

Margolin v Gatto

2008 NY Slip Op 31741(U)

June 12, 2008

Supreme Court, Nassau County

Docket Number: 8019-01/

Judge: Daniel Martin

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**SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK**

**PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice**

C. LANCE MARGOLIN.

**TRIAL/IAS, PART 31
NASSAU COUNTY**

Plaintiff.

- against -

FRANK L. GATTO and JEANNE MARIE GATTO.

**Sequence No.: 004 & 005
Index No.: 018019/01**

Defendants.

FRANK L. GATTO and JEANNE MARIE GATTO.

Third-Party Plaintiff.

- against -

INCORPORATED VILLAGE OF FARMINGDALE.

Third-Party Defendant.

INCORPORATED VILLAGE OF FARMINGDALE.

Fourth-Party Plaintiff.

- against -

MARTIN J. BOWE, JR. And THOMAS F. GAMBLIN.

Fourth-Party Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Notice of Cross-Motion and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	X

The Plaintiff moves for summary judgment in an action to quiet title to a mapped street pursuant to Article 15 of the Real Property Actions and Proceedings Law. The Incorporated Village of Farmingdale, Third-Party Defendant and Fourth-Party Plaintiff cross-moves pursuant

to Civil Practice Law and Rules § 3212 for summary judgment determining that they are the owners in fee to the bed of the mapped roadway in accordance with Article 15 of the Real Property Actions and Proceedings Law.

BACKGROUND

The essential facts are not controverted by the parties; the import of them is. The subject of the controversy is a parcel of land 50 feet wide and approximately 135 feet in length. It runs in a north-south direction between Manetto Road and Melville Road in the Village of Farmingdale. The common owner of this parcel, and the land surrounding it, was Amos G. Sullivan, who acquired title in 1909.

Sullivan filed "Map No. 3 of the Bethpage Park Property, (lying on the north side of the Long Island Railroad at Farmingdale, New York) owned by A.G. Sullivan" in the Nassau County Clerk's Office on April 13, 1911 as Map. No. 54. The subject parcel appeared as a "mapped street" on the filed map. It was never operated as an actual roadway, and was never dedicated or otherwise operated or maintained as a functioning roadway.

Highway Law § 205 provides in pertinent part as follows:

§ 205. Highways abandoned

1. Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said period shall be deemed abandoned as a right-of-way. The town superintendent with the written consent of a majority of the town board shall file, and cause to be recorded in the town clerk's office of the town a written description, signed by him, and by said town board of each highway and public right-of-way so abandoned, and the same shall thereupon be discontinued.

As a consequence, the subject parcel, by operation of law, ceased to be a highway over which the public had an easement in 1917, six years after it was laid out as such.

DEEDS FROM SULLIVAN TO LAND ON WEST SIDE OF UWANTA PLACE

By deed dated May 25, 1920, recorded in Liber 599 cp. 459, Amos G. Sullivan conveyed

title to a portion of his land to Clayton A. Peters. The conveyed property consisted of Lots 6 — 12 in Block A on Map No. 3 of the Bethpage Park Property. The parcel was described as beginning at a point at the intersection of the southerly side of Clinton Street and the westerly side of Uwanta Place (subsequently known a Taylor Road, the subject parcel) containing approximately 18, 660 square feet. The deed also conveyed “. . . all the right, title and interest of the party of the first part if any of in and to the land lying in Clinton Street and Uwanta Place, in front of and adjoining said premises to the middle lines thereof respectively.”

On December 30, 1922, Sullivan executed another deed to Clayton A. Peters. The deed, recorded in the Nassau County Clerk’s Office in Deed Liber 2059, cp. 159, conveyed Lots Nos. 13 and 14 in Block A of the same filed map. The parcel is described as beginning at a point on the westerly side of Uwanta Place, distant 108 and 30/100 feet south of the intersection of the westerly side of Uwanta Place and the southerly side of Clinton Street. This added approximately 5,790 square feet to the south of and abutting the land previously conveyed to Peters. This deed similarly conveyed the “right, title and interest if any to the land fronting on Uwanta Place to the center line.”

DEEDS FROM SULLIVAN TO LAND ON THE EAST SIDE OF UWANTA PLACE

Sullivan executed a deed dated July 25, 1922 to Frederick W. Herzog. Recorded in Liber 729 cp. 428, it conveyed title to Lots 39, 40, 47 and 48 in Block B of Map No. 3 of the Bethpage Park Property. There is no further description of the property. The deed also includes “. . . the appurtenances and all the estate and rights of the party of the first part in and to said premises.”

On January 11, 1923 Sullivan conveyed title to additional land to Herzog. The parcel consisted of Lots 45 and 46 in Block B on the Map No. 3 of the Bethpage Park Property. Again, there is no description, but the conveyance is stated to include “. . . the appurtenances and all the estate and rights of the party of the first part in and to said premises.”

As a result of mesne conveyances thereafter, title to the above-designated lots are now in C. Lance Margolin, Frank L. and Jeanne Marie Gatto, Martin Bowe and Thomas F. Gamblin. In reality, all of the foregoing parties are united in interest against the Village of Farmingdale. The interest of the Village arises from a quitclaim deed dated July 12, 1948, recorded in Deed Liber 3628 cp. 378 in the Nassau County Clerk’s Office. Norman F. Sullivan and George P. Sullivan executed the document which contained a metes and bounds description of Taylor Road, the subject premises.

The individual parties claim that the conveyances of 1920, 1922 and 1923 conveyed to the grantees in those deeds title to the midline of Uwanta Place (Taylor Road) and that there was no title to the bed of that roadway left to convey when the Village received a quitclaim deed from descendants of Amos. G. Sullivan. The Village contends that when the mapped street ceased to be a highway in 1917, there was no street abutting the conveyed Lots, and therefore no

title to the midline of the mapped street was included in those conveyances.

DISCUSSION

The issue to be determined by the Court is whether the Sullivan deeds in the 1920's conveyed title to the midline of the mapped street, or whether he retained fee title to the bed of the street, thus giving effect to the 1948 quitclaim deed. For the reasons hereafter enumerated, the Court determines that title to the midline of the mapped street was included in the earlier conveyances, and that the 1948 deed to the Village of Farmingdale was of no legal consequence.

The filing of Map No. 3 containing a proposed street created an easement in favor of the public for use of that parcel as a highway. When it was never developed or used as such for a period of six years, its status as a highway ceased to exist. Fee title to the property never left Sullivan, it was simply subject to an easement for a period of six years from the filing of the map. After six years, the easement was extinguished by operation of Highway Law § 205. Sullivan now had unencumbered use of the land depicted as a street on the filed map.

With respect to the conveyances to land on the west side of Uwanta Place, there can be no doubt but that Sullivan included title to the midline of the bed of the road. He owned the land in the mapped street in fee simple, unencumbered by any easement, and expressly included the land to the midline of Uwanta Place in the deeds.

While he did not use the same "street" language in the deeds to land on the east side of the mapped street, his conveyance by designated lots on a filed map which abutted the street, without reservation, had the same effect. Bissel v. The New York Central Railroad Company, 23 N.Y. 61, 1861 WL 5557 (1861). The fact that the land designated as streets on a filed map were never developed as such, and never accepted by the municipality, either formally or by conduct, does not alter the fact that title to the abutting numbered parcels on the filed map included title to the midline of the mapped street. Goulding v. Tonawanda Tp., 282 A.D.2d 321,322, 122 N.Y.S.2d 740, 742 (4th Dept. 1953). *See also*, JAMES M. PEDOWITZ, REAL ESTATE TITLES, 2d Ed., 19-11, citing Fiebelkorn v. Rogacki, 280 A.D.2d 20, 111 N.Y.S.2d 898 (4th Dept. 1952).

Annexed to the moving papers as Exhs. C-1 and C-2 are reports of TPS Abstract Corporation and Advantage Title respectively. The former concludes that the deeds from Sullivan in 1920, 1922 and 1923 conveyed fee title to the mid-point of the mapped street to the grantees. Further, the quitclaim deed to the Village by the presumed heirs of Sullivan was of no consequence, since there was no retained interest to convey. The latter report certifies title in the individual parties to the action, who acquired title through the original grantees of Sullivan.

The Village has produced no evidence to contradict these conclusions. The sole basis for their position appears to be that when the existence of an easement in favor of the public over the bed of Uwanta Place (a/k/a Taylor Road) expired by operation of law in 1917, there

was no longer a "street" abutting the conveyed lots, and therefore title to the mid-line did not follow title to the lots. This position is at odds with both the import of the filing of a subdivision map with mapped streets, as Sullivan did, and the established rule of law that title to a numbered lot on a filed map, without specific reservation, includes all interest of the grantor, including title to the mid-line of an abutting mapped street.

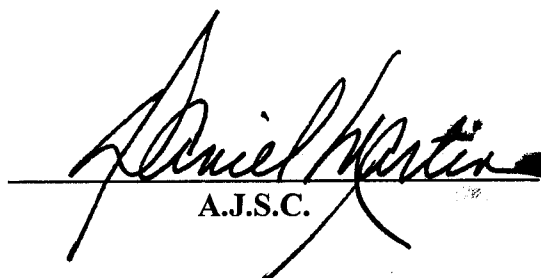
CONCLUSION

The motion by Plaintiff C. Lance Margolin, and joined in by Defendants Frank L. Gatto and Jeanne Marie Gatto, and Fourth-Party Defendants Martin J. Bowe, Jr. and Thomas F. Gamblin, is granted. Title to the mid-point of those portions of Taylor Road which abut their respective deeded parcels are owned by them in fee simple absolute.

The cross-motion by the Village of Farmingdale, by which they seek a determination that title to Taylor Road is vested in them by virtue of a quitclaim deed in 1948 is in all respects denied.

Submit judgment on notice.

So Ordered.


A.J.S.C.

Dated: June 12, 2008

ENTERED
JUN 19 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE