Basic Fact Pattern for Teaching Demonstration at NIFTEP

MEMORANDUM

TO: Associates Assigned to Wescott Matter, File 2011-31SO

FROM: Sandra O’Connor

DATE: March 16, 2011

RE: Casey Wescott Matter – Summary of Initial Conversation with Wescott and Preliminary Analysis

On March 15, 2011, I spoke with Casey Wescott. Casey contacted us about Dena Rossow, a Fresno lawyer who was involved in Casey’s purchase of 5 acres near Shaver Lake in Fresno County. Casey paid $130,000 for the property and is very angry because Rossow incorrectly told Casey that the road adjacent to the property was private, but in fact it is public. Casey’s brother and sister-in-law bought the adjacent five acres, and they had planned to build two secluded cabins. Now that plan has been ruined.

Casey is angry because Rossow was paid $6,000 to take care of the purchase, and Casey feels they ended up with property that they did not want. Casey wants to know if Rossow can be sued. (Casey is not interested in suing Katherine Sampson, the seller of the property because she has moved to Mexico. Casey thinks it would be too hard to go after her.) Finally, Casey wants to know if there is anything else that can be done to punish Rossow.

Casey is part of a very close family, particularly Casey’s brother Joe and his wife, Hillary, and their three children. In May, 2010, Casey found a piece of property in Fresno County near Shaver Lake. All three visited this property, and it seemed ideal other than a road on south side of property, which made it less private that they preferred. It was for sale by owner; no broker was involved. That seemed like an advantage because they could save money on commissions. Since they each had previously bought property (their houses), Casey thought they could manage without a broker. The property was about 10 acres, and each could own half. Casey continued to look at other property in June and July, but didn’t find anything better.

On July 26, both families went up to the property again and decided to contact the seller, Katherine Sampson. They first inquired about the road, and Sampson told them that it was a private road meaning that it wouldn’t have much traffic. This being a more rural, laid back area, they handled it orally with Ms. Sampson at a meeting at her home in Madera, California, on July 29. They agreed to pay $230,000 for the property. It was expensive because it has a stream running through it and utilities were available (water, phone, electricity, etc.) for extension. It is also developable*.* During this meeting they discussed how they should proceed to handle the sale. Rather than involve an escrow company, Ms. Sampson suggested that they hire a lawyer who could do the deal just as easily since there was no acrimony. She was anxious to have a quick sale because she was retiring and leaving the area permanently. They did not sign a written contract at that meeting because they all agree that a lawyer could reduce the understanding to writing.

On August 3, Joe, Hillary and Casey met with Dena Rossow, a lawyer in Fresno, the nearest big city and county seat. At the meeting the three told Ms. Rossow about their plans for the property, the desire for privacy and quiet, and their concern about the road to the south. She said that she was familiar with the area and believed that most of the roads in the areas were private. She also said that if Sampson told them that the road was private then she was sure that it must be.

She also inquired about how they planned to structure the transaction. Casey had thought about this a bit and was somewhat concerned because Casey had a poor credit rating. Casey had run up some big debts at the time of the divorce and while they were being paid down, Casey’s credit rating had suffered. Thus if the three of them applied for a loan together, Casey’s credit rating might result in higher interest rates or even a rejection. To avoid this problem, it was orally agreed that Joe and Hillary would buy the property from Sampson and that they would then sell Casey one-half the property a month later. Hillary had inherited some money from her grandmother and used that to pay cash for the property. Furthermore, only Joe and Hillary signed the engagement letter with Rossow and were listed as the buyers for Title Insurance and on the initial deed. In addition, Casey agreed to split the legal fees*.*  Rossow knew about the fee arrangement. A copy of the engagement letter is attached.

On August 12, Casey called Ms. Rossow to speak to her about the transaction. She had asked to see Casey’s final divorce papers and settlement agreement, and Casey wanted to be sure that she had received them. She said she want to see those documents to make sure that Casey’s ex-spouse had no claim on the property once Casey bought it. Casey also wanted further assurance that she saw no problems with the way they had structured the deal, i.e., that Casey’s brother and sister-in-law would take title and then they would sell Casey half the land. She said she couldn’t see any problems. The subject of the road came up again. She again said that most roads in that area were private and that Casey shouldn’t worry about privacy and serenity. She also sent Casey a follow-up letter to the conversation, which is attached.

On September 6, the deal closed without any problems as far as Casey knows. Casey didn’t have much to do with the details because Casey was not listed on the deed and didn’t purchase the title insurance. Casey spoke to Joe, and Joe told Casey that the land was now “ours.” Casey then went about lining up financing to buy Casey’s part of the land from Joe and Hillary. Rather than seek out a new loan on the property, Casey took a second on Casey’s L.A. house, which had increased in value. Once Casey had the $115,000, Casey contacted Ms. Rossow who drew up a deed from Hillary and Joe, giving Casey title to five of the acres. The deed was properly recorded on September 24.

During the fall, Casey did not visit the property very often. Casey was very busy at work. With no house on the property, Casey had little reason to go. The few times that Casey did go up, Casey noticed more traffic on the private road than Casey had expected, but Casey thought it must be fall visitors to the area. Over Christmas Week, Casey, Joe, and Hillary all went up to visit the property to start thinking about how they would build their houses. Joe and Casey each rented an RV and spent the long week living on the land with their families.

During this week Casey noticed that the road was heavily used, particularly by neighbors who owned cabins to the east in an area known as Dogwood Canyon. Casey found out by asking in the local market that all the cabin owners belonged to an organization called the Dogwood Canyon Property Owners Association. Joe and Casey decided to talk with Mark Lee, the president of the association, and ask them to stop using the private road to get to their cabins. When Casey spoke with Lee, he was very surprised when Casey told him that the road was private. He said that they had owned their cabins for a long time, had always used the road, and had never been told by anyone, including Ms. Sampson and Ms. Rossow, that the road was private. Lee was polite, but he also said that they would have to go miles out of their way to get to their cabins if they couldn’t use the road. Obviously they wanted to continue using “Casey’s” road. Casey did not agree with his contentions, but left without getting into a major confrontation. Casey told him that Casey would be back in touch.

Joe, Hillary, and Casey were upset after the conversation. Casey tried to reach Ms. Rossow, but she was away on vacation. When Casey tried to reach Ms. Sampson, Casey learned from her neighbors that she had left the area permanently and had retired to Baja California, Mexico. The neighbors told Casey that she was originally from Mexico and had bought a retirement home there several years ago because living was less expensive. As the week was over, Casey had to get back to L.A. without any further action.

Casey finally reached Ms. Rossow on February 1 when she returned from vacation. Casey told her about the road and Casey’s conversation with Lee. Casey reminded her that she had assured Casey that the road was private. She said she would check into it, but she said she did not remember assuring Casey that the road was private.

Now Casey was really worried. To protect their rights, on February 3, Casey wrote the cabin owners a letter, demanding that they stop using the road. Casey heard nothing in response until February 17 when Casey called Lee who told Casey that the cabin owners had used the road for years and had no intention of complying with Casey’s demand.

Casey then decided to ride up to Fresno and talk to the public works department. On March 4, Casey met with Lauren Gutierrez, head of the transportation division. She pulled out the maps of the area and located Casey’s road. She told Casey that the road had been built privately, but the county had assumed responsibility for its maintenance about 10 years ago to have access to the Dogwood Canyon area in an emergency. While it may “technically” be a private road, it was now considered public. She told Casey that the county had started to take over these roads rather than face potential lawsuits from people who might be injured or might suffer severe property damage in a forest fire or other disaster. This was widely known in the area. However, Ms. Gutierrez did admit that the county had never recorded any document to show that this road was now public or taken any action to assume title to the road.

When Casey returned to L.A., Casey told Joe and Hillary about Casey’s conversation with Gutierrez. Casey decided to call Rossow to find out what could be done about it. That conversation took place on March 7. It was very unpleasant. Casey told her what Casey had learned from Gutierrez about the road and asked her why she didn’t know about that the county maintained the road. She basically told Casey to forget it, that she had done nothing wrong, that it was great property, and that Casey were complaining about nothing. Casey reminded her that they had told her how important privacy was when they first met with her. She said that Casey had plenty of privacy – enough for anyone from L.A. She added that she didn’t have any responsibility to Casey because Casey was not her client in the initial purchase. Casey hung up the phone on her.

When Casey told Joe and Hillary about the conversation, they were upset but not interested in pursuing any action. Casey then spoke with a neighbor who recommended me.