

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

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CLARENCE PARTLOW and
MARGARET PARTLOW

v.

BERTON WELCH and
LINDA WELCH

SUPERIOR COURT
WASHINGTON COUNTY
Washington Superior Court
Docket No. 364-6-00 Wncv

Plaintiffs' Motion to Enforce Settlement Agreement, filed September 26, 2002

Plaintiffs are represented by L. Brooke Dingleline, Esq. and Defendants are represented by Steven P. Robinson, Esq. The parties notified the court on January 22, 2002 that the case had settled, and an Agreement was signed by the parties on January 7, 2002 and February 4, 2002. No Judgment or order of dismissal has been entered. The Plaintiffs' Motion to Enforce Settlement Agreement was filed September 26, 2002, and an Opposition was filed October 16, 2002. A hearing was held on December 9, 2002, following which an additional document was filed with the court. A follow-up hearing was held on January 9, 2004 by telephone.

Attorneys for both parties rely on the same documents, the Settlement Agreement with attached Exhibit 1, in support of their positions concerning the intent of the Agreement. Neither party claims that there is any ambiguity in the terms of the Agreement. In the Agreement, the parties agreed, among other terms, to swap small parcels of land in order to resolve long-standing issues between them related to their adjacent properties near Lake Champlain on Grand Isle.

The parcels to be swapped are shown on the attached Exhibit 1. Two triangles of land were to be conveyed from the Partlows to the Welches, with a total combined area of 1153.8700 square feet. Two other triangles of land were to be conveyed from the Welches to the Partlows, with a total combined area of 1153.7177 square feet. It is clear from this document that a significant term of the agreement was that the area of the parcels to be exchanged would be as close to equal as possible. Exhibit 1 is a sketch drawn to scale, but not a survey.

The issue that has arisen is that on Exhibit 1, one of the triangles to be conveyed from the Partlows to the Welches, the one with a line labeled "B," is depicted as abutting an access road of the Welches. It appears on the sketch that once the land swap is completed, the Welches would have frontage on this access road. This is the position advanced by the Welches. It is supported by the following language in Paragraph 2 of the agreement: "The land conveyed by Partlow will be subject to a view easement to benefit Partlow, their heirs and assigns, understanding that access over the land will be allowed." (Emphasis added.) This language, by its terms, applies to both triangles to be conveyed by the Partlows to the Welches, and thus applies to the "B" triangle as well as the other triangle.

A subsequent surveyor's sketch of the relationship between the "B" triangle and the access road, described and shown in a Surveyor's Report of Glenn R. Towne filed with the court on August 26, 2003, shows that there is actually a sliver of land that the Partlows would continue to own between the "B" triangle and the access road if the size of the "B" triangle is determined by area. The Partlows take the position that the fundamental term of the agreement for the land swap was area; therefore they would continue to own this sliver and the Welches would not have frontage and access off the "driveway" or access road.

The court's role is to give effect to the parties' agreement, including its underlying purpose and intent, as demonstrated by its terms. It is clear by the specificity of the square footage measurements on Exhibit 1 that the amount of land area to be swapped by the parties was to be as nearly equal as possible. Therefore, the court must give this term full effect. The Agreement calls for the Partlows to convey to the Welches, at the location of the "B" triangle, a triangle of 363.4826 square feet and no more. In other words, implementation of the Agreement does not call for a greater area to be conveyed in order to provide the Welches with complete frontage along the access road or driveway.

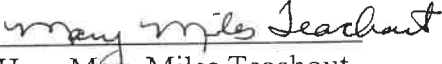
On the other hand, it is also clear from the Exhibit 1 sketch that the parties expected the "B" triangle to abut the access road—indeed, to overlap with it for nearly half of its length. See Exhibit 1. The fact that the more detailed sketch in the later Surveyor's Report shows this not to be the case does not eliminate the intent of the parties' agreement. In addition, the language of Paragraph 2 shows that "access over the land [conveyed by Partlow] will be allowed." These two provisions of the Agreement manifest an intent that the Welches would have access to their land from the access road through the newly acquired "B" triangle.

In order to implement the intended outcome of the Agreement in a manner consistent with the terms for the amount of land the parties agreed to swap, the instrument by which the "B" triangle is conveyed to the Welches shall include, in addition to a view easement retained by the Partlows, an easement for access by the Welches to the Welch parcel across the sliver of land between the access road and the "B" triangle, the width of said easement to be no wider than the width of the access road itself.

ORDER

For the reasons set forth above, the Plaintiffs' Motion to Enforce Settlement Agreement is *granted* on the terms set forth above. Plaintiffs' attorney shall also prepare a stipulation or motion for dismissal pursuant to Rule 41.

Dated at Montpelier, Vermont this 9th day of February, 2004.


Hon. Mary Miles Teachout
Presiding Judge