

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112	DATE FILED: July 13, 2020 8:46 AM CASE NUMBER: 2019CV31104
Plaintiff: ARCADIA CREEK LLC, a Colorado limited liability company, et al., vs. Defendant: MICHAEL W. ABSHER, et al.	▲ COURT USE ONLY ▲ Case Number: 2019CV31104 Division: 15
ORDER RE: PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT	

This Matter is before the Court on Plaintiffs' Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment. The Court has reviewed the Motions, Responses, Replies, the supporting exhibits and the procedural history of the case. The Court dispenses with any further argument and issues its ruling.

PROCEDURAL HISTORY

On June 17, 1993, a division of this Court entered Final Judgment in Case Number 92 CV 2564. In summary, the Court adopted the Stipulation of the Parties and approved the settlement agreement between the litigants in that proceeding. Accordingly, the Court approved the proposed language of the Stipulation and found the following:

5. The parties agree to the entry of a quiet title decree in this action, as follows;

(1) **The plaintiffs and all subsequent owners** of residences and lots within the Jefferson Bank Parcel, together with their successors, assigns, heirs, and personal representatives, and the family members, employees, agents, servants, independent contractors, guests, licensees, or invitees of the foregoing are entitled to **unrestricted and unlimited permanent rights of ingress and egress across and**

through West Christensen Lane, a private road, to and from South Platte Canyon Drive; (Emphasis added.)

(2) **Defendants and all unknown persons who claim any interest** in the subject matter of this action, and their successors, assigns, heirs, and personal representatives, and the family members, employees, agents, servants, independent contractors, guests, licensees, or invitees of the foregoing are entitled to **unrestricted and unlimited permanent rights of ingress and egress across and through West Christensen Lane, a private road, to and from South Platte Canyon Drive;** and (Emphasis added.)

(3) **Defendant[s] and all unknown persons who claim any interest** in the subject matter of this action, have no interest, estate or claim paramount to or inconsistent with the **unrestricted and unlimited permanent rights of ingress and egress across and through West Christensen Lane to and from South Platte Canyon Drive** of (a) the plaintiffs and the subsequent owners of residences and lots within the Jefferson Bank Parcel, and their successors, assigns, heirs, and personal representatives, and the family members, employees, agents, servants, independent contractors, guests, licensees, or invitees of the foregoing, and (b) any of the other named defendants in this action and their successors, assigns, heirs, and personal representatives, and the family members, employees, agents, servants, independent contractors, guests, licensees, or invitees of the foregoing. (Emphasis added.)

Since the Entry of this Judgment in 1993, the Jefferson Bank Parcel has been conveyed. However, the current litigation in this case involves whether this Court should grant Plaintiffs' Quiet Title action and enter a Declaratory Judgment which states that the language of the 1993 Order is clear, unambiguous and must be enforced as written. In contrast, Defendants have asked this Court to change, modify or clarify the language of the Order entered twenty-seven years ago based on the historical conduct of the property owners which may be affected by the 1993 Order of the Court.¹ Additionally, Defendants have filed a cross-motion for summary judgment where they ask this Court to find that the 1993 Order is a specific type of easement and therefore, restrictions upon Plaintiffs should be imposed.

STANDARD OF REVIEW

A motion for summary judgment is designed to avoid an unnecessary trial. *Terrell v. Walter E. Heller Co.*, 439 P.2d 989 (Colo. 1968); *Ruscitti v. Sackheim*, 817 P.2d 1046 (Colo. App. 1991). It furthers the prompt administration of justice, expedites litigation by avoiding needless trials, and enables one to speedily obtain judgment by preventing the interposition of unmeritorious defenses for the purpose of delay. *Blain v. Yockey*, 184 P.2d 1015 (Colo. 1947). Summary judgment is proper when the record establishes no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540 (Colo. 1997).

¹ See Defendants' Motion to Determine a Question of Law.

The record the court considers includes the pleadings, depositions, answers to interrogatories, admissions, or affidavits. *Civil Serv. Comm'n v. Pinder*, 812 P.2d 645, 649-50 (Colo. 1991). The movant bears the burden of showing the absence of any genuine disputes of material fact. *Cont'l Airlines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). Once this initial burden has been met, the burden shifts to the non-moving party to establish that there is a triable issue of fact. *Id.* at 713. Moreover, the non-moving party is afforded all favorable inferences that may be drawn from the allegedly undisputed facts. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1339-40 (Colo. 1988). Finally, all doubts as to the existence of factual issues are resolved in favor of the nonmoving party. *Travelers Ins. Co. v. Savio*, 706 P.2d 1258, 1276 (Colo. 1985).

HOLDING

A court order is interpreted as would any other contract between parties, and the Court must apply standard principles of contract interpretation. Courts interpret settlements, court orders, and even express easements in the same manner as it would a contract. See *Bumbal v. Smith*, 165 P.3d 844, 845 (Colo. App. 2007), as modified on denial of reh'g (Apr. 19, 2007); *In re Revised Abandonment List of Water Rights in Water Div. 2*, 2012 CO 35, ¶ 14; *Blecker v. Kofoed*, 672 P.2d 526, 528 (Colo. 1983) (same rules of interpretation apply in ascertaining the meaning of an ambiguous court order as to any other ambiguous writing or instrument); RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.1 (2000). A court's interpretation and enforcement of recorded instruments is no different. *Kroesen v. Shenandoah Homeowners Ass'n, Inc.*, 2020 COA 31, ¶ 31 (citing *Pulte Home Corp. v. Countryside Cmty. Ass'n*, 2016 CO 64, ¶ 23). The interpretation of a contract is a question of law. *Boulder Plaza Residential, LLC v. Summit Flooring, LLC*, 198 P.3d 1217, 1220 (Colo. App. 2008). The Court's task in interpreting a contract is to give effect to the intent of the parties. *Ad Two, Inc. v. City & Cnty. of Denver*, 9 P.3d 373, 376 (Colo. 2000). "The intent of the parties to a contract is to be determined primarily from the language of the instrument itself." *Id.* That "language must be examined and construed in harmony with the plain and generally accepted meaning of the words used, and reference must be made to all of the agreement's provisions." *Fibreglas Fabricators, Inc. v. Kylberg*, 799 P.2d 371, 374 (Colo. 1990). A court must interpret a contract in its entirety, harmonizing and giving effect to all provisions so that none is rendered meaningless. *Copper Mountain, Inc. v. Indus. Sys, Inc.*, 208 P.3d 692, 697 (Colo. 2009). Courts may not rewrite clear and unambiguous contract provisions. *Chacon v. Am. Family Mut. Ins. Co.*, 788 P.2d 748, 750 (Colo. 1990).

Whether an ambiguity exists in an agreement is a question of law. *Pepcol Mfg. Co. v. Denver Union Corp.*, 687 P.2d 1310, 1314 (Colo. 1984). To ascertain whether certain provisions of a contract are ambiguous, "the language used therein must be examined and construed in harmony with the plain and generally accepted meaning of the words employed and by reference to all the parts and provisions of the agreement and the nature of the transaction which forms its subject matter." *Cheyenne Mountain School Dist. No. 12 v. Thompson*, 861 P.2d 711, 715 (Colo. 1993) (quoting *Christmas v. Cooley*, 158 Colo. 297, 301, 406 P.2d 333, 335 (1965)). A written instrument is ambiguous when it is reasonably susceptible of more than one meaning. *Id.*; see *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 912 (Colo. 1996).

“In deciding whether a contract is ambiguous, a court ‘may consider extrinsic evidence bearing upon the meaning of the written terms, such as evidence of local usage and of the circumstances surrounding the making of the contract. However, the court may not consider the parties’ own extrinsic expression of intent.’” *Cheyenne Mountain*, 861 P.2d at 715 (internal citation omitted). Mere disagreement between the parties as to the interpretation of a contract does not in itself create an ambiguity as a matter of law. *Ad Two, Inc.*, 9 P.3d at 377.

The Court **FINDS** that the following language is clear and not ambiguous: “Unrestricted and unlimited permanent rights of ingress and egress across and through West Christensen Lane, a private road, to and from South Platte Canyon Drive.” The meaning of the word, unrestricted means “not having limits.” The meaning of the word unlimited means “boundless, infinite.”² And permanent means “continuing or enduring without fundamental or marked change.” *Merriam - Webster*. Similarly, the following language is also clear and unambiguous: “The plaintiffs and all subsequent owners... Defendants and all unknown persons who claim any interest.” “Subsequent” means “following in time”. “Unknown” means “not known”. *Merriam - Webster*. Further, assuming that this Order can be interpreted as the creation of an easement, an unambiguous easement is to be interpreted to ascertain and give effect to the express intent of the parties. *City of Lakewood v. Armstrong*, 2017 COA 159, ¶ 11. Accordingly, the Court does not have to resort to any rules of construction, further definition or rely upon 28 years of extrinsic evidence in order to ascertain the meaning of the Court Order.

Next, Colorado case law provides for “assuring the finality of civil judgments.” *In re Marriage of Wolford*, 789 P.2d 459, 460 (Colo. App. 1989). “The strong interest in the finality of civil judgments is reflected in the well-settled rule that such a judgment may be attacked collaterally in a later civil proceeding only when the court entering it lacked personal or subject matter jurisdiction.” *People v. Coyle*, 654 P.2d 815, 819 (Colo. 1982) (citing *Estate of Bonfils v. Davis*, 543 P.2d 701 (Colo. 1976); *McLeod v. Provident Mutual Life Insurance Co. of Philadelphia*, 526 P.2d 1318 (Colo. 1974); *Davidson Chevrolet v. City and County of Denver*, 330 P.2d 1116 (Colo. 1958).

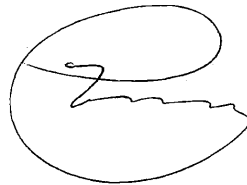
Accordingly, the Court **HOLDS** that the Final Judgment in 92 CV 2564 is clear and unambiguous and must be enforced as written. Specifically, the Final Judgment granted the then-current owners of the property bordering the Lane, and those persons’ successors, assigns, heirs, and personal representatives, and each of their family members, employees, agents, servants, independent contractors, guests, licensees and invitees, permanent “unrestricted and unlimited” rights of ingress and egress over the Lane. Here, a successor, assign ... of one or more of the defendants has property he/she may access via the Lane and the right to ingress and egress to and from the same. By the plain language of the Final Judgment, a successor, assign’s ... ingress and egress rights over the Lane are unlimited and unrestricted, meaning that once a successor, assign ... enters onto the portion of this Property that borders the Lane (here, the Arapahoe Parcel), the Final Judgment does not, and cannot serve as a basis for restricting any activity by the successor, assign (and this person’s “family members, employees, agents, servants, independent contractors, guests,

² “Un” is a prefix meaning, in relevant definitions: not, opposite of, contrary to, deprive of, remove, release from, free from. *Merriam-Webster*.

licensees and invitees”) may otherwise lawfully do thereon, including making entry upon the adjacent parcels of land of the successor, assign ... In conclusion, Plaintiffs’ Motion for Summary Judgment is **GRANTED** as set forth above. The Court also **DECLINES** to impose material restrictions on what is expressly defined as an “unrestricted and unlimited” right of ingress and egress in the Final Judgment of 92 CV 2564. Therefore, the Cross-Motion for Summary Judgment is **DENIED**.

Dated: July 13, 2020

BY THE COURT:



Frederick T. Martinez
District Court Judge