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# Pima County Superior Court Jury Trials

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THE TRIAL REPORTER of Southern Arizona

October, 2010

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10/6/10 - Judge THEODORE B. BOREK -  
CV 2008-7882 - CCSAM FAMILY LP and  
MOUSSA (Matthew J. Kelly and Walid A.  
Zarifi of Mohr, Hackett, Pederson, Blakley &  
Randolph, P.C.) v KING (David L. Curl of  
Barassi, Curl & Abraham, P.L.C.); and SILER  
(Andrew J. Petersen of Humphrey & Petersen,  
P.C.) - BREACH OF CONTRACT - BREACH  
OF COVENANT OF GOOD FAITH AND FAIR  
DEALING - IMPLIED EASEMENT -  
TORTIOUS INTERFERENCE WITH  
CONTRACTUAL RELATIONS. *Prologue: A  
land plot, known as the Proctor property,  
located in a gated community, became available  
due to the death of Mr. Proctor. Proctor Estate  
wanted to sell the lot. Both Plntf Moussa and  
Dfnt King wanted a portion of the property.  
Plntf Moussa wanted to develop the property and  
Dfnt King wanted to enlarge his backyard, to  
protect his city views. Plntf Moussa and Dfnt  
King agreed to purchase the property together,  
for \$850,000. Plntf Moussa and Dfnt King  
agreed on a property line that went through the  
existent carport and agreed to split the cost of  
demolition of the out buildings on the land.  
Existing house on the property is now owned by  
Plntf Moussa. Eighty-seven percent of property  
owned by Dfnt King and thirteen percent on the  
property owned by Plntf Moussa. Parties signed  
a contract on June 10, 2007. Parties agreed  
Plntf Moussa would have the discretion to decide  
when to demolish the house. Dfnt King  
petitioned the homeowners' association for  
approval of his plans to proceed with his land-  
scape plan, which included demolition of the  
carport. HOA granted Dfnt King's request.  
When Dfnt hired a contractor to take the carport  
down, Plntf Moussa called the police. Plntf  
Moussa, male, a developer, alleged Dfnt King  
began to tear down the carport in which Plntf  
Moussa had a property interest. Plntf Moussa*

expert, who testified Plntf Moussa could have had an easement prepared by an attorney, a real estate agent, an escrow agent, or a private individual. Dfnt King also called Herbert B. Havins, a real estate appraiser, who testified that, if Plntf Moussa gained control of the carport, it would affect Dfnt King's ability to use the portion of the parcel he purchased, and it now impacts Dfnt King's property by approximately \$175,000. Additionally, Dfnt called Everett M. Trueblood, a surveyor, who testified that the carport was eighty-seven percent on Dfnt King's property and thirteen percent on Plntf Moussa's property. Prayer: Grant Plntf Moussa quiet title for easement and injunctive relief; plus \$17,000 property damage. Plntf Moussa made a pretrial demand for an easement to use carport and storage area on Dfnt King's property - Dfnt King offered to build a carport on Plntf Moussa's property, at a cost of \$25,000; at settlement conference, Dfnt offered \$50,000 (D Curl & D Petersen). (Carrier: State Farm Insurance.) During closing arguments, Plntf Moussa's counsel asked jury to award Plntf Moussa \$17,000 for property damage against both Dfnts, and find Plntf Moussa entitled to an easement to use the carport for as long as he wanted. Defense counsel for Dfnt King argued liability, as did defense counsel for Dfnt Siler. Six day trial. Jury out two-plus hours. FOUND FOR DFNTS. UNANIMOUSLY.  
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