

KREUTZER v CHIEF PUBLIC DEFENDER

24CF14729

PETITION FOR WRIT OF MANDATE

On July 29, 2024, Petitioner Paul A. Kreutzer (“Petitioner”) filed a Petition for Writ of Mandate against Chief Public Defender Calaveras County (“Respondent”) seeking access to certain records.

Currently on calendar is a hearing on Petitioner’s writ. However, a review of the Court docket shows that the Respondent was never served with the petition.

The Petition is **DENIED** without prejudice to properly serve the Respondent and reschedule the hearing.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order Is required.

FREEMAN, SR. v SMITH

24CV47282

DEFENDANT'S MOTION TO STRIKE

Plaintiffs Michael Steven Freeman, Sr. and Janice Marie Freeman as Trustees of the Michael Steven Freeman Sr. and Janice Marie Freeman Revocable Trust, and Michael Steven Freeman, Jr. ("Plaintiffs") filed their Complaint to quiet title against Defendant Lyle Smith ("Defendant"). Now before the Court is Defendant's Motion to Strike.

I. Factual Background

Plaintiffs are the owners of real property located at 12168 Sheep Ranch Road in Calaveras County ("Freeman Property"). Defendant is the owner of real property located at 13000 Sheep Ranch Road in Calaveras County ("Smith Property"). The Freeman Property is situated adjacent to and northeasterly of the Smith Property. Sheep Ranch Road is a public road.

Ingress and egress to both the Freeman Property and the Smith Property is by way of a private road ("Road") that intersects Sheep Ranch Road. (Complaint ¶ 9.) The Road is recorded as a 50 foot wide road and public utility easement. (*Id.* ¶ 10.) The Road leaves its intersection at Sheep Ranch Road, winds towards the Smith Property, and then continues to the Freeman Property. (*Id.* ¶ 9.)

Plaintiffs have brought the instant action to ensure that they can have continued use of the Road and electric power lines and panels.

II. Legal Standard

Code of Civil procedure section 435(b)(1) provides that "any party within the time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or any part thereof..." Thereafter the court may, upon motion or at its own discretion:

- a) Strike out any irrelevant, false, or improper matter inserted in the pleading;
- b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or any order of the court.

(Code Civ. Proc. § 436.)

The grounds for a motion to strike are limited to matters appearing on the face of the challenged pleading or matters of which judicial notice may be taken. (Code Civ. Proc. §437(a).) A court may “strike false, i.e., untrue, matters contained in a pleading whenever their falsity or untruthfulness is revealed by facts which are judicially noticed.” (*Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 21.)

III. Discussion

Defendant moves to strike Paragraph 15 as false, and portions of Paragraph 16 as irrelevant. As to both paragraphs, Defendant takes issue with Plaintiffs’ statement that the Road is the “sole means of ingress and egress to the Freeman Property by vehicle from a public road.” (Paragraphs 15, 16.)

Defendant’s argument appears to be that the statement is false because the Plaintiffs’ deed references an “existing road” which provided the ingress and egress and that this road is different than the Road. Thus, according to Defendant, there must be some other roadway available because it is mentioned in the grant deed. Defendant has offered no evidence, only argument. Defendant’s argument does not in any way prove the falsity of Plaintiff’s allegation that currently the “sole means of ingress and egress” is via the Road.

Accordingly, Defendant’s motion to strike is **DENIED**.

The Clerk shall provide notice of the Ruling forthwith. Plaintiffs to prepare a formal Order conforming to this Ruling pursuant to Rule 3.1312.

SANTELICES v TURNER, et al

24CV47361

DEFENDANT TURNER and FOUNTAINS' DISCOVERY MOTIONS

This civil action stems from a dispute over the destruction and burning of several trees on real property owned by Plaintiff Cynthia Santelices ("Plaintiff") by Defendants Dolores Turner ("Turner"), Kristeen B. Fountain ("Fountain"), Josh Noble ("Noble") and Noble Tree Service (collectively "Defendants".) Turner and Fountain filed a Cross-Complaint against Plaintiff and Noble and Noble Tree Service.

Before the Court are Defendants Turner and Fountain's four separate motions to compel discovery which ask the Court to: 1) deem admitted the truth of facts in the Request for Admissions ("RFA"), 2) compel answers to Requests for Production of Documents ("RPDs"), 3) compel responses to form interrogatories ("Form Interrogatories") and) compel responses to special interrogatories ("Special Interrogatories") (collectively "Discovery"), and 5) impose sanctions on Plaintiff.

For the reasons set forth below, the matter is continued for three weeks while the parties attempt informal resolution of this dispute.

I. Factual and Procedural Background

A. Background Facts

Plaintiff is the owner of a ten-acre parcel of real property in Calaveras County with Assessor's Parcel Number (APN) #004-006-010-000 ("Property"). (FAC ¶ 6.); the neighboring property is located at 200 Miwuk Court in West Point and is co-owned by Turner and Fountain.

In October 2020, Defendants engaged in the destruction of a significant 48-inch diameter oak tree standing 40 feet tall which fell across what the Plaintiff then believed was the border of her property. (FAC ¶ 7.) In March 2022, Plaintiff observed that the entire neighboring property had been clear-cut and burned and that the fire had encroached beyond the then known boundary, onto her property. (FAC ¶ 8.) On June 29, 2022, Plaintiff confronted Noble about the fire damage which Noble refused to address or remedy. (FAC ¶ 9.) After hiring a surveyor, Plaintiff learned that the land which had been cut and burned was in fact hers. (FAC ¶ 10.) Plaintiff thereafter employed an arborist who assessed the damages to the trees alone at over \$194,000.00. (FAC ¶ 11.)

Plaintiff's FAC brings causes of action for 1) Timber Trespass (CA Civil Code § 3346); 2) Trespass (CA Civil Code § 733); 3) Negligence; 4) Nuisance (CA Civil Code § 3479); 5) Encroachment; and 6) Willfulness & Malice (CA Civil Code § 3294).

B. Discovery and Responses

On July 18, 2024, counsel for defendants served Discovery on Plaintiff'. (Declaration of Seth A. Nunley ("Nunley Decl."), ¶ 3.) The original time for Plaintiff to serve properly verified responses expired on August 22, 2024. (*Id.*, at ¶ 6.)

On August 23, 2024 (the day after the response deadline), Plaintiff reached out to Defendants' counsel asking for an extension. (Nunley Decl. ¶ 7.) Counsel sent an email confirming the extension, stating: "I will agree to a one-week extension, but any objections are waived and in the absence of a response by Aug. 30 we'll file a compel motion." (Nunley Decl. ¶ 7, Ex. C.) Plaintiff states that she did not agree to waiver of objections when she spoke with Mr. Nunley and that the concept of waiver was first made in his confirmation email. (Opp. p. 2, ll. 14-17.)

On August 30, 2024, Plaintiff emailed some responses to some of the Discovery. (*Id.* ¶ 30.) However, as of the filing of the Motions to Compel, Defendants either have not received responses to certain discovery or have received unverified responses (tantamount to no response). Defendants' counsel does not state that he took any further steps to meet and confer prior to filing the motions.

Plaintiff, on the other hand, provides multiple emails showing she did attempt to 1) comply with the discovery requests, and 2) meet and confer regarding the allegedly deficient responses. (Opp. Ex. A.)

On Reply, Defendant does not address Plaintiff's attempts to meet and confer to informally resolve this discovery dispute.

II. Legal Standard and Analysis

The Discovery Act requires that, "prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain 'an informal resolution of each issue.'" (Code Civ. Proc. section 2025, subd. (o).) The purpose of requiring the parties to meet and confer is to "encourage the parties to work out their differences informally so as to avoid the necessity of a formal order..." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016 [internal citation omitted].) By informally resolving discovery disputes, the parties "lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Ibid* [internal citation omitted].)

However, a party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Defendants' motions all assert that Plaintiff failed to respond to the discovery requests by the extended deadline and that any responses to the RFAs were unverified and therefore considered non-responsive. Based on Defendants' position that no responses (or no verified responses) were ever provided, counsel ("Mr. Nunley") asserts he was under no obligation to engage in any informal resolution of the discovery dispute.

On the other hand, Plaintiff asserts that within the deadline agreed to by the parties, she served discovery responses. (Opp. Ex. B.) According to Plaintiff, on August 30, 2024, an email was sent on her behalf to Mr. Nunley which shows two attachments: 1) a PDF that contains responses, and 2) a google drive containing multiple documents. (*Ibid.*) However, neither party provides copies of the discovery responses actually provided by Plaintiff. Thus the Court is unable to determine what exactly was contained in Plaintiff's emailed discovery responses and whether or not any of them are sufficient to obviate a motion to compel.

The four motions to compel were served on Plaintiff by U.S. mail on September 6, 2024. There is no evidence that Mr. Nunley ever informed Plaintiff of his intention to file motions to compel prior to service. Rather, after the motions were filed, on September 9, 2024, Plaintiff sent counsel an email, asking for clarification on what discovery was missing. (Opp. Ex. B.) It does not appear that Mr. Nunley responded to Plaintiff's email.

On September 11, 2024, Plaintiff sent another email to Mr. Nunley in which she pointed out the discovery responses provided by email August 30, 2024, and again on September 9, 2024. At that point Plaintiff acknowledged that she had inadvertently overlooked the RFAs and provided her responses via that email. (*Ibid.*) Later that day, Plaintiff again emailed Mr. Nunley asking for him to please clarify what discovery remained outstanding and stating "Can you please send any outstanding documents that require answering, including the Request for Documents, and I will provide what you request." (Opp., Ex. B.) In response, Mr. Nunley simply stated that he had served discovery on September 6, 2024, and Plaintiff could seek the advice of her own counsel (*Ibid.*) – a concerning response from an officer of the Court to a self represented litigant.

On October 2, 2024, Plaintiff again attempted to meet and confer with Mr. Nunley about what discovery he believed was either missing or inadequate, stating that Plaintiff would provide any further documentation if it was needed. (*Ibid.*)

Based on what is before the Court, it appears Plaintiff submitted at least some responses to Defendant's discovery requests on August 30, 2024. Thereafter, after the motions to compel had been filed, she attempted to provide answers to the RFAs, an allowable remedy up to the time of the hearing.

The Court takes note of Plaintiff's efforts at informal resolution and a less than satisfactory meet and confer effort on the part of Defendants. The Court is unable to determine what discovery responses were inadequate because neither party submitted any of Plaintiff's discovery responses (verified or unverified.)

Accordingly, the Court orders the matter continued. Plaintiff is directed to submit verified responses to Defendant's RFAs, RPDs, Special Interrogatories and Form Interrogatories within one week. Within one week of receipt of the responses, Defendants are to contact the Court to drop the hearing if they are satisfied with Plaintiff's final responses or, alternatively, to file a supplemental declaration attaching the responses and detailing the claimed continued shortcomings. The Court declines sanctions at this stage, noting Plaintiff has provided some portion of responses, and this matter could have been resolved informally without court involvement; if the matter remains on calendar for November 22, 2024, the Court will revisit the issue of sanctions.

Based on the foregoing, the hearing on these four discovery motions is continued to November 22, 2024, at 9:00 a.m. in Dept.2. Plaintiff must serve her final, verified, complete responses, without objection, to all discovery by 5:00 p.m. on November 8, 2024. In the event, defendants deem the responses insufficient, a supplemental declaration, including the discovery responses must be filed and served by 3:00 p.m. on November 15, 2024.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.