

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 252-7-17 Wmcv

Massucco vs. Kolodziej et al

### Decision on Motions for Summary Judgment (Motions 4 and 5)

On December 3, 2020, the plaintiff, Sarah Jane Massucco, moved for summary judgment as to her claim, in Count IV of her complaint, for slander of title. On December 31, 2020, the defendants filed their opposition to this motion and also moved for summary judgment in their favor as to the plaintiff's claims for breach of warranty, and for adverse possession, in Counts II and III of her complaint. All filings related to these motions were complete on January 7, 2021.

#### Procedural History

The plaintiff filed her complaint on July 13, 2017, alleging that Defendants Wayne Adams, Jennifer Cobb, Vicki Adams, and Randy Adams (the Adams Defendants) had purported to transfer lands that were actually owned by the plaintiff to Defendants James and Barbara Kolodziej on October 18, 2011. She alleged, in substance, that in 1997 her former husband and predecessor in title, George Leisey, had purchased land located at 170 Lower Bartonville Road, Bellows Falls, Vermont, from the Adams Defendants' parents, Ralph and Nancy Adams, and that the warranty deed under which title was transferred to him described the conveyed property erroneously, based on mutual mistake of the parties at that time. She alleged that the land that the Adams Defendants purported to transfer to the Kolodziejs in 2011, after their parents' deaths, had already been conveyed to Mr. Leisey in 1997. She brought claims against all of the defendants for reformation of her deed (Count I), breach of warranty (Count II), adverse possession (Count III), and slander of title (Count IV).

On July 13, 2017, just before the plaintiff filed her complaint, the Kolodziejs filed their answer, denying the plaintiff's claims, and then in June 2018, the Adams Defendants also filed their answer, similarly denying the plaintiff's claims.

In February 2020, the plaintiff moved for summary judgment on her claim for reformation of her deed, and the defendant opposed that motion. On June 8, 2020, Judge Kainen granted that motion, making extensive findings of fact, and concluding that:

[T]he Adamses and Leisey intended to transfer to Leisey the entirety of parcel B as identified in the plans attached to the Adams' zoning permit application to the town of Rockingham. Pl. Ex. 4. Specifically, the plans show the boundary between parcels A and B to be 438 feet in length, along the line of the drainage ditch, and the eastern boundary of parcel B to be 296 feet. There is no evidence that the Adamses and Leisey intended to limit the conveyance to the plot described in the deed....

[T]he evidence shows that the Adamses applied to subdivide their property into two lots, and that they intended to sell both lots without retaining any land for themselves. There is no evidence that they had a reason to retain the disputed land, sought another subdivision, paid taxes on the disputed land, claimed the disputed land as their own, or used the disputed land after the conveyance to Leisey. Neither Ralph nor Nancy left the disputed land to their children. This is sufficient circumstantial evidence as to both Ralph and Nancy's intentions.

Summary Judgment Order, 6/8/2020, at 4-5. The court concluded that it was proper to rely on evidence outside the deed to determine the parties' true intent, and to decide the plaintiff's petition for reformation. The court also held that statements made by Ralph Adams to Leisey were admissible to show notice to Leisey as to the specific location and boundaries of the land he was buying, and also under other hearsay rule exceptions. *Id.* at 5-6.

The court also concluded that the Kolodziejs were not bona fide purchasers for value, because they paid nothing for the disputed property, and because they were in fact on notice of the potential problems with title. *Id.* at 6-7. Specifically, the court concluded that:

[T]he [Kolodziejs] obtained a deed to the disputed land with awareness that the Adams heirs may not be capable of conveying title to the disputed land because their ownership of the disputed land was questionable, or at the very least they are charged with that knowledge. Such a purchaser takes the property with all its defects and subject to a claim by Massucco that the land is hers.

*Id.* at 7.

The court's decision on these issues is the law of the case. As is the general rule of practice, the court declines to reopen what has already been decided. *Kneebinding Inc., v. Howell*, 2018 VT 101, ¶ 30, 208 Vt. 578.

### Undisputed Material Facts

The court accepts and finds the facts as stated in the court's earlier decision on partial summary judgment as to reformation of the deed. In addition, the filings connected to these new motions for partial summary judgment, by the plaintiff on Count IV, for slander of title, and by the defendant on all of the plaintiff's remaining claims, demonstrate the following additional undisputed material facts.

The Adams defendants did in fact sign a warranty deed purporting to transfer the disputed land to the Kolodziejs on October 18, 2011, and the deed was recorded by the Kolodziejs in the town land records on October 20, 2011.

The parties also agree that the summary judgment order granting reformation of the deed to the plaintiff to clearly describe and include the disputed land moots any claim she has as to alleged adverse possession of the same land. That claim is therefore dismissed without prejudice. It may of course be renewed if the decision on reformation is reversed at some later date.

### Legal Conclusions

"Summary judgment is appropriate when, construing the facts as alleged by the nonmoving party and resolving reasonable doubts and inferences in favor of the nonmoving party, there are no genuine

issues of material fact and judgment is appropriate as a matter of law.” *Newton v. Preseau*, 2020 VT 50, ¶ 4 (quoting *Sheldon v. Ruggiero*, 2018 VT 125, ¶ 14, 209 Vt. 33); V.R.C.P. 56.

### Slander of Title

Slander of title requires a showing that “(1) defendants published a false statement concerning plaintiff’s title; (2) the statement caused special damages; and (3) defendants acted with malice.” *Sullivan v. Stear*, 2011 VT 37, ¶ 8, 189 Vt. 442. “The essence of the tort is the publication of an assertion that is derogatory to the plaintiff’s title to property in an effort to prevent others from dealing with the plaintiff.” *Sullivan*, 2011 VT 37, ¶ 8 (quoting *Wharton v. Tri-State Drilling & Boring*, 2003 VT 19, ¶ 14, 175 Vt. 494 (mem.)).

A party alleging slander of title must show that she had a legally protected interest in the property at the time of the derogatory publication. Restatement (Second) of Torts § 624 cmt. c (1977). “Any kind of legally protected interest in land, chattels or intangible things may be disparaged if the interest is transferable and therefore salable or otherwise capable of profitable disposal.” *Id.*

Plaintiff argues she had a legally protected interest when the Kolodziejs obtained their 2011 deed because the court’s June 4, 2020 reformation of the Adams-Leisey deed is retroactive to the original 1987 deed. Pl. Reply at 2. Defendants contend that plaintiff’s slander claim cannot be established in this case because she does not “have title capable of being slandered until a court’s final judgment confirms the reformation of Massucco’s deed of record to include title to the Disputed Parcel.” Def. Opp. & Cross Mot. at 10.

Giving the defendants the benefit of all doubts and inferences on this question, the court concludes that there is a disputed factual question as to the question of whether at the time the defendants’ recorded the deed in 2011, the plaintiff had a legally protected interest in the disputed property.

Similarly, the plaintiff is required to prove that the defendants acted with malice in publishing the deed to the Kolodziejs in the land records. In this context, malice is “defined as conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff’s rights.” *Wharton*, 2003 VT 19, ¶ 16. Reliance on public records, such as the erroneous deed in this matter, is generally not sufficient to establish malice. See, e.g., *Arnold Road Realty Associates, LLC v. Tiogue Fire Dist.*, 873 A.2d 119, 127 (R.I. 2005). Also, a bona fide belief of ownership in disputed property is not generally a basis for a finding of malice. See *Zebe, LLC v. Robinson*, 296 So. 3d 211, ¶ 16 (Miss. Ct. App. 2020); *American Nat. Bank and Trust Co. v. Bentley Builders, Inc.*, 719 N.E. 2d 360, 503 (Ill. App. Ct. 1999). “A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth” to establish malice in a claim for slander of title. *Fountain Pointe, LLC v. Calpitano*, 76 A.3d 636, 655 (Conn. App. Ct. 2013) (citation omitted). However, malice is generally a question of fact that should be left to the fact-finder.

Whether the plaintiff suffered special damages as a result of the defendants’ action in signing and recording the deed from the Adams defendants to the Kolodziejs is also a factual question that should be left to a fact-finder.

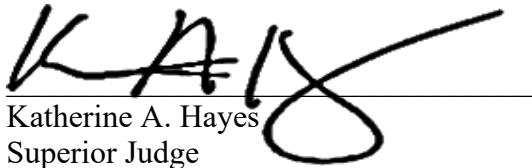
Accordingly, the plaintiff’s motion for summary judgment on her claim of slander of title is denied.

### Breach of Covenants for Title

The defendants have moved for summary judgment in their favor on the plaintiff's claim of breach of covenants for title. However, the defendants do not submit any detailed argument in support of this request, aside from the conclusory statement that this claim, like the plaintiff's claim for adverse possession, is mooted by the court's summary judgment decision to grant reformation of the deed. The plaintiff has not acknowledged that this claim is mooted. Accordingly, the court declines to grant the defendant's motion for summary judgment as to Count II of the plaintiff's complaint, for breach of covenants of title.

#### ORDER

The plaintiff's motion for summary judgment as to Count IV of her complaint alleging slander of title is denied. The defendant's motion for summary judgment as to Count II of the plaintiff's complaint alleging breach of covenants of title is denied. The defendant's motion for summary judgment as to Count III of plaintiff's complaint, alleging adverse possession, is granted, because both parties acknowledge that this claim is mooted by the already ordered reformation of the plaintiff's deed.

  
Katherine A. Hayes  
Superior Judge  
August 9, 2021

