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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MATT PEAR et al.,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant and Respondent.

H040600

(Santa Clara County

Super. Ct. No. CV227801)

This appeal involves a dispute over the existence and scope of property rights reserved when the grandparents of plaintiffs Matt and Mark Pear deeded an 80-foot strip of land to defendant City and County of San Francisco in 1951 for construction of an underground pipeline conveying water from the Hetch Hetchy reservoir to San Francisco. Plaintiffs appeal the judgment entered after the trial court granted defendant's motion for summary judgment of plaintiffs' complaint to quiet title. Plaintiffs argue there are triable issues of material fact related to their causes of action seeking quiet title, an irrevocable license, declaratory relief, and injunctive relief. Although we conclude that summary adjudication of plaintiffs' cause of action seeking an irrevocable license was appropriate, we will reverse the judgment because triable issues exist as to plaintiffs' other causes of action.

I. TRIAL COURT PROCEEDINGS

We derive the following factual summary from the admissible evidence before the trial court at the time it decided the motion for summary judgment.

A. 1951 GRANT DEED

Plaintiffs presently own property at 555 Showers Drive in the City of Mountain View (Pear property) that their family has owned for over 100 years. In 1949, the San Francisco Board of Supervisors passed Resolution No. 9175, authorizing the acquisition of “certain real property in Santa Clara County required for Bay Division Pipe Line No. 3, from the Alameda County line to [the] east boundary of Stanford University.” Defendant sought to acquire property “for a public use and purpose,” the “construction, maintenance and use of a series of aqueduct pipe lines for the purpose of conveying additional water from its Hetch Hetchy Water Supply System” The resolution states it “is necessary that fee simple title be taken ..., subject to such reservations and conditions ... as may be necessary and proper to secure to the present owners ... the privilege of crossing over the same and to construct and maintain over and across said Parcels ... roads, streets, overhead power lines, telephone lines, telegraph lines, also sewers, water pipes, gas pipes and other underground utilities” The resolution continues that the present owners “shall not use” the property they convey to defendant “for any purpose or in any manner which will interfere with, damage, or endanger in any way any aqueduct, pipe lines or other structures” owned by defendant. To the extent it was necessary for defendant to acquire land by eminent domain, the resolution allowed the City Attorney to consent to “stipulations or conditions for the protection of the rights of the present owners ... in the matter of crossing over the [parcels] and maintaining roads and other structures over and across the same and using such parts thereof as may be temporarily unoccupied by structures proposed to be constructed thereon by [defendant] as the court may find to be meet and proper in each case.”

In 1951, plaintiffs' grandparents M.J. and Milica Pear (grandparents) signed a deed granting defendant an 80-foot strip of land containing 1.609 acres (pipeline property) bisecting the Pear property. The document is titled "DEED," and states grandparents "hereby grant" to defendant "the following described real property" consisting of the 80-foot strip. The deed granted defendant the right to remove any existing fences, install gates as necessary, and "protect pipes and other structures or improvements ... by means of fences or otherwise." However, the deed forbade defendant from constructing "any other fences" on the pipeline property "without the consent" of grandparents.

Grandparents made the conveyance subject to certain covenants, three of which are relevant to this appeal. The first covenant states grandparents "are permitted the right to plant, cultivate, irrigate, harvest and retain crops from the [pipeline property], and to use said land for pasturage," until defendant needed the land for construction purposes, and thereafter on any parts of the pipeline property not actually needed by defendant for construction and maintenance of aqueduct pipelines and other structures. The only limitation on agricultural use in the first covenant was that grandparents "shall not plant any trees" on the pipeline property. The second covenant states:

"[Grandparents] are permitted the right to construct, maintain, use, repair, replace, and renew, over and across [the pipeline property], (but not along in the direction of the [defendant's] pipe line or lines), fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, telegraph lines; provided, however, that the locations and grades of such improvements and structures of the [grandparents], and the amount of any earth fill, proposed to be placed on [the pipeline property] by the [grandparents], shall first be approved by [defendant's] Public Utilities Commission; provided further, that the [grandparents] shall not use [the pipeline property], or permit the same to be used, for any purpose or in any manner which will interfere with, damage, or endanger in any way any aqueduct pipe lines and other structures and improvements, appurtenances or appliances of the [defendant]. The [grandparents] shall install gates in any additional fences which [they] may construct across [the pipeline

property] sufficient in width to allow passage of trucks and other equipment.”

Those covenants expressly “inure to the benefit of, and bind, the heirs, successors and assigns of the respective parties hereto.”

Defendant laid a pipeline sometime after receiving the pipeline property. The parties do not disclose the date the pipeline was installed or the direction of the pipeline. Plaintiffs’ mother Edna Pear (mother) stated in a declaration that in “the 1950’s and 1960’s, the surface of the [pipeline property] was used for parking by the Pear family and the public in connection with [the] sale of produce, as well as Christmas trees and pumpkins.” Jean De Amicis, a friend of plaintiffs’ father John Pear (father) since high school, stated in a deposition that the Pear family used the Pear property as an orchard. The family also sold eggs, Christmas trees, and pumpkins from the Pear property, though neither the time period nor the precise location of the sales was clearly specified by De Amicis. He also stated that the surface of the pipeline property was used for parking some time after defendant installed the pipeline. Neither mother nor De Amicis mentioned whether the pipeline property was paved.

B. 1967 REVOCABLE PERMIT

Mother, father, and plaintiffs’ grandmother received a revocable permit (1967 Revocable Permit) from defendant’s Water Department “for the purpose of additional parking and landscaping on” an area covering most of the pipeline property. That permit stated the “grant of permission does not constitute a deed or grant of an easement,” that the permit was not transferable or assignable, and that it was “revocable at any time at the will of the Public Utilities Commission.” It required plaintiffs to pay “a monthly consideration of \$50 plus taxes and assessments” to defendant. Though not contained in the permit, a 1967 letter from the City Attorney’s office to counsel for the Pears (William Antonioli) noted a dispute between the parties regarding property rights on the pipeline property and stated that “the permit is to be issued without prejudice to

the legal rights of any of the parties involved.” The letter acknowledged that payment of the \$50 rental price “will not constitute a waiver or surrender of any rights reserved to the [grandparents] by the [1951 Deed],” and that grandparents “are free to challenge [defendant’s] right to charge rental and to have said right judicially determined within the statutory period provided by law if they so desire it.” A map attached to the permit contains two lines running the length of the pipeline property that appear to show the location of two pipelines running under the pipeline property.

Mother’s declaration states they obtained the “additional” parking allowed by the 1967 Revocable Permit on the pipeline property to support a department store that was built on the Pear property. That department store later became a Target retail store, which is still located on the southwestern part of the Pear property. A Wheelworks tire and automobile facility operates on the northeastern part of the Pear property. The surface of the pipeline property is paved and is used for parking, access, and circulation to the Target and Wheelworks stores.

C. DEFENDANT SEEKS TO INCREASE PERMIT FEE AND PLAINTIFFS SUE

In 2012, defendant sought to renegotiate the terms of the 1967 Revocable Permit. Rosanna Russell, Real Estate Director of defendant’s Public Utilities Commission, stated in a declaration that the renegotiation was part of an agency-wide review of leases and permits seeking to ensure that defendant was receiving fair market rent for use of its property. Plaintiff Matt Pear stated in a declaration that in March 2012 a representative of defendant threatened to revoke the 1967 Revocable Permit and fence off the pipeline property unless plaintiffs agreed to increase the monthly payment from \$50 to \$4,500.

Plaintiffs filed a verified complaint alleging four causes of action seeking: (1) quiet title in favor of plaintiffs under the 1951 Deed, “or other retained rights, ... for the uses to which the [pipeline property] is currently put, namely, access, circulation and parking” generally as well as “accessing and tending the northernmost strip of” the Pear property; (2) an irrevocable license based on equitable estoppel allowing plaintiffs to use

the pipeline property for access, circulation, and parking based on defendant's failure to object to those uses and plaintiffs' investments to improve the pipeline property in reliance on defendant's acquiescence; (3) a declaration of plaintiffs' right to use the pipeline property for access, circulation, and parking; and (4) injunctive relief to prevent defendant from fencing off the pipeline property or otherwise interfering with plaintiffs' use.

D. MOTION FOR SUMMARY JUDGMENT

Defendant moved for summary judgment or, in the alternative, summary adjudication, arguing that the 1951 Deed did not allow plaintiffs' present use of the pipeline property and defendant never made any affirmative representations that might form the basis for equitable estoppel. Defendant supported its motion with a declaration from Real Estate Director Russell as well as a request for judicial notice of Resolution No. 9175 from 1949. Defendant's statement of undisputed material facts included the following three facts: "Approximately 45 years ago, the surface of the [pipeline property] was landscaped and paved with asphalt as part of the parking lot and driveways serving the Shopping Center located at 555 Showers Drive"; "Vehicular traffic, including parking, associated with the Target Store and Wheelworks facility occurs on the [pipeline property]"; and "The loading dock for the Target Store is accessed by way of the [pipeline property] and trucks go back and forth over the [pipeline property] to access the loading dock." Defendant did not include a statement regarding the direction of the pipeline (or pipelines) on the pipeline property.

Plaintiffs supported their opposition to the motion with declarations, excerpts from depositions, and documents produced by defendant's Public Utilities Commission during discovery. In addition to that evidence, plaintiffs requested judicial notice of court files from *American Savings and Loan Association v. City and County of San Francisco* (Santa Clara Super. Ct. No. 425351) (*American Savings*)—a case involving interpretation of a grant deed with almost identical language for the Hetch Hetchy pipeline regarding

another property—including a 1981 trial court decision and a 1985 unpublished opinion from the First Appellate District. Plaintiffs did not dispute defendant’s statement regarding current vehicular use of the pipeline property, except to claim that trucks can access the Target store from an alternative entrance. Plaintiffs disputed the date their family first used the pipeline property for parking, claiming it “was previously paved and used for parking” before 1967. In addition to filing a reply in support of its motion, defendant objected to much of plaintiffs’ evidence.

At a hearing on the motion, counsel for plaintiffs requested an opportunity to file a memorandum responding to defendant’s evidentiary objections. The court authorized a response but stressed that it “should be brief” and should not be “a 20-page memo on evidence.” Plaintiffs’ counsel then suggested there was additional evidence that had not previously been filed in opposition, to which the court responded: “If you don’t have that evidence in your papers, it’s a little belated to make an offer of proof.” The court noted plaintiffs had not moved to continue the proceedings to give the court an opportunity to consider the additional evidence. The court further stated it would not consider an oral motion to continue. Plaintiffs later filed a response to defendant’s objections and also attempted to file three declarations containing new evidence. Because it was filed without the court’s authorization, the court struck the new evidence and ordered that it be physically removed from the court’s files. (Citing Code Civ. Proc., §§ 436, subd. (b), 437c, subd. (b)(2).)

The court granted defendant’s motion for summary judgment by written order. The court found the 1951 Deed unambiguously granted defendant fee title to the pipeline property, subject to limited reservations. The court relied in part on *City and County of San Francisco v. Union Pacific Railroad Co.* (1996) 50 Cal.App.4th 987 (*Union Pacific*), where the First Appellate District determined that similar language in another deed granting Hetch Hetchy property to defendant transferred fee title. Because the trial court here found the deed unambiguous, it denied plaintiffs’ request for judicial notice of the

American Savings records as irrelevant. Regarding the quiet title cause of action, the court determined the 1951 Deed did not authorize construction of “a parking lot open to the public on [the pipeline] property as the Plaintiffs now claim.” The court also stated plaintiffs “cannot prove superior title to that held by” defendant under the 1951 Deed. Regarding the irrevocable license cause of action, the court found that plaintiffs could not obtain title to the property by adverse possession because defendant was a government agency (citing Civ. Code, § 1007), and that equitable estoppel was improper because the 1967 Revocable Permit showed that defendant never acquiesced to plaintiffs’ use. Finally, the court found that plaintiffs were not entitled to declaratory or injunctive relief.

Plaintiffs moved for a new trial based on legal error as well as newly-discovered evidence, including documents from defendant’s files, excerpts from depositions, and a declaration by a title expert. The trial court denied the motion, reasoning that none of the evidence was “newly discovered” as that phrase has been interpreted by case law because much of it existed before the hearing on defendant’s motion for summary judgment and that, even if the evidence was new, none of it was material.

II. DISCUSSION

A. SCOPE OF EVIDENCE FOR REVIEW

Before reviewing the grant of summary judgment, we must determine the proper scope of evidence to consider. On appeal, plaintiffs rely on four categories of evidence: (1) evidence they offered in opposition to defendant’s motion, including evidence the trial court excluded in response to defendant’s objections; (2) evidence they filed after the hearing on defendant’s motion but which was struck by the court because it was filed without authorization; (3) evidence they filed in support of their motion for a new trial; and (4) evidence with no citation to, or support, in the record, such as the statement in their Opening Brief that access “to the Wheelworks service bays is over” the pipeline property. The impropriety of that last category of evidence does not merit detailed discussion. (Cal. Rules of Court, rule 8.204(a)(1)(C) [briefs must “[s]upport any

reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”]; *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 [“documents not before the trial court cannot be included as a part of the record on appeal”].) Permissibility of plaintiffs’ reliance on the other categories of evidence requires greater analysis.

1. Evidence in Support of Plaintiffs’ Opposition

Because the existence of triable issues of material fact must be shown by admissible evidence (*Jones v. Wachovia Bank* (2014) 230 Cal.App.4th 935, 945–946 (*Jones*)), plaintiffs may not rely on evidence that was properly excluded by the trial court. Plaintiffs do not identify a standard of review, claiming only that the court “improperly excluded” certain evidence, while defendant argues the applicable standard of review is abuse of discretion. The Supreme Court has not decided the relevant standard of review regarding a trial court’s resolution of evidentiary objections related to a motion for summary judgment. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 [“we need not decide generally whether a trial court’s rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo”].) Consistent with our previous decisions and those of other districts, we will review the trial court’s evidentiary rulings for an abuse of discretion. (*Jones, supra*, at p. 951; *Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1335 [“ ‘Although it is often said that an appellate court reviews a summary judgment motion “de novo,” the weight of authority holds that an appellate court reviews a court’s final rulings on evidentiary objections by applying an abuse of discretion standard.’ ”].)

a. Matt Pear Declaration

The trial court sustained defendant’s hearsay, lack of foundation, and lack of personal knowledge objections to several statements in Matt Pear’s declaration regarding what his father told him about his grandparents’ negotiation of the 1951 Deed with defendant. Plaintiffs argue that Matt Pear’s statement in the declaration that his

grandparents could not read or write English was based on his personal knowledge and was not hearsay at all. However, the court did not abuse its discretion in finding that the statement was hearsay and unsupported by personal knowledge because, rather than declare he personally knew about his grandparents' English literacy, the declaration states: "I am aware as a matter of family history that my grandparents ... could not read or write in English."

Plaintiffs argue that statements in Matt Pear's declaration about what his father told him about his grandparents' negotiations with defendant, which constitute double or "multiple hearsay" (Evid. Code, § 1201), were admissible based on hearsay exceptions for family history (Evid. Code, § 1310); contemporaneous statements (Evid. Code, § 1241); and state of mind (either at the time of the statement or at a time before the statement) (Evid. Code, §§ 1250, 1251).

The family history exception allows for "evidence of a statement by a declarant who is unavailable as a witness concerning his own birth, marriage, divorce, a parent and child relationship, relationship by blood or marriage, race, ancestry, or other similar fact of his family history" unless "the statement was made under circumstances such as to indicate its lack of trustworthiness." (Evid. Code, §§ 1310, subds. (a), (b).) The types of evidence identified in Evidence Code section 1310 are all related to relationships between family members and bear no similarity to the statements in Matt Pear's declarations related to his grandparents' negotiations with defendant for the pipeline property.

Plaintiffs cite *Estate of Berg* (1964) 225 Cal.App.2d 423 (*Berg*), for the proposition that the family history exception should be broadly construed. *Berg* involved determining whether the decedent's estate should go to his first wife from whom he had separated or to a second woman he had purported to marry. (*Id.* at p. 425.) The court affirmed the trial court's admission of statements by the decedent to his son about where the father lived after separating from his first wife, reasoning "[w]here a man has deserted his family for an extended period of time ... , his declarations as to his

subsequent places of residence may offer the only basis for the acquisition of information with respect to whether he has altered his family relationships by acts having legal consequences.” (*Id.* at pp. 429, 432.) Unlike the statements in *Berg*, the Pear family’s statements about land negotiations are entirely unrelated to their family relationships and the trial court did not abuse its discretion in finding that the family history exception was inapplicable.

The contemporaneous statement exception applies if the statement is “offered to explain, qualify, or make understandable [the] conduct of the declarant” and was “made while the declarant was engaged in such conduct.” (Evid. Code, § 1241, subs. (a), (b).) Similarly, statements of then-existing state of mind are admissible to “prove or explain acts or conduct of the declarant.” (Evid. Code, § 1250, subd. (a)(2).) The trial court did not abuse its discretion in finding these exceptions inapplicable because it was plaintiffs’ grandparents—not plaintiffs’ father—who signed the 1951 Deed. Statements by plaintiffs’ father about his state of mind related to the *grandparents’* conduct do not fall under these exceptions. Matt Pear’s declaration also does not satisfy Evidence Code section 1241’s requirement that the statement be “contemporaneous” because it does not indicate that any of the statements were made while the hearsay declarant was engaged in negotiating or signing the 1951 Deed.

Finally, Evidence Code section 1251 allows evidence of “a statement of the declarant’s state of mind, emotion, or physical sensation ... at a time prior to the statement” when the declarant is unavailable and the declarant’s “state of mind, emotion, or physical sensation ... is itself an issue in the action” (Evid. Code, § 1251, subs. (a), (b).) As we have noted, because there is no evidence that plaintiffs’ father negotiated the 1951 Deed with defendant, his state of mind or beliefs about what that deed meant are irrelevant. The trial court acted within its discretion in finding that exception inapplicable.

b. Edna Pear Declaration

The trial court excluded hearsay statements in mother's declaration about what her husband (plaintiffs' father) told her regarding "family discussions" about what property rights the 1951 Deed reserved to the grandparents. Plaintiffs argue that the family history, contemporaneous statement, and state of mind hearsay exceptions make mother's statements admissible. The hearsay statements in mother's declaration are similar to those in Matt Pear's declaration in that the hearsay declarant was plaintiffs' father and the statements were about what he believed the 1951 Deed meant. For the same reasons we discussed regarding Matt Pear's statements about what his father told him (namely, no evidence shows that plaintiffs' father was involved in the 1951 Deed negotiations), we find the trial court properly excluded similar statements in mother's declaration.

Plaintiffs also suggest that the hearsay statements were admissible as statements or admissions by an opposing party, but they provide no analysis to support that argument. (Citing Evid. Code, §§ 1220, 1222, 1230.) Because the hearsay statements in mother's declaration all refer to statements by plaintiffs' father rather than defendant, those exceptions do not apply.

c. Jean De Amicis Deposition

The trial court sustained hearsay objections to statements in the deposition of plaintiffs' father's friend Jean De Amicis regarding what plaintiffs' father told De Amicis about surface rights retained by plaintiffs' family under the 1951 Deed. Plaintiffs claim the exceptions for contemporaneous statements and state of mind apply because the statements "reflect the state of mind of the grantors, through a son who translated for them, relative to the terms of the grant." Plaintiffs provide no citation to the record to support their assertion that plaintiffs' father translated for the grandparents when they negotiated and signed the 1951 Deed with defendant, again violating California Rules of Court, rule 8.204(a)(1)(C). Our independent review of the record shows that the concept of father's translation assistance in the 1951 Deed transaction was introduced in the

supplemental Matt Pear declaration which was struck by the trial court, a decision that we will find was within the trial court's discretion. Even if that evidence was properly before the court, the contemporaneous statement exception does not apply because De Amicis did not relay information he heard from plaintiffs' father while the 1951 Deed was being negotiated. Instead, the hearsay statements were from discussions plaintiffs' father had with De Amicis at unspecified later dates. Further, the statements at most reflect plaintiffs' father's state of mind, which was irrelevant to interpreting the 1951 Deed because grandparents, not father, signed the deed.

d. Antonioli Letters to Defendant Regarding 1967 Revocable Permit

The court excluded as hearsay two letters written by William Antonioli, an attorney who represented plaintiffs' family in negotiations with defendant resulting in the 1967 Revocable Permit. In one of the letters, Antonioli recounted the history of plaintiffs' interactions with defendant, stating for example that plaintiffs' family was assured in 1951 "that the surface rights were their's [*sic*], and that the City merely was interested in the underground for installation" of the pipeline. The letter does not suggest who assured plaintiffs' family of those rights. The other Antonioli letter stated that defendant agreed that signing the 1967 Revocable Permit would not waive either party's rights under the 1951 Deed and relayed a statement by one of defendant's employees that he preferred that the permit not expressly include a statement that plaintiffs' family was signing the permit under protest. On appeal, plaintiffs focus on the admissibility of statements regarding assurances reportedly made by defendant, likely because the statements about entering the 1967 Revocable Permit under protest were corroborated by statements in a letter to Antonioli from the City Attorney's office which was included in plaintiffs' opposition to the summary judgment motion.

Plaintiffs argue Antonioli's statements about defendant's assurances in 1951 are admissible as adoptive admissions. (Evid. Code, § 1221.) Plaintiffs claim defendant effectively admitted making the assurances attributed to it in Antonioli's letter because

defendant did not deny doing so. Though failure to deny a statement may constitute admission by silence (*Nungaray v. Pleasant Valley Lima Bean Growers & Warehouse Assn.* (1956) 142 Cal.App.2d 653, 666), the trial court could reasonably conclude that defendant effectively denied making the assurances by requiring plaintiffs' family to sign the 1967 Revocable Permit at all. Had defendant made the assurances in 1951, the 1967 Revocable Permit would have been unnecessary.

Plaintiffs also claim the statements were admissible under the ancient writings exception, which makes an otherwise hearsay statement admissible if it "is contained in a writing more than 30 years old and the statement has been since generally acted upon as true by persons having an interest in the matter." (Evid. Code, § 1331.) Though it is undisputed the letters are from 1967 and thus meet the 30-year requirement, the statements have only been "acted upon as true" by plaintiffs' family. Defendant's requirement that plaintiffs' family obtain the 1967 Revocable Permit indicates that since that time defendant has proceeded under the theory that plaintiffs' right to the "additional parking" referred to in that permit was not reserved to plaintiffs by the 1951 Deed.

Finally, plaintiffs assert that "[r]ecitals of the letter regarding statements made by the City to the Pears at the time of the grant and their intent in giving the deed" are admissible under exceptions for state of mind, contemporaneous statement, and statement of a declarant whose right or title is in issue, but they provide no explanation as to why those exceptions apply. Because plaintiffs provide no analysis to support the applicability of those exceptions (for instance, failing to disclose whose state of mind they are referring to), they have forfeited those arguments. (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1084, fn. 16 (*Tichinin*) [waiving argument for failure to provide reasoned argument and citation to relevant legal authority].) We therefore find no abuse of discretion in the trial court's exclusion of the Antonioli letters.

e. Howard Frantz Deposition from *American Savings* Court Record

The trial court excluded the excerpt from Howard Frantz’s 1980 deposition in the *American Savings* case, finding it irrelevant and inadmissible hearsay to the extent the testimony purported to attribute statements to defendant. Frantz apparently owned property that defendant needed for the Hetch Hetchy pipeline and defendant acquired title to that property by a deed with language similar to the 1951 Deed. Frantz stated his belief based on negotiations with defendant for his property that after the transfer “we could use the property for our own use for most anything we wanted to do provided it didn’t hinder anything that the City wanted to do later.”

Plaintiffs argue the excerpt is admissible as former testimony offered against defendant. (Evid. Code, §§ 1290, subd. (c); 1291, subd. (a)(2).) Former testimony is admissible hearsay if the “party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing.” (Evid. Code, § 1291, subd. (a)(2).) Though defendant was a party to the *American Savings* case and had an opportunity to cross-examine Frantz, the trial court could reasonably conclude that defendant’s interest and motive in that case was different than its interest and motive in plaintiffs’ case. The *American Savings* case involved a different property, a different plaintiff, and a deed that (despite apparently having similar language) was the result of a different negotiation than the negotiation that culminated in the 1951 Deed here. For those reasons, plaintiffs have not shown that the trial court’s decision to exclude the Frantz deposition “ ‘exceeded the bounds of reason,’ ” as would be necessary to demonstrate an abuse of discretion.

(*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)¹

¹ Plaintiffs also asked the trial court to take judicial notice of the lower court decision in *American Savings* and the First Appellate District’s unpublished opinion reversing that decision. The trial court denied the request, finding that because the

2. Late-Filed Evidence Stricken by the Trial Court

Plaintiffs argue that the trial court improperly struck evidence they submitted after the hearing on defendant's motion for summary judgment. At the hearing on defendant's motion, counsel for plaintiffs indicated he had "more in terms of preserving the record, making offers of proof," including evidence "that was produced after our opposition." The court noted that plaintiffs had not filed a motion to continue the hearing to allow the court to consider additional evidence. When counsel attempted to make an oral motion to continue, the court refused to consider the oral motion. The court told counsel "I'm not going to tell you what to do next, but I'm not going to consider an oral motion to allow you to file a further response to [defendant's] motion." Plaintiffs filed a response to defendant's objections as well as new evidence; plaintiffs did not file a motion to continue.

In striking the evidence, the trial court cited Code of Civil Procedure sections 436, subdivision (b), and 437c, subdivision (b)(2). Code of Civil Procedure section 436, subdivision (b) allows a court to strike "any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." "Pleading" is defined as "a demurrer, answer, complaint, or cross-complaint." (Code Civ. Proc., § 435, subd. (a)(2).) Plaintiffs are correct that the declarations and deposition excerpts they filed

1951 Deed was unambiguous, resort to extrinsic evidence was unnecessary and the records were therefore irrelevant. Plaintiffs do not directly challenge the trial court's denial of their request for judicial notice, nor did they "serve and file a separate motion with a proposed order" in this court requesting judicial notice of the *American Savings* court decisions. (Cal. Rules of Court, rule 8.252(a)(1).) Except in limited circumstances, unpublished court opinions "must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Court, rule 8.1115(a).) Although an exception to that general rule may apply when an opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel (Cal. Rules of Court, rule 8.1115(b)(1)), plaintiffs have failed to establish that any of those doctrines applies here. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 ["The party asserting collateral estoppel bears the burden of establishing these requirements"].) Therefore, plaintiffs' implicit request that this court take judicial notice of the *American Savings* decisions is denied.

after the summary judgment hearing are not pleadings, making section 436 inapplicable. However, that does not end our inquiry.

An opposition to a motion for summary judgment, consisting of “affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken,” is due “not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.” (Code Civ. Proc., § 437c, subd. (b)(2).) If “facts essential to justify opposition may exist but cannot, for reasons stated, then be presented,” a party opposing summary judgment may move to continue the proceedings “by ex parte motion at any time on or before the date the opposition response to the motion is due.” (*Id.*, subd. (h).) That motion must demonstrate that the additional facts are essential to opposing the motion, show there is reason to believe additional facts exist, and explain why additional time is needed to obtain the facts. (*Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 190 (*Desaigoudar*).) If the reason more time is needed is merely “a lack of diligence,” the judge may deny the request for continuance. (*Ibid.*) We review a decision denying a motion to continue summary judgment proceedings under the abuse of discretion standard. (*Ibid.*)

Applying those principles here, plaintiffs did not make an adequate showing to justify a continuance. Plaintiffs did not mention the existence or necessity of additional evidence until the end of the hearing on defendant’s motion. When the court informed counsel for plaintiffs that it would not consider additional evidence because counsel had not filed a motion to continue, counsel sought to make the motion orally but his entire oral motion was: “Then I’ll make the motion now.” That motion provided none of the requisite information regarding the necessity of additional facts, counsel’s reason to believe the facts existed, or an explanation of why additional time was necessary. (*Desaigoudar, supra*, 108 Cal.App.4th at p. 190.) The trial court was well within its discretion in denying the oral motion. (See *Mahoney v. Southland Mental Health*

Associates Medical Group (1990) 223 Cal.App.3d 167, 172 [“Although a trial court *may* excuse failure to comply with the requirement of a declaration in support of a motion for continuance ([citations]), the court is not required to do so.”].) The court was also within its discretion in refusing to consider the new evidence plaintiffs filed after the hearing because that evidence was not accompanied by any explanation of why a continuance was necessary. As the trial court did not abuse its discretion in refusing to consider the new evidence, we likewise do not consider that evidence.²

3. Evidence filed with Plaintiffs’ Motion for New Trial

The court denied plaintiffs’ motion for new trial,³ reasoning that none of the evidence plaintiffs claimed was newly discovered was material and that little of that evidence was new. The court sustained defendant’s objections to some of plaintiffs’ new evidence in its order denying the motion for new trial, which plaintiffs claim was improper. Though plaintiffs correctly note in their statement of appealability that an order denying a motion for new trial is reviewable on appeal of the judgment (citing *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 21), they do not provide any analysis challenging the trial court’s order denying their motion. By not providing argument challenging the denial of their motion, plaintiffs have forfeited that issue (*Tichinin, supra*, 177 Cal.App.4th at p. 1084, fn. 16), making resolution of evidentiary rulings within that decision unnecessary. We therefore do not consider the evidence accompanying plaintiffs’ motion for new trial.

² Plaintiffs complain that in addition to striking their new evidence, the trial court physically removed those filed documents from its file. We need not reach the issue of whether the physical removal was within the scope of the trial court’s statutory authority, because the removal did not prevent plaintiffs from including the documents in their Appellant’s Appendix and therefore did not interfere with appellate review.

³ “A motion for a new trial is appropriate following an order granting summary judgment.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 858.)

B. SUMMARY JUDGMENT

Summary judgment is appropriate when there are no triable issues of any material fact such that the moving party is entitled to judgment as a matter of law on all causes of action. (Code Civ. Proc., § 437c, subd. (c); *Jones, supra*, 230 Cal.App.4th at p. 945.) Short of summary judgment, a party may obtain summary adjudication of a particular cause of action by showing there are no triable issues of material fact as to that specific cause of action even if there are triable issues of fact regarding other causes of action. (Code Civ. Proc., § 437c, subd. (f)(1).)

We review an order granting summary judgment de novo, applying a three-step analysis. (*Jones, supra*, at p. 945; *Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 503.) First, we identify the causes of action framed by the pleadings. Second, we review whether defendant as the moving party carried its burden of showing the causes of action have no merit because one or more elements cannot be established or an affirmative defense precludes the cause of action. (Code Civ. Proc., § 437c, subd. (o); *Murphy v. Allstate Ins. Co.* (1978) 83 Cal.App.3d 38, 41 [moving party must show causes of action “are entirely without merit on any legal theory”].) Third, if we find the defendant has made a prima facie showing that it is entitled to judgment as a matter of law, the burden of production shifts to the plaintiff and we review whether the plaintiff has provided evidence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Jones*, at p. 945.) A triable issue of material fact exists if “the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield, supra*, 25 Cal.4th at p. 845.) “Thus, a party ‘cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact.’ ” (*Jones*, at pp. 945–946.)

1. Triable Issues of Fact Regarding Plaintiffs' Quiet Title Action

Plaintiffs' first cause of action seeks to quiet title in an "[e]asement, or other retained rights, as of the date" of the complaint for use of the pipeline property for "access, circulation[,] and parking." The purpose of a quiet title action "is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he [or she] may be entitled to." (*Peterson v. Gibbs* (1905) 147 Cal. 1, 5.) Though a party failing to show a legal interest in the property "must fail altogether," a party showing *any* legal interest "is entitled to have that interest declared by the court." (*Ibid.*)

As the party moving for summary judgment, defendant had the burden to make a prima facie showing that plaintiffs had no legal interest in the pipeline property for access, circulation, or parking such that it was entitled to judgment as a matter of law. (*Jones, supra*, 230 Cal.App.4th at p. 945.) Defendant argued plaintiffs' quiet title cause of action was "barred by the plain meaning" of the 1951 Deed, and claimed the rights reserved to plaintiffs by that deed did not grant plaintiffs "the right to pave and occupy the entire length of such property and subject it to unlimited, public commercial use as a roadway and a parking lot." We must review the 1951 Deed to determine whether defendant met its burden to show plaintiffs have no access, circulation, or parking rights on the pipeline property under that deed.

In interpreting a deed, our primary objective is to determine and carry out the intent of the parties by looking at the deed's plain language, "as construed in light of any extrinsic evidence which may prove a meaning [of] which the language of the instrument is reasonably susceptible." (*Union Pacific, supra*, 50 Cal.App.4th at p. 994.) "A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended." (Civ. Code, § 1105; *Union Pacific*, at p. 995.) While grants are generally interpreted in favor of the grantee,

“a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.” (Civ. Code, § 1069.)

Interpretation of a deed is usually a question of law subject to our independent review. However, if there is conflicting extrinsic evidence making a deed’s language reasonably susceptible of two interpretations, resolution of that conflict is a question of fact precluding summary judgment. (*Wolf v. Superior Court* (2004)

114 Cal.App.4th 1343, 1351.) We separate our analysis between two inquiries:

- (1) whether defendant obtained fee title to the pipeline property by the 1951 Deed; and
- (2) whether the property rights retained by plaintiffs’ family in the 1951 Deed include the right to use the pipeline property for automotive access, circulation, and parking.

a. Defendant Obtained Fee Title

The 1951 Deed states plaintiffs “hereby grant” to defendant “real property” consisting of the pipeline property, subject to covenants reserving, among other things, plaintiffs’ family’s “right to plant, cultivate, irrigate, harvest and retain crops from the” the pipeline property and “the right to construct, maintain, use, repair, replace, and renew, over and across [the pipeline property], (but not along in the direction of the [defendant’s] pipe line or lines), fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, [and] telegraph lines” The reserved construction rights are subject to two conditions: prior approval by defendant and the requirement that any improvements not “interfere with, damage, or endanger in any way any aqueduct pipe lines and other structures and improvements” installed by defendant on the pipeline property.

Union Pacific interpreted a similar deed. There, the City and County of San Francisco obtained land in 1949 by a grant from Union Pacific Railroad Company’s predecessor containing almost identical reserved rights to those in the 1951 Deed in this case. (*Union Pacific, supra*, 50 Cal.App.4th at pp. 990–991, fn. 1.) San Francisco sued for quiet title and trespass in 1990 to prevent Union Pacific from using the land as a

parking lot. (*Id.* at p. 993.) The court of appeal concluded that the parties intended the deed to convey fee title to San Francisco but nonetheless decided that Union Pacific could use the land as a parking lot because the parties had signed a lease in which they agreed to be bound by the outcome of the *American Savings* litigation, where the court found San Francisco had not been granted fee title through a deed it received for another property and thus could not prevent parking on the surface. (*Id.* at pp. 997, 999 [“Having suffered an adverse decision in *American Savings*, the City is now bound by its agreement to recognize Union Pacific’s fee title to the property and defendant’s right to use the land for a parking lot.”].) Because of the agreement to be bound by the *American Savings* decision, the court in *Union Pacific* did not have occasion to decide whether use of land like the pipeline property for parking would be consistent with the rights reserved in the deed.

Like the deed in *Union Pacific*, the 1951 Deed does not specify what property interest grandparents transferred to defendant but does refer to a “grant” of land, which “is usually sufficient to convey a fee simple interest in property.” (*Union Pacific, supra*, 50 Cal.App.4th at p. 995, citing Civ. Code, § 1105].) The 1951 Deed refers to the property conveyed as a “strip of land,” which the California Supreme Court has found consistent with a fee transfer. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 244 [“References to ‘land,’ particularly in conjunction with precise and technical designation of the location, generally indicate an intention to transfer the entire estate not just a limited right to pass over the property.”].) Grandparents’ reservation of rights in the 1951 Deed’s covenants provide further “indicia conforming to an intent to convey a fee” because reserving access and use rights “would be inconsistent with retaining any larger estate in the property.” (*Id.* at p. 244.) None of the extrinsic evidence submitted by plaintiffs indicates the 1951 Deed was reasonably susceptible of any contrary interpretation regarding title to the property. Further, extrinsic evidence in the form of the Board of Supervisors’ Resolution No. 9175, which referred to the

necessity of purchasing “fee simple title” to the various parcels defendant needed for its pipelines, is consistent with our determination that the 1951 Deed granted fee title in the pipeline property to defendant. Based on the foregoing, we find the 1951 Deed unambiguously granted fee simple title in the property to defendant, subject to the rights reserved in plaintiffs’ family by the deed’s covenants.

The trial court ended its analysis when it concluded defendant owned the pipeline property in fee, finding plaintiffs could not “prove superior title to that held” by defendant. However, to obtain a full summary judgment defendant has to show not only that it owns the property but also that the uses to which plaintiffs seek to quiet title (access, circulation, and parking) are not among the rights reserved to plaintiffs under the 1951 Deed.

b. Defendant Did Not Show Entitlement to Judgment as a Matter of Law

The 1951 Deed reserved the right for plaintiffs’ family to, among other things, construct and use the following improvements “over and across” the pipeline property “but not along in the direction of” defendant’s pipelines: “fences, roads, streets, earth fills, sewers, water pipes, gas pipes, electric power lines, telephone lines, [and] telegraph lines,” subject to prior approval by defendant and a prohibition against using the pipeline property for any purpose that would “interfere with, damage, or endanger in any way” defendant’s pipeline. Plaintiffs’ complaint alleged that the foregoing reservation allowed them to use the pipeline property for “accessing and tending the northernmost strip of [the Pear property] that was severed” by the pipeline property and for “access, circulation[,] and parking” more generally.

Defendant argued it was entitled to judgment as a matter of law related to plaintiffs’ quiet title cause of action because plaintiffs’ rights under the 1951 Deed did not include the “right to pave and occupy the entire length of [the pipeline] property and subject it to unlimited, public commercial use as a roadway and a parking lot.”

Defendant's separate statement of undisputed facts contained two facts related to plaintiffs' present use of the property: "Vehicular traffic, including parking, associated with the Target Store and Wheelworks facility occurs on the City Property"; and "The loading dock for the Target Store is accessed by way of the City Property and trucks go back and forth over the City's property to access the loading dock."

Neither of the undisputed facts regarding plaintiffs' present use of the property address the complaint's allegation that plaintiffs are entitled to use the pipeline property to access the northern strip of the Pear property where Wheelworks operates. By not demonstrating that plaintiffs' quiet title cause of action was "entirely without merit on *any* legal theory" (*Murphy, supra*, 83 Cal.App.3d at p. 41, italics added), defendant did not satisfy its burden as the moving party and summary judgment was improper. Though defendant moved alternatively for summary adjudication, summary adjudication is unavailable to eliminate one theory of recovery within a single cause of action. Code of Civil Procedure section 437c, subdivision (f)(1) limits summary adjudication to "one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty," and states "summary adjudication shall be granted only if it *completely* disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Italics added.)

Even if summary adjudication were available to resolve the issue of whether the 1951 Deed allows plaintiffs to use the pipeline property for parking, we would nonetheless find summary adjudication improper. Defendant claims the reservation in the 1951 Deed allowing plaintiffs to construct and use roads and streets over and across the pipeline property is unambiguous and does not allow parking. Defendant asserts that its interpretation is buttressed by the 1967 Revocable Permit and argues that the permit gave plaintiffs notice of defendant's position. Basically, defendant argues that if parking rights were retained under the 1951 Deed the 1967 Revocable Permit would have been unnecessary. As the 1951 Deed does not specifically mention parking, defendant's

interpretation of the deed is reasonable, which would shift the burden to plaintiffs to show a triable issue of material fact regarding their claim that the 1951 Deed reserved parking rights. (*Jones, supra*, 230 Cal.App.4th at p. 945.)

To support plaintiffs' interpretation of the 1951 Deed, they rely on mother's declaration, where she stated that in "the 1950's and 1960's, the surface of the [pipeline property] was used for parking by the Pear family and the public in connection with [the] sale of produce, as well as Christmas trees and pumpkins." That statement was corroborated by the deposition testimony of Jean De Amicis, who stated that the Pear family sold eggs, Christmas trees, and pumpkins from the Pear property, and that the surface of the pipeline property was used for parking some time after defendant installed the pipeline. Plaintiffs also note that the 1967 Revocable Permit allows "additional" parking and landscaping, suggesting that some amount of parking already occurred on the pipeline property.

The trial court declined to consider the foregoing extrinsic evidence regarding the 1951 Deed, based on its finding that the deed was unambiguous. However, extrinsic evidence may be considered to determine whether a deed, apparently clear on its face, is reasonably susceptible of more than one meaning. (*Schmidt v. Bank of America, N.A.* (2014) 223 Cal.App.4th 1489, 1503 [" "[E]ven if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." ' '].)

When viewed in light of plaintiffs' extrinsic evidence, we find the 1951 Deed reasonably susceptible of plaintiffs' interpretation that the reservation of road and street use included the right to at least some parking use on the property. (See *Keeler v. Haky* (1958) 160 Cal.App.2d 471, 475–476 [finding easement to "pass and repass" did not contemplate permanent parking but noting the record excluded "any evidence of the occasional or temporary parking that normally accompanies the movement of vehicles in

and out of, or over, a location such as that found in various cases cited by respondents”].) The mutual intention of parties to a deed can be shown by the subsequent conduct of the parties. (*Wolf, supra*, 114 Cal.App.4th at p. 1356.) Plaintiffs’ evidence regarding the period between the 1951 Deed and the 1967 Revocable Permit suggests that parking occurred on the pipeline property, and that by agreeing to “additional” parking in 1967, defendant knew about pre-existing parking on the pipeline property. As there are two plausible interpretations of the reserved rights in the 1951 Deed based on contradictory extrinsic evidence, resolution of which interpretation controls is a question of fact precluding summary judgment. (*Wolf*, at p. 1351.)

Another argument by defendant confirms that summary judgment is inappropriate regarding the scope of plaintiffs’ reserved rights under the 1951 Deed. Defendant claims that plaintiffs’ use of the pipeline property overburdens what it calls plaintiffs’ “easement.” But “[w]hether a particular use of an easement by either the servient or dominant owner unreasonably interferes with the rights of the other owner is a question of fact.” (*Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 350.) While summary judgment regarding overburdening an easement might be appropriate in an extreme case—for example, where the owner of a vehicle access easement converts that easement into a landing strip for airplanes—defendant’s statement that the pipeline property is used for “[v]ehicular traffic, including parking” is too imprecise to allow a court to find that plaintiffs’ use overburdens its reserved rights as a matter of law.

Our decision should not be construed as a determination of the parties’ rights under the 1951 Deed. On remand, the finder of fact must resolve the conflicting evidence regarding interpretation of the 1951 Deed.

2. No Triable Issue of Fact Regarding Irrevocable License

Plaintiffs’ second cause of action alleges that they have an “irrevocable license” to use the pipeline property, “in reasonable reliance on which” plaintiffs have spent time

and money developing the Pear property, and that defendant should be estopped from challenging plaintiffs' uses due to defendant's acquiescence. It appears plaintiffs seek an irrevocable license based on the doctrine of equitable estoppel.⁴ To rely on the doctrine of equitable estoppel, plaintiffs must show: (1) defendant knew the 1951 Deed did not permit plaintiffs' current uses; (2) defendant failed to object (or acquiesced) to plaintiffs' use despite that knowledge; (3) plaintiffs did not know they were not allowed to use the pipeline property as they currently do; and (4) plaintiffs relied on defendant's failure to object (or acquiescence) to their detriment. (See *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1359 (*Feduniak*.) When, as here, equitable estoppel is alleged against a public entity, the plaintiff must also show "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496–497.) "[P]arties invoking the doctrine of equitable estoppel against the government must show extensive reliance; this usually involves many individuals, or a plaintiff whose reliance consisted in giving up some fundamental right, or both these factors." (*Penn-Co v. Board of Supervisors* (1984) 158 Cal.App.3d 1072, 1081 (*Penn-Co*.) The "existence of an estoppel is generally a question of fact" (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 266), but estoppel can be denied if the reliance claimed was unreasonable as a matter of law. (*Penn-Co*, at p. 1081.)

Defendant argued below that it was entitled to judgment as a matter of law because plaintiffs' reliance on the 1967 Revocable Permit as authorization for irrevocable use of the pipeline property was unreasonable, especially in light of defendant's status as a public entity. Defendant's motion was supported by the 1951 Deed, the 1967

⁴ Plaintiffs expressly disclaim reliance on Civil Code section 1007 (adverse possession) as a basis for their second cause of action, making discussion of that theory unnecessary.

Revocable Permit, and the understanding between the parties who signed that permit that they signed it without prejudice to their legal rights under the 1951 Deed. Relevant terms from the 1967 Revocable Permit include that the “grant of permission does not constitute a deed or grant of an easement,” that it was not transferable or assignable, and that it was “revocable at any time at the will of the Public Utilities Commission.”

Based on the documentary evidence supporting its motion, we find that defendant satisfied its burden of showing that plaintiffs’ cause of action for an irrevocable license based on the doctrine of equitable estoppel had no merit. The 1967 Revocable Permit authorized plaintiffs’ family to use the pipeline property for “additional parking and landscaping,” but clearly stated it was not a deed or an easement and that defendant’s Public Utilities Commission could revoke the permit at any time. Though the parties signed the 1967 Revocable Permit without prejudice to either party’s property rights under the 1951 Deed, at the very least that permit put plaintiffs on notice of defendant’s position that the 1951 Deed did not authorize plaintiffs’ use of the pipeline property for parking. The notice provided by that permit forecloses plaintiffs’ ability to show that defendant failed to object or acquiesced to plaintiffs’ conduct. Even if the 1967 Revocable Permit could be construed as some limited acquiescence to plaintiffs’ use of the pipeline property for parking, relying on an expressly revocable permit to suggest that defendant granted an *irrevocable* license to use the pipeline property in perpetuity is unreasonable as a matter of law. If a party can reasonably rely on a revocable permit as granting an irrevocable license, no permit would ever be revocable.

Defendant having carried its burden of showing that this cause of action was without merit, the burden shifted to plaintiffs to show a triable issue of material fact. (*Jones, supra*, 230 Cal.App.4th at p. 945.) The only statement of undisputed fact plaintiffs proffered relevant to rebut defendant’s showing is that “the current Target store and Wheelworks store were built ... in reliance on the ability to use the surface of the [pipeline property] as part of the shopping center parking lot.” However, the paragraph

from Matt Pear's declaration cited for this fact does not mention reliance, stating: "Customers of both the Target store and Wheel Works at the site use the paved parking and circulation area above [the pipeline property] in order to operate. Without this area, they would not be able to operate and the shopping center would essentially be cut in half." Even assuming Matt Pear's declaration supported that statement of reliance, plaintiffs do not explain why any reliance would be reasonable. Though plaintiffs' family might have relied on the 1967 Revocable Permit's grant of parking rights in deciding to build stores on their property, we reiterate that relying on a revocable permit as granting an irrevocable license is unreasonable as a matter of law. Because plaintiffs did not rebut defendant's showing, defendant was entitled to summary adjudication of plaintiffs' second cause of action.

Plaintiffs' arguments on appeal are unpersuasive. They claim they have expended money based on "the ability to use the surface" of the pipeline property for parking. However, since 1967 their use of the pipeline property has been governed by the 1967 Revocable Permit. Though they stress that they signed that permit "under protest," their disagreement about their pre-existing rights to use the pipeline property does not change the revocable nature of the 1967 Revocable Permit. Nor does that disagreement negate the notice plaintiffs received through the 1967 Revocable Permit of defendant's position that the 1951 Deed did not authorize plaintiffs' use of the pipeline property for parking. While resolution of plaintiffs' quiet title cause of action on remand might establish that plaintiffs have some right to use the pipeline property for parking, any property rights will exist by virtue of the 1951 Deed and not through equitable estoppel.

3. Triable Issues of Fact Regarding Declaratory and Injunctive Relief

The trial court found that plaintiffs were not entitled to declaratory or injunctive relief because they failed to rebut defendant's showing that it was entitled to judgment as a matter of law on the causes of action seeking quiet title and an irrevocable license. The declaratory and injunctive relief causes of action substantially overlap with the quiet title

cause of action. Plaintiffs seek a declaration that they can use the pipeline property for access, circulation, and parking and an injunction preventing defendant from interfering with those uses. Because we find that summary judgment was improper for plaintiffs' quiet title cause of action, and because resolution of that cause of action affects the same issues as the declaratory and injunctive relief causes of action, summary judgment as to those causes of action was also improperly entered. Plaintiffs are thus entitled to maintain the declaratory and injunctive relief causes of action on remand as they relate to their quiet title cause of action. (See *Schmidt, supra*, 223 Cal.App.4th at p. 1513 [remanding declaratory and injunctive relief causes of action when reversing grant of summary judgment related to use of an easement when contentions overlapped with triable issues related to scope of easement].)

III. DISPOSITION

The judgment is reversed. The trial court is directed to enter a new order granting defendant's motion for summary adjudication of plaintiffs' second cause of action and denying summary adjudication as to the first, third, and fourth causes of action. Each party to bear its own costs on appeal.

Grover, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.