

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
Docket No. RE-09-40/  
2011-09-01-001

CHRIS KLADOPOULOS, ET. AL., )  
Plaintiffs, )  
 )  
 )  
v. )  
 )  
 )  
DONALD GRILLO, ET. AL., )  
Defendants. )

**ORDER ON THE PARTIES'**  
**MOTIONS FOR PARTIAL**  
**SUMMARY JUDGMENT**

This matter comes before the Court on Plaintiffs' Motion for Partial Summary Judgment on Count I and Defendants Grillo, Roseberry, Douglas and Sandra McPheters, and William and Laurelle Shoemakers' Cross Motion for Partial Summary Judgment.

*BACKGROUND*

On September 14, 2007, Richard E. Seamons conveyed to the Plaintiffs, Chris and Toni A.S.B. Kladopoulos, certain parcels of real property located in Exeter, Maine. (Pl.'s Supp. S.M.F. ¶ 11.) As alleged in the Complaint and reasserted in their summary judgment pleadings, the plaintiffs claim that they have a right to access their Exeter, Maine property over various roads including "the 'Ridge Road,' a portion of the 'Cider Hill Road,' the 'Nichols Road,' and most conveniently and directly, the 'Hawk Hill Road' f/k/a the 'Old Colbath Road.'" (Compl. ¶ 43.). Defendants Grillo, Roseberry, Douglas and Sandra McPheters, and William and Laurelle Shoemaker assert that the Plaintiffs have no right to travel over the Hawk Hill Road. With respect to the Old Nichols Road and the Ridge Road, none of the Defendants who have responded oppose this aspect of the Plaintiffs' Motion for Summary Judgment.

*STANDARD OF REVIEW*

"Cross motions for summary judgment neither alter the basic Rule 56 standard, nor warrant the grant of summary judgment *per se*." *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8 A.3d 646, 648 (citation omitted). The Court reviews the parties' respective statements of material fact separately to determine whether "the record reflects that there is no genuine issue of material fact." *Id.* ¶ 8, 8 A.3d at 649 (citation omitted). "[W]hen facts, though undisputed, are capable of supporting conflicting yet plausible inferences—inferences that are capable of leading a rational factfinder to different outcomes in a litigated matter depending on which of them the factfinder draws—then the choice between those inferences is not for the court on summary judgment." *Id.* (citation omitted).

## ANALYSIS

There are three aspects of the Plaintiffs' Motion for Summary Judgment: one relates to the Ridge Road, one to the Old Nichols Road and one to the Hawk Hill Road.

With respect to the Plaintiffs' Motion for Summary Judgment as it relates to the Old Nichols Road, the Motion is GRANTED. There are five (5) abutters (counted by parcels, not by individuals) who may have an interest in the Old Nichols Road. Three of the owners have been defaulted. The remaining two owners have consented to the entry of judgment.

With respect to the Plaintiffs' Motion for Summary Judgment as it relates to the Ridge Road, the Motion is GRANTED as to all named defendants who are abutting owners, except James and Julie Leavitt. There are thirteen abutters (counted by parcels, not individuals) who may have an interest in the Ridge Road as it relates to this action. Six have defaulted, four have consented to judgment, and one has been dismissed. Another abutter, Michael and Deborah Roderka, have answered and joined in the Defendants' Memo on Summary Judgment. Since none of the Defendants who filed the memorandum objected to the Motion as it relates to the Ridge Road, there appears to be no objection by the Roderkas. However, James and Julie Leavitt filed a letter with the Court on November 30, 2010 stating that they had not received a copy of the Plaintiffs' Motion for Summary Judgment, and the Court has not addressed that letter. Therefore, the Leavitts have been given an additional period of time to respond to the Motion for Summary Judgment.

With respect to the Hawk Hill Road, Plaintiffs' and Defendants' Motion for Partial Summary Judgment are both DENIED. Plaintiffs have argued, under two theories, that they have the right to access their Exeter, Maine property over the Hawk Hill Road, and the Defendants argue that the Plaintiffs do not have that right. The crux of the dispute concerns whether the "Hawk Hill Road" was discontinued by the Town of Exeter in 1950 or in 1972.

Plaintiffs first argue, pursuant to 23 M.R.S. § 3026 (formerly 23 M.R.S. § 3004), that the Hawk Hill Road was discontinued in 1972, and therefore they, along with the general public, have an easement to use the road. In their cross motion for Summary Judgment, Defendants argue that the Hawk Hill Road was discontinued in 1950, and therefore there is no remaining public or private easement. *Compare Frederick v. Consolidated Waste Serv., Inc.*, 573 A.2d 387, 389 (Me.1990) (holding that a road discontinued by a town prior to 1965 created neither a public nor a private easement) *with* 23 M.R.S. § 3004 (1965) (in effect in 1972) (providing that unless otherwise stated, the discontinuance of a town way shall be presumed to relegate the town way to the status of a private way<sup>1</sup>) *with* 23 M.R.S. § 3004 (1965), *repealed by* P.L. 1975, ch. 711, §§ 7-8 (providing that unless otherwise stated, a public easement remains in discontinued town roads). As stated by the Defendants, "if the Court finds ... [the Hawk Hill Road was discontinued by the Town in 1950], Defendants own to the center line of the road

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<sup>1</sup> The term "private way" is a term of art that means "public easement" in common legal parlance in Maine. *See Fournier v Elliot*, 2009 ME 25 ¶ 19 n.6, 966 A.2d 410, 416-17.

and [have] a right to bar Plaintiffs, and . . . the public in general, from using the [Hawk Hill Road]." (Def.'s Opp'n and Cross-Mot. Summ. J. 4.) Alternatively, "if the Court finds . . . [the Hawk Hill Road was discontinued by the Town in 1972], then the Plaintiffs enjoy the right to use the [Hawk Hill Road] along with the general public." (*Id.*) While the Court recognizes that the information and documentation used by each party to support the cross-motions for summary judgment may well be the same information and documentation relied upon by the parties at trial, it is at the trial stage that the essential factual dispute in this case and the sufficiency of the evidence will be determined.

Plaintiffs argue, in the alternative, that 33 M.R.S. § 460 prevents Defendants from barring Plaintiffs' travel over the Hawk Hill Road. This claim is dependent on the Hawk Hill Road being deemed a "town or private way". See 33 M.R.S. § 460. Whether the Hawk Hill Road is determined to be a "town or private way" will depend on factual findings made at trial, and if it is determined that the Hawk Hill Road is a "town or private way" then, pursuant to 33 M.R.S. §460, a factual determination would have to be made whether the Plaintiffs' access over the road was "necessary". Thus, summary judgment is denied on this alternative argument.

The Clerk shall enter this Order upon the docket as follows: Plaintiffs' Motion for Partial Summary Judgment is entered in part and denied in part. Defendants' cross Motion for Partial Summary Judgment is denied.

Dated: April 12, 2011

  
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Ann M. Murray, Justice  
Maine Superior Court