

This chapter will define a party wall, discuss how they can be created, and what role a surveyor plays with regards to a party wall.

DEFINITION

Party wall may be defined as a wall constructed on or along a property boundary line which serves as a common support to structures on each side of the wall, the structures being under separate ownerships. The wall is for the mutual benefit of both parties for supporting the construction of contiguous buildings. The adjoining owners are tenants in common in the wall. They usually share the maintenance of the wall equally. A party wall does not have to stand exactly centered on the property line. The wall may exist entirely upon the land of one parcel, but the remaining area between the wall and the adjoining parcel which also uses the wall is subjected to an easement in favor of the adjoining parcel. The main criteria for having a party wall are:

1. Two different landowners on each side of the wall.
2. The wall must be a common support to the buildings on each side of the wall.
3. The wall must be equally maintained by both parties.

CREATION OF A PARTY WALL

A party wall can be created by prescription, implication (where there is a conveyance of one or more of the adjoining parcels of land), by a written agreement or contract, or by statute.

The following case of *Cameron v. Perkins*, 454 P.2d. 834 discusses creation of a party wall by implication:

"It must be determined if a party wall can be established by implied easement as well as by express contract or statute. Our response is in the affirmative....We find that courts in other jurisdictions have recognized the rule that owners of abutting properties, on which a party wall has been erected, enjoy an easement in the other's part of the wall even in the absence of express contract or statute creating a party wall....In so ruling, we believe that the law in this jurisdiction is clear that a party wall can be created by an implied grant as well as by express contract or statute. The overwhelming authority supports this view."

In support of the theory that a party wall can be established by nature of a prescriptive easement, the following case of Weadock v. Champe, 193 Mich. 553, 564-565, 160 N.W. 564 (1916) was quoted in the case of Cameron v. Perkins, supra, as follows:

"We think the law is well settled that, where a division wall between two buildings has for a period larger than that of the statute of limitations been used for the support of both buildings, it becomes in effect a party wall, whether it was originally constructed as such or not, and the owners of the buildings, and that one who purchases such a building takes it subject to such party wall right. Such was the case with the east wall of the Eagle Block."

Generally speaking, most of the party walls created in today's time are those in duplexes, townhomes and commercial developments. Usually the developer provides for a set of covenants which run with the land. In other words they are largely created by contract. Arizona has a statute which essentially gives the power to cities and towns to regulate party walls. In essence, a city or town could establish an ordinance addressing party walls which in turn could be the same as a statutory provision for a party wall.

THE ROLE OF THE SURVEYOR

The surveyor is involved with party walls; during layout of new developments which intend to create party walls, during a resurvey which is to locate a party wall with respect to an existing boundary, and also in locating walls close to or on property lines during the course of a regular survey since it has been shown that party walls can be created by implication or prescription.

It is important to do accurate survey work making all of the proper legal boundary decisions concerning a boundary line which is within or along a possible party wall.

A very common situation is where a townhouse or duplex development is planned and platted. The property lines are intended to be down the center of the party walls. As we all know when the buildings are laid out (with some degree of error) and ultimately constructed (with more error), they do not exactly center on the property lines. With the principles outlined so far it is apparent that even though the party wall is not centered on the property line, there are still certain rights which each adjoining owner has with respect to the wall. This is not questioned. For determining the boundary, it would be quite practical to simply consider the party wall the boundary line. But, there are some considerations here. Assume for a

minute that the party wall is not necessarily centered on the boundary line, but that at least part of the wall is on each owners land. With the principles outlined there would still be equal rights to both owners to all of the party wall required for each side. But, where is the boundary line? Let's assume the townhomes are finally constructed so that the party wall(s) fall entirely on one side of the property lines (as shown by the record lines on the plat). One way to view this situation would be to say that the property lines are where they are shown by the plat, using record dimensions, the party wall then subject to an easement by both adjoining owners. The other way to view this would be to say that the center of the party walls were intended to be the property lines and the walls are an original monument, therefore they control. A key to this is whether or not "original" monuments are set at the lot corners. If so, they would control the property lines beyond any portion of the party wall.

From all of this some probable conclusions might be drawn:

- 1) In absence of "original" monuments at the corners of the lots, the actual centerlines of the party walls as constructed could control as "original" monuments and their alignment could be projected outward to control the corners of the lots. The only limitation is that no other prior rights can be interfered with, such as, if in doing so this the lots would extend beyond the boundaries of the subdivision or conflict with a senior line.
- 2) If "original" monuments are set at the lot corners, they could control the line through the building provided that this line does not place the party wall entirely upon one owner in a manner that leaves a space between the property line (as drawn between monuments) and the outside of the party wall. If the connecting line between "original" monuments at the lot corners does place the entire party wall on one owner's side with a gap between it and the wall, there are three possibilities in resolving this; (a) the owner who has the wall and some of the adjoiner's building space entirely within his property bounds (as determined by a connecting line from "original" lot corners) is subject to an easement for the area between the wall and property line; (b) the property line is the center of the wall throughout the length of the party wall and then at the exterior of the building the line might angle to the "original" lot corners; or (c) the property line is the center of the party wall throughout the length of the wall and then at the exterior of the building the line goes along the building until it hits a line which is parallel with the wall extended and would then intercept the lot corners as "originally" monumented. This would create lines that were parallel with the party walls, keeping the bearings all the

same, but would be offset at the exterior of the buildings. With respect to these possibilities, consider the case of *Walt v. Newman*, 278 NW 742, where the facts were not of this senerio, but there are some similarities:

"When a party wall is entirely on the land of one party, he retains the fee and all rights in the wall, subject to the easement of lateral support." (underlines added for emphasis).

This case is included in this chapter for review. Note the similarities in the case in that part of the fee to the lot was not included within the deed description, but the wall was still to be considered a party wall. It seems that the party wall as an "original" monument would be the most equitable situation, and also supported by other boundary law principles.

It is not necessarily the duty of the surveyor to make the decision of which situation should apply. But more often than not, the surveyor must set monuments to mark the lot corners or determine where a boundary line is with respect to a party wall. The questions and possibilities here must be considered before a decision is made. The surveyor must consider intent and original monumentation as controlling. In every case it would not be proper to simply show the "platted" line and the location of the party wall, since in the situation where no "original" lot corners were set, and it being quite possible that the centerline of the party wall is indeed the controlling factor in determining the lot lines, then to show otherwise would actually be creating a cloud on the title.

Be careful, accurate, and quickly discuss these situations with your client and/or seek legal advice.

There are no cases on party walls specific to Arizona. All of the cases mentioned are from other states within the Pacific reporting district.

ARIZONA STATUTE

§ 9-276. Additional powers of cities

A. In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

13. Regulate partition fences and party walls and regulate the construction and location of buildings, walls and fences on the line of a street, way or alley.

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284 Mich. 1

WAIT et al. v. NEWMAN et al.
No. 141.

Supreme Court of Michigan.
April 4, 1938.

1. Party walls §9(4)

Where both general and specific words are used by parties to a contract and deed concerning a party wall, the specific words ordinarily control.

2. Party walls §10

Under a contract for the sale of realty providing for equal rights in a wall and a deed which did not include the land on which party wall was situated providing for the use of wall as a party wall, the purchaser acquired only an easement for lateral support, and a mandatory injunction to compel purchaser to remove advertising posters from wall was properly granted.

3. Party walls §8

Where a party wall is entirely on the land of one party, he retains the fee and all rights in the wall subject only to the easement of lateral support, in the absence of agreement to the contrary.

4. Party walls §10

Equity will enjoin an increase of the burden on the servient estate beyond that contemplated at the time of the creation of an easement to use a wall as a party wall.

Appeal from Circuit Court, St. Joseph County, in Chancery; Blaine W. Hatch, Judge.

Suit by J. Paul Wait and others against Carl C. Newman and others for a mandatory injunction to compel the removal of advertising from a party wall and to enjoin such use. Decree for plaintiffs, and defendants appeal.

Affirmed.

Argued before the Entire Bench.

D. M. Britton and Roy H. Hagerman, both of Sturgis, for appellants.

J. Paul Wait, of Sturgis, in pro. per and for other appellees.

BUTZEL, Justice.

A party wall separates buildings fronting on the north side of Chicago street in Sturgis, Mich. Plaintiffs' building, leased to a mercantile establishment, is to the east of the wall, and that of defendants Newman, leased to defendant Theatre Company, is to the west. The contract under which defendants Newman obtained a deed of the property west of the wall, as well as the deed, came from the parties who were then owners of both lots and the buildings thereon. Defendants' contract stated: "The parties of the first part hereby * * * agree that they will sell * * * the block * * * with equal rights in the brick wall on the east of said block." The deed to defendants did not include the land upon which the party wall is situated, title thereto being retained by the grantors. However, the deed did state: "And first parties further grant to second parties or their assigns a right to use the brick wall on the east side of said granted piece or parcel of land as a party wall." Plaintiffs now hold the title in the east lot, on which is the party wall, subject, however, to any rights defendants may have acquired through their contract and deed.

The defendant Theatre Company has attached to the street end of the wall a large frame in which advertising posters are inserted. The frame faces the street and hangs flat on the brick facing at the street end of the wall. It was first attached midway between the edges of the wall, but after suit was instituted, it was moved to the half of the wall nearer the theatre. Plaintiffs brought suit for a mandatory injunction to compel the removal of the advertising frame and to enjoin defendants from using the wall except for lateral sup-

port. The court granted plaintiffs the relief sought and defendants appeal.

[1-4] The main question is one of law. Defendants stress the fact that the contract provided for equal rights in the brick wall, even though the deed granted only the use of the wall as a party wall. When both general and specific words are used by the parties, the latter will ordinarily control. *Thomson Electric Welding Co. v. Peerless Wire Fence Co.*, 190 Mich. 496, 157 N.W. 67. There being no claim of fraud or mistake, the clause used in the deed might be considered to be a practical construction by the parties of the terms used in the contract. Even giving some force to the wording of the contract and construing it with the deed, it apparently was intended that the defendants acquire only an easement of lateral support. When a party wall is entirely on the land of one party, he retains the fee and all rights in the wall, subject to the easement of lateral support. *Bean v. Dow*, 84 N.H. 464, 152 A. 609. In the absence of agreement to the contrary, the easement of the dominant tenant is limited to the right of support and he cannot increase the burden on the servient owner beyond that. *Sullivan v. Graffort*, 35 Iowa 531; *Fonda v. Parr*, 10 Ky.Law Rep. 445; *Coggins & Owens v. Carey*, 106 Md. 204, 66 A. 673, 10 L.R.A.,N.S., 1191, 124 Am.St. Rep. 468. The dominant tenant has no right to encroach beyond the lot line except for the purpose of support. *Johnson v. Minnesota Tribune Co.*, 91 Minn. 476, 98 N.W. 321. Equity will enjoin an increase of the burden on the servient estate beyond that contemplated at the time of the creation of the easement. *Grinnell Bros. v. Brown*, 205 Mich. 134, 171 N.W. 399; *Bang v. Forman*, 244 Mich. 571, 222 N.W. 96.

Appellants call attention to *Lappan v. Glunz*, 140 Mich. 609, 104 N.W. 26, wherein a party wall, running north and south, rested half on each lot so that each owner held the fee in half of the wall. The lessee of the east lot painted a large sign on the easterly face of the wall entirely located on his own lot. This court held that he had a right to do so and refused to order the sign removed. In the instant case, the entire wall is located on plaintiffs' property, and defendants' easement therein is quite different from the fee held by the defendant in *Lappan v. Glunz*, *supra*.

The decree is affirmed, with costs to plaintiffs.

WIEST, C. J., and BUSHNELL,
SHARPE, POTTER. CHANDLER,
NORTH, and McALLISTER, JJ., concur.