Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-099

JUNE TERM, 2003

Gary and Jean Bressor v. William and Betty Preston	}	APPEALED FROM: Chittenden Superior Court DOCKET NO. S1511-01 CnC Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Plaintiffs, who filed suit seeking specific performance of an option to purchase land from defendants, appeal the superior court= s determination that a particular parcel was not included within the option. We affirm.

On May 23, 2000, defendants agreed to give plaintiffs an option to purchase lands owned by defendants and located between Cochran Road and the Winooski River in Richmond, Vermont. In December 2001, plaintiffs filed a complaint for declaratory and injunctive relief seeking specific performance of the option. In July 2002, the superior court granted plaintiffs= motion for partial summary judgment, ruling that they were entitled to specific performance. At a later merits hearing in January 2003, the parties agreed that defendants would sell plaintiffs the so-called A pasture parcel@ for $12,500, but they disagreed as to whether the option included a separate, smaller A right-of-way parcel@ that the parties owned as tenants in common. Following the evidentiary hearing, the superior court ruled that the option, when considered in its entirety, unambiguously encompassed only the pasture parcel, and not the right-of-way parcel. Plaintiffs appeal, arguing that the option unambiguously included the right-of-way parcel.

In construing contracts, we presume that the parties intended to be bound by the plain and express language of their agreement, but we may also look at the circumstances under which the agreement was reached to determine its meaning. See C.D. v. N.M., 160 Vt. 495, 501 (1993); see also Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 579 (1988) (court may consider circumstances surrounding making of contract in determining whether it is ambiguous). A If the construction adopted by the trial court is reasonable, we must sustain it.@ C.D., 160 Vt. at 501; see Coop. Fire Ins. Ass= n of Vt. v. Bizon, 166 Vt. 326, 333 (1997) (A As long as the trial court= s construction of the contract is reasonable, we will sustain it.@).

Here, the relevant facts are as follows. Defendants owned a 6.67 acre parcel of grassy field, referred to as the pasture parcel, that occupies all of the land between certain segments of Cochran Road and the Winooski River. Defendants also owned an undivided one-half interest in the right-of-way parcel, an .08 acre strip of land that had been used by defendants for egress and ingress to their fields, and later by plaintiffs and the Village of Richmond to reach their respective properties. This parcel is separated from the pasture parcel by other parcels. Further, although the right-of-way parcel is between Cochran Road and the Winooski River, it borders neither and is separated from both by other parcels. The option agreement that is at the heart of this dispute grants plaintiffs the right to purchase from defendants A any of the land owned by [defendants] located between Cochran Road and the Winooski River, **excepting, however,** that certain parcel identified as containing one (1) acre, more or less, immediately adjacent to lands and premises of Johnson, the line extending from an existing culvert serving as the boundary delineation.@ The next paragraph states

that the land conveyed by the option is subject to restrictive covenants requiring (1) that A the parcel@ be used for agricultural purposes only; (2) that no portion of A the parcel@ be paved for any purpose; and (3) that no structures, apart from a barn, be built without the consent of defendants.

The trial court reasoned that although the right-of-way parcel is between Cochran Road and the Winooski River in a narrow geographic sense, it is really between the river and Bridge Street, which it borders. In the court= s view, in light of the restrictive covenants set forth in the parties= agreement, the option unambiguously gave plaintiffs the right to purchase only the pasture parcel, which had been used historically for agricultural purposes. The court pointed out that none of the covenants make any sense when applied to the right-of-way parcel, which could not be used by plaintiffs for agricultural purposes or as a construction site. We concur with the trial court= s reasoning, which is a reasonable interpretation of the parties= agreement. We find unpersuasive plaintiffs= argument that if the parties wanted to exclude the right-of-way parcel, they would have explicitly done so, as they did with another one-acre parcel. Unlike the right-of-way parcel, the one-acre parcel is adjacent to the pasture parcel, which takes up all of the land between segments of Cochran Road and the Winooski River. Thus, the fact that the parties= explicitly excluded the one-acre parcel does not suggest that they meant to include the relatively remote right-of-way parcel, which does not border Cochran Road or the Winooski River.

Nor are we persuaded by plaintiffs= arguments that (1) defendant Betty Preston admitted that she had no further use for the right of way; or (2) that a bank had considered the same language in an earlier document as imposing an encumbrance on both the pasture parcel and the right-of-way parcel. Betty Preston testified that she had planned on deeding her interest in the right-of-way parcel to the Village of Richmond, which apparently wanted the property to assure access to its water supply. Further, any position that the bank took with respect to a previous document has no bearing on our interpretation of the agreement in dispute here.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned