

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

FAIR WEATHER PROPERTIES, INC.

Plaintiff,

v.

Case No.: 2016-CA-006118-xxxx-MB
Division: AJ

SECTION 9 PROPERTY OWNERS'
ASSOCIATION, INC., et al.,

Defendants.

**ORDER GRANTING IN PART AND DENIED IN PART, PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND ENTERING FINAL JUDGMENT
(With Directions to the Clerk of Court)**

THIS MATTER came before the Court on June 17, 2024 for a duly noticed hearing on the Motion for Summary Judgment – as to Count I (Declaratory Judgment) and Count II (Injunction) of the Second Amended Complaint – filed by Plaintiff, Fair Weather Properties, Inc. (“Fair Weather” or “Plaintiff”) on January 16, 2024 (“Motion”). In advance of the hearing, a group of Defendants filed four independent responses (the “Responses”).¹ Fair Weather also filed a Reply to Responses to Motion for Summary Judgment on July 10, 2024 (the “Reply”). The Court, having reviewed the Motion, the Responses, and the Reply and having heard the

¹ On May 28, 2024, Defendant Equidae Dressage Stables, LLC filed a Response, in which Defendants Joshua Imel and Alfredo Alvarez and Melissa M. Fradley and Robert D. Parks joined. The same day Defendants Roger A. Morris and Martha J. Morris, as Trustees of the Roger A. and Martha J. Morris Revocable Living Trust, and Defendant Section 9 Property Owner’s Association, Inc. also filed independent Responses. Lastly, the Defendants Karen A. Davis and William J. Davis filed a Response on May 29, 2024.

argument of counsel as well as that of certain pro se defendants and being otherwise advised in the premises, hereby makes the following findings of fact and conclusions of law:

1. This lawsuit is about the Plaintiff's right to continue to use West Sycamore Lane (the "Road")² pursuant to an easement deed that was duly recorded in 1955 in Deed Book 1107, Page 210 of the Official Records of Palm Beach County, Florida (the "Road Easement").³

2. In 1955, Indian Trail Ranch, Inc., owned Section 9, Township 43, South, Range 40 East ("Section 9"). As the prior owner of Section 9, Indian Trail Ranch, Inc. is the predecessor in title to the Defendant Owners (as hereafter defined).

3. In 1955, Mission Company, Inc., owned Section 16, Township 43, South, Range 40 East ("Section 16"). As the prior owner of Section 16, Mission Company, Inc., is the predecessor in title to Fair Weather.

4. On June 29, 1955, Mission Company Inc., granted a perpetual easement and right-of-way to Indian Trail Ranch, Inc., its heirs, successors or assigns, over the North 50 feet of Section 16, which easement was recorded in Deed Book 1107, Page 208.

5. On August 31, 1955, Indian Trail Ranch, Inc., granted a perpetual easement to Mission Company, Inc., its heirs, successors or assigns, over a road then known as "Osceola

² The Road is a private roadway running between Section 9 and Section 16, in Township 43, South, Range 40 East, in Palm Beach County, Florida. The Road has been variously known as "West Sycamore Drive," "West Sycamore Lane," and "West Sycamore Road" and was previously known as "Osceola Road."

³ In connection with the Motion, Plaintiff also filed a Request for Judicial Notice on January 16, 2024, which sought judicial notice of, among other things, the Road Easement and attached a certified copy of that Road Easement as Exhibit 5 to its Request. There was no opposition to the Request For Judicial Notice, and Florida Statute 90.203 makes judicial notice compulsory where a party requests it and gives each adverse party timely written notice of the request, proof of which is filed with the court, and furnishes the court with sufficient information to enable it to take judicial notice of the matter. § 90.203, Fla. Stat. Accordingly, the Court takes judicial notice of the Road Easement recorded in Deed Book 1107, Page 210 of the Official Records of Palm Beach County, Florida. In all events, the Defendants did not object to this Court's consideration of the Road Easement as reflected in Exhibit 5 to Plaintiff's Request.

Road,” which ran westerly on the Section line between Sections 11 and 14, 10 and 15, and 9 and 16 to a bridge to be constructed. This easement is memorialized in the recorded Road Easement.

6. Fair Weather acquired its property within Section 16 in 1998, and, since acquiring its property, Fair Weather has always enjoyed access to its property via the Road.

7. As the successor in title to the property once owned by Mission Company, Inc., Fair Weather took a beneficial interest the Road Easement, which is appurtenant to its property.⁴

8. Fair Weather’s longstanding use of the Road has been pursuant to the written and recorded Road Easement.

9. The dispute in this case arises from Defendant Section 9 Property Owner’s Association, Inc.’s attempt to block Fair Weather’s use of the Road on February 10 and 11 of 2016. Defendant Section 9 Property Owner’s Association, Inc. (“POA”) is the POA of the subdivision created by the unrecorded plat of Mandell Realty (the “Mandell Subdivision”).

10. After the POA attempted to block Fair Weather’s use of the Road, Fair Weather sued the POA for declaratory judgment and injunction seeking a determination that Fair Weather, its grantees and assigns, have the right to continue to use the Road and enjoining the POA from interfering with Fair Weather’s right to use the Road pursuant to the Road Easement.

11. The POA moved to dismiss and, thereafter, moved for summary judgment, on the basis that the owners of the properties on the southern border of the Mandell Subdivision

⁴ In its Response, Defendant Section 9 Property Owner’s Association, Inc. admitted the facts in paragraph 2-5 and 7 of the above findings of fact. POA Response, p. 2, paragraph 1. The remaining Defendants’ Responses did not deny the existence or the validity of the Road Easement. Thus, the facts in paragraph 2-5 and 7 of the above findings were undisputed at summary judgment.

(within Section 9) were the “true owners” of the Road and therefore “necessary and indispensable parties” to this action who had not been named.

12. The Court granted the POA’s motion for summary judgment, treating it as a motion to dismiss, and granted leave to “amend the complaint so as to add the property owners of the Defendants association members which abut the lots running along the south border of Section 9 [Mandell Subdivision] and the easement in question.” Order on Defendant’s Motion for Summary Judgment, dated May 31, 2017.

13. Thereafter, the owners of properties on the southern border of the Mandell Subdivision were joined as defendants (“Defendant Owners”).

14. After much litigation and discovery, Fair Weather filed its Motion on January 16, 2024. The Motion sought, among other relief, an Order granting its Motion, declaring that Fair Weather has an easement over the Road by virtue of the Road Easement as well as its long-standing, continuous, and uninterrupted use of the Road and that the Defendants could not block or limit Fair Weather’s use of the Road, enjoining the Defendants from blocking or limiting Fair Weather’s use of the Road, and granting Fair Weather any such further and additional relief as might be necessary or appropriate.⁵

15. As it argued in its Reply and at the hearing, Fair Weather limited the relief it was seeking at summary judgment to a declaration that (i) it has an easement over the Road by virtue of the Road Easement, (ii) it has the right to use the Road to access its property pursuant to that Road Easement, and (iii) the Defendants do not have the right to preclude Fair Weather’s

⁵ Fair Weather’s Motion also sought a declaration that (i) the southern boundary of the Defendant Owners’ properties were determined by the Mandell SE Corner Monument and, thus, lie north of the relevant portions of the Road, and (ii) that the Defendant Owners, together with the POA, therefore lack standing to block or limit Fair Weather’s use of the relevant portions of the Road to access its property. Fair Weather thereafter abandoned its pursuit of this relief in its Reply and at the hearing.

use of the Road, and an injunction against the POA to preclude it from again seeking to block Fair Weather's use of the Road.

16. At the hearing, Fair Weather argued that the relief it was seeking did not require the Court to create or alter an easement, but instead relied on the recorded Road Easement. It further argued that it was only seeking injunctive relief against the POA and, if granted the relief it sought, that it would withdraw its claim for damages against all defendants.

17. By offering evidence sufficient to establish the existence of the Road Easement recorded in the Official Records of Palm Beach County, Florida, that the easement was appurtenant to Fair Weather's property, and that Fair Weather had used the Road uninterrupted since 1998, Fair Weather established a prima facie case entitling it to summary judgment.

18. Indeed, there is a strong presumption in Florida law in favor of the validity of recorded deeds such as the Road Easement. *Espriella v. Delvalle*, 844 So. 2d 674 (Fla. 3d DCA 2003). Once such a presumption has been established, it cannot be overcome absent "clear, strong and convincing evidence." *Id.* at 676.

19. The Defendants in their Responses to the Motion and at the hearing raised the following issues relevant to the relief sought by Fair Weather.⁶

20. The Defendants in their Responses and at the hearing did not challenge the validity of the Road Easement but rather argued that the Road Easement does not apply to the Road because the road described in the Road Easement is "on" the section line dividing Section 9 and Section 16 and the Road is north of the section line. Further, the Defendants in their Responses and at the hearing argued that there is no evidence that "Osceola Road" referenced

⁶ The Court acknowledges that the Defendants' Responses raised other issues and arguments in response to the relief that Fair Weather thereafter abandoned, but, because that request for that relief has been abandoned and the resolution of those issues and arguments is not necessary to grant the limited relief Fair Weather is in fact seeking, the Court need not consider them.

in the Road Easement and “West Sycamore Lane” are one and the same road. As a result, the Defendants in their Responses and at the hearing argued the Road is not situated “on” the Section line and the Road Easement does not grant any rights to Fair Weather to use the Road.

21. The Defendants in their Responses and at the hearing also argued that, because Fair Weather had claimed the Defendant Owners did not own the Road, Fair Weather had failed to name the “true owner” of the Road, a necessary and indispensable party.

22. However, both of these arguments fail to create genuine issues of material fact or issues of law that preclude the relief requested by Fair Weather’s Motion.

23. In addition to being recorded in the Official Records of Palm Beach County for nearly 70 years and thus being presumptively valid, the Road Easement also sufficiently describes the Road. The Road Easement describes “Osceola Road” as running “westerly on the Section line between Sections . . . 9 and 16 . . .”

24. The Florida Supreme Court addressed very similar facts in the *Kotick v. Durrant* opinion, where the easement in question was described as being “on north and south lines of (plaintiffs) property for use as a road . . .” 196 So. 802, 804 (Fla. 1940). In upholding the validity of the easement, the Florida Supreme Court relied on the principle that the

validity of an easement of a way over the land of another is not impaired, although not defined by metes and bounds in the instrument by which it was created, the dominant tenant being entitled to a convenient and suitable way, depending on the conditions of the place and the purposes for which it was intended. Failure to describe the boundary of a right of way in granting an easement does not render the grant void. It sometimes happens that, where a right of way is granted there has existed at the place, prior to the grant a way that has been used for the purposes mentioned or intended in the deed, and in such circumstances the limits of the way then existing are frequently adopted as the limits of the way thus granted.

Id. at 805 (internal citations omitted).

25. The *Kotick* opinion also provides useful instruction on the Court’s construction

of such deeds:

The construction of a deed is always for the Court; but, in order to apply its provisions, evidence is in every case admissible of all material facts existing at the time of the execution of the deed, so as to place the Court in the situation of the grantor. In deeds, as well as wills, the state of the subject at the time of execution may always be inquired into; and as with respect to ancient deeds the state of the subject at their date can seldom, if ever, be proved by direct evidence, modern usage and enjoyment for a number of years is evidence to raise a presumption that the same course was adopted from an earlier period, and so to prove contemporaneous usage and enjoyment at the date of the deed. These deeds are to be construed by evidence of the manner in which the subject has been possessed or used; for as Lord Coke observes, ‘optimus interpret rerum usus’ (2 Ins. 282; *Weld v. Hornby*, 7 East 199; *Beaufort v. Swansea*, 3 Exch. 413). Lord Hardwicke, with reference to the construction of ancient grants and deeds, says, ‘There is no better way of construing them than by usage, and contemporanea expositio is the best way to go by.

Id. at 804-05.

26. The facts in this case are very similar to *Kotick*. The Road Easement describes an easement over a road known as “Osceola Road” “on” the Section line between Sections 9 and 16, but does not provide a metes and bounds legal description or otherwise give the boundaries of the easement area. Yet, it references a road in existence and in use at the time, i.e., “Osceola Road.” Evidence of the use of Osceola Road at the time of the Road Easement in 1955 other than the face of the Road Easement itself was not offered. However, evidence of modern use of the Road was offered by Fair Weather’s uncontroverted statement in its declaration that it had used the Road to access its property since acquiring its property in 1998, more than 20 years.

27. The Court thus considers Fair Weather’s evidence of the modern use of the Road to be sufficient to raise the presumption that the same course was adopted at the time the Road Easement was given in 1955 and to prove that the contemporaneous use of “Osceola Road” at the time of the Road Easement was the same as the modern use of the Road is today.

28. This is particularly the case because Defendants failed to offer any evidence, much less “clear, strong and convincing” evidence that “Osceola Road” was in any location other than the current location of the Road. At summary judgment, there was evidence of only one road between Sections 9 and 16, and that was the Road.

29. The Court thus finds that the “Osceola Road” referenced in the Road Easement is the Road and that the modern use of that Road was the use of “Osceola Road” at the time of the Easement Deed in 1955, as the Defendants’ Responses failed to identify any other road between Sections 9 and 16 to which the Road Easement could have been referring.

30. The Court’s analysis and determination as to the Road Easement confirms that Fair Weather has established a prima facie case and is entitled to summary judgment as a matter of law and that Defendants have failed to raise any issue of material fact as to the validity or enforceability of the Road Easement in Fair Weather’s favor.

31. The argument that Fair Weather failed to join the “true owner” of the Road and that that person is a necessary or “indispensable party” is also not sufficient to preclude summary judgment.

32. Here, the POA initially argued to the judge who previously presided over this case that the Defendant Owners were the “true owners” of the Road, thereby persuading this Court to require Fair Weather to amend its complaint to add the Defendant Owners. Despite their arguments at summary judgment that some other party might be the “true owner” of the Road, Defendants never identified who that alleged or offered any other evidence of who that alleged “true owner” of the Road might be.

33. Nevertheless, and even assuming that Defendants were correct that the owner of the Road were not a named party to this action, that does not change the fact that the relief

that Fair Weather seeks does not require the Court to determine who the owner of the Road is. Instead, Fair Weather seeks relief as to its dispute with the POA and the Defendant Owners (not the alleged “owner” of the Road) as to whether Fair Weather is entitled to use Road pursuant to the Road Easement. Fair Weather is not asking this Court to create or impose a new easement or to alter an existing one. Fair Weather is merely asking this Court to declare its rights under the Road Easement vis a vis the POA and the Defendant Owners. The Court can thus resolve that dispute without affecting any other party, including any putative “true owner” of the Road. *Phillips v. Choate*, 456 So. 2d 556, 557 (Fla. 3d DCA 1984) (holding that a co-owner of property was not an indispensable party to an action relating to a dispute over an agreement regarding the sale and distribution of the proceeds from the sale of that property).

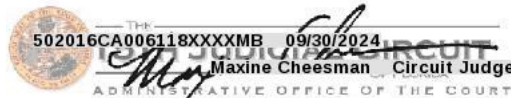
WHEREFORE, it is **ORDERED, ADJUDGED, and DECREED** that:

- A. Fair Weather has met its burden to show that it is entitled to summary judgment as to Count I (Declaratory Judgment), and Defendants have failed to meet their burden to adduce record evidence to show that Plaintiff is not entitled to summary judgment. Thus, Fair Weather Properties, Inc.’s Motion for Summary Judgment is hereby **GRANTED**.
- B. The Court hereby enters final summary judgment against all Defendants and in favor of Fair Weather Properties, Inc. on Count I of the Second Amended Complaint and Defendants’ affirmative defenses thereto.
- C. Fair Weather Properties, Inc. its successors, and or assigns in title have a perpetual easement over the Road (currently known as “West Sycamore Lane” and previously known as “Osceola Road”) in its current location by virtue of the Road Easement, which is appurtenant to Plaintiff’s property and which is recorded in Deed Book 1107, Page 210 of the Official Records

of Palm Beach County.

- D. Fair Weather Properties, Inc. has the right to use the Road pursuant to the Road Easement.
- E. The request for injunctive relief sought in Count II (Injunction) against the POA is **DENIED**
- F. The Court declines to enter the injunctive relief in Count II as the relief sought is Moot in light of the ruling on Count I, and the Plaintiff withdrew its claim for damages. Thus, the Court's determination at summary judgment disposes of all of the pending claims and defenses, and there is no further judicial labor for the Court in this matter
- G. Full and final judgment is hereby **ENTERED** in favor of Plaintiff and against Defendants.
- H. The Clerk of the Court shall record a certified copy of this Final Judgment in the Public Records of Palm Beach County, Florida.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.



502016CA006118XXXXMB 09/30/2024
 Maxine Cheesman
 Circuit Judge

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