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## Billboard Easement Prohibits Landowner from Constructing a Building Blocking the View of the Billboard

By Ronald L. Richman

Easements on real property give someone other than the owner of the property rights related to the property, whether for access, to place things on the property, or otherwise. A recent decision of the California District Court of Appeal illustrates how an easement can seriously limit a property owner's right to develop the property.

A billboard owner who has an easement on a neighbor's property allowing for the operation and maintenance of the billboard has the right to prevent the neighbor from constructing a building blocking the view of the billboard. *James Hill v. San Jose Family Housing Partners, LLC*, 2011 WL 3672071, --- Cal. App. 4<sup>th</sup> --- (2011).

James and Dawn Hill and San Jose Family Housing Partners owned property next to each other. The Hills owned and operated a billboard on the property owned by San Jose Family Housing Partners. The Hills had a written easement agreement which expressly stated the purpose of the easement was to allow the operation of the billboard including placement, construction, maintenance and repair. In addition, the easement agreement stated that "no structures, vegetation, or other objects will be allowed to interfere with or encroach on the easements..." Despite the clear language in the easement agreement, San Jose submitted plans to build a residential complex on its property which would block the view of the billboard.

San Jose argued the construction of the billboard was not up to code, making it an illegal structure. Accordingly, the Hills had no right to enforce the easement. The Court of Appeal rejected this argument even though the billboard was not code-compliant. In support of its decision, the Court of Appeal distinguished between a legal and illegal use of property. If the purpose of the easement was to allow an illegal use of property, then the easement was not enforceable. On the other hand, if the purpose of the easement was to allow a legal use of the property, the easement was enforceable. Even though the billboard itself was an illegal structure, the purpose of the easement, the *use and operation* of the billboard as an advertisement, was a legal use of property.

San Jose also argued because the Hills did not have an easement over their property for light and air, they had no right to object to their proposed building blocking the view of the billboard. This argument was also rejected by the Court of Appeal. The easement was not an easement for light and air. Instead, the easement was for the express purpose of operating a billboard. Because the point of a billboard is to be visible to potential customers, the Court decided the intent of the billboard easement was to prohibit an unreasonable interference with the billboard's visibility. The proposed structure would interfere with the visibility of the billboard and constitute an unreasonable interference with the purpose of the easement.

An express easement is a contract and is interpreted under the law the same way as any other contract. Therefore, it is very important to clearly state in the easement the purpose of the easement. The more precise the language of the easement, the better chance you have to enforce the easement. Property owners granting easements may wish to insist on limiting the duration of an easement, so as to leave open opportunities to develop the property in different ways in the future.

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