

STATE OF VERMONT
WINDSOR COUNTY, SS

Terry Hartman
Charmaine Wesley-Hartman
Plaintiffs

v.

Scott Piper
Paula Piper
Defendants

SUPERIOR COURT
Docket No. 608-8-09 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

This case has started off on the wrong foot. It involves a boundary dispute between two neighbors, and in the complaint, plaintiffs allege that defendants have placed a trailer and other personal belongings on a portion of plaintiffs' property.

Plaintiffs attached a series of photographs and letters to the complaint. The photographs purport to show the encroachment, and the letters detail some communications between the parties prior to the commencement of the lawsuit. It is clear from the letters that defendants dispute the location of the boundary line between the two properties.

Defendants represented themselves at the outset of the litigation, and filed a short answer in early September 2009 that more or less took the form of a general denial. Defendants also filed an allegation under the heading of a "counterclaim," but they did not pay a filing fee, and the counterclaim has not been docketed.

The court then sent out a notice that instructed the parties to file a stipulated scheduling and discovery order by October 29, 2009. The parties did not do this. Instead, plaintiffs filed a motion for summary judgment on October 21st.

The motion for summary judgment contained a statement of material facts, and was supported by affidavits from the individual plaintiffs, and from plaintiff's surveyor, who had measured the boundary line sometime prior to the commencement of the litigation. The motion stated that plaintiff's facts supported the entry of judgment as a matter of law, and asserted that defendants' general denial would not be enough to survive a motion for summary judgment.

Shortly after the motion for summary judgment was filed, attorney Gregory Mauriello entered an appearance for defendants, and filed a short opposition. He asserted that defendants were disputing the location of the boundary, and pointed to the letters

attached to the complaint which detailed defendants' desire to hire a surveyor to provide a second opinion as to the location of the boundary. He also asserted that the motion for summary judgment was more like a motion for judgment on the pleadings, given its timing and content. He did not file a statement of disputed facts.

~~On this record, the court is not persuaded that it can make a fair and accurate~~ determination as to whether the material facts in this case are genuinely disputed. In particular, although defendants have not followed the procedures set forth in Rule 56, the documents attached to the complaint itself show that defendants are disputing the location of the boundary line. It is apparent that defendants want more time to survey the boundary. The fact that a survey has not yet occurred appears to be more likely attributable to the lack of an opportunity for discovery, rather than an actual failure of proof.

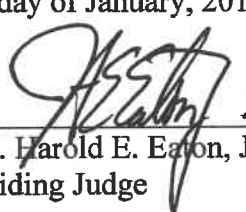
An entry of judgment at this time would not fairly reflect the substantive merits of the case. It would better serve the interests of justice to determine whether there are genuine issues for trial, and whether any party is entitled to judgment as a matter of law, after there has been "an adequate time for discovery." *Poplaski v. Lamphere*, 152 Vt. 251, 254-55 (1989); see also 10A Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 2717 (explaining that courts are generally reluctant to grant motions for summary judgment filed at the outset of the case by the plaintiff). For these reasons, the motion for summary judgment is premature at this time. *Doe v. Doe*, 172 Vt. 533, 534 (2001) (mem.).

~~The parties are ordered to submit an ADR stipulation and discovery order by~~ February 4, 2010. The order shall set forth an appropriate timeline for discovery. Either party may file a new motion for summary judgment on the merits of the case at the appropriate time.

ORDER

Plaintiff's Motion for Summary Judgment (MPR #1), filed October 21, 2009, is *denied*. The parties shall submit an ADR stipulation and discovery order by February 4, 2010.

Dated at Woodstock, Vermont, this 14 day of January, 2010.



Hon. Harold E. Eaton, Jr.
Presiding Judge

FILED
JAN 14 2010
Windsor County Clerk