UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

GREGORY RINGENBERG, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	))))))))))	3:23-CV-00295-DCLC-JEM

MEMORANDUM OPINION AND ORDER

Plaintiff Gregory Ringenberg ("Ringenberg") sued the United States under the Quiet Title Act, 28 U.S.C. § 2409a, seeking an order quieting title to property that he owns adjacent to land belonging to the United States of America (the "Government") [Doc. 20]. He seeks an order declaring his property is "free of any encumbrance" and establishing the location of the parties' shared boundary [*Id.*, ¶¶ 25, 29–32]. The Government answered, denying that Ringenberg is entitled to relief under the Quiet Title Act [Doc. 22, pgs. 1–6 ("Answer"), ¶¶ 22, 26]. Ringenberg then filed a Motion for Judgment on the Pleadings, seeking judgment on several of the Government's affirmative defenses and counterclaims [Doc. 26]. That motion is fully briefed and ripe for resolution. For the reasons stated below, Ringenberg's Motion [Doc. 26] is **DENIED**.

I. BACKGROUND

In 1920, President Woodrow Wilson created the Cherokee National Forest in East Tennessee, containing various small towns and privately owned parcels [Doc. 20 ("Am. Complaint"), ¶ 6; Answer, ¶ 6]. The Government alleges that "for at least the past century," a road known as "Miller Ridge Road" has run through the National Forest [Doc. 22, pgs. 8–15

("Counterclaims"), ¶ 13]. It asserts the road has been a public right of way throughout that time [Counterclaims, ¶ 13].

At some point, Paul Cleveland Tedford and Elizabeth T. Tedford (the "Tedfords") came to own one of the plots of land at issue in this lawsuit, known as Parcel 139-006.00 (the "Ringenberg Property") [*See* Am. Complaint, ¶ 8; Answer, ¶ 8]. The Tedfords conveyed the Ringenberg Property to Shirley Ann Grainger ("Grainger") in 1998 [Am. Complaint, ¶ 8; Answer, ¶ 8]. The Tedfords also owned what would later be known as United States Forest Service Tract K-1190 (the "USFS Property"), which adjoins the Ringenberg Property [Am. Complaint, ¶¶ 5, 8; Answer, ¶ 5, 8]. According to the Government, the Tedfords planned to convey the USFS Property to the Government with an easement over Miller Ridge Road, [Counterclaims, ¶ 3], which the Government claims runs along the parcels' shared boundary line [Counterclaims, ¶ 11]. The Tedfords conveyed the USFS Property to the Government in January 2001 [Am. Complaint, ¶¶ 9–10; Answer, ¶¶ 9–10]. The Government alleges the deed was "subject to easements for existing roads, highways, and public utilities" [Counterclaims, ¶ 8]. However, the Government claims that due to an inadvertent omission, the Tedfords failed to include the easement in the deed conveying the Ringenberg Property to Grainger [Counterclaims, ¶ 6].

Ringenberg purchased his parcel in May 2019 [Answer, ¶ 12]. He claims that it was only after purchasing his property that he learned of the "stray" deed from the Tedfords to the Government purporting to establish a public right of way at the parties' shared boundary [Am. Complaint, ¶ 15]. He brought this lawsuit seeking an order quieting title to his property and declaring that no easement or right of way encumbers it [Am. Complaint, ¶¶ 23–25]. He also seeks an order fixing the location of the parties' boundary line, which is in dispute [Am. Complaint, ¶¶ 27–32; Answer, ¶¶ 31–32]. The Government answered, claiming Ringenberg is not entitled to any

relief under the Quiet Title Act [Answer, ¶¶ 22, 26]. It claims the parties' shared boundary runs down the middle of Miller Ridge Road, and that it has easement rights on the portion of the road that lies on Ringenberg's property [Counterclaims, ¶ 12]. It asserts various affirmative defenses and counterclaims consistent with that position [*See* Doc. 22, pgs. 6–15]. The present motion followed.

II. ANALYSIS

Ringenberg seeks judgment on the pleadings under Fed.R.Civ.P. 12(c) as to several of the Government's counterclaims and affirmative defenses [Doc. 26, pg. 1]. The Court addresses the counterclaims before turning to the affirmative defenses.

A. Counterclaims

1. Standard of Review

"The standard of review for a Rule 12(c) motion is the same as for a motion under Rule 12(b)(6) for failure to state a claim upon which relief can be granted." *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010). The Court construes the challenged pleading in the light most favorable to the party asserting a claim for relief and accepts its factual allegations as true. *Meador v. Cabinet for Human Res.*, 902 F.2d 474, 475 (6th Cir. 1990). To survive dismissal, the claimant must allege facts that are sufficient "to raise a right to relief above the speculative level" and "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). The court is "not bound to accept as true a legal conclusion couched as a factual allegation," *Papasan v. Allain*, 478 U.S. 265, 286 (1986), and dismissal is appropriate "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

2. Counterclaim 1

The Government asserts a "Federal Claim of Title to Easement" over Miller Ridge Road [Counterclaims, pg. 13, ¶¶ 21–23]. Ringenberg claims the Government lacks any easement on his property because the Tedfords had already conveyed the Ringenberg Property to Grainger, without any easement, before conveying the USFS property to the Government [Doc. 26-1, pgs. 14–15]. Ringenberg contends that the Tedfords' attempt to convey an easement to the Government failed because the Tedfords could not convey what they no longer owned [Doc. 26-1, pgs. 14–15]. The Government counters that it will be able to provide evidence that at least establishes a prescriptive easement [Doc. 29, pg. 12].

Under Tennessee law, "[a] prescriptive easement is 'an implied easement that is based on the use of the property rather than on the language in a deed.'" *Cobbins v. Feeney*, No. M2022-01357-COA-R3-CV, 2023 WL 8661552, at *8 (Tenn. Ct. App. Dec. 15, 2023). To create an easement by prescription, a party must use the property for twenty years in a manner that is "adverse, under claim of right, continuous, uninterrupted, open, visible, exclusive, and with the knowledge and acquiescence of the owner of the servient tenement . . . for the full prescriptive period." *Keebler v. Street*, 673 S.W.2d 154, 156 (Tenn. Ct. App. 1984) (quoting *House v. Close*, 346 S.W.2d 445, 447 (1961)).

Here, the Government alleges "[t]he Miller Ridge Road has been continually used by the USFS, adjacent landowners, and the public. . . . At all times the use of the road has been open, visible, continuous, and adverse" [Counterclaims, ¶ 15]. It claims the road has been a public right of way for at least a century [Counterclaims, ¶ 13]. Accordingly, the Government has alleged facts to at least state a claim that adjacent landowners, the public, and the Government have prescriptive easements over Miller Ridge Road. Judgment on this claim would be premature.

In his first claim for relief, Ringenberg seeks an order stating that there is no encumbrance on his land [Am. Complaint, ¶ 25]. But the Government claims there is an easement on Miller Ridge Road, which it alleges runs partly on Ringenberg's property [Counterclaims, ¶ 12]. Because there exists a factual dispute concerning the existence of an easement on Ringenberg's property, Plaintiff's motion is DENIED.

3. Counterclaims 2, 4, and 5

On the second, fourth, and fifth counterclaims, the Government asserts "Miller Ridge Road was established as a public road by prescription" [Counterclaims, ¶ 24]. It contends Ringenberg trespassed on this public right of way by placing obstructions on the road [Counterclaims, ¶ 27]. It seeks "recogni[tion] [of] its prescriptive rights with regard to Miller Ridge Road and its use" and "declaratory judgment as to the right of the USFS and public to use of the Miller Ridge Road" [Counterclaims, ¶¶ 25, 31].

Ringenberg contends the Government's prescriptive easement theory fails because a public easement would "vest" in the public, not in the federal government [Doc. 26-1, pg. 14]. But as explained, the Government has alleged facts sufficient to state a claim that it has obtained a prescriptive easement in its own name through its own use of the land. Thus, whether a public easement "vests" in the Government is irrelevant at this stage because the Government alleges it has an easement of its own.

Ringenberg argues that under the Tennessee and United States Constitutions, the federal government cannot obtain a prescriptive easement in its own name without paying just compensation [Doc. 26-1, pg. 14]. The Fifth Amendment to the federal Constitution provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Tennessee Constitution similarly provides that "no man's particular services shall

be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor." Tenn. Const. art. I, § 21.

Ringenberg argues the Government's claim to a prescriptive easement would result in a taking [Doc. 26-1, pgs. 12, 14]. He asserts that without compensation, the Government's asserted easement is "invalid" [Doc. 26-1, pg. 13]. Initially, only the Government's first counterclaim asserts a "[c]laim of [t]itle" to an easement [*See* Doc. 22, pg. 13]. Its second, fourth, and fifth counterclaims assert only the Government and the public's right to use Miller Ridge Road as a public right of way, and for that right of way to be free from trespass by Ringenberg [Counterclaims, ¶¶ 24–25, 27–32]. Ringenberg concedes that "if an easement for the use of the general public existed on Dr. Ringenberg's property, federal officials no less than private citizens would be entitled to use it" [Doc. 30, pg. 9]. Ringenberg does not explain how the Government takes anything from him when it uses an existing public right of way.

When the Government physically appropriates a property interest, it "must pay for what it takes." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021) (citation omitted). But even assuming the Government appropriated Ringenberg's property by acquiring a prescriptive easement, none of the cases Ringenberg cites supports his argument that the Government's interest is invalid. For example, *Cedar Point*, which Ringenberg cites, [*see* Doc. 26-1, pgs. 12–13], involved a challenge to a regulation forbidding farms from excluding labor organizers for a portion of the year. 594 U.S. at 144. The Supreme Court held the regulation effected a taking because it appropriated the farmers' right to exclude the organizers. *Id.* at 149. Similarly, in *Horne v. Department of Agriculture*, 569 U.S. 513 (2013), raisin growers challenged a regulation requiring them to set aside a portion of their crop for the Government, *id.* at 518–19, arguing they could not be fined for noncompliance because the regulation violated the Takings Clause. *Id.* at 524. The

Supreme Court held that a private party could raise the Takings Clause as an affirmative defense in an enforcement proceeding to recover the allegedly unconstitutional fine. *Id.* at 528. Here, by contrast, neither party alleges the Government has enacted any regulation requiring Ringenberg to surrender property rights or fining him for failing to do so. Instead, the Government contends it *already has* a property interest in Miller Ridge Road by operation of state law [*See* Doc. 22, ¶ 23].

Ringenberg asserts that even if the federal Takings Clause permits the Government to acquire property by adverse possession or prescription without first paying just compensation, Tennessee law would block that acquisition [Doc. 26-1, pgs. 12–13]. But the case law he cites points to the opposite conclusion. In *Johnson v. City of Mt. Pleasant*, 713 S.W.2d 659 (Tenn. Ct. App. 1985), the Tennessee Court of Appeals *upheld* a government entity's claim of adverse possession, though it noted the plaintiff could seek compensation under the Tennessee Constitution afterwards. *Id.* at 664 (citing Tenn. Const. art. 1, § 21). And in *Edwards v. Hallsdale-Powell Utility District Knox Cnty.*, 115 S.W.3d 461 (Tenn. 2003), the Tennessee Supreme Court held that a taking requires a purposeful or intentional act by the government actor. *Id.* at 463. The Court nonetheless acknowledged that an inverse condemnation action is available "to recover the value" of taken property. *Id.* at 464–65 (citation omitted). Far from invalidating the Government's purported taking of a prescriptive easement, these cases at most require the Government to pay for it. Ringenberg fails to show the federal or Tennessee Constitutions require dismissal of the Government's counterclaims.

B. Affirmative Defenses

1. Standard of Review

The parties dispute the legal standard applicable to Ringenberg's challenge to the Government's affirmative defenses. Ringenberg asserts the same standard applies to both the

counterclaims and affirmative defenses [*See* Doc. 26-1, pgs. 2–3]. He claims to proceed under Fed.R.Civ.P. 12(h) [Doc. 30, pg. 1 n. 1]. But Rule 12(h) only addresses *waiver* of Rule 12 defenses. *See* Fed.R.Civ.P. 12(h). By contrast, the Government identifies Rule 12(f) as supplying the Court's authority to strike affirmative defenses [Doc. 29, pg. 4]. The Government asserts the Court has discretion to strike the affirmative defenses or not, and argues that the Rules do not even require a "short and plain statement" [Doc. 29, pg. 4].

"[W]hile there is some disagreement among district courts within the Sixth Circuit as to whether *Iqbal*'s and *Twombly*'s heightened pleading standards apply to pleading affirmative defenses, the majority of district courts have declined to apply these heightened pleading standards to affirmative defenses." *Mosley v. Friauf*, No. 3:22-CV-120, 2022 WL 20669414, at *2 (E.D. Tenn. Sept. 14, 2022) (collecting cases). "[T]he Sixth Circuit has consistently used 'fair notice' as the standard for whether a defendant has sufficiently pleaded an affirmative defense." *McLemore v. Regions Bank*, No. 3:08-CV-0021, 2010 WL 1010092, at *14 (M.D. Tenn. Mar. 18, 2010), *aff'd*, 682 F.3d 414 (6th Cir. 2012) (citing *Montgomery v. Wyeth*, 80 F.3d 455, 467 (6th Cir. 2009) and *Lawrence v. Chabot*, 182 F. App'x 442, 456 (6th Cir. 2006)). For example, in *Montgomery*, the Sixth Circuit held that a defendant had sufficiently pleaded a statute of repose defense by alleging "Plaintiff's causes of action are barred in whole or in part by the applicable statutes of limitations and repose." 580 F.3d at 467. These cases are persuasive, and following their reasoning, a Rule 12(c) motion is an inappropriate vehicle to challenge an affirmative defense because it applies the *Twombly*/*Iqbal* standard to pleadings which need not meet those decisions' heightened pleading requirements.

Instead, "[i]t appears that Rule 12(f) is more suited to a challenge to the sufficiency of affirmative defenses." *Martin v. Trott L., P.C.*, 265 F. Supp. 3d 731, 737 (E.D. Mich. 2017);

accord Signature Mgmt. Team, LLC v. Doe, No. 13-CV-14005, 2015 WL 1245861, at *3 (E.D. Mich. Mar. 18, 2015); *McClurg v. Dallas Jones Enterprises Inc.*, No. 4:20-CV-00201-JHM, 2022 WL 627149, at *2 (W.D. Ky. Mar. 3, 2022); *Jewel Sanitary Napkins, LLC v. Sprigs Life Inc.*, No. 5:23-CV-00376, 2024 WL 908876, at *2 (N.D. Ohio Mar. 4, 2024). "If a plaintiff seeks to dispute the legal sufficiency of fewer than all of the defenses raised in the defendant's pleading, he should proceed under Rule 12(f) rather than under Rule 12(c) because the latter leads to the entry of a judgment." Wright & Miller, 5C Fed. Prac. & Proc. Civ. § 1369 (3d ed.).

Under Rule 12(f), "[t]he court may strike from a pleading an insufficient defense . . . ." Fed.R.Civ.P. 12(f). "Motions to strike are viewed with disfavor and are not frequently granted." *Operating Engineers Loc. 324 Health Care Plan v. G & W Const. Co.*, 783 F.3d 1045, 1050 (6th Cir. 2015) (citation omitted). "A motion to strike should be granted if 'it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense and are inferable from the pleadings.'" *Id.* at 1050 (quoting *Williams v. Jader Fuel Co.,* 944 F.2d 1388, 1400 (7th Cir. 1991)).

2. First Affirmative Defense

The Government's first affirmative defense asserts Ringenberg's lawsuit is untimely under the Quiet Title Act [Doc. 22, pg. 6]. The Quiet Title Act provides: "Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued." 28 U.S.C. § 2409a(g). A claim accrues "on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." *Id.* The Government states it intends to present evidence that Ringenberg's predecessors in interest should have known of their claim decades ago [Doc. 29, pg. 8].

Ringenberg argues the Government has waived this defense by asserting a counterclaim

under the Quiet Title Act [Doc. 26-1, pg. 3]. He asserts the Government "cannot deny [him] the opportunity to quiet title to his property while at the same time seeking to quiet title in itself to the very same property" [Doc. 26-1, pg. 3]. He claims that doing so would be "inequitable" [Doc. 30, pgs. 3–4]. In support, Ringenberg cites case law holding that the Government waives the Federal Tort Claims Act ("FTCA")'s statute of limitations when it sues to recover damages arising out of an accident occurring outside the limitations period [Doc. 26-1, pg. 4]; *see United States v. Southern Pacific Co.*, 210 F. Supp. 760 (N.D. Cal. 1962); *United States v. Dailey*, No. 2:13-CV-722-DB-DB, 2015 WL 346921 (D. Utah Jan. 26, 2015). But these out-of-circuit cases are distinguishable. In *Southern Pacific*, after the FTCA's two-year statute of limitations had expired, the Government sued a railroad for negligence, and the railroad counterclaimed alleging negligence against the Government based on the same events. 210 F. Supp. at 761. The Government argued the statute of limitations barred the counterclaim. *Id.* The court rejected that argument, reasoning that "individual injustice, division of the social risks and the policy against multiplicity of suits" supported treating the Government as a "private party" when another party asserts a counterclaim against it in a tort lawsuit. *Id.* at 762. Thus, the district court concluded, "if the United States waits until the two year period has expired and then brings an action for damages it impliedly waives the right to assert the statute of limitations against a defendant interposing a counter claim." *Id.* at 763. In *Dailey*, the court held that FTCA amendments exempted counterclaims from the two-year limitations period. 2015 WL 346921, at *4. In any event, the court agreed "it 'would seem to be contrary to the spirit of the Federal Tort Claims Act' to disallow [the] Defendant's counterclaim." *Id.* at *5 (quoting *United States v. Shainfine*, 151 F. Supp. 586, 587 (E.D. Pa. 1957)).

Here, by contrast, Ringenberg is the one who is suing, not the Government. After he sued,

the Government set forth its affirmative defenses in its Answer as the Rules require, *see* Fed.R.Civ.P. 8(c), and pleaded its counterclaims. *See* Fed.R.Civ.P. 13. He cites no authority supporting his position that the Government must choose between its limitations defense and its Quiet Title Act claim.

3. Second Affirmative Defense

The Government asserts Ringenberg's lawsuit is untimely under Tennessee law [Doc. 22, pg. 6]. Ringenberg argues Tennessee's statute of limitations is irrelevant to his Quiet Title Act claim [Doc. 26-1, pgs. 4–5]. The Government asserts that even if Tennessee's seven-year statute of limitations does not apply, the evidence will show that Ringenberg's claim is untimely under both Tennessee's seven-year statute and the twelve-year federal statute [Doc. 29, pg. 9]. It states it will present evidence that Ringenberg's time began running when the Forest Service instructed Ringenberg's predecessor in interest Tedford not to gate the road [Doc. 29, pg. 8]. Because there exists a factual dispute going to this lawsuit's timeliness, striking this defense would be premature.

4. Fourth, Fifth, and Ninth Affirmative Defenses

The Government's fourth affirmative defense asserts "an easement by prescription and/or adverse possession exists in favor of the USFS, the owners of the Indian Boundary Subdivision and/or the public" [Doc. 22, pg. 7]. In its fifth defense, it asserts "adverse possession and/or easement by prescription under color of title with respect to the road" [Doc. 22, pg. 7]. The Government's ninth affirmative defense states it "is entitled under the law to an easement upon a known public and historical road so that the public may have ingress and egress to public lands" [Doc. 22, pg. 8].

Ringenberg argues these affirmative defenses must be stricken because the Government cannot prevail on any theory of adverse possession [Doc. 26-1, pgs. 8–9]. But as explained, the

Government has alleged it has a prescriptive easement, so whether it can succeed on an adverse possession theory is irrelevant at this stage. Ringenberg asserts a public prescriptive easement cannot vest in the federal government, [*id.*, pg. 10], but again, because the Government claims its *own* easement, it does not matter which entity formally owns a public easement. Lastly, Ringenberg contends a Government prescriptive easement would be invalid without just compensation [*Id.*, pgs. 12–13]. But as explained, none of the takings cases Ringenberg cites supports this argument.[1] Ringenberg fails to show to a certainty he would succeed despite any state of the facts on these defenses. Thus, the Court will not strike them.

5. Sixth and Seventh Affirmative Defenses

Ringenberg argues affirmative defenses six and seven should be stricken "as applied to" his first claim for relief [Doc. 26-1, pg. 16]. He does not cite any authority for a partial strike of an affirmative defense "as applied to" only some of a plaintiff's claims. He asserts nothing in his first claim for relief affects the Government's interest in its own lands, which is the subject of its sixth and seventh affirmative defenses [Doc. 26-1, pg. 13]. Nonetheless, in addition to the dispute over the use of Miller Ridge Road, the parties dispute the location of their shared boundary [Am. Complaint, ¶¶ 27–32; Answer, ¶¶ 31–32]. Thus, there is a live dispute over which land is Ringenberg's and which is the Government's.

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[1] Ringenberg also argues that as to the Government's fifth affirmative defense, the Government will be unable to show a prescriptive easement based on color of title because Tennessee law does not allow any shortening of the prescriptive period on a color of title theory [Doc. 26-1, pg. 9 n. 7]. And as to the Government's assertion of adverse possession through color of title, Ringenberg argues the defense fails because the Government has not cited which deed supports its color of title and has at most alleged adverse "use" of the land, not possession [Doc. 26-1, pgs. 7–8] But the Government is not required to plead the specific facts supporting its affirmative defenses; its pleading is sufficient if it gives Ringenberg "fair notice." *Lawrence*, 182 F. App'x at 456 (quotation omitted); *see McLemore*, 2010 WL 1010092, at *13. Thus, the Government was not required to identify the instrument supplying color of title or which facts give rise to adverse possession. Striking the defense would be inappropriate at this stage.

III. CONCLUSION

For these reasons, Ringenberg's Motion [Doc. 26] is **DENIED**.

SO ORDERED:

s/Clifton L. Corker
United States District Judge