

DEFINING "REASONABLE"

By Judith I. Johannsen

There probably are as many definitions of "reasonable" as there are people. In the movie "As Good As It Gets", Jack Nicholson's character, a writer of romance novels, is asked how he understands and writes about women so well. He answered that he thinks of a man and then takes away all reason and accountability.

Connecticut courts, as seen in the following two cases, provide us with their legal sense of "reasonable".

The first case concerned two neighbors, A and B, who disagreed on the scope of an easement for ingress and egress over A's land for B's benefit. When B's predecessor bought the property, his deed included an easement over part of A's property so he could access his property, but he also parked his cars and stored a boat on the easement. When B's predecessor sold the property to B, B assumed he had the same right to park cars and store a boat on the easement, too, and so, he did.

One day, A wrote B telling him that using the easement for purposes other than to access his property was more than he was legally allowed to do. B filed suit against A, claiming title to the easement through adverse possession and, alternatively, claimed a right to an exclusive easement alleging A had abandoned the easement.

The trial court held that 1) an easement granted in general terms can be used for any purpose reasonably necessary for the party entitled to use it, 2) B's use of the easement was not limited to access to and from his property, and 3) parking and/or storage on the easement area was not unreasonable.

A appealed, claiming the trial court was wrong to expand B's easement through the doctrine of reasonable use because the language in the deed granting the easement was not general, but very specific, and expressly limited B's rights to entry and exit. The appellate court agreed with A – reliance on the reasonable use doctrine to broaden the scope of an easement specifically limited to ingress and egress was misplaced.

In the second case, a buyer, who said he was pre-qualified for a \$1.25+/- million dollar mortgage loan, offered to buy a lakefront property for \$1.8+/- million dollars. The offer depended upon the buyer obtaining a mortgage loan of approximately \$1,557,000 dollars.

The buyer applied for a loan, but the bank's appraiser performed an incomplete property inspection and then failed to follow up when he could not obtain property information from the seller's vacationing attorney. The buyer's attorney asked the seller's attorney for a one-week extension to qualify for the loan, but the seller agreed to extend the date for only four days.

The buyer's mortgage commitment difficulties grew when the mortgage company asked to review his tax returns. The buyer told the seller that if he didn't grant him another extension for a loan commitment, he would ask for his deposit back.

When the seller refused to grant the extension, the buyer's attorney complained that the seller was being unreasonable, especially since the buyer had provided all the documents the lender required and it was the incomplete appraisal that was causing the delay.

The seller returned the buyer's deposit and three days later signed an all-cash offer from buyer #2 even though it was \$57,000 less than buyer #1's offer. Buyer #1's attorney filed a lien against the seller's property and began a lawsuit to have the court order the seller to sell to buyer #1. Shortly after the suit was filed, buyer #1 received an unconditional mortgage loan and said he was now ready to close on the property.

The issue before the trial court was whether or not the seller's refusal to grant further extensions to the buyer beyond the initial four days was unreasonable or if it was what a reasonable person in the seller's position would have done.

The appellate court decided that the seller's decision to not grant another extension to the buyer was not improper, but reasonable because 1) buyer #1 was not ready, willing and able to buy the property in early November as agreed, or even within a reasonable time afterwards, 2) buyer #1 had said he was pre-approved for a mortgage, but his having trouble securing a mortgage was contrary to that representation, 3) buyer's eventual loan commitment was for less than what was stated in the purchase agreement, and 4) seller sold the property to buyer #2 for less money because he wanted to sell the property before winter, something buyer #1 could not do with certainty.

The appellate court affirmed the lower court's decision that the seller's refusal to grant an extension was reasonable and what any prudent person would have done under the circumstances.

In contrast to Jack Nicholson's character's creating fictional women by deleting reason, our appellate courts have concluded that reasonableness is not expanding a use that is specifically limited and/or is what any prudent person would do under the circumstances.

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