

VERMONT SUPERIOR COURT
Lamoille Unit
154 Main Street
Hyde Park VT 05655
802-888-3887
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-2-20 Lecv

Alexandre Peides de Bothuri et al vs. Lizotte

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 7)
Filer: Russell D. Barr
Filed Date: January 25, 2021

The motion is GRANTED IN PART and DENIED IN PART.

This Motion was filed by Plaintiffs on January 25, 2021, shortly after Defendant's counsel had moved to withdraw.

On March 16, 2021, the attorney's motion to withdraw was granted, the Defendant changed from VTRE Investments LLC to Nicholas Lizotte as a result of a transfer of the real property at issue, and the court ruled that it would determine the status of this Motion once two other motions were ripe.

On April 9, 2021, Defendant Nicholas Lizotte moved to Amend the Answer to introduce counterclaims. See separate ruling on that motion (Motion #13).

On May 3, 2021, the court ruled on pending motions, including the ruling that Defendant's response to the Motion for Summary Judgment was due July 1, 2021. No response was timely filed. Defendant Lizotte filed a Motion to Dismiss Motion for Summary Judgment on August 20, 2021. See separate ruling on that motion (Motion #15).

Upon consideration of this Motion for Summary Judgment, the court rules as follows:

Count I: Prescriptive Easement

The undisputed facts support a prescriptive easement for some level of walking, driving, backing out, and turning around in the area labeled "Prescriptive Easement Claimed by DeBothuri," but not for parking. The Plaintiffs' proposed ruling and request for relief are stated in general terms, whereas terms defining the benefits and burdens of any easement in the proposed area call for specificity, especially given the need for shared use of that space between the owners of the dominant and servient properties. In addition, the court needs more facts about the terms of Plaintiffs' deeded easement over Lizotte land and how such terms would need to be coordinated with any specific relief on this claim. Thus, summary judgment is granted as to liability for an easement for some level of walking, driving, and vehicle backing out and turning, but an evidentiary hearing is needed on the specific terms of relief.

Count II: Adverse Possession as to ownership of land based on the fence boundary claimed by Plaintiffs

The undisputed facts support summary judgment for Plaintiffs on this claim.

Count III: Acquiescence to boundary

This appears to be duplicative of Count II, and unnecessary.

Count IV: Nuisance

The legal basis for Plaintiffs' nuisance claim is not sufficiently explained, since the alleged interference occurred at a time when there was no legal recognition of the rights Plaintiffs claim in relation to the alleged acts of nuisance. In addition, no relief appears to be sought with respect to such claim. Therefore, summary judgment on this claim is denied.

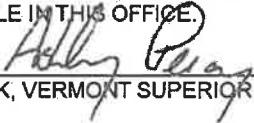
Based on the foregoing, the court will schedule a status conference to plan for a procedure to establish terms of an easement to be declared as relief on Count I and a form of judgment with respect to Count II. The court is very likely to require mediation on this issue prior to conducting an evidentiary hearing.

Electronically signed pursuant to V.R.E.F. 9(d) on August 30, 2021 at 2:01 PM.



Mary Miles Teachout
Superior Court Judge

3/30/2022. CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL AS THE SAME APPEARS
ON FILE IN THIS OFFICE.



CLERK, VERMONT SUPERIOR COURT