

<b>Town of Clifton Park v Boni Bldrs., Inc.</b>
2016 NY Slip Op 32826(U)
June 23, 2016
Supreme Court, Saratoga County
Docket Number: 20133306
Judge: Richard E. Sise
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

PRESENT: HON. RICHARD E. SISE  
Acting Justice  
STATE OF NEW YORK  
SUPREME COURT COUNTY OF SARATOGA

TOWN OF CLIFTON PARK,

Plaintiff,

**DECLARATORY  
JUDGMENT**  
Index No.: 20133306  
RJI No.:45-1-2013-1904

-against-

BONI BUILDERS, INC., LARRY BONI, individually and  
d/b/a BONI ENTERPRISES, LLC; LAKSHMI MOHAN,  
and JAMES P. CRESCENZI,  
Defendants.

(Supreme Court, Saratoga County, Motion Term)

APPEARANCES: Thomas R. McCarthy, Esq.  
Town Attorney  
*Attorney for Plaintiff*  
One Town Hall Plaza  
Clifton Park, New York 12065

Salazar and Erikson, LLP  
(By: Dana L. Salazar, Esq.)  
*Attorneys for Boni Builders, Larry Boni and Boni Enterprises, LLC*  
573 Columbia Turnpike, Suite 2  
East Greenbush, New York 12061

Ducharme, Clark & Sovern, LLP  
(By: John B. DuCharme, Esq.)  
*Attorneys for Lakshmi Mohan and James P. Crescenzi*  
10 Maxwell Drive - Suite 205  
Clifton Park, New York 12065

2016 JUN 28 PM 1:50  
SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

FILED

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

Sise, J.

On October 30, 1968 Robert Van Patten Sr. filed a subdivision map in the Saratoga County Clerk's Office. The map, entitled "Section-12 Country Knolls", depicts one section of the Country Knolls subdivision located in the Town of Clifton Park. Included on the map are lots which now bear the addresses 159 Wood Dale Drive, currently owned by defendant Lakshmi Mohan, and 161 Wood Dale Drive, currently owned by defendant James P. Crescenzi.<sup>1</sup> A paper street runs between the two lots from Wood Dale Drive to, what is shown on the map as, the undeveloped lands of "Chojnacki" on the easterly edge of the two lots. In 2005 Boni Enterprises, LLC (Boni) acquired title to 28.6 acres of undeveloped land from Ridiral Development Corporation. The acreage formed part of the lands of Chojnacki mentioned above and abuts 159 Wood Dale Drive, 161 Wood Dale Drive and the paper street on the eastern boundaries of those properties. Between March 2007 and August 2013 Boni made three separate applications to the Town Board for developing the 28.6 acres. Two of those applications were made in conjunction with other land owners and the third was for development of the Boni parcel alone. The proposals raised issues regarding the ownership of, and easements over, the paper street as well as Boni's right to use the way to access its undeveloped acreage which, it claims, is otherwise landlocked.

In an effort to resolve the competing interest, the Town commenced this declaratory

---

<sup>1</sup>159 Wood Dale Drive is shown on the map as lot 159 but 161 Wood Dale Drive does not bear any lot designation. The omission is likely an oversight as the lot sits between lots 159 and 163 and all other lots on the map show a sequential lot number.

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

judgment action seeking declarations regarding ownership of the paper street; whether the paper street was dedicated to, and accepted by, the Town; whether the offer to dedicate was withdrawn; and a determination of the prescriptive rights, if any, of the various defendants with respect to the paper street. In their answer the Boni defendants assert a counter-claim and cross-claim for declaratory relief with respect to the issue of fee ownership of the paper street; the prescriptive rights of Mohan and Crescenzi; whether Highway Law §205 (1) applies on the facts of the case; and the rights of Boni to access its property via the paper street. In addition, Mohan and Crescenzi have asserted like counter-claims in which they separately seek declarations that they own the land adjacent to their lots to the center line of the paper street pursuant to Highway Law §205 (1), or pursuant to the law of adverse possession. Mohan and Crescenzi have also asserted cross-claims seeking a declaration that Boni is not entitled to an easement by necessity over the paper street. All parties have now moved for summary judgment.

Highways located in a town may be obtained by either of two methods: dedication or use (*Matter of Hillelson v Grover*, 105 AD2d 484, 485[3d Dept 1984]; Highway Law § 171).

Dedication is essentially the offer of a gift by a private owner to the public and becomes effective when the gift is accepted by the municipality (*Romanoff v Village of Scarsdale*, 50 AD3d 763, 764[3d Dept 2008] [internal quotation marks and citations omitted]). Here, the filing of the subdivision map with the County Clerk showing the paper street constituted an offer of dedication (*see Soldatenko v Village of Scarsdale*, 138 AD3d 975, 976 [2d Dept 2016]). After the map was filed a deed was prepared transferring title to four roads in the subdivision to the Town. In September 1969 the Town passed a resolution accepting the offer of dedication and took title

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

to the four roads which included Wood Dale Drive. No mention is made in the deed of paper streets and the parties all agree that the paper street at issue was not transferred to the Town by the August 25, 1969 deed. Moreover, the Town asserts, without evidentiary contradiction that it never took action to accept the offer of dedication either by resolution or by using, improving or maintaining the paper street.

The question then arises as to what rights, if any, the defendants have with respect to the paper street. Mohan and Crescenzi argue that they are the lawful owners of the paper street to their respective center lines. The initial argument is based on a claim that the developer, Van Patten, in deeding lots 159 and 161, conveyed property to the center line of the paper street and that title passed to the owners of those lots after the paper street ceased being a highway by operation of law. Highway Law § 205 (1) provides that “[e]very 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”. Mohan and Crescenzi maintain that because the Town never opened or worked the paper street it ceased to be a highway six years after dedication. However, Highway Law § 205 (1) is not involved here because land dedicated for a street does not become a highway until dedication is accepted (*Bridges v Wyckoff*, 67 N Y 130; *In re Brigham St.*, 136 Misc. 808, [Sup Ct, Kings County 1930], *affd* 246 App Div 819, [1936], *affd* 273 NY 508, [1937]) and as noted, the Town never accepted the offer of dedication. Moreover, the application of Highway Law § 205 (1) is not necessary to establish fee ownership in Mohan and Crescenzi. If Mohan and Crescenzi are correct that their respective deeds convey to the center line of the paper street, they are the fee owners.

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

When an owner of property sells a lot with reference to a map, and the map shows that the lot abuts upon a street, or the descriptive lines run to or along such street, the conveyance presumptively conveys fee ownership to the center of the street on which the lot abuts (*Matter of City of New York*, 209 NY 344, 347 [1913]; *Lehrman v Lake Katonah Club, Inc.*, 18 AD3d 514 [2d Dept 2005]). “Since the grantor has chosen to divest himself of all of his interest in the adjoining land, absent a declaration in the deed, he cannot be deemed to have intended to retain title in the street” (*City of Albany v State of New York*, 28 NY2d 352, 356 [1971]). The fact that the unimproved roadway is a paper road does not change this analysis (*Lamm v Mauser*, 132 AD3d 1120 [3d Dept 2015]). “This presumption, however, is not inflexible and must yield to language which shows an intent on the part of the grantor to exclude from his [or her] conveyance title to the bed of an abutting street, and to limit such title to the exterior lines thereof” (*Town of Lake George v Landry*, 96 AD3d 1220, 1222 [3d Dept 2012] [internal quotation marks and citation omitted]).

The deed from Van Patten to Mohan’s predecessor refers only to the lot number shown on the subdivision map and does not contain a metes and bounds description. Moreover, the outline of the lot as shown on the map runs along the edge of the paper street. Those two factors are consistent with the presumption that the developer intended to convey to the center line of the road. Furthermore, there is no indication anywhere in the deed that the grantor did not intend to convey to the center line of the paper street. The deed from Van Patten to Crescenzi’s predecessor refers to the parcel as being the unnumbered lot next to lot 163 on the subdivision map but also contains a metes and bounds description. The description is consistent with the

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

outline of the lot on the subdivision map which, as with the conveyance to Mohan's predecessor, runs along the edge of the paper street. The deed here is also devoid of any indication that the grantor did not intend to convey to the center line.

Such a transfer from a developer to the purchaser of a lot is not inconsistent with the offer of dedication since in the absence of a statute expressly providing for the acquisition of the fee, or of a deed from the owner expressly conveying the fee, dedication provides only an easement with title remaining in the landowner (*Bashaw v Clark*, 267 AD2d 681 [3d Dept 1999], citations omitted). Moreover, the transfer of ownership does not act to revoke the offer because "[a] municipality may accept an offer of dedication at any time prior to a valid revocation by all parties who have a legal interest in the land subject to such offer, including subdivision homeowners who purchase their lots with reference to a subdivision map noting the offer of dedication" (*Underhill Ave. Corp. v Village of Croton-on-Hudson*, 82 AD3d 963, 965 [2d Dept 2011]).

Boni argues that Van Patten retained ownership of the paper street and that by virtue of an October 22, 2013 deed from the estate of Robert Van Patten, it now holds the title in fee. In support of the assertion that Van Patten retained ownership of the paper street Boni relies on deposition testimony by two individuals involved in the planning and construction of the Country Knolls subdivision. Jonh G. Gay is a land surveyor who worked with Van Patten on the layout of the development. Bruce Premo was a construction foreman in charge of the construction of Wood Dale Drive, as well as, for Country Club Acres, another development owned by Van Patten. According to Gay, the paper street was required by the Town in order to allow for the

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

of future development of land to the east. That testimony, however, is not necessarily inconsistent with a conveyance of the paper street to the adjoining lot owners. The filing of the subdivision map constituted an offer of dedication and the Town was free to act on the offer even if the paper street was not owned by Van Patten. Premo's testimony is apparently to the same effect: that the paper street was to be used for future development but Premo maintained that it was to be part of a future development plan by the developer. The latter point is questionable since the paper street connects Wood Dale Drive with the lands to the east of the development and that parcel was not owned by Van Patten. Moreover, it stands in contrast to proof that Van Patten did not install utilities on the paper street at issue but did on another nearby paper street that connected Wood Dale Drive to another parcel he owned.

Boni, further argues that for many years the Town claimed ownership of the paper street and acted as if it was the fee owner. The argument is based in part on the position taken by the Town in a 2004 tax certiorari proceeding involving the Boni parcel, then owned by Boni's predecessor in title. In that proceeding the Town asserted that the paper street was a street and therefore, the parcel was not landlocked as claimed by the owner. Boni also points to assertions made by two Town officials that the paper street was a street. The argument, however, is misplaced as only the Town Board has the authority to accept the dedication of an interest in property for highway purposes (*Matter of Hillelson v Grover*, 105 AD2d 484 [3d Dept 1984]; Highway Law § 171) and the parties agree that no such action has been taken. As there is no proof sufficient to overcome the presumption that the conveyances to Mohan's and Crescenzi's predecessors were to the center line of the paper street, title in fee is with Mohan and Crescenzi.

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*

Mohan and Crescenzi have asked for a determination of whether Boni LLC has an easement by necessity over the paper street although the Boni defendants have not claimed such right. An easement by necessity must be established by clear and convincing proof “that there was a unity and subsequent separation of title, and that at the time of severance an easement over [the servient estate’s] property was absolutely necessary” (*Simone v Heidelberg*, 9 NY3d 177, 182 [2007] quoting *Stock v Ostrander*, 233 AD2d 816, 817-818 [3d Dept 1996]). The subdivision map filed by Van Patten in 1968 shows that at that time the Boni parcel was owned by Chojnacki. In 1988 Chojnacki conveyed the parcel to Ridiral Development Corporation and in 2005 the parcel was conveyed to Boni. However, the proof submitted on the motion does not resolve the question of whether there was once unity of title with the land that is now section 12 of the Country Knolls development. Consequently, summary judgment with respect to the issue of whether Boni has an easement by necessity is not appropriate.

Accordingly, it is

DECLARED AND ADJUDGED, that Lakshmi Mohan, as the title owner of 159 Wood Dale Drive, Town of Clifton Park, Saratoga County, is the fee owner of that portion of the paper street adjoining her property on the southerly boundary from the southerly line of Lot 159, as shown on a map entitled “Section-12 Country Knolls”, filed in the Saratoga County Clerk’s Office on October 30, 1968, to the center line of the paper street as shown on the same map, along the length of the paper street, from the easterly edge of Wood Dale Drive, east to lands now or formerly of Boni Enterprises, LLC and it is further

DECLARED AND ADJUDGED, that James P. Crescenzi, as the title owner of

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJI No.: 45-1-2013-1904*


161 Wood Dale Drive, Town of Clifton Park, Saratoga County, is the fee owner of that portion of the paper street adjoining his property on the northerly boundary from the northerly line of Lot 161, as shown on a map entitled "Section-12 Country Knolls", filed in the Saratoga County Clerk's Office on October 30, 1968, to the center line of the paper street as shown on the same map, along the length of the paper street, from the easterly edge of Wood Dale Drive, east to lands now or formerly of Boni Enterprises, LLC and it is further

DECLARED AND ADJUDGED, that the Town of Clifton Park has not accepted or rejected an offer of an easement over the paper street located between Lot 159 and Lot 161 as shown on a map entitled "Section-12 Country Knolls", filed in the Saratoga County Clerk's Office on October 30, 1968 and the offer has not been revoked and it is further

DECLARED AND ADJUDGED, that Boni Builders, Inc., Larry Boni, individually and d/b/a Boni Enterprises, LLC do not have, together or separately, any ownership interest in the paper street located between Lot 159 and Lot 161 as shown on a map entitled "Section-12 Country Knolls", filed in the Saratoga County Clerk's Office on October 30, 1968.

This constitutes the judgment of the Court. The original judgement is returned to the attorney for plaintiff. A copy of the judgment and the supporting papers have been delivered to the County Clerk for placement in the file.

ENTER.  
Dated: Albany, New York  
June 23, 2016

  
Richard E. Sise  
Acting Supreme Court Justice

2016 JUN 28 PM 1:51  
SARATOGA COUNTY  
CLERK'S OFFICE  
BALLISTON SPA, NY

ENTERED

*Town of Clifton Park v. Boni Builders, Inc., et al*  
*Index No: 2013-3306; RJJ No.: 45-1-2013-1904*

**Papers Considered:**

1. Notice of Motion dated January 28, 2016;
2. Affidavit of Thomas R. McCarthy dated January 28, 2016;
3. Exhibits 1-67;
4. Affirmation of Thomas R. McCarthy dated January 28, 2016;
5. Summons and Verified Complaint dated October 9, 2013;
6. Memorandum of Law dated January 28, 2016;
7. Notice of Motion dated February 29, 2016;
8. Verified Answer with Counter-Claim and Cross-Claim dated December 6, 2013;
9. Memorandum of Law dated February 29, 2016;
10. Notice of Cross-Motion dated February 29, 2016;
11. Affirmation of John B. DuCharme dated February 29, 2016;
12. Exhibits A-D;
13. Verified Answer, Counter-Claims and Cross-Claim dated October 24, 2013;
14. Memorandum of Law dated February 29, 2016;
15. Reply Memorandum of Law dated March 15, 2016.