IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

DEXTER BLANCHARD and LINDA BLANCHARD, Plaintiffs, v. BONNIE L. HEIMBUCH and FLOYD E. HEIMBUCH, Defendants.	)	Case No. 3PA-94-814 CI

MEMORANDUM OPINION AND ORDER

On December 19, 1994, plaintiffs amended their complaint and filed a Motion for Summary Judgment asserting rights to a public highway across defendants' land under federal Revised Statute 2477. Defendants opposed this motion on January 9, 1995. Plaintiffs filed their reply and a request for oral argument on January 20. The court then asked for supplemental briefing. The defendants filed their supplemental opposition on February 17, while plaintiffs filed a supplemental reply on February 27.

On March 7, 1995, defendants filed a motion seeking summary judgment on every claim asserted by plaintiffs in their complaint. Specifically, defendants sought summary judgment on the RS 2477 claim, the contract claim, the claims for prescriptive easement under AS 09.25.050 and AS 09.10.030, and the claim for easement by estoppel. Plaintiffs opposed this motion on March 31 and defendants filed their reply on April 14. The court heard oral argument on both sets of motions on May 19.

I.

A. *Factual Background*

The Blanchards and the Heimbuchs are neighboring property owners between Nancy Lake and Willow. The land of both parties was originally federal public land open to claims under the homestead laws. The parcels are contiguous, but never were part of the same homestead. The Blanchard property borders the western edge of the Heimbuch property, the majority of which lies west of the Parks Highway. The Heimbuch property is traversed by a dirt road known as Old Long Lake Road, which runs westerly from the Parks Highway and eventually over the property of the Blanchards.

The Blanchards have access to the Parks Highway by taking Old Long Lake Road to the west, where it intersects with Long Lake Road. The Blanchards then can either follow Long Lake Road to the north, where it intersects the Parks Highway, or to the south and east, where Long Lake Road meets Nancy Lakes Road, which also runs into the Parks. The Blanchards aver that access over the westerly portion of Old Long Lake Road frequently can be made only by four-wheel drive vehicle and occasionally even four-wheel drive vehicles cannot access that portion. The Blanchard property, however, is not landlocked, despite the access problems.

The Blanchards purchased their property[1] on April 14, 1985

[1]The Blanchards describe their property as that portion of the Southeast one-quarter of the Southeast one-quarter of the Southeast one-quarter (SE 1/4 SE 1/4 SE 1/4) of Section Nineteen (19), Range Four (4) West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska, lying southerly of the center line of the Old Long Lake Road.

from Donna Gentry. Gentry (then known as Donna Bruce) had bought the property from Earl Harkey on March 20, 1970. Harkey had acquired the property from the original homesteader, Edith Sides, on January 9, 1964. Gentry apparently subdivided the ten-acre parcel in October 1977, selling the northern half to Neale Cange and Jan Hart. The Blanchards now own the southern five acres.

The Heimbuchs filed an application for homestead entry of their property[2] on May 26, 1961. The property had previously been entered by Dorius Carlson, who filed his application on June 11, 1959. On August 30, 1960, Carlson relinquished the homestead and Roy McFall filed his application on the same date. McFall relinquished his rights on May 26, 1961, the same date that the Heimbuchs filed their application. The Heimbuchs received a patent to their land on November 8, 1963 and have owned it in fee simple ever since.

The present dispute began several years after the Blanchards purchased their property. The Heimbuchs did not spend much time on their property during the late 1980's and were out of the country during 1989 and 1990. Upon returning, the Heimbuchs noticed that the Blanchards were using Old Long Lake Road to access their property, on which they had built a house. In late 1991 or 1992, Floyd Heimbuch approached Dexter Blanchard and informed him

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[2]The legal description of the Heimbuch property is the South one-half of the Southwest one-quarter (SW 1/2 SW 1/4) and the South one-half of the Southeast one-quarter (S 1/2 SE 1/4), Section 20, Township 19 North Range 4 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

that Old Long Lake Road was private and that access to the road was only with the permission of the Heimbuchs. Floyd Heimbuch eventually drew up a document by which the Blanchards acknowledged the permissive character of their use and all four parties signed the document on September. 8, 1992.

The relationship between the Blanchards and Heimbuchs deteriorated in July 1994, when the Heimbuchs placed obstructions in the road for the purpose of preventing a continuing trespass by Kurt Stenehjem, a developer owning property to the west of the Blanchards. The Blanchards removed the obstructions, asserting to the Heimbuchs that Old Long Lake Road was a public highway. The Heimbuchs then erected a swinging locked gate which prevented access to the road.

B. *Procedural History*

The Blanchards filed this action on August 5, 1994 and moved the court to enter a preliminary injunction enjoining the Heimbuchs from blocking the road. The Heimbuchs opposed the motion and the court held a hearing on August 25, 1994, at which time the court entered an oral order granting the injunction. On September 23, 1994, the court issued a written order in which the court found that plaintiffs had raised serious and substantial questions of law and that the balance of hardships clearly tipped in favor of plaintiffs, because an injunction would "not impose any great burden of any significance on the Heimbuchs." Revised Order for Preliminary Injunction at 2.

The Heimbuchs moved to dissolve the injunction on November 23,

1994. The court held oral argument on the motion on February 1, 1995, and afterward denied defendants' motion. At the hearing, the court also established a briefing schedule for supplemental argument on plaintiffs' motion for summary judgment and set oral argument on that motion for March 23, 1995. Defendants filed their cross-motion for summary judgment on March 7. The court then rescheduled oral argument until the May 19, 1995 date previously noted. The court took both motions under advisement after the May 19 oral argument.

II.

The court first examines the question of RS 2477 rights, which is the one common issue presented in both motions for summary judgment. The court then moves, in turn, to the matters raised in defendants' cross-motion: plaintiffs' claims of contract, prescriptive easement by color of title, prescriptive easement by adverse possession, and easement by estoppel.

A. *RS 2477 Right of Way*

RS 2477 is an 1866 Act of Congress authorizing rights-of-way for the construction of highways over public lands not reserved for public uses. RS 2477 was codified at 43 U.S.C. sec. 932 and repealed by Congress in 1976.[3] The precise language of the act is, "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C.

[3]The repeal does not affect the merits of this case, however, because all relevant facts to the potential creation of an easement under RS 2477 occurred prior to the repeal.

sec. 932. The Supreme Court of Alaska has interpreted this law to be "one-half of a grant--an offer to dedicate." Dillingham Comm. Co. v. City of Dillingham, 705 P.2d 410, 413 (Alaska 1985).

In order to establish a right-of-way under this act, states or other governmental entities either must engage in some official acceptance of the grant by statute or other means "or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted." Hamerly v. Denton, 359 P.2d 121, 123 (Alaska 1961). If there is no official action and so the first alternative test is not met, then a claimant wishing to establish a right to use a road under RS 2477 and the second alternative test must prove "(1) that the alleged highway was located 'over public lands', and (2) that the character of its use was such as to constitute acceptance by the public of the statutory grant." Id. Under Hamerly, homesteaded land reverts to public land status during gaps between homestead entries and can be evaluated by the court for character of use.

Both parties agree that there has not been any official acceptance of a grant and so the first alternative test under Hamerly does not apply. Therefore, the court's analysis centers on whether the lands in question were public at the time of the construction of the road or at any time since, and, if so, whether the public used the road in such a way afterwards as to constitute acceptance of the grant.

The Blanchards assert that RS 2477 applies to their situation as follows. Both parties live on land which was once federal

public land open to homesteading. The Blanchards contend that their predecessors in interest used the road crossing the Heimbuch property during 1959 and 1960 in order to provide access to homesteads to the west of the Heimbuch property. The Blanchards contend that BLM records show that several "gaps" existed between entries on what is now the Heimbuch property and that the land reverted to public land status during those gaps. The Blanchards support this claim by asserting that lands are withdrawn from public land status only upon the issuance by the Department of Interior of a "notice of allowance" authorizing the entry. The Blanchards further assert that the use during those alleged gaps was of such frequency and purpose as to satisfy the Hamerly standard. As evidence of this use, the Blanchards offer affidavits from three homesteaders in the area describing their own use and their memories of the use of other homesteaders during the time period in question.

The Heimbuchs, however, assert that the issuance of the notice of allowance is irrelevant to public land status and that the key date is the filing of the application. Using the filing date, there are no gaps between homestead entries and so no opportunity for their homestead to revert to public land status. As a result, RS 2477 can not be the basis for any claim of right on the part of the Blanchards.

As support for this assertion, the Heimbuchs offer as proof the original records of the Hamerly homestead. A comparison of those records with the dates indicated in the Hamerly case reveals

that the Supreme Court considered the date of filing the application as the date on which lands were withdrawn from the public domain.[4]

Such a result is consistent with federal law, which states that patent, once issued, relates back to the date of filing the application for entry. See, e.g., Sturr v. Beck, 133 U.S. 541, 547, 10 S.Ct. 350, 352 (1890) ("[a] claim of the homestead settler ... is initiated by making an application at the proper land office, filing the affidavit, and paying the amounts required"); Haight v. Constanich, 194 P. 26, 28, 184 Cal. 426, 430 (1920) ("[t]he granting of a patent to a settler on public lands is held to relate back to the filing of the entry of the land in the United States land office"). Although the question of whether a grant has been established under RS 2477 is a matter of state law, Shultz v. Department of the Army, U.S., 10 F.3d 649, 655 (9th Cir. 1993), the

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[4] In Hamerly, the court stated that "there were four gaps in the possession of the land:

1. From December 9, 1927 to January 25, 1928.
2. From June 23, 1942 to August 10, 1942.
3. From November 19, 1946 to March 8, 1948.
4. From November 7, 1955 to January 11, 1956."

Hamerly, 359 P.2d at 124. BLM records indicate that John King filed his application on what was to be the Hamerly homestead on August 10, 1942 and received a notice of allowance that same day. King filed a relinquishment on November 19, 1946. Hamerly filed his first application on March 8, 1948 and received a notice of allowance on March 16, 1948. Hamerly's application was finally rejected and his entry cancelled by a decision on appeal dated November 7, 1955. Hamerly filed his second application on January 11, 1956. See Exhibit 4 to Heimbuch Reply. What these records reveal is that the court in Hamerly considered the date of filing of the application, and not the date of the notice of allowance, as the date of withdrawal of the lands from the public domain.

federal law of homesteading is relevant to determine whether the land at issue was in fact public at the relevant times.

There are a few statements in various cases indicating that the issuance of the notice of allowance has some legal significance. See, e.g., Hastings, etc. Co. v. Whitney, 132 U.S. 357, 363, 10 S.Ct. 112, 114-15 (1889). However, the better view is that the issuance of the notice is but a ministerial duty which merely confirms the existence of a valid entry. See Chotard et al. v. Pope et al., 25 U.S. 586, 588 (1827) ("[t]he term entry .... means, that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer known"); McLaren v. Fleisher, 181 Cal. 607, 613, 185 P. 967, 970 (1919), aff'd, 256 U.S. 477, 41 S.Ct. 577 (1921) ("[t]he statement in the opinion of Mr. Justice Lamar [in Hastings] which seems to imply that the entry is not complete until the officials execute a certificate of entry to him is not warranted by the statute"); Pacific Coast Mining & Milling Co. v. Spargo, 16 F. 348, 350 (1883) ("[l]ands cease to be public lands when entered and paid for").

In United States v. 348.62 Acres of Land, etc., 10 Alaska 351 (1943), the United States attempted to invalidate the claim of a homesteader in a takings proceeding. The case centered around whether the defendant had received a notice of allowance. The United States claimed that failure of the defendant to obtain such a notice rendered his claim invalid. Id. at 361. The District Court examined many of the cases cited above and concluded that a

notice of allowance was not necessary to a valid entry, stating, "It seems that under the law, the plaintiff [in a cited case] had made this selection, and no approval by the Land Office of said selection is anywhere mentioned." Id. at 362. The court found that the defendant had complied with the homestead laws, even though he had not received a notice of allowance; the court therefore rejected the claim of the United States. Id. at 364.

The Blanchards cite a footnote in Shultz for the proposition that the filing of the application is not the operative date under Alaska law.[5] What this footnote suggests, however, is quite the opposite of the conclusion drawn by the Blanchards. This footnote indicates that the actual date of physical entry of the land is the operative date, not the date of application or the issuance of the notice of allowance. Under Shultz, which undoubtedly revolves

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[5]The entire footnote (including that portion conveniently omitted by the Blanchards) reads as follows:

> The district court's findings suggest that the gap closed no later than 1914 when Wiest filed his homesteading claim. Under Alaska law, land is withdrawn from the public domain when a homesteader enters his homestead, not when he files his claim or receives the patent. Hamerly, 359 P.2d at 123 ("[w]hen a citizen has made a valid entry under the homestead laws, the portion covered by the entry is then segregated from the public domain"); Dillingham, 705 P.2d at 414 (citing Hamerly rule); see also Alaska Land Title, 667 P.2d at 723 ("the homestead entry of [a claimant's] predecessor ... fixes the date from which the property rights of the owners of the parcel are to be measured") (rule applied to fixing of private property rights, not consideration of RS 2477 withdrawal from public domain). Since Nissen came on the land in 1907, and Wiest entered in 1910, Nissen has at least three years in which to establish an RS 2477 trail over that segment of the route crossing Wiest's land.

Shultz, 10 F.3d at 659-60, n. 17 (emphasis added).

around a misunderstanding of the meaning of "entry",[6] a claimant can acquire a right in federal land without even so much as submitting an application. Thus, absolutely no "official action" of any kind would be required to effect a valid homestead entry under Shultz.

The Blanchards also refer to a statement in Dillingham in which the Supreme Court stated that "[t]he Hamerly court explicitly required official action in order to withdraw lands from the public domain." Dillingham, 705 P.2d at 414. The court concluded that a predecessor in interest of the plaintiff had made his "first valid entry under the homestead law ... in 1940",[7] but did not indicate what acts validated that entry. Id. While Hamerly clearly required "official action" to accept a grant under the first alternative test, it is less clear what "official action" the Dillingham court believed was necessary under the second alternative test, which is the one that was applied in Hamerly. Because the Hamerly court unquestionably used the dates of application as the dates of withdrawal from public land status, the "official action" referred to by the Dillingham court must be the filing of the application. That interpretation is confirmed by the litany of cases cited earlier and is the interpretation adopted by

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[6] See infra, n. 7.

[7] Prior to that time, the predecessor was a squatter. The Dillingham court found that the time in which the predecessor was a squatter did not withdraw the land from public land status. Dillingham, 705 P.2d at 414. This holding, of course, directly conflicts with Shultz, in which the court supposedly relied on Dillingham.

this court.

Accordingly, because the date of application is the operative date, there were no gaps in possession in which RS 2477 rights could attach. Each application for homestead entry was filed on the date that the previous claim was relinquished. The parties apparently agree that construction on the road was not begun until after Carlson filed his claim on June 11, 1959. The court therefore finds that the land of the Heimbuchs was not "public land" during the time that Old Long Lake Road was built. Thus, there is no need to determine whether the use of the road was sufficient to establish an easement under RS 2477 during that period and summary judgment is appropriate for defendants on this point.[8]

B. *Contract*

The Blanchards have claimed that the September 8, 1992 agreement signed by the parties amounted to a contract giving them a right to use the road. The Heimbuchs have moved for summary judgment on this claim, arguing that the agreement does not evidence any of the basic elements of a contract, such as offer, acceptance or contemporaneous consideration. The Heimbuchs also note that none of these elements are alleged in either the complaint or in any of the affidavits in the court file.

In opposition, the Blanchards state that the consideration for the contract was the avoidance of litigation. Blanchard Opp. at

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[8]The Blanchards apparently concede that this is the operative question and if answered in the negative, further inquiry is unnecessary. See Blanchard Reply at 1.

14. This statement is not supported by affidavit or testimony, nor the four corners of the agreement. Accordingly, the court does not consider this argument as supporting the Blanchards' claim.

At oral argument, the Blanchards offered an alternative theory of consideration by claiming that the agreement was in consideration for road work done by the Blanchards. The Blanchards made an offer of proof by showing that they had paid a bill for the previously done road work on the date the agreement was signed. There is no mention of this road work on the face of the agreement, however. Also, it is a well-settled principle of contract law that prior acts may not provide consideration for future promises. See, e.g., Tindall v. Konitz Contracting, Inc., 783 P.2d 1376 (Mont. 1989); Clark County v. Bonanza No. 1, 615 P.2d 939, 96 Nev. 643 (Nev. 1980); Soukop v. Snyder, 709 P.2d 109, 6 Haw. App. 59 (Hawaii App. 1985). This argument thus is without merit.

The text of the agreement clearly demonstrates that the use of the road by the Blanchards was with the permission of the Heimbuchs. The agreement says, "A private road crosses the property [of the Heimbuchs] and is being used as access by permission from Floyd and Bonnie Heimbuch to land owned by Linda and Dexter Blanchard...." (emphasis added). The agreement also states that "[t]his permission does not include a permanent right of way." Finally, the agreement provides that the permission of the Blanchards to use Old Long Lake Road will cease once "the present road is relocated along the Heimbuch's North and West property lines."

Nothing in this agreement gives any indication that the Blanchards and Heimbuchs entered into a contract. No mutually passing consideration is apparent from the face of the document. Neither does any recitation of offer and acceptance appear in the writing. Contracts for easements must be in writing in order to satisfy the Statute of Frauds. AS 09.25.010. The Blanchards have failed to offer any proof that this agreement granted them any more than a license. Summary judgment therefore is appropriate for the Heimbuchs on this claim as well.

C. *Prescriptive Easement by Color of Title Under AS 09.45.052*

Plaintiffs claim a right to a prescriptive easement by color of title under AS 09.45.052. That statute provides that "[t]he uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property...." AS 09.45.052(a). The application of AS 09.45.052 to a claim for prescriptive easement appears to present a question of first impression in Alaska.

Plaintiffs claim to have color of title to an easement in Old Long Lake Road by virtue of the contract under which they purchased their property, the deed to that property, and a document reflecting a preliminary commitment to title insurance on the property. They also claim that maps of the area led them to believe that Old Long Lake Road was a road open to the use of the public. "Color of title exists only by virtue of a written instrument which purports, but which may not be effective, to pass title to the claimant." Ayers v. Day & Night Fuel Co., 451 P.2d

579, 581 (Alaska 1969). "When one adversely possesses land under color of title the extent of the land possessed is measured by the terms of the purported instrument giving color of title rather than by the actual physical use by the claimant." Lott v. Muldoon Road Baptist Church, Inc., 466 P.2d 815, 817-18 (Alaska 1970). Under Lott, some document must describe the exact boundaries of the interest purported to be conveyed. Id. at 817.

The Blanchards maintain that the cited documents led them to believe that access to the property was by virtue of Old Long Lake Road. However, the Blanchards have failed to produce any document purporting to convey a private easement in that road to them or their predecessors in interest. All of the Blanchards' statements indicate that they believed the public had a right to use Old Long Lake Road, not that they as property owners had any specific right granted by the Heimbuchs through a legal document recorded or present in the chain of title. Believing that the public had a right to use the road is not the same as believing that a private easement has been created. Accordingly, the court finds that, in the light most favorable to the Blanchards, no evidence exists purporting to grant them color of title to an easement in Old Long Lake Road. Summary judgment should be granted to the Heimbuchs on this claim as well.

D. *Prescriptive Easement by Adverse Possession Under AS 09.10.030*

The Blanchards also assert a right to a prescriptive easement in Old Long Lake Road by virtue of adverse possession for ten years under AS 09.10.030. To establish such an easement, a plaintiff

must show that "(1) the use of the easement was continuous and uninterrupted; (2) the user acted as if he or she were the owner and not merely one acting with the permission of the owner; and (3) the use was reasonably visible to the record owner." McGill v. Wahl, 839 P.2d 393, 397 (Alaska 1992). Such use must be for the statutory period of ten years. Id. AS 09.10.030.

The Heimbuchs maintain that both the Blanchards and their predecessors acknowledged the permissive character of their use and so no hostile claim has ever been asserted for a continuous ten year period. Even in the light most favorable to the plaintiffs, the Heimbuch position is correct with respect to the Blanchards. As discussed above, the September 8, 1992 document clearly recognizes the permissive character of the Blanchards' use. The Blanchards have failed to offer any evidence which could lead to an opposite conclusion. The effect of this acknowledgment is to toll the statutory period. Assuming arguendo that the Blanchards can establish the other elements of adverse possession, the Blanchards still can only prove that their use was adverse for a period of seven years -- from 1985 to 1992.

The next question is whether the use of the Blanchards' predecessors was sufficiently adverse to the Heimbuchs to allow for a "tacking" of the claims of the Blanchards to that of their predecessors. For purposes of such tacking, the only relevant users are those who are in privity with the Blanchards. Hubbard v. Curtiss, 684 P.2d 842, 849 (Alaska 1984). In this case, the only such user is Donna Gentry. The Heimbuchs maintain that the

evidence before the court, even when seen in the light most favorable to the Blanchards, precludes the finding of sufficient hostile use by Gentry to establish her right to a prescriptive easement and therefore, by implication, any right on the part of the Blanchards.[9]

However, an examination of the court file reveals a genuine dispute as to the use of the road by Gentry during the years prior to the Blanchards' purchase of the property. Gentry (now known as Donna Massay) contends that Bonnie Heimbuch told her the road was public. August 1, 1994 Affidavit of Donna Massay at 6. Gentry claims that she and her husband continued to use Old Long Lake Road to access their cabin even after they moved to Skwentna in 1977. Id. at 4-5. Bonnie Heimbuch, however, indicates that she gave Gentry permission to use the road in 1974 and that she did not see Gentry again after 1977. March 7, 1995 Affidavit of Bonnie Heimbuch at 3. Accordingly, the court finds that a genuine issue of material fact exists as to Gentry's use of the road during the period prior to plaintiffs' purchase of the property, as well as the plaintiffs' use prior to 1992, and that this dispute precludes summary judgment on this issue.

E. *Easement by Estoppel*

The only other claim on which plaintiffs could prevail is their claim of easement by estoppel. The elements of private

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[9]The Blanchards would need to prove that Gentry's use was open, continuous, and hostile for at least three years prior to the Blanchards' purchase of the property to meet the statutory period of ten years.

easement by estoppel are "an oral grant and detrimental reliance." Swift v. Kniffen, 706 P.2d 296, 301 (Alaska 1985). The court finds that the document signed by the parties on September 8, 1992 could not give rise to a claim for easement because the terms of the writing clearly contemplate a permissive use. Where a writing exists, the court must look to its terms first in determining whether the parties intended to create an easement. There is no such evidence here. In addition, there is no allegation by the Blanchards that the Heimbuchs made an explicit oral grant of easement. The claim for private easement by estoppel therefore must fail as to the Blanchards.

However, as can be seen in the preceding discussion, there does exist a genuine dispute as to whether Bonnie Heimbuch represented to Donna Gentry that Old Long Lake Road was a public road. Plaintiffs do not allege, though, that the Heimbuchs ever expressed an intention to grant Gentry a private easement in Old Long Lake Road and no evidence for the granting of such an easement appears in the court record. Neither is there evidence that Gentry detrimentally relied on Bonnie's promise, assuming such a promise was made. The court therefore finds that, as to Gentry, this claim also must fail.

Gentry's contentions would be relevant, however, to a claim for public easement by estoppel. "The requirements for a public easement by estoppel are the same as those for a private easement, except that claimants must show detrimental reliance by the public at large to establish an intent to dedicate for public use." Id.

The questions of whether such an oral grant was made and any detrimental reliance occurred must be resolved by a finder of fact and not by summary judgment.

III.

Based on the preceding discussion, the court DENIES plaintiffs' Motion for Summary Judgment. The court GRANTS IN PART and DENIES IN PART Defendants' Cross-Motion for Summary Judgment. Specifically, the court grants summary judgment to defendants on plaintiffs claims of RS 2477 rights, contract, prescriptive easement by color of title under AS 09.25.050, and private easement by estoppel. Plaintiffs may attempt to prove at trial their claims for prescriptive easement by adverse possession under AS 09.10.030, and public easement by estoppel. The court finds that defendants' claims as to necessary and indispensable parties must be made by separate motion and will not be addressed through summary judgment.

IT IS SO ORDERED.

Dated this 1 day of Sept, 1995, at Palmer, Alaska.

Beverly W Cutler
Beverly W. Cutler
Judge of the Superior Court

I certify that on 9-1-95
a copy of this document was sent to:
☐ USED ☑ Attorney(s) of Record Heimbuch + Dewan
☐ Plaintiff ☐ Defendant
☐ Other
at the address(es) of record.

Rec'd. Jnl.:
Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

DEXTER BLANCHARD AND LINDA BLANCHARD,

Plaintiffs,

vs

BONNIE L. HEIMBUCH AND FLOYD E. HEIMBUCH,

Defendants.

Case No. 3PA-94- 814 Civ.

STIPULATION OF PARTIES AUTHORIZING ENTRY OF FINAL JUDGMENT AND FURTHER STIPULATING COSTS AND FEES AND DISTRIBUTION OF BOND ON DEPOSIT WITH COURT

The above-referenced parties, by their respective counsel, hereby stipulate and agree as follows:

1. The above-referenced litigation may be dismissed, with prejudice, each party to bear their own costs and attorneys fees **except** as expressly provided for below, (providing for the distribution of the bond currently on deposit with the Court).

2. This Stipulation contemplates that dismissal, being with prejudice, shall operate as a Final Judgment in favor of the Defendants as to the issues raised by the various counts presented in the Complaint and the Amended Complaint in this litigation.

3. There is currently on deposit with the Court, by filing dated August 26, 1994, cash in lieu of a bond in the amount of $1,000. The parties stipulate and agree that such amount is to be distributed by check, payable to the order of Karl E. Heimbuch, (attorney for the Defendants), with the understanding that Attorney

Heimbuch will, in turn, distribute such funds as agreed upon between himself and his clients. Such distribution of the amount on deposit with the Court in this litigation is intended to be in full satisfaction of all costs and attorneys fees that may be awarded in favor of the Defendants in the above-referenced litigation as a result of the entry of this stipulated Final Judgment.

4. Defendants agree and stipulate, with Plaintiffs, that Defendants have no further claim, damage assertion, or other unsatisfied rights against Plaintiffs relative to the use of "Old Long Lake Road" by Plaintiffs, either preceding this litigation or arising during the course of this litigation. The intent of this paragraph is to merely confirm that there are no claims by Defendants against the Plaintiffs for Plaintiffs' prior use of "Old Long Lake Road" and/or the expense to Defendants in gating "Old Long Lake Road" that occurred prior to or during the course of this litigation. By this stipulated Final Judgment, the parties agree that Plaintiffs and the public have no future right of use of "Old Long Lake Road".

DATED this 18th day of September, 1995.

Richard Deuser
Attorney for Plaintiffs Dexter Blanchard and Linda Blanchard

DATED this 19th day of September, 1995.

Karl E. Heimbuch
Karl Heimbuch
Attorney for Defendants Bonnie L. and Floyd E. Heimbuch

ORDER OF FINAL JUDGMENT BY COURT

Pursuant to the Stipulation, described above, the Court hereby adopts the above-stated stipulations and enters such stipulations as the final judgment in this litigation.

DATED this 2 day of October, 1995.

Beverly W. Cutler
Honorable Beverly W. Cutler
Judge of the Superior Court

I hereby certify that this is a true and correct copy of the original on file in my office.
ATTEST: Clerk of the Trial Courts
By: Deputy
Date 10/05/95

[SEP 19 1995]