

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-01281-WYD-KLM

UNITED STATES OF AMERICA,

Plaintiff,

v.

SILVA RANCH, a limited liability limited partnership;
CLAUDIA A. SILVA;
DEBRA A. CALDEIRA;
STANLEY W. SILVA, a/k/a WILLY SILVA;
ERNEST J. CALDEIRA;
SILVA RANCH AND CATTLE COMPANY;
MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC.;
JAMES A. MUNDT;
PARAGON FINANCIAL INVESTORS, LLC;
FARMERS STATE BANK OF CALHAN;
TREASURER OF ELBERT COUNTY, COLORADO;
HARMONY LAND AND CATTLE COMPANY; and
ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER
OF THIS CIVIL ACTION,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

I. INTRODUCTION

THIS MATTER is before the Court on the Plaintiff's Motion to Dismiss the Second Claim for Relief and the Third Claim for Relief Alleged in the Complaint by Plaintiff United States (docket #88), which was filed on January 21, 2010. The matter was referred to Magistrate Judge Mix for a Recommendation by Order of Reference dated July 27, 2009. Magistrate Judge Mix issued a Recommendation on March 2,

2010, which is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b), D.C.COLO.LCivR. 72.1. Magistrate Judge Mix recommends therein that Plaintiff's motion be granted and its second and third claims for relief be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). (Recommendation at 3.)

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (Recommendation at 3-4.) On March 10, 2010, Defendant Stanley Silva filed an objection to the Recommendation. Since an objection was filed, I will review *de novo* the specific portions of the Recommendation to which Plaintiff objects. FED. R. CIV. P. 72(b).

II. BACKGROUND

Plaintiff United States filed the instant *in rem* action alleging the following three claims for relief: (1) First Claim for Relief - to quiet title in and to an expressed easement or, in the alternative; (2) Second Claim for Relief - to obtain a declaration of an easement by necessity. The easement by necessity is the same as the expressed easement; and (3) Third Claim for Relief - to permanently enjoin each named defendant from asserting any claim, right, title, and/or interest in the expressed easement or the easement of necessity that is adverse to Plaintiff United States' right, title, and/or interest in the expressed easement or the easement of necessity. All Defendants were served, and the Complaint has been resolved as to all Defendants, except Claudia A. Silva and Defendant Stanley W. Silva.¹

¹ Claudia A. Silva and Stanley W. Silva are mother and son.

On July 27, 2009, Plaintiff filed a motion for summary judgment requesting summary judgment against Defendants Claudia A. Silva and Stanley W. Silva as to Plaintiff's first claim for relief, that is, an order quieting title to the express easement. On December 9, 2009, Magistrate Judge Mix recommended that the motion for summary judgment be granted. On January 6, 2010, I entered an order adopting and affirming Magistrate Judge Mix's Recommendation, granting Plaintiff's motion for summary judgment and entering summary judgment in favor of the United States and against Defendants Claudia A. Silva and Stanley W. Silva.²

In the pending motion to dismiss, Plaintiff requests that the Court dismiss the second and third claims, as "[w]ith entry of summary judgment as to the first claim for relief, i.e. the quiet title in and to the Expressed Easement, Plaintiff United States has obtained the necessary relief sought by the Complaint." (Mot. ¶ 21.) Plaintiff requests that the second and third claims for relief be dismissed without prejudice. (Mot. ¶¶ 22-23.)

III. RECOMMENDATION

Magistrate Judge Mix recommends that the motion be granted and Plaintiff's second and third claims for relief be dismissed without prejudice. (Recommendation at 3.) Magistrate Judge Mix concluded that "[n]o Defendant has responded, and the Court finds no reason why the Motion should not be granted and this case closed and stricken from the Court's active docket." (Recommendation at 3.) On March 10, 2010,

² On January 20, 2010, Plaintiff filed a statement noting the death of Defendant Claudia A. Silva. Plaintiff stated that it has no knowledge of the identity of the successor or representative of her estate.

Defendant Stanley W. Silva filed a brief letter stating “I am writing to let you know of my objection to your rulings” (Objection at 1.) The objection states only that Mr. Silva has serious health issues and fails to include any further information about specific objections to Magistrate Judge Mix’s rulings.

Fed. R. Civ. P. 72(b)(2) provides that an objection must contain “specific written objections.” The District Court need not consider frivolous, conclusive or general objections. *See Zumwalt v. Astrue*, 220 Fed.Appx. 770, 777-78 (10th Cir. 2007). Accordingly, I overrule Defendant Stanley W. Silva’s objection. I find that Magistrate Judge Mix’s Recommendation on Plaintiff’s motion to dismiss is well reasoned and sound, and I agree that the motion to dismiss is properly granted as to Plaintiff’s second and third claims for relief.

IV. CONCLUSION

After carefully reviewing Magistrate Judge Mix’s Recommendation and Defendant Stanley W. Silva’s objection, I agree with Magistrate Judge Mix that Plaintiff’s motion to dismiss should be granted for the reasons stated in both the Recommendation and this Order. Magistrate Judge Mix’s Recommendation is thorough, well reasoned and is adopted. Accordingly, Defendant Stanley W. Silva’s objection is overruled. For the reasons stated above, it is

ORDERED that the Recommendation of United States Magistrate Judge (docket #90) is **AFFIRMED AND ADOPTED**. In accordance therewith, it is

ORDERED that Plaintiff’s Motion to Dismiss the Second Claim for Relief and the Third Claim for Relief Alleged in the Complaint by Plaintiff United States (docket #88) is

GRANTED and Plaintiff's second and third claims for relief are **DISMISSED WITHOUT PREJUDICE**. Since no claims remain in this case, it is hereby **DISMISSED**.

Dated: April 21, 2010

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Chief United States District Judge