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Please note:

This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.

If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF REDWOOD  
CENTRAL JUDICIAL DISTRICT

ANTHONY SMITH, et al.,

Case No. 12345

Plaintiff,

PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT OR  
SUMMARY ADJUDICATION

vs.

HENRY JOHNSON, et al.,

Defendants.

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Date:  
Time:  
Dept.  
Complaint filed:  
Motion cut-off:  
Discovery cut-off:  
Trial date:

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1 **INTRODUCTION**

2 Adjoining property owners dispute the existence and enforcement of a reciprocal  
3 easement for ingress and egress over their properties. Before defendant Henry Johnson  
4 bought his property, he had both constructive and actual notice that it was subject to a  
5 written, recorded reciprocal easement for ingress and egress, created by express  
6 agreement between adjoining property owners, including plaintiff and the previous owner  
7 of the property defendant now holds. The easement consists of an unimproved dirt road,  
8 shown on all known maps of the area, that the parties have used for many years.

9 Despite this notice, defendant has persisted in ignoring his obligations to maintain  
10 the easement as it passes over his property, and has actively blocked access by erecting  
11 and refusing to move a large metal gate across the road. Defendant has effectively  
12 blocked plaintiff’s only reliable means of access to his property. He has chosen to ignore  
13 the rights of neighboring land owners and his legal obligations under the recorded  
14 agreement, leaving plaintiff no recourse but to sue to enforce his rights.

15  
16 **FACTS<sup>1</sup>**

17 Plaintiff Anthony Smith owns certain real property in Redwood County,  
18 California. On or about May 24, 2\_\_\_, plaintiff entered into a written agreement for  
19 reciprocal easements (“the Agreement”) with the owners of two adjoining parcels: John  
20 Connor and Jane Connor, and Steve Harris and Joan Harris who owned the other  
21 adjoining parcel. Under the Agreement, the owners of each parcel granted easements in  
22 favor of the other parties for pedestrian and vehicular ingress and egress over their  
23 respective parcels. The Agreement for Reciprocal Easements was duly recorded in the  
24 official records of Redwood County.

25  
26 \_\_\_\_\_

27 <sup>1</sup>In the interests of brevity, all citations to the parties’ separate statements of fact have been  
28 deleted from this sample document.

1           The Agreement obligated each party to maintain the portion of an unimproved dirt  
2 road as it passes across their parcel for the parties’ common benefit, and to assure  
3 passable access for pedestrian and vehicular ingress and egress. The Agreement was  
4 intended to bind and inure to the benefit of the parties, their heirs, successors, personal  
5 representatives, and assigns, and the reciprocal easements were intended to “run with the  
6 land.” In the event that any of the parties sold or otherwise transferred their property, the  
7 parties intended that the obligations imposed to maintain the easements across their  
8 respective parcels under the Agreement would “run with the land” to the new owner, heir,  
9 or successor.

10           The easement referred to in the Agreement consists of an unimproved dirt road  
11 commonly known as Old Elm Road (“the Road”), shown on topography maps, the  
12 DeLorme Atlas maps, and the Thomas Guide. The easement referred to in the Agreement  
13 (i.e., the unimproved dirt road) appears on U. S. Forest Service maps under the  
14 designation of Road “ABC1.”

15           The parties all used the Road for many years before the written agreement for  
16 reciprocal easements was formalized in 2\_\_\_, and they continued to use it without  
17 interruption from 2\_\_\_ until approximately 2\_\_\_.

18           In or about 2\_\_\_, Steve Harris and Joan Harris installed a large metal gate across  
19 the Road, which blocked access to the Smith’s property. By letters from their counsel,  
20 plaintiff notified the Harrises that they had a duty under the Agreement to maintain the  
21 easement Road and to ensure “passable access,” and that this duty was violated by  
22 installing a gate across the Road.

23           In the fall of 2\_\_\_, plaintiff learned that the Harrises were negotiating to sell their  
24 property to defendant Johnson. By letter dated November 8, 2\_\_\_, plaintiff’s counsel  
25 notified Julia Miller, defendant Johnson’s attorney, that the property Johnson was  
26 considering buying from the Harrises was subject to an easement, and provided Johnson  
27 with a copy of the signed and recorded Agreement for Reciprocal Easement. On  
28

1 November 8, 2\_\_\_\_, plaintiff filed and duly recorded a “Notice of Intent to Preserve  
2 Interest,” referencing the easement for ingress and egress over the Harris Property.  
3 Defendant Johnson was in contract to buy the property when the Notice of Intent to  
4 Preserve Interest was filed and recorded. The recorded notice was served on the Harrises.

5 Documents in the chain of title for defendant Johnson’s property disclosed the  
6 existence of the recorded easement granted under the Agreement for Reciprocal  
7 Easements. Moreover, the Title Insurance policy for defendant Johnson’s 2\_\_\_\_ purchase  
8 of the property expressly excluded the easement subject to the recorded Agreement for  
9 Reciprocal Easements. The Harrises disclosed the easement’s existence in disclosure  
10 documents provided to defendant Johnson before the sale of the property. Thus, the  
11 undisputed facts show that defendant Johnson had both constructive and actual notice of  
12 the existence of the easement before close of escrow.

13 Plaintiff has repeatedly asked Johnson to remove the gate that is blocking the  
14 Road, and has asked that Johnson maintain the section of the Road that passes over his  
15 property, but he has failed and/or refused to do so.

16  
17 **ARGUMENT**

18 **1. The Agreement for Reciprocal Easements created a valid and binding**  
19 **easement in plaintiff’s favor over the real property owned by defendant**  
20 **Johnson.**

21 It has long been established that a right of way over the land of another may be  
22 created, constituting an easement. An easement “appurtenant” is attached to and runs  
23 with the easement holder’s land. Civ. Code § 801. The land to which an easement is  
24 attached is the “dominant tenement”; the land on which a burden or servitude is laid is the  
25 “servient tenement.” Civ. Code § 803. An easement may be created by an express grant,  
26 which determines the nature and extent of the servitude on the land it burdens. See Civ.

1 Code § 806. The grant’s language determines the easement’s scope. *Pacific Gas & Elec.*  
2 *Co. v. Hacienda Mobile Homes Park* (1975) 45 Cal.App.3d 519, 525.

3  
4 **2. The parties to the Agreement intended that the reciprocal easements**  
5 **would survive the property’s transfer.**

6 Easements are property rights and, where appurtenant to land, are transferrable and  
7 descendible. See 2 REST.3D, PROPERTY (Servitudes) § 5.1 et seq. Transfers may be  
8 express or by implication, as where land is transferred and all appurtenant easements are  
9 deemed to go with the grant without express mention. Civ. Code § 1104; *Shonafelt v.*  
10 *Busath* (1944) 66 Cal.App.2d 4, 14. Because of the difficulties involved in identification  
11 of the successor to an easement in gross, an easement is presumed appurtenant to land of  
12 the owner. *Balestra v. Button* (1942) 54 Cal.App.2d 192, 197.

13 When the language of a deed or grant is ambiguous, for example, as to whether or  
14 not an easement is intended to be appurtenant to land, extrinsic evidence is admissible to  
15 ascertain the parties’ intent. See *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512,  
16 522. The primary object of all contract interpretation is to ascertain and carry out the  
17 parties’ intention. *City of Manhattan Beach v. Sup. Ct.* (1996) 13 Cal.4th 232, 238.

18 Where extrinsic evidence is received in interpretation of a grant of easement, but there is  
19 no conflict in the evidence, the instrument’s interpretation becomes a question of law.  
20 *McManus v. Sequoyah Land Assoc.* (1966) 240 Cal.App.2d 348, 353.

21 In this case, when the adjoining landowners executed the Agreement in 2\_\_\_\_, they  
22 intended to create valid, binding, reciprocal easements that conveyed to each property  
23 owner a right of ingress and egress over the adjoining property of the others. And they  
24 intended that each property owner would be obligated to maintain that portion of the  
25 easement, which consisted of an unimproved dirt Road, that passed over their respective  
26 parcels. The parties also intended that each property owner would refrain from creating  
27  
28



1 any obstruction that would interfere with the other property owners' use of the Road.  
2 This intent is expressly stated in the Agreement.

3 It was also the parties' intent that the reciprocal easements would bind all  
4 successors, heirs, and assigns, and that the easements would be appurtenant to and would  
5 run with the land. These provisions were expressly stated in ¶ 6 of the Agreement.  
6 Furthermore, the parties intended that the easement would not terminate on the property's  
7 transfer, but the benefits and burdens of the easement agreement would remain  
8 appurtenant to the land and would "run with the land, including the duty to maintain the  
9 easement."

10  
11 **A. Defendant Johnson is obligated to maintain that portion of the easement Road**  
12 **that passes across his property.**

13 The language of the easement grant ordinarily determines the duty to maintain and  
14 repair the property that is subject to the easement. See *Rose v. Peters* (1943) 59  
15 Cal.App.2d 833, 835. Paragraph 5 of the Agreement here expressly provides for the  
16 easement's common maintenance by the property owners. Each property owner is  
17 obligated to maintain that portion of the Road that passes over their property. Defendant  
18 Johnson has failed to maintain his portion of the Road so that it is in passable condition.<sup>2</sup>  
19 The Road has washed out in the past and a portion of the Road passing over defendant  
20 Johnson's property needs repair.

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24 \_\_\_\_\_  
25 <sup>2</sup> If the easement is owned by more than one person, or is attached to parcels of land under  
26 different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or  
27 the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into  
28 by the parties for that purpose. If any owner who is a party to the agreement refuses to perform or fails  
after demand in writing to pay the owner's proportion of the cost, an action for specific performance or  
contribution may be brought against that owner in a court of competent jurisdiction by the other owners,  
either jointly or severally. Civ. Code § 845(b).

1 Defendant Johnson must maintain that portion of the Road that passes across his  
2 land so that it is unobstructed and remains passable for pedestrian and vehicular traffic at  
3 all times.

4  
5 **B. Defendant Johnson had both constructive knowledge and actual knowledge of**  
6 **the easement before he bought the property.**

7 Defendant cannot claim that he was a “bona fide purchaser” without knowledge of  
8 the easement. A bona fide purchaser is one who takes a property in good faith, on  
9 payment of value, and without constructive notice of another’s rights. *Gates Rubber Co.*  
10 *v. Ulman* (1989) 214 Cal.App.3d 356, 364. But defendant Johnson clearly had  
11 constructive notice of the easement.

12 The parties duly recorded the Reciprocal Easement Agreement in the official  
13 records of Redwood County in 2\_\_\_\_. Thus, a title search on the property Johnson bought  
14 would have revealed the existence of the mutual easements affecting this property and the  
15 adjoining parcels and the property owners’ obligations. In fact, the title documents do  
16 show the easement. Moreover, the Harrises disclosed the existence of the easement in  
17 documents provided to defendant Johnson before the sale of the property. The Title  
18 Insurance policy for defendant Johnson’s purchase of the property expressly excluded the  
19 easement subject to the recorded Agreement. Additionally, all known maps of the area  
20 show the unimproved dirt Road that constitutes the easement. Thus, defendant was on  
21 constructive notice of the easement’s existence before he bought the property.

22 Plaintiff took the added precaution of filing and serving a Notice of Intent to  
23 Preserve Interest, which was duly recorded in the official records of Redwood County on  
24 November 8, 2\_\_\_\_. Civil Code § 887.060 authorizes an easement’s owner to record a  
25 notice of intent to preserve an easement at any time. Proper recording of such a notice  
26 provides “conclusive evidence” that the easement has not been abandoned. See Civ.  
27 Code § 887.060(c)(1); Law Rev. Com. Comment to Civ. Code § 887.060. “Recording a  
28

1 notice of intent to preserve also creates a presumption affecting the burden of proof that  
2 the claimant has not abandoned the easement for purposes of a determination of  
3 abandonment pursuant to common law.” *Ibid.*

4 Finally, plaintiff went a step further to ensure that there could be no doubt about  
5 the existence of the reciprocal easements and the obligations imposed on the respective  
6 property owners: he recorded the Agreement. Moreover, by letter dated November 8,  
7 2\_\_\_, plaintiff’s counsel gave written notice to Julia Miller, Johnson’s attorney in his  
8 purchase of the subject property, that the property he was considering buying from the  
9 Harrises was subject to an easement, and provided her with a copy of the signed and  
10 recorded Agreement for Reciprocal Easement.

11 Thus, it is undisputed that, before the close of escrow, defendant Johnson had not  
12 only constructive notice of the easement; he had actual notice of its existence and the  
13 obligations of the adjoining property owners under it.

14 The court may grant summary judgment “if all the papers submitted show that  
15 there is no triable issue as to any material fact” and that defendants are entitled to  
16 summary judgment as a matter of law. Code Civ. Proc. § 437c. For purposes of  
17 summary judgment, the moving party has the burden of showing that there is no triable  
18 issue of material fact and that it is entitled to summary judgment as a matter of law.  
19 *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries  
20 this burden, it causes a shift, and the opposing party is then subject to its own burden of  
21 production to make a prima facie showing that a triable issue of material fact exists. *Ibid.*

22 A motion for summary judgment may be made in whole or in part on affidavits or  
23 declarations under penalty of perjury, as well as admissions by the opposing party,  
24 evidence obtained through discovery, and matters that may be judicially noticed. See  
25 Code Civ. Proc. § 437c(b)(1).

26 Since there are no disputed issues of material fact in this case, plaintiff is entitled  
27 to judgment as a matter of law.

28

1 **3. As owner of a dominant tenement, plaintiff is entitled to enforce the**  
2 **easement, and may obtain both damages and injunctive relief.**

3 The servient owner may not use his or her land in a way that unreasonably  
4 interferes with the dominant owner's easement rights. *Blackmore v. Powell* (2007) 150  
5 Cal.App.4th 1593, 1599. The owner of any estate in the dominant tenement may  
6 maintain an action for the enforcement of an easement attached thereto. Civ. Code § 809;  
7 *Jones v. Young* (1957) 147 Cal.App.2d 496, 500.

8 In *Herzog v. Gross* (1953) 41 Cal.2d 219, an action to quiet title to an easement for  
9 road purposes over the defendant's land, the court upheld a judgment for damages and  
10 injunctive relief against the defendants who unreasonably interfered with the adjoining  
11 property owners' use and enjoyment of their easement for use of a private road to access  
12 their property. The defendants had erected a fence and gates and dumped quantities of  
13 dirt that blocked the passage of adjoining property owners over the private road. While  
14 noting that the defendants had the right to erect a guardrail of the type usually used on  
15 public highways, the court rejected the defendants' contention that the fence and gates  
16 were needed to prevent motorists from mistaking the private road for a public road and  
17 entering the defendants' property; their property could be adequately protected by a sign  
18 that would not unreasonably interfere with the plaintiff's use of the easement. *Id.* at 225.  
19 The appellate court upheld an award of damages for property damages, depreciation in  
20 value, and the cost of removing the 700 cubic yards of dirt the defendants dumped on the  
21 plaintiff's property. It also ordered the defendants to alter the road so that it would  
22 conform to the map showing the properties' original configuration. (But the trial court  
23 could not order the defendants to pave the road, which was originally a dirt road on the  
24 easement.) *Id.* at 227-228.

25 In *Van Klompenburg v. Berghold* (2005) 126 Cal.App.4th 345, the trial court  
26 entered judgment enjoining the owners of a servient tenement from maintaining gates  
27 across a private roadway, the only permanent means of accessing the plaintiff's property.  
28

1 The plaintiff owned an easement—a strip of land 14 feet wide running along the edge of  
2 the defendants’ property—that had been granted in 1913 to the plaintiff’s predecessors in  
3 interest, giving them the right to travel over and along and to use the private roadway,  
4 which was to be kept open and unobstructed.

5 Both properties contained vineyards, and the defendants’ property also contained  
6 their residence and other buildings. The defendants bought the burdened property in  
7 1986. After moving onto it in 2000, the defendants observed trespassers and illegal  
8 dumping on their property, and thereafter experienced three burglaries, resulting in  
9 substantial losses of personal property. In 2002, they installed two locked gates across  
10 the easement, where there had never been gates before. The plaintiff first demanded that  
11 the defendants open the gates and leave them open during periods of intense agricultural  
12 activity, and provide their tenants with keys to the gates. Ultimately the plaintiff sued to  
13 quiet title to the easement and to force the defendants to dismantle and remove the gates.

14 The appellate court upheld the trial court’s judgment, finding that the document  
15 conveying the easement expressly stipulated that the roadway was to be “kept open” and  
16 “wholly unobstructed.” The trial court was correct in interpreting the grant document as  
17 prohibiting the defendants from maintaining gates across the easement, which constituted  
18 an obstruction that impeded and hindered the plaintiff’s use and enjoyment of their  
19 property. *Id.* at 350.

20 *Van Klompenburg*, squarely on point, is controlling here. Defendant Johnson has  
21 erected and/or refused to remove a large metal gate crossing the Road, which  
22 substantially interferes with plaintiff’s rights to use the easement for ingress and egress.  
23 Moreover, no other reliable route is available to plaintiff to access his property. The  
24 Agreement creating the easement expressly states that each property owner is to maintain  
25 the easement across their respective parcels “and to assure passable access for pedestrian  
26 and vehicular ingress and egress.”

27  
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1 The fence across the Road on defendant's property obviously obstructs passage  
2 over it, and thus substantially interferes with plaintiff's rights to the use and enjoyment of  
3 their property. Accordingly, defendant Johnson has breached his obligations under the  
4 Agreement. Under *Herzog v. Gross* and *Van Klompenburg, supra*, plaintiff is entitled to  
5 both monetary damages and injunctive relief.

6 Moreover, the Agreement provides that, if any controversy or dispute arises  
7 relating to the Agreement, "the prevailing party shall be entitled to recover from the  
8 losing party reasonable expenses, attorney fees and costs." Accordingly, plaintiff is  
9 entitled to an award of attorney's fees and costs incurred in enforcing the agreement.

10  
11 **4. In the alternative, if the court declines to enter summary judgment at  
12 this time, plaintiff requests summary adjudication.**

13 Code of Civil Procedure § 437c(f)(1) provides that a party may move for summary  
14 adjudication as to the merits of a cause of action or affirmative defense, or because a  
15 party owed a duty to the plaintiff. A motion for summary adjudication may be brought  
16 concurrently with, or in the alternative to, a motion for summary judgment, and may rely  
17 on the same evidence. Cal. Rules of Court Rule 3.1350(b).

18 In this case, if for any reason summary judgment is not granted at this time,  
19 plaintiff requests that the court enter an order adjudicating the merits of the causes of  
20 action, and making findings on the issues, as follows:

21 1. On the first cause of action for breach of contract:

22 (a) that the 2\_\_\_ Agreement created valid, binding, mutual easements in plaintiff's  
23 favor, as well as that of the other property owners who executed the Agreement; (b) that  
24 the rights and obligations under the 2\_\_\_ Agreement were intended to and did run with  
25 the land; (c) that defendant Johnson had both constructive and actual notice of the  
26 easements before he bought his property, and accordingly took the land subject to the  
27 burdens and obligations imposed by the 2\_\_\_ Agreement; (d) that defendant Johnson has  
28

1 no right to block or otherwise obstruct the unimproved Road, and his action in doing so  
2 constitutes a breach of the 2\_\_\_ Agreement; (e) that plaintiff is entitled to damages for  
3 breach of the Agreement subject to proof; and (f) that plaintiff is entitled to attorney fees  
4 incurred in enforcing the Agreement and the rights and obligations created thereby.

5 2. On the second cause of action for specific performance:

6 (a) that the 2\_\_\_ Agreement created valid, binding, mutual easements in plaintiff's  
7 favor for pedestrian, equestrian and vehicular ingress and egress over defendant's  
8 property; (b) that the rights and obligations under the 2\_\_\_ Agreement were intended to  
9 and did run with the land; (c) that defendant Johnson had both constructive and actual  
10 notice of the easements before he bought his property, and accordingly took the land  
11 subject to the burdens and obligations imposed by the 2\_\_\_ Agreement; (d) that plaintiff  
12 is entitled to an order granting specific performance of the 2\_\_\_ Agreement, including an  
13 order requiring defendant Johnson to remove the fence that has been installed across the  
14 Road and to refrain from blocking the Road or interfering with plaintiff's use and  
15 enjoyment of the easement in this or any other manner; and (e) that plaintiff is entitled to  
16 an order granting specific performance of the 2\_\_\_ Agreement, including an order that  
17 defendant Johnson must maintain that portion of the Road that passes across his property,  
18 so that it remains unobstructed and passable at all times to pedestrian, and vehicular  
19 traffic.

20 3. On the fourth cause of action for declaratory relief:

21 that plaintiff has a valid, enforceable recorded reciprocal easement over  
22 defendant's property that is appurtenant to and runs with the land.

## 23 24 **CONCLUSION**

25 Plaintiff has shown that no triable issues of disputed material fact exist here. He  
26 has established by uncontroverted evidence the existence of a written reciprocal easement  
27 agreement in his favor, duly filed and recorded in the official records of Redwood  
28

1 County. Defendant Johnson took his property subject to the rights and obligations set  
2 forth in the recorded easement. Defendant had both constructive and actual notice of the  
3 existence of the easement before he bought his property. Defendant violated the  
4 easement agreement by erecting a gate across the Road and failing to maintain the road  
5 across his property in passable condition.

6 Accordingly, plaintiff requests that the court grant plaintiff's motion for summary  
7 judgment in its entirety, and make specific findings as set forth above. Alternatively, if  
8 for any reason the court declines to enter summary judgment at this time, plaintiff  
9 requests that the court enter an order adjudicating those issues as set forth above.

10  
11 Dated: April \_\_\_\_, 2\_\_

Respectfully submitted,

\_\_\_\_\_  
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13 Attorney for Plaintiff  
14 Anthony Smith  
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