

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
2021 NOV 05
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 20-2-17330-4 SEA

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

ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

This matter came before the Court pursuant to Defendant's Motion for Partial Summary Judgment. The Court considered the following:

1. Defendant's Motion for Partial Summary Judgment;
2. Declaration of Melina Lin;
3. Plaintiff's Response to Motion for Partial Summary Judgment;
4. Declaration of Matthew Kennedy;
5. Declaration of Kan Cui;
6. Defendant's Reply; and
7. Reply Declaration of Melina Lin.

The Court heard argument from the parties on November 5, 2021; and now being fully advised, rules as follows:

Defendant's Motion for Partial Summary Judgment is GRANTED.

1 The legal description of Defendant's property per the filings in this matter is:

2 Lot B, as described in City of Mercer Island Subdivision, recorded under
3 Recording Number 7812180972 and as delineated on survey thereof,
4 recorded under Recording Number 7911309020, as revised under
5 Boundary Line Revision Recording Number 8309159010, being a
6 subdivision of Tract 10, Sunnybank, according to the Plat thereof,
7 recorded in Volume 29 of Plats, page 31 in King County Washington;

8 Together with the shorelands of the second class adjoining and lying
9 between the northeasterly projections of the sidelines of said Tract;

10 Situate in the City of Mercer Island, County of King, State of Washington.

11 See Dkt. 1, Ex. B.

12 The City of Mercer Island Subdivision, recorded under Recording Number
13 7812180972, and as delineated on survey thereof, recorded under Recording Number
14 7911309020, as revised under Boundary Line Revision Recording Number
15 8309159010, includes a "12 FOOT EASEMENT FOR INGRESS EGRESS &
16 UTILITIES (EASEMENT NO. 1)" which remains in effect, and as a matter of law was
17 not modified or terminated by the parties' private 2017 Driveway Relocation Easement,
18 King County Recording Number 20170329001022. M.K.K.I., Inc. v. Krueger, 135 Wn.
19 App. 647, 659, 145 P.3d 411, 418 (2006); City of Mercer Island Code 19.08.010(g).¹
20 Given the parties have indicated a mutual intent to relocate the easement for ingress
21 and egress, and neither party contends that the driveway should be located where it
22 was prior to the 2017 agreement, it appears the parties could present their agreement
23 to relocate the driveway to the City for approval or waiver on that point, and may have
24 a mutual contractual obligation to do so. Interpreting the 2017 agreement, the Court
25 does not conclude that it expressly intended to relocate utility easements.

26 Plaintiffs confirmed at argument that they do not claim express or prescriptive
rights of vehicular access to Ms. Lin's driveway for purposes of landscaping or

¹ Aside from the applicability of *Krueger* and the cited City Code provision, the Court questions whether a ruling effectively altering the subdivision plat as requested could be properly rendered without the City as a party or even without notice to the City.

1 maintaining their own property. To the extent any claim or defense seeking such relief
2 is asserted in this manner, it is hereby dismissed. Any claim of trespass as to alleged
3 prior usage in such a manner is moot given this ruling and the fact that no damages
4 are sought. Even were the Court required to decide such a claim, it would find the
5 record on summary judgment insufficient to establish past instances of trespass.

6 Per the briefing of the parties and the parties' agreement at oral argument, this
7 order resolves all remaining claims in this case, and final judgment shall be entered
8 accordingly.

9 SO ORDERED this 5th day of November 2021.

10 

11 _____
HONORABLE MATTHEW J. SEGAL