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Baker v. KAL, LLC Appellant's Brief Dckt. 44855

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ROBERT E. COVINGTON
Attorney at Law
8884 North Government Way, Suite A
Hayden, ID 83835
Tel. 208-762-4545
Fax 208-762-4546
ISB#2312

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARIAN B. BAKEER, TRUSTEE OF)
THE MARIAN B. BAKER TRUST,)
Dated May 12, 2013,)
Plaintiffs/Respondents,)
vs.)
KAL, LLC, an Idaho Limited Liability)
Company,)
Defendant/Counterclaimants/)
Cross Claimants/Appellants,)
and)
JOSE I. MELENDRERAS and)
JACQUELINE Z. MELENDRERAS,)
Husband and wife,)
Defendants/Cross Defendants/)
Respondents.)

SUPREME COURT NO. 44855

APPELLANT KAL, LLC'S
APPELLATE BRIEF

Appeal from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Kootenai

Honorable Lansing Haynes
District Judge, Presiding

Robert Covington
8884 North Government Way
Suite A
Hayden, ID 83835
Tel. 208-762-4545
Fax: 208-762-4546
Attorney for Appellant KAL, LLC

William A. Fuhrman
Jones, Gledhill, Fuhrman & Gourley
225 North 9th Street, Suite 820
P.O. Box 1097
Boise, ID 83701
Tel. 208-331-1170
Fax: 208-331-1529

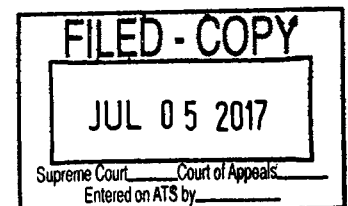


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INTRODUCTION

The District Court has entered a judgment upon a summary judgment motion against Appellant KAL, LLC, hereinafter “KAL”, imposing upon a ten acre parcel of real estate owned by KAL, a perpetual and express easement for ingress, egress and utilities for the benefit of an adjoining parcel that is owned by the Marian B. Baker Trust dated May 12, 2013, hereinafter “Baker Trust”. This easement traverses the entire south to north dimension via a winding route across the center of KAL’s property. This easement imposes a significant burden on the property of KAL. The District Court has imposed this burden upon KAL despite an absence of any grant of such an easement to Baker Trust or its predecessor in interest, Jose I. Melendreras and Jacqueline Z. Melendreras, hereinafter “Melendreras” in any conveyance document of record. The Court can correct this manifest error by reversing the decision of the District Court holding that the relevant deed is ambiguous, vacating the judgment entered by the District Court and remanding the case to the District Court for a trial on the merits.

STATEMENT OF THE CASE

This is a case about a claimed easement across two ten acre parcels of land in Kootenai County near State Line, Idaho. In late 1998 or early 1999 one Jerry Mortensen, the owner of Timberland-AG, LLC, built a logging road, now sometimes referred to as Alexana Lane, across the two parcels to support his timber removal project. The two parcels were among four rectangular ten acre parcels that are pertinent to this case. The parcels all shared a common corner. When Timberland-AG sold the two western parcels in 1999 to Melendreras Mortensen executed a deed that

did not contain language granting to Melendreras a right to use the relevant logging road that crossed the two eastern parcels. A legal description of the centerline of the logging road was attached to the above referenced deed. The deed referenced the logging road in two instances. First as a reservation to Timberland-AG of a right to use that portion of the logging road that crossed one of the two parcels it sold. The second reference was to establish the easternmost end of an easement which it deeded to Melendreras along the north boundary of the KAL, LLC parcel which is the northernmost of the two eastern parcels.

Baker Trust is the successor in interest to Melendreras in ownership of the northernmost of the two western parcels. Baker Trust has sought permission from Kootenai County to construct a residence on its property. Baker Trust has asserted a claim that Timberland-AG agreed to give Melendreras an easement over the logging road to access the northernmost of the two parcels he purchased from Timberland-AG in 1999. KAL, LLC is the owner of the northernmost of the two eastern parcels that are traversed by the logging road having purchased the parcel in 2002. KAL, LLC asserts that the deed from Timberland-AG to Melendreras did not grant to Melendreras the claimed easement. Several easement theories were plead in the case including easement by implication and pursuant to I.C. 55-603.

The trial court granted Baker Trust's Motion for Summary Judgment holding that the deed from Timberland-AG to Melendreras is ambiguous and that Mortensen, on behalf of Timberland-AG intended to grant to Melendreras an express easement over the logging road to access the parcel now owned by Baker Trust. The trial court

found material issues of disputed fact pertaining to all other easement theories advanced in the case and denied the motion for summary judgment as to those theories.

The trial court erroneously found the deed to be ambiguous because it created an “absurdity” under one of its interpretations. The alternate interpretation in the view of the trial court was reasonable. In making its determination the trial court failed to apply the proper legal standard and analysis to the issue of ambiguity. The trial court further erred in determining that though there is not any language in the deed to support its interpretation of the word it found to be ambiguous, “RESERVING”, as granting an easement to Melendreras over the logging road, Mortensen’s must have intended such an easement in deeding the property to Melendreras. The trial court then imposed the easement over the logging road. This Court should examine the record, apply its own analysis of whether the deed is ambiguous in the manner determined by the trial court, reverse the trial court on its finding of ambiguity and subsequent grant of an easement to Baker Trust as Melendreras’ successor in interest. This Court should determine that the deed is not ambiguous as a matter of law and leave to the trial court the issue of whether any other easement theory gives Baker Trust the right to use the logging road as it traverses the property owned by KAL, LLC.

ISSUES PRESENTED ON APPEAL

1. Did the District Court err in holding that the deed from Timberland-AG to Melendreras is ambiguous?

2. Did the District Court err in interpreting the language of the 1999 deed from Timberland-AG to Melendreras as granting to Melendreras an easement over the logging road?

STANDARD OF REVIEW

The District Court decided this case in the context of a summary judgment motion. The standard of review in a similar case was articulated by this Court as follows:

We review a district court's grant of summary judgment using the same standard as the district court when it originally ruled on the motion. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 870, 993 P.2d 1197, 1201 (1999). Therefore, we affirm summary judgment when "pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). On summary judgment, the Court liberally construes all facts in favor of the nonmoving party and draws all reasonable inferences from the facts in favor of the nonmoving party. *Hill v. Hill*, 140 Idaho 812, 813, 102 P.3d 1131, 1132 (2004). We deny summary judgment if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Id.* If no disputed issues of material fact exist, then only a question of law remains. *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2003). This Court exercises free review over questions of law. *Id.*

Camp Easton Forever, Inc. vs. Inland Northwest Council Boy Scouts of America, 156 Idaho 893, 332 P.3d 805, 809 (2014). More recently this Court said, "This Court reviews an appeal from an order of summary judgment *de novo*, and this Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. *Thornton v. Pandrea*, 161 Idaho 301, 385 P.3d 856 (2016).

ARGUMENT

A. The District Court erred in holding that the 1999 deed from Timberland AG, LLC, (Mortensen) is ambiguous.

The District Court issued its decision in this case from the bench. There is no record of the decision of the District Court except the transcript of the hearing at which its decision was delivered on June 29, 2016. A complete copy of the transcript of the hearing is a part of the record. A copy of that transcript is attached hereto for ease of reference as Exhibit A to this brief.

The analytical standard for assessing whether or not a deed is ambiguous was clearly stated by this Court:

When this Court interprets a deed, our primary goal is to give effect to the parties' real intent. *Hoch v. Vance*, 155 Idaho 636, 639, 315 P.3d 824, 827 (2013). If a deed's language is ambiguous, the parties' intention becomes a question of fact settled by a trier of fact. *Id.* The trier of fact must consider all of the surrounding facts and circumstances and view the deed as a whole and in its entirety. *Sells v. Robinson*, 141 Idaho 767, 773, 118 P.3d 99, 105(2005). However, "[w]hen an instrument conveying land is unambiguous, the intention of the parties can be settled as a matter of law using the plain language of the document" and without using extrinsic evidence. *Porter v. Bassett*, 146 Idaho 399,404, 195 P.3d 1212, 1217 (2008).

A deed is ambiguous when its language is reasonably subject to conflicting interpretations. *Id.* A deed is not ambiguous merely because the parties present differing interpretations to the Court. *Hoch* 155 Idaho at 639, 315 P3d at 827. Instead, "conflicting interpretations may arise when a phrase lends itself, without contortion, to a number of inconsistent meanings." *Porter*, 146 Idaho at 404, 105 P.3d at 1217. To determine whether a deed is ambiguous, the deed must be reviewed as a whole. *Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003).

Camp Easton Forever, Inc., 156 Idaho at 989-990, 332 P.3d at 811-812.

The District Court held that a portion of the February 5, 1999 Warranty Deed from Timberland-AG, LLC to Melendreras is ambiguous. T. June 29, 2016, pp. 5-7. The particular language is found in Exhibit A to the Warranty Deed, a copy of which is attached hereto as B. The specific form of Exhibit A to the deed is important to a proper understanding of the document. The presentation of the relevant language in the transcript materially differs from its presentation in Exhibit A in that the transcript combined two paragraphs into one, potentially altering the clear meaning of the language in Exhibit A. The language appears in Exhibit A to the deed after a metes and bounds description of the northernmost of the two parcels, Parcel 2, purchased by Melendreras as follows:

RESERVING THEREFROM a strip of land sixty (60) feet in width paralleling the north boundary line of Parcel 2 which shall serve as an easement for ingress, egress and utilities.

TOGETHER WITH a sixty (60) foot easement of the purpose of ingress, egress and utilities along the north boundary line of Tract 9, legally described in Exhibit "C" and west of the Ingress, Egress and Utilities easement described in Exhibit "B".

SAID EASEMENTS and all conditions, and restrictions relating thereto shall be considered as running with the land and shall bind the grantees and its heirs, executors, and administrators, and all future assigns of said premises or any part thereof.

R. at page 78. It is notable that the same format, meaning a metes and bounds description of a conveyed parcel followed by reservations and another grant related to portions of the described parcel was used earlier in Exhibit A to the deed.

The District Court observed that the above recited language from Exhibit A to the deed "could reserve to Timberlake and easement across Tracts 7 and 8 that it sold to Melendreas, but that language would not and should not and could not reserve to

itself an easement across the rest of the tracts that Timberland continued to own. That would be an unreasonable reading of the intent of that language, that Timberlake— Timberland would be reserving to itself an easement through land that it currently owned at the time of the conveyance”. T. June 29, 2016, p.7, ll. 17-25. The District Court later commented in the same hearing as follows:

The Court: The Court focuses I think on the word—the wording of the deed, that the Court took some time to find of reserving. So the Court finds that to be an ambiguous phrase in the context of the entire deed in that the literal reading of that deed with respect to that word “reserving”, it creates an absurdity in the Court’s mind that Timberland was reserving to itself an easement through land it already owned.

Mr. Covington: Okay.

The Court: Therefore, the Court finds that the intent of the grantor was to grant an easement to the Melendreas and to reserve to itself an easement only through the properties that it just conveyed to the Melendreas.

T. June 29, 2016, pp. 13-14. Thus the District Court’s analysis concludes that the word “RESERVNG” to be ambiguous having one meaning that creates an absurdity and another, which is a reasonable interpretation that Timberland was reserving an easement across property it was conveying and grant an easement to Melendreras. The grant to Melendreras in the deed plainly says sixty feet along the north boundary of Tract 9, a parcel that was retained at the time by Timberland. “A deed is ambiguous when its language is reasonably subject to conflicting interpretation.” *Camp Easton Forever, Inc.*, 156 Idaho at 900, 332 P3.d at 812. The District Court erred in holding the deed to be ambiguous when only one interpretation is reasonable and the other is a contortion generating an absurd meaning. “Conflicting interpretations may arise when no potential boundary line unambiguously fits the language contained in the deed.” *Read v. Harvey*, 141 Idaho 497, 500, 112 P3.d 785, 788 (2005). “Neither of the drainage

ditches, nor the creek channel, unambiguously fit the language contained in the deeds, making the intentions of the drafters unclear.” *Id.* In the case now before this Court only the interpretation of “RESERVING” meaning an easement to Timberland across land conveyed to Melendreras and granting an easement to Melendreras sixty feet wide along a portion of the North boundary line of Tract 9 fits the language in the deed. In fact, the fit for such an interpretation is perfect. The deed is not ambiguous because there is only one reasonable interpretation that fits.

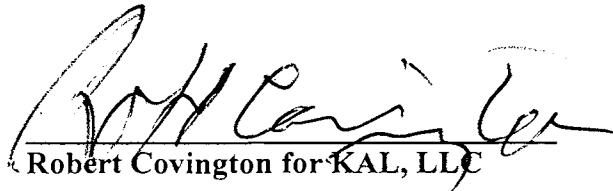
B. The District Court erred in interpreting the language of the deed to grant to Melendreras an easement over the logging road in the deed Timberland-AG, LLC gave to Melendreras in 1999?

If an ambiguity is determined, “The trier of fact must then determine the intent of the parties according to the language of the conveyance and the circumstances surrounding the transaction.” *Neider*, 138 Idaho at 508, 65 P.3d at 530. Having found the deed to be ambiguous, the District Court further erred in adding a new easement to the deed rather than applying its chosen interpretation of the words of the deed. It is as if the declaration of ambiguity provided a basis in the mind of the District Court to insert new terms into the deed, meaning a new easement in favor of Melendreras over the logging road. There is no interpretation presented of “RESERVING” in the language of the conveyance meaning a new easement over the logging road. In this respect the District Court’s conclusion fails the test of *Neider* because the language of the conveyance does not call for a new easement. The decision and should be reversed.

CONCLUSION

The District Court erred in finding that the 1999 deed from Timberland-AG, LLC to Melendreras is ambiguous in its use of the word "RESERVING". The meaning of the term in the context of the deed is clear, logical and consistent with the pattern and language used by the drafter throughout the document of conveyance. As the deed is truly unambiguous, its meaning is clear that an easement was reserved in favor of the grantor, Timberland-AG, LLC, over a portion of Tract 8 and Melendreras were granted an easement over a portion along the north boundary line of Tract 9. Even if the deed were ambiguous there is no meaning of "RESERVING" that includes a grant of a new and different easement. The deed contains no grant of an easement to Melendreras over the logging road, Alexana Lane. The judgment should be vacated, the deed held to be unambiguous and the matter remanded to the District Court for further proceedings.

Dated this 29th day of June, 2017.

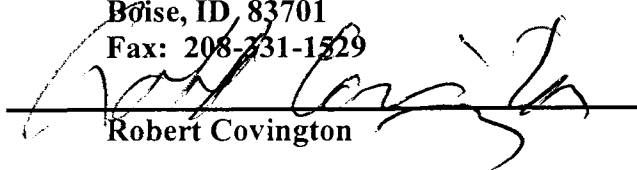

Robert Covington for KAL, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2017, I caused to be served a true and accurate copy of the foregoing instrument by placing the same in the United States Mail, First Class, postage prepaid thereon, to the following:

Susan Weeks
James, Vernon & Weeks,
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
Fax: 208-664-1684

William A. Fuhrman
Jones, Gledhill, Fuhrman, Gourley
225 N. 9th Street, Suite 820
P.O. Box 1097
Boise, ID, 83701
Fax: 208-731-1529


Robert Covington

MARIAN B. BAKER, Plaintiff,)
 vs.) DOCKET # 44855
 KAL, LLC, et al., Defendants.) CASE NO. CV-2015-0001484

PROCEEDINGS

HEARING

June 29, 2016

APPEARANCES:

For the Plaintiffs:
 STEPHEN MCCREA
 WAYNE BENJAMIN SLAUGHTER III
 Lake City Law Group, PLLC
 435 West Hanley, Suite 101
 Coeur d'Alene, ID 83815

For the Defendants:
 ROBERT COVINGTON
 8884 North Government Way, Suite A
 Hayden, ID 83835

ARTHUR MACOMBER
 Attorney at Law
 1900 Northwest Blvd., Suite 100
 Coeur d'Alene, ID 83814

APPEAL FROM DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI
 THE HONORABLE LANSING HAYNES PRESIDING

THE COURT: We're on the record in the matter of Baker vs. Stadler, et al. This is Civil Case 15-1484

And in the matter Mr. Stephen McCrea is in court representing plaintiff. And Mr. Ben Slaughter is appearing telephonically on behalf of the plaintiff as well.

Mr. Art Macomber is present representing defendants John and Vickie Stadler.

Mr. Robert Covington is present representing KAL, LLC.

Jose and Jaqueline Melendreas are present in court today. They are self-represented litigants.

This is the time set for the Court to announce its decision regarding plaintiffs' motion for summary judgment but I have one housekeeping matter first, and that is that I wanted to inquire Mr. McCrea.

There is an original proposed order in the Court's file, an order for entry of default, and it's listing a default against parties Karen Charbonneau, Jay Fromkin, Don Stephens and Gail Stephens, but it's under this case number and this case caption.

1 Do you know what that's about?
 2 MR. MCCREA: They were named defendants, I
 3 believe.
 4 THE COURT: Okay.
 5 MR. MCCREA: And they --
 6 THE COURT: I never saw that in any of the
 7 pleadings.
 8 MR. MCCREA: The original case caption, I believe
 9 they were named defendants, and they declined to appear or
 10 plead.
 11 THE COURT: Okay.
 12 MR. MCCREA: And so they were notified we wouldn't
 13 assess costs against them.
 14 THE COURT: All right. All right. That explains
 15 that.
 16 You know, now that I am looking at your -- I
 17 didn't see it in one of the earlier pleadings, but now I do
 18 see those names so thank you for clarifying that.
 19 All right. The Court's ready to make an oral
 20 pronouncement then today on defendants' motion for summary
 21 judgment, and so -- excuse me -- plaintiff's motion for
 22 summary judgment. And so the findings articulated by the
 23 Court today and the conclusions articulated by the Court are
 24 those findings and conclusions that support the ultimate
 25 decision of the Court.

1 The Court has certainly reviewed the written
 2 submissions of the parties. It listened carefully to the
 3 oral arguments the other day regarding plaintiff's motion
 4 for summary judgment. And I'll cut to the chase right away
 5 and say the Court is going to grant plaintiff's motion for
 6 summary judgment
 7 Some of the facts that are in the record that the
 8 Court has considered include that Timberland Ag owned
 9 Tracts 5 through 12 of the subject property originally, or
 10 at least at the origination of the facts before this Court.
 11 Alexanna Lane -- or Alexanna Lane crosses from I
 12 think north to south, anyway, Lots 5, 6, 11, 10, 7,
 13 recrosses back into 10, and again -- or again, then crosses
 14 Tract 9.
 15 Timberland Ag used this Alexanna Lane for its own
 16 purposes when it owned all eight of those tracts in order to
 17 access Tract 8 of that property.
 18 In 1999 a warranty deed conveying property was
 19 executed from Timberland Ag to Jose and Jaqueline
 20 Melendreas, that conveyed to the Melendreas ownership in
 21 Tracts 7 and 8 of the subject properties. That conveyance by
 22 warranty deed included easement language, that has been the
 23 subject of this dispute.
 24 That warranty deed also referenced and
 25 incorporated Exhibits 8, which the Court -- Exhibit B,

EXHIBIT A

1 excuse me, which the Court finds to be the legal description
2 of Alexanna Lane, and also Exhibit C, which the Court finds
3 to be the description of what's been called I think for ease
4 the 60-foot easement strip of land that runs from Tract 9
5 into Tract 8.

6 There is evidence in the record, although it's not
7 necessarily germane to the Court's finding, but the Court
8 did make a note of it, that the Melendreas party has
9 improved Alexanna Lane, at least at some degree after buying
10 property, the tracts mentioned above in 1999, and claimed
11 use of Alexanna Lane itself, the Melendreas to access Tract
12 Number 8.

13 The record should reflect that the KAL party
14 bought Tract 9 in 2002. The Stadlers bought Tract 10 in
15 2006.

16 Melendreas sold Tract 8 to the plaintiff in
17 2014, together with a deed and an easement to access
18 Tract 8, the same easement access that is Alexanna Lane,
19 that was the subject of Exhibit B of the warranty deed from
20 Timberland Ag to the Melendreas.

21 In this matter plaintiff has argued that they have
22 an easement for all of Alexanna Lane conveyed to them by the
23 Melendreas, and -- and also, not only that lane itself,
24 but the extension or the property described in Exhibit C of
25 the warranty deed of 1999, extension into Tract 8 by virtue

1 all future assigns of said premises of any part thereof."

2 So, that was the nature of the language that this
3 Court found to create in this warranty deed an ambiguity,
4 such that it is an ambiguous document. Therefore, because
5 that document, that warranty deed is ambiguous on its face,
6 or a latent ambiguity, even as argued by the parties, but
7 the Court finds it to be even patently ambiguous as well.
8 Therefore, the intent of the grantor is a matter of fact to
9 be determined either on summary judgment or at trial on the
10 matter.

11 Defendants Stadlers have argued that there is no
12 ambiguity in the Timberlake [sic] deed, that the deed
13 reserves to Timberlake an easement over the property it sold
14 to Melendreas.

15 This Court finds that language to be ambiguous
16 because the legal description of the easement in the grant
17 to Mr. and Mrs. Melendreas could reserve to Timberlake an
18 easement across Tracts 7 and 8 that it sold to the
19 Melendreas, but that language would not and should not and
20 could not reserve to itself an easement across the rest of
21 the tracts that Timberland continued to own. That would be
22 an unreasonable reading of the intent of that language, that
23 Timberlake -- Timberland would be reserving to itself an
24 easement through land that it currently owned at the time of
25 the conveyance.

1 of a reserved easement by written instrument.

2 The deed language that has been at issue the deed
3 from Timberland to the Melendreas, this Court finds as a
4 matter of law to be an ambiguous document.

5 The Court finds it to be ambiguous because of the
6 language in that regarding the reservation of an easement in
7 that language. And I should -- the Court should probably
8 cite all of that subject language here.

9 Let me find it.

10 Just one moment while I try to find that.

11 The subject language that was at dispute here
12 that the Court finds to be language that creates an
13 ambiguity in this warranty deed reads as follows:

14 "It was reserving therefrom a strip of land
15 60 feet in width paralleling the north boundary of
16 Parcel 2, which is Tract 8, which shall serve as an easement
17 for ingress-egress and utilities. Together with a 60-foot
18 easement for the same purpose of ingress-egress and
19 utilities, along the north boundary line of Tract 9, legally
20 described in Exhibit C, and west of the ingress-egress
21 utilities easement described in Exhibit B.

22 "Said easements and all conditions and
23 restrictions relating thereto shall be considered" --
24 spelling error -- "as running with the land, and shall bind
25 the grantees and its heirs, executors, administrators, and

1 This Court therefore concludes, based on the
2 record before it, that there is no contrary evidence, and,
3 therefore, no genuine issue of material fact that Timberland
4 intended to grant an easement -- that other than Timberland
5 intended to grant an easement to Melendreas to cross
6 Tracts 5, 6, 11, 10 and 9 all the way into Tract 8. And in
7 the same document to reserve itself -- to itself an easement
8 to cross Sections 7 and 8 that it had just sold to the
9 Melendreas. Therefore, this Court finds specific that
10 Melendreas specifically and expressly granted to plaintiff
11 the easement rights that it had received from Timberlake --
12 Timberland. I keep saying Timberlake; it's Timberland

13 The Court therefore finds that the theory
14 propounded by plaintiffs that they have an easement,
15 reserved easement by written instrument is a valid, and
16 there are no genuine issues of material fact regarding the
17 intent of the grantor Timberland

18 Now, for purposes of potential review, the Court
19 has analyzed the other theories that plaintiff has proposed.

20 The plaintiff proposed they had an easement by
21 implied prior use. The Court finds that there are genuine
22 issues of material fact in this instance regarding the
23 elements of that theory of what is called continuous long
24 use, long enough before conveyance to show that the use was
25 intended to be permanent. That may or may not be the case.

1 There were issues of fact regarding that continuous use such
2 that it was intended to be permanent, and cannot grant
3 easement or the relief sought by plaintiff under that
4 theory.

5 Plaintiffs propounded the theory of easement by
6 necessity. This Court finds that there are genuine issues
7 of fact regarding great present necessity for an easement
8 That may or may not be the case. That would need to have
9 been decided at trial on the merits.

10 The plaintiffs propounded the theory of easement
11 by prescription. The Court finds there are genuine issues
12 of fact regarding whether the use was by permission the use
13 of the parties involved here was by permission of the
14 servient estate, and the basis -- primarily based on the
15 affidavit of David White that Mr. Melendreas at some point
16 had asked if White minded if Mr. Melendreas was on White's
17 property. The Court finds that to be a small piece of
18 evidence, but one that fits into a genuine issue of material
19 fact about whether the use by Mr. and Mrs. Melendreas, or by
20 the -- no, not by Timberland, but by the Melendreas was
21 with permission. Nevertheless, whether Mr. Melendreas
22 thought he needed permission or whether -- whether
23 Mr. White thought he could give permission that's a moot
24 point because this Court finds that an express easement was
25 granted to the Melendreas, and then likewise to the

1 MR. MACOMBER: Well, the motion for summary
2 judgment was brought against the Stadler's counterclaims
3 only. And so none of the claims of the -- the other claims
4 of the plaintiffs, or the claims of KAL, or the claims of
5 Melendreas, or Baker against Melendreas are settled here.

6 THE COURT: Mr. McCrea, what's your position on
7 that?

8 That's a good -- that's a good point.

9 MR. McCREA: Right.

10 Your Honor, the original case sought to quiet
11 title to the easement for ingress and egress should cross
12 the northern boundary of Tract 8. The counterclaim alleged
13 that there was no easement to that parcel at all and so,
14 therefore, the motion for summary judgment was in response
15 to that counterclaim.

16 THE COURT: Thank you for that.

17 I'm glad you pointed that out. That clarifies
18 that. Thank you, Mr. Macomber.

19 MR. SLAUGHTER: Your Honor, can I weigh in for
20 that?

21 THE COURT: You may, Mr. Slaughter. Go ahead.

22 MR. SLAUGHTER: I apologize.

23 And maybe I'm misunderstanding, but I think that
24 the Court's ruling was that there's an express finding that
25 the -- the easement, or that the deed in question granted an

1 plaintiffs.

2 Also, the Court -- the plaintiffs proposed a
3 theory of relief for themselves on an easement by transfer
4 from Melendreas to Baker pursuant to Idaho Code Section
5 55-603. Again, the Court finds that there are genuine
6 issues of material fact as to whether the easement was
7 obviously and permanently used by the Melendreas.

8 The Court simply makes those particular findings
9 for purposes of potential further review.

10 With that, then, and based on those findings and
11 conclusions, again the Court grants plaintiffs motion for
12 summary judgment.

13 Are there any questions from the plaintiff?

14 MR. McCREA: No, Your Honor.

15 THE COURT: Any questions, Mr. Macomber?

16 MR. MACOMBER: Yes, Your Honor. I just want to
17 clarify that the notes you just gave on the genuine issues
18 of fact related to the other of plaintiff's claims are not
19 included in the summary judgment, but the summary judgment
20 is just on what they motioned for, which was the Stadler's
21 counterclaims?

22 THE COURT: Yes.

23 Well, say that again.

24 Now, I thought I followed you, and then I lost
25 you.

1 easement, and, therefore, although the motion for summary
2 judgment only sought to dismiss the counterclaims of Stadler
3 and KAL, it effectively has had a dispositive effect on --
4 on the counterclaim that -- or I guess the first amended
5 complaint that's being filed, or I guess will at this point
6 in time it should be entered into the Court for filing for
7 acceptance of the order that's been proposed wherein the
8 plaintiff is seeking affirmative relief, declaring the right
9 to use all Alexanna Lane, and one of the theories is that
10 there's an express grant of easement as the Court just
11 found. And so I -- I don't think that we need to -- if I
12 understood Mr. Macomber's question, is -- is he's thinking
13 that we need to go through some more procedural hoops to get
14 to the point where the Court would affirmatively grant the
15 relief being sought in the first amended complaint that's in
16 the process of being filed. I think that -- I think it's
17 kind of a procedural -- it's unnecessary for us to go
18 through any more hoops. I think at this time judgment would
19 be appropriate to -- for the Court to declare that there is
20 a right to use the easement for -- for the benefit of Baker
21 to have access along Alexanna Lane, and the Tract 9 easement
22 in order to reach Tract 8.

23 THE COURT: Well, thank you.

24 That may be the case. And the Court realized it
25 was being a bit expansive here, and I think in analyzing the

1 summary judgment motion with respect to the counterclaim
2 established, I think the Court had to address really many of
3 the other theories as well. So, that may or may not be the
4 case. And when-- I was going to ask the parties, after I
5 asked them if there were any questions, where they thought
6 the -- that this decision left the status of this case. And
7 so we'll find out about that in a moment. But I thank you
8 for your thoughts on that.

9 Any other questions, Mr. Macomber?

10 MR. MACOMBER: No, Your Honor.

11 THE COURT: Mr. Covington, any questions?

12 MR. COVINGTON: Your Honor, I wanted to make sure
13 I understood where the Court found ambiguity, and I'm trying
14 to recall the Court's description of that. I don't want to
15 belabor it unduly, but I want to have a clear picture in my
16 mind.

17 THE COURT: The Court focuses I think on the
18 word -- the wording of the deed, that the Court took some
19 time to find of reserving. So the Court finds that to be an
20 ambiguous phrase in the context of the entire deed, in that
21 the literal reading of that deed with respect to that word
22 "reserving", it creates an absurdity in the Court's mind
23 that Timberland was reserving to itself an easement through
24 land it already owned.

25 MR. COVINGTON: Okay.

1 original -- plaintiff's original claim, which -- which
2 portion of the case I represent my client on, which was his
3 request to quiet title to the 60-foot easement across
4 Tract 8, that still remains a matter that needs to be
5 litigated if my client intends to continue to pursue that.

6 THE COURT: All right.

7 MR. McCREA: Other than that, I would defer to
8 Mr. Slaughter for any further comment.

9 THE COURT: Mr. Slaughter, where do you think this
10 leaves?

11 I think you've mentioned it, but go ahead and make
12 your record about where you think this leaves the case.

13 MR. SLAUGHTER: Well, Your Honor, I think I even
14 addressed it in my reply memorandum, that I think that
15 effectively, especially since this is a court trial, I don't
16 see any impediment at this point in time to filing
17 declaratory judgment or quieting title in favor of the Baker
18 Trust for finding an easement, an access easement along
19 Alexanna Lane and the Tract 9 easement to the Baker
20 property.

21 So, I -- procedurally, the first -- the proposed
22 first amended complaint has not been filed and served, but I
23 think the nature of the Court's ruling is such that there's
24 no need to go down that path. At least in my opinion, but
25 I'll leave that up to the Court. I believe that the issue's

1 THE COURT: Therefore, the Court finds that the
2 intent of the grantor was to grant an easement to the
3 Melendreas and to reserve to itself an easement only
4 through the properties that it just conveyed to the
5 Melendreas.

6 MR. COVINGTON: Okay. I think I got it.

7 THE COURT: All right. Thank you.

8 Any other questions?

9 Mr. Melendreas, any questions from you?

10 MR. MELENDREAS: No, sir. No, Your Honor. I --

11 THE COURT: Mrs. Melendreas, any questions?

12 MS. MELENDREAS: Yes.

13 Okay. What you just said was correct because
14 Timberland Ag still owned the property.

15 THE COURT: Do have any questions?

16 I don't want comments. I want to know if you have
17 any questions about the Court's ruling.

18 MS. MELENDREAS: Not at the moment.

19 THE COURT: Okay. Sorry to cut you off like that,
20 but I do need to keep it in line of what we're asking here.

21 So, with that, let me turn to Mr. McCrea and/or
22 Mr. Slaughter and find out where do you see this leaving the
23 status of the case based on the ruling, and the extent to
24 which the Court has entered findings and conclusions?

25 MR. McCREA: I think there -- as to the

1 been resolved. We can just skip the procedural mechanisms
2 if -- to the extent any remain, in order to just get to the
3 point, which is my client has the right to use the existing
4 road to access its property.

5 THE COURT: All right. Thank you.

6 And before I inquire of the other parties, that
7 reminded the Court of an important finding it needed to make
8 here.

9 The Court has engaged in this analysis pursuant to
10 Rule 56, which requires the Court to view the evidence in
11 the light most favorable to the nonmoving parties, which are
12 the defendants in this case. But also because this is
13 scheduled as a Court trial, the Court is allowed to draw all
14 reasonable inferences, because it will be the finder of fact
15 at a trial, to draw all reasonable inferences from the
16 evidence, not necessarily in favor of the nonmoving party,
17 but as the Court sees them to be reasonable. So, that's
18 been the manner in which the Court has engaged in this
19 analysis.

20 So, Mr. Macomber, where do you see the status of
21 this case here? Do you have any input on that at this
22 point?

23 MR. MACOMBER: I don't, Your Honor. I'd have to
24 go back and take a look.

25 THE COURT: Sure. Understood.

1 How about you, Mr. Covington?
 2 MR. COVINGTON: Well, certainly the issue that
 3 Steve originally raised in the initial pleading here remains
 4 unresolved, and I think none of us have really focused much
 5 effort thus far on even discovery related to the claim. His
 6 claim is that it-- excuse me, Steve, if I am mistaken, but
 7 generally quieting title under some theory so that my client
 8 does not have the right to use the 60-acre-- a 60-foot
 9 easement across Tract 8.
 10 Correct me if I'm wrong.
 11 MR. McCREA: No, that's--
 12 MR. COVINGTON: And I don't know exactly what
 13 theory there is for quieting that title, but that's what
 14 remains, and very little work has been done thus far, I can
 15 tell the Court, on that issue.
 16 THE COURT: All right. Very good. Thank you for
 17 that. That's a good reminder for the Court.
 18 Mr. Melendreas, do you have any input on where you
 19 see the status of the case based on the Court's ruling?
 20 MR. MELENDREAS: What I'd like to bring up,
 21 Your Honor, is I see this case in two parts. One of 'em is
 22 what we've addressed here today as far as showing
 23 (unintelligible) to Tract 8.
 24 It's my understanding that if Mr. Espinoza wants
 25 to do this quiet title to remove the easement from his

1 the -- based on the conclusions articulated by the Court
 2 today.
 3 And then in terms of further proceedings in the
 4 matter, I'm simply going to leave it to the parties to
 5 discuss among themselves the status as they see it, and the
 6 court will await then any further motion practice and any
 7 further notices of hearings, and we'll let the parties drive
 8 I guess the next -- the next issues that go forward.
 9 MR. COVINGTON: Your Honor, I guess I'll raise the
 10 thought that we have a trial setting for sometime in
 11 September.
 12 THE COURT: Right.
 13 (Off-the-record discussion held.)
 14 MR. COVINGTON: I don't think my client's going to
 15 abandonment the easement. So do you --
 16 MR. McCREA: I can't really -- I can't really say.
 17 I have to discuss with my client at this point
 18 MR. COVINGTON: So I'll table -- or I'll put out
 19 the request to have that we consider rescheduling the trial
 20 Steve and I will figure out what we're going to do. I think
 21 my client has the strongest interest in this easement that
 22 is across Steve's property. But I would like to put that
 23 out there because we all have plans and stuff.
 24 THE COURT: All right.
 25 MR. MACOMBER: Then the other point being that if

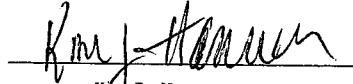
1 property, that really, in my opinion, has nothing to do with
 2 us. Once that potential -- I just want to make sure that
 3 that part of the case is separated and cleared. What he
 4 continues to do on his property is his business beyond this
 5 point.
 6 THE COURT: All right. Thank you.
 7 MR. MELENDREAS: The other thing is well, once
 8 this ruling is in, will the lis pendens be removed?
 9 THE COURT: I don't know. That's -- that's going
 10 to require some discussion among the parties, I think, or
 11 further motion practice.
 12 MR. MELENDREAS: Thank you, sir.
 13 THE COURT: Mrs. Melendreas, do you have any input
 14 on the status of this case based on the Court's ruling?
 15 MS. MELENDREAS: No, thank you.
 16 THE COURT: And if you do, please speak up. I
 17 sort of rudely cut you off just a few minutes ago, I don't
 18 want you to be quieted by that. If you have something you
 19 would like to say about the status, please do.
 20 MS. MELENDREAS: (No oral response.)
 21 THE COURT: Okay. Very good.
 22 All right. With that, then, I'm going to ask
 23 Mr. McCrea to present an order to the Court granting
 24 plaintiff's motion for summary judgment, or Mr. Slaughter,
 25 whichever is the appropriate way, for the reasons, and for

1 Alexanna Lane is truly that whole thing, then it probably
 2 includes that -- easement, and if somebody wants to build a
 3 dally (phonetic) on the parcel north, Stadlers may want to
 4 build a dally, so it's a little perhaps premature to just
 5 focus on the 60-foot and say that's all that's left
 6 THE COURT: Well, it sounds like there's more
 7 thinking that needs to be done, more discussion, possibly
 8 more motion practice.
 9 Right now we'll leave that trial setting in place.
 10 The parties can either stipulate with good cause or have
 11 notice of hearing on vacating the trial, if need be. I sure
 12 like to shoot for those trial dates whenever possible.
 13 All right. Based on that, then, thank you all for
 14 a good argument. Thank you for good briefing and for being
 15 willing to listen to the Court today. With that, you are
 16 excused.
 17 We in recess until 2:30.
 18 (Proceedings concluded.)

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I, KIM J. HANNAN, do hereby certify that the foregoing pages numbered from 2-20, constitute a true and accurate transcript of my stenographic notes, taken at said time and place, all done to the best of my skill and ability.

DATED this 25th Day of August, 2016.



Kim J. Hannan

ALLIANCE
TITLE & ESCROW CORP.

WARRANTY DEED

1576391

STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF
ALLIANCE TITLE & ESCROW CORP.

FEB 19 10 57 AM '99

DANIEL J. ENGLISH

DEPUTY
FEE \$ 12.00

930

For Value Received

TIMBER-LAND-AG L.L.C.

the grantor(s) do(es) hereby grant, bargain, sell and convey unto

JOSE L. MELENDRERAS, a single person and JACQUELINE Z. DIAZ, a single person

whose current address is

1701 SHERMAN AVENUE

COEUR D'ALENE, ID 83814

the grantee(s), the following described premises, in KOOTENAI County IDAHO, to wit:

SEE ATTACHED "EXHIBIT A"

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor do hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Subject to all existing patent reservations, easements, right of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations.

and that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: February 5, 1999

Vernon Jerry M. Stensen
TIMBER-LAND-AG L.L.C.

Manager member

STATE OF ID, COUNTY OF KOOTENAI
On this 16th day of FEBRUARY, 1999
before me, a Notary Public in and for said State, personally
appeared

TIMBER-LAND-AG L.L.C.

Vernon Jerry M. Stensen
Manager member

known to me to be the person(s) whose name(s)
subscribed to the within instrument(s) and acknowledged to
me that they executed the same.

Kathryn Sabens
Notary Public
Residing at COEUR D'ALENE
Comm. Expires 2/13/01

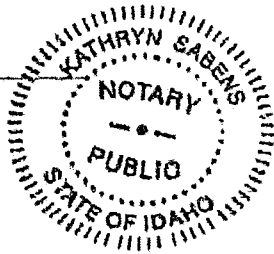


EXHIBIT B

EXHIBIT
4 of 398
pg 1

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"EXHIBIT A"

Parcel 1:

A parcel of land located in the Southeast quarter, Section 25, Township 50 North, Range 6 West, Boise Meridian, Kootenai County, Idaho, said parcel being "Tract 7" as shown on the Record of Survey filed in Book 4 of Surveys, at page 26, records of Kootenai County, more particularly described as follows:

COMMENCING at the Southeast corner, said Section 25, from which the East quarter corner, said Section 25, bears North 00°42'06" East, a distance of 2645.32 feet; thence

North 44°38'06" West a distance of 1846.72 feet to the Southwest corner, said "Tract 7", the True Point of Beginning for this description; thence

Along the boundary lines of said "Tract 7" the following four courses:

North 00°22'55" East a distance of 662.53 feet;

North 89°38'49" East a distance of 658.75 feet;

South 00°32'26" West a distance of 662.39 feet;

South 89°37'54" West a distance of 656.86 feet to the True Point of Beginning.

RESERVING THEREFROM that portion of the above described parcel which is described in an Ingress, Egress and Utilities Easement as more fully described in Exhibit "B" attached hereto and incorporated herein.

FURTHER RESERVING THEREFROM a strip of land fifteen (15) feet in width paralleling the south boundary line of said Parcel 1 which shall serve as an easement for electric utilities over land and underground and the maintenance of same.

Parcel 2:

A parcel of land located in the Southeast quarter, Section 25, Township 50 North, Range 6 West, Boise Meridian, Kootenai County, Idaho, said parcel being "Tract 8" as shown on the Record of Survey filed in Book 4 of Surveys, at page 26, records of Kootenai County, more particularly described as follows:

COMMENCING at the Southeast corner, said Section 25, from which the East quarter corner, said Section 25, bears North 00°42'06" East, a distance of 2645.32 feet; thence

North 17°45'38" West a distance of 2079.81 feet to the Southeast corner, said "Tract 8", the True Point of Beginning for this description; thence

Along the boundary lines of said "Tract 8" the following four courses:

North 00°32'26" East a distance of 660.56 feet;

South 89°39'44" West a distance of 660.64 feet;

South 00°22'55" West a distance of 660.70 feet;

North 89°38'49" East a distance of 658.75 feet to the True Point of Beginning.

RESERVING THEREFROM a strip of land sixty (60) feet in width paralleling the north boundary line of Parcel 2 which shall serve as an easement for ingress, egress and utilities.

TOGETHER WITH a sixty foot easement of the purpose of ingress, egress and utilities along the north boundary line of Tract 9, legally described in Exhibit "C" and west of the Ingress, Egress and Utilities Easement described in Exhibit "B".

SAID EASEMENTS and all conditions and restrictions relating thereto shall be considered as running with the land and shall bind the grantees and its heirs, executors, and administrators, and all future assigns of said premises or any part or parts thereof.

not in for
10/11/96

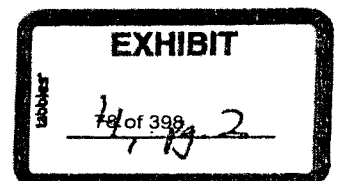


EXHIBIT B
(Ingress, Egress and Utilities Easement)

A parcel of land located in the Southeast Quarter, Section 25, Township 30 North, Range 6 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

A strip of land ~~50 (fifty)~~ ^{60 (sixty)} feet in width, the centerline of which is further described as COMMENCING at the Southeast corner, said Section 25, said point also being the Southeast corner of "Tract 12" as shown on the Record of Survey filed in Book 4 of Surveys, at Page 26, Records of Kootenai County, from which the South Quarter corner, said Section 25, bears S 89°36'05" W a distance of 2612.00 feet; thence, S89°36'05" W along the South line of the Southeast Quarter, said Section 25, a distance of 708.12 feet to the intersection of said South line with the centerline of an existing road as described in the State of Idaho Easement filed as Instrument Number 1455397, Records of Kootenai County, and the True POINT-OF-BEGINNING for this description.

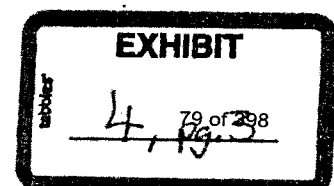
Thence, northerly along said centerline the following courses:

N 03°23'56" E a distance of 71.72 feet;
 N 08°16'19" W a distance of 170.39 feet;
 N 00°27'07" E a distance of 88.99 feet;
 N 12°51'41" E a distance of 86.93 feet;
 N 01°36'12" W a distance of 561.37 feet;
 N 21°14'24" E a distance of 105.28 feet;
 N 38°31'44" E a distance of 108.42 feet;
 N 02°35'09" W a distance of 173.56 feet;
 N 23°25'31" W a distance of 51.64 feet;
 N 11°09'06" W a distance of 58.84 feet;
 N 12°13'40" E a distance of 88.16 feet;
 N 34°04'39" E a distance of 97.00 feet;
 N 27°19'22" E a distance of 107.92 feet;
 N 38°30'55" E a distance of 451.27 feet;
 N 68°18'35" E a distance of 131.84 feet;
 N 58°13'11" E a distance of 161.82 feet;
 N 00°42'24" E a distance of 52.24 feet;
 N 71°49'28" W a distance of 155.29 feet;
 N 56°10'47" W a distance of 143.61 feet;
 N 31°01'43" W a distance of 76.76 feet;
 N 15°32'52" W a distance of 136.33 feet;

thence, N 23°23'17" W a distance of 92.32 feet, more or less, to the intersection of said centerline with the North line of the Southeast Quarter, said Section 25 (said line also being the North line of "Tract 9" as shown on said Record of Survey), the POINT-OF-TERMINUS, from which the East Quarter corner, said Section 25, bears N 89°38'01" E a distance of 410.48 feet.

The sidelines of said strip of land to be shortened or extended to begin at the South line of said Southeast Quarter, and shortened or extended to terminate at the North line of said Southeast Quarter (see Exhibit "B" attached hereto, and by reference made a part hereof).

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"EXHIBIT C"

A parcel of land located in the Southeast quarter, Section 25, Township 50 North, Range 6 West, Boise Meridian, Kootenai County, Idaho, said parcel being "Tract 9" as shown on the Record of Survey filed in Book 4 of Surveys, at page 26, records of Kootenai County, more particularly described as follows:

COMMENCING at the Southeast corner, said Section 25, from which the East quarter corner, said Section 25, bears North 00°42'06" East a distance of 2645.32 feet; thence

North 17°45'38" West a distance of 2079.81 feet to the Southwest corner, said "Tract 9" the True Point of Beginning for this description; thence

Along the boundary lines of said "Tract 9" the following four courses:

North 00°32'26" East a distance of 660.56 feet;

North 89°39'44" East a distance of 660.65 feet;

South 00°42'06" West a distance of 660.41 feet;

South 89°38'49" West a distance of 658.76 feet to the True Point of Beginning.

with for
1001/00

