

MEMORANDUM

At an IAS Term, Part 28 of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Supreme Court Building, Riverbed, New York on the 22nd day of May 2020.

Present: Hon. Mark D. Cohen, Justice

Eastender 87, LLC,

Plaintiff,

V.

NW 91 Jobs Lane, LLC,

Defendant.

INDEX NUMBER: 18854/15
 MOTION NUMBER: 001/002
 RETURN DATE: 9/24/19
 DECISION: CDISPJ

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The plaintiff is the owner of real property located at 87 Jobs Lane, Bridgehampton, New York, having obtained such property in 2010. The defendant is the owner of real property located at 91 Jobs Lane, Bridgehampton, New York, having obtained this property in 2012. The defendant's property abuts Sam's Creek, while the defendant's property does not. There is a common lane with a right of way to both properties, which ends at the defendant's property. The plaintiff's deed provides "TOGETHER WITH a right of way over said Cooper's Lane from Job's Lane to Beach or Sam's Creek for passage and re-passage on foot and for all vehicles."

In 1993, the defendant's predecessor- in- interest, one Schuster, sought to subdivide and develop 87 Jobs Lane into three lots, one which would belong to the defendant. As part of the governmental approval, Schuster was required to record a conservation easement that created a 50-foot-wide vegetative buffer along Sam's Creek. Moreover, the final subdivision map depicted that the right of way began at the defendant's property and did not extend to Sam's Creek. Thereafter, the Town of Southampton accepted The Conservation Easement for Protection of Natural Resources and The Conservation Easement for Protection of Archeological Resources involving the properties, both of which were duly recorded.

In 1997, Schuster was granted a wetlands permit to allow the construction of a pool, patio and pool drywell on what later became the defendant's property. The granting of the application included, inter alia, a Declaration of Covenants from Schuster to the Conservation

Board of a 75-foot non-disturbance/non-fertilization buffer extending from the tidal wetlands [Sam's Creek] and also provided that no streets, roadways, or other rights of way or easement for vehicle use were to be constructed or granted. There were no objections raised by any property owner to any of the application at the time of either application.

The plaintiff commenced this action seeking a declaratory judgment that its right of way over Cooper Lane extends to Sam's Creek, that defendant does not own Cooper Lane, granting it an injunction enjoining the defendant from interfering with the plaintiff's right of way to Sam's Creek, opening the lane to Sam's Creek, finding that the plaintiff has an implied easement by grant or reservation, or an easement of necessity, or an easement appurtenant. The defendant answered and raised eight affirmative defenses, including that the right of way to Sam's Creek was extinguished by adverse possession, acquiescence, waiver and the passage of more than 10 years from the filing of the subdivision map and recording of the conservation easement, the right of way was abandoned, barred by laches and estoppel and barred by the statute of limitations. Procedurally, the defendant raised the failure to join necessary parties, including the ZBA, Planning Board, Conservation Board and Town Board. The defendant has moved for summary judgment. The plaintiff has moved for an extension of time to submit a motion for summary judgment.

Initially, the procedural issue of joinder of necessary parties needs to be addressed. Necessary parties are "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action." CPLR 1001 [a]. When one describes property it is a "bundle of rights." *Kaiser Aetna v. United States*, 444 U.S. 164, 167. It is uncontroverted that the Town and Conservation Board received a bundle of rights by the defendant's predecessor-in-interest. In fact, the plaintiff's submission concedes this point noting that the 1993 conservation easement "could be construed as a restriction on the Plaintiff's right of way." Plaintiff's Memorandum of Law, p. 4. The plaintiff further argues that both transfers do not prohibit pedestrian use. However, without those necessary parties presenting their position as it effects their bundle of rights, complete relief cannot be granted.¹

The plaintiff argues that clearly the government could not fully take the right of way, since it would be an unconstitutional taking. Initially, it is unclear that the transfer would raised to the level of an unconstitutional taking. See *Dolan v. City of Tigard*, 512 U.S. 374; *Smith v. Town of Mendon*, 4 N.Y.3d 1. Furthermore, without those parties, there is no complete record of what occurred at the time of the transfer to know whether the taking was unconstitutional. Even assuming it was a total taking, the plaintiff's predecessor-in-interest would have been entitled to monetary relief.²

A final issue raised by the plaintiff is that dismissal is not required. The Court can directed the necessary parties to be added. CPLR 1003; RPAPL 1511(2). In many cases such action would be appropriate. However, here in this equitable action, the equities balance against it. Initially, this action has proceeded five years and the note of issue has been filed. Furthermore, a notice of pendency was filed on October 28, 2015. If the parties were added, it would require further discovery, striking the note of issue, and continuance of the notice of

¹. In other words, any declaration by the Court would impact those parties rights.

². If raised today, there may be an issue of the statute of limitations.

pendency for a period of time.³ Moreover, the plaintiff could have determined the issue of necessary parties in a timely manner by moving to strike that affirmative defense raised in the defendant's answer in January, 2016. See CPLR 3211(b). Therefore, equity requires denial of the plaintiff's position that the parties should be added at this late date. Consequently, the defendant's motion to dismiss is granted.⁴

Settle judgment.⁵

ENTER:

MARK D. COHEN, J.S.C.

³. Although the length of time would not violate the Rule Against Perpetuity, such a cloud on title is disfavored.

⁴. The Court does hope that the parties could arrange an understanding to allow the plaintiff to have pedestrian access to Sam Creek. Good neighbors should be able to reach such an agreement, especially at a time in which recent experience has shown that good neighbors can come together for the common good.

⁵. Since the motion to dismiss is granted on procedural grounds, there is no basis to declare any party's rights under CPLR 3001.