Geoca Homes, LLC v Green
2021 NY Slip Op 31130(U)
March 24, 2021
Supreme Court, Wayne County
Docket Number: 86079
Judge: John B. Nesbitt
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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

GEOCA HOMES, LLC

Plaintiff

-vs-

Index No.: 86079

ROBERT JOHN GREEN,
ASHLEY M. GREEN

Defendants.

APPEARANCES: Christopher H. Corcoran, Esq.
Attorney for Plaintiff

Robert John Green and Ashley M. Green
Defendants Pro Se

MEMORANDUM-DECISION

John B. Nesbitt, J.

Is the plaintiff entitled to summary judgment reforming a deed to defendants excising 1.3 acres from a 3.643 acre parcel it conveyed to defendants in June of 2019? The operative facts are uncomplicated and undisputed. The 3.643 acre parcel situates on the northwest corner of the intersection of Canandaigua Road and Gananda Parkway in the Towns of Walworth and Macedon. Canandaigua Road runs generally north and south, and Gananda Parkway east and west. So far as the present record reveals, the 3.643 acre parcel finds provenance in the deed from Gananda Partnership, LCC, to Geoca Homes, LLC, dated September 23, 2011, conveying 26 parcels. The 3.643 acre parcel at issue in this action is denominated Parcel 10 and 11 in the 2011 deed to Geoca Homes, and is described by courses and distances as set out on a survey map dated October 26, 1987, prepared by Donald B. Schwarz, Professional Land Surveyor, as referenced in the deed. The deed recites that the property being conveyed is part of Lot 110 in the Town of Macedon and part of Lot 65 in the Town of Macedon.

The fact that the 3.643 acre parcel straddles or overlaps the line between the Towns of Macedon and Walworth informs the present dispute. The Town of Walworth borders Macedon on

the north. The town line cuts roughly north of and parallel to Gananda Parkway, slicing the 3.643 acre parcel, resulting in 1.3 acres of the 3.643 acre parcel being located in the Town of Macedon, abutting Canandaigua Road on the east and Gananda Parkway on the south. Because the Towns of Macedon and Walworth are two separate real estate taxing authorities, the 3.643 acre parcel was mapped by the County of Wayne as two separate tax parcels, one lying in the Town of Macedon and the other in the Town of Walworth. That lying in the Town of Macedon was denominated by a tax account number with the last six digits being 303895, and that lying in the Town of Walworth with the digits of 92400. Accordingly, separate tax bills were issued annually by the applicable taxing authorities for the two tax parcels, comprising the 3.643 acre parcel conveyed to Geoca Homes by Gananda Partnership in 2011.

As will become relevant later on, it is significant that the taxing authorities assess the value of the tax account parcel lying in the Town of Macedon at $40,700, and the value of the tax account parcel lying in the Town of Walworth at $4,000. Given that the entire 3.643 acre parcel is unimproved, and the Macedon tax parcel is significantly smaller than the Walworth parcel, the Court inquired at oral argument why the ten times difference. Counsel for the plaintiff ventured that it may be due to the fact that the Macedon tax parcel is a corner lot; hence more desirable for development purposes. Also, from the Court's review of the maps submitted, the Walworth tax parcel is encumbered by easements that could impair development, as well as a creek running through a significant part of the property, suggesting some impediments to development. Nevertheless, neither party challenges the accuracy of the valuations assigned for taxing purposes for purposes of the present motion and, indeed, plaintiff relies upon the same for purposes of its unjust enrichment claim as will be discussed later.

Such was the state of affairs and backdrop when the parties to this litigation began their transaction. Apparently, at some point Geoca Homes engaged Howard Hanna Real Estate Services, a real estate brokerage firm, to effect a sale of property. This resulted in a written pre-printed purchase and sale contract in May of 2019 between Geoca Homes as seller and Robert and Ashley Green as purchasers. To the extent relevant to the instant action, that contract provided that defendants agreed to purchase certain unimproved land for $4,800. With the penned insertions underscored in the contract, the first paragraph of section 1 reads:

[* 3]

> **1. Property Description.** Property known as *3297 Canandaigua Rd.* in the County of *Wayne* Town of *Macedon* State of New York Zip 14502 also known as Tax No. *5444400-062-113-0006-309-924-000* including all buildings and any other improvements and all rights which the Seller has in or with the property. Approximate Lot Size: *2.24 acres*. Description: (include specific inclusions and exclusions) *raw land*.

The contract describes the property to be conveyed as the 2.24 acre tax parcel 92400 with an address of 3297 Canandaigua Road in the Town of Macedon. This information derives directly and accurately from the tax map and records of the Town of Walworth, not the Town of Macedon. Given that the tax parcel number, street address, and acreage indicate Walworth property, one may conclude that the reference to the Town of Macedon in the contract was inadvertent. So too, the portion of the 3.643 acre parcel lying in the Town of Macedon is denominated as tax parcel 303895, consisting of 1.3 acres with a Gananda Parkway address at the time of the contract and conveyance to the Greens, clearly distinct from the Walworth tax parcel. Thus, any level of familiarity with the tax maps and records at the time the parties entered into their purchase contract would indicate that the intent was to convey the Walworth tax parcel and not the Macedon tax parcel. Further buttressing this conclusion is the fact that the assessed value of the Walworth tax parcel approximates the contract purchase price, while that of the Macedon tax parcel is ten times more.

Although not always the best practice, real property can be conveyed by tax map description and reference. "The well-established standard by which the adequacy of a tax map description is measured is whether, notwithstanding any errors or omissions, the property at issue 'can be identified and located with reasonable certainty'"(*McGuire v Mazzella*, 63 AD3d 421 [1st Dep't 2009, *quoting Riggs v Kirschner*, 187 AD2d 759, 760 [1992]); *see also* 85 C.J.S. Taxation §1553 (2021). Based on the deeds and maps submitted, a deed description for the Walworth tax parcel intended to be conveyed to the Greens could have be drawn with "reasonable certainty" at the time of the conveyance at issue. Indeed, the property boundaries had already been surveyed except for the location of the Walworth-Macedon town line, which can be identified with "reasonable certainty."

Notwithstanding the contract terms, the deed delivered to the Greens at the time of closing conveyed the entire 3.643 acre parcel, not simply the 2.24 acre parcel mapped as Walworth tax

[* 4]

parcel 92400. The description used in the deed to the Greens was based on the description contained in the deed to Geoca Homes from Gananda Partnership in 2011, which encompassed both the land constituting the Macedon tax account parcel as well as the Walworth tax account parcel. This error resulted in the Greens acquiring both tax account parcels, when the contract called for transfer only of the Walworth parcel.

The error was subsequently discovered by Geoca Homes, which instituted this action in equity for reformation of the deed or, alternatively, for relief compelling the Greens to reconvey the Macedon tax account parcel to Geoca. The Greens oppose such relief, producing a survey they had prepared after closing, accurately reflecting conveyance to them of the land comprising both tax account parcels. The Greens note that Geoca Homes insisted in the contract that no survey would be provided, and as a result, Geoca Homes cannot now complain that the deed erroneously included the Macedon tax parcel when a survey would have made that obvious.

The Restatement of Law-Restitution (3rd ed) provides an overview of the legal issue this action presents:

> **§12 Mistake in Expression.**
> If an instrument is intended to transfer an interest in property or to embody an obligation pursuant to valid agreement; and
>
> (a) by mistake as to its contents or legal effect, the instrument fails to reflect the terms of the agreement; and
>
> (b) performance or enforcement on the terms of the instrument or would result in the unjust enrichment of one party at the expense of another; then the person disadvantaged by the mistake has a claim in restitution as necessary to prevent the unjust enrichment of the other.

The commentary following this statement reads in pertinent part:

> The mistaken transfer that results from a mistake in expression may be either completed or prospective. An explanation in terms of unjust enrichment is most directly relevant when a mistaken transfer has been completed - as when a claimant seeks reformation, cancellation, or constructive trust to remedy the consequences of an erroneous deed
>
> ***
>
> This section states a principle of liability without prescribing a remedy. For obvious reasons, the most effective remedy for a claim in restitution arising out of a mistake in expression is often reformation of an instrument.
>
> ***

The rule stated in this section overlaps with the doctrine of reformation in the law of contracts. ... The rationale in contract is that reformation gives effect to the real agreement of the parties; the rationale in restitution is that reformation avoids the unjust enrichment of one party at the expense of the other.

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Where property has already been transferred, the intuitive applicability of restitution and contract principles may diverge. Supposing Blackacre has been conveyed under a mistaken deed description, the error might result in the conveyance of either more or less land than the parties intended. Either way, the party adversely affected might seek to reform the deed to conform to the agreement. In the case of underperformance, the immediate explanation of the grantee's claim is in terms of contract; while in the case of overperformance, it is natural for the mistaken grantor to focus on the grantee's unjust enrichment.

Illustrations:

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2. A sells Blackacre to B. By mistake in description, the deed delivered by A omits a portion of Blackacre. B is entitled to reformation of the deed to conform to the parties' agreement. The claim is most easily described in terms of contract law, since reformation yields the specific enforcement of A's contractual obligation.

3. Same facts as Illustration 2, except that the deed delivered by A conveys Blackacre plus an adjoining tract. Subject to the rights of third parties, A is entitled to reformation of the deed to conform to the parties' agreement. A's claim is most easily described in terms of restitution, applying the rule of this section. It is easier to demonstrate that B is unjustly enriched by the error than to identify a contractual obligation of B's part to reconvey property transferred by mistake.

New York follows the Restatement rule. 11 Warren's Weed New York Real Property Law § 117.27 Reforming Deeds (2020 Supp) provides in pertinent part:

[1] Correcting Executed Agreements
The equitable relief of reformation of an instrument is not limited to executory agreements, and may be granted to correct executed agreements, such as deeds, where the proper grounds for reformation exist. To reform a deed, there must be a mutual mistake of the parties, or a unilateral mistake coupled with the fraud of the other party...

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[2] Reforming Description
The description in a deed may be reformed by a court of equity where, because of an error contained in the writing, the deed does not convey the property which the parties intended to be conveyed ... The fact that the grantor prepared or directed the preparation of the deed does not bar him or her from maintaining an action to reform the deed where it is later discovered that there is a mistake in the description of the property conveyed.

The leading New York case is *Harris v Uhlendorf*, 24 NY2d 463 (1969), where, in the context of a court-ordered and conducted auction sale, the plaintiff took a deed in which the description included lands both north and south of a boulevard, while the property intended for sale as set out in the notice of sale and identified by tax roll number included only lands north of the boulevard. The Court of Appeals directed reformation of the deed so to convey only the northerly lands, holding:

> The factual circumstances presented on this record indicate that the defendants Uhlendorf and Zausmer were properly granted judgment on their counterclaim for reformation of the deed. "Where there is no mistake about the agreement and the only mistake alleged is the reduction of that agreement to writing, such mistake of the scrivener, or of either party, no matter how it occurred may be corrected." (*Born v Schrenkeisen*, 110 NY 55,59; see, also, *Hart v Blabey*, 287 NY 257; *Nash v Kornbloom*, 12 NY2d 42). The principle thus formulated is applicable where the parties have a real and existing agreement on particular terms and subsequently find themselves signatories to a writing which does not accurately reflect that agreement, as opposed to a situation where there is a mistake as to the agreement itself on the part of one of the parties (*Harris*, supra at 467).

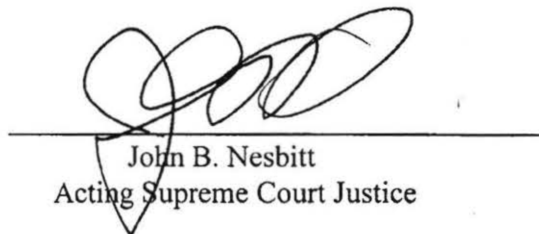
Harris v Uhlendorf provided the dispositive precedent in *Crockford v Viniski*, 74 AD2d 719 (4th Dep't 1980), a case originating in Wayne County Supreme Court involving property in the Village of Sodus Point. Plaintiff Crockford owned five contiguous parcels on the north side of Greig Street bordering Sodus Bay. The westerly three parcels hosted a masonry building operated as a bar/restaurant then known as the Dolphin. The fourth contiguous parcel to the east hosted a frame structure called the Teen Center. The fifth contiguous parcel to the east of the Teen Center was a small vacant lot. Defendant Viniski entered into a written contract with Crockford to purchase the "Dolphin Restaurant being a cement block building and lot known as 8516 Greig Street, Sodus Point." Crockford delivered to Viniski a deed conveying all five parcels, not just the three upon which the Dolphin bar/restaurant was constructed. When this was discovered, Crockford brought action to reform the deed, as well as the purchase money mortgage delivered at closing. The Appellate Division held that the language of the contract "clearly indicate that the agreement between the parties was for the purchase of the restaurant property only," and that "the descriptions drafted were simply mistakes which did not carry out the agreement of the parties, which should have been and were corrected by the reformation of the two instruments (*id.* at 720, citing *Harris v*

Uhlendorf, 24 NY2d 463 [1969]).

In this case, the Court determines, based upon the undisputed material facts, that the deed to defendants must be reformed to reflect conveyance only of Walworth tax parcel no. 92400. As in *Daly v Messina*, 228 AD2d 542 (2nd Dep't 1996), [t]he record demonstrates by clear, positive and convincing evidence that this was the intent of the grantor and the grantees and that the mistake was in the reduction of the deed to writing, a mistake of the scrivener" (citations and internal quotation marks omitted); see also, *Vasilakos v Gouvis*, 296 AD2d 668 (3rd Dep't 2002); *Beebe v LaPierre*, 114 AD2d 668 (3rd Dep't 1985).

Accordingly, so much of the motion of plaintiff seeking summary judgment upon its complaint is granted upon its first three causes of action, and judgment directed reforming the deed issued and delivered by plaintiff to defendants so as to convey only the Walworth tax parcel no. 92400, without costs and disbursements.

Dated: March 24, 2021
Lyons, New York



John B. Nesbitt
Acting Supreme Court Justice