

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 7-1-21 Wncv

THE ESTATE OF JOHNSON LEE,
Plaintiff,

v.

ANDREW LEE, JONATHAN K. LEE, and
VIRGINIA LEE,
Defendants

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Motion #3)

I. Introduction and Discussion

This is a partition action relating to a 125-acre parcel of undeveloped land in Waitsfield, Vermont. The parcel is owned by the four parties to this case, and it is undisputed that each party owns a one-fourth undivided share of the property as tenants in common. At this point in the case, the Court would ordinarily enter a judgment of partition in favor of the Plaintiff, and would appoint three commissioners to partition the property in accordance with 12 V.S.A. § 5169. However, the Plaintiff has filed a motion for partial summary judgment, which must be decided before the Court can take any further action.

Plaintiff contends that the parties cannot agree on a just and appropriate division of the property or the worth of each party's interest in the property (Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment, at 1-2). Therefore, Plaintiff asks the Court to enter an order requiring the property to be sold for its highest possible price, allowing the Plaintiff (i.e., the Estate) to control the sale, and leaving for later a determination of how much each party should receive from the proceeds of the sale (Id. at 4).

Plaintiff contends that this outcome is mandated because "all parties to this Action held a mediation and entered into an agreement signed by all parties on March 29, 2012, providing for the sale of the property" (Id. at 2). In support of its motion, Plaintiff filed a statement of undisputed material facts, paragraph 9 of which states "[a]ll parties to this Action held a mediation and entered into an agreement signed by all parties on March 29, 2012, providing for the sale of the

property” (Plaintiff’s Statement of Undisputed Facts in Support of its Motion for Partial Summary Judgment, ¶ 9). Also accompanying the motion was an affidavit signed by Julia Lee, Administrator of the Estate, saying “[a]ll parties to this Action held a mediation and entered into an agreement signed by all parties on March 29, 2012, providing for the sale of the property” (Affidavit of Julia Lee dated April 16, 2021, ¶ 11). In a later affidavit, Julia Lee attached what she described as a “true and correct copy of the Settlement Agreement” (Affidavit of Julia Lee dated September 13, 2021, ¶ 18). On page 3 of the agreement appears the following: “All property owners for the real estate of the estate including Vermont, will cooperate with the Administration in regard to the sale, lease or transfer of the real estate.”

Plaintiff’s motion for partial summary judgment was filed on April 20, 2021. Four months later, on August 30, 2021, Defendants Jonathan Lee and Andrew Lee filed their “Response” to Plaintiff’s motion. In response to Plaintiff’s assertion that the parties had agreed at mediation to sell the property, Defendants asserted that “[n]o such agreement was made for this property; although agreement for sale was made in the related Windham County action for the properties in that county” (Id. at 1-2). In a later filing dated September 30, 2021, counsel for the Defendants stated that “Jonathan and Andrew Lee believe that Settlement Agreement to have been voided by actions subsequent to its 2012 date, and in fact there is apparently a Connecticut court order voiding it” (Memorandum and Explanation in support of Defendants’ Motion for Additional Time, at 2).¹ Defendants did not, however, back up either of these assertions with any affidavit or court order, nor did they respond to Plaintiff’s statement of undisputed material facts.²

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). When determining whether there is a disputed issue of material fact, a court must afford the party opposing summary judgment the benefit of all reasonable doubts and inferences. Carr v. Peerless Insurance Co., 168 Vt. 465, 476, 724 A.2d 454 (1998). However, a non-moving party cannot rely on unsupported generalities or speculation to defeat a properly-supported motion for summary judgment. See V.R.C.P. 56 (c), (e).

Conclusory allegations without facts to support them do not preclude the entry of summary judgment. Robertson v. Mylan Laboratories, Inc., 2004 VT 15, ¶15, 176 Vt. 356; accord Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)

¹ The Court granted Defendants’ request for additional time (i.e., until November 1, 2021) to further respond to Plaintiff’s motion for partial summary judgment.

² Defendant Jonathan Lee did file an affidavit with his Response to Plaintiff’s motion, but his affidavit did not address, or even mention the settlement agreement that the parties had entered into in 2012, even though the settlement agreement bears his signature. Jonathan Lee’s affidavit merely states “I am personally familiar with this property” and “I know of no reason why this property cannot be divided into four equal shares” (Id. ¶¶ 3-4).

(“If the evidence is merely colorable, . . . or is not significantly probative, . . . , summary judgment may be granted.”) (citations omitted). An opposing party’s allegations must be supported by affidavits or other documentary materials which show specific facts sufficient to justify submitting that party’s claims to a factfinder. See Robertson, 2004 VT 15, ¶15; Samplid Enterprises, Inc. v. First Vermont Bank, 165 Vt. 22, 25, 676 A.2d 774 (1996).

If Defendants Jonathan Lee and Andrew Lee wanted to dispute Plaintiff’s assertion, that the parties had agreed in mediation to the sale of the property, they needed to comply with V.R.C.P. 56(c), which provides that “[a] party asserting that a fact . . . is genuinely disputed must support the assertion by . . . [f]iling a separate and concise statement of . . . disputed facts, consisting of numbered paragraphs with specific citations to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations . . . admissions, interrogatory answers, or other materials....” However, they did not do this. Therefore, the Court deems the fact to be undisputed that the all the parties to this action held a mediation and entered into an agreement on March 29, 2012, providing for the sale of the property. See V.R.C.P 56(e)(2) and (3) (“If a party fails to properly . . . address another party’s assertion of fact as required by Rule 56(c) , the court may . . . consider the fact undisputed for purposes of the motion . . . [and] grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it....”).

Moreover, the Defendant’s suggestion, that the mediated settlement agreement only called for the sale of the Estate’s property in Windham County, is not supported by the agreement itself, which makes no mention of Windham County. Because the parties agreed at mediation to a settlement agreement which called for the sale of the Estate’s property in Vermont, the 125-acre undeveloped parcel of land in Waitsfield, Vermont must be sold, despite Defendants’ preference that it be divided up among the four parties to this case.³

II. Conclusion and Order

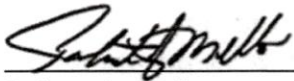
For the foregoing reasons, Plaintiff’s motion for partial summary judgment is GRANTED. The 125-acre undeveloped parcel of land owned by the parties in Waitsfield, Vermont shall be sold for its highest possible price. The Plaintiff shall

³ Plaintiff denies that the property can be subdivided into four parcels. According to the Plaintiff, Waitsfield town zoning rules and regulations would only support a three-lot subdivision because the property is only benefited by a 25-foot right of way (Plaintiff’s Reply Memorandum of Law in Further Support of Motion for Partial Summary Judgment, at 2). The Court does not need to resolve that issue, however, because the Court has determined that the parties entered into a settlement agreement at mediation calling for the sale (not subdivision) of the Estate’s property in Vermont.

control the sale. The net proceeds of the sale shall be placed in escrow, and shall remain in escrow pending further order of the Court.

In the meantime, within ten (10) business days the parties shall agree upon and submit to the Court a proposed scheduling order for the resolution of all accounting issues and disputes relative to the parties' respective shares of the proceeds from the sale of the property. If the parties cannot agree on a schedule, then each party shall file his, her and its own proposal within that same deadline, and the Court will choose one of them.

SO ORDERED this 15th day of November, 2021.

A handwritten signature in black ink, appearing to read "Robert A. Mello", is written over a horizontal line.

Robert A. Mello
Superior Judge