

PHILLIPS v. RADER-COLEMAN, et al

22CV46116

**PLAINTIFFS' MOTION FOR JUDGMENT
ON THE PLEADINGS**

Before the Court is a motion for judgment on the pleadings ("MJOP") filed by Plaintiffs/Cross-Defendants Kelly Lynn Phillips ("Kelly Lynn") and Richard Phillips ("Richard")("Plaintiffs")¹ against the First Amended Cross-Complaint ("FACC") filed by Defendant Sara Ann Rader-Coleman ("Rader").

The Court grants Plaintiffs' Request for Judicial Notice.

I. Factual Background

This case involves a lengthy dispute over a gravel roadway that traverses over neighboring properties.

The "Rader Property" is a 160-acre parcel of real property located in the unincorporated area of Calaveras County, California. (FACC ¶ 1.) Rader asserts that she obtained her interest in the Rader Property upon the death of her grandfather, Jack Rader on January 25, 2012 and awarded to her by the Final Distribution of the Estate by the probate court on or about February 19, 2013. (*Id.* ¶ 2.) (Probate Case No. 12-PR-7340.). Her interest was recorded on February 20, 2013. (*Ibid.*) At the time, Rader was married to Addison Coleman but upon their divorce, he relinquished his rights to the Rader Property. (*Ibid.*) Rader contends that the Rader Property has been in her family for six generations and that she has lived on the house on said property since 1974. (*Id.* ¶ 3.) Rader also contends that for fifty years, the Rader family has openly and continuously used the access road without interference.

Kelly Lynn is the owner of adjacent property to the west of the Rader Property ("Phillips Property.") (FACC ¶ 4.) Rader alleges that Kelly Lynn became owner of the Phillips Property as a gift from family. (*Id.* ¶ 6.) title issues -- is disputed. (UMF 5.)

The Rader Property is accessed via a roadway and public utility easement on Dorray Road through the Phillips Property. (FACC ¶ 7.) Until 1967, Dorray Road served the Rader Property as a public road, at which time the public rights were abandoned but the private access easement rights continued unabated. (*Ibid.*) Dorray Road across the

¹ Given the common surnames of the parties, first names are used. No disrespect is intended.

Phillips Property has always provided access to the Rader Property from the time the house was placed there in 1974. (*Ibid.*)

Dorray Road is a road about 12 feet wide that leads northeasterly from Highway 26 east of Mokelumne Hill, specifically about 800 feet east of the intersection of Highway 26 with Ponderosa Way (south). (FACC ¶ 8.) Dorray Road is a county road that serves several properties for approximately ½ mile, before entering the Phillips Property and then proceeding to the Rader Property (*Ibid.*)

Rader alleges that in 1981, the prior owners of the Phillips Property – the Andersons – gave her grandfather Easement Deed to use the road through the Phillips Property and into the Rader Property. (FACC ¶ 9; 12.) Rader alleges that in exchange for the Easement Deed, her grandfather agreed that the Andersons could erect a gate across the road where it entered the Phillips Property to prevent general public access and to protect animals, but that the Andersons could not use the gate to keep her grandfather out. (*Id.* ¶ 18.) The grandfather placed his name and street number on the gate but such sign was apparently removed by the Plaintiffs. (*Ibid.*)

In 2000, the Andersons deeded the Phillips Property to the Trust of Kelly Lynn's parents, Norman and Shirley Cupler. (FACC ¶ 12.) The Rader alleges that the former owners of the Phillips Property – as well as the Phillips when they purchased it – were on notice of the Easement Deed because Rader's name was on the entry gate to the Phillips Property, the access road leading to the Rader Property, was visible from the Phillips Property, and utilities ran along the access road. (*Ibid.*). Rader alleges that she, and her predecessors, open and notoriously used the access road for fifty years prior to the Phillips attempts to restrict its use. (FACC ¶ 10.)

At some point, Plaintiffs allegedly began blocking access to the road for both Rader, and also for various utility companies. Rader alleges that Plaintiffs took her name off the gate, replaced the locks on the gates, are building a steel barricade across her access points, and have blocked utilities from entering. (FACC ¶ 23.)

On June 23, 2022, Plaintiffs filed the instant action, bringing causes of action against Defendant for 1) Quiet Title, 2) Declaratory Relief, 3) Injunctive Relief, 4) Nuisance, 5) Trespass, and 6) Slander of Title. Defendant filed an Amended Cross-Complaint alleging similar claims on August 18, 2022.

Plaintiffs now move for judgment on the FACC.

II. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id.*) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation.

(*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc. § 438(d).)

III. Legal Analysis

A. Quiet Title

The elements of an action to quiet title are: 1) the claimant is the owner and in possession of the land and 2) the defendant claims an interest therein adverse to the plaintiff. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740.)

Plaintiffs allege that Rader cannot maintain a claim for quiet title because her only purported ownership of the easement is from her grandfather's estate. They assert that because this did not occur until 2013 – well after they took ownership in 2000 – Rader's claim based on the estate cannot be maintained.

However, the FACC clearly pleads alternative theories of ownership to the easement, including notice or by prescriptive easement.

Constructive notice of an adverse interest to property can be had in two ways. First, constructive notice arises by the proper recording of an instrument containing that property right. (*Vasquez v. LBS Financial Credit Union* (2020) 52 Cal.App.5th 97, 108.) That clearly did not happen in this case. It is also possible to have constructive notice of a potential defect to the title where the purchaser "has knowledge of circumstances which, upon reasonable inquiry, would lead to that particular fact." (*Ibid* [citations omitted].) That is, in certain circumstances, where the purchaser has knowledge of certain facts or circumstances that should warn them of the need to make further inquiries into whether there are any adverse claims to the property. (*Ibid*.)

Somewhat similarly, the "elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years. [Citations.]" (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 159.) "[A]n essential element necessary to the establishment of a prescriptive easement is visible, open and notorious use sufficient to impart actual or constructive notice of the use to the owner of the servient tenement. [Citation.]" (*Ibid*.)

Here, Rader alleges that her family had open and continuous use of the easement from 1974 until the Plaintiffs attempted to block access. (FACC ¶ 10.) Rader alleges that her grandfather openly and notoriously used the road and even had his name and address posted on the gate across the road – and that it was Plaintiffs' who removed that name and address. (*Id.* ¶ 18.) Rader alleges that in addition to herself, others used the road including guests and utility companies, which were open and obvious to the Plaintiffs. (*Id.* ¶ 19.)

Plaintiffs take issue with the fact that Rader does not specify that she was using the land for the necessary five years to establish a prescriptive easement. The Court disagrees. The FACC clearly alleges that the family has been using the access road for over fifty years. By Plaintiffs' own arguments, any written easement that the Rader family had was extinguished in 2000 when the Cuplers took title to the land. Nonetheless, Rader continued to use the access road openly and notoriously after that date.

Accordingly, the FACC alleges that Rader is the claimant of the land in interest by either constructive notice or prescriptive easement, and the Plaintiffs have claimed an interest adverse to her own. Thus, Rader has sufficiently alleged a cause of action for quiet title.

The MJOP as to the FACC's cause of action for quiet title is overruled.

B. Declaratory Relief /Injunctive Relief

Code of Civil Procedure section 1060 allows for the bringing of an action for declaratory judgment in order to ascertain the ongoing rights and duties of parties to an actual controversy. " 'One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff's future conduct in order to preserve his legal rights.'" (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.)

For the same reasons as stated above, Rader has sufficiently pled a cause of action for quiet title and can reasonably seek a judgment to ascertain the rights and duties of the parties because there is an actual controversy.

Injunctive relief is a remedy, not an individual cause of action. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65.) Thus, before injunctive relief can be granted, a cause of action must exist. (*Ibid.*) Here, the Court has found that Rader has sufficiently pled a cause of action for quiet title. Accordingly, the request for injunctive relief is also proper.

The MJOP as to the causes of action for declaratory and injunctive relief are overruled.

C. Slander of Title

"Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a false statement that disparages title to property and causes the owner thereof " 'some special pecuniary loss or damage.'" (*Sumner Hill Homewoners' Assn., Inc. v. Rio Mesa Holdings* (2012) 205 Cal.App.4th 999, 1030.) Where, as here, the alleged title is based on prescriptive rights, there can be no slander of title claim *until* the determination of title has been made by the Court. (*Id.* at 1028-1029.) Because there has been no determination as to Rader's claimed rights, she cannot maintain a cause of action for slander of title.

Accordingly, the MJOP as to the cause of action for slander of title is sustained, without leave to amend.

V. Conclusion

For all the foregoing reasons, Defendant's motion for judgment on the pleadings is denied.

PHILLIPS v. RADER-COLEMAN, et al.

22CV46116

**PLAINTIFFS' MOTION TO CONTINUE TRIAL DATE
AND REOPEN DISCOVERY**

This is a matter involving a dispute over real property rights. Before the Court is a motion to continue trial date or adjudication filed by Plaintiffs Kelly Lynn Phillips ("Kelly Lynn") and Richard Phillips ("Richard")("Plaintiffs")¹ against Defendant Sara Rader-Coleman ("Sara.")

Plaintiffs filed a motion to continue the trial date and reopen discovery. In response, Sara filed a consent to continuing the trial date, but requested that the continuance be conditioned upon an order limiting the ability to engage in additional discovery.

On May 5, 2026, the Court continued the trial date to April 6, 2027.

A continuance of trial does not reopen discovery. (Code Civ. Proc., § 2024.020(b).) The Court may permit discovery to be completed, or discovery motions to be heard, after the statutory cutoff only on motion and a showing of good cause. (Code Civ. Proc., § 2024.050, subd. (a).) In deciding whether to reopen discovery, the Court considers the necessity and reasons for the discovery, the moving party's diligence, prejudice, and the time elapsed between trial settings. (Code Civ. Proc., § 2024.050, subd. (b)(1)-(4).)

Plaintiffs move to reopen discovery and primarily seek an opportunity to conduct depositions in this case. The Plaintiffs assert that their new counsel only came into this case in March of 2026 and upon realizing that no depositions had been taken, moved to continue the trial and reopen discovery. (Declaration of Cinthia P. Martin ("Martin Decl.") ¶ 3.)

Plaintiffs filed their Complaint in this case on June 23, 2022. Shortly thereafter, Sara filed her Cross-Complaint on August 10, 2022 and her First Amended Cross-Complaint on August 18, 2022.

On November 11, 2024, Plaintiffs' counsel filed a motion to withdraw and on November 22, 2024, the Plaintiffs notified the Court of their new status as self-represented. According to the declaration of Sara's attorney, John B. Allen ("Allen Decl."), prior to the Plaintiffs' becoming pro se, the parties engaged in substantial discovery, including:

¹ Given the common surnames of the parties, first names are used. No disrespect is intended.

- Sara served Kelly-Lynn with Form Interrogatories (Set One) and Requests for Admissions (RFA) which were answered in or about September 2022 (Allen Decl. ¶ 3);
- Kelly-Lynn served Sara with Form Interrogatories, Set One (39 requests), Requests for Production, Set One (33 requests), Special Interrogatories, Set One (35 requests) and Requests for Admission, Set One (35 requests) which were answered by Sara in or about March of 2023 (Allen Decl. ¶ 4);
- Sara served Plaintiffs with Special Interrogatories, Set One and Requests for Production of Documents, Set One, which were answered by Plaintiffs in or about June 2024 (Allen Decl. ¶ 5);
- Kelly-Lynn served Sara with Requests for Production, Set Two which were responded to in or about May 2024 (Allen Decl. ¶ 6);
- Sara served Kelly-Lynn with RFP, Set Two and Special Interrogatories, Set Two, which were responded to in or about October 2024 (Allen Decl. ¶ 7);
- In September of 2024, Kelly-Lynn served Sara with Special Interrogatories, Set Two (35 requests) and Special Interrogatories to Sara's Ex-Husband, Set One (Allen Decl. ¶ 8.)

Despite engaging in roughly two years of written discovery, neither party appears to have ever noticed or requested the opportunity to take any depositions. While Plaintiffs' counsel asserts, vaguely, that Plaintiffs were unable to conduct discovery while self-represented, this assertion is undermined by the significant discovery that took place prior to self-representation.

The Court finds Plaintiffs have not established good cause to broadly reopen all discovery deadlines based on the continued trial date. However, the opposition does not specifically oppose the taking of depositions or engaging in limited additional discovery on matters which have not previously been addressed or answered.

Accordingly, the motion to reopen discovery is granted, but with limitations. The parties may notice and take party depositions on or before October 1, 2026. No further depositions may be noticed or taken.

The parties may engage in further written discovery but must complete said discovery on or before September 1, 2026. Discovery requests must be limited to matters which have not previously been part of discovery requests and should be limited to no more than ten requests per type of discovery sought.

PHILLIPS v. RADER-COLEMAN, et al.

22CV46116

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before the Court is a motion for summary judgment or adjudication filed by Plaintiffs Kelly Lynn Phillips ("Kelly Lynn") and Richard Phillips ("Richard")("Plaintiffs")¹ against Defendant Sara Rader-Coleman ("Sara.")

The Court grants the Request for Judicial Notice.

I. Factual Background

This case involves a lengthy dispute over a gravel roadway that traverses over neighboring properties.

Kelly Lynn is the owner of real property in Calaveras County identified as Assessor's Parcel Numbers 012-001-002-000 and 014-002-004-00 ("Phillips Property") (UMF 1.) Sara is the owner of adjacent real property. ("Rader Property.") (UMF 2.)

A public road formerly known as Dorray Road used to run through both the Phillips Property and the Rader Property until the Board of Supervisors of the County of Calaveras passed and adopted a resolution on April 17, 1967 abandoning that portion of Dorray Road. (UMF 3.) The road was declared abandoned, subject to the reservation of access rights for public utilities. (*Ibid.*)

In 1981, the prior owners of the Phillips Property – Chester and Juanita Anderson ("Andersons") conveyed a "Grant of Easement" ("Easement") to Sara's grandparents, Jack and Wilberta Rader ("Grandparents.") (UMF 5.) The Easement purported to grant a roadway easement across their property along the road formerly known as Dorray Road for the benefit of the Rader Property. (*Ibid.*) No easement instrument was ever duly recorded against the Phillips Property; a copy of the alleged document did not appear in the official records until 2013, when it was attached to a probate order. (UMF 7.) However, the Culpers permitted members of the Rader family to use the road, including during a lease of the property to a Rader family member for cattle operations through March of 2017. (UMF 44.) S

Kelly Lynn's parents were Norman and Shirley Culper ("Culpers") who purchased the Subject Property from the Andersons on July 20, 2000. (UMF 8.) The Grant-Deed does not reference the Easement. (UMF 9.) Sara contends that her Grandparents' house numbers were visible on the gate when the Culpers purchased it and that the buildings on the Rader Property were clearly visible at that time. (AMF 1,2.) Sara contends that a

¹ Given the common surnames of the parties, first names are used. No disrespect is intended.

road showing use went through the gate to the Rader Property at the time the Culpers bought the Phillips Property. (AMF 3.) Sara contends her grandfather put his mobile home on the Rader Property in 1974 and this is the home that Sara lives in today. (AMF 4.) Sara contends that her grandfather used the road across the Phillips Property for years and that she continued to openly do so from 2010 until the events giving rise to this lawsuit (AMF 5.) Sara contends that neither she, nor her Grandparents, ever sought permission from the Phillips to use the road. (AMF 7.) Jack Rader kept his own lock on the access gate from 1981 until his death in 2012, and then Sara continued to use her own lock at that time. (AMF 8.) Sara contends that Mr. Cuper visited the Phillips Property multiple times before purchasing it and was in fact friends with her grandfather. (AMF 9, 10.)

Kelly Lynn obtained one-half interest in the Subject Property in 2009 and then the other one-half interest in 2017. (UMF 11, 15.) After Kelly-Lynn took sole ownership, she continued to permit Sara to use the road and provided access through the gate. (UMF 46.) Sara admitted in discovery in 2023 that the road was used without interference until acrimonious events began two years before then (2021) (UMF 47.)

In or around 2021, Sara filed a complaint against Plaintiffs seeking the establish title pursuant to the Easement. (UMF 20.) Shortly thereafter, Kelly Lynn withdrew permission allowing Sara to use the road on the Phillips Property. (UMF 21.) Sara thereafter cut the locks on the gate and continued to use the roadway. (UMF 22.) It appears undisputed that in order to access the Rader Property, Sara must also traverse across a property belonging to the Burchards – who have never attempted to block Sara’s access. (AMF 12.)

On June 23, 2022 Plaintiffs filed the instant action, bringing causes of action against Defendant for 1) Quiet Title, 2) Declaratory Relief, 3) Injunctive Relief, 4) Nuisance, 5) Trespass, and 6) Slander of Title. Defendant filed an Amended Cross-Complaint alleging similar claims on August 18, 2022.

Plaintiffs moves for summary adjudication or summary judgment on all causes of action, in the FACC involving the existence of easements. Defendant seeks adjudication of the competing claims for quiet title, declaratory relief and slander of title.

II. Legal Standard

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

Defendant has the initial burden to show Plaintiffs’ claims have no merit by showing either (1) that one or more elements of each cause of action cannot be established or (2) there is a complete defense to the claims. (Code Civ. Proc., § 437c(p)(2); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850.) If Defendant meets that burden, then the burden shifts to Plaintiffs to show that a triable issue of material fact exists as to the element or defense at issue. (*Ibid.*) In ruling on a motion for

summary judgment, the court must view the evidence in the light most favorable to the opposing party. (*Aguilar, supra*, 25 Cal.4th at p. 843.)

The moving party bears the burden of persuasion that there is no triable issue of material fact and that she is entitled to adjudication as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

III. Legal Analysis

A. Quiet Title

The elements of an action to quiet title are: 1) the plaintiff is the owner and in possession of the land and 2) the defendant claims an interest therein adverse to the plaintiff. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740.)

Here, it is undisputed that the Plaintiffs own the Roadway – or at least that part of the Roadway that is at issue.

Sara acknowledges that she does not have legal or formal ownership of any easement over or in part of the roadway. However, she asserts ownership under either a notice theory, prescriptive easement, or abutter's rights. Plaintiffs, however, argue that there are no questions of material fact remaining and that Sara cannot maintain her cause of action for quiet title.

Constructive notice of an adverse interest to property can be had in two ways. First, constructive notice arises by the proper recording of an instrument containing that property right. (*Vasquez v. LBS Financial Credit Union* (2020) 52 Cal.App.5th 97, 108.) That clearly did not happen in this case. It is also possible to have constructive notice of a potential defect to the title where the purchaser "has knowledge of circumstances which, upon reasonable inquiry, would lead to that particular fact." (*Ibid* [citations omitted].) That is, in certain circumstances, where the purchaser has knowledge of certain facts or circumstances that should warn them of the need to make further inquiries into whether there are an adverse claims to the property. (*Ibid.*)

The determination as to whether a party is a good faith purchaser is typically a question of fact. (*Ibid.*) Here, there are substantial questions of material fact remaining with regards to whether the Culpers were on notice, when they purchased the Phillips Property, that occupants of the Rader Property were using the access roadway. There is substantial evidence that the access road was open and obvious, that the Rader family had used it repeatedly and continuously for decades, that the Culpers were aware that the Raders had their name and address and lock on the access gate, and that multiple Rader family members were openly and continuously using the access road. At the same time, Plaintiffs argue that any of these "notices" of use were "neighborly accommodations" (MSJ p. 14.) Thus, there are quite clearly multiple issues of material fact with regards to the nature, obviousness, and use of the roadway by the Raders at the time the Culpers took ownership.

As is evidenced by the number of disputed factual claims in the motion and opposition, too many questions of fact on the issue remain. Accordingly, the motion for summary adjudication on FACC's claim for quiet title is denied.

B. Declaratory Relief/Injunctive Relief

Code of Civil Procedure section 1060 allows for the bringing of an action for declaratory judgment in order to ascertain the ongoing rights and duties of parties to an actual controversy. " 'One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff's future conduct in order to preserve his legal rights.'" (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.)

For the same reasons as stated above, there are multiple issues of material fact with regards to the underlying use of the Roadway to grant summary adjudication on the issue of ownership and use.

As regards the claims for injunctive relief, the cause of action is not an individual claim but rather a remedy based on another claim. Because the quiet title claim survives the motion or summary judgment, so does the claim for injunctive relief.

C. Slander of Title

"Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a false statement that disparages title to property and causes the owner thereof " 'some special pecuniary loss or damage.'" (*Sumner Hill Homewoners' Assn., Inc. v. Rio Mesa Holdings* (2012) 205 Cal.App.4th 999, 1030.)

Plaintiffs asserts that they are entitled to summary adjudication on this claim because there was never a false statement about easement rights, because Sara does not in fact have any such rights.

Where, as here, the alleged title is based on prescriptive rights, there can be no slander of title claim *until* the determination of title has been made by the Court. (*Id.* at 1028-1029.) Because there has been no determination as to Rader's claimed rights, she cannot maintain a cause of action for slander of title.

Accordingly, summary judgment on the claim for slander of title is granted.

IV. Evidentiary Rulings

The parties objected to various statements and exhibits. However, none of the contested items were material to the disposition of the motion, and accordingly the Court does not rule on any of the evidentiary objections to evidence. (Code Civ. Proc. §437(q).)

V. Conclusion

For all the foregoing reasons, Plaintiffs' motion for summary judgment/adjudication is granted in part and denied in part. The Motion is denied on the claims for quiet title, injunctive relief and declaratory judgment. The Motion is granted on the cause of action for slander of title.