

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-052924

09/21/2020

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
K. Cabral
Deputy

3603 CAMPBELL L L C

ARI RAMRAS

v.

WOODSIDE ENCORE AT SUNSET RANCH L
L C, et al.

JEFFREY D. HARRIS

JONATHAN D EBERTSHAUSER
JUDGE VIOLA

UNDER ADVISEMENT RULING
Defendant Encore at Sunset Ranch Community Association's (Association) Motion for
Summary Judgment filed May 29, 2020 - Denied

The Court has received and considered the following:

1. Defendant Encore at Sunset Ranch Community Association's (Association) Motion for Summary Judgment filed May 29, 2020 and the associated Statement of Facts;
2. Plaintiff's Response and Response to Statement of Facts;
3. The Association's Reply.

Defendant requested oral argument but the Court concludes that oral argument will not assist the Court with determining the issues presented.

The Association asks the Court to grant judgment in its favor as to all of Plaintiff's claims. Plaintiff seeks a declaration from the Court that the easement is valid as to the Association. Plaintiff further alleges a breach of contract and trespass claim against the Association. Specifically, Plaintiff asks the Court to find that the Association breached the easement and the implied covenant of good faith and fair dealing and committed a trespass by continuing to maintain

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the property in a way that interferes with the easement. The Court concludes issues of fact and law preclude the entry of judgment in Defendant's favor.

This matter arises from a dispute over an easement. Plaintiff purchased an access easement over a neighboring parcel. The grantor later sold the servient property to a developer, Woodside. Woodside discovered the easement and attempted to have it removed. Woodside was unsuccessful and proceeded with developing the property into a planned community. Woodside later transferred the servient property to the Association. The area of the servient property that Plaintiff claims under the easement has been developed as a retention basin for the planned residential community.

Standard

The party moving for summary judgment must produce evidence that it believes demonstrates the absence of a genuine issue of material fact and must explain why summary judgment is warranted. *Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115 (App. 2008.) If the nonmoving party has the burden of proof of the claim or defense at trial, the moving party need not disprove the nonmoving party's claim or defense, but need only point out the lack of evidence on an essential element of the claim or defense. *Thruston*, 218 Ariz. at 117. If the moving party meets its burden, the burden shifts to the nonmoving party to present sufficient evidence demonstrating the existence of a disputed fact. *Thruston*, 218 Ariz. at 119. The nonmoving party cannot then rest on its pleadings, but must call to the court's attention evidence to explain why the motion should be denied. *Id.* "If the party with the burden of proof on the claim or defense cannot respond to the motion by showing that there is evidence creating a genuine issue of fact on the element in question, then the motion for summary judgment should be granted." *Orme Sch. v. Reeves*, 166 Ariz. 301, 310 (1990).

Analysis

Both parties incorporated prior filings in support of their respective positions. The Court discourages such practice for at least two reasons: 1) incorporating prior briefing effectively grants a page limit extension without approval from the Court; and 2) the Court is required to guess as to which of the portions of the prior filings should be considered and why. Regardless, the Court has considered the incorporated documents in evaluating the Motion, Response, and Reply.

Notice

The record presented to the Court confirms, at a minimum, that the Association had record notice of the Easement. The Commercial Reciprocal Access Easement and Non Barrier Agreement (Easement) was recorded on July 2, 2007. The recorded Easement contains a legal description of the entire Presbytery Property (property purchased by Woodside and transferred to

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the Association). Exhibit B to the Easement described the burdened servient property which is what is required for a valid Easement. *See* Restatement (Third) of Property (Servitudes) § 2.7, cmt. f. Additionally, the record reflects Woodside had actual notice and the Association had actual notice to the extent the Association itself admits that Woodside controlled the Association and all decision-making for the Association. Even if it did not have actual notice, the Association was on inquiry notice based on the public records.

The Association relies on *Dunlap Investors Ltd. v. Hogan*, 133 Ariz. 130, 132 (1982) to assert that the easement is defective because the recorded document failed to attach a description of the “Presbytery Drive Area.” *Dunlap Investors* is distinguishable, however, because the servient estate was not identified with reasonable certainty. As the court noted, “[i]t might be different if the deed had contained a legal description of the servient property. This might put a person searching the record on notice as to the property to be burdened. *Id.* Here, the recorded instrument contained a legal description of the servient property and that served to put the Association on notice as to the property to be burdened. Defendant has not presented evidence that a surveyor could not go upon the land and locate the easement.

The Association has not established as a matter of law that the Easement is void or unenforceable as against it.

Contract

There is no question that the Association is the current the owner of the property. Plaintiff alleged the Association is maintaining the retention basin resulting in a continuing trespass. The Association does not dispute maintaining the retention basin alleged to interfere with the Easement. To the extent that the Court finds the Easement to be enforceable, it can be enforced as a contract between landowners. *See Ellerman v. Snyder*, 2013 WL 636728, at *23 (App. Feb. 21, 2013).

Trespass

The Association asserts that Plaintiff’s trespass claim is barred by the two-year statute of limitations. *See* A.R.S. § 12-542(1); *Cheatham v. Sahuaro Collection Service, Inc.*, 118 Ariz. 452 (App. 1978). Plaintiff asserts that the trespass is continuing. *See Garcia v. Sumrall*, 58 Ariz. 526 (1942). There is no dispute that the Association did not make the improvements to the property allegedly subject to the Easement. Plaintiff claims instead that the Association has continued to maintain the improvements that prevent Plaintiff’s enjoyment of the property. Defendants present no facts to the contrary. To the extent the trespass is continuing (which the Association does not address in the Motion), the Court concludes the two-year statute of limitations does not bar Plaintiff’s claim.

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IT IS ORDERED denying the Association's Motion for Summary Judgment filed May 29, 2020.