

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 JAMES OLVEY,

5 Plaintiff,

6 v.

7 ERROTABERE RANCHES, a California
8 partnership; DANIEL D. ERROTABERE,
9 an individual; JEAN ERROTABERE, an
individual,

10 Defendant.
11

1:06-cv-00653 OWW SMS

MEMORANDUM DECISION AND ORDER
RE PLAINTIFF'S MOTION TO
ENFORCE SETTLEMENT AGREEMENT.

(DOC. 215)

12 I. INTRODUCTION

13 Plaintiff, pro per, moves to enforce the Settlement
14 Agreement dated February 5, 2009 ("Settlement Agreement"). Doc.
15 215. Plaintiff contends that Defendants have not satisfied the
16 Settlement Agreement's remaining conditions and seeks (1) an
17 order granting Plaintiff and his agents access to Defendants'
18 property to complete construction of the road required by Section
19 2E of the Settlement Agreement ("Road"); and (2) the costs of
20 bringing this motion and reimbursement of costs to construct the
21 Road. Defendants oppose the motion. Doc. 217. The matter was
22 heard on March 14, 2011.
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25 II. FACTUAL BACKGROUND

26 On May 26, 2006, Plaintiff filed a Complaint against
27 Defendants alleging misrepresentations of the terms of a Purchase
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1 and Sale agreement. Doc. 1. The case went to trial before a jury
2 April 2008; partial judgment was entered for Plaintiff for
3 damages, costs, and pre-judgment interest. Doc. 167. On February
4 5, 2009, the parties entered into the Settlement Agreement to
5 resolve Plaintiff's remaining claim.

6
7 By Order dated November 19, 2010, the Court held that: (1)
8 all settlement conditions in the Settlement Agreement were
9 satisfied, other than a dispute over Section 2E of the Settlement
10 Agreement regarding the width of the Road; and (2) upon filing
11 with the Court proof of the payment in Section 2G of the
12 Settlement Agreement, all remaining pending claims in the
13 Complaint will be dismissed with prejudice. Doc. 214. At issue is
14 whether these two settlement conditions have been satisfied.
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16 III. ANALYSIS

17 A. Road Width

18 Section 2E of the Settlement Agreement provides:

19 After the harvest of Olvey's 2009 cotton crop on the Olvey
20 parcel, and not later than January 1, 2010, the Errotaberes
21 shall immediately construct a 30' wide dirt field road,
22 traveling in an East-West direction, just South of the
23 Northernmost boundary of their property. The dirt field road
24 currently existing in this area, which is located on Olvey's
25 parcel, shall become the sole property of Olvey and all
26 parties understand and agree that Olvey has the right to
27 plow the road under and use the land for crops or other
28 purposes. The new road, constructed by Errotabere, is to be
shared equally by both parties. Other than in the normal
course of farming and cultural husbandry, neither party
shall disrupt, block or prevent the other party from having
full and complete access to and use of this road.

Doc. 217, Ex. 1, § 2E.

1 Plaintiff states that after the November 8, 2010 hearing,
2 Plaintiff hired a surveyor to identify the northern and southern
3 boundaries of Defendants' property and measured the distance
4 between the property boundary line and the southern edge of the
5 road. Plaintiff contends that while the Settlement Agreement
6 requires a 30-foot Road, the distance between the southern
7 boundary of the Road and the property line is as little as 13
8 feet in some places. Plaintiff provides a video of the Road dated
9 November 22, 2010 on which he alleges that Defendants built a
10 fence, constructed a ditch in the Road, and decreased the width
11 of the Road.
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13 Defendants contend that the Road did measure 30 feet as
14 required by the Settlement Agreement, but that Plaintiff's tenant
15 constructed a ditch in the Road. Doc. 217, Ex. 2, ¶ 3. At the
16 Court's request on November 2, 2010, Defense counsel visually
17 inspected the Road and measured it in its then-current state (not
18 as originally constructed) as between 28 to 29 feet (Doc. 217,
19 Ex. 2, ¶ 3) and up to 33 feet in some portions (Doc. 217, Ex. 3,
20 6-9). After receiving this motion, Jean Errotabere declares that
21 Defendants used global positioning to score a road that was
22 exactly 30 feet wide from beginning to end. Doc. 218, ¶ 4.
23 Defendants contend that in response, Plaintiff extended the
24 existing ditch onto the Road, flooding and reducing the
25 traversable width of the Road. Doc. 218, ¶ 5. Defendants provide
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1 pictures of the flooded Road. Doc. 218, Ex. 1-2.

2 The parties are reminded that Section 2E of the Settlement
3 Agreement requires that "[o]ther than in the normal course of
4 farming and cultural husbandry, *neither party shall disrupt,*
5 block or prevent the other party from having full and complete
6 access to and use of this road." Doc. 217, Ex. 1, § 2E (emphasis
7 added). Building a ditch and flooding the Road breach the
8 Settlement Agreement.
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10 The Errotaberes shall measure the width of the Road every
11 1/8th mile by placing stakes on both edges of the Road, recording
12 the distance between the stakes, and photographing the width of
13 the Road and stakes. Plaintiff and his surveyor may accompany the
14 Errotaberes while they measure the Road and may check and confirm
15 the Errotaberes' measurements. The Errotaberes shall file a
16 declaration with the measurements and photographs within ten (10)
17 days following the date of service of this memorandum decision.
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19 B. Payment

20 Section 2G of the Settlement Agreement provides:

21 The Errotaberes shall, within twenty (20) days of the date
22 of completion of the lot line adjustment referenced in
23 Paragraph 3, below, pay Olvey a 1/3 share of the \$15,994 in
24 costs Olvey incurred with Quad Knopf in generating the
record of survey for the Olvey parcel which the parties have
utilized.

25 Doc. 217, Ex. 1, § 2G. Defendants' 1/3 share of \$15,994 equals
26 \$5,331.33 ("Payment").

27 Plaintiff contends that Defendants have not made the
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1 Payment, and have not filed any proof of Payment as required by
2 the Court's Order dated November 22, 2010.

3 Defendants contend that they mailed Plaintiff a check in the
4 amount of \$5,331.34 to satisfy the Payment. Defendants provide
5 (1) a copy of the uncanceled check dated December 14, 2010, and
6 (2) a letter from Defendants' counsel's office to Plaintiff
7 enclosing the check. Doc. 217, Ex. 4. Defendants do not offer
8 proof that the check was mailed and/or received by Plaintiff. On
9 January 29, 2011, Defendants' counsel e-mailed Plaintiff to
10 confirm receipt of the check. Doc. 217, Ex. 5. Defendants contend
11 that Plaintiff never responded; instead, Plaintiff filed this
12 motion.
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15 At the hearing, Plaintiff stated that he has never received
16 the check. Defendants gave Plaintiff a new check at the hearing,
17 which the court witnessed. The Payment contingency in Section 2G
18 of the Settlement Agreement is satisfied.
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20 IV. CONCLUSION

21 For the reasons stated:

- 22 1. Plaintiff's motion to enforce settlement agreement is
23 DENIED, subject to the Road measurement condition specified
24 in this memorandum decision.
- 25 2. Defendants shall submit a proposed form of order consistent
26 with this memorandum decision within five (5) days of
27 electronic service of this memorandum decision.
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SO ORDERED.

DATED: March 16, 2011.

 /s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge