VERMONT SUPERIOR COURT
Windham Unit
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CIVIL DIVISION
Case No. 22-CV-04060

Stephanie Givens v. Wallace Bly

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment Partial (Motion: 2)
Filer: Joseph C. Galanes
Filed Date: October 18, 2023

This is an action for ejectment pursuant to 12 V.S.A. § 4761 brought by Plaintiff Stephanie Givens against Defendant Wallace A. Bly. Before the court is Plaintiff's motion under V.R.C.P. 56(a) for partial summary judgment on three of Defendant's affirmative defenses: (#9) Defendant has a deeded right to live in his mobile home on the Property; (#10) Defendant has a deeded life tenancy to live in his mobile home on the Property; and (#11) Defendant has a deeded life estate to live in his mobile home on the Property. Plaintiff contends that Defendant does not have a deeded interest in the subject property. Defendant opposes the motion, arguing that he had acquired a deeded right to a part of Plaintiff's property for the remainder of his life. For the reasons that follow, Plaintiff's motion is GRANTED.

I. Procedural Background

On November 17, 2022, Plaintiff filed a complaint for ejectment pursuant to 12 V.S.A. §4761 as Executor of the estate of Beverly J. Coleman. Complaint dated October 5, 2022. On October 18, 2023, Plaintiff filed a motion pursuant to V.R.C.P. 25 to substitute parties based on a Final Decree of Distribution in the matter of *Estate of: Beverly Coleman*, issued on July 19, 2023, in 22-PR-05616, decreeing the subject property to Stephanie Givens in fee simple. Motion to Substitute dated October 18, 2023. This court granted the motion on December 1, 2023, substituting Stephanie Givens as Plaintiff. Entry Regarding Motion dated December 1, 2023. On October 18, 2023, Plaintiff also filed a motion for partial summary judgment. Motion for Partial Summary Judgment dated October 18, 2023. Plaintiff moves for a partial summary judgment with respect to Defendant's affirmative defenses #9 through #11, asserting that the undisputed facts demonstrate that "Defendant did not receive a deeded interest, life tenancy or life estate in the property located at 2944 Fort Bridgeman Road …." *Id.* at 8. The motion is supported by a statement of undisputed facts and a number of exhibits. On November 11, 2023, Defendant filed an opposition to Plaintiff's motion. Opposition dated November 17, 2023. The opposition asserts that "Defendant's right to maintain his mobile home on the property originates from his father, Wallace E. Bly, who orally granted Defendant the right in 1985 ." *Id.* at 2. The opposition continues, arguing that "[t]his granted Defendant a tenancy at will under 27

V.S.A § 302, which was later reduced to writing in the Executor's Deed in 1992." *Id*. Additionally, or alternatively, the opposition asserts that a March 11, 2022 Document from the Colemans, constitutes an *inter vivos* gift, which grants Defendant a life tenancy in the subject property. *Id*. Defendant also supplies a statement of disputed facts. On November 27, 2023, Plaintiff filed a reply to Defendant's Opposition. Plaintiff's Reply dated November 27, 2023.

The court is now asked to answer (1) whether the 1992 Executor's Deed granted Defendant any interest in the subject property; and/or, (2) whether the March 11, 2022 Document by the Colemans did the same.

II. Analysis

A. Summary Judgment Standard

Summary judgment is appropriate when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." V.R.C.P. 56(a); *Kelly v. University of Vermont Medical Center*, 2022 VT 26, ¶ 15, 216 Vt. 445. A fact is material only if it might affect the outcome of the case. *O'Brien v. Synnott*, 2013 VT 33, ¶ 9, 193 Vt. 546. In assessing whether a genuine dispute as to any material fact exists, the courts construe "the facts presented in the light most favorable to the nonmoving party," *Vanderbloom v. State, Agency of Transp.*, 2015 VT 103, ¶ 5, 200 Vt. 150, such that "the nonmoving party receives the benefit of all reasonable doubts and inferences." *Pettersen v. Monaghan Safar Ducham PLLC*, 2021 VT 16, ¶ 9, 214 Vt. 269. The courts, therefore, "accept as true the allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." *Robertson v. Mylan Laboratories, Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356.

To survive a motion for summary judgment, the nonmoving party "may not rest upon the mere allegations or denials in its pleadings, but … must set forth specific facts showing that there is a genuine issue for trial." *White v. Quechee Lakes Landowners' Ass'n, Inc.*, 170 Vt. 25, 28 (1999) (internal quotations omitted). If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law. *State v. G.S. Blodgett Co.*, 163 Vt. 175, 180 (1995).

B. Undisputed Facts

Applying the standards set forth above and viewing all evidence in the light most favorable to Defendant, the following narrative emerges. The case concerns a property located at 2944 Fort Bridgeman Road in Vernon, Vermont. The property consists of two parcels. Parcel One contains a mobile home. Parcel Two contains a dwelling house. Beverly J. Coleman and Richard F. Coleman purchased the subject property from the estate of Wallace E. Bly and received the property by Executor's Deed dated January 23, 1992. Defendant Wallace A. Bly is the owner of the mobile home located on Parcel One of the subject property. Richard F. Coleman passed away on April 4, 2022. Beverly J. Coleman passed away on August 5, 2022. On September 30, 2022, Plaintiff Stephanie Givens was appointed Executor of the estate of Beverly J. Coleman.

Defendant asserts that his father, Wallace E. Bly, orally gifted him the right to put a mobile home on the property in 1985. He has resided in his mobile home on the subject property since 1985 without payment of rent or other financial obligations beyond paying his own utilities. On April 13, 2022, Stephanie Givens, acting under the authority of a power of attorney from Beverly J. Coleman advised Defendant in a written "Notice of Termination" that his occupancy of the property at 2944 Fort Bridgeman Road was "ending as of October 1, 2022."[1] Defendant disputes this assertion, alleging that "at the time the Notice of Termination was delivered, [he] had life tenancy, life estate, lifetime gift, or irrevocable license as granted by Wallace E. Bly during his life, Beverly Coleman and Richard Coleman, and the Estate of Wallace E. Bly." Defendant's Disputed Facts dated November 27, 2023, at ¶ 10. As a result, Defendant claims, the notice could not have been valid. *Id*.

At some point after the April 13, 2022 Notice, Defendant presented Plaintiff with a document dated March 11, 2022, purporting to give Defendant permission to remain on the subject property. The March 11, 2022 Document reads

> I Beverly Coleman are of sound mind and I have given my Brother "Skip" Wallace Bly permission to live in his [m]obile [h]ome on my land, until he dies.

Defendant did not provide any consideration in exchange for permission to remain on the property. Likewise, he has not incurred any expenses in reliance on the March 11, 2022 Document. Defendant has paid personal property taxes based on the mobile home. On or about May 2, 2022, Beverly Coleman drafted a document stating that the "permission" granted in the March 11, 2022 Document was given mistakenly. The May 2, 2022 Document states

> I Beverly J. Coleman wrote a note saying my Brother Skip Bly could keep living on the land in his [m]obil[e] [h]ome <u>until I die</u>. Not him for God sakes he might live until he's 90. It is not up to my daughter to have to put up with him and his son Wallace who doe[]sn['t even work. We and Steph gave him until Oct[ober] 2022 to have his belongings removed[,] the equipment, cars, and trucks, and the mobil[e] home to move.
> * Both Skip and his son Wallace [] Bly need to be off the property by Oct[ober] 1, 2022 *
> * Skip is (Wallace A. Bly)

(emphasis in original). Defendant has refused to remove his mobile home from the subject property. On July 19, 2023, the Windham County Probate Division issued a Final Decree of Distribution in the matter of *Estate of: Beverly Coleman* (Docket No. 22-PR-05616), decreeing the subject property to Stephanie Givens in fee simple.

Defendant's grounds for claiming a deeded interest in the property at 2944 Fort Bridgeman Road are (1) the Executor's Deed of January 1, 1992, which Defendant contends, granted and reserved a life tenancy, and/or life estate to him; and (2) the March 11, 2022

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[1] Plaintiff's Statement of Undisputed Facts specifies that "[o]n April 13, 2022, Stephanie Givens acting under the authority of a power of attorney from Beverly Coleman *and Richard Coleman*, advised Defendant in writing that his occupancy of the property at 2944 Fort Bridgeman Road was terminated as of October 1, 2022." Plaintiff's Statement of Undisputed Facts at ¶ 10 (emphasis supplied). However, the Durable General Power of Attorney that Plaintiff submitted to the court is from Beverly J. Coleman alone. Summary Judgment Ex. 4. The court considers the inclusion of "Richard Coleman" in the Statement of Undisputed Facts an oversight on Plaintiff's part.

Document by Beverly and Richard Coleman, which Defendant contends, granted him a life estate, and/or life tenancy in the subject property.

C. Discussion

As mentioned above, Defendant has pleaded three separate affirmative defenses: (#9) Defendant has a deeded right to live in his mobile home on the Property; (#10) Defendant has a deeded life tenancy to live in his mobile home on the Property; and (#11) Defendant has a deeded life estate to live in his mobile home on the Property. Each of these defenses, essentially, asserts that Defendant acquired a deeded right to live on the subject property for the remainder of his life. Defendant specifies that

> [his] right to maintain his mobile home on the property originates from his father, Wallace E. Bly, who orally granted Defendant the right in 1985. This granted Defendant a tenancy at will under 27 V.S.A § 302, which was later reduced to writing in the Executor's Deed in 1992. Defendant, as an heir of Wallace E. Bly and the Executor-grantor of the deed, thus making him a party to the deed, memorialized the oral tenancy his father granted him by reserving the right to maintain the mobile home on the property in the Executor's Deed. When the Colemans took title, they did so subject to Defendant's reservation in their deed ….

Defendant's Opposition at 2 (citations omitted). Additionally, Defendant contends that the March 11, 2022 Document constituted an *inter vivos* gift, granting him life tenancy in the subject property. *Id*.

Plaintiff, on the other hand, contends that (1) the Executor's Deed of January 1, 1992, did not grant Defendant any interest in the subject property; and (2) that the March 11, 2022 Document granted Defendant a revocable license to use the subject property to live in his mobile home.

1. 1992 Executor's Deed

The 1992 Executor's Deed conveyed two parcels of land at 2944 Fort Bridgeman Road in Vernon, Vermont, to Richard F. Coleman and Beverly J. Coleman, as tenants by the entirety. Summary Judgment Ex. 1 at 45. In the relevant part, the deed contains the following:

> Together with dwelling house located on Parcel Two described above but *specifically excepting and reserving the trailer located on Parcel One* above described.
>
> Meaning and intending to convey all and the same land and premises *with the exception of the trailer conveyed to Wallace E. Bly* by Warranty Deed of Janice Marie Tracy et als dated December 1, 1987 and recorded December 3, 1987 in Book 50, Pages 336–337 of the Vernon Land Records to which deed and the deeds, instruments, records therein referred to further reference may be had for more particular description of said premises.

Id. at 46 (emphasis supplied). The first question for the court to decide is whether the 1992 Deed created for Defendant an interest in the subject property.

In answering the question, the court must consider the 1992 deed as a whole and attempt to ascertain the intent of the parties when they used the language in question. *Kipp v. Chips Estate*, 169 Vt. 102, 105 (1999). As the Vermont Supreme Court explained

> [the] master rule in construing a deed is that the intent of the parties governs. In ascertaining intent, we must consider the deed as a whole and give effect to every part contained therein to arrive at a consistent, harmonious meaning, if possible. A deed term is ambiguous if reasonable people could differ as to its interpretation. If a writing is unambiguous under this standard, we must enforce the terms as written without resort to rules of construction or extrinsic evidence.

Brault v. Welch, 2014 VT 44, ¶ 10, 196 Vt. 459 (quoting *DeGraff v. Burnett*, 2007 VT 95, ¶ 20, 182 Vt. 314. The determination of whether a deed provision is ambiguous is a question of law, *Sanville v. Town of Albany*, 2022 VT 22, ¶ 15, 216 Vt. 368, which "may also involve preliminary analysis of the circumstances in which the terms are set." *Brault*, 2014 VT 44, ¶ 12. The court may "allow limited extrinsic evidence of 'circumstances surrounding the making of the agreement' in determining whether the writing is ambiguous." *Kipp*, 169 Vt. at 107. "Only after exhausting all relevant construction aids to resolve an ambiguity does 'the proper interpretation become[ ] a question of fact, to be determined on all relevant evidence.'" *Sanville*, 2022 VT 22, ¶ 15 (quoting *Kipp*, 169 Vt. at 107).

In the instant case, the language of the deed is unambiguous on its face. Upon plain reading, the deed explicitly states nothing more than that "the trailer located on Parcel One" is specifically excluded from the conveyance. The deed does not discuss Defendant, his use of the land, or any quality of his purported interest. In fact, the deed does not discuss Defendant's interest in the land at all. The use of: "intending to convey all and the same land and premises with the exception of the trailer conveyed to Wallace E. Bly …[,]" is particularly revealing; clarifying that all the deed intended to do, was except the trailer from the conveyance to Beverly and Richard Coleman. This interpretation is consistent with the normal use of the English language and the plain reading of the deed's language.

Defendant contends, however, that the specific *reservation and exception* in the language of the deed memorializes a tenancy at will pursuant to 27 V.S.A § 302, orally gifted to him by his father Wallace E. Bly in 1985. Defendant's Opposition at 2. This, according to Defendant, is the interest that the deed refers to when it specifically "except[s] and reserv[es] the trailer." In *Nelson v. Bacon*, 113 Vt. 161, 169 (1943), the Vermont Supreme Court noted that the terms "reservation" and "exception" are often used synonymously in deeds. Indeed, in the instant case, both terms are used conjunctively—although technically, "[a] deed exception takes something out of the conveyance that would otherwise pass, while a reservation creates some new right out of the thing granted." *In re Estate of Harding*, 2005 VT 24, ¶ 9, 178 Vt. 139 (citing *Roberts v. Robertson*, 53 Vt. 690, 692 (1881)). But "[w]here it is possible that the terms [are] being treated as synonyms in a deed, the Court must interpret the terms within the context of the surrounding language 'in a way to effectuate the intent of the parties.'" *In re Guite*, 2011 VT 58, ¶ 13,190 Vt. 90 (quoting *Roberts*, 53 Vt. at 692)). And while

> [a] reservation cannot create an estate or interest in a stranger to a deed but can only operate to the benefit of the grantor therein[, a]n effective exception may be made in

> favor of a third person not a party to the deed in recognition and confirmation of a right already existing in him.

Toussaint v. Stone, 116 Vt. 425, 427–28 (1951) (citing *Nelson v. Bacon*, 113 Vt. 161, 170 (1943) (collecting cases)); see also *Goss v. Congdon*, 114 Vt. 155, 156–57 (1945); *Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201, 205 (2000). Defendant was not the grantor in the 1992 Executor's Deed. Instead, as Executor of the estate of Wallace E. Bly, "[h]e was a third party and a stranger to it." *Toussaint*, 116 Vt. at 428. Thus, the supposed reservation could not have recognized some new right in him, but, at best, could have operated to confirm some right previously existing in him.

Taking all the circumstances of the conveyance existing at the time of the execution of the deed, the intentions of the parties, the situation of the parties, the subject matter, and the language used into account, the *exception* and *reservation*, as mentioned in the deed, merely operated to ensure that the trailer itself is excluded from the conveyance. See *Goss*, 114 Vt. at 156. As mentioned above, the 1992 deed does not describe the supposed interest or mention Defendant. Had the parties intended to specifically reserve any interest in the land for Defendant, the deed would surely have either explicitly said so, or at least alluded to it more than it did—considering that Defendant himself was Executor of the estate of Wallace E. Bly. And so because the language of the deed in the instant case is unambiguous, it must be enforced as written. *Brault*, 2014 VT 44, ¶ 13.

Accordingly, the 1992 deed did not reserve, or except, any interest in the subject land for Defendant but merely made it explicit that the trailer was excluded from the conveyance of the two above-described parcels of land to Beverly J. Coleman and Richard F. Coleman.

2. March 11, 2022 Document

Alternatively, and or additionally to the first argument, Defendant argues that the March 11, 2022 Document by Beverly and Richard Coleman constituted an *inter vivos* gift, granting him life tenancy in the subject property. Plaintiff, on the other hand, contends that the March 11, 2022 Document conveys no interest in the subject property to Defendant but is merely a revocable license to place a mobile home on the property and live in it. Moreover, Plaintiff asserts that even if the document could be construed to convey some interest in land to Defendant, it was not signed and acknowledged by the grantors before a notary public as required by 27 V.S.A. § 341. Plaintiff also asserts that 27 V.S.A. § 342 cannot come to save Defendant, because Plaintiff Stephanie Givens is neither the grantor nor the heir of the grantor but rather a devisee under a will. Thus, the court's second task is to determine the nature of the March 11, 2022 Document.

The March 11, 2022 Document reads

> I Beverly Coleman are of sound mind and I have given my brother "Skip" Wallace Alfred Bly permission to live in his mobile home on my land until he dies.

As one treatise explains

> [t]he question whether an instrument is a lease, creating an estate in favor of another and the consequent relation of tenancy, or is merely a license, is one properly of the construction of the language used, as showing an intention to give possession vel non.

1 Tiffany Real Property § 79 (3d ed.); see also *Bergeron v. Forger*, 125 Vt. 207, 210 (1965) ("Whether an instrument is a license or a lease depends generally on the manifest intent of the parties gleaned from a consideration of its entire contents."). Additionally,

> a license generally provides the licensee with less rights in real estate than a lease. If the contract gives *exclusive possession of the premises against all the world, including the owner*, it is a lease, but if it merely confers a privilege to occupy the premises under the owner, it is a license.

53 C.J.S. *Licenses* § 133, at 608 (emphasis supplied). The Vermont Supreme Court defined a license as "the authority to do some act or acts upon the land of another [that] does not pass an interest in the land." *Toussaint*, 116 Vt. at 428 (citing *Clark v. Glidden*, 60 Vt. 702 (1888); 51 C.J.S. *Landlord & Tenant* § 763 at 763; *Smith v. Royal Ins. Co.*, 111 F.2d 667, 670 (1940)) (citations cleared up). And "although some divestiture of control is inherent in any granting of a license, it is the degree of possession and control that must be considered to determine whether a lease rather than a license has been granted." *Millennium Park Joint Venture, LLC v. Houlihan*, 948 N.E.2d 1, 19 (Ill. 2010). Thus, the crucial distinguishing characteristic of a lease is the surrender of possession and control of the property to the tenant for the agreed-upon term. See e.g., The Law of Easements and Licenses in Land § 11:1 (2010); *Davis v. Dinkins*, 206 A.D.2d 365, 366 (N.Y. 1994). Moreover, licenses are ordinarily revocable at the will of the grantor. See e.g., *De Haro v. United States*, 72 U.S. 599, 627 (1866) ("… a license is a personal privilege … revocable at the pleasure of the party making it.").

An agreement constituting a lease of real property commonly includes the names of the parties to the lease; a statement of the rights of a party to extend or renew the lease; any addresses set forth in the lease as those of the parties; the date of the execution of the lease, the term of the lease; the date of commencement, and the date of termination; a description of the real property as set forth in the lease; a statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto; a statement of any restrictions on assignment of the lease; and the location of an original lease. See 27 V.S.A. § 341(c)(1)–(9). Courts in other jurisdictions have specifically found that some essential elements of a lease include the extent and bounds of the property; the term of the lease; and rental consideration. See e.g., *Port of Coos Bay v. Dep't of Revenue*, 691 P.2d 100, 103 (Or. 1984); *Francone v. McClay*, 41 Haw. 72, 79, 1955 WL 8780 (Haw. 1955); *Millennium Park Joint Venture, LLC*, 948 N.E.2d at 19. The fact that an agreement may contain all of these elements, however, does not automatically make it a lease. See e.g., *Feeley v. Michigan Avenue National Bank*, 490 N.E.2d 15, 18–20 (Ill. App. Ct. 1986).

In the instant case, the document does not purport to be a lease in its terminology. "While the language of a written instrument governs in determining its effect and operation, in construing such language the nature and condition of the subject matter, the purpose sought to be accomplished, and the circumstances in which the parties contract, tending to throw light on

their apparent intention at the time the instrument was executed, may be considered." *Spero v. Bove*, 116 Vt. 76, 91 (1950) (citations omitted). The document implicitly identifies Beverly Coleman as the owner of the subject land and gives Defendant the "permission" to live on the subject land; i.e. use a part of her land for a particular purpose described in the document. And although it is signed and acknowledged in accordance with the statutory requirements for a transfer of real estate, the document does not give Plaintiff exclusive possession and control, but simply the ability to keep the mobile home on the subject property and live there. Equally, the document does not specify the extent and bounds of the property, or mention an amount of rent due.

Under these circumstances, the court concludes that the document in the instant case did not relinquish the necessary control and possessory interest in the land to constitute a lease. The court further questions whether the March 11, 2022 Document meets even the minimum requirements essential to create a lease because of the lack of specificity in describing the extent and bounds of Defendant's interest in the property. Indeed, the vagueness of the description in this case weighs heavily in favor of finding that the March 11, 2022 Document constituted a license. Lastly, the court observes the May 2, 2022 Document by Beverly Coleman, outlined above, purportedly revoking the permission that the March 11, 2022 Document conferred. The May 2 Document, to a large extent, demystifies the grantors' intent to make the March 11, 2022 Document a revocable license.

Taking all the circumstances of the case into account, there can be no doubt that the March 11, 2022 Document constitutes a revocable license to remain on the land.

Order

Accordingly, for the foregoing reasons, Plaintiff's motion for partial summary judgment with respect to Defendant's affirmative defenses #9, #10, and #11 is GRANTED.

Signed electronically December 20, 2023 pursuant to V.R.E.F 9(d).

David Barra
Superior Court Judge