

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

AUG 20 2019

Clerk, U.S. Courts
District Of Montana
Missoula Division

NICOLE L. CROY; PAULA JOBE
a/k/a PAULA KURTZ; JEFFREY D.
COLLINS; CAM J. COLLINS; SHAEN
D. MCELRAVY; JODY MCELRAVY;
KAREN M. HAYWARD; RONALD C.
HAYWARD; and BRAD
MAGRUDER,

CV 19-77-M-DWM

ORDER

Plaintiffs,

vs.

RAVALLI COUNTY, in its official
capacity; BOARD OF
COMMISSIONERS OF RAVALLI
COUNTY, in its official capacity; LEE
E. FOSS; FOSS REALTY, INC., a
Montana Profit Corporation;
WESTERN MONTANA
EXCAVATION LLC, a Montana
Limited Liability Company;
SUNNYSIDE ORCHARDS, LLC, a
Foreign Limited Liability Corporation;
STARLIGHT INTERESTS, LLC, a
Georgia Limited Liability Company;
and JOHN DOES 1-15,

Defendants.

RAVALLI COUNTY, in its official
capacity, and BOARD OF
COMMISSIONERS OF RAVALLI
COUNTY, in its official capacity

Cross-Claimants,

vs.

LEE E. FOSS; FOSS REALTY, INC., a Montana Profit Corporation; STARLIGHT INTERESTS, LLC, a Georgia Limited Liability Company; SUNNYSIDE ORCHARDS, LLC; a Foreign Limited Liability Corporation; WESTERN MONTANA EXCAVATION LLC, a Montana Limited Liability Company; and JOHN DOES 1-15,

Cross-Defendants.

On April 26, 2019, Plaintiffs, a group of landowners in Ravalli County, sued the County (“Public Defendants”) as well as one individual and four business entities (“Private Defendants”) in a road dispute, alleging fifteen causes of action under both federal and state law. (Doc. 1.) Plaintiffs amended their complaint as a matter of right on May 17, 2019. (Doc. 4); Fed. R. Civ. P. 15(a)(1)(A). The Public Defendants answered, bringing a cross-claim against the Private Defendants. (Doc. 7.) Defendants Sunnyside Orchards, LLC and Starlight Interests, LLC answered both the Amended Complaint (Doc. 8), and the Public Defendants’ Cross-Claims, (Doc. 14). Instead of answering, Defendants Lee E. Foss and Foss Realty, Inc. (collectively “Foss Defendants”) filed motions to dismiss both the Amended Complaint, (Doc. 9), and the Public Defendant’s Cross-Claims, (Doc. 15). The Foss Defendants also filed a motion for judicial notice. (Doc. 11.)

On August 5, 2019, Plaintiffs sought and received an extension of time to respond to the Foss Defendants' motion to dismiss the Amended Complaint. (Docs. 17, 18.) Instead of responding, Plaintiffs filed a Second Amended Complaint on August 13, 2019. (Doc. 19.) No party objects to the filing. (*See id.*; Doc. 20.) The Second Amended Complaint adds to and clarifies certain factual allegations, (*see e.g.* Doc. 19 at ¶¶ 10, 14), but maintains the same causes of action, (*see id.* at ¶¶ 57–121). Pursuant to the consent of the other parties and the liberal pleading standard outlined in Federal Rule of Civil Procedure 15, the amended pleading is properly filed. *See* Fed. R. Civ. P. 15(a) (“The court should freely give leave when justice so requires.”). As a result, the First Amended Complaint, (Doc. 4), is no longer the operative pleading and the Foss Defendants' pending motion to dismiss that pleading, (*see* Doc. 9), is moot.

While the Foss Defendants' motion for judicial notice indicates Plaintiffs oppose the motion, (*see* Doc. 11 at 3), Plaintiffs did not file a responsive pleading. That failure is “deemed an admission that the motion is well-taken.” L.R. 7.1(d)(1)(B)(ii). Exhibits A through P (attached to Doc. 10) are properly noticed as official records that have been filed with and/or recorded by the Ravalli County Clerk and Recorder. Fed. R. Evid. 201(b)(2); *see Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

Accordingly, IT IS ORDERED that the Second Amended Complaint (Doc. 19) is accepted as filed. The case caption is amended as reflected above to include Plaintiff Paula Jobe a/k/a Paula Kurtz.

IT IS FURTHER ORDERED that the Foss Defendants' motion to dismiss (Doc. 9) is DENIED as MOOT. The Foss Defendants may refile their motion, or answer, within the 21-days provided by Rule 12. *See* Fed. R. Civ. P. 12(a)(1)(A)(i).

IT IS FURTHER ORDERED that the Foss Defendants' motion for judicial notice (Doc. 11) is GRANTED. Judicial notice is taken of the following documents (attached as Exhibits A through P to Doc. 10):

A. Quit Claim Deed recorded May 25, 2018, as Document No. 721085, Records of Ravalli County;

B. Warranty Deed recorded January 20, 2017, as Document No. 706503, Records of Ravalli County;

C. Notice of Purchaser's Interest recorded October 7, 2016, as Document No. 703016, Records of Ravalli County;

D. Declaration of Covenants, Road Easements, and Irrigation Easements for Sunnyside Orchards LLC, recorded October 7, 2016, as Document No. 703015, Records of Ravalli County;

E. Warranty Deed recorded March 25, 1999, at Book 229, Page 751, Records of Ravalli County;

F. Warranty Deed recorded August 8, 1989, at Book 186, Page 818, Records of Ravalli County;

G. Deed recorded June 2, 1981, at Book 159, Page 239, Records of Ravalli County;

H. Original and Amended Plats of Sunnyside Orchards, recorded in the Records of Ravalli County (1909, 1913), and referenced throughout Plaintiffs' Amended Complaint;

I. Recorded Plat of Townsite of Bitter Root (Nov. 16, 1909);

J. Certificate of Survey No. 4590, recorded 1991, Records of Ravalli County;

K. Certificate of Survey No. 541197-TR, Records of Ravalli County;

L. Certificate of Survey No. 555816-TR, Records of Ravalli County;

M. Certificate of Survey No. 696170-TR, Records of Ravalli County;

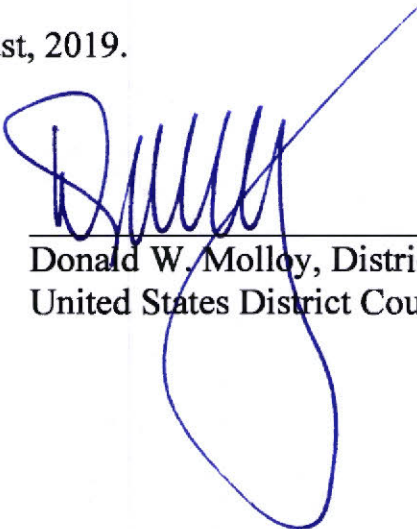
N. Ravalli County Permanent File No. 7957;

O. Abandonment Petition filed with Ravalli County by certain Plaintiffs and others in February 2017, referenced throughout Plaintiffs' Amended Complaint;

P. Amended Abandonment Petition filed with Ravalli County by certain Plaintiffs and others in March 2017, referenced throughout Plaintiffs' Amended Complaint.

These documents do not need to be refiled.

DATED this 20th day of August, 2019.



Donald W. Molloy, District Judge
United States District Court