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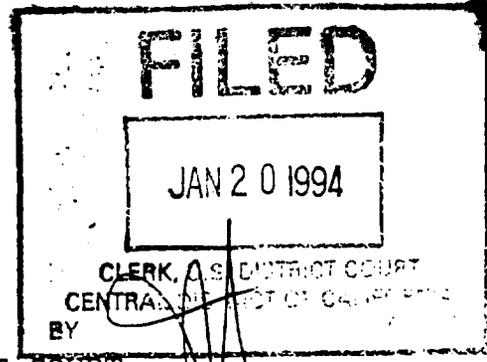
The undersigned further certifies that on the 28th day of October, 1996, the above-referenced document was sent via messenger to:

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DATED: October 28, 1996

No JS-6



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SONIC CABLE TELEVISION, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CREEKSIDE MOBILEHOME COMMUNITY,)
 et al.,)
)
 Defendants.)
 _____)

CASE NO. CV 92-6577 JGD
(Ex)

ORDER GRANTING
PLAINTIFF'S MOTION TO
AMEND, GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

On November 15, 1993, the plaintiff's motion to amend, the defendants' motion for summary judgment, and the plaintiff's motion for partial summary judgment came on for hearing before the Court. The Court has considered the parties' written and oral submissions.

Facts

On November 3, 1992, Plaintiff Sonic Cable Television of San Luis Obispo ("Sonic") filed its complaint in this action. On December 29, 1992, Sonic filed an amended complaint. The amended

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AS REQUIRED BY FRCP, RULE 77(d).

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1 complaint states causes of action for (1) deliberate and unlawful
2 exclusion citing 47 U.S.C. § 541 and California law; (2) breach
3 of contract; (3) breach of the implied covenant of good faith and
4 fair dealing; (4) breach of easement agreement and tortious
5 interference with easement; (5) tortious interference with
6 prospective economic advantage; (6) tortious interference with
7 contract and performance of contract; (7) unfair competition; and
8 (8) violations of First Amendment rights. Sonic seeks injunctive
9 relief and damages.

10 Sonic, or a related entity, Sonic Leasing, operates a
11 commercial cablevision system in San Luis Obispo. Defendant
12 Creekside Mobilehome Community ("Creekside") is a mobile home
13 trailer park in San Luis Obispo. The land and the mobile home
14 park business are owned by Defendants Edwin J. Evans ("Evans"),
15 Jean B. Evans, and the Edwin J. Evans Family Trust. Evans bought
16 Creekside in early 1983 from H.C. and Margaret F. Elliott.
17 Defendant EPM Associates is a business in which Evans has an
18 interest. The plaintiff, in its attempt to amend, now asserts
19 that EPM Sales & Leasing, not EPM Associates, is the actual EPM
20 entity involved in Creekside.

21 Evans, together with someone known to Sonic only as "Tony,"
22 owns a subscription satellite video programming service offered
23 to residents of Creekside.

24 In 1963, Sonic's business predecessor, Central California
25 Communications Corporation ("CCCC"), entered into a cablevision
26 franchise in San Luis Obispo. In 1971, CCCC allegedly entered
27 into a nonexclusive contract with Creekside (the "1971
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1 Agreement"). The 1971 Agreement has no termination provision.
2 The 1971 Agreement provided that CCCC would provide cable service
3 to Creekside for which Creekside would pay CCCC directly. CCCC
4 would be responsible for delivering the service to a point on the
5 exterior or just inside of Creekside. Creekside would then be
6 responsible for distributing the service to the individual mobile
7 homes. At some later date, CCCC began to sell premium cable
8 service directly to individual owners of mobile homes and to
9 install equipment necessary for them to receive such service.

10 The parties dispute whether CCCC or Sonic ever installed its
11 own equipment or otherwise expended resources in repairing or
12 upgrading the cable system within Creekside other than the
13 equipment for the premium service. Sonic asserts that, in
14 reliance on the 1971 Agreement, it expended considerable sums on
15 physical facilities in Creekside.

16 In April 1983, after Evans bought Creekside, Sonic sent
17 Evans a copy of its usual commercial contract. This contract
18 appears to be an updated version of the 1971 Agreement. It
19 stated the terms and conditions for Creekside to purchase cable
20 service from Sonic. The parties dispute who initiated this
21 contact. However, Evans neither signed nor returned the
22 contract.

23 In February 1987, Sonic sent a letter to Evans offering to
24 completely rebuild Creekside's cable system at Sonic's expense
25 and to maintain the system. In return, Sonic requested ownership
26 of the system and an easement agreement allowing it to enter the
27 property for the purpose of maintaining the system. The
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1 defendants rejected this offer.

2 Pacific Bell, in order to provide telephone services to the
3 residents of Creekside, runs its cables and wires into the park
4 and to the individual residences. There is no evidence of an
5 express easement.

6 On August 24, 1992, the defendants sent a letter to Sonic
7 terminating Creekside's purchase of Sonic's cable service as of
8 September 1, 1992. The defendants then began to provide their
9 own cable service to the park.

10 11 Discussion

12 13 I. Plaintiff's Motion for Leave to File a Second Amended 14 Complaint

15 16 A. Standard

17 Rule 15 of the Federal Rules of Civil Procedure governs the
18 amendment of pleadings and provides in pertinent part that "a
19 party may amend the party's pleading only by leave of court or by
20 written consent of the adverse party; and leave shall be freely
21 given when justice so requires." Fed. R. Civ. P. 15(a).

22 The decision to grant leave to amend rests within the sound
23 discretion of the trial court and will be reversed only for an
24 abuse of discretion. See International Assn. of Machinists &
25 Aerospace Workers v. Republic Airlines, 761 F.2d 1386, 1390 (9th
26 Cir. 1985). "Federal policy strongly favors determination of
27 cases on their merits. Therefore, the role of pleadings is
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1 limited and leave to amend the pleadings is freely given unless
2 the opposing party makes a showing of prejudice." W. Schwarzer,
3 A. W. Tashima, J. Wagstaffe, Federal Civil Procedure Before Trial
4 § 8:400 (1993) [hereinafter Schwarzer] (citing Forman v. Davis,
5 371 U.S. 178, 182 (1962)). In the Ninth Circuit, this policy is
6 to be applied with "extraordinary liberality." Schwarzer, supra,
7 § 8:414; Roth v. Garcia Marquez, 942 F.2d 617, 628 (9th Cir.
8 1991).

9 In deciding whether to grant a motion for leave to amend,
10 courts commonly consider four factors: undue delay, bad faith,
11 futility of the amendment, and prejudice to the opposing party.
12 Roth, 942 F.2d at 628. While all four factors are relevant,
13 they are not accorded equal weight. Delay, by itself, is
14 generally not a sufficient ground for denial of leave to amend.
15 United States v. Pend Oreille Pub. Util. Dist. No. 1, 926 F.2d
16 1502, 1511-12 (9th Cir.), cert. denied sub nom. Washington Dept.
17 of Natural Resources v. United States, 112 S.Ct. 415 (1991). A
18 showing of substantial prejudice is by far the most important
19 factor, and the party opposing the amendment bears the burden of
20 showing that it will suffer such prejudice. Schwarzer, supra,
21 § 8:424. Prejudice requires more than added expense, delay, or
22 the need for additional discovery; rather, prejudice exists where
23 the opposing party is unable to respond to the proposed
24 amendment, due to the unclear recollection of witnesses, loss of
25 relevant documents, or some other circumstance. Schwarzer,
26 supra, § 8:426.

1 B. Analysis

2 1. Undue Delay

3 There are no allegations of undue delay in requesting this
4 amendment.

5
6 2. Bad Faith

7 There are no allegations that the plaintiff is acting in bad
8 faith by requesting this amendment.

9
10 3. Prejudice

11 The defendants argue that the amendment to add the new
12 plaintiff, Sonic Leasing, and to substitute EPM Sales and Leasing
13 for EPM Associates would prejudice the defendants.

14 The defendants assert that allowing a motion for amendment
15 adding a new plaintiff and a new defendant and then immediately
16 requiring the defendants to defend a motion for summary judgment
17 brought by that plaintiff would cause prejudice. This argument
18 is well taken, however, since the Court is denying the
19 plaintiff's motion for summary judgment, as discussed below, the
20 prejudice to the defendants will be minimal.

21
22 4. Futility

23 The defendants argue that the plaintiff has failed to state
24 a claim against EPM Sales and Leasing and therefore the amendment
25 is futile and should not be allowed. The plaintiff's pleading
26 alleges that EPM Sales and Leasing "is sued herein solely as a
27 co-conspirator and aider and abettor." The plaintiff does not
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1 include any further detail. The defendants attack the lack of
2 factual allegations.

3 Even if the complaint, as currently plead, is deficient in
4 the claim it states against EPM Sales & Leasing, it is not futile
5 to allow the amendment because the plaintiff could state a claim
6 against EPM Sales & Leasing.

7 Moreover, in light of the disposition of the defendants'
8 motion for summary judgment below, it is best to have the proper
9 defendant as the named party.

10 Therefore, the Court grants the plaintiff's motion for leave
11 to file a second amended complaint.

12 13 II. Defendants' Motion for Summary Judgment

14 15 A. Summary Judgment Standard

16 Rule 56(c) of the Federal Rules of Civil Procedure provides
17 for summary judgment if "the pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the
19 affidavits, if any, show that there is no genuine issue as to any
20 material fact and that the moving party is entitled to judgment
21 as a matter of law." In a trilogy of 1986 cases, the Supreme
22 Court clarified the standard for summary judgment. See Celotex
23 Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby,
24 Inc., 477 U.S. 242 (1986); Matsushita Elec. Indus. Co. v. Zenith
25 Radio Corp., 475 U.S. 574 (1986).

26 The moving party bears the initial burden of demonstrating
27 the absence of a genuine issue of material fact for trial.
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1 Anderson, 477 U.S. at 256. Whether a fact is material is
2 determined by looking to the governing substantive law; if the
3 fact may affect the outcome it is material. Anderson, 477 U.S.
4 at 248. If the moving party seeks summary adjudication with
5 respect to a claim or defense upon which it bears the burden of
6 proof at trial, its burden must be satisfied by affirmative
7 admissible evidence. By contrast, when the non-moving party
8 bears the burden of proving the claim or defense, the moving
9 party can meet its burden by pointing out the absence of evidence
10 from the non-moving party. The moving party need not disprove
11 the other party's case. See Celotex, 477 U.S. at 325; see also
12 Schwarzer, supra, §§ 14:123-141.

13 When the moving party meets its burden, the "adverse party
14 may not rest upon the mere allegations or denials of the adverse
15 party's pleadings, but the adverse party's response, by
16 affidavits or as otherwise provided in this rule, must set forth
17 specific facts showing that there is a genuine issue for trial."
18 Fed. R. Civ. P. Rule 56(e).

19 In assessing whether the non-moving party has raised a
20 genuine issue, its evidence is to be believed, and all
21 justifiable inferences are to be drawn in its favor. Anderson,
22 477 U.S. at 255 (citing Adickes v. S. H. Kress & Co., 398 U.S.
23 144 (1970)). Nonetheless, "the mere existence of a scintilla of
24 evidence" is insufficient. Anderson, 477 U.S. at 252. As the
25 Court explained in Matsushita, 475 U.S. at 586-87:

26 When the moving party has carried its burden under Rule
27 56(c), its opponent must do more than simply show that
28 there is some metaphysical doubt as to the material

1 facts Where the record taken as a whole could
2 not lead a rational trier of fact to find for the
nonmoving party, there is no "genuine issue for trial."

3 In meeting their burdens, the parties must present evidence
4 that is admissible under the rules governing the admission of
5 evidence generally. Hal Roach Studios, Inc. v. Feiner & Co.,
6 Inc., 896 F.2d 1542 (9th Cir. 1990).

7
8 B. Claim One: Deliberate and Unlawful Exclusion

9 The plaintiff alleges that the defendants have excluded the
10 plaintiff from Creekside in violation of federal and California
11 law.

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13 1. California Law

14 The plaintiff bases its argument that the exclusion of Sonic
15 from Creekside violates California law on Salvaty v. Falcon
16 Cable, 212 Cal. Rptr. 3 (Ct. App. 1985).

17 In Salvaty the telephone company owned an easement. The
18 telephone company entered an agreement with Falcon Cable to allow
19 the cable company to place its equipment on the telephone
20 company's poles. A landowner sued to prevent the cable company
21 from using the telephone company's easement over his land. The
22 court found that the addition of the cable equipment was within
23 the scope of the telephone company's easement both because it
24 merely involved new technology within the communications
25 equipment allowed under the easement and because the court found
26 the telephone company's easement was apportionable. Furthermore,
27 the court noted that the California legislature, in enacting
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1 Public Utilities Code § 767.5, had expressed a strong public
2 policy in favor of encouraging these types of cable attachments.
3 Finally, the court found that the cable television equipment
4 would not place any additional burden on the servient estate.
5 Therefore, the court found that the landowner could not prevent
6 the cable company from using the telephone company's easement.

7 Even assuming Pacific Bell had an easement within Creekside,
8 which is disputed, Salvaty does not support the plaintiff's claim
9 to a right under California law to share Pacific Bell's easement.
10 First, the plaintiff has presented no evidence that Pacific Bell
11 has entered an agreement with Sonic allowing it access to Pacific
12 Bell's easement. Second, the plaintiff has presented no evidence
13 that its use of Pacific Bell's easement would not place any
14 additional burden on Creekside.

15 Finally, even if Pacific Bell had entered an agreement with
16 Sonic, this apportionment would not be within the scope of its
17 easement. In Salvaty, the court found the easement was
18 apportionable based on the fact that it was exclusive vis-a-vis
19 the landowner. The court had concluded that the easement was
20 exclusive because there was no indication the landowner ever
21 attempted to share in providing utility services. The opposite
22 is true in the present case. Creekside has taken an active role
23 in providing water and electricity to its residents. Therefore,
24 any easement Pacific Bell may have is exclusive and thus not
25 apportionable.

26 Thus, the plaintiff has failed to show the existence of any
27 state law right of access to the Pacific Bell easement and thus
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1 failed to show a genuine issue for trial.

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3 2. Federal Cable Act

4 The plaintiff also asserts that the defendants have violated
5 the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521-559
6 (1988) [hereinafter Cable Act].

7 Section 541(a) authorizes state or local franchising
8 authorities to grant franchises to companies to provide cable
9 television services for areas within their jurisdiction. Section
10 541(a)(2) provides:

11 Any franchise shall be construed to authorize the
12 construction of a cable system over public rights-of-
13 way, and through easements, which is [sic] within the
area to be served by the cable system and which have
been dedicated for compatible uses . . .

14 The parties dispute whether this section requires forced
15 access to both public and private easements or only public
16 easements. The defendants argue that in using the phrase
17 "dedicated to compatible uses" Congress intended the legal
18 definition of dedication in the property context which limits it
19 to a formal gift of property to the public which is accepted by
20 the public entity. The plaintiff argues that the common meaning
21 of dedicated was intended and thus it merely requires
22 designation.

23 Congress, in enacting this section, and the courts, in
24 interpreting it, have attempted to strike a balance between, on
25 the one hand, allowing access and thus promoting the growth of
26 and competition in the cable industry and, on the other hand,
27 protecting a landowner's right to exclude others from his
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1 property and preventing unconstitutional takings.

2 The Ninth Circuit has not interpreted this section. The
3 Central District issued a brief order touching upon this issue.
4 Booth Am. Co. v. Total TV of Victorville, 1992 WL 512412 (C.D.
5 Cal. 1992). The order issued pursuant to a stipulation of the
6 parties. The facts are not very clear, but it appears all of the
7 easements under which the cable company was requesting access
8 were recorded on a plat of the development and thus arguably
9 "dedicated" to the public. See Cable Holdings of Georgia, Inc.
10 v. McNeil Real Estate Fund VI, Ltd., 953 F.2d 600 (11th Cir.
11 1992) [hereinafter Cable Holdings]. The order does not expressly
12 state that access to private easements is required by the Cable
13 Act. The Northern District also issued an order touching upon
14 this issue. Heritage Cablevision of Calif., Inc. v. J.F. Shea
15 Co., Inc., 1990 U.S. Dist. Lexis 18811 (N.D. Cal. 1990). In
16 granting a motion for a preliminary injunction, the court allowed
17 the cable company not only access to the easements that were
18 expressly dedicated as utility easements, but also access to
19 anywhere a competing cable company was allowed to go. The court
20 did not address the distinction between public and private
21 easements. Given the lack of discussion in both of these orders,
22 the Court does not find them to be persuasive authority for
23 holding that the Cable Act requires access to private easements.

24 The Eleventh Circuit has written three opinions addressing
25 this issue. Cable Holdings, 953 F.2d 600 (11th Cir. 1992);
26 Centel Cable Television Co. of Fla. v. Thos. J. White Dev. Corp.,
27 902 F.2d 905 (11th Cir. 1990) [hereinafter White]; Centel Cable
28

1 Television Co. of Fla. v. Admiral's Cove Assocs., Ltd., 835 F.2d
2 1359 (11th Cir. 1988) [hereinafter Admiral's Cove].

3 In Cable Holdings, the cable company argued that because the
4 owner of apartment buildings had granted interior access to a
5 telephone company, electric company, and competing cable company,
6 the owner had "dedicated" compatible easements and must allow
7 access to the plaintiff. The Eleventh Circuit disagreed with
8 this interpretation of the Cable Act. The court concluded that
9 "The language and the legislative history of [§ 541(a)(2)]
10 indicates [sic] that the Cable Act does not provide a right to
11 access wholly private easements granted by property owners in
12 favor of particular utilities." Cable Holdings, 953 F.2d at 605-
13 06.

14 In reaching this conclusion, the court considered the fact
15 that the Congress did not pass § 633 of the Cable Act which would
16 have required owners of apartment buildings and manufactured home
17 parks to allow cable company access upon the insistence of a
18 tenant. Section 633 contained specific just compensation
19 language that was deleted with the section. The court
20 interpreted the deletion of § 633 and the specific just
21 compensation language from the final act as supporting its
22 position that Congress did not intend the Cable Act, as enacted,
23 to allow for takings. Therefore, the court interpreted the Cable
24 Act in order to avoid the constitutional questions of the Takings
25 Clause.

26 The court distinguished Admiral's Cove and White. In both
27 of those cases, the Eleventh Circuit had used broad language that
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1 tended to indicate that forced access to private easements was
2 required by the Cable Act. The court stated that both of those
3 cases involved dedicated utility easements within a residential
4 subdivision. The court emphasized that in those cases the
5 landowner had recorded plats containing the dedication of the
6 corridors of land for general utility use. The court reasoned
7 that through dedication of the property to utilities generally,
8 the landowner had voluntarily relinquished his right to exclude
9 particular users. Thus the easements were "public."

10 The Third Circuit interpreted § 541(a)(2) in Cable Invs.,
11 Inc. v. Woolley, 867 F.2d 151 (3d Cir. 1989). The cable company
12 argued that § 541(a)(2) granted it a right of access to and
13 including the interior of apartment buildings. The cable company
14 relied on easements arising from private agreements made by the
15 owner of the buildings with other utilities. The court turned to
16 the legislative history of the Cable Act for the definition of
17 "easement" and "dedicated for compatible uses." The court denied
18 the cable company's request for access to the property. Once
19 again, the court emphasized the elimination of § 633 from the
20 Cable Act prior to enactment. The court further distinguished
21 the provisions in § 541(a)(2) that require just compensation for
22 damages from the provisions that were eliminated with § 633 that
23 provided just compensation for the value of the property taken.
24 The court also noted that the relief requested was even greater
25 than what § 633 would have allowed. If § 633 had remained in the
26 Cable Act, it would not have required the landowner to allow
27 access to a cable company if the landowner made available to
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1 residents an equivalent service.

2 The Fourth Circuit addressed § 541(a)(2) in Media General
3 Cable of Fairfax, Inc. v. Sequoyah Condominium Council of Co-
4 owners, 991 F.2d 1169 (4th Cir. 1993) [hereinafter Media
5 General]. This case involved a development including not only
6 apartment buildings but also townhomes and five-plex units. In
7 the Master Deed, the Condominium Council of Co-owners reserved a
8 general blanket easement. Additionally, specific easements had
9 been granted to the electric company, the telephone company, and
10 a satellite television company. The plaintiff argued it was
11 entitled to access to the development based on the blanket
12 easement or the specific easements. The Court refused to grant
13 the cable company access via any of those easements. The court
14 first noted that there was no dispute in the case that all the
15 easements were private. The court held that in enacting
16 § 541(a)(2), "Congress intended to do no more than authorize a
17 franchisee . . . to use public lands, namely public rights-of-way
18 and easements that have been dedicated to public use." Media
19 General, 991 F.2d at 1173. The court also noted the significance
20 of the elimination of § 633 from the Cable Act. It noted that
21 § 633 and § 541(a)(2) had distinct purposes; § 541(a)(2) deals
22 with cable company access to public property while § 633 would
23 have dealt with cable company access to private property.

24 Since many of the cases rely on the elimination of § 633
25 from the Cable Act to limit § 541(a)(2) to public easements, a
26 brief discussion of that section and their reasoning is
27 appropriate. Section 633 would have required owners of "any
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1 multiple-unit residential or commercial building or manufactured
2 home park" to allow the construction of a cable system if a
3 resident requested cable service. Exhibits to Defendants' Motion
4 for Summary Judgment, Exhibit 22. The section included not only
5 a provision for just compensation for damages identical to the
6 one currently found in § 541(a)(2)(C), but also a provision for
7 calculating just compensation using factors tied to the takings
8 issue. Additionally, the section limited its own reach by not
9 requiring access if the landowner made available an equivalent
10 system of diverse information sources and services.

11 The cases reason that the fact that Congress did not pass
12 § 633 supports an interpretation of § 541 that would not allow
13 the actions that § 633 specifically would have allowed. As § 633
14 would have applied not only to apartment buildings, but also to
15 manufactured home parks, i.e. mobile home parks, the reasoning is
16 equally applicable in the present situation as it is in the cases
17 discussed above. Based on the legislative history, it appears
18 that the refusal to pass § 633 was, at least partially, based on
19 the congressional intent to limit the interference with private
20 property rights by the Cable Act.

21 The Court finds the reasoning of the Circuit Courts in the
22 cases discussed above to be persuasive. Thus, the Court adopts
23 the construction of the Cable Act that limits it to requiring
24 access to easements that have been dedicated to the public.
25 Whether this would always require a strict dedication and
26 acceptance by the public entity or whether this may include
27 designations of general utility easements on the developer's
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1 plans need not be addressed. None of the easements in the
2 present case are even arguably public.

3 In the present case, the easements upon which the plaintiff
4 rests its right to access are all private. The plaintiff asserts
5 the following easements exist: (1) easement under the 1971
6 Agreement; (2) easement to Pacific Bell; (3) Union Oil easement;
7 (4) electrical utility easement up to the master meter; and (5)
8 gas utility easement up to the master meter.

9 The Union Oil easement, electrical utility easement, and gas
10 utility easement are not compatible with Sonic installing the
11 equipment necessary to provide cable service to Creekside
12 residents. Even if these were compatible, they are clearly
13 private easements. Unlike the easements in Admiral's Cove and
14 White, these easements are not general utility easements recorded
15 on the development plat. Rather, the easements are more similar
16 to the easements involved in Media General. They are specific
17 easements given to specific utilities.

18 Only the alleged Pacific Bell easement and the alleged
19 easement arising out of the 1971 Agreement would be compatible
20 with Sonic providing cable service to Creekside residents. As
21 discussed below, the defendants are entitled to summary judgment
22 that the 1971 Agreement did not create an easement. Thus, the
23 only possible easement allowing Sonic access is the alleged
24 Pacific Bell easement. While the existence of a Pacific Bell
25 easement throughout the mobile home park is disputed, even if it
26 did exist, it would clearly be a private easement outside the
27 scope of the Cable Act. The Pacific Bell easement is not a
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1 general utility easement recorded on the development plat like
2 the easements in Admiral's Cove and White. Rather, any Pacific
3 Bell easement is a specific easement to a specific utility like
4 the easements in Media General.

5 Thus, the plaintiff has presented no evidence of an easement
6 that could be considered public and that would be compatible with
7 the plaintiff installing a cable system. Therefore, the Court
8 concludes that the plaintiff is not entitled to access to
9 Creekside under the Cable Act.

10 This conclusion is supported by the fact that while Congress
11 felt § 633 went too far, the action the plaintiff is asking the
12 court to take in the present case is even beyond what § 633 would
13 have authorized. Under § 633, since the defendants are offering
14 an equivalent cable service, they would not have been compelled
15 to allow the plaintiff to construct a cable system on their
16 property.

17 Therefore, the Court grants summary judgment in favor of the
18 defendants on the plaintiff's first claim for relief.

19
20 C. Claim Two: Breach of Contract

21 The plaintiff's second claim alleges breach of the 1971
22 Agreement. In order to prevail on this claim, the plaintiff must
23 first prove a binding agreement. Then the plaintiff must prove a
24 breach of the agreement.

25 The plaintiff has failed to present evidence of a binding
26 agreement. The plaintiff has failed to authenticate the 1971
27 Agreement. The defendants specifically raised this issue in
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1 their memorandum in support of summary judgment. p.24, footnote
2 9. The plaintiff did not attempt to remedy the situation in its
3 opposition to the motion. Without such authentication, the
4 agreement is not admissible evidence and cannot be used to oppose
5 a motion for summary judgment. The plaintiff has submitted two
6 declarations. The declaration of Hargan states he recognized the
7 1971 Agreement as one of a type Sonic's predecessor issued. The
8 declaration of Burrell refers to an original of the 1971
9 Agreement found in the Creekside file; however, he at no point
10 states that the agreement submitted is that original. These are
11 insufficient to authenticate the paper submitted as the 1971
12 Agreement.

13 Even if the paper was authenticated, the plaintiff has
14 failed to produce any evidence the agreement was signed by
15 someone with the power to bind the previous owner of Creekside.
16 If no binding agreement ever existed, there is no way the
17 defendants could have assumed this obligation. This failure to
18 name the person signing the agreement is not mere inadvertence by
19 the plaintiff. The defendants have repeatedly requested that the
20 plaintiff provide them with this information. The only
21 conclusion that can be drawn from this is that the plaintiff has
22 no evidence of the identity of the signer or his ability to bind
23 any owner of Creekside. Therefore, the Court concludes that the
24 plaintiff has failed to present admissible evidence raising a
25 genuine issue of fact concerning the existence of a binding
26 contract and the defendants are entitled to summary judgment in
27 their favor on the breach of contract claims.
28

1 Even if the plaintiff had presented a triable issue
2 concerning whether there was a binding agreement, the plaintiff
3 has failed to raise a genuine issue concerning breach. The
4 plaintiff argues that the 1971 Agreement is an easement agreement
5 and thus not terminable at will.

6 No reasonable trier of fact could find that the evidence
7 supports the plaintiff's claim that the 1971 Agreement was a
8 binding easement agreement. The agreement, in the first
9 sentence, states it is intended to "clarify [sic] installation
10 and maintenance charges and procedures." It does not say it is
11 intended to grant the plaintiff any interest in the land. In
12 fact, the only part of the 1971 Agreement that mentions any
13 activity on the land owned by Creekside is the reservation by the
14 cable company of the right to enter Creekside to make sure that
15 Creekside is paying for the proper number of residents. This is
16 hardly an easement allowing the installation of cable equipment.

17 The plaintiff argues that the language in the last paragraph
18 of the 1971 Agreement that the agreement "shall remain in effect"
19 and is "finding [sic] on heirs and successors of both parties" is
20 classic easement language and thus shows an easement was
21 intended. Plaintiff's Opposition p.14. Such "classic easement
22 language" does not create an easement without a grant of an
23 interest in land with the properties of an easement, if it did,
24 many contracts would have to be considered easements.
25 Additionally, the declaration of Hargan, which is the only
26 relevant evidence submitted by the plaintiff, contradicts this
27 interpretation. He states that the 1971 Agreement was an
28

1 agreement to provide cable service, not an easement.

2 Furthermore, he states that the language in the last paragraph
3 was included so the contract would remain in effect "for as long
4 as the Company had franchise rights to serve the area." This is
5 not consistent with the grant of a perpetual easement as the
6 plaintiff argues.

7 Thus, the plaintiff has presented no genuine issue that the
8 1971 Agreement is an easement agreement. Therefore, any breach
9 must be found under the standard California law governing
10 contracts.

11 The defendants argue that the 1971 Agreement, because it
12 contained no provision governing duration, was terminable at
13 will. The plaintiff has the burden of proving breach of the
14 contract. However, the plaintiff does not oppose this argument
15 directly because the plaintiff insists this is an easement
16 agreement, not a contract of indefinite duration.

17 Pursuant to California law, a contract that does not state a
18 duration is terminable at will by either party. Zimco
19 Restaurants, Inc. v. Bartenders and Culinary Workers Union, 165
20 Cal. App. 2d. 235 (Ct. App. 1958). However, the terminating
21 party must give reasonable notice and the contract must have been
22 in effect for some reasonable period of time. Aronowicz v.
23 Nalley's, Inc., 106 Cal. Rptr. 424, 439 (Ct. App. 1973).

24 The plaintiff has presented no evidence that raises a
25 genuine issue of material fact as to whether the 1971 Agreement
26 was for an indefinite duration. The plaintiff insists on relying
27 on its argument that this is an easement agreement. The
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1 plaintiff also does not raise a genuine issue of material fact
2 that this agreement was in effect for a reasonable period of
3 time. Twenty years appears to be reasonable. The final question
4 is therefore whether the defendants gave reasonable notice. The
5 defendants gave the plaintiff one week notice. Again, the
6 plaintiffs have not directly attacked the reasonableness of the
7 defendants' notice. The agreement that the plaintiff provided to
8 defendant Evans in 1983, but that he never signed, provided for
9 termination with no notice whatsoever. Exhibits to Defendants'
10 Motion for Summary Judgment #7. The plaintiff does not contest
11 the defendants' statement of uncontroverted fact that the one
12 week notice gave it ample time to cap off the signal where it
13 entered Creekside. The plaintiff does contest the assertion that
14 there is no material difference in terminating service to a
15 mobile home park as opposed to a single family home. However,
16 this is not evidence that one week is unreasonable. At most this
17 raises "some metaphysical doubt" as to the reasonableness of the
18 notice. This is insufficient to defeat the defendants' motion
19 for summary judgment.

20 Therefore, the plaintiff has failed to present evidence of a
21 genuine issue of material fact that would allow a jury to find
22 that termination of the agreement was unreasonable and a breach
23 of the agreement. The defendants are therefore entitled to
24 summary judgment in their favor.

25 Thus, the plaintiff is unable to prove that the 1971
26 Agreement ever was a valid contract binding on an owner of
27 Creekside and is further unable to enforce it as against the
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1 defendants. Even if the plaintiff was able to enforce it against
2 the defendants, the plaintiff has not presented evidence that
3 raises a genuine issue that the defendants did not properly
4 terminate the contract.

5 Therefore, the Court grants summary judgment in favor of the
6 defendants on the plaintiff's second claim.

7
8 D. Claim Three: Breach of Implied Covenant

9 The defendants argue that since the plaintiff has no
10 contractual relationship with the defendants, the plaintiff
11 cannot state a claim for breach of the implied covenant of good
12 faith and fair dealing.

13 As discussed above, the plaintiff has not presented any
14 evidence to support finding an underlying contract that was
15 binding on the defendants. Therefore there is no implied
16 covenant and no breach of it.

17 The Court therefore grants summary judgment in favor of the
18 defendants on the plaintiff's third claim.

19
20 E. Claim Four: Breach of Easement Agreement, etc.

21 In order to prevail on its claim for breach of an easement,
22 the plaintiff must first prove the existence of an easement.
23 California law recognizes express easements, implied or quasi
24 easements, and irrevocable licenses that are equivalent to
25 easements.

26 An implied easement arises as a result of land that is
27 originally owned by one individual being divided. An irrevocable
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