

SUPREME COURT OF THE STATE OF NEW YORK
SCHOHARIE COUNTY

FEDERAL NATIONAL MORTGAGE ASSOCIATION
("FANNIE MAE") A CORPORATION ORGANIZED
AND EXISTING UNER THE LAWS OF THE
UNITED STATES OF AMERICA,

Plaintiff,

-against-

FRED DUFEK, JR.; ROBIN DUFEK; LAURIE
DUFEK; TROY DUFEK,

Defendant(s).

ANSWER

Index No. 2022-3

Defendants Troy Dufek, Laurie Dufek, Fred Dufek and Robin Dufek, by and through their counsel, Charles Wallshein, answer the complaint as follows:

1. Defendants deny the allegations contained in complaint paragraphs numbered "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "16", "17", "18", "19", "20", "22", "23", "24", "26", "27", "28", "30", "32" and "33".

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE
TO THE FIRST CAUSE OF ACTION

2. The referee's deed that vests title in the Plaintiff transfers title to Lots 3 and 4.
3. Lot "4" abuts Bassler Road for an approximate distance of approximately 600 feet.
4. Plaintiff's characterization of lot "3" as "landlocked" is in error. Plaintiff has title to Lot "4".
5. Plaintiff has access and ingress and egress to lots 3 and 4 directly from Bassler Road.
6. Plaintiff's demand for an easement of any kind to be created at equity is without merit.

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE
TO THE SECOND CAUSE OF ACTION

7. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "6" as if fully set forth herein.

8. An easement of Necessity is only permitted when a property is landlocked. Easements by necessity are unwarranted where the access to the property is merely inconvenient.
9. The Plaintiff has full ingress and egress to lots "3" and "4" directly from Bassler Road separate and apart from the easement demanded across lot "12".
10. Plaintiff states that it took title to both lots "3" and "4" in the complaint by the referee's deed at paragraph numbered "24".
11. Plaintiff attaches the survey of adjoining lots 3, 4, and 12 to its complaint.
12. Plaintiff fails to attach the referee's deed as an exhibit to the complaint.
13. Plaintiff's complaint must be dismissed based upon documentary evidence in the public land record.

AS AND FOR DEFENDANTS' SECOND AFFIRMATIVE DEFENSE
TO THE SECOND CAUSE OF ACTION

14. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "13" as if fully set forth herein.
15. The gate barricade described by Plaintiff does not bar Plaintiff's ingress and egress to the subject property.
16. The Plaintiff has full ingress and egress to lots "3" and "4" directly from Bassler Road separate and apart from the easement demanded across lot "12".

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE
TO THE THIRD CAUSE OF ACTION

17. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "16" as if fully set forth herein.
18. Plaintiff has failed to plead unity of title with particularity.
19. Plaintiff has failed to plead the imposition of a permanent servitude of one estate upon that of another.
20. The Plaintiff has full ingress and egress to lots "3" and "4" directly from Bassler Road separate and apart from the easement demanded across lot "12".
21. Plaintiff states that it took title to both lots "3" and "4" in the complaint by the referee's deed at paragraph numbered "24".
22. There is no legal basis for the imposition of an easement by implication.

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE
TO THE FOURTH CAUSE OF ACTION

23. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "22" as if fully set forth herein.
24. Plaintiff's fourth cause of action requests a declaratory judgment but fails to describe the declaratory relief sought that could provide a legal remedy.
25. Plaintiff states that it took title to both lots "3" and "4" in the complaint by the referee's deed at paragraph numbered "24".
26. The Plaintiff has full ingress and egress to lots "3" and "4" directly from Bassler Road separate and apart from the easement demanded across lot "12".
27. Plaintiff's fourth cause of action fails to state a cause of action for which relief could be granted.

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE
TO THE FIFTH CAUSE OF ACTION

28. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "27" as if fully set forth herein.
29. Plaintiff has not been damaged in any respect and is not entitled to attorney's fees, costs disbursements.
30. The Plaintiff has full ingress and egress to lots "3" and "4" directly from Bassler Road separate and apart from the easement demanded across lot "12".

AS AND FOR DEFENDANTS' SECOND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

31. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "30" as if fully set forth herein.
32. The Summons and Complaint in the foreclosure action was filed on November 9, 2015.
33. CPLR §214(4) provides a statute of limitation of three (3) years barring the commencement of the instant action from the date of the commencement of the foreclosure action by Fannie Mae. More than 17 years lapsed since the date of the mortgage.
34. CPLR §212(a) provides a statute of limitation of ten (10) years barring the instant action calculated from the date of the commencement of the foreclosure action by Fannie Mae. Plaintiff has never had possession or use of the property claimed in this action.

35. CPLR §213(1) provides a statute of limitation of Six (6) years barring the instant action calculated from the date of the commencement of the foreclosure action by Fannie Mae. At the time of the foreclosure, Plaintiff had actual knowledge of the existence of the use of the property by permission. More than 6 years has elapsed since the Plaintiff claimed an interest by the filing of its notice of pendency in the property claimed in this action.
36. Plaintiff has allowed the statute of limitations to expire on both statutes.
37. At all times Plaintiff knew that it did not need an easement for ingress and egress to the mortgaged lots "3" and "4".
38. The instant action sounding in trespass and for an equitable easement is time barred.

AS AND FOR DEFENDANTS' THIRD AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

39. Defendants repeat and reallege all statements of fact contained in Paragraphs numbered "1" through "30" as if fully set forth herein.
40. Defendants Fred Dufek and Robin Dufek are in possession of the parcel of land identified herein as Lot 12 and refuse to allow access across Lot "12" to Lots "3" and "4".

WHEREFORE, Defendants demand that the Complaint be dismissed and that the Court grant such other and further relief as the Court may deem just equitable and proper.

Dated: January 25, 2022
Melville, NY

_____/S/_____
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Charles Wallshein Esq. affirms that he has personal knowledge of the facts and circumstances that form the basis for the denials and defenses in this action. Any defenses or other statements of fact in the answer that are not based upon facts contained in the public land record or are admitted in

