March 31, 2014

"What's In A Name?" In The Case Of Brandt V. United States Of America – Plenty

In a case that has property rights advocates cheering and biking/hiking trail advocates and their lawyers reaching for their Real Property textbooks, the U.S. Supreme Court in Marvin M. Brandt v. United States of America ruled on March 10, 2014 in favor of a Wyoming rancher who fought government efforts to convert a rail corridor on his property to a public trail.

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The facts are relatively straightforward. The Brandt family purchased an 83-acre parcel of land in the Medicine Bow National Forest near Laramie, Wyoming in a 1976 land patent. The conveyance to Brandt was expressly "subject to those rights for railroad purposes" previously conferred upon the Laramie, Hahn's Peak and Pacific Railroad when it acquired the rail corridor in 1908 by federal land grant under the Railroad Right of Way Act of 1875 ("the 1875 Act"). The rail corridor was formally abandoned in 2004 by the successor to Hahn's Peak and Pacific Railroad. In 2006 the United States initiated a quiet title action to the section of rail corridor over the Brandt property in order to extend a pre-existing recreational trail across it. The District Court granted summary judgment in favor of the United States and its claim of a reversionary interest in the rail corridor. (D Wyo., April 8, 2008.) The Court of Appeals affirmed finding that the United States had an "implied reversionary interest" in the rail corridor, which vested a fee ownership in the United States when the rail corridor was abandoned. 496 Fed. Appx. 822 (CA 10 2012.)

Writing for the majority, Chief Justice John Roberts, in a decision notable for its brevity, overturned the 10th Circuit Court of Appeals and characterized the historic rail corridor as a "mere easement" that happily for Brandt simply "disappear[ed]" when the STB approved the rail corridor abandonment. The end result - "Brandt's land became unburdened of the easement, conferring upon him the same full rights over the right of way as he enjoyed over the rest of [his property]."

In her dissent, Justice Sonia Sotomayor criticizes the majority for its simplistic reliance on "basic common law principles" to retreat from a century of court decisions in which the court has held that rights of way granted to railroads have significant fee characteristics reflective of the unique historical development of rail corridors and congressional intent that rail corridors be preserved as a means of transportation and recreation.

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"But federal and state decisions in this area have not historically depended on 'basic common law principles.' To the contrary, this Court and others have long recognized that in the context of railroad rights of way, traditional property terms like 'fee' and 'easement' do not neatly track common law definitions…. Today's opinion dispenses with these teachings. Although the majority canvasses the special role railroads played in the development of our Nation, it concludes that we are bound by the common-law definitions that apply to more typical property. In doing so, it ignores the sui generis nature of railroad rights of way."

It is an interesting exercise to tally the various descriptions of railroad property interests used in the majority and dissenting opinions and the briefing provided the court. Anyone hoping the Brandt decision would deliver clarity to the meaning of the term "railroad right of way" in the context of federally granted right of way interests must wade through definitions as varied as:

- A substantial property interest that carries some characteristic of a limited grant of fee
- A limited fee with an implied condition of reverter in the United States
- A defeasible fee
- A right of way extending only to surface lands
- A right to exclusive use and occupancy of land
- Some attributes of a fee interest
- A type of easement peculiar to the use of a railroad that has certain attributes of the fee
- "Like a fee in the surface and so much beneath as may be necessary for support"
- A bare common-law easement
- A mere easement
- Neither a mere easement nor a fee simple absolute
- An ordinary easement
- Surely more than an ordinary easement

Although writers on both sides of the decision (including Justice Sotomayor) predict an onslaught of litigation as a result of this decision, it remains to be seen whether the decision will have much long-term impact. The Brandt majority expressly limits the scope of its decision to the nature of federally granted railroad right of way interests granted by the 1875 Act and subsequently abandoned. Accordingly, the decision does not apply, for example, to federally granted rights of way that pre-date the 1875 Act, railbanked corridors that are by definition not "abandoned" but are preserved for future rail use, or property acquired by a railroad from a private land owner.

For more information, contact an attorney from Foster Pepper's Real Estate and Transportation practices.