

Filings

Title: KENNETH L. MORRELL TRUST V. 117 LAND COMPANY, LLC

Case: 05251 EQCV040740 (DALLAS)

Citation Number:

<u>Event</u>	<u>Filed By</u>	<u>Filed</u>	<u>Create Date</u>	<u>Last Updated</u>	<u>Action Date</u>
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ANSWER	DEVOLDER STEVEN PAUL	11/03/2017	11/03/2017	11/03/2017	
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Comments: TO COUNTERCLAIM*Documents:* [ANSWER](#)

ANSWER	EGGE JEFFREY ALAN	10/26/2017	10/26/2017	10/26/2017	
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Comments: APPEARANCE, ANSWER AND COUNTERCLAIM*Documents:* [ANSWER](#)

RETURN OF ORIGINAL NOTICE	GRATIAS SCOTT	09/29/2017	09/29/2017	09/29/2017	
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Comments: 117 LAND CO LLC-09/28/17-SERVED LINDSEY GUERRERO, REG AGENT*Documents:* [RETURN OF ORIGINAL NOTICE](#)

PETITION FILED	DEVOLDER STEVEN PAUL	09/25/2017	09/26/2017	09/26/2017	
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Documents: [PETITION](#)

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

KENNETH L. MORRELL, Trustee of)	No. _____
THE KENNETH L. MORRELL TRUST,)	
)	
Plaintiff,)	
)	
v.)	PETITION
)	
117 LAND COMPANY, L.L.C.,)	
)	
Defendant.)	

The plaintiff states the following in support of its causes of action:

COUNT I
(Trespass)

1. The plaintiff Morrell, in his capacity as trustee of The Kenneth L. Morrell Trust (the trust), is the trustee of an Iowa based trust. The trust owns some 95 acres of land, zoned agricultural and used to grow row crops and raise cattle, and which land is locally known as 33512 U Lane, Boone Township, Adel, Dallas County, Iowa.

2. The defendant 117 Land Company L.L.C. (Land Company) is an Iowa chartered limited liability company. The Land Company recently purchased from Knapp Properties real property located in Dallas County, Iowa and that borders the land owned by the trust; the Land Company presently is in the process of developing this land for commercial (non-agricultural) purposes (historically, this land has been used exclusively for agricultural purposes and is now going through the annexation and rezoning process in order to be commercially developed).

3. The property owned by the trust and the property acquired and being developed by the Land Company is separated by a boundary fence; this fence has been in place for at least the past 80 years and has been treated as a boundary fence by the trust and its predecessors in interest

as well as all of the relevant predecessors in interest of the Land Company; indeed, the trust and its predecessors in interest as well as the predecessors in interest of the Land Company have maintained the fence continuously for the last 80 years or more under the “right-hand rule”; in any case, the fence at its present location has been considered the boundary fence and treated as such for more than the last continuous ten years (Iowa Code § 650.14). Further, the trust’s claim of ownership is supported not only by the boundary fence, but its prescriptive—open, notorious, exclusive, continuous, adverse and hostile (claim of right or color of title)—possession of the land on its side of the border fence for at least the last 80 years (and certainly longer than the last 10 years) as well as by its continuous chain of title.

4. On or about September 11, 2017, agents or representatives of the Land Company (and apparently through engineers and/or surveyors under its control and hire) trespassed onto the land owned by the trust and placed boundary stakes within the trust’s property; the Land Company through its agents crossed-over the boundary fence without the trust’s permission and placed the stakes within the trust’s agricultural field where the trust’s row crops are growing and cattle are being raised.

5. The trust through its representative notified the Land Company through its registered agent of the trespass and instructed that no further acts of trespass occur; nonetheless, the stakes have not been removed from the trust’s property and nor has the Land Company formally acknowledged that the true and actual boundary between the respective properties is the one demarcated by the boundary fence.

6. The Land Company, through its actions of crossing over the boundary fence without permission and placing stakes within the land owned by the trust, has trespassed onto the trust’s land and is committing a continuing trespass by its ongoing conduct of leaving the stakes

in the trust's land (indeed, it has further instructed agents of the trust not to remove the stakes) and apparently claiming ownership of the land up to the line marked by the stakes.

7. The Land Company's acts of trespass has resulted in damages to the trust.
8. The amount of the damages exceeds the jurisdictional minimum limits of the court.
9. Given the continuing nature of the trespass, the trust should be granted preliminary and permanent injunctive relief against continued and further acts of trespass by the Land Company and any of its agents.

WHEREFORE, the plaintiff prays that the court enter a judgment in favor of the plaintiff and against the defendant for the full amount of the damages sustained, plus pre- and post-judgment interest at the maximum lawful rates, preliminary and permanent injunctive relief, the costs of this action, and such additional relief as is just and proper in the premises.

COUNT II
(Declaratory Relief)

10. The trust pleads as if fully set forth in this paragraph each of the allegations contained in paragraphs 1 through 9, inclusive, of Count I of this petition.

11. The court should declare the rights of the trust to its land and adverse to any and all competing claims of the Land Company to any portion of the trust's land as described herein, and further permanently establish the boundaries and corners of the trust's land consistent with the trust's possession of the land, and as established by the boundary fence, the trust's prescriptive possession and its chain of title.

12. The trust further should be awarded compensatory damages and preliminary and injunctive relief as set forth herein.

WHEREFORE, the plaintiff prays that the court enter a declaratory judgment in favor of the plaintiff and against the defendant that establishes full and complete title in the trust to its land

identified herein, that further awards the trust the full amount of the damages it has sustained, plus pre- and post-judgment interest at the maximum lawful rates, preliminary and permanent injunctive relief, the costs of this action, and such additional relief as is just and proper in the premises.

/s/ S.P. DeVolder

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ATTORNEY FOR THE PLAINTIFF

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KENNETH L. MORRELL, TRUSTEE
OF THE KENNETH L. MORRELL TRUST

CASE NO.: EQCV040740

Plaintiff,

vs. :

117 LAND COMPANY, LLC,

Defendant.

**APPEARANCE, ANSWER AND COUNTERCLAIM
OF DEFENDANT 117 LAND COMPANY, LLC**

COMES NOW Defendant 117 Land Company, LLC (hereinafter referred to as "117") in the above-captioned matter in its Answer to Plaintiff Kenneth L. Morrell, Trustee of the Kenneth L. Morrell Trust's (hereinafter referred to as "Morrell") Petition, does hereby state:

ANSWER

1. With respect to paragraph 1, 117 admits Morrell owns property located at 33512 U Lane, Adel, Iowa.

2. With respect to paragraph 2, 117 admits it is an Iowa limited liability company.

117 denies it recently purchased land from "Knapp Properties." However, 117 has taken title to real property located in Dallas County, Iowa legally described as (hereinafter referred to as the "Property"):

That part of the North fractional $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 78 North, Range 26 West of the 5th P.M., Dallas County, Iowa, lying South of the Interstate Route No. 80, except Parcel "A" of the survey of the Fractional NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18-78-26, as shown in Book 748, Page 599, in the office of the Recorder of Dallas County, Iowa.

Lot Three (3) of the Auditor's Plat of that part of the Northwest Quarter (NW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section 17 in Township 78 North, of Range

26 West of the 5th P.M., Dallas County, Iowa, EXCEPT Commencing at the NW Corner of Sec. 17-T78N-R26W of the 5th P.M., Dallas County, Iowa, thence S 00°00' 658.43 feet along the section line to the point of beginning, thence continuing S 00°00' 87.17 feet, thence S 89°12'E 382.70 feet, thence S06°12'E130.00 feet, thence S 84°35'E 225.61 feet, thence N 02°55' W 30.62 feet, thence N 73°50'E 338.22 feet, thence N 02°55' W 128.79 feet, thence N 73°50'E 400.92 feet to the center line of a county road, thence N 00°50'E 75.00 feet along said centerline, thence S 73°50' W 423.54 feet, thence N 02°55' W 568.48 feet to the south right of way line of Interstate No. 80, thence N 85°04' W 315.13 feet along said right of way line, thence S 02°55'E 676.50 feet, thence N 89°50' W 609.02 feet to the point of beginning.

Parcel "A" of the survey of all of Lot 4 and party of Lot 3 of the Auditor's Plat of the NW ¼ of the NW ¼ of Section 17, Township 78 North, Range 26 West of the 5th P.M., all being in and forming a part of the City of Waukee, Dallas County, Iowa, as shown in Book 2004, Page 5051, in the office of the Recorder of Dallas County, Iowa.

3. With respect to paragraph 3, 117 acknowledges the existence of a fence but denies said fence has been in its current location for 80 years. 117 denies the fence has been treated as a boundary fence by prior land owners. Further, 117 denies Morrell's claim of ownership.
4. With respect to paragraph 4, 117 admits engineers and surveyors retained by 117 did perform a survey and place boundary markers on the lot line between the property owned by Morrell and the Property owned by 117. 117 denies its agents have trespassed upon land owned by Morrell.
5. With respect to paragraphs 5, 117 admits receiving correspondence regarding the fence. Further, 117 admits it has not "acknowledged" the fence represents the boundary line between the property owned by 117 and Morrell. 117 affirmatively asserts it has taken title to the Property with the boundary lines as established by the survey.

6. With respect to paragraphs 6, 117 denies it has trespassed upon land owned by Morrell and affirmatively asserts it is the owner of the land upon which the stakes have been placed.
7. With respect to paragraphs 7 through 8, 117 denies it has trespassed upon Morrell's property and further denies Morrell has been damaged by the alleged trespass.
8. With respect to paragraph 9, 117 denies Morrell is entitled to either preliminary or injunctive relief.
9. With respect to paragraphs 10 through 11, 117 denies Morrell is entitled to declaratory relief and denies the boundary line is defined by the current placement of the fence.
10. With respect to paragraph 12, 117 denies Morrell is entitled to compensatory damage and further denies it is entitled to injunctive relief.

COUNTERCLAIM: TRESPASS

11. Paragraphs 1 through 10 are hereby incorporated as if fully set forth herein.
12. Morrell has placed a fence upon land owned by 117 as set forth in the survey.
13. Morrell continues to use a portion of land owned by 117 for its own economic interests in exclusion to 117's property interests.
14. Morrell's continued and unlawful intrusion upon land owned by 117 has resulted in economic damage to 117 in its inability to fully develop and utilize its Property.
15. As a direct and consequential result of Morrell's trespass 117 has suffered damages in excess of \$75,000.00

AFFIRMATIVE DEFENSES

16. Morrell has failed to state a cause of action for which relief can be granted.

17. Morrell's claims may be time barred or otherwise barred by the applicable statute of limitations.

PRAAYER FOR RELIEF

WHEREFORE, 117 hereby prays the Court enter judgment for the following:

- 1) Dismissing Morrell's Petition together with an award of costs and interest accrued herein;
- 2) Enter Judgment against Morrell on 117's Counterclaim, in an amount which will fully compensate 117 for Morrell's trespass together with costs and interest accrued herein;
- 3) Any further relief the Court finds just and equitable.

DATED: October 26, 2017.

By: s/ Jeffrey A. Egge
Jeffrey A. Egge, #AT0010705
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Phone: 515.369.2502
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**ATTORNEY 117 LAND COMPANY,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16/317(1)(a), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

Dallas County Courthouse
Clerk of Court, Civil Division
801 Court St.
Adel, IA 50003

Attorney for Plaintiff

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The follow parties are not a part of and will not receive notice of the electronic filing and will instead receive notice via the U.S. Mail:

N/A

_____/s/ Jeffrey A. Egge_____
Counsel for 117 Land Company,
LLC

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

KENNETH L. MORRELL, Trustee of)	No. EQCV040740
THE KENNETH L. MORRELL TRUST,)	
)	
Plaintiff,)	
)	
v.)	ANSWER TO COUNTERCLAIM
)	
117 LAND COMPANY, L.L.C.,)	
)	
Defendant.)	

The plaintiff states the following in answer to the counterclaim:

COUNTERCLAIM

11.¹ The plaintiff/counterclaim-defendant denies each and all of the allegations incorporated by the defendant/counterclaimant in this paragraph of the counterclaim.

12. Denied; and in further denial the referenced fence has been at its present location for over 80 years and as such was not originally “placed” there by the plaintiff; it has served as the boundary fence for all of this time, and in any case at least for the last 10 years’ statutorily prescribed time period.

13. Denied.

14. Denied.

15. Denied.

WHEREFORE, the plaintiff prays that the court enter a judgment in favor of the plaintiff and against the defendant on the counterclaim and dismiss that claim with prejudice, tax all costs

¹ The plaintiff uses the same paragraph numbers in answering the counterclaim as the defendant used in pleading that counterclaim.

against the defendant, and award the plaintiff such additional relief that is just and proper in the premises.

AFFIRMATIVE DEFENSES

1. The counterclaimant fails to state a claim for which relief can be granted.
2. The counterclaimant's claim is barred by the running of the statute of limitations or the doctrine of laches.
3. The counterclaimant's claim is barred by acquiescence, estoppel, waiver or unclean hands.

/s/ S.P. DeVolder

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ATTORNEY FOR THE PLAINTIFF

Original electronically filed.

Copy electronically served on counsel of record via EDMS.