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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FRIENDS OF MARTIN'S BEACH, Plaintiff and Appellant, v. MARTINS BEACH 1, LLC, et al., Defendants and Respondents.	A154022 (San Mateo County Super. Ct. No. CIV 517634)

This is the second appeal in this case challenging a property owner's closure of a road and the cove beach to which the road provides the exclusive means of access by land. For nearly a century before the closure, the former property owners and their lessee permitted the public to use the road and the beach and provided parking and other amenities. In our prior opinion, we reversed in part a grant of summary judgment to the owner, holding that the trial court decision erred in ruling the plaintiff had failed to state a cause of action for public dedication.[1]

In this appeal the plaintiff challenges a judgment after a bench trial conducted after remand ruling that the evidence failed to show that the former property owners dedicated the road and beach to a public use. Central to the trial and to this appeal are the practice of a lessee, and later the owner, of charging a fee to those who visited the beach. The parties disagree about whether the trial court properly considered the lessee's actions

[1] While the defendant's motion was styled as one seeking summary judgment, as to the public dedication claim it challenged the sufficiency of the plaintiff's allegations.

in determining whether the public's use of the beach was permissive. Further, they disagree as to whether imposition of a fee rendered the public's use of the road and beach permissive, thereby preventing the use from ripening into a public dedication.

As the courts have stated in many prior cases, public dedication is a highly fact-dependent doctrine. Thus, our decision is limited to the evidence presented and facts established at the trial in this case. Based on the totality of these facts, we conclude that the trial court did not err by considering the acts of the lessee in determining whether the public use was permissive. We, again based on the totality of these facts, further conclude that the lessee's, and later the owner's, charge of a fee to all users and the users' willing payment of the fee amounted to permission to use the road and the beach. Because the public's use of the road and beach was thus permissive, it did not ripen into a public dedication that would give the public a permanent right to use the property. Finally, we reject the plaintiff's argument that because it presented evidence to support the allegations we previously held were sufficient to state a cause of action, it established a public dedication as a matter of law.

For these reasons, we affirm the judgment.

BACKGROUND

I.

Prior to Trial

Martin's Beach is a crescent-shaped beach located just south of Half Moon Bay that is bounded to the north and south by high cliffs that extend into the water. Other than by water, the only means of access is via Martin's Beach Road, which runs across the property from Highway 1 to the beach.

Plaintiff and appellant Friends of Martin's Beach (Friends) filed this action in the Superior Court for San Mateo County in October 2012 asserting a right on behalf of the public to use the road, parking area and inland dry sand of Martin's Beach. Defendants and respondents Martins Beach 1, LLC and Martins Beach 2, LLC (LLCs) filed a cross-complaint against Friends seeking to quiet title to these parts of the property and to

establish that they are privately owned and that the public has no easements allowing public use.

Friends asserted several theories for its claim of public rights in Martin's Beach, which it later narrowed to two. The first was that a provision of the California Constitution (art. X, § 4) prohibits owners of property fronting navigable waters from excluding the right of way to the beach and confers on the public a right of access over private property to all tidelands. The second was that under the common law of dedication the LLCs' predecessors, the Deeney family, who owned the property from early in the 20th century until the LLCs purchased it in 2008, through their words and acts offered to dedicate the road, parking area and inland sand beach to public use over a period of decades, and the public accepted that offer by using those parts of the property.

The trial court granted summary judgment to the LLCs on all of Friends' causes of action and both of the LLCs' causes of action, and Friends appealed. This court affirmed in part and reversed in part. (*Friends of Martin's Beach v. Martins Beach I, LLC*, et al. (2016), No. A142035, 201 Cal.Rptr.3d 516, review denied and ordered not published (July 20, 2016).) We reversed summary judgment as to Friends' common law dedication claims and the LLCs' related counterclaims. We also ordered the trial court to modify its order in other ways that are not pertinent to this appeal. We concluded that the LLCs' motion, which was in effect a pleadings challenge, failed because Friends' allegations sufficiently stated a cause of action for public dedication.

On remand, the parties conducted discovery and proceeded to trial on the common law dedication issues before Judge Steven L. Dylina.

II.

The Evidence at Trial

Friends' evidence:

Helen Horn visited Martin's Beach many times in her life. Her father fished, surfed and swam there and taught her and her brother to do all those things. She first went to Martin's Beach in 1948, when she was four years old, after her father moved to Redwood City. They went to Martin's Beach once or twice a month every year from

1948 until she graduated from high school in 1962. When she was younger, there were swings there that they played on. They also played in the water, with inner tubes and skimboards, surfed, dug clams and fished. They ate ice cream from the store there. When she was about seven, her father taught her to jump for smelt, and she started helping him catch smelt. When she was ten, she got her first fishing pole and fished with other people at Martin's Beach. They fished with poles for stripers and rock cod.

There were always people at Martin's Beach when she and her family visited, sometimes a few and sometimes many. Sometimes the parking lots were full. There were many other children at the beach with whom she and her brother played and caught fish. Other people and families came with their children and engaged in the same activities her family did. There were group celebrations, like birthday parties and family get-togethers. Summer was the busy season; there could be as many as 100 to 200 people at Martin's Beach on weekends. Horn and her family visited Martin's Beach year-round. They went to the beach in the morning and stayed until afternoon. The beach was open from sunup to dusk, and they always left before dark.

Besides a swing set and a store, there were restrooms, showers, picnic tables and trash receptacles. There were signs on the road and near the gate advertising Martin's Beach.[2] There were parking lots, one below the convenience store right by the beach and another higher up for overflow. Occasionally, if those lots were full and her family really wanted to go to Martin's Beach, they would park at the very top and walk down.

Horn's family never experienced problems coming down the road to the beach. She recalls a gate at the front of the property but did not remember it being closed. Her father drove. If no one was collecting the parking money part way up the road, her father would park and pay the attendant at the bottom or pay in the convenience store. When he

[2] Horn remembered two signs she saw at the foot of Highway 1 and Martin's Beach Road but could not remember which was there at what time. Both said "Martin's Beach" and had arrows pointing toward the beach that said "Enter" or "Entrance." One had no other language but contained pictures of the beach. The other had in smaller letters: "Admission per Car $2.50 $7.00 Bus Parties."

went into the store, he told Horn he was going to pay for parking. When she started driving at 16, she sometimes went on her own. On those occasions, she paid the fee, which the attendant told her was for parking. The fee was a per-car fee, not a per-person fee. Occasionally when Horn and her family visited, the store was closed and there was no one to collect the fee. On the rare occasions when her family parked at the top and walked down Martin's Beach Road, they were allowed in without paying a fee. At no time did anyone ever kick them out or tell them to leave.

Horn never saw a "No Trespassing" sign until 2008. Nor does she remember seeing signs that said "Toll Road" or "No Walk Ins." If there had been a sign that said, "No Walk Ins," her father would not have walked in.

A video entitled "Martin's Beach in the 40's" was admitted. It shows people at Martin's Beach engaged in most of the activities Horn described—including children swinging on swings, and adults and children fishing with smelt nets and fishing poles, clam digging, swimming, playing in the water with innertubes and surfing. It also shows events with large crowds of people, cooks preparing and serving food, parades, foot races and what appears to be a wedding. It shows people walking down the road carrying surfboards and cars coming down behind them. The video also shows many of the features and amenities Horn described. Horn testified that the video was a fair representation of Martin's Beach as she remembers it from her childhood.

Alex Van Broek testified that he first visited Martin's Beach with his father and mother between August 1955 and early 1956. He was 14 or 15 at the time. He went back a few more times. The times he went in the '50s, they were headed south, saw the "Martin's Beach" sign, drove down and around and didn't see anybody or any other cars. He believes it was in the fall or winter of 1955 or sometime in the spring of 1956. They didn't encounter anyone when they drove down the road. He did not see a gate. The road was dirt and gravel and went southwest off Highway 1. The sign said, "Martin's Beach," but he doesn't remember it saying anything else. He doesn't recall the structures by the beach, such as the general store, or the houses below the road, but can't say they weren't there; he simply wasn't paying attention to structures. He recalls parking on a

little bluff, a flat area above the beach but below the road. There were no people there, and he doesn't recall seeing any cars. There was a beach, and there were tidepools.

Raymond Grzan testified that he first visited Martin's Beach in 1955 or 1957 or earlier. He continued to go there until the early '90s. He went every Sunday for a long time. His family went to Martin's Beach year-round. They went at all times of day, including at night. He went with his father at night to go fishing. In the moonlight they could see the fingerlings of the smelt in the curl of the waves. They never had trouble getting in and out of Martin's Beach by way of Martin's Beach Road. They never saw any kind of locked gate at any of those times. No one ever stopped them or asked them to leave when they went at night.

They paid the fee from the mid-'50s to the mid-'90s. They drove down the road and paid. The fee was for parking. There was a sign that said "Parking" and had a fee. They always paid the fee. Sometimes they paid the fee above on the road, sometimes below, and sometimes at the store. At some point, he wrote on a form that the fee was an "access fee—road." He misused the term "access" when he wrote that. It was a term he had used as a county employee. He recanted it because he remembered a billboard, a parking sign and a small colored ticket they received that was for parking. He was talking about Exhibit 50. That exhibit consists of tickets that have a space for the date and say, "Day Parking Only Martin's Beach."

Amelia Rispoli, along with her sisters Beverly Manzano and Perla Menchavez, testified that they visited Martin's Beach three to six times a year from the 1960s through the 1990s. They visited throughout the year except in winter when it was cold. They visited with their immediate and extended family. They went every year on the Fourth of July and had big family reunions. Their father and uncles fished for smelt,[3] and their relatives played football and frisbee on the beach and played in the water. There were lots of other families they would see year after year. The beach was filled to the limit and

[3] Smelt are "school-running fish that run along the coast, and the fishermen would either use throw nets or the rectangular nets, with two people on a rectangular net, one person on a throw net."

the parking spaces were all filled on the Fourth of July. They also regularly went to Martin's Beach when they heard the smelt were running. There were always a lot of people when they went. "Practically the whole coastline was full of fishermen."

There were picnic tables and garbage cans, parking lots, restrooms, a store that sold snacks and fishing gear and outdoor showers. There were three rows of cars. On the cliff side of the beach where they parked was a portable restroom.

Their family was always able to go up and down the road freely, without interference. They never walked down Martin's Beach Road to get to the beach; they always drove down the road and paid a fee. They were not stopped other than in front of the store where they paid a fee. They were never asked to leave or discouraged from being there. They were never told they were trespassing. Sometimes cars would be lined up on the road to pay. The fee was not collected at the top of the road; when they paid it on the road they were at least 50–100 feet down the road. The fee was per car, not per person. They would receive a ticket to display on the dashboard.

Other than the billboard that said "Martin's Beach," Rispoli never observed any other signs when driving down Martin's Beach Road. Prior to when the gate was closed in 2007 or 2008, Rispoli had never encountered a closed gate at Martin's Beach. She never noticed a gate there before that.

Their parents stopped to pay the fee every time they came to the beach. They paid in front of the store where Martin's Beach Road ends and the beach starts. After they paid the fee, they had access to the restrooms and the beach. People accessed the beach in part because the road was open.

After their parents passed away, some of them continued to go to Martin's Beach. They largely stopped visiting after the gates were closed in 2007 or 2008.

Robert Caughlan testified that he first went to Martin's Beach in the 1960s, not long after he began surfing when he was in high school. He surfed there about five or ten times a year. He also took his wife and children many times. It had a nice sandy beach, a convenience store, bathrooms and showers. It wasn't crowded because they charged for parking. He once performed a wedding there. The smelt fishermen liked to go there. It

wasn't only surfers who visited but also beach lovers. He was never stopped from going down the road to the beach and didn't remember seeing a gate until recent years. Prior to the new owners buying the property, he did not see any "No Trespassing" signs.

When he visited Martin's Beach, Caughlan understood he had to pay a fee. He drove down the road, parked the car and paid $2.00 for parking. He never walked down the road. Sometimes he paid at the top of the road. The owners would let surfers drive down to check out the surf and, if they didn't like the conditions, go back out. But if he wanted to stay and surf, he had to pay.

Edmundo Larenas testified that he first went to Martin's Beach in the mid-1980s. He went there three to five times a year to surf. He parked at a pullout alongside the Coast Highway and walked down the road to the beach. No one ever asked him to leave as he walked down or approached him and said he should be paying a fee. There were other people at the beach during all seasons. There were restrooms, a parking lot near the bottom of the road and some concession stands.

Larenas sometimes drove down to the beach and paid $7 to $10 to park. When he parked by the highway, he did so to avoid paying the parking fee. When he walked down, he carried his surfboard and didn't see employees of Martin's Beach on the road. Nor did he see an attendant collecting fees at the bottom. But he did see an attendant when he drove down. He doesn't know why attendants were sometimes there and other times not there. When he paid the fee, it was a per-car fee rather than a per-person fee.

Linda Locklin, the Manager of the California Coastal Commission's Public Access Program, testified. Her position entailed tracking, implementing and protecting public access easements obtained through coastal development permits issued by the Commission and local governments. In her professional capacity, she visited Martin's Beach about once a year for the previous 25 or 30 years. She drove down to the end of the road and looked around to see what was going on. When she first visited Martin's Beach in the 1980s, she "observed members of the public enjoying the coast, picnicking, surfing, sitting in their cars, in the little snack bar." On subsequent visits, she continued

to observe people enjoying the coastline. The store sold snacks and served the people who were at the beach.

In her work, Locklin used a bulletin produced by the state listing fish catch numbers for Northern California, including at Martin's Beach. The bulletin indicated there was quite a high number of fishermen at the beach. She relied on statements in the bulletin about smelt fishing being an "outstanding feature" of Martin's Beach and that visitors flocked there to catch or buy them. During her visits to Martin's Beach she saw large billboards advertising the beach.

As part of her job, Locklin tried to identify the different user groups that used a particular beach area, such as fisherman, surfers or other groups. Coastal Access Guides produced by the Commission beginning in 1981 reflect historical use of Martin's Beach. The 1981 Guide contains an entry informing the public of the availability of Martin's Beach for public recreation and other activities such as fishing. Guides for other years contain similar entries. The 1983 Guide contains similar language and states the amount of the entrance fee. It also states that "[t]he beach is open daily all year; the store is open daily during the summer . . . ." That was accurate in 1983, when the guide was produced. The other access guides say the same except for the years 2012 and 2014. Locklin does not recall whether she ever paid a fee when she visited Martin's Beach.

Michael Wallace testified he visited Martin's Beach multiple times over a period of roughly 14 years, from 2003 on. He went for family outings and surfing trips and took the Half Moon Bay high school surf team, which he coached. There was a sign that said "Martin's Beach." There was "no impediment to get in." There was a store and public bathrooms. With the sign and the absence of any impediment to get down the road, he was not aware it wasn't a public road.

He paid a fee at the general store once he was down at the beach if there was an attendant there. When he first started going to Martin's Beach, the fee was $5 and by the time the ownership changed it was $15. It was a parking fee as he understood it. It was charged for his vehicle, not for his surfing team. He took his team on some occasions and his family on others. Sometimes there was no attendant to take the fee. Other times

they would be allowed to come down the road and do a "surf check," to see if it was worth paying to stay. If the conditions were not good enough, they would leave. There was no impediment to their coming down the hill. The fee was for parking along the frontage road by the beach itself. Either there was a sign or he inferred that was what it was for. He knew through the community that the Deeney family owned the property, but presumed the road and access were public because there was no impediment to getting to the beach. He knew he had to pay a parking fee to stay down there.

In roughly 2009, the ownership changed from the Deeney family, and the new owners were Martins Beach 1 and 2 [the LLCs]. After the change, the beach was closed, infrequently at first and more often over time. Prior to the change, he didn't recall there being a posted closing time, but afterward the attendants told him it was 5:00 p.m.

Friends and the LLCs both called Richard Deeney as a witness. Deeney was about 69 years old at the time of trial. He was born on the Martin's Beach property in 1948 and lived there until 1969. His parents' house and barn were above the beach near the part of the property they farmed. Deeney returned to Martin's Beach two years after he left, having married in the interim, and from then on lived in a house south of Martin's Beach on Highway 1 until his family sold the Martin's Beach property in 2008. From that house, he could see the intersection of Martin's Beach Road and Highway 1. Deeney farmed the land above the beach and ran livestock. Those, along with hauling hay to Half Moon Bay, were his main occupations.

Deeney's family leased some of the property at Martin's Beach to the Watt family.[4] The Watt family ran the beach business, including the store, starting in about 1922. The Watt family collected parking or toll fees. The Deeney family itself didn't run the business at the beach until 1990 or 1991. When the Deeney family leased to the

[4] It appears the leasing continued through two generations of Deeneys and Watts. The Deeney who testified at trial, Richard Deeney, was the son of the original owners and lessors. It is not entirely clear whether the Watt who was the subject of testimony at trial was the senior Watt or his son. Witnesses sometimes referred to Deeney and Watt in the singular and sometimes in the plural. For convenience, we will refer to either Watt or his son as "Watt," without distinction.

Watts, Watt had "full management watching over [the beach], and he leased [the land above the beach] directly to the cabin owners."

For all practical purposes, Martin's Beach Road, which runs across the property from Highway 1 to the beach, was the only way to get to Martin's Beach. Watt built a convenience store at the end of the road down at the beach. The store was there so it would be accessible to people at the beach. There were two parking lots on the beach, one on the north and one on the south. The Deeneys and the Watt family before them provided services so people could use the beach, including the facilities at the store and restrooms.

There was an advertising sign at the top of Skyline on Highway 35 to advertise Martin's Beach. It was probably put there in the 1940s, but that "was before [Deeney's] time." There was a sign at Martin's Beach with an arrow that pointed down stating "Entrance." In smaller print, it said "Admission per Car $2.50 $7.00 Bus Parties." Prior to that sign, there was a "picturesque sign of Martin's Beach" with "a painting, like a scenic thing of Martin[']s Beach." Deeney had no recollection of what, if any, words it had on it. Deeney thought the later sign was erected around 1960 or "in the early '60s, probably," or the "mid-'60s."

Deeney did not know what hours Watt kept. Deeney wasn't there much to see how the beach business was actually run because in the 1960s "we farmed quite a bit of acreage and were busy farming." A gate was installed in about 1960. Watt would "open the gate, charge a toll for the cars to go down and park at the beach, and allow them to fish or, you know, to make a day at the beach." Watt made his money on "car fees" and land lease payments from cabin owners. As far as Deeney knew, Watt did not permit people to walk in on the road and avoid paying the fee. There was a sign that said "No Walk-Ins." Tenants would notify them if anyone was walking in, and Watt or his employees "would be on top of it." Back in the 1960s, if someone refused to leave or make payment, Watt would "get a good response from the Sheriff Department," but Deeney didn't know of an instance in which anyone didn't leave once told the Sheriff would be called.

In the early 1990s, the Deeney family took over the business, after which there were many people coming to use Martin's Beach in the summer. At no time when the Deeney family owned the property did they ever consider completely closing the beach.

During the period the Deeneys operated the property, Deeney's son and two daughters lived in houses near the store. "[T]hey all worked together to watch over it and, you know, keep an eye on things." If there were problems, "they took care of it." They put up a new billboard because the old one had blown over. The new sign said "Martin's Beach" with an arrow pointing toward the beach that said "Enter." The billboards were two-sided, so people could see them coming from both directions on Highway 1.

The Deeneys accommodated requests for special events, such as an annual car club picnic, parties and other events. Deeney was not involved in booking the events and doesn't know if his family closed the beach for such events, which usually were limited to a particular part of the beach. The Deeneys had some picnic tables that were moveable for people who visited the beach. They charged a fee for using the tables.

No parking was allowed on Martin's Beach Road because "it would just jam up the road." The Deeneys kept "Permit Parking Only" signs to prevent parking on the road and charged a "[t]oll road/parking" fee. They did not permit people to walk in for free. They would approach people who tried to walk in and tell them they "just as well bring their car in because they've got to pay [¶] . . . [¶] [i]f they're staying. If not, they're welcome to go back up the road they just came down." His parents, who lived in the brick house at the top, would call down to the store if they saw someone walk in. A tenant who lived "right at the turn of the road up there" would do the same.

Sometime in the early 1990s, the Deeneys installed the gate that is currently at the top of Martin's Beach Road. The Deeneys opened the gate at about 7:00 or 8:00 in the morning and closed it at about 6:00 p.m. in summer or 4:30 p.m. in winter, though Deeney did not recall the exact hours. When the beach was closed, the gates would be shut.

The Deeneys did not allow dogs and put up signs saying "No Dogs Allowed." There was also a sign that said "Toll Road" with a price. There were "No Trespassing" signs at the gate and a few along the property line between the Deeney property and the Coast Highway. They put these signs up because they didn't want people to think "they could be running through at their own . . . enjoyment," and they wanted to protect their property rights. "[W]ay back probably in the '60s," they started hearing "property rights" and of "people trespassing . . . and getting injured and lawsuits and all the problems that develop with people that don't belong on there . . . or . . . sneak on." The Farm Bureau told them to watch their property rights and protect them, and so they did. The Deeneys put up security cameras so they could keep a close eye on people coming and going on Martin's Beach Road and the road to the cabins.

The Deeneys had parking tickets of different colors for different days of the week. When people paid the toll, they handed them a ticket and told them to place it in their dash. The fee was "an entry fee to come down and use the beach and spend the day and park." "They had no way to be in there without a ticket because they had to come right to our store. And right in front, there was always somebody there to respond and collect and see to it that they had tickets." If a car was parked in the top parking area for tenant guests without having a ticket, the Deeneys would have the car towed.

No state or local public agencies did work to maintain the road or the restrooms. The Deeneys incurred those expenses. The Deeneys also maintained liability insurance at their own expense.

LLCs' evidence:

Besides Richard Deeney, the LLCs called the following two witnesses:

Paul DiAngelo testified that he lived at Martin's Beach for 35 years. He started working for Ed Watt at Martin's Beach during the summers in 1973, when he was 13. The Deeney family owned Martin's Beach. DiAngelo worked there for five summers. His responsibilities included collecting the fee, making the nets, stocking store shelves and cleaning the facilities.

During the week, cars would come in and drive to the bottom of the beach. The people would pay at the store. On weekends, DiAngelo "would collect the fee a little higher up because of the parking considerations." Depending on how crowded it was, Watt or DiAngelo would start at the store and work their way up the hill until the levels of parking filled up. Ultimately, they collected at the turn in the road. No one was allowed in without paying an entrance fee. The fee was 75 cents when DiAngelo started there in 1973 and was raised to a dollar during the course of that summer. When people handed him the fee, he would put a ticket under their windshield wiper and, depending on how crowded it was, show them where to park. Watt and his employees did not allow people to walk down the road; if they saw people doing so, they would ask them to leave. People didn't walk in and try to pay. In the period from 1973 to 1978, there were signs that said "Toll Road." To his recollection, there were never signs that said "No Walk-Ins Allowed." If someone had driven down the road and refused to pay, they'd be asked to leave, and if they didn't he would call the sheriff.

In 1978, DiAngelo moved away from Martin's Beach but returned in 1982. He owned a home there, where he had lived since 1982. From 1982 to 1991, when the Deeneys took over, he again worked for Watt. In addition to the responsibilities he had when he was younger, he did all the maintenance and carpentry work and as Watt got older he took on more responsibility for running the beach. He or Watt collected the fees. Watt raised the fees over time from 75 cents in the mid-'70s to $2 by the end of 1978. It was $5 from 1982, when DiAngelo returned, and remained $5 until 1991. On a busy day, there could be 200 cars, which meant Watt would collect $1,000. Owners of cabins at Martin's Beach and their immediate families did not have to pay a fee, but their guests did. The guests would pay at the store and then park next to the cabin. Surfers were allowed to check out the conditions, and if they decided not to stay he would refund their fee.

In the 1970s, there was a locked gate that would be opened at 7:00 a.m. and closed at sunset in the summer. It would be closed earlier in the winter. If there were people on the beach, they would let them know the gate would be locking and give them half an

hour to "gather their stuff together." They never had problems with people refusing to leave. Tenants helped them by calling the store if they saw someone walking in. He doesn't recall anyone ever being arrested at Martin's Beach for trespassing.

DiAngelo is not aware of any public agency that assisted in the maintenance of the road, the beach or the amenities. That was the responsibility of Watt and was done by DiAngelo and others. Watt made money from the fees, the convenience store and the rentals.

Steven Baugher testified that he was the manager of the LLCs, which owned Martin's Beach. They acquired the property in 2008. He negotiated with the Deeneys on the purchase of the property. He posted signs on the property in about 2010 saying right to pass was by permission of the owner only. When he purchased the property, he knew there were restrooms that were used by the public and a store used by people who came down and paid the fee to park their car, and there was a billboard that advertised beach access. He understood that the Deeneys, before the LLCs owned the property, charged an admission fee that has been called a "toll fee" that allowed people who paid to drive down and that part of the fee was to park their car. He understood the Deeneys had allowed the public paid access to the property.

III.

The Trial Court Decision

The trial court orally stated its decision at the conclusion of the trial, from which we will quote.

"The real difficulty here is that the Court, balancing all the evidence that was submitted to the Court, I just don't see that there was any dedication, either express or implied.

"And to me, from 1922 until about 1990 when Mr. Watt was managing, had made certain changes to the beach, that doesn't show an intent to in any way create dedication. I don't see it. And therefore, I can't draw any conclusion from that.

"And the testimony of Mr. DiAngelo was very important in indicating to the Court that Mr. Watt never missed an opportunity to collect a dollar bill, that the money was important to him.

"The changes that were made, the highway sign that invited certain people to come in, clearly indicated there was compensation to be paid. And it was the testimony, and the Court balanced the testimony, that the amenities that were used at Martin[']s Beach, the store and the swing set and the restrooms, were for those patrons who had paid an admission fee to Martin[']s Beach. Whether we say that is per car or per individual—I know the testimony is a little bit inconsistent with that—I simply can't conclude that that produces either an express or implied dedication.

"And it was very clear to the Court that Ms. Locklin's testimony indicated that there is no record of an express dedication.

"I simply don't find the evidence sufficient, based on the testimony the Court heard, to support either an express or implied dedication.

"So the Court rules in favor of the defendant that on the plaintiff's cause of action, there has not been enough evidence produced to show either an express or an implied or implied by law dedication. I just don't see it here.

"And in terms of the cross-complaint, I don't know if you worked out the issue concerning the deed that you're requesting; but the Court will, in fact, grant the relief requested in the cross-complaint. It has been proven to the satisfaction of the Court. So the quiet title action will, in fact, be granted."

The court then directed the defense to prepare a statement of decision, which Friends had previously requested. The court further noted, "I thought Mr. DiAngelo and Mr. Richard Deeney were critical witnesses in this case. And it was very clear to the Court that during the period that Mr. Watt, pursuant to a lease, which, of course, was not presented at trial, operated Martin[']s Beach, that it was done only to invite certain people in on condition that they paid a fee.

"Now, that, at most, is a revocable license. It's nothing more than that.

"So that's essentially the decision of the Court, the tentative decision."

The LLCs submitted a proposed 26-page statement of decision that was adopted by the trial court in its entirety. It found, among other things, that the "Deeney family licensed daily use and access to the property on payment of a fee," and that the Deeneys' intent was "to allow licensed use and access only upon payment of a fee." It also concluded that Friends "failed to prove that defendants intended to dedicate their property to the public and that the public accepted the dedication" and did not meet its burden to prove "defendants intended to dedicate the property to the public or that the public had continuous and unfettered public use for the prescriptive period without asking or receiving permission." In discussing the evidence and making these findings, the statement of decision did not "parse out particular time periods," which, the LLCs argued and the trial court agreed, was unnecessary because there were witnesses for all periods who testified they paid a fee, which showed they "were using the property by permission."

Friends objected to the LLCs' proposed statement of decision on various grounds, contending among other things that it "fails to explain the court's factual basis as to whether defendants provided affirmative proof of a license for the following three periods: before 1973, from 1973 until 1991, and from 1991 to the present." The trial court overruled Friends' objections and adopted the LLCs' proposed statement of decision without change.

The court then entered judgment in favor of the LLCs and against Friends on all causes of action in Friends' complaint and both causes of action in the LLCs' cross-complaint. Friends timely appealed.

DISCUSSION

Friends challenges the trial court decision on three grounds. It argues the trial court erred by relying on the acts of the Deeneys' lessee, Watt, to find the use by the public permissive rather than adverse and that there was no evidence that the Deeneys themselves took steps to prevent public use prior to 1990. Without that evidence, it contends, the evidence established implied-by-law dedication as a matter of law. Friends

further argues the trial court incorrectly held the evidence showing the Watts and Deeneys charged a per-vehicle fee was sufficient to establish that the public's use was pursuant to a personal license. Finally, Friends argues the evidence established the allegations in its complaint, that our prior decision holding its allegations sufficient means it established express dedication as a matter of law absent facts that would conclusively negate the elements of dedication, and that the evidence, including the fee, did not negate intent or provide a defense to the dedication. Before turning to these arguments, we first set forth the law governing common law public dedication claims.

I.

Legal Principles Governing Common Law Public Dedication

" 'Dedication has been defined as an appropriation of land for some public use, made by the fee owner, and accepted by the public. By virtue of this offer which the fee owner has made, he is precluded from reasserting an exclusive right over the land now used for public purposes.' " (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 820 (*Blasius*).) A common law dedication may be established in three distinct ways. "Express dedication arises where the owner's intent to dedicate is manifested in the overt acts of the owner, e.g., by execution of a deed." (*Id.* at p. 821.) "A dedication is implied in fact when the period of public use is less than the period for prescription and the acts or omissions of the owner afford an implication of actual consent or acquiescence to dedication." (*Ibid.*) Finally, "[a] dedication is implied by law when the public use is *adverse* and exceeds the period for prescription." (*Ibid.*)

To demonstrate express or implied-in-fact dedication, the question is whether there has been "an offer of dedication and an acceptance of that offer by the public." (*Scher v. Burke* (2017) 3 Cal.5th 136, 141.) "An offer of dedication may be 'implied in fact' if there is proof of the owner's actual consent to the dedication." (*Ibid.*) By contrast, "[a]n offer of dedication may . . . be 'implied by law' [citation] if the public has openly and continuously made adverse use of the property for more than the prescriptive period." (*Ibid.*)

Plaintiff's first and second arguments relate to an implied-in-law theory of dedication. Our Supreme Court set forth the principles that govern that theory in *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29 (*Gion-Dietz*), from which we will quote liberally.

The *Gion-Dietz* court wrote, "In our most recent discussion of common law dedication, *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 240-241 we noted that a common law dedication of property to the public can be proved either by showing acquiescence of the owner in use of the land under circumstances that negate the idea that the use is under a license[5] or by establishing open and continuous use by the public for the prescriptive period. When dedication by acquiescence for a period of less than five years is claimed, the owner's actual consent to the dedication must be proved. The owner's intent is the crucial factor. (42 Cal.2d at p. 241, quoting from *Schwerdtle v. County of Placer* (1895) 108 Cal. 589, 593.) When, on the other hand, a litigant seeks to prove dedication by adverse use, the inquiry shifts from the intent and activities of the owner to those of the public. The question then is whether the public has used the land 'for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone.' (42 Cal.2d at p. 240, quoting from *Hare v. Craig* (1929) 206 Cal. 753, 757.) As other cases have stated, the question is whether the public has engaged in 'long-continued adverse use' of the land sufficient to raise the 'conclusive and undisputable presumption of knowledge and acquiescence, while at the same time it negatives the idea of a mere license.' (42 Cal.2d at p. 241, quoting from *Schwerdtle v. County of Placer*, *supra*, 108 Cal. 589, 593.)" (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 38.)

In discussing the requirement of "adverse use" for implied-by-law dedication, the court in *Gion-Dietz* rejected analogies to the law of adverse possession and prescriptive easements, in which the test is "whether the person acted as if he actually claimed a personal legal right in the property." (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 39.) "Such a

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[5] "A license in respect to real estate is an authority to do a particular act, or series of acts, on another's land without possessing an estate therein." (*Guerra v. Packard* (1965) 236 Cal.App.2d 272, 285.)

personal claim of right need not be shown to establish a dedication because it is a public right that is being claimed. What must be shown is that persons used the property believing the public had a right to such use. This public use may not be 'adverse' to the interests of the owner in the sense that the word is used in adverse possession cases. If a trial court finds that the public has used land without objection or interference for more than five years, it need not make a separate finding of 'adversity' to support a decision of implied dedication.

"Litigants, therefore, seeking to show that land has been dedicated to the public need only produce evidence that persons have used the land as they would have used public land. If the land involved is a beach or shoreline area, they should show that the land was used as if it were a public recreation area. If a road is involved, the litigants must show that it was used as if it were a public road. Evidence that the users looked to a governmental agency for maintenance of the land is significant in establishing an implied dedication to the public."

"Litigants seeking to establish dedication to the public must also show that various groups of persons have used the land. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public. An owner may well tolerate use by some persons but object vigorously to use by others. If the fee owner proves that use of the land fluctuated seasonally, on the other hand, such a showing does not negate evidence of adverse user. '[T]he thing of significance is that whoever wanted to use [the land] did so . . . when they wished to do so without asking permission and without protest from the land owners.' [Citation.] [¶] . . . [¶]

" . . . The question whether public use of privately owned lands is under a license of the owner is ordinarily one of fact. . . . For a fee owner to negate a finding of intent to dedicate based on uninterrupted public use for more than five years, therefore, he must either affirmatively prove that he has granted the public a license to use his property or demonstrate that he has made a bona fide attempt to prevent public use. Whether an owner's efforts to halt public use are adequate in a particular case will turn on the means

the owner uses in relation to the character of the property and the extent of public use. Although 'No Trespassing' signs may be sufficient when only an occasional hiker traverses an isolated property, the same action cannot reasonably be expected to halt a continuous influx of beach users to an attractive seashore property. If the fee owner proves that he has made more than minimal and ineffectual efforts to exclude the public, then the trier of fact must decide whether the owner's activities have been adequate. If the owner has not attempted to halt public use in any significant way, however, it will be held as a matter of law that he intended to dedicate the property or an easement therein to the public, and evidence that the public used the property for the prescriptive period is sufficient to establish dedication." (*Gion-Dietz, supra*, 2 Cal.3d at pp. 39-41.)[6]

Once implied-by-law dedication has been established through public use for the requisite five-year period, the owner or a subsequent owner cannot "take back that which was previously given away." (*Gion-Dietz, supra,* 2 Cal.3d at p. 44.)

In reviewing a trial court decision on a claim of public dedication, "this court is without power to reweigh the evidence and reach a factual determination contrary to that of the trial court. All factual matters must be viewed most favorably to the prevailing party and in support of the judgment." (*Aptos Seascape Corp. v. County of Santa Cruz* (1982) 138 Cal.App.3d 484, 501.)

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[6] After the court issued its decision in *Gion-Dietz*, the decision was the subject of "severe" criticism, and in 1971 the Legislature enacted Civil Code section 1009 and amended section 813, dramatically limiting implied dedication doctrines going forward for most types of property. (*Scher v. Burke*, *supra*, 3 Cal.5th at p. 142; Civ. Code, § 1009.) For non-coastal properties, it abrogated the common law of implied dedication prospectively by requiring an express written irrevocable offer of dedication and acceptance by a government body to establish public dedication. (*Blasius*, *supra*, 78 Cal.App.4th at p. 823; see Civ. Code, § 1009, subd. (b).) The statute excluded coastal properties but provided specified methods by which a coastal landowner could allow public use while preventing public dedication, such as posting of signs or recording a notice stating the right to pass is "by permission and subject to control of owner." (Civ. Code, § 1009, subds. (e), (f).)

II.

Analysis

A. In Deciding Whether the Owners' Acts Prevented Any Public Dedication, the Acts of Watt, as Lessee, Were Properly Considered.

In finding that the Deeneys licensed daily use and access to the property on payment of a fee and that their intent was only to allow "licensed use," the trial court addressed the entire time period without distinction[7] and treated the acts of the lessee, Watt, as if they were those of the Deeneys. Friends asserts this was error. Specifically, Friends posits that as a matter of law the Deeneys could not rely on the actions of their lessee, Watt, "to protect their property from an implied by law dedication." Friends relies on *Gion-Dietz*, which addressed two cases, *Gion v. Santa Cruz* and *Dietz v. King*. Both involved claims of implied-by-law dedication. (*Gion-Dietz*, *supra*, 2 Cal.3d at pp. 34-38, 39 ["dedication by adverse use"].)

The *Dietz* case concerned Navarro Beach, located in Mendocino County, and the road that led from Highway 1 to that beach. (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 36.) Much like Martin's Beach, Navarro Beach was surrounded by cliffs and Navarro Beach Road provided "the only convenient access to the beach by land." (*Ibid*.) Also like this case, the public had used the beach and the road for about 100 years to picnic, fish, swim and engage in a variety of other activities. (*Id.* at pp. 36-37.) The road crossed three different parcels: first, land owned by a couple who maintained a residence adjacent to the road; second, land previously owned by the proprietors of a hotel; and third, the land owned by the defendants who, having bought the parcel closest to the beach, sought to stop the public from using the last stretch of road. (*Id*. at p. 36.)

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[7] The overall time period addressed at trial began in the 1940s when Helen Horn first visited the beach. There was limited documentary evidence and a video showing public use prior to that time, but the testimony spanned 1948 to 2010. The Deeneys owned the property from about 1902 through 2008, when they sold it to the LLCs. In the meanwhile, they leased it to Watt from 1922 through 1990, and took over the beach-related operations themselves from 1990 through 2008.

From 1949 on, a proprietor of the hotel on the second parcel had maintained a sign saying "Private Road-Admission 50¢-please pay at hotel" and, for a short period of time, had collected tolls. A later operator of the hotel tried to resume the practice, but most people ignored the sign and went to the beach without paying. (*Gion-Dietz, supra,* 2 Cal.3d at p. 38.) In holding there was a public dedication of the road and beach, the *Gion-Dietz* court addressed this evidence, stating, "A few persons may have believed that the proprietors of the Navarro-by-the-Sea Hotel owned or supervised the beach, but no one paid any attention to any claim of the true owners. The activities of the Navarro-by-the-Sea proprietors in occasionally collecting tolls had no effect on the public's rights in the property *because the question is whether the public's use was free from interference or objection by the fee owner or persons acting under his direction and authority*." (*Id.* at p. 44, italics added.)

Quoting this and other language in the opinion, Friends argues that the court in *Gion-Dietz* adopted a rule that a fee owner can negate a finding of intent to dedicate based on uninterrupted public use only by proving that the fee owner himself made a bona fide attempt to prevent public use, based on Friends' analysis of the hotel proprietor evidence and on other language in the opinion that can be read to support such a rule. (See *Gion-Dietz, supra,* 2 Cal.3d at pp. 41 ["For a fee owner to negate a finding of intent to dedicate based on uninterrupted public use for more than five years . . . *he* must either affirmatively prove that *he* has granted the public a license to use his property or demonstrate that *he* has made a bona fide attempt to prevent public use"], italics added.)

The LLCs respond by distinguishing *Gion-Dietz* on its facts, noting the fee collection there was "only occasional and largely unsuccessful" and " '[t]he hotel operators never applied any sanctions to those who declined to pay.' " The LLCs' recitation of certain facts in the *Gion* case is accurate, but our Supreme Court did not rely on those facts in holding the hotel proprietors' acts had "no effect on the public's rights." (*Gion-Dietz, supra,* 2 Cal.3d at p. 44.) Instead, it dismissed that evidence because the hotel proprietor's acts did not constitute interference or objection "by the fee owner or persons acting under his direction and authority." (*Ibid.*) The LLCs also contend the

hotel's actions were not actually on the subject property. That is partially accurate; the road in question crossed three different properties before reaching the beach, including the hotel property, but it was the defendants' property and not the hotel property that encompassed the beach. (See *id*. at p. 36.) But again, that is not the ground on which the Supreme Court determined the hotel proprietors' conduct was ineffectual.

The LLCs also argue that *Gion-Dietz* did "not address a landlord/tenant scenario, an owner/operator scenario, or . . . even acts of any party *on the subject property*." They suggest *County of Orange v. Chandler-Sherman Corp.* (1976) 54 Cal.App.3d 561 did address the issue and relied heavily on the conduct of "Mr. Noble, a non-owner who operated a for-profit business granting licenses to access and use the beach." It is true that in *County of Orange* such evidence was mentioned by the court as one among a number of factors it considered—the most significant being that the usage was "casual" rather than "major or substantial"—in concluding the beach "was never used as a public recreational area or a public park." (See *id*. at pp. 566-567.) But the appellate opinion appears to have assumed, without discussion or analysis, that a third party's conduct may be considered. For that reason, it is weak authority, at best, for the proposition for which the LLCs cite it.

However, while the LLCs do not mention it, our Supreme Court's holding in *Gion-Dietz* that the hotel proprietor's acts were of no effect on the public's rights is framed in language that is highly relevant to the issue before this court. The court stated, "the question is whether the public's use was free from interference or objection by the fee owner *or persons acting under his direction and authority*." (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 44, italics added.) Focusing on that language, the question here is whether the Deeneys' lessee, Watt, acted under the Deeneys' direction and authority.

The evidence showed the Deeneys leased the beach and the road to Watt from 1922 through 1990, while they continued to live and engage in agriculture on the upper part of the property closer to Highway 1. The testimony of Richard Deeney, the son of the original owners, suggests his parents (and later he) understood and intended that Watt would run a business that, at minimum, involved charging per vehicle fees to people who

visited the beach. Further, he testified that Watt early on constructed a convenience store that sold and rented various items to beachgoers. Although the leases were not offered in evidence, and thus we do not know their precise terms, they were short term and the Deeneys renewed them time and again from 1922 until 1990. It is true, as Friends point out, that Deeney testified Watt had "full management watching over [the beach]." Even so, it is apparent from Deeney's testimony that his family was aware of the general nature and scope of Watt's operations, including the fees he charged users and his efforts to ensure their collection, and that they repeatedly chose to renew Watt's lease.

On this record, there is substantial evidence to support an implied finding that Watt had the Deeneys' *authority* to do what he did. While it does not appear that the Deeneys exercised day-to-day control over Watt's activities, the short-term nature of the leases enabled the Deeneys at least potentially to direct in a general way Watt's operations, in other words, to stop leasing to Watt if he engaged in activities they believed were inadequate to protect their property rights. That they continued to renew the leases every year or few years over a nearly 70-year period suggests they were satisfied with his efforts. While the issue of what degree of authority and direction is necessary for the acts of a third party to be viewed as acts of a fee owner is not settled by any case law of which we are aware, we believe there was sufficient authority and control here. For that reason, the trial court did not err in treating the conduct of the Watt family as conduct of the Deeneys for purposes of its public dedication analysis.

B. The Trial Court Did Not Err in Finding That the Fee Rendered the Public's Use Permissive.

Friends next argues that even if Watt's actions could be considered, the evidence was insufficient to show the public use was pursuant to a license so as to defeat Friends' showing of an implied-by-law dedication.[8] Although couching the argument in language

[8] We understand this to be an argument about Friends' implied-by-law dedication theory because Friends relies on *Gion-Dietz* and refers to a claim that " 'rests upon long[-] continued adverse use.' " Our conclusion that charging a fee amounts to a license to use would be the same in connection with Friends' theories of express and implied-in-fact easement.

that suggests it is challenging the sufficiency of the evidence, Friends goes on to argue that "the trial court concluded that charging a *per vehicle* fee was itself sufficient to establish that use was pursuant to a personal license" and that "[t]he law does not support this conclusion." The questions Friends raises in this section of its brief are less about what the evidence showed and more about the legal significance of facts that are not actually disputed.

There is no question that the trial court relied heavily on the payment of a fee and efforts to collect it in concluding that the public's use of the beach was pursuant to permission or license, and thus that Friends had not established a public dedication and the LLCs had established a defense. Indeed, the statement of decision refers to a "fee" 84 times, including 19 references to it as a "toll." The centrality of a fee to the decision is summed up by this sentence: "All of Plaintiff's witnesses admit and acknowledge a fee was charged and thus, that any access was allowed by permission only." We also note, that while the trial court relied on certain other facts, such as excluding individuals who walked on and failed to pay and posting no-trespassing signs, there was scant evidence that the Deeneys or Watt engaged in any of those acts in the earliest period for which there was evidence, namely the 1940s through about 1960.[9] Because the evidence covering that period reflects the charging of a per-vehicle fee but none of the other acts that the LLCs contend demonstrate the public use was permissive, and because the period from the 1940s until 1960 exceeds the five-year prescriptive period for establishing implied-by-law dedication, we consider whether charging a per-vehicle fee in the manner

[9] Deeney's testimony pertained mostly to the period after about 1960 (when, according to his date of birth in 1948, he was about 12 years old). He recalled that in about 1960 a gate was installed, and that sometime in the 1960s the sign referring to the "Admission fee" was put up. DiAngelo did not start working for Watt until 1973, when he was a teenager, and he did not testify about Watt's operations before then. The witnesses who testified about the period from 1948 through 1960 (or later) testified that they either did not see a gate at all or that they never saw it closed, they did not see no-trespassing or similar signs and they were not asked to pay or excluded on the occasions when they walked down the road to the beach.

done in this case alone establishes that the use was by "license" or "permissive" within the meaning of *Gion-Dietz* without regard to the additional acts of Watt and the Deeneys during later periods.[10]

The LLCs argue that the fee, among other things, supports the trial court's finding that there was no intent to dedicate, refuting any implied-in-law dedication: "Individuals that accessed and used Martin[']s Beach did so only after receiving permission to do so (by paying a fee) and, if unpermitted access was attempted, those trespassers were promptly asked to leave and/or ejected." As we have already noted, there was no evidence of persons being asked to leave or ejected prior to the early 1960s.[11] The LLCs argue that other evidence also negates any intent, including the fact that there was a gate at the entrance to the road that was shut at certain times, a fence around the property and signs saying "no-trespassing" and "toll road."

This raises the question whether the evidence, including the testimony of Helen Horn and others about the 1940s, 1950s and early 1960s, established a public dedication in those early years that was not negated by Watt's charging a fee for parking. The testimony of Helen Horn, Alex Van Broek[12] and Raymond Grzan covered the period

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[10] As we have indicated, the statement of decision signed by the trial court discusses all the evidence without distinction as to any particular period. Friends objected to this aspect of the statement of decision, stating that it "fail[ed] to explain the court's factual basis as to whether defendants provided affirmative proof of a license for the following three periods: before 1973, from 1973 until 1991, and from 1991 to the present." We therefore do not imply a finding that use was by permission or license for all or any of the period before 1973. (Code Civ. Proc., § 634; *In re Marriage of Furie* (2017) 16 Cal.App.5th 816, 827 [if omissions or ambiguities in statement of decision are timely brought to trial court's attention, appellate court will not imply findings in favor of the prevailing party].)

[11] At oral argument, counsel for the LLCs argued that Deeney's testimony about tenants reporting people walking down the road showed efforts to exclude in the 1940s to 1960 period. This testimony was in response to a question about the 1960s, not earlier.

[12] The testimony of Van Broek was of little significance because his recollections were so scant and so vague.

from 1948 through 1962.[13] Horn's testimony, coupled with the video that was shown, reflected that there was a heavy use of the beach by the public during the summer months in the 1940s, 1950s and 1960s for a variety of ocean-related activities, from surfing and swimming to fishing. Her testimony, coupled with that of Grzan, established that they consistently paid a fee for parking, at least when they drove down the road and parked. They visited the beach during different seasons, and in Grzan's case, at night. On occasions where they walked down or there was no attendant, such as during less busy seasons, the gate was not closed or was unlocked. Horn's family on rare occasions walked down and used the beach without paying a fee. There were no efforts to stop or exclude them at any time; nor were there signs about trespassing or a toll road or walk-ins. There was a sign about parking that stated a fee amount.

In effect, Friends argues that the testimony of these individuals, especially Horn, established a public dedication during the period between 1948 and 1960[14] and that charging a fee for parking is not tantamount to permission or a license. The LLCs in effect argue the opposite.[15] The facts for this period are not in dispute, and so the question is a legal one. Neither party has cited, and we have been unable to find, case law addressing whether charging a fee is sufficient to establish that use is pursuant to a license or permissive within the meaning of *Gion-Dietz*. However, in *Gion-Dietz* itself, the court observed that a party seeking to establish a public dedication "need only produce evidence that persons have used the land as they would have used public land. If

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[13] Grzan testified about later years as well.

[14] In its opening brief, Friends focuses on the period before 1990, contending that before then the Deeneys took no acts to prevent or limit public use. This argument, however, is dependent on the proposition, which we have rejected, that Watt's acts are irrelevant. In reply, Friends argues the testimony of Horn alone, which spanned the period from 1948 through 1962, was sufficient to establish a pre-1991 dedication. Further, in both briefs Friends strenuously argues that payment of a fee cannot alone establish that use was pursuant to permission or a license.

[15] Like the trial court, the LLCs rely heavily on the fee as evidence of permissive use or "license." Also like the trial court, they do not segregate the evidence presented for any time period from that presented for any other time period.

the land involved is a beach or shoreline area, they should show that the land was used as if it were a public recreation area." (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 39.)

In regard to an owner's (in this case the LLCs) burden to show the use was permissive or pursuant to a license, the *Gion-Dietz* court held: "For a fee owner to negate a finding of intent to dedicate based on uninterrupted public use for more than five years, therefore, he must *either* affirmatively prove that he has granted the public a license to use his property *or* demonstrate that he has made a bona fide attempt to prevent public use." (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 41, italics added.) Here, for the period from the 1940s through the 1950s, there is no evidence that Watt or the Deeneys made any bona fide effort to prevent public use. On the contrary, they posted a large billboard and another sign that advertised and encouraged public use. In later periods, the evidence reflects efforts to limit public use, such as by closing and locking the gate, posting no-trespassing signs, and instructing persons who attempted to walk in without paying to leave. But for the 1940s and 1950s, the LLCs provided no such evidence.

However, it is undisputed that even in that early period, Watt consistently charged people a fee, and those who visited the beach understood they needed to pay the fee to access the property. The witnesses who discussed this early period indicated the fee was for parking, but whether it was characterized as an admission fee or a parking fee does not matter in this case. The witnesses testified they drove down the road, paid the fee and parked every time or almost every time they visited Martin's Beach. While parking on Highway 1 above the road and walking down the road was apparently possible, the only testimony about that for the 1940s and 1950s was that Horn's family parked above on rare occasions when the parking areas near the beach were full. Even so, they did not do that when her brother was with them "because he was a baby." The reasonable inference is that carrying a baby, or for that matter beach gear or picnic supplies, down and back up the road would be challenging or inconvenient, at best. As a practical matter, the evidence suggests that the vast majority of those who used the beach during this period generally expected to and did drive down the road, pay a fee and park.

Paying a fee to gain admission to Martin's Beach was tantamount to obtaining permission or a license. Implicit in charging a fee is that the right to use the beach is conditional on payment. We do not believe this is the kind of unfettered use the court referred to in *Gion-Dietz* when it stated, " '[T]he thing of significance is that whoever wanted to use [the land] did so . . . when they wished to do so without asking permission and without protest from the land owners.' " (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 40.)

Here, the trial court found Friends did not show that the public had continuous public use for the prescriptive period without asking or receiving permission. It reasoned that "[n]one of Plaintiff's witnesses testified that they were able to come and go on their own terms, and without the payment of a fee. Even though a few witnesses testified that they were able to occasionally use the property without paying, such use is insufficient to establish the 'long-continued adverse use' necessary to establish an implied-in-law dedication. . . . All of Plaintiffs' witnesses admit and acknowledge a fee was charged and thus, that any access was allowed by permission only."

Whether framed in terms of use without asking or receiving permission (as to which Friends bore the burden of proof) or use pursuant to a license (as to which the LLCs bore the burden), the trial court did not err. Payment of a fee to access or use property implies that such use is not a matter of right but instead is a permitted use. A party who pays for a privilege and is granted the privilege in exchange for the payment is not acting as though he or she had an unfettered right to exercise the privilege. At most, she is asserting a right to exercise a privilege upon making the payment.

Friends argues "a license is defined as a '*personal*, revocable, and unassignable permission or authority to do one or more acts on the land of another,' " and that in this case "any fee charged was not personal but was per vehicle." Friends cites cases that generally describe a "license" as used in relation to real property, such as *Eastman v. Piper* (1924) 68 Cal.App. 554, 560 [comparing license and easement] and *Beckett v. City of Paris Dry Goods Co.* (1939) 14 Cal.2d 633, 637 [comparing license to lease]. Nothing in these cases indicates that a license cannot be conferred on a group of people, as opposed to a single individual. Here, the record indicates the people who visited Martin's

Beach paid a fee on behalf of the driver and all occupants of a vehicle. And as used in these cases, "personal" is understood to mean it is "incapable of being assigned by the licensee" and " 'is never extended to the heirs or assigns of the licensee.' " (*Eastman*, at p. 560.) Friends fails to explain why a license, i.e., permission to access and use Martin's Beach for recreational purposes, could not be given to a group of persons, rather than only one, in exchange for a single, per-vehicle fee.

Finally, Friends argues that the LLCs presented no evidence that the Deeneys or Watt at any time took the steps set forth in Civil Code sections 813, 1008 and 1009 of posting or recording a notice that public use is "by permission, and subject to control, of owner" or entering into an agreement with a public entity for such use, pointing out that these sections provide a mechanism for establishing that use is pursuant to a license. (See footnote 6, *ante*.) Friends further argues that "nothing in Civil Code section 1009 indicates charging a fee—much less a per vehicle fee—creates a license." These statements are accurate but beside the point for two reasons.

First, section 1009 provides specific methods by which coastal landowners and other landowners may avoid public dedication even while allowing public use (see Civ. Code, § 1009, subds. (b), (f)(1)–(3)), it does so prospectively, that is for use that occurs "subsequent to the effective date of this section." (See *id.*, subd. (f).) Thus, the common law rules expressed in *Gion-Dietz* continue to apply to conduct prior to March 1972, in this case including the 1940s, '50s and '60s. (*Blasius*, *supra*, 78 Cal.App.4th at p. 823.)

Second, it is not clear that even for periods after 1972, section 1009's notice and agreement mechanisms are the exclusive means of establishing that use is pursuant to a license. As we have noted, there was evidence of additional steps Watt and later the Deeneys took after 1972 to limit use of the property, further supporting a finding that public use after 1972 was permissive. For example, Watt and the Deeneys shut the gate at the property every evening in the summer and even earlier in wintertime. Watt erected signs that said "toll road," and the Deeney family erected "no trespassing" and "permit parking only" signs. When individuals on occasion walked down the road without paying the fee, Watt told them to leave, and the Deeneys told them they could either

leave or pay the fee. If such a person refused to leave, Watt or the Deeneys threatened to call the Sheriff, which resulted in compliance. The Deeneys installed security cameras and enlisted the help of tenants who resided on the property to let them know when they saw people walking down the road. All of this evidence supports a finding that Watt and the Deeneys were allowing use of the property, but only subject to payment and on terms acceptable to them. If Friends means to argue that neither the charging of a fee nor any of the other acts taken in later years to enforce it can establish that use was by license and that section 1009 was intended to abrogate the common law regarding permissive use, it has not adequately developed the argument.

For all of these reasons, Friends has failed to persuade us that the trial court erred in finding the public's use of Martin's Beach was, at all relevant times, permissive and therefore incapable of giving rise to a dedication. Even as to the years from the 1940s through the early 1960s, the requirement that users pay a fee prevented the ripening of public use into a dedication.

C. This Court's Resolution of Friends' Prior Appeal Does Not Compel a Finding of Public Dedication.

Friends' final argument is that "pursuant to this court's directions on remand, Friends also established an express dedication as a matter of law." Friends relies on statements in our prior opinion, reversing the grant of summary judgment, that the facts Friends had alleged were "sufficient to establish the elements of common law dedication, if they can be proven at trial," and that the complaint alleged "acts on the part of the owners that could manifest an intent to dedicate to the public, coupled with public use over many years that could establish acceptance." Friends contends that it provided evidence at trial to support every allegation in its complaint and that our prior ruling thus means that as a matter of law it met its burden of proof at trial. Further, it argues that the LLCs "failed to produce facts, as this court directed, that would 'conclusively negate' an express dedication claim."

Friends' argument misconstrues our prior ruling, which was simply a determination that Friends had *alleged* enough to get beyond what was in effect a motion

for judgment on the pleadings.[16] True, we held that the allegations were "sufficient to establish a common law dedication cause of action absent some other facts that would conclusively negate either element." But this was not tantamount to holding that if Friends provided some evidence supporting its allegations it would be entitled to judgment as a matter of law, even if there had been no contrary evidence. On the contrary, as we emphasized, whether the elements of a common law dedication ultimately could be established "will depend on all of the circumstances, *as shown by the evidence the parties offer at trial*." (Italics added.)

There has now been a trial, and both sides presented evidence shedding considerably greater light on the circumstances relating to the public's use of Martin's Beach Road and Martin's Beach itself than the minimal allegations and record presented at summary judgment. Not only is the record different, but our task is entirely different. All of the questions Friends raises on appeal—even those that have a legal component—turn on the facts and circumstances. This includes whether an owner's words or acts manifest an intention to dedicate his or her property to a public use. (*City of Los Angeles v. Kysor* (1899) 125 Cal. 463, 465-66 ["The owner's intention is the all-important element in creating a dedication, and that intention is a question of fact" as to which "it is peculiarly the province of the jury, or the trial court" to decide]; *Hays v. Vanek* (1989) 217 Cal.App.3d 271, 282 ["Whether an owner has made an offer is a question of fact requiring an examination of all the pertinent circumstances"].) It also includes whether the circumstances in which the owners allowed public use amounted to permission or a license to use.[17] (*Gion-Dietz, supra,* 2 Cal.3d at p. 41; *Richmond Ramblers Motorcycle*

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[16] As we pointed out in our prior opinion, the LLCs' summary judgment motion on the public dedication claim was a challenge to the pleadings, rather than a more typical evidence-based summary judgment motion.

[17] In the prior appeal, we declined to determine whether the allegation that "a $.25 entry fee" was charged to "our grandparents" established that public use was "on a permissive basis," even though the evidence regarding a fee could be a factor indicating permissive use. In declining to affirm the summary judgment ruling, we observed that the information in the complaint regarding the fee was "extremely limited," and in

Club v. Western Title Guaranty Co. (1975) 47 Cal.App.3d 747, 755.) The facts and circumstances we must consider in reviewing the trial court decision are those shown by the *trial evidence*, not those alleged in the complaint or contained in the summary judgment record. As a general matter, we must accept all trial court findings that are supported by substantial evidence; it is not our province to reweigh the evidence.

Focusing on express dedication, to which this argument is directed, Friends was required to establish overt acts of the owner manifesting an intent to dedicate his or her property to a public use and an acceptance by the public of that offer. (*Blasius*, *supra*, 78 Cal.App.4th at p. 821.) Friends contends it showed an offer to dedicate by evidence that the Deeneys and Watt erected billboards inviting the public to use the beach, constructed a parking lot, provided toilets and opened a convenience store, and it showed an acceptance by evidence demonstrating extensive and continuous public use. Friends further contends that the LLCs "failed to produce facts, as this court directed, that would 'conclusively negate' an express dedication claim." The trial court, in the statement of decision, disagreed. It found that "the only 'clear and unequivocal intention' expressed by the Deeney family was the intention to steadfastly protect their private property rights" and that there was "no evidence that the Deeney family manifested an intent to dedicate Martin's Beach Road through legal instruments, words, or through any other overt act." Among other things, the trial court found the intent reflected by the billboard inviting the public onto the property and the maintenance of amenities was to make the property and related facilities "available to members of the public [who] paid a fee to use and access the property."

Friends has not couched its challenge to that finding in substantial evidence terms, but that is the standard of review we must apply. Indeed, since the trial court found Friends did not present evidence sufficient to meet its burden of proof on certain issues (see, e.g., p. 16, *ante*), the standard is even more challenging; Friends must show the

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particular there was no indication that the practice of charging a fee persisted over the many decades of public use.

evidence compels a finding in its favor. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.) There is substantial evidence to support the trial court's finding that the owners' acts did not reflect an intent to dedicate to public use and instead reflected only an intent to allow paid use. The evidence thus does not compel a finding to the contrary. It was for the trial court to weigh the evidence, and it is not within the scope of our review to reweigh it or substitute our own judgment As we have already held, the trial court's conclusion that payment of a fee amounted to permission or a license was not legally erroneous. We therefore reject Friends' contention that the LLCs failed to negate an express dedication claim. They negated the claim by showing that their predecessors consistently charged a fee to those who used the beach.

CONCLUSION

We are aware of "the strong policy expressed in the Constitution and statutes of this state of encouraging public use of shoreline recreational areas," including article X, section 4[18] of our state Constitution (*Gion-Dietz*, *supra*, 2 Cal.3d at pp. 42-43) and the California Coastal Act (Pub. Res. Code, § 30001.5, subd. (c) [describing as one of the "basic goals of the state for the coastal zone" to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone"]; *id.*, § 30211 ["Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation"]). We are also familiar with our Supreme Court's directive that "[a]lthough [article X section 4] may be limited to some extent by the United States Constitution it clearly indicates that we should encourage public use of shoreline areas whenever that can be done consistently with the federal Constitution." (*Gion-Dietz*, at p. 43.)

That said, we have been tasked here with reviewing a trial court's application of the common law of public dedication, which is the sole legal basis for Friends' remaining

[18] Article X, section 4 was formerly article XV, section 2.

claims in this case. In *Gion-Dietz*, our high court relied on the above-quoted constitutional provision to hold that "the courts of this state must be as receptive to a finding of implied dedication of shoreline areas as they are to a finding of implied dedication of roadways." (*Gion-Dietz*, *supra*, 2 Cal.3d at p. 43.) Although, in the wake of *Gion-Dietz*, the Legislature subsequently revised the law of dedication with respect to other kinds of properties, it largely left intact the common law of public dedication with respect to coastal properties (see footnote 6, *ante*), reinforcing the state's public policy in favor of coastal access. We have endeavored faithfully to follow the prior holdings of our Supreme Court and fellow appellate courts in applying common law of public dedication principles here. However, we have not attempted to extend the public dedication doctrine beyond the common law parameters previously recognized by court decisions in this state. As strong as the coastal access policies of our state are, we do not understand them to empower us to do so.

DISPOSITION

We affirm the judgment of the superior court. Respondents shall recover their costs on appeal.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

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