LAKEVIEW ASSOCIATES v. WOODLAKE MASTER CONDO. ASSN.

239 Conn. 769 (1997) | Cited 0 times | Supreme Court of Connecticut | January 21, 1997

This case requires us to decide whether the trialcourt properly concluded that the defendant, Woodlake MasterCondominium Association, Inc., must pay for repairs to a privateroad in Woodbury owned by the plaintiff, Lakeview Associates,under the terms of a conveyance that granted to the defendant aneasement over the road. The defendant has appealed from thejudgment of the trial court directing it to pay the plaintiff asum not to exceed $298,400 for repairs to the road. The plaintiffhas appealed from the judgment of the trial court awarding itoffer of judgment interest under General Statutes (Rev. to 1993) §52-192a,[1] claiming that

[239 Conn. 771]

the trial court failed to awardsuch interest retroactive to the date of the complaint. The defendanthas cross appealed, claiming that the plaintiff is not entitled to anyprejudgment interest under § 52-192a.[2] We concludethat the trial court properly required the defendant to pay for therepairs to the private road, but that the plaintiff is not entitled toany offer of judgment interest under § 52-192a.

The following facts are undisputed. The plaintiff is ageneral partnership that owns seventy-nine acres of undevelopedproperty in Woodbury and Southbury. Approximately sixty-threeacres of that property are located in Woodbury and border on aprivate road known as Woodlake Road. The defendant is a

[239 Conn. 772]

condominium association, comprised of 400 units and approximately1100 residents, whose property abuts the plaintiff's propertyalong Woodlake Road.[3] Woodlake Road, which is 6400 feetlong, provides the only means of ingress and egress to theparties' properties.

Originally, both properties were owned by Joseph R. Pepe. InJanuary, 1972, Pepe conveyed what is now the defendant's propertyto Woodbury Village, Inc. (Woodbury Village), a joint venture thatdeveloped the defendant's condominium complex and that eventuallytransferred control of the complex to the defendant. Peperetained ownership of Woodlake Road for himself and hisbeneficiaries, but granted an easement over the roadway toWoodbury Village and its heirs, successors and assigns.[4]In October, 1972, Pepe recorded a modified easement that provided inrelevant part: "The above granted easement shall continue in fullforce and effect unless and until the herein described premises shallbe dedicated as a public highway and accepted by the Town of

Woodbury,at which time this easement shall cease and be of no further force andeffect. Provided, however, that by the acceptance hereof,Woodbury Village, Incorporated, its successors and assignscovenant and agree that they will contribute, pro rata to maintainand keep in good repair the road described herein until acceptancethereof by such Town of Woodbury."[5]

[239 Conn. 773]

The plaintiff purchased the balance of Pepe's property in1988. Because Pepe had retained ownership of Woodlake Road forhimself and his beneficiaries, the plaintiff, as Pepe's successorin title, now owns the road. The defendant has always repairedand maintained the road without any contribution from theplaintiff.[6]

In 1990, the plaintiff requested that the town of Woodburyaccept Woodlake Road as a public highway.[7] In response tothe plaintiff's request, the town commissioned a study of WoodlakeRoad, which stated that the road was generally in poor conditionand in need of repair. Upon learning of the results of the study,the plaintiff demanded that the defendant make the necessaryrepairs or that it otherwise assist the plaintiff in having theroad accepted as a public highway by the town.[8] When thedefendant failed to cooperate, the plaintiff instituted this actionseeking injunctive relief and damages.[9] On July 16, 1993,the plaintiff filed an

[239 Conn. 774]

offer of judgment under § 52-192a in the amountof $175,000. The defendant failed to accept the plaintiff's offerof judgment, and the case proceeded to a court trial.

At the conclusion of the trial, the court determined that,under the terms of the easement, "the plaintiff and [the]defendant are responsible for their pro rata share of all repairand maintenance expenses [required for the upkeep of] WoodlakeRoad. . . . [T]he pro rata share of each is determined by thenumber of dwelling units legally using said road. Since there areno such units on the plaintiff's property using said road, andthere are 400 condominium units of the defendant using the road,then those 400 condominium units are responsible pro rata for anyexpense in [the] maintaining, repairing and upkeep of said road.By this the court means that [the] number of units on eachproperty should be added together and each unit is responsible forone share of the total aforesaid expenses relative to the road. . . .Since there are no units on the plaintiff's parcel of land,all maintenance and repairs required for Woodlake Road are theresponsibility of the defendant . . . ."

The trial court, construing the terms "repair" and "maintain"according to their ordinary meaning,[10] further concludedthat the plaintiff had established by "overwhelming" evidence that WoodlakeRoad "has deteriorated to a point where it needs more than amaintenance program" and that it "is in serious need

[239 Conn. 775]

of reconstructive repairs at this time." On the basis of testimonyby the plaintiff's two experts regarding the nature and cost ofthe necessary repairs, the trial court awarded the plaintiff$298,400 and ordered it "to have . . . Woodlake Road repaired . . .within six (6) months of this date or be subject to a penaltywhich this court can impose for the failure to do so."[11]The court also ordered that "[i]n the unlikely event that theaforesaid repairs cost less than $298,400.00, then any such excessfunds shall be repaid to the defendant by the plaintiff."[12]The court also awarded the plaintiff prejudgment interest under §52-192a in the amount of $76,701.20.[13] Finally, the courtstated that the defendant shall remain solely responsible formaintaining the road in good repair until such time, if ever, asthe plaintiff's property is developed. Additional facts will beset forth as they become relevant.

[239 Conn. 776]

On appeal, the defendant claims that: (1) the trial courtimproperly concluded that the defendant is responsible for makingthe required repairs to Woodlake Road; (2) even if the defendantbears some responsibility for those repairs, the trial courtimproperly concluded that the plaintiff does not share equally inthat responsibility; and (3) the conditions of the easement areunenforceable because they impose a limitation on the defendant'srights under the preexisting easement. The plaintiff hasappealed, and the defendant has cross appealed, from the trialcourt's award of offer of judgment interest under § 52-192a. Weconclude that the trial court: (1) properly required the defendantto pay for the repairs to Woodlake Road; and (2) improperlyawarded the plaintiff prejudgment interest pursuant to § 52-192a.

I

The defendant first claims that the trial court improperlyconcluded that the defendant breached a duty to the plaintiff tomake repairs to Woodlake Road. Specifically, the defendant arguesthat its obligation to the plaintiff is limited to maintainingWoodlake Road so as to afford the plaintiff the reasonable use ofthe road and to prevent injury to the plaintiff's property. Thedefendant further argues that because the plaintiff did notestablish that the defendant's failure to make repairs to WoodlakeRoad had either impaired the plaintiff's use of the road or causedinjury to the plaintiff's property, the trial court improperlyordered the defendant to pay for the road repairs. We disagree.

It is true that "[w]here the instrument is silent, the ownerof an easement has a duty to make such repairs as are necessaryfor the owner of the land to have the reasonable use of hisestate"; Center Drive-In Theatre, Inc. v. Derby, 166 Conn. 460,464, 352 A.2d 304 (1974); and, further, that the "owner of aneasement may be

[239 Conn. 777]

held to have a duty to maintain it where failureto do so would injure the servient estate." Id., 465. Theeasement in this case, however, is not silent as to the parties'obligations concerning the upkeep of Woodlake Road: theconveyance expressly provides that the parties shall "contribute,pro rata to maintain and keep in good repair [Woodlake Road] untilacceptance thereof by [the] Town of Woodbury."

"For a determination of the character and extent of aneasement created by deed we must look to the language of the deed,the situation of the property and the surrounding circumstances inorder to ascertain the intention of the parties. American BrassCo. v. Serra, 104 Conn. 139, 142, 132 A. 565 (1926). The languageof the grant will be given its ordinary import in the absence ofanything in the situation or surrounding circumstances whichindicates a contrary intent. [Id.]" Mackin v. Mackin, 186 Conn. 185,189, 439 A.2d 1086 (1982); see also Lago v. Guerrette,219 Conn. 262, 267-68, 592 A.2d 939 (1991). Because the partiesadduced no evidence to suggest that the terms "repair" and"maintain" were intended to have any special or unusualconnotation, the trial court properly construed those wordsaccording to their ordinary meaning.

Furthermore, the trial court personally inspected WoodlakeRoad and heard testimony from the plaintiff's experts regardingthe extensive work necessary to bring Woodlake Road into a reasonablestate of repair.[14] The evidence also indicated thatWoodlake Road is a busy thoroughfare used by the defendant'sresidents as the sole means of access to and from theirhomes[15] and, in addition, that the road is used by busesthat transport

[239 Conn. 778]

children who reside in the condominium complex toand from school. The question of whether Woodlake Road is in needof repair and, if so, the nature and extent of the repairsnecessary to restore the road to a satisfactory condition, raisedfactual issues to be resolved by the trial court. See Saphir v.Neustadt, 177 Conn. 191, 198, 413 A.2d 843 (1979); see also Kurasv. Kope, 205 Conn. 332, 347-48, 533 A.2d 1202 (1987).Accordingly, the trial court's conclusion "must stand unless it islegally or logically inconsistent with the facts found or unlessit involves the application of some erroneous rule of law materialto the case. Belford v. New Haven, 170 Conn. 46, 55, 364 A.2d 194(1975). Only in the clearest circumstances where the conclusionfound could not reasonably be reached will the trier'sdetermination be disturbed." Saphir v. Neustadt, supra, 198.Because the evidence supports the trial court's determination thatWoodlake Road is in substantial disrepair and that the reasonablecost of repairing the road is $298,400,[16] the defendant'schallenge to the trial court's conclusion in that regard iswithout merit.

II

The defendant also claims that the trial court improperlyconstrued the easement as placing upon the defendant the fullresponsibility for making the repairs to Woodlake Road. Wedisagree.

The following additional facts are necessary to a resolutionof this claim. At trial, the parties disputed the meaning of theprovision in the easement requiring

[239 Conn. 779]

Woodbury Village, itssuccessors and assigns "to contribute, pro rata" to themaintenance and repair of Woodlake Road. The defendant claimedthat the easement unambiguously requires the plaintiff and thedefendant to share equally the cost of maintaining and repairingthe road. The plaintiff, focusing on the fact that the easementmakes express reference only to Woodbury Village, its successorsand assigns, claimed that the easement unambiguously applies only to thedefendant, as the successor in interest of Woodbury Village, andnot to the plaintiff. In the alternative, the plaintiff arguedthat the easement requires the homeowners on each of the twoparcels to pay for the repair and maintenance of Woodlake Roadaccording to the number of dwelling units on each propertyrelative to the total number of units on both properties.

In support of its alternative interpretation of the easement,the plaintiff, over the defendant's objection, elicited thetestimony of Jonathan Bowman, the lawyer who had drafted theeasement on behalf of Woodbury Village in 1972.[17] Bowmanexplained that the words "contribute, pro rata" were intended toensure that the cost of maintaining and repairing the road wouldbe fairly apportioned among those persons actually using the road,namely, the homeowners on both properties.[18]

[239 Conn. 780]

The trialcourt accepted Bowman's explanation of the intent of the partiesto the instrument and, accordingly, concluded that so long as theplaintiff's property remains undeveloped, the defendant is solelyresponsible for maintaining Woodlake Road in good repair.

The defendant asserts that the easement unambiguouslyrequires each of the parties to pay for one half of the cost ofrepairing and maintaining Woodlake Road and, therefore, that thetrial court improperly permitted the plaintiff to elicit Bowman'stestimony regarding the easement's meaning. We are not persuaded.

The principles governing the construction of instruments ofconveyance are well established. "In construing a deed, a courtmust consider the language and terms of the instrument as a whole. . . .Our basic rule of construction is that recognition will begiven to the expressed intention of the parties to a deed or otherconveyance, and that it shall, if possible, be so construed as toeffectuate the intent of the parties. . . . In arriving at theintent expressed . . . in the language used, however, it is alwaysadmissible to consider the situation of the parties and thecircumstances connected with the transaction, and every part ofthe writing should be considered with the help of that evidence. . . .The construction of a deed in order to ascertain the intentexpressed in the deed presents a question of law and requiresconsideration of all its relevant provisions in the light of thesurrounding

circumstances. . . ." (Citations omitted; internalquotation marks omitted.) Hare v. McClellan, 234 Conn. 581,593-94, 662 A.2d 1242 (1995). Thus, if the meaning of thelanguage contained in a deed or conveyance is not clear, the trialcourt is bound to consider any relevant extrinsic evidencepresented by the parties for the purpose

[239 Conn. 781]

of clarifying theambiguity. Id., 594-97. Finally, our review of the trial court'sconstruction of the instrument is plenary. Id., 594; Carbone v.Vigliotti, 222 Conn. 216, 222, 610 A.2d 565 (1992).

With these principles in mind, we turn to the defendant'sclaim that the trial court misconstrued the terms of the easement.As the trial court noted, the adverb "pro rata" means"proportionately according to some exactly calculable factor (asshare, liability, period of time): in proportion." Webster'sThird New International Dictionary. Thus, it is plain that theoriginal parties to the easement intended that Woodbury Villageand its successors in interest shall contribute proportionately tothe repair and maintenance of Woodlake Road. The instrument,however, contains no express indication whether that contributionis to be apportioned among Woodbury Village's successors ininterest or, rather, in some manner between its successors and theowner or owners of the servient estate. Since the easement isfacially susceptible of either interpretation, the trial courtproperly overruled the plaintiff's objection to Bowman's testimonyconcerning the intention of the parties. Bowman, who drafted thelanguage in question, testified unequivocally that the partiesintended to apportion the cost of repairing and maintainingWoodlake Road equally among the homeowners on each of the twoproperties, and the defendant introduced no evidence to thecontrary. In light of Bowman's uncontradicted testimony, we agreewith the trial court's determination with respect to the parties'intended meaning of the term "pro rata," and, accordingly, wereject the defendant's claim that the plaintiff is obligated tocontribute to the cost of repairing Woodlake Road.

III

The defendant next contends that the easement isunenforceable insofar as it requires the defendant to

[239 Conn. 782]

"contribute,pro rata" to the repair and maintenance of Woodlake Road becausethat requirement constitutes a condition or limitation on thedefendant's preexisting right to use the road[19] secured inthe original deed in violation of standard 4.2 of the ConnecticutStandards of Title.[20] We decline to consider this claim.The defendant not only failed to raise the claim in the trialcourt; see Practice Book §§ 4061 and 285A;[21] but the partiesalso expressly stipulated at trial that "the covenant to`contribute, pro rata to maintain and keep in good repair theroad' as stated in [the easement] is in the chain of title for thecondominiums and binds the Master Association." (Emphasis added.)The

defendant is therefore foreclosed from raising a contraryclaim on appeal.

IV

Finally, the plaintiff appeals, and the defendant crossappeals, from the judgment of the trial court awarding theplaintiff prejudgment interest under § 52-192a. The

[239 Conn. 783]

plaintiffclaims that it is entitled to prejudgment interest retroactive tothe filing of the complaint, and the defendant claims that theplaintiff is not entitled to any interest under § 52-192a. Weagree with the defendant and, accordingly, we do not reach theissue raised by the plaintiff's appeal.

The following additional facts are relevant to thedefendant's claim. The plaintiff filed its original complaint onJuly 29, 1991. The defendant filed a request to revise thecomplaint, which was granted over the plaintiff's objection, andthe plaintiff filed an amended complaint on January 29, 1992.Thereafter, on July 16, 1993, the plaintiff filed its offer ofjudgment in the amount of $175,000.

After the trial court had rendered judgment for the plaintiff,the plaintiff sought prejudgment interest under § 52-192a.The plaintiff claimed that it should be awarded such interest from thedate of the original complaint because it had submitted a validoffer of judgment within eighteen months of the filing of theamended complaint. The defendant argued that the plaintiff wasnot entitled to any interest under § 52-192a because "the court'sjudgment is, in effect, an order to restore Woodlake Road ratherthan an award of money damages to the [plaintiff]." Althoughthe trial court acknowledged that its judgment was "in the form ofan injunction," the court nevertheless concluded that an award ofinterest was mandated under § 52-192a because the plaintiff hadreceived money damages in excess of its $175,000 offer ofjudgment.[22] See footnote

[239 Conn. 784]

12. The trial court furtherconcluded that the interest was to be calculated from the date theplaintiff filed its offer of judgment and not, as the plaintiffhad claimed, from the date of the original complaint.Accordingly, the trial court awarded the plaintiff $76,701.21 ininterest pursuant to § 52-192a. Finally, the trial court statedthat if the repairs to Woodlake Road cost less than $298,400, thenthe defendant shall be entitled to (1) a refund of the differencebetween the actual cost of the repairs and $298,400, and (2) arefund of the offer of judgment interest on that amount.[23]

We conclude that the plaintiff is not entitled to offer ofjudgment interest.[24] Although it is true that the trialcourt's judgment requires the defendant to pay money to theplaintiff, the judgment further requires that the plaintiff shalluse that money solely to repair Woodlake Road and, in addition,that it may expend only so much of the $298,400 as will benecessary to make those repairs. Moreover, the

trial courtordered the plaintiff to repair the road within six months or besubject to the court's contempt power for failure to comply withits judgment. Thus, as the defendant maintains, the trial court'sjudgment is in the nature of a mandatory injunction

[239 Conn. 785]

directing thedefendant to discharge its duty under the easement and not, as thetrial court concluded, an award of money damages. See footnote12.[25] We are aware of no authority, and the plaintiff hasprovided us with none, to support a claim that § 52-192a appliesin circumstances where, as here, the relief granted is not simply theaward of a sum certain but, rather, an equitable remedy not availableat law.[26] We conclude, therefore, that the trial courtimproperly awarded the plaintiff prejudgment interest under § 52-192a.

With respect to the defendant's appeal, the judgment isaffirmed. With respect to the plaintiff's appeal and thedefendant's cross appeal, the judgment is reversed and the case isremanded to the trial court with direction to deny the plaintiff'smotion for prejudgment interest pursuant to § 52-192a.

In this opinion the other justices concurred.

1. General Statutes (Rev. to 1993) § 52-192a provides: "Offerof judgment by plaintiff. Acceptance by defendant. Computationof interest. (a) After commencement of any civil action basedupon contract or seeking the recovery of money damages, whetheror not other relief is sought, the plaintiff may before trial filewith the clerk of the court a written `offer of judgment' signedby him or his attorney, directed to the defendant or his attorney,offering to settle the claim underlying the action and tostipulate to a judgment for a sum certain. The plaintiff shallgive notice of the offer of settlement to the defendant'sattorney, or if the defendant is not represented by an attorney,to the defendant himself. Within thirty days after being notifiedof the filing of the `offer of judgment', the defendant or hisattorney may file with the clerk of the court a written`acceptance of offer of judgment' agreeing to a stipulation forjudgment as contained in plaintiff's `offer of judgment'. Uponsuch filing, the clerk shall enter judgment immediately on thestipulation. If the `offer of judgment' is not accepted withinthirty days, the `offer of judgment' shall be considered rejectedand not subject to acceptance unless refiled. Any such `offer ofjudgment' and any `acceptance of offer of judgment' shall beincluded by the clerk in the record of the case. "(b) After trial the court shall examine the record todetermine whether the plaintiff made an `offer of judgment' whichthe defendant failed to accept. If the court ascertains from therecord that the plaintiff has recovered an amount equal to orgreater than the sum certain stated in his `offer of judgment',the court shall add to the amount so recovered twelve per centannual interest on said amount, computed from the date such offerwas filed in actions commenced before October 1, 1981. In thoseactions commenced on or after October 1, 1981, the interest shallbe computed from the date the complaint in the civil action wasfiled with the court if the `offer of judgment' was filed notlater than eighteen months from the filing of such complaint. Ifsuch offer was filed later than eighteen months from the date offiling of the complaint, the interest shall be computed from thedate the `offer of judgment' was filed. The court may awardreasonable attorney's fees in an amount not to exceed threehundred fifty dollars, and shall render judgment accordingly.This section shall not be interpreted to abrogate the contractualrights of any party concerning the recovery of attorney's fees inaccordance with the provisions of any written contract between theparties to the action."

2. The parties appealed from the judgment of the trial court tothe Appellate Court, and we transferred the appeals to this courtpursuant to Practice Book § 4023 and General Statutes § 51-199(c).

3. The defendant's property also abuts the balance of theplaintiff's property, which is located in Southbury.

4. The deed provided that the transfer of the property was made"[t]ogether with and to be used in common with all others to whomsuch right may hereafter be granted by the grantor, his heirs,successors and assigns, the right to use the fifty (50) footroadway adjacent to the said premises on the easterly and westerlyside thereof extending from Transylvania Road to and through saidpremises for all lawful purposes including access and egress toand from said premises by motor vehicle and otherwise and for theinstallation and maintenance therein of utility lines, storm andsanitary sewers."

5. Unless otherwise indicated, all references hereinafter tothe easement are to the modified easement recorded in October,1972.

6. Because the plaintiff's property remains undeveloped,Woodlake Road has been used almost exclusively by condominiumresidents and their guests.

7. Under local zoning regulations, the plaintiff cannotsubdivide its property unless that property is accessible bypublic road.

8. Prior to the town's study of Woodlake Road, children whoresided in the condominium complex were transported to and fromschool over that road by the bus company hired by the town. SeeGeneral Statutes § 10-220c (municipality may transport publicschool children over private road if road owner agrees and roadmeets municipality's specifications). The bus company ceased alltravel on Woodlake Road, however, after the plaintiff complainedthat the town's study had indicated that the road did not meettown standards. The buses resumed their travel on Woodlake Roadafter the defendant and the bus company entered into an agreementpursuant to which the defendant itself hired the company totransport the condominiums' schoolchildren and agreed to hold thecompany harmless for any claims arising from the buses' use ofWoodlake Road.

9. The complaint is in two counts. The first count allegesthat the plaintiff has been irreparably harmed by the defendant'sfailure to maintain Woodlake Road properly because: "(a)Woodlake Road and the abutting woodland are worth less than theyotherwise would be; (b) [t]he risk of injury to all who travelWoodlake Road has been increased; and (c) [the plaintiff's]potential liability for such injuries has been increased." Thesecond count alleges that the defendant and its members haveforfeited their right to use Woodlake Road and, consequently, thattheir continued use of the road constitutes a trespass. Thecomplaint seeks either an injunction requiring the defendant "tomaintain Woodlake Road and keep it in good repair" or aninjunction prohibiting the defendant and its members from usingthe road, and damages.

10. "The verb `repair' has been defined to mean `to restore toa sound or healthy state; to make good.' Webster, Third NewInternational Dictionary. The verb `maintain' means `to keep in astate of repair, efficiency or validity; to sustain againstopposition or danger.' [Id.]" John A. Errichetti Associates v.Boutin, 183 Conn. 481, 490, 439 A.2d 416 (1981).

11. The plaintiff's expert witnesses were Jack E. Stephens, aconsultant and retired college professor, and William A. Brennan,the secretary-treasurer of a local construction company. Stephenstestified that he had inspected Woodlake Road on several occasionsbetween 1991 and 1994 and that, in his opinion, Woodlake Road hasnot been properly maintained, it is no longer usable as aroadway, and a new road is necessary. Brennan testified that hiscompany had built a portion of Woodlake Road and that he is veryfamiliar with the road. In Brennan's opinion, the damage toWoodlake Road was due largely to the improper maintenance of theroad's drainage system. Brennan further testified that WoodlakeRoad is in need of extensive road repairs and a new drainagesystem. According to Brennan, there are several different methodsthat may be employed to repair the road and its drainage system,the least costly of which will require an expenditure of $298,400.

12. Although the trial court rendered judgment for theplaintiff on count one of the complaint; see footnote 9; the courtexpressly stated that it had rejected the plaintiff's applicationfor injunctive relief because the plaintiff had not establishedthat it had been irreparably harmed and, further, that theplaintiff had "an adequate remedy at law, namely, money damages . . . ."The trial court rendered judgment for the defendant oncount two of the complaint. The plaintiff has not appealed fromthat portion of the court's judgment.

13. The trial court also concluded that the offer of judgmentinterest is to be recomputed in the event that the actual cost ofthe repairs is less than $298,400.

14. The defendant presented no expert testimony regarding thecondition of Woodlake Road.

15. The evidence also established that the residents of thecondominium complex comprise approximately 10 percent of all ofthe residents of the town of Woodbury.

16. Although the defendant claims that the plaintiff failed toestablish that the defendant had breached its duty under theeasement, the defendant does not contest the trial court'sjudgment on the ground that the cost of repairing Woodlake Roadis, as a matter of law, an improper measure of the award to whichthe plaintiff is entitled under the plaintiff's construction ofthe easement. See, e.g., Bachman v. Fortuna, 145 Conn. 191, 194,141 A.2d 477 (1958) (in action for breach of agreement to repairroad, damages may be determined by ascertaining cost ofnecessary repairs).

17. Earlier in the trial, the court had inquired as to theidentity of the attorney who had prepared the easement and whetherthat attorney was available to testify regarding the meaning ofthe instrument's "pro rata" language. The court, having beeninformed that Bowman had drafted the document and could be madeavailable to testify, indicated that it might wish to call him asa "court witness." The plaintiff, however, apparently inresponse to the court's expression of interest in Bowman'stestimony, called Bowman as its own witness.

18. We note that the plaintiff entered into a stipulation attrial providing, inter alia, that "its obligations pursuant to[the easement] are as stated by Attorney Bowman." Because theplaintiff's property has not been developed, however, theplaintiff has no greater responsibility to maintain and repairWoodlake Road under Bowman's interpretation of the easement thanit does under its alternative construction that the repair andmaintenance obligations under the instrument apply only toWoodbury Village, its successors and assigns.

19. See footnote 4.

20. Standard 4.2 of the Connecticut Bar Association,Connecticut Standards of Title (1980), provides in pertinent partthat "[a] grantor who has conveyed by an effective, unambiguousdeed cannot by executing a subsequent deed, make a substantialchange in the name of the grantee, decrease the size of thepremises or the extent of the estate granted, impose a conditionor limitation upon the interest granted, or otherwise deviate fromthe first deed, even though the latter deed purports to correct ormodify the former." As the Appellate Court has recently noted,however, "[t]he standards of title `establish the custom in thelegal community . . . [but] are not controlling, contractually orotherwise.' Carter v. Girasuolo, 34 Conn. Sup. 507, 510,373 A.2d 560 (1976)." Cardillo v. Cardillo, 27 Conn. App. 208, 212 n. 5,605 A.2d 576 (1992).

21. Practice Book § 4061 provides in relevant part that anappellate "court shall not be bound to consider a claim unless itwas distinctly raised at the trial or arose subsequent to thetrial." Practice Book § 285A provides in relevant part: "If aparty intends to raise any claim of law which may be the subjectof an appeal, he must either state the same distinctly to thecourt before his argument is closed or state it in a written trialbrief. If this is not done, it will not be the duty of either thetrial court or the appellate court to decide the claim."

22. "Section 52-192a (b) requires a trial court to awardinterest to the prevailing plaintiff from the date of the filingof a complaint to the date of judgment whenever: (1) a plaintifffiles a valid offer of judgment within eighteen months of thefiling of the complaint in a civil complaint for money damages;(2) the defendant rejects the offer of judgment; and (3) theplaintiff ultimately recovers an amount greater than or equal tothe offer of judgment." Loomis Institute v. Windsor, 234 Conn. 169,180, 661 A.2d 1001 (1995). The purpose of § 52-192a is toencourage pretrial settlements by penalizing a party that fails toaccept a reasonable offer of settlement in "any civil action basedupon contract or seeking the recovery of money damages." SeeBlakeslee Arpaia Chapman, Inc. v. EI Constructors, Inc.,239 Conn. 708, 687 A.2d 506 (1997).

23. The trial court also indicated that because the plaintiffis not entitled to payment from the defendant in excess of$298,400 even if the cost to repair Woodlake Road exceeds thatsum, the defendant is not responsible for offer of judgmentinterest on any amount expended by the plaintiff for road repairsin excess of $298,400.

24. We do not question, however, the trial court's sensibleconclusion that it is preferable, in the circumstances, to placeresponsibility on the plaintiff for implementing the repairs toWoodlake Road. At trial, the court explained why it had fashionedits judgment in such a manner: "[T]he reason, very frankly, Iordered [the plaintiff] to [repair the road] is because obviously[the parties] can't get along, so if I'm going to have [thedefendant] fixing [the plaintiff's] property, [there are] going tobe more problems . . . ."

25. Although the ad damnum clause of the complaint contained aclaim for damages, the primary relief sought by the plaintiff was"[a]n injunction requiring [the defendant] to maintain WoodlakeRoad and keep it in good repair, or, alternatively, an injunctionprohibiting [the defendant] and its members from further use of[Woodlake Road]." See Clipfel v. Kantrowitz, 143 Conn. 184, 189,120 A.2d 416 (1956) ("where the asserted essential right isequitable in nature and damages are sought in lieu of equitablerelief or as complementary or supplemental to it in order to makethe relief complete, the whole action still remains one inequity"). Moreover, the trial court did not award any moneydamages to the plaintiff on its trespass claim; see footnotes 9and 12; but, instead, awarded the plaintiff a sum not to exceed$298,400 solely

for the purpose of repairing the road. Finally,the plaintiff, in light of the defendant's ongoing duty under theeasement to maintain Woodlake Road in good repair, has notchallenged any of the equitable conditions placed on its use ofthe $298,400.

26. See Associated Investment Co. Ltd. Partnership v. WilliamsAssociates IV, 230 Conn. 148, 159, 645 A.2d 505 (1994) (equity is"`a system of positive jurisprudence founded upon establishedprinciples which can be adapted to new circumstances where a