

VERMONT SUPERIOR COURT  
CHITTENDEN UNIT  
CIVIL DIVISION

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IN RE: 88 KING STREET

Docket No. 45-1-17 Cncv

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RULING ON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

This is a deed reformation action. Plaintiff Lake Champlain Transportation Company seeks to reform the deed for property located at and known as 88 King Street in Burlington, Vermont. Although Lake Champlain Transportation Company purchased the property from its then-owner, King Street Properties, Inc., on November 7, 1988, because of a scrivener’s error, the limited warranty deed incorrectly states that the grantee is “Lake Champlain Transportation Company, Inc.” Plaintiff now seeks an order correcting that error and reforming the deed to reflect the true grantee. Kevin Lumpkin and Michael Furlong, Esqs. represent Plaintiff.

The error in the deed likely resulted from the fact that there was previously a Vermont entity named “Lake Champlain Transportation Company, Inc.” That company operated the ferry business crossing Lake Champlain until 1976, when it sold all assets of the ferry business to Plaintiff Lake Champlain Transportation Company, which operates the ferry business to this day. Lake Champlain Transportation Company, Inc., after changing its name to L.C.T. Liquidating Co., Inc., formally dissolved in 1977. Plaintiff apparently discovered the error in 2016 when it agreed to provide an easement over the property to the City of Burlington in connection with a planned bike path relocation.

Deed reformation is appropriate “when an agreement has been made, or a transaction has been entered into or determined upon, as intended by all the parties interested, but in reducing such agreement or transaction in writing, . . . through the mistake common to both parties, . . . the written instrument fails to express the real agreement or transaction.” Cassani v. Hale, 2010 VT 8, ¶ 17, 187 Vt. 336 (2010) (quoting LaRock v. Hill, 131 Vt. 528, 530–31 (1973)). “[T]he right to seek reformation of a deed is limited to the original parties to the deed and their successors in title . . . .” Bourne v. Lajoie, 149 Vt. 45, 49 (1987) (citing Hadlock v. Poutre, 139 Vt. 124, 128 (1980)). The party seeking reformation must prove mistake beyond a reasonable doubt. Cassani, 2010 VT 8, ¶ 17 (citing deNeergaard v. Dillingham, 123 Vt. 327, 331 (1963)). More specifically, that

party must prove “that there existed, previous to the deed, a valid agreement representing a standard to which the erroneous writing can be reformed, so as to express the true transaction between the parties.” Bourne, 149 Vt. at 49 (quoting LaRock, 131 Vt. at 530).

In the present case, there was a “handshake” agreement between the principals of Lake Champlain Transportation Company and King Street Properties, Inc., rather than a written purchase and sale agreement. Furthermore, both King Street Properties and Lake Champlain Transportation Company, Inc. have long since dissolved (the former in 1989 and the latter in 1977), so there are no interested parties in existence other than Plaintiff to clarify the intent of the agreement.

However, Plaintiff has provided affidavits from Raymond Pecor, a shareholder of Lake Champlain Transportation Company, and Liam Murphy, the attorney who represented King Street Properties, Inc. in this transaction in 1988. Both affiants stated that the intent of the parties to the transaction was to convey the property at 88 King Street to Lake Champlain Transportation Company, but that the limited warranty deed and property transfer tax return erroneously provided that the grantee was Lake Champlain Transportation Company, Inc. Neither party to the transaction, nor their representatives, caught the error. The court also observes that Pecor’s signature appears in the buyer’s line on the limited warranty deed and tax return.

The affidavits and other documentation submitted by Plaintiff are sufficient to establish a mutual mistake in the deed beyond a reasonable doubt. The clear intent of both parties to the transaction was to transfer 88 King Street to Plaintiff Lake Champlain Transportation Company, not Lake Champlain Transportation Company, Inc. Moreover, it would defy all logic for King Street Properties to have intended to transfer the property to a nonexistent company that had dissolved 11 years earlier. Because the deed fails to express the real agreement or transaction, reformation of the deed is appropriate.

#### Order

Lake Champlain Transportation Company’s motion for summary judgment is granted.

SO ORDERED.

Dated at Burlington this 10th day of February, 2017.

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Robert A. Mello  
Superior Court Judge