SUPREME COURT OF NEW HAMPSHIRE

Thomas M. Benoit & a. v. Joseph A. Cerasaro, Trustee of the Joseph A. Cerasaro Revocable Trust & a.

169 N.H. 10 (2016) · No. 2015-0573 · Decided April 19, 2016

SUMMARY

The New Hampshire Supreme Court affirmed summary judgment enforcing a subdivision declaration governing common land, easements, and restrictions after the land was acquired at a tax sale. The court held that the declaration vested upon recording and was not extinguished by the tax sale, rejected the plaintiffs' laches and equitable-relief arguments, and upheld the order requiring conveyance of the common land to a homeowners association once formed.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	April 19, 2016
DOCKET	2015-0573
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from an order granting the defendants' motion for summary judgment and denying the plaintiffs' cross-motion for summary judgment in an action concerning the enforceability of subdivision covenants and easements affecting common land.
STANDARD OF REVIEW	On cross-motions for summary judgment, the court views the evidence in the light most favorable to each party as the nonmoving party and determines de novo whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. The court reviews the trial court's application of law to facts de novo, its laches determination for an unsupported finding or legal error, and its decision whether to grant equitable relief for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES	Thomas M. Benoit, Kathleen A. Nawn-Benoit v. Ronald N. Delude, Rita A. Delude

TOPICS

real estate · covenants and restrictions · easements · tax liens · appellate procedure

PRACTICE AREAS

real estate · property law · equitable remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether the tax sale extinguished the declaration's easements and restrictions under a tax-assessment theory.
2. Whether the declaration's easements and restrictions failed to vest because the homeowners association was never formed or because title was never transferred to it.
3. Whether the defendants' failure to redeem after notice of the tax sale extinguished their rights under the declaration.
4. Whether laches barred enforcement of the declaration.
5. Whether the trial court improperly ordered conveyance of the common land to the association without compensation or determined that the plaintiffs held less than fee-simple title.
6. Whether the plaintiffs were entitled to equitable relief requiring the subdivision residents to purchase the common land and reimburse their expenses.
7. Whether the plaintiffs' tax-abatement argument demonstrated that the declaration was extinguished by the tax sale.

HOLDINGS

1. The tax sale did not extinguish the declaration as a matter of law. Any alleged overvaluation of the servient estate resulting from failure to account for easements and restrictions was a matter for tax-abatement proceedings, not a basis for extinguishing the recorded interests.
2. The easements and restrictions vested when the declaration was recorded in 1974 and were not extinguished by the later tax sale.
3. The redemption argument did not apply because the tax sale did not extinguish the declaration, leaving no declaration-based interests for the defendants to redeem. The plaintiffs' additional theory that the defendants' ownership rights were extinguished was not considered because it was not raised below.
4. Laches did not bar enforcement because the defendants' delay was not unreasonable in the circumstances and the plaintiffs failed to show that the defendants knew of misconduct requiring enforcement before the plaintiffs sought a variance to develop the common land.
5. The trial court did not improperly determine that the plaintiffs lacked fee-simple title; it ordered conveyance based on the declaration's requirement that the common land be conveyed to the association

after more than 51 percent of the lots had been sold. The plaintiffs' takings argument was inadequately developed and was not addressed.

6. The plaintiffs were not entitled to the requested equitable relief.

KEY QUOTATIONS

> *"Under its plain language, the Declaration vested upon being recorded in the registry of deeds in 1974."* (5)

> *"Accordingly, the plaintiffs have failed to establish that the court's order constitutes an unsustainable exercise of discretion."* (10)

FACTUAL BACKGROUND

A 1974 subdivision declaration created easements, restrictions, and common land for the benefit of subdivision lot owners, required formation of a homeowners association, and required eventual conveyance of the common land to that association. The association was never formed, and the developer's failure to pay taxes resulted in a 1979 tax sale of the common land. The plaintiffs later acquired both an adjoining lot and the common land, with notice of the recorded declaration, paid taxes on the common land, and obtained a variance to build a residence there despite objections from subdivision residents. They then sought to invalidate the declaration, establish title free of it by adverse possession, or obtain compensation and equitable relief.

PROCEDURAL HISTORY

The plaintiffs petitioned for declaratory relief, adverse-possession title, and, alternatively, equitable compensation and an order requiring formation of the homeowners association and conveyance of the common land. The Superior Court granted the defendants' motion for summary judgment, denied the plaintiffs' cross-motion, denied reconsideration, and entered judgment for the defendants. The New Hampshire Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gowen v. Swain, 90 N.H. 383, 387 (1939)
- Marshall v. Burke, 162 N.H. 560, 564, 566 (2011)
- Buchholz v. Waterville Estates Assoc., 156 N.H. 172, 175 (2007)
- Burke v. Pierro, 159 N.H. 504, 514-15 (2009)
- Dukette v. Brazas, 166 N.H. 252, 255 (2014)
- Appeal of Prof'l Fire Fighters of Hudson, 167 N.H. 46, 57 (2014)
- Village Green Condo. Ass'n v. Hodges, 167 N.H. 497, 505 (2015)
- Lennartz v. Oak Point Assocs., 167 N.H. 459, 464 (2015)
- Conant v. O'Meara, 167 N.H. 644, 649 (2015)

- State v. Lambert, 147 N.H. 295, 296 (2001)
- Chase v. Ameriquest Mortgage Co., 155 N.H. 19, 24 (2007)
- Foley v. Wheelock, 157 N.H. 329, 332 (2008)
- Nashua Hospital v. Gage, 85 N.H. 335, 343 (1932)
- C F Invs. v. Option One Mortgage Corp., 163 N.H. 313, 316 (2012)
- In re Adam M., 148 N.H. 83, 84 (2002)