

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

SEGAL, SEGAL & LIEBERMAN	:	SEPTEMBER TERM, 2016
PRIME ASSOCIATES,	:	
	:	NO. 01444
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 16091970
BINYAN 14 SOUTH 3RD ST LLC,	:	
	:	
Defendant.	:	3239 EDA 2016

2017 JAN 19 10:11:47  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

**OPINION**

This appeal opinion is submitted relative to Plaintiff Segal, Segal & Lieberman Prime Associates' ("SSL") appeal of this court's order dated September 21, 2016 which modified a prior order entered by this court on September 15, 2016 granting SSL's Emergency Motion for Preliminary Injunction. For the reasons set forth below, this court's order should be affirmed since the injunction granted in SSL's favor abated the harm and preserved the existing easement between the parties.

SSL, a general partnership, is the owner of 308 Market Street ("Parcel 'A'") in Philadelphia, Pa. Defendant Binyan 14 South 3<sup>rd</sup> Street LLC ("Binyan"), a limited liability company, is the owner of 14 South 3<sup>rd</sup> Street, Philadelphia, Pa. 19106 ("Parcel B"). SSL and Binyan are parties to a certain Reciprocal Easement Agreement ("Easement") dated May 19, 2014 and recorded in the Philadelphia Office of the Recorder of Deeds which provides in pertinent part as follows:

2. Access Easement.

- (a) Binyan 14, as Owner of Parcel B, does hereby grant, bargain, sell and convey to SSL and Binyan 306 and their respective successors and assigns, for the benefit of parcel A and C, a perpetual and irrevocable non-exclusive easement for ingress, egress and



regress over and across those paved driveways, access ways and curb cuts to be located on Parcel B, as more particularly identified on Exhibit "D" ("Easement Area") for the purpose of permitting the owners, occupiers, agents, employees, tenants guests, guests and invitees of the Owner of Parcel A and the Owner of parcel C to gain free and uninterrupted pedestrian access to and from said respective lots and South 3<sup>rd</sup> Street. The easement granted above shall not be exclusive, but shall be in common with the Owner of Parcel B and Parcel C and such Owners' respective successors, assigns, invitees, licensees, tenants, agents, employees, and such other and further grantees of easements, licensees and rights over and across the Easement Area described as above as may from time to time exist. <sup>1</sup>

Essentially, the Easement's purpose is to provide owners, occupiers, agents, employees, tenants, guests and invitees of the owner of Parcel A and the Owner of Parcel C to free and uninterrupted pedestrian access to and from the respective lots and South 3<sup>rd</sup> Street. As identified on Exhibit "D" of the Easement, the Easement Area is 3' wide and 10' high and runs along the rear of SSL's property Parcel "A" and Binyan's properties Parcel "B" and "C". Exhibit "D" further shows that the only access from the rear of Parcel "A" to 3<sup>rd</sup> Street is the ingress and egress permitted by the Easement.

Recently, Binyan demolished and obstructed the Easement Area by digging a ten (10) foot hole where the Easement Area is to be located blocking SSL's owners, occupiers, agents, employees, tenants, guests and invitees of Parcel A free and uninterrupted pedestrian access to and from the respective lots and South 3<sup>rd</sup> Street. Any person attempting to use the ingress, egress and egress from the rear of Parcel A would either be trapped or plummet into the hole. As a result, in September 2016, SSL filed a complaint<sup>2</sup> along with a petition for emergency preliminary injunction seeking equitable relief to prevent Binyan from causing further damage and to protect the public at large from the extreme risk of harm.

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<sup>1</sup> Attached hereto as Exhibit "A" is Exhibit "D" to the Reciprocal Easement Agreement.

<sup>2</sup> The complaint alleges claims for breach of contract, trespass, nuisance, interference with easements rights and injunctive relief.

On September 14, 2016, the court issued an order for the parties to appear for a hearing on the Petition for Emergency Relief on September 15, 2016. On September 15, 2016, the court, after a conference with the parties which appeared on the record, entered an order, consented to by the parties, which stated the following:

1. Defendant shall construct two ADA compliant ramps in the pit it created on its own property, 14 South Third Street, in order to provide plaintiff, its tenant(s), their employees and customers with a means to exit plaintiff's building at 308 Market Street in the event of a fire or other emergency and thereby to access South Third Street safely.
2. Defendant shall construct the ramps immediately and shall install them, at the latest, before it rains on September 18, 2016.
3. On or before September 19, 2016, defendant shall provide plaintiff with plans and drawings signed by defendant's architect, depicting the replacement walkway and any ceiling or overhang with respect to plaintiff's easement over defendant's property.
4. Defendant shall proceed swiftly with underpinning, shoring, and building the necessary foundation walls around the perimeter of the pit it created on its property.

Several days after the September 15, 2016 order was entered, a dispute arose among the parties regarding the temporary ramp's compliance with the ADA requirements<sup>3</sup> and the plans and drawings signed by Binyan's architect depicting the replacement walkway. On September 21, 2016 after a conference with the attorneys and consultation with their clients, and an on the record discussion, the court issued the following order with the consent of the parties:

- 1) Defendant shall continue to proceed swiftly with the underpinning, shoring and building the necessary foundation walls.

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<sup>3</sup> The construction of the court ordered ramp was temporary and it was represented to the court that the permanent Easement Area would be completed by the following week.

- 2) The easement shall be as depicted in Court Exhibit 1.<sup>4</sup>
- 3) The easement will be at least 36” wide at all points and at least 10’ feet high as previously agreed.

On September 30, 2016, SSL appealed this court’s order dated September 21, 2016. On October 3, 2016, the court issued an order requiring SSL to file a concise statement of errors complained of on appeal. On October 25, 2016, SSL filed its statement of matters complained of on appeal as required by the court. In its statement of matters complained of on appeal, SSL complains that the court erred in modifying the September 15, 2016 order by entering the September 21, 2016 order because it authorized Binyon to build on and relocate an express easement benefitting SSL and others in violation of the Easement Agreement. Additionally, SSL complained that the court erred in modifying the September 15, 2015 order by entering the September 21, 2016 order which granted preliminary injunctive relief in favor of Binyon without requiring Binyon to post a bond.

### **DISCUSSION**

The purpose of a preliminary injunction is to preserve the status quo as it exists or previously existed before the acts complained of, thereby preventing irreparable injury or gross injustice.<sup>5</sup> To establish the right to preliminary injunctive relief, the moving party carries the burden of showing that: (1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) the party must show that greater injury

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<sup>4</sup> Attached hereto as Exhibit “B” is Court Exhibit “1”. Court Exhibit “1” was not attached to the order since the parties were in possession of said document. Court Exhibit “1” is the plan and drawings signed by Binyan’s architect.

<sup>5</sup> *Santoro v. Morse*, 781 A.2d 1220, 1229 (2001)

would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; (5) the party must show that the injunction it seeks is reasonably suited to abate the offending activity; and (6) the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.<sup>6</sup>

SSL contends that this court modified the existing easement between the parties with the entry of the order dated September 21, 2016. The easement is not modified by the September 21, 2016 order. The purpose of the easement is to provide owners, occupiers, agents, employees, tenants, guests and invitees of the owner of Parcel A and the Owner of Parcel C to free and uninterrupted pedestrian access to and from the respective lots and South 3<sup>rd</sup> Street. This court's order affirms the existence of the easement, the dimensions of the Easement Area, the location of the easement and the purpose of the easement. More importantly, the September 21, 2016 order was agreed to by SSL, the complaining party. The court stated the following:

The Court: Okay. I have had a conference with counsel in the back and I think we don't really have a controversy here. As I understand it from counsel, this easement should be finished by next week, correct, Counsel?

At no time did SSL raise any concerns about the court's reference to Court Exhibit "1".

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<sup>6</sup> *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 646-47, 828 A.2d 995, 1001 (2003)(citations omitted).

Mr. Nachmani<sup>7</sup>: Your Honor, if I may? Defendant's counsel had provided me with a clean copy marked Defendant Exhibit 4<sup>8</sup> of that that's more legible. If I may hand it up?

The Court: Thank you. Okay.

....So looking at what's marked as Defense Exhibit 4, which I'm going to remark as Court Exhibit 1, the easement area that's depicted there, that's what it's going to be and it's going to be at least 36 inches wide at every point, correct?

Mr. Litz: That is correct.

Mr. Nachmani: That's my understanding, your Honor. Only other requirement is that it be at least 10 feet high....<sup>9</sup>

Based on the foregoing, the easement has not been modified and any objections to this court's order dated September 21, 2016 is waived.


SSL also complains that this court failed to impose a bond when it entered an injunction in favor of defendant. While Pa. R. Civ. P. 1531(b) requires the filing of a bond when a preliminary or special injunction is granted, in this case Binyan was not required to file a bond since it never filed a motion for preliminary or special injunction.

### CONCLUSION

For the foregoing reasons, this court's order dated September 21, 2016 should be affirmed.

**Date: January 13, 2017**

**BY THE COURT,**

  
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**PATRICIA A. McINERNEY, SJ.**

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<sup>7</sup> Counsel for SSL.

<sup>8</sup> Court Exhibit "1".

<sup>9</sup> N.T. September 21, 2016 p. 4 L4-19.

## EXHIBIT “A”

**HARMAN  
DEUTSCH**

ARCHITECTS  
PLANNERS

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3RD STREET  
12/26/12

PROJECT:

14 S. 3rd  
Philadelphia PA

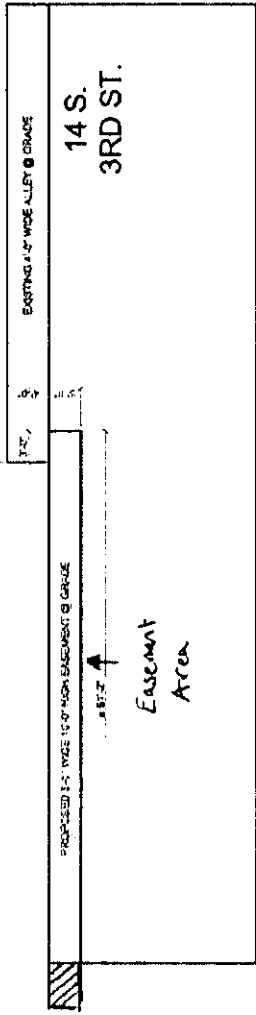
1	DATE	12/26/12
2	BY	SP
3	SCALE	1" = 10'

Architect: Harmar Deutsch Architects, Inc.  
Project: 14 S. 3rd Street, Philadelphia, PA  
Drawing: SP.1-0  
Scale: 1" = 10'  
Date: 12/26/12

DRAWING NUMBER:

**SP.1-0**

308 MARKET ST.  
306 MARKET ST.  
304 MARKET ST.  
302 MARKET ST.  
300 MARKET ST.



16 S.  
3RD ST.

18 S.  
3RD ST.

20 S.  
3RD ST.

1 SITE PLAN

SP.1-0 / SCALE: 3/32" = 1'-0"

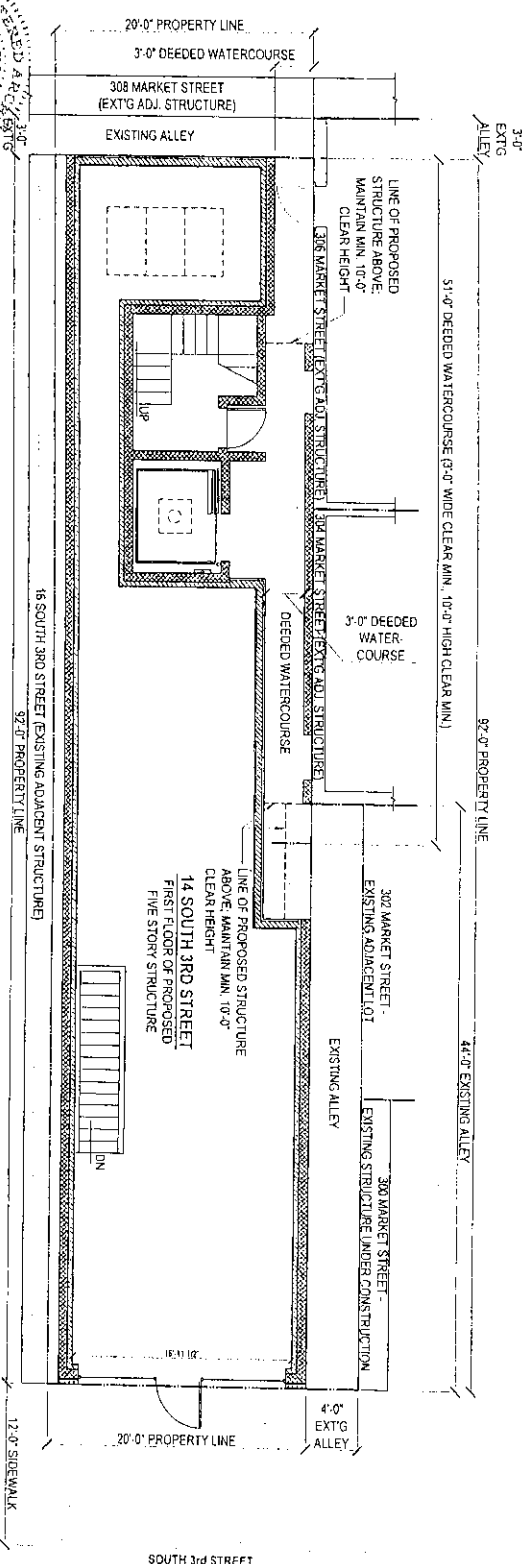


## EXHIBIT “B”

Center 1



PROPOSED FIRST FLOOR PLAN  
SK 1  
SCALE: 1/8" = 1'-0"



DEEDED WATERCOURSE WILL MAINTAIN 3'-0" CLEAR WIDTH AND 10'-0" CLEAR HEIGHT FROM THE WATERCOURSE IS TO MAINTAIN EXISTING ACCESS TO AND EXISTING EGRESS FROM:  
308 MARKET STREET 308 MARKET STREET  
306 MARKET STREET 14 SOUTH 3RD STREET

**harmanndeutsch**  
ARCHITECTURE

14 South 3rd Street  
Philadelphia, PA

#	DATE	ISSUE / REVISION
1	5/25/2016	FIRST FLOOR SKETCH

**SK.1**

Defendant  
Exhibit  
4