

Dispute Over Parking Lot Access
Lands One Party in Contempt

by

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After years in court, and four trial judges later, owners of adjacent commercial properties will continue their dispute over access to their common parking lots. The Western District of Missouri dismissed an appeal, leaving in place an order of contempt against one of the owners and sending the case back for more trial proceedings.

The case is *Relaxation, Inc. v. RIS, Inc.*, 452 S.W.3d 743 (Mo. App. W.D. 2015).

Relaxation and RIS own adjacent commercial properties. Two common parking lots between the properties were set up for use as common customer parking. This included a requirement that an existing 25-foot wide driveway was to always remain open.

In July 2011, RIS began construction of a new shopping center on its property. The development included several big box stores as future tenants including Menard's, Kohl's and CVS. During construction, RIS altered or destroyed portions of the two parking areas, barricaded and restricted access, stored construction vehicles, supplies and other equipment on the areas, and ran power lines and other utilities across the areas without Relaxation's permission.

Relaxation filed a lawsuit against RIS seeking a temporary restraining order (TRO), a preliminary and permanent injunction and damages. The first judge ordered the parties to agree on a location for the common parking area and ordered RIS to open the driveway of the parking lot and restore the area to its agreed dimensions within 10 days. The court stated that it would issue a TRO if those conditions were not met.

The next day, Relaxation had the area surveyed and stated that if RIS had any disagreement with the boundaries, it should contact Relaxation's counsel. RIS did not respond and did not restore the common parking area.

A week later, RIS moved in court for a change of judge. The court had noted that construction work was still continuing in the disputed common area in spite of the court's previous order. The trial court concluded that it could

“entertain absolutely no reason for defendant’s contemptuous behavior.” The case was then assigned to another judge.

The new trial judge gave RIS 30 days to reach a settlement. The court stated that if there was no settlement, it would enter a TRO. The court also ordered RIS not to perform any additional construction work on the disputed property.

During the next 30 days, RIS continued performing construction work on the disputed property. The trial court then issued a TRO requiring RIS to restore the two parking easement areas within 96 hours and remove any utility poles and construction materials.

That judge then recused himself and the case went to yet another judge.

From March through May 2012, the trial court through its new judge issued additional extended temporary restraining orders at Relaxation’s request.

Relaxation then filed another motion for contempt based on RIS’s failure to comply with the prior court orders. Relaxation requested daily fines and the incarceration of Gary Prewitt, the principal owner of RIS. The trial court issued another TRO and a show cause order on why RIS should not be held in contempt.

At the contempt hearing, Prewitt testified that he did not even read the prior court order and that his company took no steps to comply with it. RIS’s construction manager further testified that additional construction work had occurred in the disputed areas in violation of the court’s orders. RIS also constructed a large commercial sign partially within one of the disputed lots.

In April 2012, the court issued an order of contempt, finding RIS’s conduct constituted a trespass and issued a preliminary injunction.

RIS’s defense to its actions was that there was a potential condemnation action which might affect the property in question and therefore RIS felt that it did not need to comply with any of the court orders. The City of Lake Ozark did in fact file a condemnation proceeding.

At this point, the trial court ordered RIS to pay \$45,892.94 for Relaxation’s attorney fees and surveyor fees. The court then entered an order that Prewitt would be incarcerated if he failed to strictly comply with the orders of the court including payment of the \$45,892.94 and if he failed to restore the parking areas.

RIS argued that the condemnation action superseded the parking lot dispute and thus the action should be stayed. The court agreed and stayed the

parking lot dispute and then the trial judge recused himself and a fourth judge was assigned to the case.

RIS appealed the contempt order. The Western District dismissed the appeal as being untimely. This sent the case back to the trial court once again with the order of contempt remaining in place

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