Last Chance for CLE

6/8/2022

Andy Mikell & Liz Smith

Lamphere v. Mallets Bay HOA

LIKE CHAMP, THIS CASE WAS LAST SPOTTED (AT LEAST BY ANDY) IN 2016

RECALL: MONGEON BAY PROPERTIES V. MALLETS BAY HOA (2016 VT 64)

LANDLORD SUES HOA ALLEGING DEFAULT UNDER GROUND LEASE. SEEKS TERMINATION OF LEASE AND POSSESSION OF 25 CAMP PROPERTIES.

ALLEGATIONS:

1. INADEQUATE SEAWALL – SEVERE EROSION – REPAIRS WERE THE OBLIGATION OF HOA
2. STAIRWAY IN DANGER OF IMMINENT COLLAPSE – OBLIGATION OF HOA
3. LL SEND NOTICE OF DEAULT.
4. COLCHESTER ISSUES NOV AGAINST 1 OWNER RESULTING IN HOA AGREEING TO "REMEDY" BUT WOEFULLY INADEQUATE REPAIR

TRIAL COURT CONCLUDES: DAMAGE > ORDINARY WEAR AND TEAR = WASTE

FORFEITURE IS DISFAVORED BY THE LAW; MUST BE READ NARROWLY; REQUIRES AFFIRMATIVE ACT BY THE LESSOR TO INVOKE

Lamphere v. Mallets Bay HOA

SUPREME COURT HOLDING IN MONGEON: BOOM – FORFEITURE – LOSS OF CAMPS!

CONFIRMING THE NEED FOR THE FOLLOWING

TITLE INSURANCE REQUIREMENTS FOR LEASEHOLD ESTATES …

1. If new lease, just record a 27/342(c) statutory Memorandum of Lease;

2. If insured interest is acquired by lease Assignment:

a. Determine validity of Lease and Assignment; and

b. Obtain LL Estoppel letter!! WHY?

BACK TO LAMPHERE –

- **WINDING UP OF TENANTS SUING THEIR OWN HOA FOR LOSING THEIR CAMPS!**
- **LEGAL ISSUE: TENANT SEEKS TO APPLY COLLATERAL ESTOPPEL, ISSUE PRECLUSION TO BIND THE HOA TO THE FACTS AND CONCLUSIONS OF ALL PRIOR LITIGATION.**
- **TENANT WINS = YES, PRECLUSION. HOA BOUND.**

Sanville v. Town of Albany
SCOVT 2022 VT 22

It's bar exam time

1955 deed to Town:

> **If the grantee shall use or suffer the use of said lands for any other purpose than as a memorial 4-H forest for use by young people in particular, and for 4-H recreational and forestry purposes, this conveyance shall become void and the title to said premises shall thereupon become void and the title to said premises on demand shall revert to the grantors, their successors and assigns, and they shall have the right to re-enter and repossess themselves of the same.**

1955 to 2018 = land not used for any purpose

2018 = Conversion to public recreation area; parking lot; trail to Pond; consistent infrastructure; logger clear cuts 10A worth $32k.

Neighbor says: "Hold onto your chain saws just a minute there boys and girls"; reversionary clause triggered =automatic reverter to grantors' successors in interest.

Court joins relative as indispensable party.

Sanville v. Town of Albany
2022 VT 22

RELATIVE ARGUES

1. DEED IS AMBIGUOUS. DO TELL?

PART OF DEED = DETERMINABLE FEE;

PART OF DEED = FEE SIMPLE SUBJECT TO CONDITION SUBSEQUENT

SAY WHAT? SAY WHY DO WE CARE?

- SIMILAR ESTATES IN THAT THEY EXHAUST THE WHOLE ESTATE (COLLETTE V. TOWN OF CHARLOTTE)

- DIFFERENT AS TO FUTURE INTERESTS:

DETERMINABLE FEE = POSSIBILITY OF REVERTER - ESTATE TERMINATES ON OCCURRENCE

FEE ON CONDITION = RIGHT OF RE-ENTRY – ESTATE DOES NOT TERMINATE UNTIL ACTUAL RE-ENTRY

2. RULE OF CONSTRUCTION FAVORING EARLIER OVER LATER CLAUSES IN AN AMBIGUOUS, HERE:

DETERMINABLE FEE WITH POSSIBILITY OF REVERTER – AUTOMATICALLY MINE (UNUSED OR WHEN LOGGED)

Sanville v. Town of Albany
2022 VT 22

TOWN ARGUES:

DEED CREATED FEE SIMPLE SUBJECT TO CONDITION SUBSEQUENT ….

BUT LOGGING IS NOT A CONDITION SUBSEQUENT SO NOTHING IS TRIGGERED

TRIAL COURT: GRANTS SUMMARY JMT TO RELATIVE

- **DEED CREATED FEE SIMPLE SUBJECT TO CONDITION SUBSEQUENT WITH RIGHT OF RE-ENTRY.**
- **LOGGING WAS A CONDITION SUBSEQUENT BECAUSE IT WAS NOT RELATED TO 4-H FORESTRY ACTIVITIES.**

Sanville v. Town of Albany
2022 VT 22

Determinable fee?

WHAT SAYETH YOU?

If the grantee shall use or suffer the use of said lands for any other purpose than as a memorial 4-H forest for use by young people in particular, and for 4-H recreational and forestry purposes, this conveyance shall become void and the title to said premises shall thereupon become void and the title to said premises on demand shall revert to the grantors, their successors and assigns, and they shall have the right to re-enter and repossess themselves of the same.

Fee subject to condition subsequent?

Sanville v. Town of Albany
2022 VT 22

<u>INTERLOCUTORY APPEAL</u>

SOLE QUESTION: IS LOGGING A CONDITION SUBSEQUENT THAT VIOLATES THE DEED?

AFTER 4 PAGES OF ANALYSIS INCLUDING:

- **TURNING TO THE DICTIONARY TO DEFINE WORDS;**
- **EVEN IF PURPOSES ARE SUSCEPTIBLE TO TWO OR MORE MEANINGS, THIS FACT ALONE DOES NOT NECESSARILY MAKE THE SENTENCE AMBIGUOUS;**
- **LOGGING IS CLOSELY RELATED TO 4-H RECREATIONAL ACTIVITIES;**
- **REASONABLE PEOPLE COULD NOT DIFFER THAT LOGGING DID NOT VIOLATE THE DEED; AND**

HELD: DEED NOT AMBIGUOUS. LOGGING DID NOT VIOLATE CONDITION. TOWN STILL OWNS THE PROPERTY.

Sanville v. Town of Albany
2022 VT 22

TAKE AWAYS:

- **IF YOU FIND ONE OF THESE DEEDS DON'T EXPECT LIZ OR ANDY TO DO ANYTHING EXCEPT RUN FOR THE HILLS.**
- **WITH A CHANGE IN USE, EVERYTHING IS AMBIGUOUS UNTIL A COURT MAKES A RULING;**
- **RELATIVES CAN (AND DID) COME OUT OF THE WOODWORK 60 YEARS LATER;**
- **BUT FOR A COIN FLIP, THE RELATIVE COULD HAVE WALKED AWAY WITH THE PROPERTY = TOTAL TITLE FAILURE**

TAX SALES – WHAT COULD GO WRONG

PERRINO V. SUSCO (RUTLAND CIVIL DIVISION, 3/15/2022)

MEET THE PROPERTY OWNER – "LAST MINUTE DAN".

- INHERITS PROPERTY FROM FATHER 2013.
- 2013/14 – PROPERTY GOES TO TAX SALE; DAN REDEEMS AT LAST MINUTE
- 2014/15 – PROPERTY GOES TO TAX SALE; DAN REDEEMS AT LAST MINUTE
- 2015/16 – PROPERTY GOES TO TAX SALE; DAN REDEEMS AT LAST MINUTE
- 2016/17 -

TAX SALES – WHAT COULD GO WRONG

PERRINO V. SUSCO (RUTLAND CIVIL DIVISION, 3/15/2022)

FACT SPECIFIC **** PRE-SALE ****

- 2016/17 LM DAN CHANGED MAILING ADDRESS TO PO BOX IN ORWELL
- ALL NOTICES AND WARNINGS TO OLD ADDRESS GET RETURNED TO TAX COLLECTOR
- TAX COLLECTOR SENDS LETTER TO LM DAN'S MOTHER. LM DAN LEARNS OF THE DATE BUT D/N REDEEM
- LM DAN KNEW HE OWED TAX DESPITE NO PROPERTY TAX BILL IN 2017 DUE TO ADDRESS CHANGE
- DAY BEFORE REDEMPTION DEADLINE, LM DAN APPLIED FOR AN ABATEMENT – USING THE PROPERTY ADDRESS NOT THE PO BOX.
- MULTIPLE LETTERS SENT TO LM DAN ABOUT UNPAID TAXES AND THE COMING TAX SALE AT PROPERTY ADDRESS (VACANT, UNABLE TO FORWARD, NO MAIL RECEPTACLE, UNABLE TO FORWARD)
- TAX SALE 6/26/2017.
- NOTICE OF SALE MAILED, POSTED & PUBLISHED IN PAPER
- CERTIFIED MAIL RETURNED UNDELIVERABLE; 1ST CLASS MAIL SENT, TOO.
- SALE OCCURS PRIOR TO COLLECTOR LEARNING THAT NOTICE WAS UNDELIVERED.

TAX SALES – WHAT COULD GO WRONG

PERRINO V. SUSCO (RUTLAND CIVIL DIVISION, 3/15/2022)

FACT SPECIFIC **** POST-SALE****

- AT AUCTION, TAX COLLECTOR'S WIFE BUYS THE PROPERTY
- NOTICE FOR REDEMPTION SENT TO LM DAN – SPOLIER ALERT - RETURNED "UNDELIVERABLE"
- ANOTHER LETTER SENT TO LM DAN'S MOM A MONTH BEFORE DEADLINE
- NO REDEMPTION – COLLECTOR CONVEYS TITLE TO HIS WIFE
- WIFE SHOWS UP, FINDS PERSONAL PROPERTY –STARTS EVICTION
- VT LAW:
  - ADVERTISE IN NEWSPAPER; ☑
  - CERTIFIED MAIL TO LAST KNOWN ADDRESS; ☑
  - IF RETURNED SEND IT FIRST CLASS; ☑
  - ONE YEAR REDEMPTION WHICH HAS EXPIRED ☑
- HIGH BIDDER: PAID TAXES SINCE PURCHASE; PAID PROPERTY TRANSFER TAX; $4,311.32 ATTYS FEES

WHO OWNS THE PROPERTY AND WHY??

TAX SALES – WHAT COULD GO WRONG

PERRINO V. SUSCO (RUTLAND CIVIL DIVISION, 3/15/2022)

TAX SALES – WHAT COULD GO WRONG

PERRINO V. SUSCO (RUTLAND CIVIL DIVISION, 3/15/2022)

HOGABOOM & **FLOWERS = WHEN TAX COLLECTOR HAS ACTUAL KNOWLEDGE THAT NOTICES ARE NOT BEING RECEIVED, TAX COLLECTOR MUST TAKE FURTHER STEPS BEFORE TAX SALE.**

HOGABOOM V. JENKINS = TAX COLLECTOR FAILED TO FOLLOW UP ON RETURNED REGISTERED WITH 1ST CLASS.

HERE = YES, HE DID BUT…. ALSO KNEW 1ST CALASS WAS NOT GETTING THERE. METHOD NO LONGER "REASONABLY CALCULATED TO GIVE NOTICE.

WHAT TO DO? POST NOTICE ON THE DOOR; SHERIFF; ASK HIS MOTHER.

TOTAL TITLE FAILURE

TITLE INSURANCE REQUIREMENTS:

- COPY OF TAX SALE FILE WITH EVIDENCE OF ACTUAL NOTICE RECEIVED BY ALL STAKEHOLDERS
    - DATE OF YOUR TRANSACTION WITH AN EYE ON APPLICABLE STATUTUE OF LIMITATIONS
    - ONE YEAR STATE LAW
    - TWO YEARS FEDERAL LAW
- NATURE OF CURRENT TRANSACTION:
    1. PURCHASE PRICE;
    2. LOAN AMOUNT;
    3. SELLER'S SKIN IN THE GAME (WARRANTY DEED)

JAMES H. HART (Bradford)

When last seen (at our fall & spring CLEs), Mr. Hart had:

1. **Lost a decision circa 2015 which cost him $15k in punitive damages;**
2. **Lost a decision in 2020 which cost him $60k in punitive damages (though reduced to $30k by SCOVT).**

Now:

Washington Superior Court with a Valentine's Day 2022 decision:

- **Now suing the Town of Bradford – 2 of its police officers – a State Trooper in an individual capacity, the Orange County Sheriff's Office for matters arising from the last 6 years of litigation.**
- **Complaint: "So jumbled and conclusory that it is fully unclear what legal claims Mr. Hart is trying to raise";**
- **Extraordinarily lengthy affidavit of 134 paragraphs that "does not help";**
- **New defendants conspired against him and failed to help him with his civil dispute;**
- **Despite court order to comply with pleadings: "the amended complaint … is more unintelligible than the first."**

ALPINE HAVEN POA V. FLAVOR OF THE DAY/MONTH/YEAR/DECADE (DEPTULA)

SCOVT ENTRY ORDER: MARCH, 2022

- DEFENDANT BEGAN CHALLENGING FEES 30 YEARS AGO IN 1992 LEADING TO NUMEROUS LAWSUITS (2016 KAHN; 2018 BREWIN)
- THIS CASE IS COLLECTION ACTION BY POA FILED IN 2012
- DEFENDANT FILED COUNTERCLAIMS AGAINST POA AND ITS ATTY/LAW FIRM
- 2018 SUMMARY JMT FOR POA
- 2019 JMT TO POA FOR $18K
- DEFENDANT FILED 60(b) MOTION
- POA SEEKS ATTYS FEES

ALPINE HAVEN POA V. FLAVOR OF THE DAY/MONTH/YEAR/DECADE (DEPTULA)

"The court determined that defendant was more than a struggling self-represented litigant. He approached the defense of these modest annual charges as a **pathological life mission**, provoking an obstinacy in him that was vexatious to all on the other side… even before Brewin… the dispute represented years twenty-two to thirty of defendant's fight against these charge and 'round three'… Whatever the cause of that pathology… others should not bear the cost once the law was clear."

- Award of $30,500 in attys fees = aff'd

- Take aways: vexatious litigators ARE out there.

The Future Is Bright

building trust together.