

CAUSE NO. 2006-12-B8515-CV

PROPERTY OWNERS  
ASSOCIATION  
OF TERLINGUA RANCH, INC.,

Plaintiff

v.

MARION CRAIG SUBER,

Defendant.

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IN THE DISTRICT COURT OF

394<sup>th</sup> JUDICIAL DISTRICT

BREWSTER COUNTY, TEXAS

AMENDED FINAL JUDGMENT

This cause came on for trial on Monday, January 9, 2012. No jury having been demanded, all issues were tried to the Court. Plaintiff Property Owners Association of Terlingua Ranch, Inc. ("POATRI") appeared and was represented by its attorney of record Jeffrey Thomason. Defendant Marion Craig Suber appeared and was represented by his attorneys of record Pat Long Weaver, Keith J. Valentine, and Arvil Rod Ponton.

Having considered all the evidence and the arguments of counsel,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. The roads traversing the property of Marion Craig Suber in Terlingua Ranch are private roads.
2. POATRI's easements with respect to the private roads on Marion Craig Suber's property on Terlingua Ranch are limited to purposes for maintenance and utilities.
3. Marion Craig Suber has the right to erect and maintain gates across roads entering or crossing his property, to the extent same are capable of being opened and closed.

4. POATRI cannot define or create ingress or egress rights of Property Owners in Terlingua Ranch on the private roads on Marion Craig Suber's property.

5. POATRI cannot grant rights to access to any Property Owner or its invitees to the roads on Marion Craig Suber's property.

6. The limited purpose of POATRI's easement rights for road maintenance and utilities on Marion Craig Suber's property is not frustrated by gates, locked or unlocked, as long as POATRI is provided a reasonable means of access to Marion Craig Suber's property.

7. Marion Craig Suber's gates, as long as they are capable of being opened and closed for road maintenance and access for utilities by POATRI, are reasonable as a matter of law.

8. Marion Craig Suber's request to recover reasonable attorneys and necessary fees is granted as follows: \$10,000.00 for prosecution of the trial, payable to the Court; \$35,000.00 for any successful appeal to the Court of Appeals; and \$30,000.00, for any successful appeal to the Supreme Court.

9. All relief not expressly granted herein is DENIED, and this Judgment shall dispose of all issues pending on this matter between POATRI and Marion Craig Suber, and this Judgment shall be FINAL as to such issues and parties.

SIGNED this 27 day of August, 2012.



HONORABLE STEPHEN B. ABLES  
Judge Presiding

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**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

1. Terlingua Ranch is a real estate development in Brewster County, Texas, consisting of numbered lots, a lodge, and a road system.
2. Marion Craig Suber ("Suber") is a property owner in Terlingua Ranch
3. There is no plat filed for record of Terlingua Ranch in the official Brewster County Deed Records or Official Public Records concerning any tract of land owned by Suber in Terlingua Ranch.
4. On November 30, 1976, Terramar Corporation, the property developer of Terlingua Ranch, deeded to Property Owners Association of Terlingua Ranch, Inc. ("POATRI") portions of the Terlingua Ranch owned by Terramar at the time, expressly reserving for Terramar an easement across existing roads and an easement for ingress and egress to and from the property conveyed in said Deed, recorded at volume 198, page 714, Brewster County Deed Records.

5. On December 29, 1976, Terramar Corporation filed an Assignment and Easement, granting to POATRI:

(a) the non-exclusive right and privilege to use in common with Terramar and other appropriate parties any easement now owned or held by Terramar for ingress and egress across existing roads and roadways upon any property in Brewster County, Texas, previously conveyed by Terramar to various third parties, reserving unto Terramar any such easements; and (b) a non-exclusive easement of ingress and egress over, across and upon all existing roads and roadways upon any property now owned by Terramar within Brewster County, Texas, as shown by the records of the County Clerk of Brewster County, Texas, as of the date hereof; such assignment of easement rights and the non-exclusive easement granted herein being for the purpose of ingress and egress by the Association and the Association's duly authorized agents and representatives for (i) the maintenance and repair of such roads and roadways, and (ii) the maintenance and repair of the fresh water system . . . . The rights and privileges herein created and assigned to the Association are non-exclusive and are personal to the Association and are not subject to assignment or transfer by the Association without the joinder and approval of Terramar and its successors and assigns.

Recorded at volume 200, page 119, Brewster County Deed Records. This document is the "1976 Assignment and Easement."

6. Pursuant to the 1976 Assignment and Easement, POATRI has an easement across the property therein discussed.

7. This suit involves certain tracts of land owned by Suber in Terlingua Ranch.

8. Three of the tracts owned by Suber, tracts 8398, 8399, and 8400, were originally conveyed from Terramar Corporation to Carl Cangelosi on November 25, 1975, as recorded at volume 233, page 5, Brewster County Deed Records.

9. Suber's tract 8562 was originally conveyed to Lillard A. Kerlin and wife, Betsy J. Kerlin, on March 26, 1976, recorded at volume 222, pages 48-49, Brewster County Deed Records.

10. Suber's tract 8520 was originally conveyed to Kenneth R. and Debra Jenke, on March 26, 1976, recorded at volume 226, pages 90-91, Brewster County Deed Records.

11. Suber's tract 8517 was originally conveyed from Terramar Corporation to Robert J. Knotts, on March 27, 1976, recorded at volume 218, page 384, Brewster County Deed Records.

12. Suber's tract 8391 was originally conveyed from Terramar Corporation to William A. and J. Joan Martin, on March 30, 1976, recorded at volume 217, page 709, Brewster County Deed Records.

13. Suber's tract 8514 was originally conveyed from Terramar Corporation to Mr. and Mrs. L. R. Perdue, on March 31, 1976, recorded in volume 231, page 338, Brewster County Deed Records.

14. The deeds from Terramar Corporation to the original owners of tracts 8398, 8399, 8400, 8562, 8520, 8517, 8391, and 8514 in Terlingua Ranch, contained the following reservation:

There is reserved unto GRANTOR, its successors and assigns: (a) an easement of ingress and egress across the existing roads and roadways on the subject property; (b) the right to dedicate such roads and roadways on the subject property to the public at any time after the date of this conveyance without the joinder of GRANTEE, his heirs and assigns; and (c) an undivided one-half (1/2) interest in and to all of the oil, gas and other minerals presently owned by GRANTOR in and under the subject property; provided, however, GRANTOR expressly waives all rights of ingress and egress or across the subject property for any and every purpose related to or arising by virtue of this mineral reservation.

15. No water system exists on any of Suber's tracts.

16. In 2003, Suber erected the gates at issue in this case on tracts 8562, 8514, and 8517, as well as gates on tracts 8398 and 8399. POATRI has no objection to the gates on tracts 8398 nor 8399, but objects to the gates on tracts 8562, 8514 and 8517.

17. On February 4, 2004, Terramar Corporation, by Deed recorded at volume 164, page 617, Brewster County Deed Records, conveyed to Brewster County Oil Company "all of GRANTOR'S right, title and interest, of any kind, including but not limited to: all right, title and in and to the fee lands, and all right, title and interest in and to the surface estate . . . . There is nothing herein reserved unto GRANTOR, it being the desire and intent of GRANTOR to convey all of GRANTOR'S right, title and interest, of any kind, in and to any parcel of land, tracts and described lots lying and being situated in Brewster County, Texas . . . retaining nothing by the GRANTOR herein."

18. On November 1, 2006, Terramar Corporation executed an Assignment of Easement and Rights to POATRI, recorded in volume 207, page 418, Brewster County Deed Records, purportedly assigning to POATRI all easements, rights and interests reserved unto Terramar in the original Deeds to each individual tract on Terlingua Ranch. Said assignment was invalid and conveyed no interest in the real property at issue to POATRI.

19. The rights of POATRI with respect to roads on Suber's property are accurately described in paragraphs 1-9 of Plaintiff's Exhibit 18, which is entitled *Access to Private Roads on Terlingua Ranch*, which is contained in *POATRI Policies & Procedures Manual*, page 14, revised April 30, 2005.

20. The extent of POATRI's interests in the roads of Terlingua Ranch on Suber's property are as stated in the following listed conditions from the above-described Exhibit 18:

- a. All roads on Terlingua Ranch are private Property Owner roads, not Public roads. POATRI owns no roads other than the roads that access the lodge and one water well. POATRI has ingress and egress access to all other roads strictly for maintenance and utilities.

b. It is the responsibility of all organizations using these roads to obtain permission from all property owners whose property will be used in their operations. POATRI cannot issue such permission.

c. As POATRI is not a permitting agency, neither may they deny any tours or events that are held on Property Owner roads; they may only be denied by individual property owner action. Each property owner should obtain his/her own legal counsel to determine his/her rights.

d. If POATRI does accept contributions by commercial or other organizations using roads on Terlingua Ranch, it does not imply that POATRI has permitted, allowed, approved, or disapproved of the action.

e. Commercial use is not to be construed as including service use, such as UPS, propane delivery, or emergency vehicles.

f. POATRI can only create policy and guidelines and cannot act as an enforcing agency. In this spirit, the following guidelines are offered in the hope they will be adhered to by commercial users:

i. Any and all organized tours should contact the Terlingua Ranch office 2 to 4 weeks prior to an event.

ii. Routes, dates, and duration of events should be furnished to the Terlingua Ranch office management, who will then disseminate the information in the most practical manner, such as posting to the website.

iii. In the case of repetitive guided tours, it is not necessary to advise each time, but routing is still requested.

iv. Have a method of identifying participants, such as visible numbers, names on vehicles, etc.

v. No individual group should number more than 20 participants and each group should have one individual charged to monitor behavior (not applicable to single vehicle tours).

vi. It is requested that groups creating noise, dust and other “nuisances” limit themselves to sparsely populated areas.

vii. Each guest or visitor or proposed commercial user should be furnished a copy of reasonable behavior on Terlingua Ranch as well as a copy of the guidelines.

g. If a property owner notifies the General Manager that any organization or business has violated the suggested guidelines, as a service to the interested property owners, the General Manager will notify, in writing, said organization or business of the guideline violation(s).

h. A member who has barricaded a road shall not be relieved of any obligation to pay maintenance fees.

i. A member may not block or otherwise barricade a private road if such action will deny access to any other property owner.

21. In that the roads of Terlingua Ranch on Suber’s property are private roads, not public roads, and POATRI has ingress and egress solely for the purposes of maintenance and utilities, and to the extent that conditions 20.a., b., and c. above accurately describe Plaintiff’s interests in the roads of Terlingua Ranch, members of POATRI, by virtue of POATRI’s ingress and egress easement, do not enjoy the right to access any

Terlingua Ranch roads on Suber's property for the purposes of ingress and egress. Paragraph 10 of Plaintiff's Exhibit 17, which declared that there were ingress and egress rights to general members of the Association, has no basis in law or in fact.

22. POATRI cannot grant permission for the use of private roads in Terlingua Ranch on Suber's property to any party or invitee or any other property owner in Terlingua Ranch. POATRI can grant rights of access to its agents SBA AND subcontractors for the purpose of performing maintenance ON the Suber roads.

23. The Court further finds that gates on the roads on Suber's property, if they are designed to open and close, are not barricades as described and prohibited by POATRI road policy. The limited purpose of POATRI's easement right for road maintenance is not frustrated by the existence of gates on Suber's property.

24. The existence of gates, whether locked or unlocked, if designed to open and close, as placed by Suber on the private roads entering or crossing his property, are reasonable as a matter of law, as long as POATRI is provided a reasonable means of access for maintenance.

25. It is equitable and just to award attorneys' fees to Suber pursuant to the Texas Declaratory Judgment Act. Therefore, Suber's request to recover reasonable and necessary attorney's fees is granted as follows: POATRI is ordered to pay to Suber \$10,000.00 for prosecution of the trial; \$35,000.00 for any successful appeal to the Court of Appeals; and \$30,000.00, for any successful appeal to the Supreme Court.

### CONCLUSIONS OF LAW

26. The deed of sale from Terramar Corporation to each original purchaser of Suber's property, tracts 8398, 8399, 8400, 8562, 8520, 8517, 8391, and 8514, reserved to Terramar Corporation an easement of ingress and egress across existing roads and roadways

on the property, the right to dedicate any existing roads to the public without joinder of the original grantee, his heirs or assigns, and an undivided one-half interest in the mineral estate.

27. The non-exclusive right and privilege to use Terramar's easement for ingress and egress, in common with Terramar, was expressly limited to use by POATRI and POATRI's duly authorized agents for road and water system maintenance across Suber's property.

28. The grant to POATRI of the right to use Terramar's ingress and egress easement <sup>on the Suber property SBA</sup> was not conveyed to any individual POATRI members.

29. The easement for ingress and egress conveyed to POATRI in the 1976 Assignment and Easement was expressly limited to use by POATRI or POATRI's duly authorized agents and representatives for road and water system maintenance.

30. No easement for ingress and egress on Suber's property, or for any other purpose, exists in favor of individual POATRI members, by virtue of the 1976 Assignment and Easement granted from Terramar to POATRI.

31. POATRI cannot grant permission for the use of the private roads on Suber's property to any party or invitee or other property owner in Terlingua Ranch.

32. Paragraph 10 of Plaintiff's Exhibit 17 which declared that there were ingress and egress rights to general members of the Association, <sup>as it applies to the Suber property SBA</sup> has no basis in law or in fact.

33. On November 1, 2006, Terramar Corporation executed an Assignment of Easement and Rights to POATRI, recorded in volume 207, page 418, Brewster County Deed Records, purportedly assigning to POATRI all easements, rights and interests reserved

unto Terramar in the original Deeds to each individual tract on Terlingua Ranch. Said assignment was invalid and conveyed no interest in the real property at issue to POATRI.

34. Suber is entitled to attorney's fees under the Texas Declaratory Judgment Act.

35. To the extent necessary, each of the findings of facts shall be treated as a conclusion of law, and each conclusion of law shall be treated as a finding of fact.

SIGNED this 27 day of Aug., 2012.



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THE HONORABLE STEPHEN B. ABLES