

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FLST, LTD, FLCT, LTD, AND FLSC, LTD,	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:16-CV-00017-KPJ
	§	
v.	§	
	§	
EXPLORER PIPELINE COMPANY,	§	
	§	
Defendant.	§	
	§	

ORDER AND OPINION

Pending before the Court is Defendant’s Motion for Summary Judgment (Dkt. 49). Plaintiffs filed a Response (Dkt. 54). Defendant filed a Reply (Dkt. 59), and Plaintiffs filed a Sur-Reply (Dkt. 60). The Court held a hearing on the matter on April 20, 2017, and the Court allowed the parties to file supplemental briefing regarding the application of the discovery rule under Texas law in this case (Dkt. 62). Both parties filed supplemental briefs (Dkts. 66, 67). For the following reasons, the Court finds Defendant’s motion (Dkt. 49) is **DENIED**.

I. BACKGROUND

This matter involves a claim for trespass and concerns the existence and placement of a pipeline and easement on a seventeen (17) acre tract of land in Denton County, Texas (the “Property”). *See* Dkt. 48 at 6. In 1948, the then-owners of the Property granted an easement (the “Easement”) to Sinclair Refining Company to install and operate a petroleum products pipeline (the “Pipeline”) on the Property, which was then a part of a larger tract of land. *See id.* at 7. Both ownership of the Property and rights under the Pipeline and the Easement passed to other parties several times in the subsequent decades. *See id.*

In 2001, the owners of the larger tract of land on which the Property was located, D-F Funds GP, LLC (“D-F Funds”), and the holders of the Easement at that time, Citgo Products Pipeline Company (“Citgo”), entered into an amendment to the Easement that allegedly relocated the Easement off the Property to another portion of the then-owner’s land (the “Amendment”) (Dkt. 48-7 at 11-13). Based on a review of the survey by Plaintiffs and of title documents by their real estate professionals, Plaintiffs purchased the Property in 2007 with the understanding that several easements previously located on the Property had been abandoned or moved, including the Easement. *See* Dkt. 48-1 at 1-2. Defendant purchased the Pipeline and the rights of the Easement in late 2007, after Plaintiffs purchased the Property. *See* Dkt. 48-7 at 8.

In or around 2014, Plaintiffs began negotiating to sell the Property, along with other adjacent tracts of land as part of the same purchase, to JBGL Chateau, LLC (“JBGL”). *See* Dkt. 48-1 at 2. The parties to the transaction learned from JBGL’s engineers that a pipeline might be located on the Property, and it was later confirmed. *See id.* Plaintiffs demanded that Defendant remove the Pipeline, but Defendant refused to do so. *See id.* Plaintiffs and JBGL adjusted the purchase price of the Property and amended their sales contract to reflect a sales price reduced by approximately \$805,000.00. *See id.* On December 1, 2015, Plaintiffs closed on the sale of the Property. *See id.* at 3. On November 25, 2015, Plaintiffs filed suit against Defendant for damages resulting from the reduction in purchase price. *See* Dkt. 5. Defendant removed the case to federal court based on diversity jurisdiction. *See* Dkt. 1.

On February 1, 2017, Plaintiffs filed a motion requesting the Court to designate a date for Plaintiffs’ damages analysis. *See* Dkt. 39 at 4-6. On February 14, 2017, the Court ordered the parties to confer on the issue of the Court designating a date for the damages analysis. *See* Dkt. 44 at 2. If the parties could not agree to a date, the parties were ordered to file a motion for

summary judgment limited to the issue of the damages analysis. *See id.* On February 22, 2017, Plaintiffs filed a motion for partial summary judgment (Dkt. 48). On February 27, 2017, Defendant filed a response (Dkt. 52). On March 1, 2017, Plaintiffs filed a reply (Dkt. 53). The Court entered an order on March 13, 2017, finding the appropriate date for the damages analysis to be February 5, 2001. *See* Dkt. 57.

On February 22, 2017, Defendant filed a Motion for Summary Judgment (Dkt. 49), claiming that Plaintiffs' trespass claim is barred by the statute of limitations. On March 8, 2017, Plaintiffs filed a Response (Dkt. 54). On March 15, 2017, Defendant filed a Reply (Dkt. 59). On March 21, 2017, Plaintiffs filed a Sur-Reply (Dkt. 60). On April 27, 2017, following a hearing on the matter, the parties submitted supplemental briefing regarding the application of the discovery rule under Texas law (Dkts. 66, 67).

II. LEGAL STANDARD

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *See* FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The mere existence of some alleged factual dispute between the parties will not defeat summary judgment; the requirement is that there be no genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A fact is “material” if a dispute

over it might affect the outcome of a suit under governing law; factual disputes that are “irrelevant or unnecessary” do not affect the summary judgment determination. *See id.* at 248. An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *See id.*

III. EVIDENCE PRESENTED

Defendant has offered the following summary judgment evidence in support of its motion:

1. Sworn Deposition of Stephen Williams, Plaintiff’s corporate representative (Dkt. 49-1);
2. Sworn Deposition of Sean Shropshire, who conducted and authored 2007 surveys of the Property (Dkt. 49-2);
3. Sworn Deposition of William Anderson, civil engineer engaged by Plaintiffs to develop the Property (Dkt. 49-3);
4. Sworn Deposition of William Sanders, representative of Defendant (Dkt. 49-4);
5. Sworn Deposition of Laura Keith, former attorney of D-F Funds (Dkt. 49-5);
6. Certified copy of original Right of Way Easement from 1948 (Dkt. 49-6);
7. Certified copy of the Amendment (Dkt. 49-7);
8. Certified copy of the 1998 Special Warranty Deed by which D-F Funds acquired the Property (Dkt. 49-8);
9. Business Records Affidavit and accompanying documents from Geary Porter, and Donovan, P.C., attorneys for D-F Funds when they owned the Property (Dkt. 49-9);
10. Certified copy of the 2007 Special Warranty Deed by which Plaintiffs acquired the Property (“2007 Deed”) (Dkt. 49-10);
11. 2007 surveys of the Property conducted by Sean Shropshire (Dkt. 49-11);
12. Owner Policy of Title Insurance, purchased by Plaintiffs in connection with their acquisition of the Property in 2007 (“Title Insurance Policy”) (Dkt. 49-12); and

13. Contract for Sale and Purchase of Unimproved Real Property, by which Plaintiffs' agreed to purchase the Property from their predecessors in title in 2007 (Dkt. 49-13).

Plaintiffs have offered the following summary judgment evidence in opposition to Defendant's motion:

1. Affidavit of Stephen Williamson (Dkt. 54-1);
2. 2007 Deed (Dkt. 54-2);
3. Certified copy of original Right of Way Easement from 1948 (Dkt. 54-3);
4. Certified copy of the Amendment (Dkt. 54-4);
5. 2007 survey Plaintiffs received as to the Property (Dkt. 54-5);
6. Copy of the Phase I Environmental Site Assessment of Alpha Testing that Plaintiffs received in connection of the purchase of the Property in 2007 (the "Environmental Survey") (Dkts. 54-6, 54-7, 54-8, 54-9, 54-10, 54-11, 54-12, 54-13, 54-14);
7. True and correct copy of the email between Stephen Williamson and purchasers of the Property (Dkt. 54-15);
8. True and correct copy of Plaintiffs' demand for Defendant to remove the Pipeline (Dkt. 54-16);
9. True and correct photograph of the northeast corner of the Property, looking south in October 2007 (Dkt. 54-17 at 1);
10. True and correct photograph of the eastern edge of the Property, looking northwest in October 2007 (Dkt. 54-17 at 2);
11. True and correct photograph of the northeast corner of the Property, looking north, across the road from the Property, in October 2013 (Dkt. 54-17 at 3);
12. True and correct photograph taken by Stephen Williamson of the northeast corner of the Property looking north in 2016 (Dkt. 54-17 at 4);
13. Affidavit of Phillip Conley (Dkt. 54-18);
14. True and correct copy of deposition of William James Sanders (Dkt. 54-19);
15. True and correct copy of deposition of William A. Anderson (Dkt. 54-20);

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