

FILED
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ORANGE SUPERIOR COURT

**STATE OF VERMONT
ORANGE COUNTY**

**BARBARA JAUHOLA
and SUSAN JAUHOLA**

v.

CHRISTINE JAUHOLA

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**Orange Superior Court
Docket No. 55-3-09 Oecv**

DECISION

Plaintiff's Motion for Partial Summary Judgment, filed Apr. 17, 2009

Plaintiffs Barbara Jauhola and Susan Jauhola seek orders declaring that (1) the right of first refusal contained in the will of John Jauhola benefitted them as well as their sister, defendant Christine Jauhola; (2) Christine improperly interfered with their right of first refusal; and (3) each of the three sisters presently holds an undivided one-third interest in the property.

Barbara and Susan seek the foregoing rulings by way of a Motion for Partial Summary Judgment filed April 17, 2009. Christine opposed the motion on May 26, 2009. Barbara and Susan are represented by Attorney James Caffry. Christine is represented by Attorney Michael Hanley.

Summary judgment is appropriate if the moving party demonstrates that there are no genuine issues of material fact for trial and that she is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). In assessing the motion, the court views all of the evidence in the light most favorable to the non-moving party and grants the non-moving party the benefit of all reasonable doubts and inferences. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 5, 175 Vt. 413. This means that, for purposes of deciding the motion for partial summary judgment, the court regards the facts asserted by Christine as true so long as they are supported by affidavit or other evidentiary materials. *Pierce v. Riggs*, 149 Vt. 136, 139 (1987).

The following facts are established for the purposes of the motion for partial summary judgment. The Jauhola family maintains a family farm in Corinth, Vermont. In March 1990, following the death of grandmother Lydia Jauhola, the family farm was bequeathed to siblings Barbara, Christine, Susan, and John as tenants in common. Each sibling held an undivided one-quarter interest in the farm.

John passed away in August 2004 and was survived by his wife Sandra. His will provided for the following disposition of his one-quarter interest in the family farm:

FIFTH: Should my wife survive me, I give to her my interest in the Vermont Farm. It is my express intent that the farm remain in the Jauhola family and not be sold. Therefore, should my wife choose to liquidate her interest in the farm, she must offer first right of refusal to Christine Jauhola, Susan Jauhola and Barbara Jauhola.

Sandra subsequently filed a petition to open a testate estate in the Orange Probate Court. In accordance with the will, the probate judge distributed John's one-quarter interest in the farm to Sandra "subject to the right of first refusal in favor of Christine Jauhola, Susan Jauhola, and Barbara Jauhola." However, the sisters were not listed as beneficiaries on the petition filed by Sandra, and they were not given notice of the probate court proceedings. None of the sisters were made aware at that time that John's will had given them a right of first refusal.

Sandra called Christine in May 2006 and told her that she could not afford to pay property taxes on the farm, and that she did not want to maintain her interest any longer. Christine offered to buy Sandra's interest in the farm, and Sandra agreed. Sandra subsequently executed a quitclaim deed in favor of Christine in August 2006. Christine was not aware of the right of first refusal at this time.

The family farm is enrolled in an agricultural use program for property tax purposes. In October 2006, the consulting forester told Christine that the tax department wanted them to file a document showing the transfer of John's interest to Sandra. Christine prepared the document, circulated it to her sisters for their signature, and filed it with the tax department. The document stated that John's interest in the family farm had been transferred to Sandra. It did not mention that Sandra's interest had been subsequently transferred to Christine.

Christine told her sisters about the purchase in March 2007. She then learned about the right of first refusal in July 2007. This was the first time she became aware of the right of first refusal. She had not intended to do anything hostile to her sisters' interests in the property.

Issue #1: Beneficiaries of the Right of First Refusal

The first question is whether the terms of John's will required his one-quarter interest in the family farm to be offered to all of the sisters before it was sold.

"The cardinal rule of interpreting wills . . . is that from the language used that the meaning intended by the testator is to be ascertained and given effect, in so far as legally possible." *In re Estate of Davis*, 126 Vt. 19, 22 (1966). If the language of a will is plain and unambiguous, "[f]orce and effect must be given to every word written in the instrument if reasonably possible." *In re Estate of Valiquette*, 122 Vt. 350, 364-65 (1961).

Here, John bequeathed his one-quarter interest in the family farm to his wife on the condition that, should she ever choose to sell her interest, "she must offer first right of refusal to Christine Jauhola, Susan Jauhola *and* Barbara Jauhola." (Emphasis added.) The straightforward and unambiguous meaning of this conjunctive clause is that Sandra should have offered the opportunity to purchase John's one-quarter interest in the family farm to all the sisters simultaneously and together so that each had an opportunity to share equally in acquiring the property.

This interpretation makes the most sense because it effectuates John's intent that the farm remain in the Jauhola family and not be sold to an outsider. For example, if an outsider had expressed an interest in buying a one-quarter share of the family farm, it would have been most consistent with John's expressed intent for all three sisters to be offered the opportunity to purchase the property before it was sold outside the family, rather than for the property to be sold after only one sister was offered the opportunity to purchase.

There is no need for the court to examine the circumstances surrounding the formation of the will because the language of the will unambiguously establishes John's intent. He gave a right of first refusal to all three sisters (Christine, Susan *and* Barbara), and each sister was therefore entitled to an equal opportunity to purchase his interest in the family farm before it was sold. There is nothing in the language of the will that suggests that the right of first refusal existed only until one sister decided to buy the interest, or that the right of first refusal was merely hopeful or precatory. Instead, the will gave the sisters a vested beneficial interest in the property.

It is not relevant that the sisters were not given notice of the probate court proceeding or listed as beneficiaries, even though their right of first refusal was noted in the decree of distribution. The role of this court is not to speculate as to why the probate court did not require the three sisters to receive notice as beneficiaries under the will, but rather to implement the intent of the testator as expressed in his will and incorporated in the Decree of Distribution. *Estate of Valiquette*, 122 Vt. at 364-65. Here, the intent of John, as expressed in the clear and unambiguous language of the will, was that Christine, Susan, and Barbara should each be offered an equal right of first refusal before the property was sold.

Issue #2: Breach of Fiduciary Duty

The next question is whether Christine breached a fiduciary duty to her sisters by purchasing the one-quarter interest from Sandra.

The facts show that Christine did not know about the right of first refusal either at the time she purchased the interest from Sandra or at the time she submitted the ownership change notice with the tax department. It follows that Christine did not intentionally undermine the right of first refusal contained in John's will. See *Williams v. Chittenden Trust Co.*, 145 Vt. 76, 81 (1984) (explaining that an actor cannot intentionally interfere with a contractual interest if she does not know about the existence of the contract) (citing Restatement (Second) of Torts § 766 comment i).

The facts also do not show that Christine breached any fiduciary duty to her sisters by purchasing the one-quarter interest in the property. The general rule is that co-tenants in common may enter into transactions between themselves, and purchase additional interests in the common property, without breaching any duties of trust or confidentiality owed to the other co-tenants. *McLendon v. Georgia Kaolin Co., Inc.*, 837 F.Supp. 1231, 1240 (M.D.Ga. 1993); see also 20 Am. Jur. 2d Cotenancy and Joint Ownership § 92 (explaining that co-tenants are not under a duty to consult with one another prior to entering into transactions regarding the common property). This makes sense because one co-tenant's purchase of an additional interest in the property does not generally diminish or harm the interests held by the other co-tenants. In other words, one co-tenant's purchase of an additional interest in

common property does not rise to the level of collusive foreclosures or other transactions designed to harm or extinguish the interests held by other co-tenants. See *Cooper v. Cooper*, 173 Vt. 1, 7–10 (2001) (holding that a collusive foreclosure amounts to a breach of fiduciary duty between co-tenants). The mere fact that Christine purchased John's interest without seeking prior consent from her sisters or advising them immediately afterwards, therefore, does not support the conclusion that Christine breached any duty owed to her sisters.

Issue #3: Status of Ownership in the Property

The final question is whether Barbara and Susan are entitled to a declaration that they each presently hold an undivided one-third interest in the property.

It would be premature to declare that Barbara and Susan presently hold an undivided one-third interest in the property for the simple reason that they have not yet been offered the opportunity to exercise their right of first refusal, and they have not yet purchased any additional interest. However, Barbara and Susan are entitled to have an opportunity to purchase the interest together with Christine.

The court therefore declares that Christine presently holds John's interest in constructive trust for herself, Barbara, and Susan. A constructive trust is an equitable remedy that holds property for the benefit of the persons who are entitled to share in the enjoyment of the property. *Legault v. Legault*, 142 Vt. 525, 529 (1983); Dan B. Dobbs, *Remedies* § 4.3, at 240–42 (1973). Here, under the terms of John's will, all three sisters are entitled to an opportunity to share equally in acquiring John's one-quarter interest in the property.

Conclusion

Barbara and Susan are entitled to declarations that (1) the right of first refusal contained in John's will benefitted all three sisters, and that (2) John's interest is presently held in constructive trust for the benefit of Christine, Barbara, and Susan, so that all three sisters may have an opportunity to share equally in acquiring John's one-quarter interest in the family farm. The facts show that Barbara and Susan are not entitled to summary judgment on the claim that Christine intentionally undermined the right of first refusal or otherwise breached a fiduciary duty in connection with her purchase of John's interest.

ORDER

For the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment is *granted in part and denied in part*.

Dated at Chelsea, Vermont this 1st day of September, 2009.

Maty Miles Teachout
Hon. Maty Miles Teachout
Superior Court Judge