

SUPREME COURT OF VERMONT

Smalley v. Stowe Mountain Club, LLC

25 A.3d 539 (Vt. 2011) · No. No. 10-204 · Decided May 20, 2011

SUMMARY

The Vermont Supreme Court considered whether restrictive covenants in a 1959 deed applied to land within 200 feet of the plaintiff's property that was transferred among affiliated corporate entities and developed as part of a golf course. The court held that the deed did not create a general resort-free buffer zone, but that the phrase "sold and conveyed" was ambiguous as applied to the inter-corporate transfers. It reversed summary judgment and remanded for further discovery and proceedings concerning the transfers, the parties' intent, and the defendant's affirmative defenses.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Burgess, J.; Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	May 20, 2011
DOCKET	No. 10-204
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a final judgment granting plaintiff declaratory and permanent injunctive relief based on alleged violations of restrictive covenants in plaintiff's deed. The Supreme Court reviewed the trial court's construction of the deed, refusal to permit additional discovery, and related summary-judgment rulings.
STANDARD OF REVIEW	De novo review of the trial court's construction of the terms of a writing and determination whether the writing is ambiguous; summary judgment is improper when the opposing evidence raises a genuine issue of material fact.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Stowe Mountain Club, LLC v. David Smalley

TOPICS

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QUESTIONS PRESENTED

1. Whether the restrictive covenant requiring land within 200 feet of Smalley's property to be subject to the deed restrictions ran with the land and was enforceable by Smalley.
2. Whether the 1977 corrective deed extinguished or failed to preserve the 200-foot restriction.
3. Whether the deed unambiguously created a resort-free 200-foot buffer zone or instead restricted resort use only on land that was sold and conveyed within that area.
4. Whether the 2003 and 2004 intercorporate transfers constituted a sale and conveyance triggering the restrictive covenant.
5. Whether the defendant's evidence concerning the nature of the transfers and its affirmative defenses raised genuine issues of material fact requiring additional discovery and precluding summary judgment.
6. Whether the trial court exceeded the proper scope of injunctive relief.

HOLDINGS

1. The 200-foot restriction was intended to run with the land and was enforceable by Smalley as part of the deed's residential covenant scheme.
2. The 1977 corrective deed did not extinguish the 200-foot restriction.
3. The deed did not prohibit resort activity on land retained by the grantor within 200 feet of Smalley's property; it applied only to land within that area that was sold and conveyed.
4. The deed was ambiguous as to whether transfers lacking a real change in ownership or control and involving alleged nonmonetary consideration constituted a sale and conveyance triggering the restriction.
5. Summary judgment for Smalley was improper because the defendant's evidence raised genuine issues of material fact concerning the nature of the transfers, the parties' intent, and its affirmative defenses; additional discovery was warranted.

KEY QUOTATIONS

"The intention of the parties, not the language used, is the dominating factor, and the circumstances existing at the time of the execution of the deed, the situation of the parties and the subject matter are to be considered." (at 543)

"The deed by its terms imposed no restriction on resort activity within 200 feet of the lot. Rather it provided that any land "sold and conveyed" by MMC within 200 feet of the property was subject to the covenant restricting resort activity." (at 544)

"Since the deed language is reasonably susceptible of more than one meaning, it must be considered ambiguous." (at 545)

“The judgment is reversed and the case is remanded for further proceedings consistent with the views expressed herein.” (at 546)

FACTUAL BACKGROUND

Smalley's property was subject to a 1959 deed containing residential restrictions, including a provision requiring land within 200 feet of the property later sold and conveyed by the grantor to be subject to the same restrictions. In 2003 and 2004, land within that area was transferred through affiliated entities, ultimately to Stowe Mountain Club, LLC, and portions of a golf course were constructed there in 2005 and 2006. The golf course opened in 2007, and Smalley sued in 2008, asserting that the transfers triggered the restriction against business or resort use. The defendant submitted evidence that the transfers were intercorporate capital contributions involving entities controlled by the same parent and raised evidence supporting equitable defenses based on Smalley's delay in asserting the restriction.

PROCEDURAL HISTORY

Smalley sued Stowe Mountain Club, LLC, alleging that transfers of land within 200 feet of his property triggered a deed restriction prohibiting business or resort use and that the defendant's golf course violated the restriction. The parties filed cross-motions for summary judgment. The trial court ruled for Smalley, rejected the defendant's affirmative defenses, and permanently enjoined further golf-course use in the buffer area, including ordering removal of portions of the course. The Supreme Court reversed because the deed was ambiguous as to whether the intercorporate transfers constituted a sale and because the defendant's evidence raised genuine factual disputes requiring further discovery.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including additional discovery and factual development concerning the nature of the 2003 and 2004 transfers, the parties' intent regarding the sold-and-conveyed clause, the defendant's affirmative defenses, and related issues.

CASES CITED

- Gardner v. Jefferys, 2005 VT 56, 178 Vt. 594, 878 A.2d 259
- Welch v. Barrows, 125 Vt. 500, 504, 218 A.2d 698, 702 (1966)
- Main St. Landing, LLC v. Lake St. Ass'n, 2006 VT 13, 179 Vt. 583, 892 A.2d 931
- Kipp v. Chips Estate, 169 Vt. 102, 105, 107, 732 A.2d 127, 129, 131 (1999)
- Rogers v. Watson, 156 Vt. 483, 488, 594 A.2d 409, 412 (1991)
- Creed v. Clogston, 2004 VT 34, 176 Vt. 436, 852 A.2d 577
- Premier Van Schaack Realty, Inc. v. Sieg, 2002 UT App 173, 51 P.3d 24
- Barry v. Barry, 78 F.3d 375 (8th Cir. 1996)

- *NSK, Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997)
- *Mandell v. Gavin*, 262 Conn. 659, 816 A.2d 619, 625 (2003)
- *Imported Car Ctr., Inc. v. Billings*, 163 Vt. 76, 82, 653 A.2d 765, 770 (1994)
- *Weed v. Weed*, 2008 VT 121, 185 Vt. 83, 968 A.2d 310
- *Means v. United Fidelity Life Ins. Co.*, 550 S.W.2d 302, 310 (Tex. Civ. App. 1977)
- *Johnson v. Harwood*, 2008 VT 4, 183 Vt. 157, 945 A.2d 875
- *Mann v. Levin*, 2004 VT 100, 177 Vt. 261, 861 A.2d 1138
- *Segerstrom v. Knott*, 149 Vt. 391, 392-93, 543 A.2d 706, 707 (1988)

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