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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CHRISTOPHER A. NIEDERMAN and
NICOLE L. NIEDERMAN, husband and
wife, and the marital community
composed thereof,

Plaintiffs,

v.

STEVE YANG and SOPHY YANG,
husband and wife, and the marital
community composed thereof; UMPQUA
BANK, a foreign bank corporation.

Defendants.

The Honorable Ken Schubert

NO. 20-2-08679-7 SEA

ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS

Defendants Steve Yang and Sophy Yang (“Defendants” or “Yang”), through their undersigned attorneys of record, answer Plaintiffs Christopher A. Niederman and Nicole L. Niederman’s (“Plaintiffs” or “Niederman”) Complaint, as follows.

I. PARTIES

1.1 Admit.

1.2 Admit.

1.3 Admit.

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1 1.4 Admit that Umpqua Bank is the beneficiary of a deed of trust granted by
2 the Defendants.

3 **II. JURISDICTION AND VENUE**

4 2.1 Admit.

5 2.2 Admit.

6 2.3 Admit.

7 **III. BACKGROUND FACTS**

8 3.1 Admit that the Niedermans own real property that has an address of 6800
9 SE 96th Ave. Mercer Island, Washington. The tax account numbers and legal descriptions
10 are reflected in documents of the public record, and those public records speak for
11 themselves.

12 3.2 Admit that the Niedermans purchased the subject property from the Simons,
13 the details of the purchase are matters of public record and those records speak for
14 themselves.

15 3.3 Admit that the details of the purchase are matters of public record and those
16 records speak for themselves.

17 3.4 Admit.

18 3.5 Admit that the recorded document speaks for itself.

19 3.6 Admit that the recorded document speaks for itself.

20 3.7 Admit that the recorded document speaks for itself.

21 3.8 Admit that the recorded document speaks for itself.

22 3.9 Admit that portions of the Yang Property and the Niederman Property share
23 a common boundary.

24 3.10 Lack sufficient information to admit or deny, and therefore admit to the
25 extent that public records speak for themselves, and otherwise deny.

1 3.11 Admit that the Yang Property is in the Evan's Addition. Admit that Parcel
2 A of the Niederman Property is not part of the Evan's Addition. Deny that Parcel B of the
3 Niederman Property (the ingress/egress easement) is not part of the Evan's Addition.

4 3.12 Lacking sufficient information to admit or deny, deny as to the Niederman
5 Property, as it is understood that the Niedermans have an alternative access point that the
6 Niedermans or their predecessors sealed off. Further deny to the extent that both the Yang
7 Property and Niederman Property can be accessed by watercraft.

8 3.13. Admit that the Short Plat document is a public record and speaks for itself.

9 3.14 Admit that the Short Plat document is a public record and speaks for itself.

10 3.15 Deny as alleged.

11 3.16 Admit.

12 3.17 The recorded Lot Line Revision speaks for itself and the Yangs otherwise
13 deny the allegation.

14 3.18 Deny insofar as Parcel B of the Niederman deed was subject to RIGHTS,
15 RESERVATIONS, COVENANTS, CONDITIONS, RESTRICTIONS, AGREEMENTS, NOTES,
16 DEDICATIONS, ENCROACHMENTS, AND EASEMENTS PRESENTLY OF RECORD. Further Deny
17 based on Washington State common law as stated in *Buck Mountain Owner's Ass'n v*
18 *Prestwich*, 174 Wn. App. 702 (2013).

19 3.19 Lacking sufficient information to admit or deny, deny, as it is understood
20 that the Niederman Property originally had an alternative access point that the Niedermans
21 or their predecessors sealed off.

22 3.20 Deny.

23 3.21 Lacking sufficient information to admit or deny, deny.

24 3.22 Admit to the extent that the Yangs have observed the Niedermans'
25 construction project.

1 3.23 Deny that the Niedermans initially complied with all legal permit
2 requirements. With respect to the remaining allegation, lacking sufficient information to
3 admit or deny, therefore deny.

4 3.24 Deny.

5 3.25 Admit that the land use records and/or Washington statutes speak for
6 themselves, deny they are relevant to this matter. The allegation is further denied to the
7 extent that it implies that other neighbors in the Evan's Addition did not file a complaint.

8 3.26 The allegation purports to be a legal conclusion and is therefore denied.

9 3.27 The allegation purports to be a legal conclusion and is therefore denied.

10 3.28 Deny, as alleged, as the Niedermans had no utility easement or other legal
11 right to connect to the existing gas line.

12 3.29 Admit that part of the gas line was on the Yang Property and constituted a
13 trespass. Deny that the Yangs were the only owners who did not agree with the Niederman
14 proposal, as the offered contribution was wholly inadequate to meet the Niedermans'
15 proportional burden on the private lane.

16 3.30 Admit that the Yangs did not agree with the proposal. Lacking sufficient
17 information to admit or deny, deny the remaining allegations.

18 3.31 Admit on information and belief that the Niedermans installed a new gas
19 line. Lacking sufficient information to admit or deny the remainder of the allegation, deny.

20 3.32 Admit that the complaints of public record speak for themselves. Deny that
21 any claim was frivolous.

22 3.33 Deny.

23 3.34 Deny.

24 3.35 Admit.

25 3.36 Deny.

1 3.37 Deny.
2 3.38 Deny.
3 3.39 Admit that the public records reflect matters regarding the permit
4 applications, but otherwise deny how the Niedermans characterize the allegation.

5 **IV. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

6 4.1 The Yangs reassert their previous responses and incorporate them herein.
7 4.2 Admit there is a dispute but deny there is any legal basis for the
8 Niedermans' claims.
9 4.3 The Yangs deny such relief is appropriate.
10 4.4 The Yangs deny such relief is appropriate.
11 4.5 The Yangs deny such relief is appropriate.
12 4.6 The Yangs deny such relief is appropriate.

13 **V. SECOND CAUSE OF ACTION – QUIET TITLE TO EASEMENT**

14 5.1 The Yangs reassert their previous responses and incorporate them herein.
15 5.2 Deny, as the Niedermans have not proved ownership or quieted the title to
16 the disputed land.
17 5.3 Deny.
18 5.4 Deny.
19 5.5 Deny.
20 5.6 Deny.
21 5.7 Deny.
22 5.8 Deny.
23 5.9 Deny.

1 **VI. THIRD CAUSE OF ACTION – QUIET TITLE TO PRESCRIPTIVE EASEMENT FOR**
2 **USE OF VEHICLE TURN AROUND EASEMENT**

3 6.1 The Yangs reassert their previous responses and incorporate them herein.

4 6.2 Deny.

5 6.3 Deny and expressly note that there is no evidence of any nature whatsoever
6 supporting the historical use as alleged by the Niedermans.

7 6.4 Deny.

8 6.5 Deny.

9 6.6 Deny, insofar as there is not an adequate legal description of the Vehicle
10 Turn Around. Admit to the extent that the Lot Line Revisions did not affect any Niederman
11 rights in the Vehicle Turn Around Easement as non-existent Niederman rights cannot be
12 affected.

13 6.7 Deny, insofar as there is not an adequate legal description of the Vehicle
14 Turn Around to respond to the allegation, and otherwise deny.

15 6.8 Deny.

16 6.9 Deny.

17 6.10 Deny.

18 6.11 Deny that the relief is appropriate.

19 6.12 Deny that the relief is appropriate.

20 **VII. FOURTH CAUSE OF ACTION**
21 **NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

22 7.1 The Yangs reassert their previous responses and incorporate them herein.

23 7.2 Deny.

24 7.3 Deny.

25 7.4 Deny.

1 7.5 Deny that such relief is appropriate.

2 7.6 Deny monetary damages are appropriate.

3 **VIII. FIFTH CAUSE OF ACTION – PRIVATE NUISANCE**

4 8.1 The Yangs reassert their previous responses and incorporate them herein.

5 8.2 Deny the allegations and legal conclusions.

6 8.3 Deny the allegations and legal conclusions.

7 8.4 Deny the allegations and legal conclusions.

8 8.5 Deny the allegations and legal conclusions.

9 8.6 Deny that such relief is appropriate.

10 8.7 Deny that Yangs committed wrongful action that are compensable.

11 **IX. SIXTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

12 9.1 The Yangs reassert their previous responses and incorporate them herein.

13 9.2 Deny that such relief is appropriate.

14 **X. AFFIRMATIVE DEFENSES**

15 Having answered the Plaintiffs’ Complaint, the Yangs assert the following
16 Affirmative Defenses:

17 1. Existing easements are expressly barred at common law from being
18 relocated by Courts. See *Kave v. McIntosh Ridge Primary Rd. Ass'n*, 198 Wash. App.
19 812, 823, 394 P.3d 446, 451 (2017); *MacMeekin v. Low Income Housing, Inst., Inc.*, 111
20 Wn. App. 188, 190, 45 P.3d 570 (2002).

21 2. Plaintiffs fail to state a cause of action for which relief can be granted.

22 3. Statute of limitations.

23 4. Statute of frauds.

24 5. Unclean hands.

25 6. Estoppel.

1 7. Any use of the Yang Property was permissive, at least through the date the
2 Niederman Property was purchased by the Niedermans.

3 8. Any historic or prior use of the Yang Property was neighborly
4 accommodation.

5 9. Administrative land use and permit decisions do not control property rights.

6 10. Claims for prescriptive easements require knowledge by the servient owner
7 of the claimant's use, and the Niedermans cannot demonstrate such knowledge by the
8 servient owner for the required statutory period of time, and if such knowledge is
9 established, the use was permissive.

10 11. The Niedermans have no objective physical symptoms of emotional
11 distress.

12 XI. COUNTERCLAIMS

13 Having fully answered and asserted affirmative defenses, the Yangs assert the
14 following counterclaims:

15 1. Jurisdiction, Venue, and Parties are properly stated in the Complaint.

16 2. Steve Yang, as his separate estate, is the owner of the real property
17 identified as King County Parcel No. 239600050 (the "Yang Property"). Sophy Yang is
18 the wife of Steve Yang (collectively, the "Yangs") and uses and enjoys the Yang Property
19 together with her husband. The Yang Property is legally described as follows:

20 THAT PORTION OF LOTS 4 AND 5, EVANS ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN
VOLUME 101 OF PLATS, PAGES 91 THROUGH 92, RECORDS OF KING COUNTY, WASHINGTON, LYING
EASTERLY OF THE FOLLOWING DESCRIBED LINE:

21 BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 4, EVANS ADDITION, WHICH BEARS SOUTH 88
DEGREES 4 MINUTES 26 SECONDS EAST, DISTANT 103.38 FEET FROM THE NORTHWEST CORNER OF
SAID LOT 4;
22 THENCE SOUTH 05 DEGREES 41 MINUTES 39 SECONDS WEST A DISTANCE OF 102.58 FEET TO THE
SOUTH LINE OF SAID LOT 4 AND THE TERMINUS OF THIS LINE;

23 TOGETHER WITH SECOND CLASS SHORELANDS ADJOINING AS DELINEATED ON THE FACE OF THE
PLAT;

24 TOGETHER WITH AN UNDIVIDED INTEREST IN TRACT A (COMMUNITY BEACH) AND SECOND CLASS
SHORELANDS ADJACENT TO AND ABUTTING THEREON;

25 AND TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES OVER THE 10
FOOT PRIVATE ROAD AS DELINEATED ON THE FACE OF THE PLAT;

(ALSO KNOWN AS REVISED LOT 5 OF MERCER ISLAND LOT LINE ADJUSTMENT #MI-94-1039, RECORDED
UNDER RECORDING NO. 9412229001);

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1 3. The Yang Property is located within the short plat known as the Evan’s
2 Addition recorded under King County Recording Number 7701260554 (the “Evan’s
3 Plat”).

4 4. Christopher A. Niederman and Nicole L. Niederman (“Niedermans”) own
5 an easement interest within the Evan’s Plat (the “Access Easement”) that is part of the
6 Yang Property. The Niedermans are husband and wife and all actions hereafter alleged to
7 have been performed on their individual behalf, were also performed on behalf of the
8 marital community.

9 5. This Access Easement was created in the face of the Evan’s Plat which
10 grants the OWNERS AND GUESTS OF THE RESIDENCE AT 6800 96th SE” the right
11 to an easement for “INGRESS AND EGRESS PURPOSES.”

12 6. The Niedermans identify the Access Easement as “Parcel B” in their
13 Complaint, and alleged it is legally described as follows:

14 **PARCEL B:**
15 AN EASEMENT FOR INGRESS AND EGRESS AS DELINEATED ON
16 THE PLAT OF EVAN’S ADDITION, ACCORDING TO THE PLAT
17 THEREOF RECORDED IN VOLUME 101 OF PLATS, PAGES 91 AND 92,
 RECORDS OF KING COUNTY, WASHINGTON.
 SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

18 7. The Yangs’ predecessors acquired the underlying fee interest in all or part
19 of Parcel B and the Access Easement through a Lot Line Revision by and between the
20 Yangs or their predecessors and the then-owners of Lot 4 of the Evan’s Plat, recorded under
21 King County Recording Number 9412229001 (the “Lot Line Revision”).

22 8. The Lot Line Revision further makes reference to a certain Turn Around
23 Easement which the Yangs allege, on information and belief, served purposes of meeting
24 legal requirements for emergency vehicle access.

25

1 9. The Niedermans (or their predecessors) were not a party to the Lot Line
2 Revision and therefore did not acquire any legal rights from its recording.

3 10. In or around 2004, the Niedermans' predecessors constructed certain
4 driveway improvements including a wall encroaching on the Yang Property. At that time,
5 the encroachment was discussed with the Niedermans' predecessors and it was agreed that
6 any further use would be deemed permissive and a neighborly accommodation.

7 11. All prior use of the driveway access outside of the Access Easement was
8 either based on neighborly accommodation or permissive use.

9 12. The face of the Evan's Plat which created the Access Easement contains
10 certain Conditions Covenants and Restrictions ("CC&Rs"). One of these CC&Rs is a
11 restriction which provides that "access to all lots is limited to a 10' private road easement"
12 (the "Access Covenant"). The Access Covenant is therefore an express restriction on the
13 grant of the Access Easement to the Niedermans.

14 13. As owners of the Access Easement within the Evan's Plat, the Niedermans
15 are subject to the Access Covenant.

16 14. The Niedermans have impermissibly utilized portions of the Yang Property
17 for purposes of temporarily storing garbage and recycling cans (collectively, "Garbage
18 Can(s)") for weekly pickup.

19 15. The use referenced in the preceding paragraph never occurred prior to the
20 Niedermans' purchase of the Niederman Property in 2015. Thereafter, the Niedermans
21 asked the Yangs if they could place the Garbage Cans in that location and the Yangs
22 initially agreed as a permissive use and neighborly accommodation. The Yangs have since
23 revoked the authorization.

24 16. The Niederman's predecessors never used the Yang Property for such
25 purposes.

1 17. Despite repeat demand, the Nidermans have failed and refused to cease and
2 desist their unauthorized use of the Yang Property.

3 18. It is blackletter law that relocation of existing easements is not allowed at
4 common law. The purpose behind this rule is explained in a leading treatise:

5 As a general rule, **once the location of an easement has been established,**
6 **neither the servient estate owner nor the easement holder may unilaterally**
7 **relocate the servitude.** As the Supreme Court of Arizona has noted: "The reason
8 for this rule is that treating the location as variable **would incite litigation and**
9 **depreciate the value** and discourage the improvement of the land upon which the
10 easement is charged." The no-unilateral-relocation general rule also protects the
11 easement holder from such developments as capricious adjustments of the
12 easement route by the servient estate owner.

11 § 7:13. Relocation—General rule, The Law of Easements & Licenses in Land § 7:13
12 (emphasis added). The no-unilateral relocation rule has been adopted in Washington. *See*
13 *Kave v. McIntosh Ridge Primary Rd. Ass'n*, 198 Wash. App. 812, 823, 394 P.3d 446, 451
14 (2017); *MacMeekin v. Low Income Hous. Inst., Inc.*, 111 Wash. App. 188, 45 P.3d 570
15 (2002).

16 19. Contrary to the stated purpose of the no-unilateral relocation rule the
17 Nidermans have attempted to relocate the Access Easement which has operated to “incite
18 litigation and depreciate the value” of the Yang Property.

19 20. During the course of the Yangs’ efforts to obtain building permits for their
20 own home, Christopher Niederman contacted the City of Mercer Island and attempted to
21 cause the City to withhold permits unless the Yangs agreed to the Nidermans demands
22 for an expanded easement. This conduct was wrongful.

23 21. Without authorization, during the course of construction, the Nidermans
24 have wrongfully destroyed the Yangs’ personal property. This conduct included, but is
25

1 not limited to, Nicole Niederman’s conduct on or around November 20, 2019 in taking a
2 planter on the Yang Property and throwing it down the hill which resulted in its destruction.

3 22. There is an actual, present and justiciable controversy to the parties to this
4 lawsuit. Pursuant to RCW Ch. 7.24 the Yangs are entitled to declaratory relief including,
5 *inter alia*, that: (a) the Niedermans have no right to relocate the Access Easement or expand
6 its width from 10 feet to 15 feet; (b) the Niedermans, as owners of an easement interest in
7 the Evan’s Plat, are subject to the CC&R’s and the Access Covenant; (c) the Niedermans
8 have no rights arising from the Lot Line Revision or the Turn Around Easement referenced
9 in the Lot Line Revision; and (d) that the Niedermans have no right to utilize the Yang
10 Property for Garbage Can purposes or any other purpose outside of the ingress and agrees
11 purpose stated on the face of the Access Easement.

12 23. The Yangs are entitled to temporary, preliminary, and permanent injunctive
13 relief prohibiting the Niedermans from attempting to prevent, limit, or to interfere with the
14 continued use by the Yangs of the Yang Property, and enjoining the Niedermans from
15 using the Yang Property outside of Access Easement created by the Evans Plat.

16 24. The claims and contentions of the Niedermans constitute a cloud on the title
17 to the Yang Property. The Yangs are entitled to an order quieting title in all portions of
18 the Yang Property in their favor, subject to the Access Easement created by the Evans Plat,
19 together with attorneys’ fees and costs pursuant to RCW 7.28.083(3).

20 25. The Niedermans conduct in disregarding the Access Covenant in the
21 CC&Rs is a breach of the express provisions of the CC&Rs and an overburdening of the
22 Access Easement. This has caused damages to the Yangs in an amount as will be proven
23 at trial.

1 26. The Niedermans conduct in destroying the Yangs' personal property is
2 intentional and constitutes conversion. This has caused damages to the Yangs in an
3 amount as will be proven at trial.

4 27. The Niedermans use of the Yang Property for purposes other than Access
5 Easement as deeded on the face of the Evan's Plat, the Niederman's conduct in destroying
6 the Yang's personal property, and the Niedermans other conduct, constitutes a trespass
7 which entitles the Yangs to damages in an amount as will be proven at trial.

8 28. The Nidermans conduct in destroying the Yangs' personal property is
9 intentional and in violation of RCW 4.24.630. This has caused damage to the Yangs in
10 an amount as will be proven at trial, which amount is to be trebled pursuant to RCW
11 4.24.630(1), plus reasonable attorneys' fees and costs as authorized by the statute.

12 29. The Niederman's claims against the Yang Property are either entirely: (a)
13 barred by the Access Covenant and the no-unilateral relocation rule applicable to
14 easements; or (b) factually baseless with respect to the Garbage Can easement and Vehicle
15 Turn Around Easement, such that there is not "substantial justification" for the *lis pendens*
16 that the Niedermans have recorded against the Yang Property. The Yangs are entitled to
17 an order cancelling the *lis pendens* together with their actual damages caused by the filing
18 of the *lis pendens*, as well as attorneys' fees and costs pursuant to RCW 4.28.328.

19 **XI. PRAYER FOR RELIEF**

20 Based on the foregoing, Steve Yang and Sophy Yang seek the following relief.

- 21 A. That all of the Plaintiffs' claims be dismissed with prejudice;
- 22 B. That title be quieted in favor of the Yangs against all claims by the
23 Niedermans for all portions of the Yang Property, subject only to the Access Easement on
24 the Evan's Plat;
- 25 C. Declaratory relief and injunctive as requested above;



- 1 D For an Order cancelling the *lis pendens* recorded by the Niedermans against
- 2 the Yang Property;
- 3 E. Damages in an amount that will be proven at trial, and for the trebling of
- 4 any damages subject to 4.24.360(1);
- 5 F. Pre and post judgment interest at the rate of 12 percent per annum;
- 6 G. For an award of attorneys' fees and costs as authorized by RCW 7.28.083,
- 7 RCW 4.24.630(1), RCW 4.28.328, other applicable statute or caselaw, or as otherwise
- 8 allowed in law or equity;
- 9 H. For the right to amend the pleadings as discovery continues; and
- 10 I. For any other relief that the Court finds proper in law or equity.

11 DATED: This 29th day of June, 2020.

12 **AHLERS CRESSMAN & SLEIGHT PLLC**

13
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CERTIFICATE OF SERVICE

The undersigned certifies that on the date given below, I caused the foregoing document to be filed with the Clerk using the Court’s electronic service system which will send notification of such filing to the following counsel of record:

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Niederman and Nicole L. Niederman

SIGNED: This 29th day of June, 2020, at Seattle, Washington.

/s/ Sarah King

Sarah King, Legal Assistant