

DOCKET NO.: NNH-CV14-6048802-S : SUPERIOR COURT  
THE WOODBRIDGE LAND TRUST, INC.: JUDICIAL DISTRICT OF NEW HAVEN  
V. : AT NEW HAVEN  
RANDY KAOUD and SALWA KAOUD : OCTOBER 21, 2014

**ANSWER, SPECIAL DEFENSES, AND COUNTERCLAIM**

Randy Kaoud and Salwa Kaoud (“the Kaouds”) hereby answer the complaint of the Woodbridge Land Trust, Inc. (“the Land Trust”), assert special defenses and, together with the co-Trustees for the Salwa Kaoud Family Trust, respectfully counterclaim for adverse possession and/or prescriptive easement as set forth below.

**ANSWER**

**FIRST COUNT (Common Law Trespass)**

1. The Kaouds are without information or knowledge sufficient to allow them to admit or deny the allegations in paragraph 1 of the Land Trust’s complaint.
2. Admitted.
3. Denied to the extent the allegations in paragraph 3 include the disputed portion along the northern boundary line, which the Kaouds acquired through adverse possession and/or have prescriptive easement rights in. The Kaouds are without information or knowledge sufficient to admit or deny the remaining allegations in paragraph 3.
4. Denied except to admit that the property alleged in paragraph four is owned by James Kaoud and Randy Kaoud as co-Trustees of the Salwa Kaoud Family Trust (the “co-Trustees”).
5. Denied.
6. Denied.
7. Denied.

8. Denied.

**SECOND COUNT (Conn. Gen. Stat. § 52-560(a))**

1-8. The Kaouds incorporate their responses to paragraphs 1-8 as if fully set forth herein.

9. The Kaouds are without information or knowledge sufficient to allow them to admit or deny the allegations in paragraph 9 of the Land Trust's complaint.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

**THIRD COUNT (Quiet Title)**

1-14. The Kaouds incorporate their responses to paragraphs 1-14 as if fully set forth herein.

15. The Kaouds are without information or knowledge sufficient to allow them to admit or deny the allegations in paragraph 15 of the Land Trust's complaint.

16. Denied except to admit that the Kaouds, together with the co-Trustees, assert adverse possession and/or prescriptive easement claims.

17. Admitted.

18. Denied.

**SPECIAL DEFENSES**

**FIRST SPECIAL DEFENSE**

The First Count is barred in whole and/or part under the three year statute of limitations/repose to the extent plaintiff alleges trespass between 1976 and 2011.

## **SECOND SPECIAL DEFENSE**

The First Count is barred in whole and/or part under the doctrine of waiver. Plaintiff intentionally waived its rights, if any, to enforce a claim in trespass having been aware of the Kaouds' alleged conduct since 1998, when the Land Trust delivered a letter to the Kaouds alleging substantially the same conduct as set forth in its Complaint. Because the Land Trust has intentionally stood on its rights to enforce a claim in trespass, for approximately sixteen years, the First Count is barred by the doctrine of waiver.

## **THIRD SPECIAL DEFENSE**

The First Count is barred in whole and/or part by the doctrine of estoppel. Plaintiff should be precluded from enforcing its rights, if any, to claims in trespass having known of the Kaouds' alleged conduct since 1998, approximately sixteen years ago.

## **FOURTH SPECIAL DEFENSE**

The First Count is barred in whole and/or part by the doctrine of adverse possession. In 1976, when the Kaouds purchased the abutting parcel, where they have continuously lived to date, the Kaouds ousted the Land Trust from possession of the northern portion of the disputed property line with the intent to possess, enjoy, and/or use this land as their own. Between 1976-1998, the Kaouds kept the Land Trust from the disputed land, without interruption, by their open, visible, notorious, and exclusive possession of the disputed property under a claim of right with the intent to possess it as their own for at least fifteen consecutive years. At no time between 1976-1998, did the Land Trust consent to the Kaouds' possession, enjoyment, and/or use of the disputed land; nor has the Land Trust ever consented. The Kaouds incorporate as if fully set forth herein Paragraphs 4-10 in the Counterclaim immediately below.

#### **FIFTH SPECIAL DEFENSE**

The First Count is barred in whole and/or part by the doctrine of prescriptive easement. In 1976, when the Kaouds purchased the abutting parcel, where they have continuously lived to date, the Kaouds began using the northern portion of the disputed property line with the intent to enjoy, use, and/or possess it as their own. Between 1976-1998, the Kaouds openly, visibly, and notoriously used, enjoyed, and/or possessed the disputed land under a claim of right with the intent to do so as their own property for at least fifteen consecutive years. At no time between 1976-1998, did the Land Trust consent to the Kaouds' use, enjoyment, and/or possession of the disputed land; nor has the Land Trust ever consented. The Kaouds incorporate as if fully set forth herein Paragraphs 4-10 in the Counterclaim immediately below.

#### **SIXTH SPECIAL DEFENSE**

The Second Count is barred in whole and/or part under the three year statute of limitations/repose to the extent plaintiff alleges encroachments between 1976 and 2011.

#### **SEVENTH SPECIAL DEFENSE**

The Second Count is barred in whole and/or part under the doctrine of waiver. Plaintiff intentionally waived its rights, if any, to enforce encroachment related claims having been aware of the Kaouds' alleged conduct since 1998, when it delivered a letter to the Kaouds alleging substantially the same conduct as alleged its Complaint, and having intentionally stood on its rights for approximately sixteen years.

#### **EIGHT SPECIAL DEFENSE**

The Second Count is barred in whole and/or part by the doctrine of estoppel. Plaintiff should be precluded from enforcing its rights, if any, to encroachment related claims having known of the Kaouds' alleged conduct since 1998, approximately sixteen years ago.

### **NINTH SPECIAL DEFENSE**

The Second Count is barred in whole and/or part by the doctrine of adverse possession. In 1976, when the Kaouds purchased the abutting parcel, where they have continuously lived to date, the Kaouds ousted the Land Trust from possession of the northern portion of the disputed property line with the intent to possess, enjoy, and/or use this land as their own. Between 1976-1998, the Kaouds kept the Land Trust from the disputed land, without interruption, by their open, visible, notorious, and exclusive possession of the disputed property line under a claim of right with the intent to possess it as their own for at least fifteen consecutive years. At no time between 1976-1998, did the Land Trust consent to the Kaouds' possession, enjoyment, and/or use of the disputed land; nor has the Land Trust ever consented. The Kaouds incorporate as if fully set forth herein Paragraphs 4-10 in the Counterclaim immediately below.

### **TENTH SPECIAL DEFENSE**

The Second Count is barred in whole and/or part by the doctrine of prescriptive easement. In 1976, when the Kaouds purchased the abutting parcel, where they have continuously lived to date, the Kaouds began using the northern portion of the disputed property line with the intent to enjoy, use, and/or possess it as their own. Between 1976-1998, the Kaouds openly, visibly, and notoriously used, enjoyed, and/or possessed the disputed land under a claim of right with the intent to do so as their own property for at least fifteen consecutive years. At no time between 1976-1998, did the Land Trust consent to the Kaouds' use, enjoyment, and/or possession of the disputed land; nor has the Land Trust ever consented. The Kaouds incorporate as if fully set forth herein Paragraphs 4-10 in the Counterclaim immediately below.

## **COUNTERCLAIM**

Defendants-counterclaim-plaintiffs Randy and Salwa Kaoud (“the Kaouds”), together with counterclaim plaintiffs James Kaoud and Randy Kaoud as co-Trustees of the Salwa Kaoud Family Trust, respectfully assert the following counterclaim against plaintiff-counterclaim-defendant The Woodbridge Land Trust, Inc. (“the Land Trust”).

### **PARTIES**

1. The Kaouds are individuals who reside at 22 Tulip Tree Lane in Woodbridge, Connecticut (“22 Tulip Tree Lane”).
2. James Kaoud and Randy Kaoud are co-Trustees of the Salwa Kaoud Family Trust.
3. Upon information and belief, the Land Trust is a non-stock corporation and non-profit land holding organization located in Woodbridge, Connecticut.

### **BACKGROUND**

4. In 1976, the Kaouds purchased 22 Tulip Tree Lane as their family home where they have continuously resided from 1976 to date. The Kaouds’ property at 22 Tulip Tree Lane as originally purchased is more particularly described on the attached property description, Exhibit A hereto.

5. Upon information and belief, the Land Trust owns property that abuts the northern boundary line of 22 Tulip Tree Lane.

6. In 1976, the Kaouds cleared the northern boundary line of 22 Tulip Tree Lane from overgrown brush, fallen tree branches, and plant debris. At the same time, the Kaouds also cleared a portion of the Land Trust’s property, approximately 100 feet long by 40 feet deep, along the northern abutting boundary line, and began to possess, enjoy, and/or use this land as their own backyard (“the Disputed Land”). Among other things, in 1976, the Kaouds cleared,

mowed, landscaped, planted shrubbery and trees, including white pine trees, azaleas, blue spruce trees, and rhododendrons on the Disputed Land.

7. The following year, 1977, the Kaouds maintained the lawn, groomed the shrubbery, planted another twenty-four white pine trees, and continued to possess, enjoy, and use the Disputed Land as their own.

8. In the years that followed, 1977-1998, the Kaouds continuously possessed, enjoyed, and used the Disputed Land as their own and without interruption. Among other things, the Kaouds regularly planted and groomed shrubbery on the Disputed Land, maintained and mowed the lawn, removed fallen debris and brush, and installed decorative gardening items on the Disputed Land. The Kaouds also enjoyed the Disputed Land at picnics, family functions, graduations, wedding related events, and for recreation and relaxation. In 1991, the Kaouds also installed a retaining wall on the Disputed Land to prevent soil erosion and address water and mud overflow issues.

9. At no time between 1976-1997, did the Land Trust demand, notify, and/or inform the Kaouds that they were encroaching or otherwise improperly possessing, enjoying, and/or using Land Trust property.

10. At no time between 1976-1998, did the Land Trust consent to the Kaouds' possession, enjoyment, and use of the Disputed Land.<sup>1</sup>

#### **COUNT ONE (ADVERSE POSSESSION)**

11. Paragraphs 1-10 are incorporated into this paragraph as if fully set forth herein.

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<sup>1</sup> In 2007, Randy and Salwa Kaoud executed quit claim deeds with the intent of placing 22 Tulip Tree Lane, together with all rights and interests they had in the Disputed Land, in the Salwa Kaoud Family Trust. In 2014, and in connection with reviewing the Land Trust's Complaint, Randy and Salwa Kaoud executed corrective deeds to address (a) recording sequence issues related to their 2007 quit claim deeds, (b) property description issues related to their 2007 quit claim deeds, and (c) more fully memorialize their 2007 intent to place all rights and interests they may have in the Disputed Land into the Salwa Kaoud Family Trust.

12. In 1976, the Kaouds ousted the Land Trust from possession of the Disputed Land with the intent to possess, enjoy, and use the Disputed Land as their own.

13. Between 1976-1998, the Kaouds kept the Land Trust from the Disputed Land without interruption by their open, visible, notorious, and exclusive possession of the Disputed Land under a claim of right with the intent to possess the Disputed Land as their own for at least fifteen consecutive years.

14. At no time between 1976-1998, did the Land Trust consent to the Kaouds' possession, enjoyment, and use of the Disputed Land.

15. At no time between 1976-1997, did the Land Trust demand, notify, and/or inform the Kaouds that they were encroaching or otherwise improperly possessing, enjoying, and/or using Land Trust property.

16. The Court has jurisdiction to decide the Kaouds and/or co-Trustees' adverse possession claim under Connecticut's Quiet Title statute, Conn. Gen. Stat. § 47-31, and Connecticut's adverse possession statute, Conn. Gen. Stat. §52-575.

17. As a result of the foregoing, the Kaouds and/or co-Trustees acquired ownership of the Disputed Land by virtue of adverse possession.

#### **COUNT TWO (PRESCRIPTIVE EASEMENT)**

18. Paragraphs 1-10 are incorporated into this paragraph as if fully set forth herein.

19. In 1976, the Kaouds began to use and enjoy the Disputed Land.

20. Between 1976-1998, the Kaouds openly, visibly, and notoriously used and enjoyed the Disputed Land under a claim of right and without interruption for at least fifteen consecutive years.



21. At no time between 1976-1998, did the Land Trust consent to the Kaouds' use and enjoyment of the Disputed Land.

22. At no time between 1976-1997, did the Land Trust demand, notify, and/or inform the Kaouds that they were encroaching or otherwise improperly using, possessing, and/or enjoying Land Trust property.


23. The Court has jurisdiction to decide the Kaouds and/or co-Trustees' prescriptive easement claim under Connecticut's Quiet Title statute, Conn. Gen. Stat. § 47-31, and Connecticut's prescriptive easement statute, Conn. Gen. Stat. §47-37.

24. As a result of the foregoing, the Kaouds and/or co-Trustees acquired a prescriptive easement over the Disputed Land.

Prayer for Relief:

1. Declaration that the Kaouds and/or co-Trustees own the Disputed Land under adverse possession;
2. Declaration that the Kaouds and/or co-Trustees acquired prescriptive easement rights to the Disputed Land; and/or
3. Such legal and equitable relief as the Court deems appropriate.

**DEFENDANTS-COUNTERCLAIM-  
PLAINTIFFS RANDY KAOUD AND SALWA  
KAOUD; JAMES KAOUD AND RANDY  
KAOUD AS CO-TRUSTEES OF THE SALWA  
KAOUD FAMILY TRUST**

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**CERTIFICATE OF NOTICE TO INTERESTED PERSONS**

Pursuant to Connecticut Practice Book § 17-56, defendants-counterclaim-plaintiffs Randy Kaoud and Salwa Kaoud, together with counterclaim-plaintiffs James Kaoud and Randy Kaoud as co-Trustees of the Salwa Kaoud Family Trust, certify that all persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest in this action has been made a party or has been given notice thereof. To the best of defendants-counterclaim-plaintiffs Randy Kaoud and Salwa Kaoud, together with counterclaim-plaintiffs James Kaoud and Randy Kaoud as co-Trustees of the Salwa Kaoud Family Trust, knowledge and belief, the only additionally interested persons/parties to this action is the Woodbridge Land Trust.

**DEFENDANTS-COUNTERCLAIM-  
PLAINTIFFS RANDY KAOUD AND SALWA  
KAOUD; JAMES KAOUD AND RANDY  
KAOUD AS CO-TRUSTEES OF THE SALWA  
KAOUD FAMILY TRUST**

By: \_\_\_\_\_



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**CERTIFICATION**

This is to certify that a copy of the foregoing on October 21, 2014 was e-mailed and mailed via first-class mail, postage prepaid to all pro se parties and counsel of record including:

Jeffrey Hellman, Esq.  
Law Offices of Jeffrey Hellman LLC  
195 Church Street, 10<sup>th</sup> Floor  
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\_\_\_\_\_  
Matthew C. Brown

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# Exhibit A

SCHEDULE A

All that certain piece or parcel of land, with all the improvements thereon, situated in the Town of Woodbridge, County of New Haven and State of Connecticut, being Lot #30 on a map entitled "Lots 30 & 31 Tulip Tree Lane, Woodbridge, Connecticut, Grove Hill Properties, Inc., Scale 1" = 40' February 13, 1976 Rev. 5/24/76", by William B. Gilbert, on file in the Woodbridge Town Clerk's Office, said lot being bounded:

South by Tulip Tree Lane, being a curved line,  
33.59 feet;

South again by Lot #29 on Map of Grove Hill Properties,  
Inc. Revised to 5/24/76, 163.69 feet;

West by land now or formerly of Clifford I. Stoddard,  
305.27 feet;

North by land now or formerly of Clifford I. Stoddard,  
248.40 feet;

East by Lot #31 on said first above mentioned map,  
326.90 feet.

Said premises are subject to a drainage right of way and other facts and agreements as shown on said first above mentioned map.

It is further agreed that said Lot #30 is subject to the covenant binding upon the owner of each said lot, their successors, heirs and assigns forever, that all of the drainage facilities, pipes, swales, culverts, etc., shown on said map shall be maintained solely by such lot owners individually and privately and without any obligation to the Town of Woodbridge, its successors or subdivisions of government.

Said premises are further subject to a hold harmless agreement in favor of the Town of Woodbridge, regarding all claims of any kind which may arise from damage from water, congestion, clogging or otherwise from the drains, swales, culverts, etc., as recorded in Volume 110 on Page 7 of the Woodbridge Land Records.

Said premises are also subject to building lines if established, all laws, ordinances or governmental regulations, including building and zoning ordinances, affecting said premises, and taxes on the list of 1976, which taxes said grantees hereby assume and agree to pay as part of the consideration for this deed.

Received for record Oct. 5, 1976 at 9h 45m a.m. and recorded by:

*Polly P. Schulz*

Ass't Town Clerk