

Easement -- or License? New Case Law Blurs the Line.

by Steven J. Kahn

Suppose you give your neighbor permission – also known as a license -- to enter your property to maintain landscaping along a shared driveway that serves both properties. Your neighbor wants an aesthetically pleasing approach to his home, and you benefit from his efforts, so you give him permission. This license is just a friendly agreement between two neighbors; it is not an easement recorded against either property, and it is not a right that “runs with the land” in perpetuity.

Now, suppose 20 years pass and you decide to revoke the license. Say you want to maintain the landscaping yourself or remove it altogether, or say you and your neighbor are no longer friends. No matter the reason, you know your decision has no impact on your neighbor’s ability to continue using the shared driveway for access but you believe you have the right to revoke permission.

Generally speaking, you would be correct because a license -- whether express or implied -- gives someone permission to perform acts on the property of another, and can be revoked at any time without excuse or consideration to the licensee. However, the recent case of *Richardson v. Franc* broadens the scope of licenses by giving them the **potential to add key easement characteristics: perpetuity and irrevocability.**

In *Richardson v. Franc* – after nearly 26 years of allowing his neighbors to maintain landscaping along their shared driveway – Greg Franc revoked James Scott Richardson’s license, prevented Richardson from further maintenance, and accordingly got himself sued. Franc argued that he had an absolute right to revoke the license since it is tantamount to an agreement for permission. Despite the general rule that licenses are revocable agreements for permissive use, Richardson argued that it would be inequitable to deny him an *irrevocable* license to forever maintain the landscaping, given his substantial investment and Franc’s years of acquiescence.

The trial court and the Court of Appeal both agreed with Richardson and ruled that his *otherwise revocable landscaping license became irrevocable* because Franc knowingly permitted Richardson to repeatedly perform acts on his land, and Richardson, in reasonable reliance on the continuation of the license, expended time and a substantial amount of money on improvements with Franc’s knowledge. In effect, Franc was barred or estopped from revoking the license and the license became the equivalent of an easement for landscaping maintenance.

There are several takeaways from *Richardson v. Franc* for property owners:

- Be diligent in protecting your property rights.
- If someone has permission to do something on your land:
 - *document it*
 - *control it*, and
 - *do not let it grow* into something bigger and more complicated

Otherwise, that simple license could turn into an *irrevocable* right to do something else that will forever burden your property, potentially impacting its value, saleability and development potential. Each case is unique and largely fact-determinative, so if you have questions about others' rights to your property, give us a call. ■



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