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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNION PACIFIC RAILROAD
COMPANY,

Plaintiff,

v.

GUARD DOG HEAVEN, LLC,

Defendant.

2:09-CV-1622 JCM (RJJ)

ORDER

Presently before the court is plaintiff Union Pacific Railroad Company’s renewed motion for summary judgment. (Doc. #83). Defendant Guard Dog Heaven has filed an opposition (doc. #91) and Union Pacific has replied (doc. #93).

Background

In the instant action, Union Pacific seeks to enforce an alleged railroad right of way under the General Railroad Right of Way Act of 1875 against Guard Dog. Union Pacific claims that as successor in interest to the San Pedro, Los Angeles and Salt Lake Railroad Company, it is entitled to the rights of way its predecessor in interest retained in the disputed parcel of land, identified as Clark County Assessor Parcel Number 177-06-101-009. Guard Dog purchased the disputed parcel in 2006. Guard Dog has now constructed a fence and storage yard on the property, which plaintiff claims infringes upon its ability to perform railroad tie installation and maintenance work pursuant to its alleged right of way.

1 Thus, to establish a right of way pursuant to the act, a party must submit proof (1) of its
2 organization and (2) of its having filed a copy of its articles of incorporation with the Secretary of
3 the Interior. In this case, Union Pacific must also establish that it is the successor in interest to Los
4 Angeles & Salt Lake Railroad and therefore is entitled to its predecessor's right of way under the act.
5 If Union Pacific makes the requisite showing, it is entitled to exclusive use and occupancy of the
6 right of way. As is evident, the preliminary issue is whether a right of way exists over the disputed
7 parcel.

8 Plaintiff's Exhibit 1 is a certified copy of a letter dated April 20, 1906, from the Secretary
9 of the Interior approving the grant of the right of way from the United States to the San Pedro, Los
10 Angeles and Salt Lake Railroad Company pursuant to 18 Stat. 482. The letter is certified by the
11 Bureau of Land Management. The certification by the Bureau of Land Management satisfies Federal
12 Rule of Evidence 901(b)(7), and thus this exhibit is properly authenticated and admissible.

13 Defendant contends that the letter does not establish whom the right of way was granted to.
14 This court disagrees. The letter establishes that the right of way was granted to the San Pedro, Los
15 Angeles & Salt Lake Railroad Company, because it states that the maps were filed by the San Pedro,
16 Los Angeles & Salt Lake Railroad Company, which is the successor of the Oregon Short Line &
17 Utah Northern Railway Company. The letter explicitly states:

18 In a letter of the 17th instant to the Department you submitted three maps
19 filed by the San Pedro, Los Angeles & Salt Lake Railroad Company, under the act
20 of March 3, 1875 – 18 Stat. 482, – showing the amended definite location of three
21 sections of the line of road of the Oregon Short Line and Utah Northern Railway, in
22 the Carson City land district, Nevada, one map showing 50.392 miles and the others
23 50 miles each, of the line of road of the company.

24 The company filing these maps is the successor of the Oregon Short Line &
25 Utah Northern Railway Company, and it has filed with the maps a formal
26 relinquishment by the Second Vice-President thereof, of so much of the right of way
27 acquired by the approval Nov. 22 and Dec. 29, 1890, of maps filed by the last named
28 company as lies outside of the right of way shown on the maps of amended definite
location.

25 Pl.'s Renewed Mot. Summ. J. Ex. 1. Thus, it is clear that the maps were filed by "the successor of
26 the Oregon Short Line & Utah Northern Railway Company" which is "to the San Pedro, Los Angeles
27 & Salt Lake Railroad Company." *Id.* Accordingly, Guard Dog's argument that the letter does not

1 state the Oregon Short Line & Utah Northern Railway Company’s successor is without merit. The
2 right of way was granted to the San Pedro, Los Angeles & Salt Lake Railroad Company.¹ The letter
3 does not, however, explicitly state where the right of way is located.

4 Plaintiff contends that Exhibit 2, also certified by the Bureau of Land Management and
5 therefore authenticated pursuant to Rule 901(b)(7), is a map that confirms the right of way is located
6 on the disputed parcel. The map contains the notation:

7 R/W Acquisition:

8 United States to S.P.L.A. & S.L.R.R.Co.

9 Act of Congress, March 3, 1875

10 Filing Approved April 20, 1906

11 Assuming that this map depicts the right of way granted by the Secretary of the Interior in Exhibit
12 1, and assuming that said grant confirms that the San Pedro, Los Angeles and Salt Lake Railroad
13 Company complied with all requirements under the act, it is still not clear that this map covers parcel

14
15 ¹ This court finds that Union Pacific is the successor in interest to the San Pedro, Los Angeles
16 & Salt Lake Railroad Company. Specifically, Plaintiff’s Exhibit 3, certified by the Utah Department
17 of Commerce, is an amendment to San Pedro, Los Angeles and Salt Lake Railroad Company’s
18 articles of incorporation, filed August 19, 1906. The amendment changed the name of San Pedro,
19 Los Angeles & Salt Lake Railroad Company to Los Angeles & Salt Lake Railroad Company. The
20 amended articles state:

21 The undersigned, who are respectively the President and Secretary of the San Pedro, Los
22 Angeles & Salt Lake Railroad Company . . . certify that upon motion duly seconded and a
23 vote thereon taken by ballot it was resolved:

24 (a) To amend Article I, of the Articles of Incorporation so as to read as follows:

25 ARTICLE I. The name of said corporation shall be “Los Angeles & Salt Lake
26 Railroad Company”

27 Pl.’s Renewed Mot. Summ. J. Ex. 3, 3:8-9, 4:17-22. Further, Exhibit 4 is a notarized copy of articles
28 of merger that establish that Los Angeles & Salt Lake Railroad Company merged into Union Pacific
Railroad Company on December 3, 1987. On March 2, 1998, Union Pacific Railroad Company
merged into Southern Pacific Transportation Company. *See id.* Ex. 5. “At the effective time of the
merger, the Corporation changed its name to Union Pacific Railroad Company.” *Id.* Accordingly,
Union Pacific has satisfactorily shown that it is the successor in interest to San Pedro, Los Angeles
and Salt Lake Railroad Company.

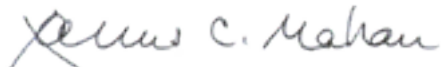
1 177-06-101-009. In short, even if the map properly identifies the right of way granted in Exhibit 1,
2 it remains unclear whether that right of way runs through Guard Dog's property. Accordingly, this
3 court cannot find on the evidence submitted, that Union Pacific enjoys a right of way over the
4 disputed parcel.

5 Therefore,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Union Pacific's renewed
7 motion for summary judgment (doc. #83) be, and the same hereby is, DENIED.

8 DATED October 21, 2011.

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UNITED STATES DISTRICT JUDGE