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KING COUNTY
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CASE #: 20-2-17330-4 SEA

Honorable Matthew Segal
Hearing Date: November 5, 2021
Hearing Time: 9:00 a.m.
Moving Party: Defendant Melina Lin

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KAN CUI and YAN LIU, husband and wife,

Plaintiffs,

vs.

MELINA LIN, a single person,

Defendant.

No. 20-2-17330-4 SEA

MELINA LIN'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

RELIEF REQUESTED

Ms. Lin requests partial summary judgment holding that a 2017 "Driveway Relocation Easement" did not terminate any utility easements shown on the short plat and amendments to the plat, and hold that Ms. Lin therefore is benefited by the utility easements shown on the short plat as amended.

Ms. Lin also requests summary judgment holding that plaintiffs do not have a prescriptive easement for vehicular access to her driveway, and holding that such use for purposes of maintaining plaintiffs' property is a trespass, and enjoining the trespass.

FACTS

1. Plaintiffs and defendant are neighbors in Mercer Island. Defendant Melina Lin owns a waterfront home, and plaintiffs own the property between her home and N. Mercer Way. Ms. Lin must cross plaintiffs' property to reach her home. Ms. Lin's utilities also must cross plaintiffs' property to reach her home. Ms. Lin's property is thus

MOTION FOR PARTIAL SUMMARY JUDGMENT

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1 benefitted by certain ingress, egress, and utility easements, which easements burden
2 plaintiffs' property. (Lin Declaration)

3 2. Plaintiffs' real property is located at 8636 N. Mercer Way, Mercer Island
4 Washington. The legal description of their property is as follows:

5 Lot A, as described in City of Mercer Island Subdivision, recorded under
6 Recording Number 7812180972 and as delineated on survey thereof,
7 recorded under Recording Number 7911309020, as revised under
8 Boundary Line Revision Recording Number 8309159010, being a
9 subdivision of Tract 10, Sunnybank, according to the Plat thereof,
10 recorded in Volume 29 of Plats, page 31 in King County Washington,
11 Together with the shorelands of the second class adjoining and lying
12 between the northeasterly projections of the sidelines of said Tract,
13 Situate in King County, Washington. (ECR 1, Ex. A)

14 3. Defendant Melina Lin owns and lives at 8630 N. Mercer Way. The legal
15 description of Ms. Lin's property is the same as plaintiffs' property, except that she owns
16 "Lot B" instead of "Lot A." (Lin Decl., and ECR 1, Ex. B)

17 4. The legal descriptions of the two lots are included here, and are significant
18 because, they specifically reference the "City of Mercer Island Subdivision" recorded in
19 1978 (hereinafter referred to as the "1978 Subdivision"), as delineated on the 1979 plat
20 (the "1979 Plat Amendment"), and as "revised" in the 1983 "Boundary Line Revision
21 Recording Number 8309159010" (the "1983 Plat Amendment").

22 5. That 1979 Plat Amendment and the 1983 Plat Amendment, establish a
23 "12 FOOT EASEMENT FOR INGRESS EGRESS & UTILITIES (EASEMENT NO. 1)"
24 along a driveway that crosses plaintiffs' property on its way to Ms. Lin's property. (Lin
25 Decl. Exs. B-C)

26 6. Plaintiffs purchased their property on February 25, 2010. (ECR No. 14 p.
1) Plaintiffs quickly proceeded to obtain a permit to demolish the existing residence and
construct a new residence. The application date on the permit was October 20, 2010,
and the permit was issued on or about March 28, 2011. The construction permitting
process, including inspections, etc. lasted until final sign off by the City on or about June

1 21, 2013. (Lin Decl. Ex. F-G) During their construction of the new home, plaintiffs
2 constructed a new driveway, which was in a different location than the old driveway in
3 the area where the driveway approached N. Mercer Way. (*Id.* Ex. C-E)

4 7. In 2011, plaintiffs granted to the Keehns (prior owners of Ms. Lin's
5 property) an ingress, egress, and utility easement (the "2011 Access and Utilities
6 Easement"). The map of the easement shows it travelling along what is now the
7 existing driveway across plaintiffs' property. Nothing in the 2011 easement terminated
8 or otherwise affected any existing easements. Its apparent purpose was to allow the
9 owner of the Waterfront Parcel to access the new driveway to be built in connection with
10 plaintiffs' new house. (*Id.* Ex. D)

11 8. In 2017, plaintiffs and a prior owner of Ms. Lin's property, Jing Ma, agreed
12 to a "Driveway Relocation Easement." The 2017 agreement includes a recital noting
13 that the driveway shown on the 1983 Plat Amendment has been "slightly altered ... as it
14 approached North Mercer Way," and thus the parties "desire to cancel the previous
15 location of the Driveway and to adopt in its place the new location of the Driveway
16 easement." (*Id.* Ex. E)

17 9. The 2017 agreement then grants to Jing Ma an easement for ingress and
18 egress, but not utilities, over the new driveway. No legal description is included, but a
19 map of the new driveway is attached. The map seems to show the ingress and egress
20 easement in the same location as the map attached to the 2011 Access and Utilities
21 Easement. (*Id.* Ex. D-E)

22 10. The 2017 agreement, in paragraph 2, provides that "any Easement rights
23 in the former Driveway area, which is no longer used, shall be cancelled, extinguished
24 and of no further effect." (*Id.* Ex. E)

25 11. There is no mention of any utilities or utility easements in the 2017
26 Driveway Relocation Easement. (*Id.*)

1 12. There is no evidence that plaintiffs and Jing Ma obtained approval from
2 the City of Mercer Island for the 2017 Driveway Relocation Easement.

3 13. Ms. Lin's water meter is located at the end of the 12 foot ingress egress
4 and utility easement shown on the 1979 Plat Amendment and the 1983 Plat Amendment.
5 (Lin Decl. ¶ 12) At the time of the 1979 Plat Amendment, there was no house on Ms.
6 Lin's property, as that house was built starting in 1979 and finishing in 1980. (ECR No.
7 30 ¶ 2) Based on the timing of the 1979 plat establishing the easement, the timing of
8 the construction of Ms. Lin's house, and the location of the water meter, it is highly
9 likely, and the parties all believe, that Ms. Lin's waterline is located within that easement
10 shown on the 1979 Plat and the 1983 Plat Amendment. (Lin Decl. ¶ 12) Yet plaintiffs
11 claim that the utility easement shown on the 1979 and 1983 Plat Amendments was
12 terminated and that Ms. Lin could not install a new waterline in the utility easement
13 shown on those plats. (Lin Decl. ¶ 13, and ECR 59, Ex. A)

14 14. Ms. Lin purchased her property in 2017. Since that time, plaintiffs'
15 landscaping company has driven on her property to access plaintiffs' backyard for
16 purposes of maintaining plaintiffs' backyard. (Lin Decl. ¶ 15) Plaintiffs filed this lawsuit
17 on December 2, 2020. (ECR No. 1) Ms. Lin filed a counterclaim on January 21, 2021
18 for trespass, and seeking a declaratory judgment that plaintiffs do not have a
19 prescriptive easement based on the vehicular access to plaintiffs' backyard. (ECR No.
20 8) Plaintiffs claim that they were not trespassing because they have a prescriptive
21 easement. (ECR No. 10, 33)

ISSUES

23 1. Does Ms. Lin have utility easement rights in the areas shown on the 1979
24 Plat Amendment and the 1983 Plat Amendment?

25 2. Did the 2017 Driveway Relocation Agreement terminate the utility
26 easements shown on the 1979 Plat Amendment and the 1983 Plat Amendment?

1 Amendment, which amendments revised the location of the ingress, egress, and utility
2 easements. As shown on the face of those amendments, each of them was approved
3 by the City of Mercer Island. Moreover, each of those amendments is now part of the
4 legal description for both plaintiffs' property and Ms. Lin's property. (ECR No. 1,
5 Exhibits A and B to the Complaint).

6 Significantly for purposes of this motion, the 2017 Driveway Relocation
7 Easement is not an amendment to the short plat and was not approved by the City of
8 Mercer Island. As such, regardless of what it was intended to accomplish, it could not,
9 as a matter of law, terminate the easements shown on the plat and plat amendments.

10 In *M.K.K.I.*, an easement was created on a short plat. Subsequently, both the
11 benefitted and burdened parcels became owned by the same person, and they
12 executed a quit claim deed attempting to extinguish the easement. The Court of
13 Appeals held that the attempt to terminate was not successful, holding that "once a
14 private easement is depicted on a short plat, the easement cannot be extinguished
15 without amending the plat document. Consequently, the easements here were not
16 extinguished." *M.K.K.I.*, 135 Wn. App. 647, 659.

17 The same is true here. The utility easement was created on the 1978
18 Subdivision Plat, and amended and re-located on the 1979 and 1983 Plat Amendments,
19 all of which were approved by the City of Mercer Island, and all of which are now part of
20 the legal description of the properties purchased by plaintiffs and defendant.

21 The 2017 Driveway Relocation Easement, in contrast, was not a plat
22 amendment, as it did not follow the procedures for amending the plat, and was not
23 approved by the City of Mercer Island. Mercer Island code section 19.08.010(f)
24 provides that "Vacations and alterations of short subdivisions shall be reviewed by the
25 code official, and shall comply with the requirements of this chapter for the creation of
26 short subdivisions, unless those requirements are waived by the code official."

1 Plaintiffs have no evidence that the 2017 Driveway Relocation Agreement met these
2 requirements or was otherwise reviewed and approved as a plat amendment by the
3 City of Mercer Island. They lack that evidence because it did not happen. Without
4 such evidence to establish an essential element of their claim, Ms. Lin is entitled to
5 summary judgment. *M.K.K.I.*, 135 Wn. App. 647; *Young v. Key Pharmaceuticals*, 112
6 Wn.2d 216, 225 n.1.

7 There is a second independent reason why the 2017 Driveway Relocation
8 Easement did not terminate any utility easements, and that is because it says no such
9 thing.

10 Plaintiffs rely on section 2, which says that “any Easement rights in the former
11 Driveway area, which is no longer used, shall be cancelled, extinguished and of no
12 further effect.” (Lin Decl. Ex. E) Plaintiffs’ interpretation of this as terminating all utility
13 easements, rather than just the ingress and egress easement mentioned throughout the
14 entire document, is absurd.

15 The clear intent of the 2017 document, which intent is *stated in the recitals*, was
16 simply to relocate the ingress and egress easement to match the location of the
17 relocated driveway, and to terminate the ingress and egress easement in the area of
18 the former driveway. There is no mention of utility easements in the entire document.
19 The word “utility” or “utilities” does not appear in the document. The owner of Ms.
20 Lin’s property at that time was Jing Ma, who lived in China, and apparently does not
21 speak English. See ECR No. 19; Lin Decl. Ex. E notary. There is no evidence that
22 this document was intended to terminate utility easements, and that is not what it
23 says. Moreover, no rational property owner would agree to terminate a utility
24 easement over an area that almost certainly contains existing utility lines. (Lin Decl. ¶
25 13)

1 In any event, as noted above, and regardless plaintiffs unreasonable
2 interpretation, the 2017 Driveway Relocation Agreement did not terminate the utility
3 easements shown on the 1979 Plat Amendment and the 1983 Plat Amendment
4 because the 2017 agreement is not a plat amendment and does not otherwise comply
5 with the Mercer Island code requirements for amending a plat. Thus, as a matter of
6 law, it could not alter, amend, or terminate those easements. See *M.K.K.I.*, 135 Wn.
7 App. 647.

8 C. Plaintiffs Claim for Prescriptive Easement Must be Dismissed

9 Plaintiffs built their house starting in 2011 or 2012, and received final sign off
10 from the Mercer Island building department in 2013. They filed this lawsuit in early
11 December of 2020.

12 Plaintiffs bizarrely contend that they do not have a “claim” for a prescriptive
13 easement, and further, they have dropped all their claims in this case. See ECR No.
14 64. Yet plaintiffs continue to argue that they are not liable for trespass because they
15 have a prescriptive easement right to access Ms. Lin’s property. They argue that this
16 assertion of a prescriptive easement is an “affirmative defense” and not a “claim.”

17 Regardless of their semantics, asserting prescriptive rights to vehicular access to
18 someone else’s property is a claim, which requires proof of various elements in order to
19 gain legal access to another person’s real property. See *e.g. Gamboa v. Clark*, 183
20 Wn.2d 38, 43, 348 P.3d 1214, 1217 (2015). Whether it is a claim or a defense, Ms. Lin
21 is entitled to summary judgment holding that plaintiffs access was a trespass, and that
22 plaintiffs do not have any prescriptive rights to vehicular access to her property.

23 “Prescriptive rights ... are not favored in the law, since they necessarily work
24 corresponding losses or forfeitures of the rights of other persons.” To establish
25 a prescriptive easement, the person claiming the easement must use another person's
26 land for a period of 10 years and show that (1) he or she used the land in an “open” and

1 “notorious” manner, (2) the use was “continuous” or “uninterrupted,” (3) the use
2 occurred over “a uniform route,” (4) the use was “adverse” to the landowner, and (5) the
3 use occurred “with the knowledge of such owner at a time when he was able in law to
4 assert and enforce his rights.” *Gamboa v. Clark*, 183 Wash. 2d 38, 43.

5 Furthermore, there is a presumption that between neighbors, use of the
6 neighboring parcel is permissive. This presumption can only be overcome by a distinct
7 and positive assertion of a hostile right, such as installation of a fence, or a demand to
8 stop the use. *Gamboa*, 183 Wn.2d 38, 51.

9 Plaintiffs do not have prescriptive rights to vehicular use of Ms. Lin’s property for
10 at least two reasons.

11 First, their house has not even existed for more than ten years, and plaintiffs
12 have no evidence of “continuous” use of Ms. Lin’s driveway for vehicular access by their
13 landscapers for ten years.

14 Second, their use is presumed to be permissive until Ms. Lin asked them to stop.
15 Thus, they have no evidence of an “adverse” use until sometime in or after 2018, which
16 of course is less than ten years before this action.

17 In sum, Ms. Lin is entitled to summary judgment that vehicular access to her
18 driveway by plaintiffs’ landscapers is a trespass, an order enjoining plaintiffs from such
19 use, and dismissal of plaintiffs claim and/or defense to a prescriptive easement.

20 CONCLUSION

21 Ms. Lin is entitled to summary judgment holding that (1) the 2017 Driveway
22 Relocation Easement did not terminate the utility easements shown on the 1979 and
23 1983 Plat Amendments, and thus those utility easements remain in effect; and (2) that
24 plaintiffs are trespassing when their landscaping company accesses Ms. Lin’s driveway
25 for purposes of maintaining plaintiffs’ backyard, and that plaintiffs do not have a
26 prescriptive easement for vehicular access to Ms. Lin’s driveway.

1 DATED this 8th day of October, 2021.

2 JAMESON PEPPLER CANTU PLLC

3 s/ Matt Adamson

4 Matt T. Adamson, WSBA #31731

5 madamson@jpclaw.com

6 Attorneys for Melina Lin

7 I certify this motion is 2,714 words in
8 compliance with the Local Rules

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1 **CERTIFICATE OF SERVICE**

2 I, Taylor Waggoner, declare under penalty of perjury under the laws of the State
3 of Washington as follows:

4 1. I am a paralegal with the law firm of Jameson Pepple Cantu PLLC, over
5 the age of 18 years, a resident of the State of Washington, and not a party to this
6 matter.

7 2. On October 8, 2021, I sent the foregoing document via King County e-
8 service to the following:

9 Douglas Scott, WSBA No. 6658
10 Matthew Kennedy, WSBA No. 36452
11 RAINIER LEGAL ADVOCATES, LLC
465 Rainier Blvd. N. St. C
Issaquah, WA 98027

12 DATED this 8th day of October, 2021 at Seattle, WA.

13
14 *s/ Taylor Waggoner* _____
15 Taylor Waggoner
twaggoner@jpclaw.com
16 Paralegal
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