

95 Meadowmere LLC v MPPR, LLC
2018 NY Slip Op 30954(U)
May 16, 2018
Supreme Court, Suffolk County
Docket Number: 14-4869
Judge: Joseph Farneti
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SHORT FORM ORDER

INDEX No. 14-4869SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY**PRESENT:**Hon. JOSEPH FARNETI
Acting Justice Supreme CourtMOTION DATE 11-16-15 (001)
MOTION DATE 2-11-16 (002)
ADJ. DATE 5-26-16
Mot. Seq. # 001 - MotD
002 - MotD; CASEDISP

95 MEADOWMERE LLC, JAMES
CALLANAN, MARY CALLANAN, JAY
FENSTERSTOCK, ELIZABETH
FENSTERSTOCK, EICHLER FRANK
INVESTMENTS, JAMES FRANK, BRIAN
FRANK, CYNTHIA FRANK as Trustee of the
AMANDA FRANK TRUST, CYNTHIA
FRANK, JEROME LEFF, GABRIELLA M.
LEFF, GABRIELLA M. LEFF and NANCY
LEFF LERNER as Trustees of THE ARTICLE
THIRD TRUST UW DORA LEFF,
FRANCESCA SCHWARTZ,

Plaintiffs,

- against -

MPPR, LLC, MEADOWMERE PLACE, LLC,
CLAUS MOLLER, Individually and as a member
of MPPR, LLC and MEADOWMERE PLACE,
LLC,

Defendants.

MARCELLO P. DA S. DOREA, HYDRANGEA
HILL LLC, 31 MEADOWMERE PLACE, LLC,
MEADOWMERE I, LLC, MARJORIE WALLIS
as Trustee of the MARJORIE WALLIS
REVOCABLE TRUST,

Additional Defendants.

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Upon the following papers numbered 1 to 108 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 33; Notice of Cross Motion and supporting papers 34 - 46; Answering Affidavits and supporting papers 47 - 57; 58 - 105; Replying Affidavits and supporting papers 106 - 108; Other ; it is,

ORDERED that the motion by defendants for summary judgment is granted to the extent indicated; and it is further

ORDERED that the motion by plaintiffs for summary judgment is granted to the extent indicated.

Plaintiffs, owners of real property shown on the Suffolk County Tax Map at:

0904-012.00-03.00-021.000
0904-012.00-03.00-023.002
0904-012.00-03.00-019.00
0904-012.00-03.00-018.000
0904-012.00-03.00-016.000
0904-012.00-03.00-023.001

commenced this action pursuant to Article 15 of the Real Property Actions and Proceeding Law ("RPAPL") seeking a determination with regard to the ownership of Meadowmere Place, a private street in Southampton, New York. Plaintiffs maintain that each homeowner owns the respective portions of Meadowmere Place fronting their respective lots to the center line of Meadowmere Road. Defendants have answered and interposed a counterclaim alleging that by quitclaim deed, they own the entirety of Meadowmere Place, and seek, among other things, removal of encroachments on Meadowmere Place.

It is undisputed that in 2010 defendant Meadowmere Place, LLC purchased vacant property located at 70 Meadowmere Place, SCTM No. 904-012.00-03.00-24.001. 70 Meadowmere Place borders Meadowmere Place on the east and has a deeded right-of-way for ingress and egress over Meadowmere Place. Thereafter, Claus Moller, the owner of Meadowmere Place, LLC constructed a home. In 2013, MPPR, LLC, a company controlled by Moller, purchased what he believed to be the entire bed of Meadowmere Place with the intention of expanding the road to 26 feet and making certain improvements, including removing certain encroachments and burying power lines at MPPR, LLC's cost. Two neighbors, the Picards, owners of 95 Meadowmere Place, and the Left's, owners of 126 Meadowmere Place, objected to the "improvements" and this litigation ensued.

Defendants now move for summary judgment, maintaining that the Picards and the Lefts are precluded from claiming ownership of their respective portions of Meadowmere Place based on judicial estoppel. In support of the motions, defendants submit copies of the pleadings, affidavits of Claus Moller, and David L. Saskas; various photographs, deeds to the respective properties on Meadowmere Place, various surveys; and Small Claims Assessment Review documents.

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Plaintiffs oppose the motion and cross-move for summary judgment, maintaining that they are the respective owners of Meadowmere Place in fee simple and seek, *inter alia*, a determination that Meadowmere Place, LLC has a right of way over Meadowmere Place only for reasonable ingress and egress. In opposition to the motion, plaintiffs submit an affidavit of Kevin A. McGowin and supporting documentation. In support of the cross motion, plaintiffs submit, among other things, copies of the pleadings; affidavit of Lance R. Pomerantz, with supporting deeds and surveys, Mark Picard, Gabriela Leff, James Callanan, Cynthia Frank, Francesca Schwartz, and Jay Fensterstock. In reply, and in opposition to the cross motion, defendants submit an affirmation of Joseph N. Friedman; and affidavits of Russell Z. Scott, William P. Rosko, Jr., Claus Moller; an affirmation of Lance R. Pomerantz (from an unrelated litigation); various photographs; and appraisal documents. The Court declines to consider the sur-reply and sur-sur-reply in deciding these motions (see *Bayly v Broomfield*, 93 AD3d 909, 939 NYS2d 634 [3d Dept 2012]; *Whale Telecom Ltd. v Qualcomm Inc.*, 41 AD3d 348, 839 NYS2d 726 [1st Dept 2007]; *Allstate Ins. Co. v Raguzin*, 12 AD3d 468, 784 NYS2d 644 [2d Dept 2004]; *Barbuto v Winthrop Univ. Hosp.*, 305 AD2d 623, 760 NYS2d 199 [2d Dept 2003]).

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (see *Alvarez v Prospect Hospital*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *Rebecchi v Whitmore*, 172 AD2d 600, 568 NYS2d 423 [2d Dept 1991]; *O'Neill v Town of Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]). Furthermore, the parties' competing interest must be viewed "in a light most favorable to the party opposing the motion" (*Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610, 563 NYS2d 449 [2d Dept 1990]).

In order to maintain an action to quiet title, a party must establish that it has an estate or interest in the subject property (RPAPL 1501; *Lennard v Chinkpoo Realty Holding Corp.*, 76 AD3d 1052, 909 NYS2d 456 [2d Dept 2010]; *Soscia v Soscia*, 35 AD3d 841, 829 NYS2d 543 [2d Dept 2006]).

It is undisputed that Meadowmere Place has two portions: an open and improved private road which runs north to south, and an unopened road which runs east to west along the southern boundary of 95 Meadowmere Place and 636 Halsey Neck Lane. As to the open north to south portion, a review of the respective deeds and chain of title for each of the twelve adjacent parcels fronting Meadowmere Place establishes by metes and bounds the respective ownership in fee simple to each respective owner. Additionally, each deed contains an express "center line" or "half-street" grant of ownership, specifically:

Together with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above described premises to the center lines thereof.

The only property which does not contain a “center line” grant is owned by Meadowmere Place, LLC, as the center line clause is expressly stricken out.

The deeds also contain an easement over the private road known as Meadowmere Place:

Together with a right-of-way over the private road bounding the above described premises on the east, northerly to Meadowmere Lane.

On January 31, 2013, MPPR, LLC purchased from Gill Wylie Peabody, as Executor of the Estate of Eugenia P. Slaughter, for \$5,000.00 by quitclaim deed “the entirety of the bed of Meadowmere Place.” The Court finds based upon the documentary proof submitted that Eugenia Slaughter was, in fact, Eugenia Leary. However, Slaughter’s Estate could only transfer what the estate then owned, not the entire bed of Meadowmere Place, which was previously sold to the respective parties herein. The Court finds and the documentary evidence demonstrates that MPPR, LLC purchased only the center-line portion of Meadowmere Place, which was previously expressly stricken in that portion of the road abutting 70 Meadowmere Place. That portion of Meadowmere Place, as all of Meadowmere Place, is subject to a right-of-way easement.

As to the “unopened” portion of Meadowmere Place which runs east to west along the southern boundary of 95 Meadowmere Place and 636 Halsey Neck Lane abut 95 Meadowmere Place and property owned by Wallis/636 HN Properties, the deeds conveying those properties contain express center line clauses. Therefore, 95 Meadowmere Place and 636 Halsey Neck Lane own half of the “unopened” portion of Meadowmere Road, subject to right-of way easements. In that the deeds convey only that portion of the unopened portion of Meadowmere Road to 95 Meadowmere Place and Wallis/636 HN properties, unlike *Haberman v Baker*, 128 NY 253 (1891), where the deed provided “along said road * * * to the Bloomingdale road,” as opposed to the centerline of the road, the full portion of the unopened road was not conveyed to 95 Meadowmere Place and 636 Halsey Neck Lane. As Eugenia P. Leary acquired the original tract “excepting therefrom, however, all those certain tracts pieces or parcels of land which have hereto been conveyed” pursuant to earlier Morris deeds, Leary purchased, and therefore, sold to MPPR, LLC one-half of the center of the unopened portion of Meadowmere Road.

As to defendants’ motion for summary judgment, defendants have failed to establish a *prima facie* case of entitlement to summary judgment with regard to judicial estoppel. Judicial estoppel or the doctrine of inconsistent positions does not apply in this case. This doctrine precludes a party who assumed a certain position in a prior legal proceeding and who secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed (see *Prudential Home Mtge. Co. v Neildan Constr. Corp.*, 209 AD2d 394, 618 NYS2d 108 [2d Dept 1994]; *Piedra v Vanover*, 174 AD2d 191, 579 NYS2d 675 [2d Dept 1992]; *Neumann v Metropolitan Med. Group*, 153 AD2d 888, 545 NYS2d 592 [2d Dept 1989]). “The doctrine is invoked to estop parties from adopting such contrary positions because the judicial system cannot tolerate this playing fast and loose with the courts” (*Kimco of N. Y. v Devon*, 163 AD2d 573, 575, 558 NYS2d 630 [2d Dept 1990], quoting *Environmental Concern v Larchwood Constr. Corp.*, 101 AD2d 591, 594, 476 NYS2d 175 [2d Dept 1984]; see *Bua v Purcell & Ingrao, P.C.*, 99 AD3d 843, 952 NYS2d 592 [2d Dept 2012]). Here,

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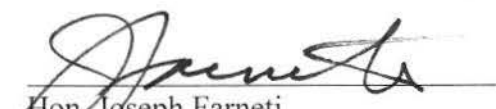
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defendants have not established that in prior Small Claims Assessment Review ("SCAR") matters regarding tax assessments for 95 Meadowmere Place Property by the Picards and for 126 Meadowmere Lane by the Leffs, that plaintiffs' represented that they had no property interest in Meadowmere Place. Moreover, the affidavits Mark Picard and Gabriela Leff establish that the respective plaintiffs never claimed, acknowledged or admitted in any prior proceeding, including the prior SCAR proceedings, that they did not have an ownership interest in the bed of Meadowmere Place. Accordingly, that branch of defendants' motion to dismiss the plaintiffs' amended complaint on the grounds of judicial estoppel is denied.

Turning to plaintiffs' cross motion for summary judgment, and that branch of defendants' motion seeking summary judgment on their counterclaims, plaintiff has established, based upon documentary evidence, that each of the plaintiffs, and defendants as well, own one-half of Meadowmere Lane that abuts their respective property and is subject to an easement of ingress and egress. On their counterclaims, defendants have established that Meadowmere Lane is a 50-foot-wide road in both its opened and unopened portions. Moreover, various parties have encroached the 50-foot width of the road, by installing raised cobblestone curbs, fences, hedges, shrubs, mailboxes, walls, and other encroachments. Where a right-of-way is reserved "the way need be only such as is reasonably necessary and convenient for the purpose for which it was created" (*Grafton v Moir*, 130 NY 465, 471 [1982]). The owner of the land has the right to use it any way that he sees fit, provided he does not unreasonably interfere with the reasonable and convenient use of the right of passing to and fro (*Grafton v Moir*, supra). "A right of way along a private road belonging to another person does not give the dominant owner a right that the road shall be in no respect altered or the width decreased, as his right does not entitle him to the use of the whole of the road, unless the whole width of the road is necessary for his purpose, but is merely a right to pass with the convenience to which he has been accustomed" (*Grafton v Moir*, quoting Goddard on Easements). "Where a right of way was granted over certain roads marked on a plan, and one was described there as forty feet wide, it was held that the grantee was entitled to only a reasonable enjoyment of a right of way, and that such reasonable enjoyment was not interfered with by the erection of a portico, which extended a short distance into the road, so as to reduce it at that point to somewhat less than forty feet" (*Grafton v Moir*, quoting Goddard on Easements). Here, the historical use of Meadowmere Place has been an 18 foot wide paved road, with a total width of 26 feet cleared. The New York State Fire Code § 503 is consistent with the historical use of the road requiring a minimum pavement width of 26 feet with an appropriate turnaround area. Accordingly, any encroachments to the 26 feet of Meadowmere Road's "cleared" width, including cobblestone curbs, fences, hedges, shrubs, mailboxes, walls, or other encroachments shall be removed forthwith by the respective parties at their cost.

Submit Judgment.

Dated: May 16, 2018


Hon. Joseph Farneti
Acting Justice Supreme Court

 X FINAL DISPOSITION NON-FINAL DISPOSITION