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8 IN AND FOR THE SUPERIOR COURT OF THE COUNTY OF COCHISE

9 DANNY R. HATCH, JR. and DENICE R.
10 HATCH, husband and wife,

11 Plaintiffs,

12 vs.

13 RONALD J. KLUMP and JANE DOE KLUMP,
14 husband and wife, ROY J. KLUMP and JANE
15 DOE KLUMP, husband and wife, and DAYLA
16 HEAP and JOHN DOE HEAP, wife and
17 husband,

18 Defendants.

CASE NO. CV 2014 00128

**REPLY
MOTION FOR SUMMARY
JUDGMENT**

19 Defendants, Ronald J. Klump, Dayla Heap, and Roy J. Klump, ("Klumps") by and
20 through undersigned counsel, and pursuant to Rule 56, Ariz.R.Civ.P., hereby reply to Plaintiff's
21 Counter Motion for Summary Judgment and Response to Klumps Motion for Summary
22 Judgment.

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1 **Memorandum of Points and Authorities**

2 **I. Common Law Acceptance**

3 An effective dedication of private land to a public use has two general components—an
4 offer by the owner of land to dedicate and acceptance by the general public. *Pleak v Entrada*
5 87 P.3d 831, 837 Allied Am. Inv. Co., 65 Ariz. at 287, 179 P.2d at 439; Restatement (Third)
6 of Prop.: Servitudes § 2.18(1).

7 In this case, the offer to create an easement as recorded states that Continental Service
8 Corporation “does hereby grant and convey to the public for ingress and egress and public
9 utilities, an easement to construct, operate and maintain utilities and appurtenances across, over
10 and under the surface of the premises hereafter described.” Thereafter, the easterly 60 feet of
11 parcel 32 is described as part of the public easement for ingress and egress. The offer of the
12 easement does not appear to be in dispute in this case.

13 In *Pleak vs. Entrada*, the Court stated there was “no dispute in this case that the lots in
14 Entrada were sold after recordation of the Survey and that the conveyance documents
15 specifically referred to the Survey.” *Pleak at 837*. There had been effective acceptance of the
16 common law dedication of the road for public use.

17 In this case, lots were sold and a specific reference to the Survey was made in the
18 Warranty Deed, an effective acceptance of the common law dedication has been completed.

19 In another similar matter, *Hunt v Richardson*, parties purchased their properties with
20 reference to the Survey, thus constituting sufficient acceptance of the common law dedication.
21 163 P.3d 1069.

22 Plaintiffs were on notice of the easement because of the specific reference to the Survey
23 in the Warranty Deed, which by itself is sufficient for acceptance and the public easement at
24 issue in this matter. In addition to the reference to the Survey, Plaintiffs’ Warranty Deed also
25 states: “Subject to current taxes and other assessments, conservations in patents and all
easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, ... as may
appear of record”. Not only is there a reference to the Survey and the statement regarding

1 other easements of record in the Warranty Deed, Plaintiffs in this case had further reason be on
2 notice of the easement because access to their residence located on Parcel 32 requires
3 traversing over Parcel 28. The easement, known as Sheppard Road, permits Plaintiffs to have
4 access to their residence is also established by the same recorded document creating the
5 easement for the Klumps, and indicated on the same Survey that is referred to in Plaintiff's
6 warranty deed.

7 **II. Use of Easement**

8 In the event it is determined that common law acceptance was not sufficient by
9 reference in the Plaintiff's Warranty Deed to the Survey, use of the easement by the public is
10 another possible way for the easement to be accepted, which is a factual issue. Use of the
11 easement regarding Plaintiff's motion for Summary Judgment is also an issue of material fact
12 which cannot be decided by Summary Judgment.

13 **III. Conclusion**

14 Plaintiffs' Warranty Deed refers to the Survey as required for acceptance of the public
15 easement. Plaintiffs had notice of the easement due to their own use of the easement traversing
16 other parcels and by reference to other easements in the Warranty Deed. The Klumps are
17 entitled to judgment in their favor for unrestricted use and access to the easement.

18 Finally, the Klumps are entitled to an award of their attorney's fees and costs pursuant
19 to A.R.S. §12-341.01 and A.R.S. §12-349.
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DATED this April 15, 2015

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