At a Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 27th day of June 2022.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

CARRIER SERVICES GROUP NEW YORK, LLC,

Plaintiff,

vs.

CHENANGO VALLEY CENTRAL SCHOOL DISTRICT,

AND

BROOME COUNTY, as a Necessary Party,

Defendants

DECISION, ORDER AND JUDGMENT

Index No. EFCA202000319

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This matter is before the Court to consider the motion filed by Defendant Chenango Valley Central School District (Chenango Valley) seeking summary judgment and dismissal of Plaintiff's Complaint, and the cross-motion of Plaintiff Carrier Services Group ("CSG") for an Order denying Chenango Valley's motion for summary judgment and an Order granting CSG summary judgment on the second, third and fourth causes of action of the Complaint. The parties appeared for virtual oral argument on the motion and cross-motion on December 16, 2021, at which time the Court determined that the motion and cross-motion would be held in abeyance to allow the parties to discuss potential resolution, and the parties were to advise the Court as to negotiations by January 7, 2022. Subsequently, the parties informed the Court that they were continuing to negotiate and additional time was requested to provide an update. Ultimately, no agreement was reached and the Court advised the parties that a decision would be rendered. After due deliberation, this constitutes the determination of this Court with respect to the motion and cross-motion. [1]

BACKGROUND FACTS

This case involves ownership of certain parcels of property located in the Town of Fenton, and an easement over those parcels. The parcels were originally part of a larger tract of land, known as the Binghamton Depot, owned by the United States and used as a depot during World War II. Eventually, the depot property was determined to be surplus and unnecessary, so it was sold off in parcels over several years.

First, in December 2010, the United States conveyed approximately 29.41 acres of the tract of land to Defendant School District. This conveyance consisted of two parcels of property, now known as 1153 Hoyt Avenue and 226 Chenango Bridge Road and the conveyance was subject to "[a] perpetual and assignable easement to the United States of America, its successors and assigns, for access to its land, over and across" several specifically described easements, including: (a) a combined 50' Access & Utility Easement; and (b) a 20' Utility Easement. Those

[1] All the papers filed in connection with the motion and cross motion are included in the NYSCEF electronic case file, and have been considered by the Court.

easements run through 1153 Hoyt Avenue and 226 Chenango Bridge Road, and ultimately could provide easy access to an interstate highway north of 226 Chenango Bridge Road.

Next, in December 2014, the United States conveyed another portion of the former Binghamton Depot to Broome County. These parcels are now known as 1177 Hoyt Avenue and 1253 Hoyt Avenue and the conveyance was also subject to a Cross Easement Agreement between the United States, Broome County and Chenango Valley. Under the Cross Easement Agreement, the United States retained a right to use Central Avenue, which runs across the Broome County parcel at 1253 Hoyt Avenue and ends at the southern boundary of Chenango Valley's parcel. In effect, it extended the easement that already existed over Chenango Valley's property and gave the United States continuing access to its remaining property.

In February 2017, the United States conveyed the remaining portion of the Binghamton Depot property to the Plaintiff herein. That parcel is now known as 1151 Hoyt Avenue, and when that conveyance was made, the United States granted to Plaintiff all of its rights, title and interest in that property, including its interest in the easements running across Defendant's properties at 1153 Hoyt Avenue and 226 Chenango Bridge Road, as well as the easement across the Broome County parcel.

After all these conveyances by the United States of the Binghamton Depot land, five separate parcels were created. Defendant's two parcels are at the northern part of the former Binghamton Depot site, and Broome County owns the land just south of Defendant's parcels. CSG's parcel is south of Broome County's parcel.[2]

Plaintiff intended to use its property for a distribution facility for the acquisition, storage and re-sale of telecommunications equipment. At the time Plaintiff purchased the property, it also applied for a zoning variance and special use permit to allow it to use the property for its intended commercial purposes. Defendant opposed usage of the easement for ingress and egress because such usage would bring traffic to, and over, Defendant's property, and pose a danger for school children who might travel over that road to access parts of the School District's property. Eventually, Plaintiff was granted a Special Use Permit by the Town of Fenton in July 2019. Among other conditions, the Special Use Permit was "subject to the disclosures and limitations

[2] Broome County's two parcels are not contiguous. 1253 Hoyt Avenue is located between Chenango Valley's parcels and CSG's parcel. 1177 Hoyt Avenue is on the southern part of CSG's parcel and not significantly involved in the current dispute.

set forth in the application." In its application, Plaintiff made various representations that traffic to its property would enter and exit the site at the south end of Plaintiff's property via Hoyt Avenue, and it would not utilize the Defendant's right of way.

Meanwhile, still concerned about potential increase in traffic around its school, Defendant passed a resolution on May 22, 2019 limiting access and usage of its "driveway" to District related business. Chenango Valley claimed that the southern-most portion of CSG's access easement over Chenango Valley's lands is a "driveway". CSG claims it is actually a highway or private road. In October 2019, based on the resolution, Defendant erected a locked gate between its parcel at 1153 Hoyt Avenue to the north and Broome County's parcel at 1253 Hoyt Avenue to the south. The gate blocks both the Plaintiff and Broome County from using the access easement.[3]

Plaintiff filed a Summons and Complaint and Order to Show Cause on January 31, 2020 alleging that Defendant had erected a locked gate preventing Plaintiff from being able to access Central Avenue, and utilize its easement. Plaintiff further alleged that Defendant informed Plaintiff that it was not allowed to traverse over the School District's property. The Order to Show Cause sought to enjoin Defendant from blocking Plaintiff's access to its property from the northern end.

The Order to Show Cause was signed on February 4, 2020 (Connerton, AJSC), but the injunctive relief to allow Plaintiff to utilize the easement was not granted at that time. Following oral argument, the Court denied Plaintiff's application for a preliminary injunction. Discovery proceeded and the Court issued a Preliminary Conference Stipulation and Order on April 30, 2021 giving a deadline of July 31, 2021 for completion of all disclosure and a deadline of October 13, 2021 for dispositive motions.

Defendant filed its motion on October 18, 2021 seeking summary judgment and dismissal of the Complaint. Defendant argues that: 1) the claim is not justiciable because even if this Court rules that the easement exists, Plaintiff is prevented from using it since the Special Use Permit does not allow CSG to use the northern right of way; so there is no direct and immediate harm to Plaintiff that can be adjudicated by the Court; 2) Plaintiff is estopped from claiming use of the

[3] As will be discussed below, Chenango Valley disputes that CSG is blocked from using the access easement. Chenango Valley contends that there are two gates, one of which is never locked and the other, while locked, can be opened by CSG which has its own lock on the gate.

easement because of its prior representations that it did not intend to utilize the easement, which were relied upon by Defendant; and 3) Plaintiff has abandoned any easement by nonuse of the easement.

Plaintiff filed a cross motion on November 12, 2021 seeking denial of Defendant's motion and granting summary judgment to Plaintiff on its second, third and fourth causes of action, for permanent injunction, declaratory judgment and trespass, respectively. Plaintiff contends that the deeds establish that the access easement was duly conveyed to the Plaintiff and that Defendant was not authorized to erect a fence and obstruct Plaintiff's usage of its easement.

LEGAL DISCUSSION AND ANALYSIS

When seeking summary judgment, "the movant must establish its prima facie entitlement to judgment as a matter of law by presenting competent evidence that demonstrates the absence of any material issue of fact." *Lacasse v. Sorbello*, 121 AD3d 1241, 1241 (3rd Dept 2014) *citing Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986) and *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985) (other citation omitted); *see Amedure v. Standard Furniture Co.*, 125 AD2d 170 (3rd Dept. 1987); *Bulger v. Tri-Town Agency, Inc.*, 148 AD2d 44 (3rd Dept. 1989), *app dismissed* 75 NY2d 808 (1990). Such evidence must be tendered in admissible form. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs.*, 46 NY2d 1065, 1067-1068 (1979). Once this obligation is met, the burden shifts to the respondent to establish that a material issue of fact exists. *Dugan v. Sprung*, 280 AD2d 736 (3rd Dept. 2001); *Sheppard-Mobley v. King*, 10 AD3d 70, 74 (2nd Dept. 2004) *aff'd as mod.* 4 NY3d 627 (2005); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324; *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853. "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination *(see, Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact." *Boston v. Dunham,* 274 AD2d 708, 709 (3rd Dept. 2000); *see, Boyce v. Vazquez*, 249 AD2d 724, 726 (3rd Dept. 1998). The motion "should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists." *Haner v. De Vito*, 152 AD2d 896, 896 (3rd Dept. 1989)

(citation omitted); *Lacasse v. Sorbello*, 121 AD3d 1241; *Asabor v. Archdiocese of N.Y.*, 102 AD3d 524 (1st Dept. 2013). It "is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact." *Vega v. Restani Constr. Corp.*, 18 NY3d 499, 505 (2012) (citation omitted).

At the outset, there is no dispute that the conveyances to Chenango Valley and Broome County reserved an access easement to the United States over those parcels, and that when CSG bought its parcel from the United States, it also obtained the easement rights held by the United States. This included the right to utilize the easement access across Plaintiff's property as well as the property sold to Broome County. The proscription against using the access road is based on the Special Use Permit.

Pursuant to CPLR § 3001, "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." However, there are limitations on the availability of declaratory relief and "[a] declaratory judgment will not be granted if it may only result in an advisory opinion." *Cutro v. Sheehan Agency, Inc.*, 96 AD2d 669, 669 (3rd Dept. 1983) *citing New York Public Interest Research Group v. Carey*, 42 NY2d 527, 529-530 (1977).

CSG has filed this action to determine the rights of the parties related to the easement and the access road. Defendant maintains that this action is non-justiciable because Plaintiff is not suffering any direct and immediate harm related to the alleged blocking of the easement access. Rather, due to the limitations of the Special Use Permit, all traffic is required to utilize the southern access on Hoyt Avenue. "To constitute a 'justiciable controversy,' there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect." *Chanos v. Madac, LLC*, 74 AD3d 1007, 1008 (2nd Dept. 2010) (citations omitted). Contrary to Defendant's argument, this case does, indeed, present a justiciable controversy. Plaintiff's Complaint includes claims for declaratory judgment and trespass. Here, there is a controversy regarding the parties' legal rights with respect to the easement. Plaintiff seeks to resolve that question and provide clarity as to present and future rights and obligations. That is the very purpose of a declaratory judgment action. CSG claims that it has a valid easement, and that Chenango Valley infringed on CSG's rights by placing a locked gate across CSG's easement. The event has already occurred and is not some speculative

event in the future that may never occur. The action for declaratory judgment is to establish Plaintiff's "rights and [it] subsequently can seek compensation from anyone who has violated such rights." *Dale Renting Corp. v. Bard*, 39 Misc2d 266 (Sup. Ct. Kings County 1963) *aff'd* 19 AD2d 799 (2nd Dept. 1963). Regardless of whether Plaintiff intends to use the easement, it is entitled to a determination of its rights in the easement. Additionally, should CSG decide to sell its property sometime in the future to an entity not limited by the Special Use Permit, the existence of the easement could be very important; CSG might also seek to modify the Special Use Permit at some point in the future, and its easement rights would be an important consideration. A declaratory judgment action at this juncture provides clarity as to the parties' respective rights in the property.

Similarly, the trespass claim is justiciable because, irrespective of Plaintiff's ability or inability to use of the north easement access, its property interest includes "the right ... to be free from direct invasions of person or property" regardless of whether there is any pecuniary injury. *509 Sixth Ave. Corp. v. New York City Transit Auth.*, 15 NY2d 48, 51 (1964); *City of Albany v. Normanskill Cr., LLC*, 165 AD3d 1437, 1439 (3rd Dept. 2018) ("a trespass claim represents an injury to the right of possession.") Thus, the trespass claim is not dependent on whether the Special Use Permit separately prevents Plaintiff from using the north easement access, but involves consideration of CSG's rights in its ownership including the easement, and whether Chenango Valley's actions infringe on CSG's rights. The question is not whether Plaintiff will attempt to use the north easement, but whether Defendant has the right to place a locked gate over the easement- or if such activity constitutes a trespass upon Plaintiff's rights. That question presents a justiciable issue for the Court.

Defendant alternatively seeks summary judgment based on estoppel. In particular, Defendant argues that Plaintiff should be estopped from claiming a right to use the easement because Plaintiff made representations to Defendant and others during the Special Use Permit process that all traffic would utilize the south access, and Plaintiff would not use the easement to the north. For the same reasons noted in the preceding paragraph, Plaintiff's representations and ability to use the easement in light of the Special Use Permit limitation are not determinative of the Plaintiff's claims in this action. This action deals with Plaintiff's rights in the property and Defendant's actions in allegedly erecting a locked gate over the easement, and not whether CSG can use the easement. Further, estoppel would not bar the claim because CSG's agreement to

have all traffic use the south access did not relinquish all the rights CSG has in the easement itself. CSG simply agreed not to use all its easement rights. CSG agreed that traffic to its property would use the south entrance, but CSG did not relinquish rights for other travellers- for example, pedestrian or bicycle usage. Despite Chenango Valley's claim that CSG relinquished all its rights in the easement when it obtained the Special Use Permit, the written documentation does not support that contention. The Special Use Permit states that "applicant's use of the property shall be subject to the disclosures and limitations set forth in the application." CSG's application stated that "Traffic will enter and exit via Hoyt Avenue at south end of CSG site" and that "North and South have Ingress and Egress rights." Nothing in the permit itself, nor in the application, mandate estoppel against CSG with respect to its easement, other than the condition that traffic will enter and exit and the south end of the CSG property.

Furthermore, equitable estoppel and promissory estoppel are premised on detrimental reliance, which is absent here. "Equitable estoppel requires clear and convincing proof that the party against whom estoppel is directed misrepresented or concealed material facts, with knowledge of the real facts, and with the intention that the other party act in reliance upon the disingenuous conduct and that the party seeking to invoke estoppel detrimentally relied on that conduct in excusable ignorance of the true facts." *Central Fed. Sav. F.S.B. v. Laurels Sullivan County Estates Corp.*, 145 AD2d 1, 6 (3rd Dept. 1989) *citing Bergner v. Kick*, 85 AD2d 911, 912 (4th Dept. 1981), *affd* 56 NY2d 795 and *Airco Alloys Div., v. Niagara Mohawk Power Corp.*, 76 AD2d 68, 81-82 (4th Dept. 1980); *Holm v. C.M.P. Sheet Metal, Inc.*, 89 AD2d 229, 234-235 (4th Dept. 1982) *citing* 21 NY Jur, Estoppel, Ratification, and Waiver, § 21. "A party relying upon promissory estoppel must demonstrate that there was a clear and unambiguous promise upon which it reasonably and detrimentally relied." *Clifford R. Gray, Inc. v. LeChase Constr. Servs., LLC*, 31 AD3d 983, 986 (3rd Dept. 2006) (citation omitted). Defendant claims that it withdrew its objection to Plaintiff's rezoning and Special Use Permit application in reliance of Plaintiff's claim that it would not be using the north easement. In this action, however, Plaintiff is not seeking to direct commercial traffic over the easement, but rather, Plaintiff is asserting it still has an easement which is not extinguished by the Special Use Permit. As Plaintiff correctly points out, bicycle or pedestrian use might still be allowable under the Special Use Permit, but Defendant's actions have interfered with that permissible use, and are inconsistent with Plaintiff's easement. Since Plaintiff is not asserting a right to use the easement for vehicular

traffic, there can be no detrimental reliance by Defendant. Plaintiff continues to adhere to its prior statements that traffic will utilize the south entrance. Since there is no detrimental reliance, Defendant cannot prevail on equitable estoppel or promissory estoppel.

Defendant lastly argues that the Complaint should be dismissed because Plaintiff has abandoned the easement by agreeing not to use the easement for any traffic. An easement can be extinguished by abandonment. *Gerbig v. Zumpano*, 7 NY2d 327 (1960). "A party relying upon another's abandonment of an easement by grant must produce clear and convincing proof of an intention to abandon it ... The acts relied upon must be unequivocal, and must clearly demonstrate the owner's intention to permanently relinquish all rights to the easement." *Consolidated Rail Corp. v. MASP Equipment Corp.*, 67 NY2d 35, 39-40 (1986) (internal and end quotations marks and citations omitted). Non-use of the easement does not suffice. *Gerbig v. Zumpano*, 7 NY2d 327. Plaintiff did agree to limit its use of the easement by agreeing before the Town of Fenton Town Board that traffic will enter and exit via Hoyt Avenue at the south end of Plaintiff's property. However, that evidence does not establish that Plaintiff was giving up all of its rights in the easement. In fact, Plaintiff's assertions in the permit process were that it would not direct business-related vehicular traffic through the easement, but CSG consistently maintained that it would not permit any further curtailment of its easement rights. Chenango Valley fails to allege acts that would constitute affirmative relinquishment of CSG's easement right. On the other hand, if CSG failed to object to Chenango Valley erecting a locked gate and obstructing CSG's access, then that might actually support a claim of abandonment (and provides additional rationale for deciding the claim is justiciable and that declaratory judgment is proper). Defendant has failed to establish an entitlement to summary judgment on the theory of Plaintiff's abandonment of the easement.

Based on the preceding discussion, summary judgment for Defendant must be denied. Plaintiff has also filed a cross motion for summary judgment on the claims for permanent injunction, declaratory judgment and trespass.

"The general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." *James v. Alderton Dock Yards, Ltd.*, 256 NY 298, 305 (1931); *Thome v. Alexander & Louisa Calder Found.*, 70 AD3d 88, 99 (1st Dept. 2009). As already set forth above, Plaintiff has established that it has a valid easement over the lands of Defendant. CSG also made a *prima*

facie showing that it did not abandon the easement, which was not rebutted. Therefore, CSG has established its rights in connection with the valid easement, entitling it to a declaratory judgment.

CSG also seeks a permanent injunction enjoining Defendant from obstructing or otherwise interfering with Plaintiff's easement, and an Order that Chenango Valley must not prevent Plaintiff from being able to utilize the easement in a manner not inconsistent with the Special Use Permit. Since the Court has concluded that CSG has a valid easement which has not been abandoned or relinquished in some other manner, Defendant must honor that property right. An injunction at this point only has the effect of requiring Defendant to do what it must do under the law with regard to the easement rights. However, the law is clear that "a landowner burdened by an express easement of ingress and egress may narrow it, cover it over, gate it or fence it off, so long as the easement holder's right of passage is not impaired... As a matter of policy, affording the landowner this unilateral, but limited, authority to alter a right of way strikes a balance between the landowner's right to use and enjoy the property and the easement holder's right of ingress and egress." *Lewis v. Young*, 92 NY2d 443, 449 (1998) (citations omitted) (internal and end citations omitted). Thus, the Defendant can gate the right of way and lock it, so long as CSG still has the ability to use the access easement (but not with traffic to its site). That would not be an impermissible interference with CSG's rights. However, if the locked gate prevents CSG from using the easement (which is what CSG alleges), then that could constitute a trespass. In this case, however, even if there has been a technical trespass, there is no evidence of damage, and any temporary interference with CSG's easement is resolved by this Decision and Order. The easement remains in effect and Chenango Valley is enjoined from acts in violation of CSG's easement rights (i.e. a locked gate through which CSG cannot pass is not permitted). The Court, however, is also mindful and appreciates the concerns of Chenango Valley in the safety of its students, and nothing herein prevents the Defendant from gating the access easement, as long as CSG's right of passage is not impaired. Thus, Chenango Valley is simply enjoined from acts that violate the easement.

CONCLUSION

Based upon all the foregoing, it is hereby

ORDERED, that Defendant's motion for summary judgment is DENIED; and it is further

ORDERED, that Plaintiff's cross-motion is GRANTED.

THIS CONSTITUTES THE DECISION, ORDER AND JUDGMENT OF THIS COURT.

Dated: June 27, 2022
Binghamton, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice