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1.

Ten years ago, Ed signed a written agreement conveying a right-of-way easement to Fran, which allowed Fran to access the commercial farm and bunkhouse that she operated. There are no facts indicating that the agreement was delivered or recorded. The agreement was likely delivered to Fran, which would have made the conveyance valid, but even if it had not been delivered, Fran would have obtained the easement through her continued use of it (10 years would have also qualified for adverse possession, but only if her use had been open, notorious, and hostile), Fran is now changing her use, and subjecting the lane to increased traffic, electric lines, and fiber optic cable. Fran would have the right to continue her prior use of the easement, but Ed could argue to enjoin the new uses. Ed would not be entitled to a temporary restraining order-- Fran is just beginning to convert her farm, and a TRO would expire shortly (14 days in Federal Court, although there is no indication that there would be subject matter jurisdiction for a federal action, or until the next hearing, no later than 28 days in State court). Ed could seek a preliminary injunction--to maintain the status quo until there can be a hearing on his request for a permanent injunction. Ed would have to show that he is likely to suffer irreparable harm if the injunction is not granted, and that he has a likelihood of success on the merits. He would also need to post security for any damages to Fran if he were to lose his quest for a preliminary injunction. The court would also be required to balance the benefit to Ed against the harm to Fran. The same considerations would come into play when Ed seeks a permanent injunction.

Ed is likely to succeed--a 50-lot subdivision will likely greatly increase traffic over the easement. Although there may be less employees for a computer server center than on a farm (this is not certain), the electric lines and fiber optic cable are an additional burden on the easement. Fran can argue that the easement includes the airspace and underground (depending on whether the lines and cable are above or below ground), but she is unlikely to succeed.

2. Gloria's agreement with Ed provided that Gloria and her successors in interest would use her property only as a commercial organic garden, and that Ed would buy produce from Gloria for use in his inn. Contracts are generally assignable, and when Gloria sold her land to Henry, the agreement was assumed by Henry. Exceptions to the assignment

of contracts include a) restrictions on assignment within the contract and b) when the obligations are personal to the assignor. Neither of these exceptions are present here. Furthermore, Ed continued to buy produce from Henry. This conduct showed that Ed accepted the assignment.

Henry is a successor-in-interest to Gloria, and thus his conversion of the organic garden to a truck stop and diner is a breach of the agreement. Henry can argue that Fran's intended development is an occurrence that was unforeseeable when Ed and Gloria entered into the agreement, and therefore excuses his performance under the agreement. This is unlikely to succeed, but Ed is unlikely to be successful in stopping Henry from converting the property into a truck stop and diner. Despite the agreement between Ed and Gloria / Henry, Henry owns the property and is free to use it as he sees fit. It is unlikely that the truck stop and diner would be considered a nuisance, which would give Ed grounds for an injunction. But Ed is likely to recover damages from Henry if other sources of organic produce are more expensive (sales and transportation costs) than the produce Ed was buying from Henry. Although the truck stop and diner will compete with Ed's inn, there is no remedy available to Ed to defeat Henry's plans.

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