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OPINION OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA (JUNE 6, 2019)

DISTRICT OF COLUMBIA COURT OF APPEALS

KEBREAB ZERE,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

No. 17-CV-829

Appeal from the Superior Court of the District of Columbia (CAB-772-16) (Hon. Brian F. HOLEMAN, Trial Judge)

Before: BLACKBURNE-RIGSBY, Chief Judge, EASTERLY, Associate Judge, and NEBEKER, Senior Judge.

BLACKBURNE-RIGSBY, Chief Judge:

Pro se appellant Kebreab Zere appeals the trial court's July 7, 2017, order granting appellee District of Columbia's motion for summary judgment and entering a declaratory judgment that the public has a prescriptive easement to traverse an alley between O and N Streets, NW, for which he is the property

owner.[1] Mr. Zere argues that the trial court erred in granting summary judgment in favor of the District, and that the establishment of a prescriptive easement constitutes a de facto unconstitutional taking of property without just compensation. We affirm.

I.

Mr. Zere purchased five of the six lots forming the alley between the row houses located in the 3200 block of O Street, NW and the 3200 block of N Street, NW from tax sales. Mr. Zere acquired title to each of the lots in separate tax-sale foreclosure actions between 2006 and 2011. Mr. Zere appears to be an experienced tax-lien purchaser.[2] Subsequently, he attempted to erect a fence to block the alley, and combine the five lots into one. However, the Historic Preservation Review Board denied Mr. Zere's proposed consolidation of the five lots.

In response to Mr. Zere's attempt to block the alley, the District of Columbia filed a complaint for declaratory judgment and injunctive relief against

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[1] A prescriptive easement is an interest in land owned by another, consisting of the right to use or control the land for a specific limited purpose, that is established by a claimant's open, notorious, continuous, and adverse use for the statutory period of fifteen years. *Martin v. Bicknell*, 99 A.3d 705, 711-712 (D.C. 2014). We clarified in *Martin* that, while the use of a prescriptive easement must be adverse, unlike an adverse possession claim, a plaintiff need not show the element of exclusivity to make out a claim of a prescriptive easement because "servitudes are generally not exclusive." *Id.* at 711, 713-714 (quoting RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 2.17 cmt. g (AM. LAW. INT. 2000)).

[2] Between 2004 and 2016, Mr. Zere filed twenty tax-sale foreclosure actions.

Mr. Zere to prevent his interference with the public's right to traverse the alley. The District subsequently filed a motion for summary judgment alleging that the lots owned by Mr. Zere were encumbered by a public prescriptive easement, and that Mr. Zere took title to the lots subject to that easement. The District argued that members of the public had traversed the alley for many years, that this use was open, notorious, adverse, and continuous for over fifteen years, from 1980 to 1995, and, thus, a public prescriptive easement had been established by 1995. The District further asserted that, although the alley was privately owned, the District had long recognized its public use, which was evidenced, in part, by the District of Columbia Department of Transportation's ("DDOT") maintenance of the street light in the alley and pavement of the alley in 2003. The District further alleged that the easement over the alley was perfected by 1995, before Mr. Zere acquired title, and that the District's request for declaratory judgment was not a new acquisition that would constitute a taking or require compensation.

As part of its motion for summary judgment, the District filed a statement of undisputed material facts, pursuant to Super. Ct. Civ. R. 12-I(k), which was supported by declarations from three individuals who lived in townhouses abutting the alley—John Queenan, Gerald Turner, and Mary Carter. Taken together, the three declarations asserted that, from 1980 to at least 1995, the residents used the alley daily without asking permission. The declarants also observed members of the public using the alley on a daily basis for a number of purposes without asking for permission. Moreover, the declarants assert that the public's usage of the

alley is visible to anyone who lives adjacent to it, or who has passed by it in recent years.

Mr. Zere did not file a statement of disputed material facts pursuant to Rule 12-I(k) in response to the District's motion for summary judgment. As a result, the trial court was entitled to assume that the facts set forth in the District's statement of undisputed material facts were admitted without controversy. *See Jane W. v. President & Dirs. of Georgetown Coll.*, 863 A.2d 821, 826 (D.C. 2004). In his subsequent opposition to the summary judgment motion, Mr. Zere made the following arguments: (1) there were no records maintained by DDOT to support a public prescriptive easement, and DDOT only repaved the alley once in 2003; (2) the easement does not meet the adversity element of a prescriptive easement because the trespassing is permissive; and (3) any prescriptive easement was extinguished by the tax-sale foreclosure. Mr. Zere further argued in his opposition that, under the Takings Clause of the Fifth Amendment, he should be compensated for the value of the lots.

The trial court granted summary judgment in favor of the District. The trial court held that there was no material disputed issue of fact that the public had traversed the alley openly, notoriously, continuously, and adversely in excess of the fifteen-year statutory period to establish a public easement by prescription. The trial court also held that pursuant to D.C. Code § 47-1382(a)(3) (2012 Repl.), the alley was conveyed to Mr. Zere subject to a public easement observable by an inspection of the property. The trial court explained that the alley was "clearly burdened" by the public's right to traverse it, and this right was easily observable to any tax-lien purchaser. This appeal followed.

II.

A. Summary Judgment

We review a trial court's order granting summary judgment *de novo*. *Newmyer v. Sidwell Friends*, 128 A.3d 1023, 1033 (D.C. 2015). Mr. Zere's first argument is legal in nature, in which he claims his tax-sale purchase of the lots extinguished all unrecorded easements. To the extent that Mr. Zere is raising a res judicata defense, we conclude it to be without merit. D.C. Code § 47-1382(a)(3) provides that tax-sale purchasers take a fee simple interest in property subject to "[e]asements of record and any other easement that may be observed by an inspection of the real property." (emphasis added). Therefore, the tax sale would not have extinguished any preexisting easement.[3] The question then becomes whether such an easement existed and, in particular, whether the trial court could make this determination on summary judgment.

In determining whether summary judgment was appropriate, we view the evidence in the light most favorable to the non-prevailing party and we draw all reasonable inferences in that party's favor. *Liu v. U.S. Bank Nat'l Ass'n*, 179 A.3d 871, 876 (D.C. 2018). Summary judgment is appropriate where there is no genuine issue of material fact and a party is entitled to a judgment as a matter of law. *Id.* (citation and internal quotation marks omitted). Once a party provides

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[3] Mr. Zere also argues that the District should not have sold him the lots in a tax-sale if the entire alley was burdened with the easement and therefore had no value. Regardless of the validity of this claim, it does not affect the existence of the easement. Furthermore, Mr. Zere was required to first raise this argument in a counterclaim with the trial court, and he failed to do so.

sufficient evidence to establish its entitlement to judgment as a matter of law, the burden shifts to the adverse party to set forth facts placing issues in dispute. *Newmyer*, 128 A.3d at 1033. The opposing party cannot rely solely on denials. *See, e.g., Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 249 (1986) (non-moving party must provide "sufficient evidence supporting the claimed factual dispute" in order to defeat a motion for summary judgment) (internal citations omitted); *Newmyer*, 128 A.3d at 1033 ("mere 'conclusory allegations' are insufficient to defeat the [summary judgment] motion.") (internal citations omitted).

"An easement is an interest in land owned by another person, consisting in a specific limited right to use or control the land." *Martin*, 99 A.3d at 708 (internal alternations, brackets, and citation omitted). The elements to establish a prescriptive easement by the public are the same elements required to establish a private prescriptive easement, and the burden rests on the claimant to show by a preponderance of the evidence that a prescriptive easement was established. *Hefazi v. Stiglitz*, 862 A.2d 901, 910 (D.C. 2004); *see also* 25 AM. JUR. 2D *Easements and Licenses* § 36 (2014). To establish the existence of a prescriptive easement, a claimant must demonstrate that use of another's land was open, notorious and adverse for a period of at least fifteen years. *Martin*, 99 A.3d at 711; *see also* D.C. Code § 12-301(1) (2012 Repl.) (statute of limitations for bringing a claim for the recovery of land is fifteen years). The sole element that Mr. Zere takes issue with is whether the use was adverse.

Adverse use of land is use executed in a manner that does not recognize the right of the landowner to stop it. *Chaconas v. Meyers*, 465 A.2d 379, 382 (D.C.

1983). Adversity may be presumed from proof of open and continuous use for the statutory period absent contrary evidence. *Id.* Permissive use can defeat a claim of adversity, and can be granted explicitly or implicitly by the landowner through the interactions between the parties. *See id.* at 382-383. However, mere acquiescence is not permission. *Martin*, 99 A.3d at 712.

The District's statement of facts supported each of the requisite elements of a prescriptive easement. The declarations of three residents of townhouses abutting the alley—Queenan, Turner, and Carter—showed that the public's use was open, notorious, and adverse for the fifteen-year statutory period. Mr. Queenan resided in a townhouse abutting the alley from 1980 until 2016, and stated that during those thirty-six years he used the alley daily and observed his neighbors and the public use the alley daily. Mr. Queenan stated that the alley had never been blocked, aside from a few rare occasions "when the United States government did so for security reasons." Mr. Queenan further stated that he never asked nor observed anyone else ask for permission to use the alley and that he did not believe that anyone had a right to stop him from using the alley.

Mr. Turner and Ms. Carter, who have been residing in townhouses abutting the alley since 1989 and 1996, respectively, corroborated Mr. Queenan's declaration. Mr. Turner and Ms. Carter both stated that since they began living in their townhouses they have used the alley daily and have observed members of the public use the alley in a multitude of fashions. Mr. Turner and Ms. Carter stated that they have never asked for permission to use the alley, nor have they observed anyone else asking for permission to use the alley, nor did they

believe anyone had the right to stop them from using the alley. Mr. Zere did not file a statement of disputed material facts pursuant to Super. Ct. Civ. R. 12-I(k), and therefore, the trial court was entitled to consider the District's evidence as undisputed. *See Jane W.*, 863 A.2d at 826.

Mr. Zere contends that he raised material disputes of fact in his opposition to the District's motion for summary judgment. We disagree that Mr. Zere created any material disputes within his opposition. Mr. Zere contends that the declarants lacked credibility because he was not able to cross-examine the declarants. However, Mr. Zere's credibility challenge is misplaced because, at the summary judgement stage, the trial court does not assess credibility, and Mr. Zere is not entitled to cross-examine the affiants. *Anderson v. Ford Motor Co.*, 682 A.2d 651, 654 (D.C. 1996); *see Bortell v. Eli Lilly & Co.*, 406 F. Supp. 2d 1, 11 (D.D.C. 2005) (agreeing with the Seventh Circuit that Rule 56 governing summary judgment does not have a cross examination requirement); *see also Journal of Commerce, Inc. v. U.S. Dep't of Treasury*, 1987 WL 4922 at *3 (D.D.C. Jun. 1, 1987) (holding that there is "no automatic entitlement to cross-examination" at the summary judgement stage because that "would in essence deprive [ ] defendants of their right to move for summary judgment on the basis of appropriate affidavits.").[4]

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[4] Mr. Zere also argues that the declarations were in violation of the Dead Man's Statute, D.C. Code § 14-302(a) (2012 Repl.), but this statute does not apply. The Dead Man's Statute is intended to protect a deceased party from being fraudulently held liable in a legal action where the only evidence of liability is the claimant's own assertion that the deceased was obligated to him in some

Mr. Zere contends that the District did not establish adversity because there is a dispute as to whether the public's use of the alley was merely permissive. He claims that none of the declarants showed they ever made a claim of right on the lots, nor did they maintain the lots, or interfere with the use of the lots by the owner. However, other than denials, Mr. Zere presents no evidence to place this issue in dispute. *See Beard v. Goodyear Tire & Rubber Co.*, 587 A.2d 195, 198-99 (D.C. 1991). Mr. Zere's argument thus fails to refute the District's prima facie showing of adverse, open, and continuous public use of the alley. *See Smith v. Tippett*, 569 A.2d 1186, 1190 (D.C. 1990) ("[P]ossession is adverse whenever there is open and continuous use of another's land for the statutory period, and this presumption is effective to establish title in the absence of evidence to the contrary.").

Mr. Zere also claims that there is not a public prescriptive easement because the testimony of a DDOT representative at a public hearing on a bill to condemn the lots demonstrates that the agency did not recognize, or maintain, the alley as a public alley. Mr. Zere asserts that this notion is supported by the absence of any public record of the easement, the introduction of a bill to condemn the lots and transfer ownership to the District, and the District's collection of taxes. Additionally, Mr. Zere argues that it was a contradiction for the Council to hold an eminent domain hearing on the property at issue in 2015, when the District now claims a prescriptive easement was created in 1995. None of these assertions, however, defeat the creation of a public easement. The burden of establishing a

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fashion. *See Gray v. Gray*, 412 A.2d 1208, 1212 (D.C. 1980). This is not the case here.

prescriptive easement does not require public knowledge or acknowledgment, but only a demonstration of open, notorious, continuous and adverse use for the statutory period. *See Martin*, 99 A.3d at 711. "[A] use is open and notorious if knowledge of it is had by those who are or may be affected by it even though the use is not a matter of common knowledge in the community." RESTATEMENT (FIRST) OF PROP. § 458 cmt. h (AM. LAW INST. 1944) (emphasis added). The undisputed evidence shows that the property owners abutting the alley used the alley and did not ask permission. Therefore, summary judgment was properly granted in favor of the District on the issue of whether a prescriptive easement had been established.

B. Takings Claim

Mr. Zere alternatively argues that, assuming a public easement existed, the District should compensate him for the fair market value of the lots, under the Takings Clause of the Fifth Amendment. Mr. Zere did not raise this as a compulsory counterclaim in his answer to the complaint, *see* Super. Ct. Civ. R. 13 (a), but rather, first raised it in a motion to dismiss before the trial court. The trial court, in its order denying his motion to dismiss, alerted Mr. Zere that this argument was improperly presented in his motion.[5] Mr. Zere, nevertheless, did not raise this compulsory counterclaim. Therefore, he forfeited this claim.

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[5] In the order denying Mr. Zere's motion, the trial court explained that such a claim was not a valid ground for dismissal, nor was it properly presented in a motion to dismiss.

III.

Accordingly, the judgment on appeal is affirmed.

So Ordered.

JUDGMENT OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA (JUNE 6, 2019)

DISTRICT OF COLUMBIA COURT OF APPEALS

KEBREAB ZERE,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

No. 17-CV-829

On Appeal from the Superior Court of the District of Columbia Civil Division CAB-772-16

Before: BLACKBURNE-RIGSBY, Chief Judge, EASTERLY, Associate Judge, and NEBEKER, Senior Judge.

This case was submitted to the court on the transcript of record, the briefs filed, and without presentation of oral argument. On consideration whereof, and for the reasons set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the judgment on appeal is affirmed.

For the Court:

/s/ Julio A. Castillo
Clerk of the Court

Dated: June 6, 2019

Opinion by Chief Judge Anna Blackburne-Rigsby

ORDER OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (JULY 7, 2017)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA, CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

KEBREAB ZERE,

Defendant.

Case No. 2016 CA 772 B

Calendar 12

Before: Brian F. HOLEMAN, Judge.

This matter comes before the Court upon consideration of Plaintiff's Motion for Summary Judgment, filed on October 14, 2016, On October 25, 2016, Defendant filed his Opposition. On May 30, 2017, Plaintiff filed its Replay to Defendant's Opposition to Its Motion for Summary Judgment.

I. Factual Background

Plaintiff seeks a judicial declaration of the public's prescriptive easement to a privately-owned alley located between two rows of houses on O Street, NW and N

Street, NW in the District of Columbia (the "Alley"). (Compl. at 1, 4.) Plaintiff alleges that "[m]embers of the public have traversed the Alley by foot, by bicycle, and by car for many years, and have thereby established an easement by prescription to do so." *(Id.* at 2.) Defendant is currently the owner of five of the tax lots that make up the Alley: Lots 804, 814, 818, 820, 822. (*Id.* at 1.) Defendant obtained title to the five lots through tax-deeds issued pursuant to the District of Columbia's tax-sale foreclosure statute. (*Id.* at 2.)

II. Pertinent Procedural History

On February 1, 2016, Plaintiff filed the Complaint. On March 2, 2016, Defendant filed the Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment. On March 16, 2016, Plaintiff filed the Memorandum of Opposing Points and Authorities in Opposition to Defendant's Motion to Dismiss. On April 8, 2016, Defendant filed the Motion to Dismiss Plaintiff's Memorandum of Points and Authorities. On April 21, 2016, the Court issued the Omnibus Order that, *inter alia*, denied Defendant's Motion to Dismiss Plaintiff's Complaint and denied as moot Defendant's Motion to Dismiss Plaintiff's Memorandum of Points and Authorities. On May 20, 2016, the Court held an initial scheduling conference and issued the Initial Scheduling Order. On June 10, 2016, Defendant filed the Answer to the Complaint. On June 14, 2017, the parties filed the Pretrial Statement.

III. Analysis

A. The Applicable Standard

Under the District of Columbia Superior Court Rules of Civil Procedure, Rule 56(a), the Court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." To prevail on a motion for summary judgment, the moving party must demonstrate, based on the pleadings, discovery responses, and any affidavits submitted, that there is no genuine issue as to any material fact and that it is thus entitled to judgment as a matter of law. *Grant v. May Department Stores Co.*, 786 A.2d 580, 583 (D.C. 2001). A trial court considering a motion for summary judgment must view the pleadings, discovery materials, and affidavits in the light most favorable to the non-moving party and may grant the motion only if a reasonable finder of fact, having drawn all reasonable inferences in favor of the non-moving party, could not find for the non-moving party based on the evidence in the record. *Grant*, 786 A.2d at 583 (internal citations omitted).

The moving party has the initial burden of proving that there is no genuine issue of material fact in dispute. If the moving party carries its initial burden, then the non-moving party assumes the burden of establishing that there is a genuine issue of material fact in dispute. *Id.* at 593. Any presentation of a genuine issue of material fact must conform with the requirements set forth in Rule 56(b) and (c), which state in pertinent part:

> (b) TIME TO FILE A MOTION; FORMAT.
> (1) Time to File. Unless the court orders

otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery. (2) Format: Parties' Statement of Fact. (A) Movant's Statement. In addition to the points and authorities required by Rule 12-I(d)(2), the movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph. (B) Opponent's Statement. A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.

(c) PROCEDURES. (1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purpose of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. (2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support

> or dispute a fact cannot be presented in a form that would be admissible in evidence. (3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record. (4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

B. Plaintiff's Entitlement to Summary Judgment

An easement is "'[a]n interest in land owned by another person consisting in the right to use or control the land . . . for a specific limited purpose.'" *Martin v. Bicknell*, 99 A.3d 705, 708 (D.C. 2014) (citation omitted). A claimant seeking to obtain a prescriptive easement must demonstrate "open, notorious, exclusive, continuous, and adverse use for the statutory period of fifteen years." *Id.* at 711. The burden of establishing a prescriptive easement claim rests on the claimant and must be established "by a preponderance of the evidence." *Hefazi v. Stiglitz*, 862 A.2d 901, 910 (D.C. 2004).

The pleadings and Plaintiff's affidavits demonstrate, by a preponderance of the evidence, that the public has traversed the Alley openly, notoriously, continuously, and adversely for over the statutory period of fifteen years. (Ex.S, Ex.T, Ex.U of Mot. for Summary J.) Pursuant to Super. Ct. Civ. R. 8(b), Defendant was required to answer Plaintiff's Complaint by making specific denials of designated averments or he

could generally deny all the averments.[1] Further, "[a]n allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied." *Id.* Defendant did not generally deny all of the averments, and the only element of Plaintiff's public prescriptive easement claim that Defendant denied was Plaintiff's claim of adversity.[2] (Pl' s Rule 12-I(k) Statement of Undisputed Material Facts in Supp. of Its Mot. for Summary J. at 4; Answer to Compl. for Declaratory J. at 3.)

For prescriptive easements, there is a presumption that possession is adverse "whenever there is open and continuous use of another's land for the statutory period . . . in the absence of evidence to the contrary."

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[1] DEFENSES; ADMISSIONS AND DENIALS. (1) In General. In responding to a pleading, a party must: (A) state in short and plain terms its defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party. (2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation. (3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted. (4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest. (5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial. (6) Effect of Failing to Deny. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

[2] "The trespassing is permissive. There is no adversity."

Smith v. Tippett, 569 A.2d 1186, 1190 (D.C. 1989). A use is considered to be adverse "if [it is] not accompanied by any recognition, in express terms or by implication, of a right in the landowner to stop such use now or at some time in the future." *Chaconas v. Myers*, 465 A.2d 379, 382 (D.C. 1983); *Hefazi v. Stiglitz*, 862 A.2d 901, 910-11 (D.C. 2004). Permissive use defeats a claim of adversity, but "[m]ere acquiescence is not permission." *Martin v. Bicknell*, 99 A.3d 705, 707 (D.C. 2014).

Defendant has claimed that the use of the Alley was permissive, but this claim is contradicted by three witnesses who have lived on the Alley and state that they have never witnessed a member of the public ask permission to use the Alley. (Ex.S, Ex.T, Ex.U of Mot. for Summary J.) Defendant has no witnesses who can testify that the public's use was not adverse. The parties' exchange of lists of fact witnesses was due on July 19, 2016. Defendant failed to file a list of fact witnesses.

Under District of Columbia Code § 47-1382(a)(3), a fee simple interest conveyed via tax sale is subject to "[e]asements of record and any other easement that may be observed by an inspection of the real property[.]" The Alley was clearly burdened by the public's right to traverse the Alley by foot, bicycle, and vehicles, which was easily observable to any tax-lien purchaser. As part of each of his tax-sale foreclosure actions, Defendant was required to post notice of the action on the real property subject to the action, D.C. Code § 47-1372(f)[3] Defendant filed an affidavit with the Court,

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[3] In addition to the notice required by subsection (a) of this section, the plaintiff shall provide notice of the action by posting

attaching pictures of the postings in the Alley. (Ex. V. of Mot. for Summary J.) The picture show parked cars, garages, and trash that was to be collected by the District. (*Id.*) Consequently, the easement "may be observed by an inspection of the real property[.]" (Also *See* P's Ex. B at 4-5 (photograph of the Alley indicating a parked car and suggesting that the Alley is wide enough to support automobile traffic).); D.C. Code § 47-1382(a)(3).

IV. Conclusion

Defendant has failed to establish a genuine issue as to any material fact required for establishing a prescriptive easement. Plaintiff is entitled to judgment as a matter of law.

WHEREFORE, it is this 7th day of July 2017, hereby

ORDERED, that Plaintiff's Motion for Summary Judgment is GRANTED; and it is further

ORDERED, that JUDGMENT IS ENTERED in favor of Plaintiff in accord with the Order of Judgment issued concurrently herewith; and it is further

ORDERED, that the Pretrial Conference currently scheduled for July 10, 2017 is VACATED.

/s/ Brian F. Holeman
Judge

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a copy of the summons on a place on the premises of the real property where it may be conveniently read.

ORDER OF JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (JULY 7, 2017)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA, CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

KEBREAB ZERE,

Defendant.

Case No. 2016 CA 772 B

Calendar 12

Before: Brian F. HOLEMAN, Judge.

In accord with the Order of this Court dated July 7, 2017, it is on this 7th day of July 2017, hereby

ORDERED, that Judgment is entered in favor of Plaintiff District of Columbia and against Defendant Kebreab Zere; and it is further

ORDERED, that a certified copy of this Order shall be recorded in the Office of the Recorder of Deeds for the District of Columbia as a judgment.

ORDERED, that Plaintiff is entitled to a declaratory judgment that the general public has a prescriptive

easement to walk and traverse by foot or by vehicle the entire length of the alley located at the tax lots 804, 814, 818, 820, 822 in Square 1230 (the "Alley"), and that the width of the easement is 20' so that two vehicles, including trucks, may pass each other in the Alley; and it is further

ORDERED, that Defendant is permanently enjoined from obstructing or blocking the Alley in any way that interferes with the public's prescriptive easement or interfering with the public's prescriptive easement in any other way.

/s/ Brian F. Holeman
Judge

ORDER OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA GRANTING MOTION FOR JUDGMENT (NOVEMBER 9, 2011)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

KEBREAB ZERE,

Plaintiff,

v.

PERSONAL REPRESENTATIVE OF THE ESTATE OF KATHLEEN K. SMITH, ET AL.,

Defendants.

Civil Action No. 2008 CA 004873

Before: J. E. BESHOURI, Magistrate Judge.

This matter comes before the court on Plaintiff's "Motion for Default Judgment as to Defendants Mellon National Association, Roderick S. Smith (Heir and Co-Executor), Richard A. Smith, Jr. (Heir and Co-Executor), J. Leighton Cornwell, Ella Cornwell Chisholm, and Aleen Cornwell, and their Unknown Heirs, Devisees, Personal Representatives, Executors, Administrators, Grantees, Assigns or Successors in Right, Title and Interest, and for Summary Judgment as to Defendant District of Columbia" ("Motion"), filed July 13, 2011.

Having considered Plaintiff's Motion and the entire record herein, the Motion is GRANTED.

Plaintiff—the purchaser of a tax sale certificate on a parcel of property located at Square 1230-Lot 0820, which may also be known as a vacant lot in an alley running between the 1300 blocks of 33rd and Potomac Streets NW, Washington, D.C.—filed this action to foreclose the rights of redemption on the property.

The record definitively establishes that Plaintiff has complied with the statutory requirements of Title 47, Chapter 13A of the D.C. Code and all relevant procedural Rules, and has been duly diligent in attempting to locate and join record and legal owners and other persons with interest in the property, none of whom have redeemed the property.

Wherefore, it is this 9th day of November, 2011, hereby

ORDERED that Plaintiff's Motion for default judgment and summary judgment is GRANTED; and it is further

ORDERED that the Mayor of the District of Columbia is directed to issue to the Plaintiff, within ten days of the entry of this Order, a statement detailing the amounts required for the Plaintiff to receive a deed under D.C. Code § 47-1382 (c), provided that any surplus paid for the real property by the Plaintiff be applied against all other taxes, interest thereon, and expenses owing on the real property, in accordance with D.C. Code § 47-1382 (g); and it is further

ORDERED that the Mayor of the District of Columbia is hereby directed to execute and deliver a deed ("the deed") to Plaintiff, in fee simple, upon

Plaintiff's payment to the Mayor of the amount required under D.C. Code § 47-1382 (c) and Plaintiff's presentment to the Mayor of a certified copy of this Order. The deed shall be subject to: (a) a lien filed by the taxing agency under D.C. Code § 47-1340 (c); (b) the tenancy of a residential tenant, other than a tenant described in D.C. Code § 47-1371 (b)(1)(C) and (D); and (c) easements of record and any other easement that may be observed by inspection of the property; and it is further

ORDERED that, once issued, the deed shall vest in Plaintiff fee simple title to the property, free and clear from all claims, estate, or rights of Defendants, or any person claiming through Defendants; and it is further

ORDERED that this constitutes a final Order in this case.

/s/ J.E. Beshouri
Magistrate Judge
(Signed in chambers)

JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (OCTOBER 18, 2011)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION

KEBREAB ZERE,

Plaintiff,

v.

PERSONAL REPRESENTATIVE OF THE ESTATE OF KATHLEEN K. SMITH, ET AL.,

Defendants.

Civil Action No. 2008 CA 004865

Before: J. E. BESHOURI, Magistrate Judge.

Plaintiff—the purchaser of a tax sale certificate on a parcel of property located at Square 1230-Lot 0804, which may also be known as a vacant lot in an alley running between the 1300 blocks of 33rd and Potomac Streets NW, Washington, D.C.—filed this action to foreclose the right of redemption to the subject parcel.

This court granted Plaintiff's Motion for Default Judgment as to Defendants Mellon National Association, Roderick S. Smith (Heir and Co-Executor), Richard A. Smith, Jr. (Heir and Co-Executor), David L. Shoemaker and Carl T. Shoemaker, and their Unknown Heirs,

Devisees, Personal Representatives, Executors, Administrators, Grantees, Assigns or Successors in Right, Title and Interest, and for Summary Judgment as to Defendant District of Columbia, filed July 19, 2011. Accordingly, the rights, title, claims, liens, or interests of the Defendants named in this matter, subject to the exceptions noted in Chapter 13A of Title 47 of the D.C. Code, are hereby extinguished. Plaintiff is hereby vested with title in fee simple, free and clear of any and all rights of Defendants, subject to the requirements of D.C. Code § 47-1382. The Mayor of the District of Columbia is directed to execute and deliver a deed to the Plaintiff in accordance with D.C. Code § 47-1382.

It is so ORDERED, this 18th day of October, 2011.

/s/ J.E. Beshouri
Magistrate Judge
(Signed in chambers)

JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (SEPTEMBER 7, 2010)

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION

KEBREAB ZERE,

Plaintiff,

v.

ESTATE OF KATHLEEN KNOX SMITH, ET AL.,

Defendants.

Civil Action No. 2008 CA 004875L(RP)

Before: Joseph E. BESHOURI, Magistrate Judge.

Plaintiff, purchaser of a tax sale certificate on a parcel of property known for tax assessment purposes as Lot 0814 in Square 1230, more commonly known as a vacant lot in an alley running between the 1300 Blocks of 33rd and Potomac Street, NW, Washington, D.C., filed this action to foreclose the right of redemption to the subject parcel. This Court granted the Plaintiff's Motion for Default Judgment and Summary Judgment as to the District of Columbia. Accordingly, the rights, title, claims, liens, or interests of the Defendants named in this matter, subject to the exceptions noted in Chapter 13A of Title 47 of the D.C. Code, are hereby extinguished. Plaintiff is vested with title in fee simple,

subject to the requirements of D.C. Code § 47-1382. The Mayor of the District of Columbia is directed to execute and deliver a deed to the Plaintiff in accordance with D.C. Code § 47-1382.

It is so ORDERED, this 7th day of September, 2010.

/s/ Joseph E. Beshouri
Magistrate Judge
(Signed in chambers)

JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (AUGUST 1, 2006)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA, CIVIL DIVISION

KEBREAB ZERE,

Plaintiff,

v.

EDITH ALLEN CLARK, ET AL.,

Defendants.

Civil Action No. 05ca774(RP)

Calendar No. 18

Before: Evelyn COBURN, Judge.

Plaintiff filed an action to foreclose the right of redemption to real property described for tax assessment purposes as Lot 0822 in Square 1230, which may also be known as a Vacant Lot on 33rd Street, NW, Washington, D.C. (hereinafter "the Property"). The legal description of the Property is as follows:

> Parts of King Acres and Lot numbered 102 in Square numbered 1230 as follows:
>
> BEGINNING at a point at the end of the following two courses and distances: (1) Beginning for the same at the point on the South

westerly corner of said Square at the intersection of the North line of N Street and the East line of 33rd Street and running Easterly 28.62 feet to a point on the North line of N Street (2) thence running Northerly along the West line of Lot numbered 821 in said Square, 128 feet to the point of beginning; thence North 22 feet; thence East 28.62 feet to the point of beginning.

NOTE: At the date hereof the above described land is known for assessment and taxation purposes as Lot 822 in Square 1230.

This Court granted Plaintiff's Motion for Default Judgment against Defendants Edith Allen Clark and Allan R. Wurtele, and Motion for Summary Judgment as to Defendant the District of Columbia. Accordingly, any and all Defendants who have or claim to have any right, title, claim, lien or interest in the property are hereby extinguished. Plaintiff is hereby vested in good and perfect title in fee simple, free and clear of any and all rights of Defendants. This Order constitutes a final judgment.

IT IS SO ORDERED, this 1st, day of August, 2006.

/s/ Evelyn Coburn
Judge

JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (JULY 31, 2006)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION

KEBREAB ZERE,

Plaintiff,

v.

KATHLEEN KNOX SMITH, ET AL.,

Defendants.

Civil Action No. 05ca776(RP)

Calendar No. 18

Before: Evelyn COBURN, Judge.

Plaintiff filed an action to foreclose the right of redemption to real property described for tax assessment purposes as Lot 0818 in Square 1230, which may also be known as a Vacant Lot on 33rd Street, NW, Washington, D.C. (hereinafter "the Property"). The legal description of the Property is as follows:

> Parts of King Acres and Lot numbered 102 in Square numbered 1230 as follows:
>
> NOTE: At the date hereof the above described land is known for assessment and taxation purposes as Lot 818 in Square 1230.

This Court granted Plaintiff's Motion for Default Judgment against Defendant Kathleen Knox Smith, and Motion for Summary Judgment as to Defendant the District of Columbia. Accordingly, any and all Defendants who have or claim to have any right, title, claim, lien or interest in the property are hereby extinguished. Plaintiff is hereby vested in good and perfect title in fee simple, free and clear of any and all rights of Defendants. This Order constitutes a final judgment.

IT IS SO ORDERED, this 31st, day of July, 2006.

/s/ Evelyn Coburn
Judge

ORDER OF THE DISTRICT OF COLUMBIA COURT OF APPEALS DENYING PETITION FOR REHEARING (OCTOBER 28, 2019)

DISTRICT OF COLUMBIA COURT OF APPEALS

KEBREAB ZERE,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

No. 17-CV-829
(CAB-772-16)

Before: BLACKBURNE-RIGSBY,* Chief Judge; GLICKMAN, FISHER, THOMPSON, BECKWITH, EASTERLY,* and MCLEESE, Associate Judges; NEBEKER,* Senior Judge.

On consideration of appellant's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

Additional material from this filing is available in the Clerk's Office.