

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 239-10-18 Oscv

Sanville vs. Town of Albany

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment on Buchanan Cross Claim (Motion: 29)
Filer: William L. Durrell
Filed Date: June 23, 2023

The motion is DENIED.

Cross claim Plaintiff Ralph Buchanan seeks summary judgment on his cross claim against the Town of Albany. He seeks a declaration quieting title to a parcel of Town land pursuant to a right of entry provision in a 1955 deed of the land to the Town. The deed provided for a right of entry and reversion of possession to the original Grantors' successors if the property was used for a purpose other than as specified in the deed, which was "as a memorial 4-H forest for use by young people in particular, and for 4-H recreational and forestry purposes."¹

He originally sought judgment based on a claim that logging by the Town on the property triggered the right of entry. The Vermont Supreme Court, on interlocutory appeal, rejected his claim that logging by the Town violated the terms of the deed. Pursuant to a subsequent Amended Cross Claim, which was allowed by this court on July 26, 2023, he now seeks judgment based on a claim of non-use of the parcel for its intended purpose.

A party is entitled to summary judgment when "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). Undisputed material facts must be supported by citations to materials in the record such as depositions, documents, affidavits, stipulations, admissions, interrogatory answers, or other admissible evidence. V.R.C.P. 56 (c)(1). They must provide a sufficient factual basis to support a valid legal theory. "The moving party has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. *Price v. Leland*, 149 Vt 518 (1988).

The court declines to grant the motion for summary judgment for the following reasons.

¹ In a decision of April 26, 2021 on summary judgment motions, this court ruled that the deed created ownership in the Town subject to a condition subsequent with a right of entry, rather than subject to a determinable fee. Entry Order, April 26, 2021, page 3. Another ruling in that decision was reversed by the Vermont Supreme Court on interlocutory appeal, but that particular ruling as to the legal right held by Buchanan heirs was not challenged and remains the law of the case.

First, Mr. Buchanan relies for facts only in part upon the type of admissible evidence described above. He also relies heavily on his summary characterization of the content of a court decision of November 28, 2018, early in the case, on a Motion for a Preliminary Injunction and a Motion to Dismiss. At that time, not all facts were known. The Town disputes that many of the Buchanan facts are material at all, and points out that many other facts have been called into question by information subsequently developed during the course of the case, including the fact that parcel characteristics are now not as they were previously understood to be.

The Town also argues that some of the statements that Mr. Buchanan claims are “facts” are actually conclusory statements or generalization rather than specific facts. Specifically, Mr. Buchanan states as fact that the Town did “nothing whatsoever” from 1955 until it commenced logging, whereas the Town argues that allowing a stand of planted young trees to grow and mature until ready for harvesting is not a non-use but is consistent with the use of the land for forestry purposes and with the availability of the land for 4-H use. The court agrees with the Town that the simple label “non-use” states a conclusion devoid of specific facts.

To prove his claim that the right of entry is supported by non-use of the property, Mr. Buchanan will first need to prove specific facts concerning the property itself and what if any action the Town took with respect to it over the years up to the filing of his Amended Counterclaim. This will require specific facts about property characteristics, which are not included in Mr. Buchanan’s statement of undisputed facts. It is likely that the court will need to make a site visit in order to understand the characteristics of the property sufficiently to make a legal ruling on Mr. Buchanan’s claim of non-use by the Town. Then, based on the Vermont Supreme Court ruling on interlocutory appeal, Mr. Buchanan will need to prove that whatever the Town did or did not do was unrelated “to forests and to 4-H recreational and forestry activities.” *Sanville v. Town of Albany*, 20922 VT 22, ¶ 20. There are insufficient facts for the court to be able to reach a legal conclusion on either of these necessary elements.

In sum, the court agrees with the Town that there is not a clear and sufficient body of undisputed facts upon which the conclusion of law advocated by Mr. Buchanan can be based.

A second issue was not addressed in relation to Mr. Buchanan’s prior claim based on logging, but has subsequently come to the court’s attention. The issue is whether Mr. Buchanan is a person entitled to exercise the right of entry, even if there is a basis for it, and whether there are any others who also hold such a right and might be necessary parties to the case. V.R.C.P. 19. In the November 28, 2018 ruling on the Motions for Dismissal and Preliminary Injunction, it is stated that Mary Lou Buchanan is the “only known present-day heir” to the property, and that she gave power of attorney to Ralph Buchanan in 2015. There are no specific facts to support this assertion as of 2018. It suggests that the person with any such right is Mary Lou Buchanan. She is not a party in this case.

In his Amended Cross Claim dated June 26, 2023, Ralph Buchanan appears to be asserting a right of entry on his own behalf, and not on behalf of Mary Lou Buchanan as her attorney-in-fact. Yet there are no facts to support the status of Ralph Buchanan as either a person, or the only person, as a successor to the grantors of the 1955 deed, with the legal right to exercise

any right of entry. Thus, the court cannot grant summary judgment to him based on the current state of the record due to an insufficient factual basis.

For the reasons set forth above, the Motion for Summary Judgment is *denied*.

Discovery and motion deadlines have passed with no pending motions filed. The court will schedule a pretrial status conference to plan the trial needs of the case. It is not clear whether or not mediation has occurred. If it did, it was likely to have occurred when the Buchanan claim was based on logging, prior to the Vermont Supreme Court interlocutory decision. Thus, it may be necessary to reconvene mediation prior to trial. As noted above, the court is likely to require a site visit although input from the attorneys on that issue will be welcome at the pretrial status conference.

Electronically signed August 18, 2023 pursuant to V.R.E.F. 9 (d).

A handwritten signature in black ink that reads "Mary Miles Teachout". The signature is written in a cursive, slightly slanted style.

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned