

STATE OF VERMONT

SUPERIOR COURT
Lamoille Unit

CIVIL DIVISION
Docket No. 162-9-19 Lecv

Cameron vs. Estate of Robert H. Granger et al

FILED

ENTRY REGARDING MOTION

APR 23 2020

Declaratory Judgment (162-9-19 Lecv)

VERMONT SUPERIOR COURT
LAMOILLE UNIT

Title: Motion for Summary Judgment on Count 1 (Declaratory Judgment) (Motion 1)
Filer: Martha Cameron
Attorney: Kevin M. Henry
Filed Date: February 20, 2020

Response filed on 03/23/2020 by Attorney Arline P. Duffy for Defendant Carol Gadhue
Response filed on 04/06/2020 by Attorney Kevin M. Henry for Plaintiff Martha Cameron
Response filed on 04/08/2020 by Attorney Kevin A. Lumpkin for party 3 Co-counsel

The motion is DENIED.

Plaintiff argues that the intent of the deeds that conveyed property to unmarried grantees as tenants by the entirety is unambiguous in expressing an intent of joint tenancy with right of survivorship. She argues that because the deed is not ambiguous, there is no need for discovery to consider extrinsic evidence as requested by Defendants. Plaintiff does acknowledge that she relies on two facts based on extrinsic evidence: that the grantees were unmarried, and that they had lived together for over 40 years in the same manner that married couples do. She argues, however, that those are the only extrinsic facts necessary to determine that there is no ambiguity calling for additional facts.

"A deed term is ambiguous if reasonable people could differ as to its interpretation." *DeGraff*, 2007 VT 95, ¶ 20, 939 A.2d 472 (quotation omitted). In determining whether a deed is ambiguous, the court may examine "limited extrinsic evidence of 'circumstances surrounding the making of the agreement.'" *Kipp*, 169 Vt. at 107, 732 A.2d at 131 (quoting *Isbrandtsen v. N. Branch Corp.*, 150 Vt. 575, 579, 556 A.2d 81, 84 (1988)).


LeBlanc v Snelgrove, 2015 VT 112 ¶ 31.

It is clear from both the circumstances of this case and the legal standard quoted in the foregoing paragraph that under some circumstances (such as this), the ambiguity does not become apparent unless some extrinsic evidence is considered. Even if extrinsic evidence of circumstances is to be "limited," it does not make sense that the scope of limitation includes only the facts that one party seeks to rely on. Defendant is entitled to determine whether there may be countervailing facts.

For the foregoing reasons, the Plaintiff's motion for summary judgment on Count 1 is denied as premature. Defendant is entitled to proceed with discovery.

Given the terms of the pretrial scheduling Order of March 12, 2020, the delay caused by this motion, and the effect of the coronavirus pandemic and related Governor's Stay Home/Stay Safe Order, it is likely that a new pretrial scheduling order with extended terms would be appropriate. The attorneys are requested to seek to agree on terms of an amended scheduling order and submit it by May 16, 2020.

Electronically signed on April 23, 2020 at 09:47 AM pursuant to V.R.E.F. 7(d).


Mary Miles Teachout
Superior Court Judge

Notifications:

Kevin M. Henry (ERN 2289), Attorney for Plaintiff Martha Cameron
Arline P. Duffy (ERN 1033), Attorney for Defendant Carol Gadhue
Joseph F. Cahill (ERN 1898), Attorney for Defendant Estate of Robert H. Granger
Kevin A. Lumpkin (ERN 6480), Attorney for party 3 Co-counsel