



SHORE 'NUFF!!

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Muskrat Suzi and Muskrat Sam were able to obtain their earnest money back on their previous real estate escapade in Muskrat Land, after all. So, having learned very little from that experience, they were more determined than ever to buy a place of their own---on the water, of course. When they came across a for-sale-by-owner sign on a tract lying between Primrose Lane and the shore of Lake Lebarge, they felt like the deal was meant to be.

Which could have explained their lack of caution in dealing with Ferrol Katz. Katz had no real estate license, but was quick on his feet and free with the truth. His favorite ploy was to acquire a tiny fractional interest in a tract so that he could market it as an “owner,” cutting out a commission. Sometimes it worked.

Further, he was adept at what he called “conditioning the market,” either as buyer or seller. He had, for example, convinced the previous owner that no one would pay much for the property because of that unfortunate winter barbecue incident on the site involving the late Sam McGee.

Dirty deeds done cheap...

So, Katz bought a total of four acres dirt cheap. He planned to re-sell it in pieces, but he also figured on enhancing the proceeds with his usual slight of hand, if the opportunity presented itself. He contracted with Sam and Suzi to sell them an acre which was on the Lake shore, but without direct access from Primrose Lane. Katz explained that there was a prescriptive easement on the adjacent property which provided access.

By then the Muskrats begin to be suspicious, and went to see lawyer Coon Dog Twichell, who suggested a look-see. They were glad Twichell had worn his dirty, beat up, tromping around shoes, instead of his good shoes, since it was muddy by the Lake---not realizing that those were his good shoes.

A plethora of theories...

The neighboring owner whose property was supposedly subject to a prescriptive easement happened to be on site when they sidled down Primrose Lane and pulled in on a faint, weedy track that did in fact run all the way to the Lake. The neighbor confirmed Twichell's suspicions: "Years go by when no one uses this track," said the neighbor. Twichell recognized some similarities to the recent case of **Horton v. Taylor**, also involving no real attempt to round up all of the elements of adverse possession, or even a few.

"So we won't have access?!" squealed the Muskrats in unison. "Well, I wouldn't say that," allowed Twichell, about the time that Ferrol Katz himself pulled up. Katz smiled his Cheshire Cat grin and offered to lease them a small path across property he still owned---at a hefty price! "Nothing in that contract about free access," Katz chortled. "Even if you use those county court access statutes, you will still have to pay for what you get!"

Necessary implications...

"As a matter of fact, Ferrol," mused Twichell, "these kids have two shots at free access, either by *way of necessity* or an *implied easement*, given the topography and the chain of title, as I understand it." At one time, Katz had of course owned both the tract being sold and the "small path" tract. There was simply no practical way get to the sold tract (as to which by boat off the Lake did not count) without crossing the path tract---it was necessary to cross it at some point.

Further, the path served and benefited both pieces of property, which was obvious just from looking at it---the implication was clear, as was the existence of the well-used path, which was really the only practical access. "Contract or no contract, Ferrol, you can't sell property without providing reasonable access and you can't ignore the lay of the land---no matter how clever you think you are!"

"In fact, if you choose to admit to the way of necessity, your buyers get to decide where to put the access, within reason, even if you don't like it. But, if they later obtain other access (like a dedication of the bogus prescriptive easement, maybe) the necessity evaporates and the easement along with it. If you choose to give in on the existence of the implied easement, it will be pretty well permanent. There's more than one way to skin a clever cat."

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