

FILED

OCT 28 2011

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By S. Kell Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SUTTER

RICHARD W. CAMPBELL, JR, et. al.,

Case No. CVCS 08-2421

Plaintiffs

RULING ON MOTION FOR
SUMMARY JUDGMENT AND/OR
SUMMARY ADJUDICATION

-vs-

STATE OF CALIFORNIA, et. al.,

Defendants

_____/

Now pending before me is a motion for summary judgment or, in the alternative, for summary adjudication filed by defendant State of California, Acting on Behalf of the Department of Parks and Recreation of the State of California ("Parks"). The motion came on regularly for hearing on September 12, 2011, in Department B of this court, and, after argument, was taken under submission.

Evidentiary Objections

Parks filed evidentiary objections to plaintiffs' evidence submitted in support of their dispute with the Facts submitted by Parks. Those evidentiary objections are in proper form. CRC, Rule 3.1354. I have ruled on those objections, as indicated by my handwritten insertions on that filing, but only as to Objections 1 through 18. "Objections" 19 through 28

simply contain arguments that the evidence cited by plaintiffs to create a dispute as to the mentioned Fact(s) no longer creates a dispute as to that Fact because the evidence has been ruled inadmissible. These arguments would have been more appropriately placed in the State's Reply, and not placed in the evidentiary objection submission. Having made my evidentiary rulings, I will determine what Facts are disputed or undisputed in light of the cited evidence and my rulings on Parks' objections.

Separate Statements of Facts

On June 10, 2011, Parks filed its Statement of Undisputed Material Facts setting out 15 separate Facts with supporting evidence. On August 18, 2011, Campbells responded with responses thereto. Having reviewed those submissions, and in light of my evidentiary rulings, I find as follows:

Fact 1: Undisputed;

Fact 2: Undisputed;

Fact 3: Undisputed. I note this means that no evidence exists as to the use of the road for a period of from 1918 to 1938;

Fact 4: Undisputed, but irrelevant. I do not know what it means to have no knowledge of "evidence of events" for the indicated period;

Fact 5: Undisputed. This Fact does not preclude other actions by Parks that might exceed the scope of the easement;

Fact 6: Undisputed;

Fact 7: Undisputed, but irrelevant;

Fact 8: Undisputed;

Fact 9: Undisputed;

Fact 10: Undisputed;

Fact 11: Undisputed;

Fact 12: Undisputed;

Fact 13: Undisputed

Fact 14: Undisputed and

Fact 15: Undisputed.

Legal Standard

Summary judgment is proper if there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. CCP § 437c(c). A defendant moving for summary judgment or summary adjudication bears the initial burden of setting forth evidence that one or more of the elements of the cause of action cannot be established or that there is a complete defense to the cause of action. Cal. Civ. Proc. Code § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 849.

“A party is entitled to summary adjudication of a cause of action if there is no triable issue of material fact and the matter can be adjudicated as a question of law.” *London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648, 655. See Cal. Civ. Proc. Code § 437c(c) and (f)(1). “As with a motion for summary judgment, the court must view the evidence and reasonable inferences from the evidence in the light most favorable to the opposing party.” *London Market Insurers, supra*.

Discussion

The current parties to the First Amended Complaint (“FAC”) are the plaintiffs Richard W. Campbell, Jr. and Deborah Campbell Killips (“Plaintiffs”) and defendants Circle H, LLC, Margaret A. Hughes, Joseph P. Hughes, and Parks. The FAC contains four causes of action against all defendants. The first is for Quiet Title. The second is for Declaratory Relief in which plaintiffs seek a declaration of the scope of an easement across their real property, as well as the duties and responsibilities of the parties to a private road created by that easement. (¶ 20 of the FAC; all future references are to the FAC, unless noted to the contrary). The third is for Declaratory Relief to determine if an easement creates a public or private road. (¶ 24). Finally, the fourth is for Injunction to prevent defendants from using the road in excess of the scope of the easement creating the road. (¶ 28).

Everyone agrees Parks has a recorded easement, created in 1928, consisting of “...a continuous and unbroken right of way as and for a private road, together with the incidents thereto...” over the real property owned by plaintiffs. (Fact 1 of Parks’ Separate Statement; all future references to a Fact are to Facts set out therein.) (Emphasis added.) That road connects North Butte Road with land owned by Parks. The road passes first through plaintiffs’ property and then through several parcels owned by others, not parties to this action, before it finally reaches Parks’ land.

Parks asserts the motion for summary judgment should be granted because the 1928 easement allows Parks to invite whomever it wants to use the road to access their property. At the time of the creation of the 1928 easement, the then-current version of Vehicle Code §490, defined “private road” as follows:

“Sec. 22. “Private road or driveway.” Every private road, driveway or place used by the owner, his guests and those having business with the owner and not intended to be otherwise used, or otherwise used by the general public.”

First Cause of Action (Quiet Title)

In their first cause of action, plaintiffs seek to quiet title by seeking a judgment that defendants cannot use the road to allow access for members of the general public or to use the road in excess of the scope appropriate for a private road providing access to rural, non-commercial uses. (¶14.)

The extent to which an expressly created easement can be used by its owner is determined by the terms of the creating instrument. Civ. Code §806. The easement owner receives only those rights of use expressly conveyed that are necessary and reasonable for enjoyment of the easement, incident to the grant, and consistent with its purpose. *Camp Meeker Water System, Inc. v. Public Utilities Company* (1990) 51 Cal.3rd 845, 866. A road easement can be used for all reasonable purposes, the most common of which is for ingress and egress to another parcel of property. *San Rafael Ranch Co. v. Ralph Rogers Co.* (1908) 154 Cal. 76, 77; *Laux v. Freed* (1960) 53 Cal.2nd 512, 522. Other uses, such as a right to dig trenches or lay pipe, are not permitted. *Vestal v. Young* (1905) 147 Cal. 715, 718.

Assuming the definition of “private road” mentioned above, in Sec. 22, informs the use of the words “private road” contained in the 1928 easement, there appears to be no dispute that Parks has not exceeded the scope of their easement. Undisputed Facts 5 and 6 establish that those individuals who use the road do so with the express permission of Parks. Those individuals are “guests”. Undisputed Facts 8 and 9 establishes the road is used only for ingress and egress to Parks’ property. That use is expressly permitted by the easement.

To the extent plaintiffs have alleged the current use by Parks of the easement exceeds the contemplated use of the easement at the time of its creation, that argument would depend on the intent of the parties at the time the 1928 easement was created. *Camp Meeker Water*

System, Inc., supra, at page 866. However, it is disputed that plaintiffs have no evidence of the intent of the parties at the creation of the easement for ten years before and ten years after its creation. (Fact 3 and 4.) Therefore, there is no evidence to establish that the current use of the easement by Parks has overburdened the original easement. (Facts 5, 6, 8, and 10.) Therefore, the only basis for interpreting the scope of the easement is its plain language and any ambiguity must be resolved liberally in favor of Parks. CC §1069; *Norris v. State* (1968) 261 Cal.App.2nd 41, 46-47.)

The motion for summary adjudication as to this cause of action is granted.

Second Cause of Action (Declaratory Relief)

Here, plaintiffs allege defendants have exceeded the use of their private road easement, by exercising a right to invite members of the general public to use the road to access Parks' property. Plaintiffs also allege a judicial determination of the duties and responsibilities of the parties with respect to maintenance of the road, dust creation, and possible interference with agricultural activities. However, plaintiffs allege no "actual controversy" in these collateral areas, and plaintiffs have no right to any declaratory relief other than as to the scope of the 1928 easement. CC §1060.

The motion for summary adjudication to the second cause of action is granted.

Third Cause of Action (Declaratory Relief)

For the reason stated above, the motion for summary adjudication to the third cause of action is granted.

Fourth Cause of Action (Injunction)

Injunctive relief is not a cause of action; it is a remedy. *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159.

It is undisputed that plaintiffs' privacy is not disturbed, since they do not live on the property and have no home there. (Fact 11.) The threat of liability because of the road's use by Parks, or its invitees, is speculative; no loss or damage has occurred to date. (Fact 15.)

It is undisputed that plaintiffs have never been prevented from spraying pesticides or harvesting because someone used the private road. (Fact 14.)

The motion for summary adjudication to the fourth cause of action is granted.

Joinder

On August 23, 2011, defendants Circle H, LLC, Margaret A. Hughes, and Joseph P. Hughes filed a joinder to this pending motion. These defendants filed no separate statement of facts, or supporting declarations, as required by CCP section 437c(b). For those reasons, I ignore that joinder request for all purposes. *Village Nurseries, L.P. v. Greenbaum* (2002) 101 Cal.App.4th 26; *Frazee v. Seely* (2002) 95 Cal.App.4th 627.

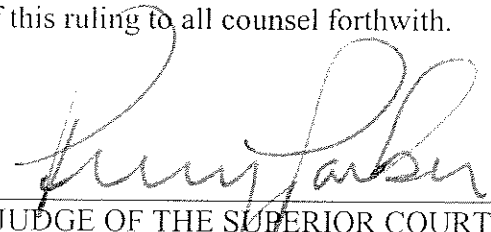
Conclusion

The motion for summary judgment, also, is granted.

Counsel for Parks shall prepare an order consistent with this ruling and submit it to me for signature after complying with CRC, Rule 3.1312.

The Clerk shall mail a copy of this ruling to all counsel forthwith.

Dated: October 28, 2011



JUDGE OF THE SUPERIOR COURT