

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHOHARIEFEDERAL 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).

Index No. 2022-3

AFFIRMATION IN SUPPORT

ROBERT M. LINK, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, duly deposes and says:

1. I am a partner of David A. Gallo & Associates, LLP, counsel for the Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE") A CORPORATION ORGANIZED AND EXISTING UNER THE LAWS OF THE UNITED STATES OF AMERICA.

2. This affirmation is in support of Plaintiff's Order to Show Cause for an Order (1) granting summary judgment against the Defendants, FRED DUFEK, JR.; ROBIN DUFEK; LAURIE DUFEK; TROY DUFEK, (2) for a permanent injunction restraining and enjoining the Defendants from interfering with Plaintiff's Property by preventing access through constructed fences, signage threatening violence, cameras, and locks to prevent the use of Plaintiff's Property; (3) During the pendency of this action, a preliminary injunction to enjoin and restrain Defendants from the acts set forth above; (4) A declaratory judgment finally determining the rights and obligations of the respective parties with respect to the Subject Premises and Lot 12; (5) A permanent easement by necessity allowing ingress and egress from the Subject Premises to Bassler Road through Lot 12; (6) A permanent easement by implication allowing ingress and egress from

the Subject Premises to Bassler Road through Lot 12; (7) Alternatively, a temporary easement for the limited purpose of facilitating the eviction proceedings and to explore the construction of an alternative ingress and egress to the landlocked Lot 3. (8) Compensatory damages in a sum to be determined at trial; (9) Exemplary damages in a sum to be determined at trial; (10) Costs of suit including but not limited to reasonable attorney fees; (11) That plaintiff has such other and further relief as may be just and proper.

3. Accompanying this motion is the Affidavit of Fact of Sgt. J. McCoy of Schoharie County Sheriff's Department.

4. Also accompanying this motion is the Affidavit of Daniel J. Card associate broker at A-1 REO Services, LLC, the property manager for FANNIE MAE AKA FEDERAL NATIONAL MORTGAGE ASSOCIATION with respect to the premises known as 208 Bassler Road, Middleburgh, New York 12122.

5. This Court also has broad authority to take judicial notice of public records and/or facts determined in the foreclosure action under Schoharie County Supreme Court Index Number: 2015-573. See, e.g., *Jacobs v. Law Offices of Leonard N. Flamm*, No. 04-CV-7607 (DC), 2005 WL 1844642, at 3 (S.D.N.Y. July 29, 2005) (“In cases where some of those factual allegations have been decided otherwise in previous litigation, ... a court may take judicial notice of those proceedings.”). See also, *Bentley v. Dennison*, 852 F. Supp. 2d 379, 382 n.5 (S.D.N.Y.2012) citing *Ruffins v. Dep't of Corr. Servs.*, 701 F. Supp. 2d 385, 390 n.2 (E.D.N.Y. 2010) (“Judicial notice of public records is appropriate—and does not convert a motion to dismiss into a motion for summary judgment—because the facts noticed are not subject to reasonable dispute and are capable of being verified by sources whose accuracy cannot be reasonably questioned.”); See also, *People v.*

Lawrence, 111 Misc. 2d 1027, 1033 n.8, 447 N.Y.S.2d 793 (App. Term 2d & 11th Dists. 1981) (Facts that are “widely known” are subject to judicial notice).

6. Fannie Mae is the owner of the Subject Property commonly known as 208 Bassler Road, Middleburgh, New York 12122 (Section: 119, Block: 3, Lot: 3 & 4).

7. Fannie Mae owns the Property pursuant to a Referee’s Deed dated April 21, 2017, and recorded in the Office of the Schoharie County Clerk on June 19, 2017, under Document #720738, Book 1047, Page 124, which was obtained in a foreclosure action under Schoharie County Supreme Court Index Number: 2015-573. A copy of the Referee’s Deed is annexed hereto as **Exhibit C**.

8. Defendants, FRED DUFEK, JR., ROBIN DUFEK, LAURIE DUFEK, TROY DUFEK, are possible occupants of 208 Bassler Road, Middleburgh, New York, and former owners pursuant to a Deed dated September 7, 1995, from Edward G. Smith and Lynda G. Smith to Fred Dufek, Jr. and Robin Dufek, his wife, recorded November 21, 1995 in Liber 588, Page 31 (See, **Exhibit D**), and a Deed dated July 5, 2012, from Fred Dufek, Jr. and Robin Dufek, husband and wife, to Troy Dufek and Laurie Dufek, husband and wife, recorded July 20, 2012 in Liber 937, Page 237. A copy of the 2012 deed is annexed hereto as **Exhibit E**.

9. Defendants FRED DUFEK, JR., ROBIN DUFEK, are also owners of the neighboring parcel, which adjacent to the Subject Premises and Bassler Road, and is commonly identified as Lot 12 (“Lot 12”), pursuant to a Deed dated December 20, 2006, and recorded March 12, 2007 in Document Number 467235, Book 831, Page 287. A copy of the Lot 12 Deed is annexed hereto as **Exhibit F**.

10. Plaintiff owns an easement appurtenant that benefits the real property commonly known as 208 Bassler Road, Middleburgh, New York.

11. Plaintiff is entitled to an easement as the Referee's Deed pursuant to the foreclosure under Schoharie County Supreme Court Index Number: 2015-573 created a severance of the unity of title which gives rise to the easement.

12. Plaintiff obtained a Judgment and Warrant of Eviction on or about August 22, 2018. Execution of the Warrant was stayed until September 21, 2018. See, the Judgment and Warrant annexed hereto as **Exhibit G**.

13. Defendants, FRED DUFEK, JR. and ROBIN DUFEK, are the owners of real property subject to the easement.

14. That property known as Lot 12 includes a driveway along the outer edge of the premises that serves as the only egress between Bassler Road and Lot 3, which includes the residence at 208 Bassler Road, Middleburgh, New York 12122. A copy of the tax map evidencing the relevant Tax Lots is annexed hereto as **Exhibit H**.

ARGUMENT

SUMMARY JUDGMENT

15. The Court must grant summary judgment where the movant establishes the claim by tender of evidentiary proof in admissible form sufficiently to warrant the court as a matter of law to direct judgment in its favor. *Rodriguez v. City of New York*, 31 N.Y.3d 312, 317 (2018); *Friends of Animals, Inc. v. Associated Fur Manufacturers, Inc.*, 46 N.Y.2d 1065, 416 (1979). In determining the motion, the Court must be mindful that summary judgment should not be granted when the parties, through documentary evidence, show that a factual dispute exists which necessitates a trial on the evidence presented by the respective parties. *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978).

16. Defendants' Answer includes several affirmative defenses to causes of action for an easement but counsel's arguments can be summarized as follows: (1) the Plaintiff is not entitled to

an easement because “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”; (2) plaintiff failed to fully plead its causes of action; and (3) the statute of limitations operates to prevent Fannie Mae from requesting an easement to facilitate the eviction. As illustrated, these purported defenses are neither supported by the law nor operate to further delay the enforcement of this court’s Orders.

17. For instance, Defendants’ Answer at Paragraph (4) in support of its First Affirmative Defense is misguided in its assertion that Plaintiff should not be extended an easement because its “*characterization of lot “3” as “landlocked” is in error. Plaintiff has title to Lot “4.”*” For variations on this argument see also, Defendants’ Answer at Paragraphs (8), (9), (15), (16), (20), (21), (25), (26), (30), and (37).

18. Defendants’ Answer is misleading at best. As explained in the attached Card Affidavit: “Lot 3 cannot be accessed through Lot 4 because, to the extent a narrow hiking path exists, even walking access is prevented by challenging terrain and overgrown trees and shrubbery. Moreover, even on Lot 4, the Defendants have installed chains, gates, and signage stating that trespassers will be shot.” See also, **Exhibit B**.

19. Sergeant McCoy’s Affidavit similarly explains: “For practical purpose there is a single point of access from Bassler Road to 208 Bassler Road which would allow vehicular travel (ie a moving truck) [at Lot 12]. This entry point is blocked by a gate with numerous signs on it stating “no trespassing”.”

20. The affiants’ testimony is supported by the public records kept by the Schoharie County Clerk. See, e.g., Map Viewer, 2018 NYS Digital Orthoimagery, which shows a single means of ingress/egress over Lot 12 and impassable terrain at Lot 4. See, e.g., Schoharie County Map Viewer (schohariecounty-ny.gov)

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