTS:

7. In August 2009, Plaintiff purchased her property located at 61 White Avenue Riverside, RI 02915 (“Residence”).

8. At the time of purchase, the Residence was a traditional-looking property, without any signs or notices of any possible easement or right of way owned by any other third party. Additionally, the warranty deed (“Deed”) issued on August 31, 2009 provided to the Plaintiff did not notice any easements nor rights of way held by any third party. A copy of the warranty deed is hereby attached and herein incorporated as **Exhibit 1**. The Deed did note a “gangway” but did not disclose who owned the “gangway” nor was the “gangway” marked in any way to provide notice as to the specific location of where it was set forth.

9. The Plaintiff, upon moving into her Residence, maintained all portions of the yard of the Residence, as did the prior owner, by cutting the grass as well as weeding and picking up leaves from the Japanese maple tree.

10. On or about October 2009, the Plaintiff installed a fence on the back portion of her Residence due to the dangerous steep incline. To understand how dangerous the steep incline is, it is filled with brush and trees and is impassable without a machete to cut away the trees and brush and then one must use rope and harness to repel down to the beach. Plaintiff also installed a fence that attached to her neighbor's fence ("Front Fence"), along with a fence in the inner section of her property to enhance the safety of her Residence. The Plaintiff's concern was the attractive nuisance aspect of the view of the Narragansett Bay from the backyard of the Residence, as well as the fact that she has two dogs that she was concerned might fall over the dangerous incline. Prior to beginning the work on all the fences, Plaintiff inquired with her contractor whether a permit would be required to erect the fence. Plaintiff was assured by her contractor that no permit was required and that the fence was being properly installed on the Plaintiff's Residence.

11. On the same day of installment Plaintiff's neighbor, Liza Duvall of 85 White Ave., Riverside, RI 02915, attacked the Plaintiff verbally as well as threatened the Plaintiff physically by demanding that the Plaintiff remove the front portion of her fence, due to an easement owned by the City of East Providence. Plaintiff did not know how to react to the hostile nature of Ms. Duvall's verbal and physical threatening posture. In fact, the Plaintiff believed Ms. Duvall was mentally impaired with how she acted that the Plaintiff chose to ignore the outburst and asked Duvall to exit her property. However, Ms. Duvall

retaliated against the Plaintiff by calling the City of East Providence and reporting that Plaintiff had installed a fence.

12. Shortly after the incident with Ms. Duvall, Erik Skadberg, the City Engineer for the City of East Providence, spoke with the Plaintiff at her Residence. Mr. Skadberg informed the Plaintiff that he had received a report and he would need to review the matter before he could give the Plaintiff any further information. It was not clear to Mr. Skadberg, from his initial review of the situation, that the report of blocking a right of way was correct. As Mr. Skadberg indicated that there were no clear indicators of any alleged right of way or even that the City of East Providence had an interest with respect to the complaint by Ms. Duvall.

13. On March 4, 2010, Mr. Skadberg issued a letter to the Plaintiff noting that the Front Fence was in violation of City Ordinance 10-2 and 14-3. A copy of the letter of March 4, 2010 is hereby attached and herein incorporated as **Exhibit 2**. Mr. Skadberg also provided forms in his letter on how to apply for abandonment of the right a way to the Plaintiff. Upon receipt of the letter, the Plaintiff hired undersigned counsel's firm to work out this issue with the City of East Providence.

14. Plaintiff's counsel communicated amicably with the City Solicitor at the time, James Briden, about this matter. The main issue was the fact that the Plaintiff, as well as those who owned the property prior to the Plaintiff, maintained the property that is the alleged right of way (hereafter "Subject Easement"). David Tanury, Plaintiff's neighbor noted that the City of East Providence had not maintained the alleged right of way for over 50 years. A very mature Japanese red maple tree that is at least 25 years old impedes

the Subject Easement is solid proof of the failure of the City of East Providence to maintain the Subject Easement.

15. Additionally, counsel discussed the issue of failure to provide actual notice for Plaintiff to know of this Subject Easement. The fact that there were no markings such as signs, stairs, or fences that would demonstrate ownership by the City questioned the validity of the claim by the City. More importantly, there were no signs, stairs, fences, or any other device to provide for the safety of the City's citizens, including the Plaintiff. Plaintiff's position, both at the time of discussions with Mr. Briden and currently, is that if the City of East Providence does own this Subject Easement that the Front Fence is blocking, the Plaintiff would apply pursuant to the letter of March 4, 2010 for abandonment under City Ordinance 14-22. Once allowed to pursue that process as a citizen of East Providence and that application was denied, the Plaintiff would remove the fence without issue.

16. However, these outward issues and outright failure of maintenance by the City raised the question of whether the City of East Providence actually owned the Subject Easement. Plaintiff's counsel as well as Mr. Briden looked into the issue of ownership of the Subject Easement. Plaintiff's counsel could not locate any conveyances from the original owner, John Carpenter, of the neighboring property 59 White Ave as well as the Residence, to the City of East Providence of any "right of way" or a "gangway." The original deed ("Original") from Mr. Carpenter to Mr. George and Rebecca Whitaker dated October 15, 1920, does not mention any rights of way owed by the City of East Providence nor does it mention a gangway as a boundary to the Residence. The Original

provides for only easement rights to the Plaintiff's Residence. A copy of the Original Deed is hereby attached and herein incorporated as **Exhibit 3**.

17. Nevertheless, Mr. Skadberg provided to both Plaintiff's counsel and Mr. Briden a view of a map of the area that was *never recorded to demonstrate ownership* by the City of East Providence of the Subject Easement. The map does not provide any indication of ownership or proof of conveyance of ownership to the City of East Providence. No copy of the map was ever provided to Plaintiff's counsel nor was any other document provided to Plaintiff's counsel to demonstrate ownership.

18. As a result, Mr. Briden made a determination to keep the fence as status quo for safety reasons as well as the fact that clear ownership was undetermined. The ruling by the City was issued after nearly a half year of review and research by both Plaintiff's counsel and Mr. Briden in November 2010. A copy of the letter outlining the decision is hereby incorporated and herein incorporated as **Exhibit 4**. Due to this decision, the Plaintiff did not pursue the process for abandonment.

19. On August 18, 2011, Mr. Skadberg issued another letter to the Plaintiff. Mr. Skadberg was aware of Mr. Briden's decision and agreement made with the Plaintiff. Unfortunately, Mr. Briden was removed from his position as City Solicitor. Additionally, Mr. Skadberg did not agree with Mr. Briden's position to keep the Front Fence status quo.

20. Upon receiving the letter from Mr. Skadberg, Plaintiff's counsel again contacted the City of East Providence and spoke with assistant City Solicitor, Gina Dicenso, Esquire. Again, Plaintiff's counsel by conversation and in letter requested proof of ownership by the City of East Providence. A copy of the letter of August 31, 2011 is

hereby attached and herein incorporated **Exhibit 5**. Ms. Dicenso was very amicable to work with and attempted to resolve this matter as it legally should have been undertaken pursuant to the Rhode Island legal ethics.

21. Unfortunately, this matter grew out of control with Robert and Liza Duvall's constant complaints to the City. The Plaintiff had to endure harassment not only by the Duvalls but by her City councilmen Michael D. Digioia and William J. Conley, Jr with demands to remove the Front Fence. The Plaintiff's city councilmen met with the Duvalls but not with the Plaintiff regarding this matter. Neither Mr. Digioia nor Mr. Conley, both attorneys, listened to the request of the Plaintiff to simply confirm ownership by the City of East Providence. Nor did either one provide any due diligence before they took action.

22. As a result of the councilmen's as well as the many complaints by the Duvalls to the City about this Front Fence has made a proposal to the Plaintiff that is simply to remove the fence. Apparently, the complaints and the representatives complaints are too much to handle. The City Manager, Peter Graczykowski was requested again by Plaintiff's counsel to demonstrate proof of ownership. Mr. Graczykowski noted that the map that was *never recorded nor demonstrates ownership* was the basis for his belief that the City could enforce this issue. However, the City Manager did indicate that he would have to refer this matter to his legal department to determine if any other documentation could be provided to Plaintiff. Nothing has been provided to counsel as of date of this Complaint. Plaintiff's counsel sent on November 23, 2011 another letter requesting ownership information. A copy of the letter is hereby attached and herein incorporated at **Exhibit 6**.

23. Plaintiff's counsel conducted a title search as well as general research on this matter and has not been able to find any document conveying the Subject Easement to the City of East Providence. Plaintiff only wants to ensure that her rights under Rhode Island law are being protected. Plaintiff's request for this information is two fold: 1. To be able to file the appropriate paperwork with the City and exercise her due process to do so; and 2. To be able to determine the validity of the City's claim and to act in accordance with the law.

24. The fact is that pursuant to Rhode Island law, a person or entity, city or corporation, making a claim to a property must provide proof of ownership. Plaintiff is filing this action to determine title and if required to quiet title to unfounded claims. Most importantly, the Plaintiff is filing this complaint to protect her rights as a citizen of the State of Rhode Island as well as the City of East Providence. Plaintiff simply desires to know the real truth of the situation so that she may finally be able to exercise her rights of due process afforded her under the law.

COUNT I:

**QUIET TITLE UNDER
RHODE ISLAND LAW CHAPTER 34-16**

25. The Plaintiff incorporates by reference the allegations contained in ¶¶ 1-24, *supra*.

26. The legal description of the subject property is as follows: Beginning at a point in the westerly line of a five foot gangway, said point being N. 84° 05' 40" W. one hundred twenty nine and 82/100 (129.82) feet from a point in the westerly line of Bullocks Point Avenue is S. 05° 54' 20" W. seven hundred thirty-five and 78/100 (735.78) feet from a

granite bounded set at the intersection of said westerly line of Bullocks Point Avenue with the southerly line of the Pleasant Bluff Plant #1; thence running N. 03 19' 40" W. bounded easterly by said twenty foot street thirty nine and 29/100 (30.29) feet; thence running S. 89 11' W about one hundred forty five (145) feet to Narragansett bay; thence running southerly bounded westerly by said Narragansett Bay forty (40) feet to said five foot gangway; thence running N 89 11' E. about one hundred forty eight (148) feet to beginning. This property is commonly known as 61 White Avenue.

27. Plaintiff obtained the rights to the above referenced land, with all buildings and improvements situated on, together with all riparian and littoral rights in to Narragansett Bay and together with the rights or easement to use for highway purposes the Subject Easement through the Deed.

28. The City of East Providence is claiming ownership of the Subject Easement although the deed appears to grant Ms. Glavin the right to use the strip of land. Additionally, the City of East Providence has been unwilling to provide proof of actual ownership of this land through a valid conveyance to Plaintiff's counsel, despite numerous requests for such documentation. Plaintiff's counsel has diligently searched for evidence of any conveyance of the Subject Easement to the City of East Providence, however has been unable to find any documentation.

29. Should this Honorable Court determine that the City of East Providence does not have property rights in the Subject Easement, the interest of adjoining landowners may become adverse to Ms. Glavin's interest.

30. The names and last known addresses are referenced in the "Parties" section of this suit.

31. Plaintiff has tried by computer search, white page search and now by detective search.

32. The Plaintiff has owned the property located at 61 White Avenue since the date the Deed was executed on August 31, 2009. Previous to that date the property was acquired by Aurora Loan Services, LLC by deed on August 4, 2009; by James Pavao by deed on July 19, 2007; by Joel Benson by deed on August 11, 2005; and Jean Buchanan by deed on January 10, 1988. Since taking possession of the property, the Plaintiff has maintained the land in question as did the other prior owners noted, cut the grass, and raked the leaves that fall from the Japanese maple tree that sits in the middle of the Subject Easement.

33. By way of proof that the City of East Providence owns the Subject Easement, the City has offered an unrecorded plat map, which has been used to justify the existence and location of the Subject Easement. The Plaintiff is not contesting that an easement exists, she is contesting that the City has the right to exert control over the Subject Easement. Therefore, producing a plat map, which clearly states that it was not recorded, does not demonstrate ownership or the right to exert control.

34. The City has not, despite repeated requests from Plaintiff's counsel, produced any documentation that it owns the Subject Easement. The fact that no conveyance of this land has been offered, together with the fact that a title search did not demonstrate ownership by the City and the fact that counsel has not discovered a conveyance to the City renders it unlikely that a conveyance was in fact made. Noting that no eminent domain is of record.

35. The City continues to attempt to exert control over the Subject Easement, threatening to fine the Plaintiff for non-compliance with its requests that she take down the Front Fence. Plaintiff was informed on November 22, 2011, of the City's decision that her fence would need to be removed immediately, and instituted this action to determine if the City has the authority to do so. See Exhibit 4.

COUNT II:

ADVERSE POSSESSION

36. The Plaintiff incorporates by reference the allegations contained in ¶¶ 1-35, *supra*.

37. Plaintiff gained her rights in the Subject Easement by way of Warranty deed on August 31, 2009. Previously, the following had ownership to the Subject Easement: Aurora Loan Services, LLC by deed on August 4, 2009; by James Pavao by deed on July 19, 2007; by Joel Benson by deed on August 11, 2005; and Jean Buchanan by deed on January 10, 1988 (together the "Landowners").

38. During that time period, the Landowners treated the Subject Easement as no different from the rest of their property. The lawn was mowed and the area was maintained just as the rest of the property.

39. A Japanese maple tree was planted directly in the path of the Subject Easement by one of the Landowners, and the land continued to be treated as a part of the property at 61 White Avenue. The fact that the tree was planted and maintained by the Landowners is adverse to any other party who may claim an interest in the Subject Easement.

40. The Subject Easement has not been used by the public, nor by any other property owner who may have a right to use it granted through a deed, for significantly longer than 10 years. No signs or fences distinguish this property as being owned or for use as an easement. The neighboring property owner, David Tanury, confirms that no one has used this Subject Easement for any purpose.

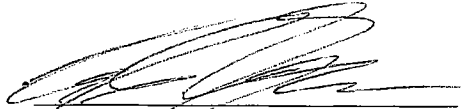
41. The Subject Easement has not been left vacant, and has been used as if were a part of the property located at 61 White Avenue for significantly longer than 10 years. The Subject Easement is now part of the backyard and is used by the Plaintiff for her own pleasure and enjoyment. No one outside of the Landowners are claiming ownership to the Subject Easement or effectuating any rights to use the property as an easement.

42. No party who may have had an interest in the Subject Easement, other than Governmental Defendants and the Landowners, have attempted to exert control over or have enjoyment of the subject easement.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a judgment:

- (i) Declaring that the City of East Providence does not have any property rights in the subject easement;
- (ii) Declaring that the Plaintiff has the property rights in the subject easement;
- (iii) Removing the cloud on Plaintiff's title relative to the subject easement;
- (iv) Declaring Plaintiff as owner of the subject easement; and
- (v) Granting such other and further relief as the Court deems proper.

Respectfully submitted,



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