

**Judge Mosbarger – Law & Motion – Wednesday, December 11, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1-3. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY ET AL

EVENTS: (1) Sierra Pacific’s Motion for Summary Judgment Against the Kooreman Plaintiffs

(2) Sierra Pacific’s Motion for Summary Judgment, or in the Alternative, Summary Adjudication, Against the Decker Plaintiffs

(3) Plaintiffs Michael P. Decker and Decker Ranch, L.L.C.’s Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Defendants Sierra Pacific Land & Timber Company and Sierra Pacific Industries, Inc.’s Motion for Summary Judgment Against the Kooreman Plaintiffs

Defendants Sierra Pacific Land & Timber Company and Sierra Pacific Industries, Inc. (“Defendants” herein) Request for Judicial Notice is granted.

Based on the Plaintiffs’ Phillip L. Kooreman and Carole L. Kooreman, Trustees of the Kooreman Living Trust, dated April 11, 2006 (“Kooreman Plaintiffs” herein) admissions to Request for Admission, Set One Nos. 2, 4, 6, and 8, the Kooreman Plaintiffs are unable to raise a triable issue of fact as to their claim for a prescriptive easement because they have admitted that all use of the road was by permission, and the Motion is granted as to the First (Quiet Title – Prescriptive Easement) and Second (Quiet Title – Prescriptive Easement) Causes of Action. [See UMF Nos. 6-9; and Declaration of William R. Warne at ¶3, and Exhibit A thereto.]

Based on the Kooreman Plaintiffs’ admissions to Request for Admission, Set One Nos. 9-10, and the Notice of Consent to Use of Land, recorded in the Official Records of Butte County on March 15, 1999, the Kooreman Plaintiffs are unable to raise a triable issue of fact as to their claim for an equitable easement because it has been established (without an opposition here) that the Kooreman Plaintiffs knew or should have known that the Roads were owned by Defendants and therefore their use of the Roads was not “innocent.” The Motion is granted as to the Third (Quiet Title – Equitable Easement) Cause of Action. [See UMF No. 10-12; RJN Ex. 2; and Declaration of William R. Warne at ¶3, and Exhibit A thereto.]

Based on the Kooreman Plaintiffs’ admissions to Request for Admission, Set One Nos. 9-10, and the Notice of Consent to Use of Land, recorded in the Official Records of Butte County on March 15, 1999, the Kooreman Plaintiffs are unable to raise a triable issue of fact as to their claim for an easement by estoppel because it has been established (without an opposition here) that the Kooreman Plaintiffs were not “ignorant of the true state of facts.” The Motion is granted as to the Fourth (Quiet Title – Easement by Estoppel) Cause of Action. [See UMF No. 13-16; RJN Ex. 2; and Declaration of William R. Warne at ¶3, and Exhibit A thereto.]

Based on the above, the undisputed facts require that the Kooreman Plaintiffs be barred from relief on their declaratory relief cause of action because the Kooreman Plaintiffs’ substantive easement claims fail as a matter of law. The Motion is granted as to the

Fifth (Declaratory Relief) Cause of Action. [See UMF No. 6-16; RJN Ex. 2; and Declaration of William R. Warne at ¶3, and Exhibit A thereto.]

Defendants Sierra Pacific Land & Timber Company and Sierra Pacific Industries, Inc.'s Motion for Summary Judgment Against the Kooreman Plaintiffs is granted in its entirety. Counsel for the Defendants shall submit a form of order within two weeks.

Defendants Sierra Pacific Land & Timber Company and Sierra Pacific Industries, Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication, Against the Decker Plaintiffs

Defendants Sierra Pacific Land & Timber Company; and Sierra Pacific Industries, Inc.'s ("Defendants" herein) Request for Judicial Notice is granted. Likewise, Plaintiffs Michael P. Decker, and Decker Ranch, LLC's ("Decker Plaintiffs" herein) Request for Judicial Notice is granted.

The Decker Plaintiffs' Objections to Evidence are overruled. Defendants' Objections to Evidence are sustained as to Nos. 4, 5, 25, and 32 based on relevance, and are overruled as to the remainder.

"A prescriptive right cannot be acquired if the use is with permission of the owner of the land over which it is claimed." 28 Cal. Jur. 3d Easements and Licenses § 44. "[I]t is well settled that a right of way by prescription cannot be acquired by use which is either expressly or tacitly permissive and is not adverse." *Jones v. Tierney-Sinclair* (1945) 71 Cal.App.2d 366, 369; *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1181 [confirming that use with the owner's permission is not adverse to the owner.]. Here, the Court finds that the Decker Plaintiffs have failed to establish that their use, nor their predecessor-in-interests use, was anything other than permissive. [UMF Nos. 9, 10, 11, 13, 16, 22, 23, 31, 47, 48, 49, 61, and 62]. As such, the Court finds that the undisputed facts require that the Decker Plaintiffs be barred from relief on the First (Quiet Title – Prescriptive Easement) and Second (Quiet Title – Prescriptive Easement) Causes of Action seeking to establish prescriptive easement rights.

An equitable easement has three requirements, the first being that the easement seeker must use and improve property innocently, "[t]hat is, his or her encroachment must not be willful or negligent." *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1009. Here, the Court finds that the Decker Plaintiffs have failed to establish that their use was innocent. [UMF Nos. 106-129, 131]. As such, the Court finds that the undisputed facts require that the Decker Plaintiffs be barred from relief on the Third (Quiet Title – Equitable Easement) Cause of Action seeking to establish equitable easement rights.

"[F]our elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." *Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 37. Here, the Court finds that the Decker Plaintiffs have failed to establish that Defendants made any representation to the Decker Plaintiffs

that an easement existed, and in fact, the evidence before the Court conclusively establishes that the opposite is true. [UMF Nos. 151-176, 179]. As such, the Court finds that the undisputed facts require that the Decker Plaintiffs be barred from relief on the Fourth (Quiet Title – Easement by Estoppel) Cause of Action seeking to establish equitable easement rights.

Finally, based on the above, the undisputed facts require that the Decker Plaintiffs be barred from relief on their declaratory relief cause of action because the Decker Plaintiffs' substantive easement claims fail as a matter of law. The Motion is granted as to the Fifth (Declaratory Relief) Cause of Action.

Defendants Sierra Pacific Land & Timber Company and Sierra Pacific Industries, Inc.'s Motion for Summary Judgment Against the Decker Plaintiffs is granted in its entirety. Counsel for the Defendants shall submit a form of order within two weeks.

Plaintiffs Michael P. Decker and Decker Ranch, L.L.C.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Plaintiffs Michael P. Decker, and Decker Ranch, LLC's ("Decker Plaintiffs" herein) Request for Judicial Notice is granted. Likewise, Defendants Sierra Pacific Land & Timber Company; and Sierra Pacific Industries, Inc.'s ("Defendants" herein) Request for Judicial Notice is granted.

Defendants' Objections to Evidence are sustained as to Nos. 28 (hearsay), 29 (relevance), 30 (relevance), and 35 (as to Exhibit A only; relevance and lacks foundation) and overruled as to the remainder.

In regard to Issue No. 1, that the Decker Plaintiffs' 31st Affirmative Defense provides a complete defense to Defendants' Cross-Complaint because the Roads were public and were never vacated by the Butte County Board of Supervisors in the manner required by law, the Court finds a triable issue of fact exists as to whether the roads at issue in this case were public or private, and therefore the Decker Plaintiffs' 31st Affirmative Defense is not a bar to the Defendants' Cross-Complaint. [See Defendants' Additional Material Facts "AUMF" Nos. 3, 10, 11, 12, 14, 17, 20, and 21]. The Motion is denied in this regard.

In regard to Issue No. 2, that the Permissive Use Agreement was void ab initio, which means that Defendants cannot prove the necessary element of exclusive possession and use, the Court finds that a triable issue of facts exists as to the applicability and validity of the Permissive Use Agreement in relation to the roads at issue in this litigation. [AUMF Nos. 10, 24, 25, 27, 30 and 31]. The Motion is denied in this regard.

Finally, in regard to Issue No. 3, the undisputed material facts demonstrate adverse use of the Roads and Concow Road for more than five years, again the Court finds that a triable issue of facts exists as to the applicability and validity of the Permissive Use Agreement in relation to the roads at issue in this litigation. [AUMF Nos. 10, 24, 25, 27, 30 and 31]. The Motion is denied in this regard.

Plaintiffs Michael P. Decker and Decker Ranch, L.L.C.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication is denied in its entirety. Counsel for the Defendants shall submit a form of order within two weeks.

4. 23CV00211 NOLL, TIMOTHY ET AL V. 1 SOURCE SOLUTIONS INC.

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted over the objection of Plaintiffs, finding that defense counsel has in fact sufficiently established good cause. The Court will sign the form of order submitted by counsel. The Court will advance the Case Management Conference from the 10:30 a.m. calendar to be heard concurrently with this Motion at 9:00 a.m. and continue the Case Management Conference to January 8, 2025 at 10:30 a.m. The Court orders that a representative of Defendant One Source Builders, Inc., be present at the continued Case Management Conference if new counsel has not yet been retained.

5. 23PR00432 CONSERVATORSHIP OF NOLTA, MADELEINE U

EVENT: Petitioner Stephen Cowee's Motion to Expunge Liens

Petitioner's Request for Judicial Notice is granted. The Motion is unopposed and is granted. Counsel for the Petitioner shall prepare and submit a form of order within two weeks.

6. 24CV03271 SANCHEZ, ESMERALDA V. STATE OF CALIFORNIA ET AL

EVENT: Defendant State of California's Motion to Strike Prayers for Attorneys' Fees in Plaintiff's Complaint

Defendant State of California's Request for Judicial Notice is granted. The Court finds that Plaintiff has sufficiently alleged facts in her Complaint that could justify a claim for the recovery of attorneys' fees, and it is premature to deny an award of attorneys' fees in this action. If Plaintiff prevails at trial, she is not prevented from seeking reasonable attorney fees pursuant to CCP §1021.5, but she will be required at that time to demonstrate she meets the requirements of that Section. The Motion is denied and counsel for the Plaintiff shall submit a form of order within two weeks.

7. 24CV03666 BUTTE COUNTY ANIMAL CONTROL VS. TIMONE, REGINA ET AL

EVENT: Trial de Novo

Food & Agriculture Code §31622 states in relevant part that "... If the petitioner or the owner or keeper of the dog contests the determination, they may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of

original jurisdiction.” Here, the notice of determination was made in open Court on November 6, 2024, with an order signed and served that same date. The instant appeal was not filed until December 3, 2024, which is 27 days later. The Appeal is untimely and is denied.

8. 24CV03667 BUTTE COUNTY ANIMAL CONTROL VS. TIMONE, REGINA ET AL

EVENT: Trial de Novo

Food & Agriculture Code §31622 states in relevant part that “... If the petitioner or the owner or keeper of the dog contests the determination, they may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction.” Here, the notice of determination was made in open Court on November 6, 2024, with an order signed and served that same date. The instant appeal was not filed until December 3, 2024, which is 27 days later. The Appeal is untimely and is denied.

9. 24CV03897 BUTTE COUNTY ANIMAL CONTROL V. REYNOSO, YULIANA ET AL

EVENT: Petition to Determine if Dog is Potentially Dangerous

It appears to the Court that Petitioner has met its burden of proof to support a finding that the dog “Cachi” is potentially dangerous. The Court will hear from the parties.