STATE OF IDAHO)
County of KOOTENAI)ss
FILED 3/1/2021
AT 4:55 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

DANIEL BEDWELL and ANN BEDWELL, husband and wife,,
Plaintiffs,
vs.
DAVID SPIKER and JILL SPIKER, husband and wife and the marital community comprised thereof,
Defendants,
And DIAMOND SPIKE 55+ RATHDRUM, LLC, an Idaho limited liability company,
Defendant/Counterclaim Plaintiff.

Case No. **CV28-20-2810**

MEMORANDUM DECISION GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on a Motion for Partial for Summary Judgment filed on January 28, 2021, by plaintiffs, Daniel Bedwell and Ann Bedwell (Bedwell) against defendants David Spiker, Jill Spiker, and Diamond Spike, 55+ Rathdrum, LLC (collectively defendants).

This case involves three causes of action raised by Bedewlls. First, Bedwells allege that "Defendant Spiker, without permission, willfully and intentionally proceeded upon Plaintiffs' property and cut down or caused to be cut down the two (2) large irreplaceable pine trees standing on Plaintiffs' property." Compl. 4. Next, Bedwells allege trespass in cutting down the aforementioned trees. *Id.* at 4-5. Finally, Bedwells allege waste as "[a] tenant in common who cuts down a tree owned together by a co-tenant, and without the permission of said co-tenant, commits waste." *Id.* at 5.

Defendants have put forward three counterclaims. First, defendants allege that

a previous agreement had been reached in which defendants removed dirt sliding onto Bedwells' property and built a fence at defendants' expense. Defs' Answer to Compl., Affirmative Defenses and Counterclaim 8-9. Defendants allege that in satisfying this agreement, the liability, if any incurred by defendants for trespass had been discharged. *Id.* at 9. Furthermore, defendants allege that "[t]he Bedwells action of demanding trespass damages and filing suit against Diamond Spike was a breach of the accord and satisfaction agreement reached between the Bedwells and Diamond Spike." *Id.* The defendants claim Diamond Spike was damaged by this breech. *Id.*

Next defendants claim promissory estoppel. Defendants claim to have spent approximately $30,000 to clean up the dirt that had slid onto defendants' property and erect a fence based upon their agreement that they believed would resolve the Bedwells' trespass claims. *Id.* at 9-10. Finally, defendants claim quasi estoppel regarding their assertion that "the Bedwells previously took the position that if Diamond Spike cleaned up the dirt that had migrated on its property and built the fence that it would resolve any claims arising from the removal of the pine trees." *Id.* at 10-11.

On March 1, 2021, argument on Bedwells' Motion to Strike filed February 22, 2021, and Bedwells' Motion for Partial Summary Judgment was held, at the conclusion of which this Court made its ruling on Bedwells' Motion to Strike on the record and also made its ruling on the Bedwells' Motion for Partial Summary Judgment on the record, indicating that this Court would file its decision on the Motion for Partial Summary Judgment consistent with that on the record finding.

II. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
> (4) issue any other appropriate order.

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact.

. . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden. . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

III. ANALYSIS.

Bedwells seek summary judgment on their claim of waste as well as Defendants' Counterclaims of breach of accord and satisfaction agreement, promissory estoppel,

and quasi-estoppel. Mem. in Supp. of Pls' Mot. for Partial Sum. J. 2. This Court will address these issues in turn.

A. Plaintiffs' Claim of Waste

"Plaintiffs have alleged trespass and waste against Defendants for their act of willfully, intentionally and without permission cut down two (2) large irreplaceable pine trees standing on what Defendants allege was the shared boundary of Plaintiffs' and Defendant's property." *Id.* at 3. Bedwells argue that defendants have conceded that the trees defendants cut down existed on a shared property line. *Id.* at 4 (*Citing,* Defendants Answer, ¶¶ 6, 7, 14, 19 and 24.; Wing Decl., Exh. D; Defendants' Answer to Plaintiffs' Interrogatory No. 7). Bedwells argue that defendants did not receive permission to cut down the trees, and therefore, "if the subject trees were located on the parties' shared property line, as the Defendants' allege, the Defendant is at least liable for waste and treble damages under I.C. § 6-201 for willfully, wantonly or maliciously cutting down the property of its co-tenant in common." *Id.* at 6.

Defendants argue that their answer to the Amended Complaint, and discovery admissions do not amount to a concession that defendants did not have permission to cut down the trees in question. Defs'. Opp. to Pls'. Mot. for Summ. J. 15. Additionally, defendants argue that, "the direct testimony of David Spiker contradicts the inference the Bedwells seek to have drawn in their favor." *Id.* This testimony appears to relate to David Spiker's Declaration in which he states:

> Mrs. Bedwell consented to the removal of the brush and the debris during our conversation. Regarding the pine trees, she indicated she and her husband would like to have the two pine trees preserved if possible. I explained given their condition, it was not possible to preserve the trees and told her to have Mr. Bedwell call me or come over to look at the trees with me if he had questions on why I believed they were dangerous.
>
> I informed Mrs. Bedwell I would be at the property daily for the next few weeks if Mr. Bedwell had any concerns about removing the trees. Mr.

> Bedwell never contacted me, nor did he visit the property to inspect the trees with me.
>
> Based on the conversation, with Mrs. Bedwell's consent, Diamond Spike had the brush and debris cleared from the mutual property boundary and the three pine trees taken down. The third tree had already blown over onto Diamond Spike's property due to an existing widowmaker.

Decl. of David Spiker 3-4.

Finally, defendants argue that, "Defendants present evidence that the trees were not healthy and posed a hazard to Diamond Spike, as well as to the property of another neighbor and the removal of the two pine trees was warranted because of the hazard they posed." Defs'. Opp. to Pls'. Mot. for Summ. J. 15-16.

This Court finds that defendants had not received permission to cut down the trees in question. It is undisputed by both parties that the trees resided on the shared property line, existing as property held as co-tenants in common between the Bedwells and the defendants. Bedwells have made allegations in their unverified Complaint, and have provided evidence via the declarations of Anne and Dan Bedwell, that defendants did not receive permission to cut down the trees in question. (See, Complaint, ¶ 13; Ann Bedwell Decl., ¶ 4; Dan Bedwell Decl., ¶¶ 7 and 8.) Defendants state that "Diamond Spike contends otherwise" (Defs'. Opp. to Pls'. Mot. for Summ. J. 15), but the only evidence defendants point to is the Declaration of David Spiker, in which it is clear to this Court that David Spiker's own declaration proves that the Bedwells did not give defendants permission to cut down the trees. Defendants argue they were justified in cutting down the trees due to the hazard and nuisance they posed, and they cite to *Lemon v. Curington* 78 Idaho 522, 523-524 (1957). *Lemon* does not speak to allowing self-help, without court permission, to remedy a nuisance on an abutting land owners' property. Instead, *Lemon* delt with a nuisance claim in which the plaintiff asked the

court to grant permission to remove the offending trees. *Lemon*, 78 Idaho at 524. This Court finds that no genuine issue of material fact remains regarding the Bedwells' claim of waste. However, issues of fact remain as to injury to Bedwells and damage to Bedwells, relative to their claim of waste.

B. Defendants' Affirmative Defenses of Accord and Satisfaction, Promissory Estoppel, and Quasi-Estoppel

As a preliminary matter, this Court finds that defendants counterclaims of accord and satisfaction, promissory estoppel, and quasi-estoppel are not counterclaims and are properly affirmative defenses under I.R.C.P. 8(c)(1)(A), and I.R.C.P. 8(c)(1)(F).

Bedwells argue that "[s]imply, resolution of the Defendants' timber trespass was not part of the parties written agreement, and therefore Defendants' defenses and/or claims for accord and satisfaction and estoppel are unavailing and should be dismissed." Mem. in Supp. of Pls' Mot. for Partial Summ. J. 10. Furthermore, Bedwells argue that, "There is nothing in the parties' fence agreement that would lead one to believe that there are other oral agreements not contained in the final written agreement, and parole evidence is not appropriate." Reply 6.

Defendants argue that:

> an oral settlement agreement was reached between the Bedwells and Diamond Spike through its agent, John Scarcello. Contracts may be oral. I.C. § 29-105. The "New Fence Replacement Agreement" was a document executed to effectuate the terms of the oral settlement agreement because it allowed Diamond Spike to enter the Bedwells property to erect the fence it agreed it would erect to resolve the trespass claims. It was not the settlement agreement itself.

Defs'. Opp. to Pls'. Mot. for Summ. J. 17. The "New Fence Replacement Agreement" executed by Bedwells on April 29, 2019, reads:

> We hereby understand and agree that David Spiker (Diamond Spike), owner/installer of the existing fence on the South side of my property, will remove his fence at his expense. He will then construct, at his cost, a new Vinyl privacy fence on top of a cement wall between my property and

> Diamond Spike 55+, (see attached drawing for clarity). I give the fence, wall contractors, surveyor, and City of Rathdrum Officials permission to assess my yard to install/check pins and for the construction of the new fence and wall. I understand that there may be a slight disturbance to the edge of my yard and that if any damage is done to a sprinkler head, it will be repaired/replaced as necessary, at no cost to me.

Decl. of Daniel Bedwell Ex. F. Prior to the signing of the "new fence replacement agreement, David Spiker employed John Scercello and "authorized John Scarcello to speak with Dan Bedwell on behalf of Diamond Spike as its agent and agreed to place the fence on top of a concrete retaining wall if it resolved all of the issues Dan Bedwell had raised in his letter dated April 10, 2019." Decl. of David Spiker 6. This included the trespassing and destruction of the trees. In regards to John Scarcello's interactions with Dan Bedwell, John Scarcello testified the following:

> 9. I contacted Mr. Bedwell by phone to let him know I was authorized to meet with him regarding his request. At his invitation, I met with him on his property soon after the telephone call. I took one of the pre-signed fence replacement agreements with me in case we were able to come to an agreement regarding resolving the matter.
> 10. At the meeting, Mr. Bedwell expressed his displeasure with Diamond Spike for causing dirt to slough off onto his side of the property line and removing two trees. We discussed what resolution would resolve the matter.
> 11. Mr. Bedwell indicated he would be happy if as a resolution to the matter Diamond Spike cleaned up the dirt on his side of the boundary to his satisfaction and placed the fence along his property on an elevated foundation similar to what was done to the east.
> 12. Based upon Mr. Bedwell's conversation, I was left with the impression and understood the fence compromise was intended to resolve the dispute between the Bedwells and Diamond Spike.
> 13. After our discussion and my understanding all the problems Mr. and Mrs. Bedwell had with Diamond Spike would be resolved by the items we discussed, I agreed on behalf of Diamond Spike that it would clean up the dirt and place the fence on a foundation. I had Mr. Bedwell and Mrs. Bedwell sign the fence agreement so Diamond Spike's contractors could enter the Bedwells' property to clean up the dirt and construct the fence. A true and correct copy of the document signed by Mr. and Mrs. Bedwell is attached hereto as Exhibit "A".
> 14. Neither Mr. Bedwell nor Mrs. Bedwell indicated that the fence compromise was not intended to resolve the issue involving the removal of the two trees.

Decl. of John Scarcello 3. David Spiker states that, "[s]ince I understood the Bedwells agreed this retaining wall would resolve the issues they had expressed in their April 10, 2019, letter, I had Blue Sky install the retaining wall at an increased cost to Diamond Spike of $9,650.00." Decl. of David Spiker 6. The April 10, 2019, letter from Daniel Bedwell to David Spiker first referenced the Bedwells' claim that Spiker had trespassed on his property and cut down two trees (for which Bedwells wanted $10,000.00 in damages and that the holes where the stumps were dug out were to be filled in with topsoil instead of rocks), then referenced the claim that Spiker had elevated dirt that had sloughed onto his property (for which Bedwells wanted the sloughed dirt cleaned up, and a retaining wall built. Decl. of Dan bedwell, Ex. E.

The Idaho Supreme Court has found that:

> If the terms of a contract are clear and unambiguous, the interpretation of their meaning and legal effect are questions of law. *Idaho v. Hosey,* 134 Idaho 883, 886, 11 P.3d 1101, 1104 (2000) (citations omitted). The meaning of an unambiguous contract must be determined from the plain meaning of the words. *Id.* Where, however, the contract is deemed to be ambiguous, "interpretation of the contract is a question of fact that focuses on the intent of the parties." *Id.* "Whether the facts establish a violation of the contract is a question of law over which this Court exercises free review." *Id.*

Opportunity, L.L.C. v. Ossewarde, 136 Idaho 602, 605–06, 38 P.3d 1258, 1261–62 (2002). As to what constitutes ambiguity in a contract, the Idaho Supreme Court has found that:

> "There are two types of ambiguity, patent and latent." *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011). A patent ambiguity exists when the document is ambiguous on its face. *Id.* (citation omitted). "A latent ambiguity exists where an instrument is clear on its face, but loses that clarity when applied to the facts as they exist." *Id.* (citing *Cool v. Mountainview Landowners Co-op. Ass'n, Inc.*, 139 Idaho 770, 773, 86 P.3d 484, 487 (2004)). "Where the facts in existence reveal a latent ambiguity in a contract, the court seeks to determine what the intent of the parties was at the time they entered into the contract." *Id.* (citing *Snoderly v. Bower*, 30 Idaho 484, 488, 166 P.

265, 266 (1917)).

E. Side Highway Dist. v. Delavan, 167 Idaho 325, 470 P.3d 1134, 1151–52 (2019).

This Court finds that there exists a latent ambiguity as to the New Fence Replacement Agreement because it would not make sense for defendants to enter into the New Fence Replacement Agreement if an oral settlement agreement had not been reached prior to its signing. Defendants assert that a prior oral settlement was reached and the New Fence Replacement Agreement was signed in order to settle all of Bedwells' claims of trespass against defendants. Defs'. Opp. to Pls'. Mot. for Summ. J. 19. Bedwells argue that the new fence replacement agreement was made in response to Bedwells' demand that a retaining wall be built only to remedy defendant's dirt sluffing onto Bedwells' property. Mem. in Supp. of Pls'. Mot. for Partial Summ. J. 9. In this regard, Bedwells and defendants both point to an oral settlement agreement to make sense of the new fence replacement agreement. The New Fence Replacement Agreement itself is completely silent as to consideration owed to defendants' for their expenses and effort in completion of their end of the agreement, it is completely silent upon any damages from defendants to Bedwells for trespass, and it is completely silent on the issue of the trees that were removed by defendants and any damages for such removal. Nothing can be gleaned as to the intent of the parties regarding any consideration based on the agreement itself, and in order to make sense of the agreement, this court must look to extrinsic evidence. For these reasons, this Court finds that a genuine issue of material fact exists as to whether an oral settlement agreement discharged defendants of the liability incurred in their trespass and waste regarding the removal of the trees.

For the reasons described above, this Court finds that a genuine issue of material fact exists as to whether defendants' affirmative defenses of accord and

satisfaction, promissory estoppel, and quasi-estoppel exist.

IV. CONCLUSION AND ORDER.

For the reasons discussed above, Bedwells' Motion for Partial Summary Judgment regarding their claim of waste is granted. Bedwells' Motion for Partial Summary Judgment on Defendants affirmative defenses of accord and satisfaction, promissory estoppel, and quasi-estoppel is denied.

IT IS HEREBY ORDERED that Bedwells' Motion for Partial Summary Judgment regarding their claim of waste is GRANTED.

IT IS FURTHER ORDERED that Bedwells' Motion for Partial Summary Judgment on defendants' affirmative defenses of accord and satisfaction, promissory estoppel, and quasi-estoppel is DENIED.

ENTERED this 1st day of March, 2021.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 1st day of March, 2021, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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