

STATE OF VERMONT
WINDSOR COUNTY, SS.

MYRTLE REBEKAH LODGE #6
OF PROCTORSVILLE

v.

CAVENDISH LIBRARY TRUSTEES OF
CAVENDISH, VERMONT, and
TOWN OF CAVENDISH

WINDSOR SUPERIOR COURT

DOCKET NO. S211-5-96 WrC

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A hearing on the merits was held on Monday, June 23, 1997. Plaintiff was represented by Patrick M. Ankuda, Esq. Defendant Cavendish Library Trustees was represented by Paul S. Gillies, Esq. Defendant Town of Cavendish has been dismissed from the case.

FINDINGS OF FACT

The evidence supports the following findings of fact:

1. The Plaintiff, Myrtle Rebekah Lodge #6, is an unincorporated association located in the Town of Cavendish. It has been in existence for several generations, and provides ongoing philanthropic benefit to needy persons and worthy causes within the Town.
2. The Cavendish Board of Library Trustees, Defendants, are duly elected officials of the Town of Cavendish. They are responsible for the Town library.
3. On a parcel of land on the main street of Proctorsville, a village in the Town of Cavendish, there is a building which for many years housed an active circulating library. It was known as the Proctorsville Public Library, and was a branch of the Cavendish Public Library. Whether or not the building is still used for library purposes is the subject of this lawsuit.
4. On September 20, 1948, the Proctorsville Fraternal Society conveyed the parcel of land (without the building) on which the Proctorsville Library building now stands to the Cavendish Library Trustees to be used for library purposes only. The deed contains the following provisions:

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It is a further condition of this deed that the said parcel conveyed shall be used for library purposes only, and if this condition be violated, then the conveyed parcel shall revert back to and become the property of the grantor or its assigns, and the grantee, its successors and assigns shall have the right to remove any building which may have been erected thereon, and also any heating plant that may have been installed, all for its own use.

Book 29, Page 174.

5. At the time of this conveyance from the Proctorsville Fraternal Society to the Cavendish Library Trustees in 1948, the Library Trustees operated a Library in the Village of Proctorsville in a building located across the street from the parcel conveyed. That Library was a circulating library and was used by the residents of the Village of Proctorsville. The Library could no longer be maintained at that location because the owner of the land no longer wished to have the library building on that land. The Proctorsville Fraternal Society conveyed property to provide a new location to which the library building could be moved to continue to serve the community as a library.

6. Sometime in 1948 or 1949, the Library building was moved from across the street in Proctorsville to the present parcel.

7. It is undisputed that the Library Trustees of Cavendish operated a circulating library at the Proctorsville location continuously from 1948 or 1949 until 1990.

8. Beginning in 1986, a plan was afoot, headed by a group known as the Building For Books Committee, which included members of the Library Trustees, to develop a community library to be located at the Cavendish Town Elementary School. Both the Cavendish Library Trustees and the Building For Books Committee were aware of the reversionary interest held by the Proctorsville Fraternal Society as established in the 1948 deed.

9. At a special town meeting of the Town of Cavendish on November 8, 1988, the voters considered the following article:

Shall the voters of the Town of Cavendish authorize the Fletcher Town Library Board of Trustees to combine the two (2) existing public libraries with a school library into one (1) community library to be located at the Cavendish Elementary School?

It passed by a substantial margin.

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10. Following that vote, the Library Trustees began an extensive fundraising campaign. The Trustees raised \$250,000 for the construction of the new library. This amount was sufficient to build a new library building, but it was not sufficient to build a full basement under the building. A basement had been included in the original plans and was to serve the library for storage purposes. The Trustees proceeded with the building of a new library without the basement, using the available funds.

11. On July 28, 1990, the books and operations of the Proctorsville Library were moved from the Proctorsville Library building in question to the new library at the Cavendish Town Elementary School. All of the circulating books were moved, and no library operations continued at the old library.

12. After the circulating library was moved from the Proctorsville Library building in 1990, the building ceased to be used for a circulating library. Unused books have been stored at the building, but no books have been lent or circulated from that building. No library programs or meetings have taken place in the building. The present Town Librarian, Joyce Fuller, was hired in June of 1990, shortly before the move. Since the move in July of 1990, she has not overseen any activities in that building and stated that she has had no involvement in any activities in that building since July 1990.

13. Since 1990, the Cavendish Library Trustees have stored a small quantity of uncatalogued books at the building in Proctorsville. They have additional storage at the Town Hall in the Village of Cavendish, Vermont, where they store other books. There is limited storage space at the new library building. The books stored at the building in Proctorsville number about 500, most of which are discards to be used for book sales to raise money for the library.

14. In January 1991, a voluntary group called React, a playgroup sponsored by a group of residents of Proctorsville, asked to use the Proctorsville Library building as a place to conduct its activities. The group is an informal group that meets once a week, on Wednesday mornings, for two hours. React is not under the care, custody or control of the Cavendish Library Trustees and does

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not have any affiliation with the library. The Cavendish Library does not own the materials used by React and does not provide any specific resources to React. While React promotes prereading activities among preschoolers, its activities are not related to library operations in any way. React pays little or no rent and pays solely for its own electricity and water and sewer. The Trustees were pleased to have the building in use to avoid deterioration. The activities of React are compatible with the mission of the library, but not directly related to it. React has used the Proctorsville Library building for its program two hours each week since January 1991. The building has had no other identified uses during this period.

15. On August 2, 1991, the Proctorsville Fraternal Society conveyed all of its interests in real property of whatever kind and nature in the Village of Proctorsville, Vermont to the Plaintiff Myrtle Rebekah Lodge #6 by Warranty Deed. Specifically included in said deed was a reference to the Warranty Deed of the Proctorsville Fraternal Society to the Library Trustees of Cavendish dated September 20, 1948. By said deed, the Proctorsville Fraternal Society conveyed to Plaintiff its reversionary interest in the lands and premises at issue in this proceeding.

16. Said deed also conveyed other property and buildings in Proctorsville, Vermont to the Plaintiff. The Myrtle Rebekahs maintained those properties and ultimately subdivided the remaining land and sold off the remaining building. The Myrtle Rebekahs continue to hold the reversionary interest.

17. On or about December 15, 1994, the Myrtle Rebekahs' attorney, Patrick M. Ankuda, sent demand to the Cavendish Library Trustees' attorney, Matthew Birmingham, Esq., demanding that the library remove the building on the land in question within 90 days. By this act, the Myrtle Rebekahs asserted a claim of right to the land based on their reversionary interest, and notified the Trustees of the time period it considered reasonable for the Trustees to exercise their right under the original deed to remove the library building. The Cavendish Library Trustees have not moved the building.

18. The mission statement of the library, adopted in 1993 but reflective of the mission statement of the library during the period of development of the new library, reads as follows: "The

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Cavendish Community Library promotes the exchange of ideas, stimulates thought, and supports lifelong learning in the school and community by providing relevant, current materials, programs and services for all ages."

19. The Cavendish Board of Library Trustees's position is that they are not finished with the use of the property for a library. They claim they still use it for library purposes, including book storage to keep books for future fundraising efforts, and making it available for React, which they claim is in keeping with the mission of the library.

CONCLUSIONS OF LAW

The Myrtle Rebekahs seek a declaration that their organization is the owner of the old library property, and seek a judgment order establishing title in their name. They further claim that since the building has not been removed since they made their demands two and one-half years ago, they are also entitled to a declaration of ownership of the building on the basis that the Trustees did not remove it after an opportunity to do so. The Library Trustees claim that the reversionary interest of the Myrtle Rebekahs has not yet ripened into life.

This case turns on whether or not the property formerly owned by Proctorsville Fraternal Society and conveyed to the Cavendish Library Trustees in 1948 is still used for library purposes. If it is still used for library purposes, then the Trustees's ownership of the lot and building continues; if it is not, then the Myrtle Rebekahs, successors in title to the reversionary interest of the Society, are entitled to a declaration of ownership of the land.

Proctorsville Fraternal Society conveyed a determinable fee to the Cavendish Library Trustees and retained for itself and its assigns a possibility of reverter. The estate reverts at once on the occurrence of the event by which it is limited. Collette v. Town of Charlotte, 114 Vt. 357, 360 (1946). "When, as here, the parties appear to have understandingly reached an agreement and to have embodied it in their deed providing that upon termination of the estate conveyed it shall revert to the grantor [or its assigns], such provision should not be held void, in whole or in part, unless for sound

reasons of public policy." Id. at 362. If the land in question ceased to "be used for library purposes only," it reverted to the plaintiff. Id. at 363.

In the Collette case, the Vermont Supreme Court provided the following explanation of the concept of a "determinable fee with a possibility of reverter":

A determinable or qualified fee, as that term is now generally used, is a fee simple limited to a person and his [or her] heirs [or assigns] with a qualification annexed to it by which it is provided that it must determine whenever the qualification is at an end. Because the estate may last forever it is a fee and because it may end upon the happening of the specified event it is what is usually called a qualified or determinable fee. . . . Such an estate has sometimes been called an estate on a limitation . . .

Collette, 114 Vt. at 359-60 (citations omitted). The Court also explained the distinction between a determinable fee with possibility of reverter and a similar but different arrangement called a "fee simple on condition subsequent":

A fee upon condition resembles a determinable fee in that it exhausts the whole estate. It may return to the grantor because of the breach of the condition subject to which it was granted, *but it does not return until there has been an entry by the person having that right*. The only practical distinction between a right of entry for breach of condition subsequent and a possibility of reverter on a determinable fee is that in the former the estate in fee does not terminate until entry by the person having the right, while in the latter the estate reverts at once on the occurrence of the event by which it is limited. . . . A slight change in the language of the deed would usually be sufficient to change a determinable fee into a fee upon condition subsequent, or vice versa.

Id. at 360 (emphasis added; citations omitted).

In the instant case, the language of the deed resembles the language used in the deed at issue in Collette, and there is no dispute that the deed conveyed a determinable fee with a possibility of reverter. Thus the estate reverted to the plaintiff "at once on the occurrence of the event by which it is limited," if such occurrence took place. Id. The 1948 deed conveyed the subject parcel of land with the condition that it "be used for library purposes only."

[T]he language is to be construed in connection with, and in reference to, the nature and condition of the subject matter at the time the deed was executed, and the obvious purpose the parties had in view; and in this situation the condition is to be

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interpreted by its own language, and the intent of parties must be deemed to be what the condition thus interpreted declares.

Hoadley v. Hoadley, 114 Vt. 75, 80 (1944) (citations omitted).

Thus, if the property ceased to be used for library purposes in July of 1990, it automatically reverted to the Myrtle Rebekahs as of that time. If it did not, the Library Trustees are still the owners of the entire fee.

Based on the evidence, the court concludes that the Cavendish Library Trustees ceased maintaining and operating a library on the parcel in question in 1990, and thereafter the parcel was no longer used for library purposes. In 1990 the Proctorsville Library was moved to another location; all of the circulating books and the library operations were moved. Since then, the Library Trustees have used the old building only as a place for storage of non-circulating books awaiting disposal, and have agreed to the tenancy of React for its playgroup activities as a means of maintaining the building.

The mere storage of books does not suffice to show that the property has been used for library purposes. Collette v. Town of Charlotte, 114 Vt. 357 (1946) (storage of school supplies not sufficient to constitute "school purposes"). Nor does the use of the building by the playgroup React qualify as "library purposes." Cf. Ball v. Hall, 129 Vt. 200, 208 (1971) (use of building by pupils in lower grades did not satisfy condition that it be used for "high school" or "central school"). React uses the building as a welcome tenant, but not as a group providing library services to the community. Moreover, the transfer of all essential library activities to a different location is strong evidence that the old building was no longer used for library purposes. See In re: .88 Acres of Property Owned by the Town of Shelburne, 7 Vt.L.W. 75 (1996) (building not maintained as a "meeting house" after the town began maintaining town hall on separate property). The functions of a community library are being carried out at the new library located at the Cavendish School. Storage of unused books is tangential to the functions of a community library, and could be accomplished just as well in a rented storage space. The fact that unused books are stored in the old library building in Proctorsville does nothing to

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provide library services to the community from that location, which was the purpose of the original grant.

For the above reasons, the court hereby **DECLARES** that the Plaintiff Myrtle Rebekah Lodge #6 owns the parcel of property where the old Proctorsville Public Library was located.

In light of the above conclusion, the next issue the court must address is whether, since the reverter occurred as a matter of law in July 1990, it is too late for the Defendants to remove the library building, or whether, since the decision on the disputed issue is now being made herein, the Defendants still have a reasonable period of time to remove the building. The language in the deed specifies no time limitation for removal of the building. Since the parties have not focused their arguments on this issue, and since the issue has substantial economic implications for both parties, and since it is purely a question of law, the court will allow the parties additional time to submit memoranda on this issue. The parties are respectfully invited to submit additional argument concerning this issue, or a stipulation, on or before August 25, 1997. The court will defer its decision on that issue until after that date.

Dated this 14th day of August, 1997.

Mary Miles Teachout
Hon. Mary Miles Teachout,
Presiding Superior Court Judge

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