

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living)
Trust of Barbara S. Eastman,)
))
Plaintiff)
))
v.)
))
Town of Underhill, David Arnold,)
Stanley and Sue Senger, and Carl and)
Carol Menard,)
))
Defendants)

September 2, 2016

Christine Brock, Clerk
Superior Court Chittenden Unit
P.O. Box 187
Burlington, VT 05401

Re: Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman
Docket No. 333-4-15 Cnv

Dear Christine:

I am enclosing Defendants response to Plaintiff's Motion for Summary Judgment, with 3 attached Exhibits, and with attached Certificate of Service.

I am also enclosing Defendants First Set of Discovery Requests to the Plaintiff, with attached Certificate of Service.

Thank you for your assistance. Please give me a call if you have any questions or concerns regarding this matter.

Sincerely,



Stanley Senger
99 Repa Road
Underhill, Vermont, 05489
802-899-4879

Stanley and Susan Senger
99 Repa Road, Underhill Vermont 05489
Phone 802-899-4879

STATE OF VERMONT
SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 333-4=15Cncv

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman,

Plaintiff

V

Town of Underhill, David Arnold, Stanley
And Susan Senger, and Carl and Carol Menard

Defendants

ANSWER TO AMENDED COMPLAINT

NOW COMES Stanley and Susan Senger, *pro se*, and hereby answers as follows:

We, the defendants have found disturbing news of information provided to us from the plaintiff's lawyers. They sent the Affidavit from Robert Nolan to the town of Underhill dated August 15, 2016 and a cover letter to the town containing reference to information not disclosed to us. Letter is attached to this response labeled Exhibit A.

We understand we are separate but equal defendants in the plaintiff's lawsuit. As such we should be afforded access to all disclosed information provided to the other defendants. As Exhibit A identifies the response as Interrogatory No. 6, we suspect there may be more items of evidence withheld and this is not an isolated omission. We request the court to investigate this item, and if validated, require the plaintiff to remedy the harm to us they have caused. If the court validates this and finds the plaintiff negligent or worse in their duty, we pray the court to further sanction the plaintiff as seen appropriate, including dismissing the suit and finding in our favor on all accounts.

If validated we request the court require the plaintiff to distribute the missing information to all defendants in this matter.

As direct response to the Plaintiff filing August 2, 2016 and the court requesting our timely reply, we are responding in sections:

- 1) Request to the court to find in our favor most all of Claims 1,2,3
- 2) Request to the court to find in our favor of our Counterclaim in entirety.
- 3) Response to the Affidavit sent to us by Robert Nolan in correspondence dated August 2, 2016
- 4) Full response to claims 1-20 that in our initial filing stated we did not have sufficient information to respond to at that time.
- 5) Amended response including memorandums of law to support Claims 21, 22, 23

Item 1

Plaintiff has reviewed our initial filing and has challenged Claim II Paragraph 2.
Our response to this challenge is contained in Item 3.

Plaintiff has not challenged Count I, Count II Paragraph 1, or Count III, nor have they indicated inadequate information to formulate a response.

Thus, we the defendants request the court to record these claims as undisputed facts for this case.

Item 2

Plaintiff has not challenged our initial filing Counterclaim, nor have they indicated inadequate information to formulate a response.

Thus, we the defendants request the court to record these counterclaims as undisputed facts for this case.

Item 3

Response to plaintiff's challenge of Count II Paragraph 2.

Response to Plaintiff's Affidavit of Robert Nolan by Line item:

- 1) Claim is that the last residential use of the Eastman Trust property was by the prior owner 55 years ago. We cannot confirm or deny this claim.
- 2) We cannot confirm or deny this claim.
- 3) Claim does not assert vehicular access the full length of Repa Road, in particular the Class 4 section now reclassified as Repa Trail. Claim does not assert that even if vehicular access was possible the full length of Repa Road seasonally, that is was accessible year round. We cannot confirm or deny this claim.
- 4) The Crick school, as all Underhill District schools, was closed following the 1951-1952 school year thus the last asserted Repa Road pedestrian access to what is now the Eastman Trust parcel occurred in 1952. We cannot confirm or deny this claim.
- 5) We cannot confirm or deny this claim.

Discussion of Affidavit of Robert Nolan:

Robert Nolan's Claim 3 is in direct conflict with Statement of Undisputed Facts Item 3 beginning "Prior to 1972, access to the Eastman Parcel was by Goodrich Road (Westford Town Highway #24". Possibly the minor child of the landowners did not know of all of access routes.

Upon Information and Brief by Stanley Senger is enclosed as Exhibit B.

The purpose of this brief is not to disclaim Robert Nolan's assertions in minutia, but merely to request the court to take a sharp look at the wordings of the claim and to not boldly generalize them to an assumed construct of actual Repa Road travel routines by the Nolan family.

Item 4

ANSWER TO AMENDED COMPLAINT

Full response to claims 1-20

Claim 1:

Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit A.

Claim 2:

Defendants do not admit or deny this claim.

Claim 3:

Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit A.

Claim 4:

Defendants do not admit or deny this claim.

Claim 5:

Defendants do not admit or deny this claim.

Claim 6:

Defendants do not admit or deny this claim.

Claim 7:
Defendants do not admit or deny this claim.

Claim 8:
Defendants do not admit or deny this claim.

Claim 9:
Defendants do not admit or deny this claim.

Claim 10:
Defendants do not admit or deny this claim.

Claim 11:
Defendants do not admit or deny this claim.

Claim 12:
Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit C.

Claim 13:
Defendants request claim be reclassified as disputed.
Plaintiff has not furnished any supportive evidence.

Claim 14:
Defendants claim this conflicts with Claim 3 and is misleading, thus disputed.
Plaintiff Claim 3 states that the Eastman Trust parcel historically was accessible by both the western and eastern borders.

Claim 15:
Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit D or E.

Claim 16:
Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit F.

Claim 17:
Defendants request claim be reclassified as disputed.
Plaintiff has not furnished said Exhibit D, E, or F.

Claim 18:
Defendants do not admit or deny this claim.

Claim 19:
Defendants request claim be reclassified as disputed.
Plaintiff claims the contents of the Revocable Living Trust of Barbara S. Eastman are not relevant to this case. We disagree. Enclosed is an Upon Information and Brief (Exhibit C) suggesting the observable outward persona Dr. and Mrs. Eastman presented to me differs from the request and intentions in this suite filed by the Eastman Trust. Also we have filed a Defendants First Set of Discovery Request requesting a copy of the Trust Document for inspection.

Claim 20:
Defendants do not admit or deny this claim.

Item 5
AMENDED ANSWER TO COMPLAINT with Supportive Memoranda of Law

Claim 21:
Defendants deny this claim that Eastman Trust has only 1 access route to their land.

Support 1:
Prior to 1972, the Eastman's parcel had 2 legal access points to their land, via Class 4 Repa Road on the east, and via class 4 Goodrich Road on the west. These roads were intact when the parcel transferred to Eastman Trust.

Defense 1 assertion:

When Westford and Underhill met in 2000 and jointly voted to reclassify the Class 4 portion of Repa Road, and the entirety of Goodrich road to be trails, the status of access to the Eastman Trust parcel changed, but not the legal equivalence of the 2 access routes; by common law or by Statute.

Support 2:

Plaintiff references the illegal road closure attempt in 1972 by Westford in this case. We request the court not be swayed by this conjecture, and the fact that it was stricken as invalid.

Defense 2 assertion:

Clearly Goodrich Road existed intact from ancient times to now, without gap, never discontinued in whole or part since it would have required "taking" via a legal process to make it a trail if indeed it had been discontinued. There is no dispute by the Plaintiff that the former Goodrich Road is legally now, by statute, Goodrich Trail.

Support 3:

We must assume the town of Westford dutifully maintained their bridges and culverts the entire length of Goodrich Road as required even on class 4 highways thru 1972. (A Hood) "Thus even with a Class 4 highway that a town is not mandated by statute to maintain, a town must maintain the highways bridges and culverts to avoid or minimize tort liability". ~~The road must have been minimally maintained at a minimum.~~

Defense 3 assertion:

Plaintiff does not claim any access to the Eastman Trust parcel from 1961 to date, thus could have suffered no harm by the interim Goodrich Road churn by the town between 1972 and the time it was legally reclassified as Goodrich Trail in 2000.

Support 4:

Plaintiff claims a private right of way by way of discontinued town highway based on 19 V.S.A 717(C). Wording of 19.V.S.A 717C, as written identifies "necessary" private access rights process if only 1 access point exists, but does not address cases with multiple access points. "Necessary", does not confer "reasonable and convenient".

Please follow this logic:

The plaintiff is suing to allow a residence and vehicular access to town highways for the resident.

To travel by vehicle from the residence, built on Eastman Trust parcel but not on the Goodrich Trail easement, to any town highway requires a private vehicular right of way on Goodrich Trail, as no portion of Eastman Trust parcel not on the Goodrich Trail easement abuts Repa Trail. Those rights extend the entire length of Goodrich Trail.

Having the vehicular access private right of way on Goodrich Trail they could travel west, accessing Westford Town highways, or they could travel east, up to the Westford / Underhill Town line.

Without having considering any potential access rights on Repa Trail, they already are granted "necessary" vehicular access on Goodrich Trail to a public highway to Westford, thus satisfying the necessity clause of 19. V.S.A 717 (C).

Request for a private right of way on Repa Trail can only be made for reasonable and convenience, not for necessity.

Defense 4 assertion:

Eastman Trust contains 2 legally equivalent access points. The necessity plea can only be had to access Goodrich Trail. A claimed necessity on private vehicular right of way on Repa Trail does not fulfill the plaintiff's original goal of the suit, vehicular access to a residence on Eastman Trust parcel. For this end goal plaintiff still requires a private vehicular right of way on Goodrich Trail.

Additional Counterclaim:

We the defendants claim the legal quality of access to a town highway through Goodrich trail is, and through known history always was identical to the access to a town highway through Repa trail. Plaintiff requires one necessity cited private right of way to exit west to Westford and 2 private rights of ways to exit east through Underhill.

Defendant requests court to find the requested private right of way on Repa Trail as it, by itself, is insufficient to satisfy plaintiffs overall goal, and the simpler solution granting the private vehicular right of way over Goodrich Trail by necessity satisfies 19.V.S.A 717 (C).

Claim 22:

Defendants deny this claim.

The cited cases Thompson v. Ryan and Okemo Mountain, Inc, v. Town of Ludlow are substantially different than this case.

Support 1:

Thompson v. Ryan the plaintiff claims private access rights where he had 2 unequal access points; , one was a town road, and the other a discontinued highway periodically used by the landowner for hunting and timbering. Eastman Trust has 2 equal access points, neither of which has been used by the landowner. The courts in Thompson v. Ryan found the Plaintiff did retain a private access to discontinued highway route, but the scope of the granted right of way was limited to the landowner's prior uses, hunting and timbering, not unrestricted access.

Plaintiff in this case requests a private unrestricted access right of way. For the court to apply the Thompson v. Ryan ruling to this case, they should deny any private access right of way to the plaintiff requests as they have suffered no harm by its lacking, as the requested access was never used by the plaintiff.

Defense assertion:

Eastman Trust never claimed use of public right of way, thus suffer no harm by not having a private right of way.

Support 2:

Okemo v. Ludlow specifically cited a timeframe to file aspect. "We also note that this dispute has arisen only recently, even though the original lease to Okemo Mountain, Inc. was given in 1956. Okemo has relied upon that lease in constructing its ski area and facilities, and the record indicates no objection to its development and construction until recently. "

Eastman Trust has owned the parcel since 1995 and participated in public forums leading up to the Goodrich Road / class 4 section of Repa Road reclassification agreement in 2000. That final approval contained appeal procedure pursuant to V.R.C.P. 75 with a right to appeal this decision within 30 days. They had no objection to this reclassification until recently.

Two other impacted landowners in Westford, Joseph Bornstein and A. J. Johnson did quickly appeal and were afforded private access rights consistent with their prior land use. Both towns took this precedence to avoid litigation and minimize harm to affected landowners.

Eastman trust knew or should have known at that time adjacent landowners were exerting their appeal rights afforded them as the granted easements cross the Eastman Trust parcel.

Defense assertion:

Applying the Okemo v. Ludlow comment to this case, the plaintiff knowingly disregarded the legal process of appeal afforded them in a timely manner and thus relinquished their right to appeal.

Additional Counterclaim:

We, the defendants claim the plaintiffs have suffered no tangible harm to date without any private right of way by Repa Trail to the Eastman Trust parcel, thus should not be afforded damage remedy. We also claim the plaintiff knowingly disregarded the appeal process afforded them to remedy any damage claims.

We, as preparation to provide for our totally and permanently disabled child, awaited more than 3 years after this ruling before we felt at ease this issue was beyond reasonable timeframe for challenge to the access to Westford by Repa Trail by any un-asserted party. We embarked on an extensive homestead upgrade to provide for our son through adulthood in a safe environment. Permitting full, unrestricted access over Repa Trail to the plaintiff harms us as fully described in our initial filing.

Claim 23:

Counterclaim fully described in our initial filing.

Wherefore:

Defendant respectfully prays the court to issue an order denying the Eastman Trust the entitlement to use the 238 feet length of trail at the terminus of Repa road for requested use and to an award of money damages for Court costs and attorney's fees, and such other and further relief to the Defendants as the court may deem just and proper.

Signed Stacy Seeger

Dated Sept 2, 2016

Signed Stacy Seeger

Dated 9/2/16

Notary Public Barry B...
FD 2-10-19

Dated Sept 2, 2016

Stanley and Susan Senger
99 Repa Road, Underhill Vermont 05489
Phone 802-899-4879

STATE OF VERMONT
SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 333-4=15Cncv

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman,

Plaintiff

V

Town of Underhill, David Arnold, Stanley
And Sue Senger, and Carl and Carol Menard

Defendants

ANSWER TO AMENDED COMPLAINT

NOW COMES Stanley and Susan Senger, *pro se*, and hereby answers as follows:

Count I (Claim 21):

Paragraph 1 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. Plaintiff has stated their access to their property on the western terminus via Goodrich trail in Westford and the eastern terminus via Repa trail in Underhill.

Count II (Claim 22):

Paragraph 1 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. Towns of Westford and Underhill, after public inputs in 2000 changed the status of Goodrich Road and a portion of Repa Road to trails. Eastman's Trust agents participated in that process. They did not challenge or appeal this action through the process they were afforded.

Paragraph 2 - We disagree with this claim and requests plaintiff not be given anything asked for in this complaint. Plaintiff has provided no evidence that request is for a single family home or evidences of historical use. Plaintiff has not demonstrated any "necessary need" to Repa trail access, as Goodrich trail at the western terminus is open.

Count III:

Paragraph 1 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. We were party to the discussions in 2000 surrounding the Goodrich Road / Repa Road issue. Decisions by both towns to reclassify these roads were not arbitrary, not irrational, and not motivated by personal reasons unrelated to their official duties. Eastman's Trust agents participated in that process. They did not challenge or appeal this action through the process they were afforded.

Paragraph 2 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. Plaintiff affords the same access rights on Repa trail and Goodrich trail as we have.

Paragraph 3 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. Plaintiff affords the same fair and impartial rights on Repa trail and Goodrich trail as we have.

Paragraph 4 - We disagree with this claim and request plaintiff not be given anything asked for in this complaint. Plaintiff has not demonstrated discrimination on this issue.

Claims 1-20

In response to counts alleged 1 through 20 the Defendants do not have sufficient information to admit or deny these claims.

Counterclaim:

We purchase our homestead in 1986. We later had a son with special needs and uses a power wheelchair for self ambulation. He has many friends in this neighborhood and enjoys walking Repa road to visit them and for pleasure.

Following the reclassification of Goodrich road and portion of Repa road we heavily invested in handicap accessibility for our house and homestead knowing that with the road status change we could provide a safe environment for our son through adulthood.

Granting Plaintiffs request to access their property from the eastern terminus will:

- 1) Harm our son's safety of pedestrian travel on Repa Road
- 2) Depress the livability, and emotional value of our homestead.
- 3) Depress the financial and invested value of our homestead.

Wherefore:

Defendant respectfully prays the court to issue an order denying the Eastmans Trust the entitlement to use the 238 feet length of trail at the terminus of Repa road for requested use and to an award of money damages for Court costs and attorney's fees, and such other and further relief to the Defendants as the court may deem just and proper.

Signed

Stanly Senger

Dated

5/26/2016

Signed

Susan Senger

Dated

5/26/2016

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living)
Trust of Barbara S. Eastman,)

Plaintiff)

v.)

Town of Underhill,)

Defendant)

**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST SET OF
DISCOVERY REQUESTS**

NOW COMES Plaintiff, Eastman Trust, by and through its attorneys, Clarke Demas & Baker, and hereby supplements its response to Interrogatory No. 6 of Defendant's Interrogatories and Requests to Produce.

a. Interrogatory No. 6

- A. Did Plaintiff, or its predecessors in title, ever use Goodrich Road to access the Property? If so, please describe all such use including the year, the means of access (by foot, by car), and the purpose of said access.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: See attached Affidavit of Robert Nolan.

Dated at Burlington, Vermont this 15th st day of August, 2016.

CLARKE DEMAS
& BAKER
ATTORNEYS AT LAW
SHELBURNE RD., 2ND FLOOR
P. O. BOX 4484
BURLINGTON, VT 05406-4484
TELEPHONE (802) 652-1400
FAX (802) 652-1405

Exhibit A

STATE OF VERMONT
SUPERIOR COURT
Chittenden Unit
4=15Cncv

CIVIL DIVISION
Docket No. 333-

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman,

Plaintiff

V

Town of Underhill, David Arnold, Stanley
And Susan Senger, and Carl and Carol Menard

Defendants

Upon Information and Belief

NOW COMES STANLEY SENGER, and being duly sworn, deposes and says:

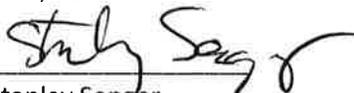
I met John Repa on one occasion. He resided at the "Repa House" now identified as 43 Repa Road, purchased in 1951 and sold in 1982 (Underhill Town Records Book 51, Page 65).

The meeting concerned of sale of his woodlot that abuts our property on the south side that was eventually purchased in 1990 by Craig Armstrong, Sam Ward Road, Underhill.

I asked John about the history of the Repa Road region, as he was a long time resident. He commented that the town turnaround for winter plowing used to be at his residence and the road above him was rough. The section he described as rough is the approximately 2/3 mile Repa Road from his house to the Westford line.

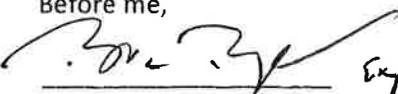
I inquired on August 29, 2016 at the Underhill town hall for any documentation to support or counter the claim of accuracy that the Repa House was the plow turnaround point. Without hesitation a town employee confirmed town lore that the Repa House was indeed the historic town turnaround prior to new houses being constructed further up the hill. Two other town employees witnessed this conversation, but all refused a request by me for an affidavit due to legal concerns in this matter.

Dated at Underhill, Vermont this 2 day of September, 2016


Stanley Senger

At Underhill, in said County this 2nd day of September 2016, personally appeared Stanley Senger and made oath to the truth of the foregoing.

Exhibit B

Before me,

Notary Public *Exp 2-10-19*

STATE OF VERMONT
SUPERIOR COURT
Chittenden Unit
4=15Cncv

CIVIL DIVISION
Docket No. 333-

Brianne E. Chase, Trustee of the Revocable Living
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Town of Underhill, David Arnold, Stanley
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Defendants

Upon Information and Belief

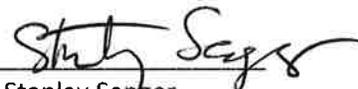
NOW COMES STANLEY SENGER, and being duly sworn, deposes and says:

I met Dr. and Mrs. Eastman on one occasion. I do not recall the year. We moved to 99 Repa Road in 1985 and still reside there.

I was coming home from work one day and saw a car in Dave Arnold's driveway at the end of Repa Road. I continued driving past my driveway to inspect, as it was not Dave's car. I saw 2 elderly people walking the path (now known as Repa Trail, and prior to the improvement from the A.J Johnson logging operation) towards me from Eastman's property. We met and introduced to each other, they were Dr. and Mrs. Eastman.

He mentioned they did not get up there much anymore and he loved to do bird watching. I asked if it was OK for my family to hike and ski on his property and he responded yes it was OK. He then asked me if I had a snow machine, he said he did not want any snow machines on his property as they disturb the animals. I stated I do not. He asked me to keep an eye out for them, and hunters also. I said I would.

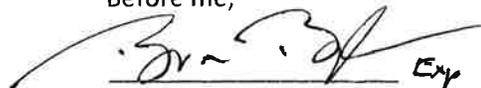
Dated at Underhill Vermont this 2 day of September, 2016


Stanley Senger

At Underhill, in said County this 2nd day of September 2016, personally appeared Stanley Senger and made oath to the truth of the foregoing.

Exhibit C

Before me,


Notary Public Exp 2-10-19

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 333-4-15 Cncv

| | |
|---|---|
| Brianne E. Chase, Trustee of the Revocable Living |) |
| Trust of Barbara S. Eastman, |) |
| |) |
| Plaintiff |) |
| |) |
| v. |) |
| |) |
| Town of Underhill, David Arnold, |) |
| Stanley and Sue Senger, and Carl and |) |
| Carol Menard, |) |
| |) |
| Defendants |) |

CERTIFICATE OF SERVICE

I, Stanley Senger, hereby certify that on the 2 day of September, 2016, I sent a copy of Response to Plaintiff's Motion for Summary to Plaintiff via U.S. mail, postage prepaid to:

Elizabeth M. Demas, Esq.
Clarke Demas & Baker
346 Shelburne Road, Suite 203
P.O. Box 4484
Burlington, VT 05406-4484

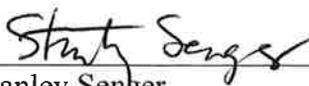
With copies to:

Murphy Sullivan Kronk

Carl and Carol Menard

David Arnold

DATED at Underhill, Vermont this 2 day of September, 2016.



 Stanley Senger
 Pro Se