

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 26-CV-01541

Mark Streuli et al v. Christopher Curtis et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss; Motion to Amend Counterclaims; Counterclaims (Motion: 3; 4)
Filer: Francis J. DiMora; William F Grigas
Filed Date: April 16, 2026; May 18, 2026

The motion is GRANTED IN PART and DENIED IN PART.

The present matter arises from a subdivision and sale gone sideways. Defendants Christopher Curtis and Tari Swenson subdivided land from a larger parcel in Waterbury, Vermont and sold the unimproved, or mostly unimproved, lot suitable for residential construction to Plaintiff Mr. Mark Streuli. The purchase and sale agreement (P&S) and the subsequent deed reflect that Defendants retained three separate rights to purchase the property back from Mr. Streuli under three different scenarios.

Those scenarios come with apparently substantially different price tags. Prior to the initiation of this case, Defendants took the position that the lowest price scenario had occurred and sought to purchase the property according to those terms. Mr. Streuli then filed this case seeking declaratory relief to the effect that the lowest price scenario has not occurred, and Mr. Streuli remains free to take steps that would trigger one of the higher priced scenarios (particularly, a classic right of first refusal triggered by a not-yet realized arms-length agreement to sell to a third party). Defendants responded with a counterclaim essentially claiming that the lowest price scenario already has occurred and seeking an order compelling Mr. Streuli to sell to them on those terms. Mr. Streuli then filed a Rule 12(b)(6) motion to dismiss the counterclaim, and Defendants filed a motion to amend in response.

1. Background

The underlying circumstances as described in the pleadings and attachments in some

ways are substantially uncertain. The court's understanding of the setting of this controversy is as follows.

Of the three rights reserved to Defendants in the deed to Mr. Streuli, only two rights, Section 4(a) and 4(b), are currently at issue.¹ They are as follows:

4. Grantors, for themselves and their heirs and assigns, reserve and retain the following described option and rights of first refusal pertaining to the Property after sale and conveyance to Grantee:

(a) Prior to pouring or laying of concrete for construction of a residential dwelling, if Grantee wishes to sell or make other such disposition of the Property, Grantors shall have the option to purchase the Property for the sum of the purchase price paid by Grantee plus 4% per annum of said purchase price, prorated to reflect the period of time between the date of sale to Grantee and the date of Grantors' purchase of the Property.

(b) For a period of ten years from the date when the concrete has been installed, Grantors shall have a right of first refusal to purchase the Property, including all improvements now or hereafter located thereon, for the same price and upon the same terms and conditions of any bona fide offer, agreement, or contract made or entered into in connection with any sale of the Property. Pursuant to this right of first refusal, Grantee shall present a copy of any written offer, agreement, or contract, or memorandum setting forth the terms and conditions of any verbal offer, agreement, or contract to Grantors. Grantors shall then have ten calendar days from the date of receipt thereof to notify Grantee whether or not Grantors elect to purchase the Property under this right of first refusal. If Grantors exercise the right of first refusal, the purchase shall be for the same price and upon the same terms and conditions of any such offer, agreement, or contract, and the purchase by Grantors shall be consummated on the later to occur of: (a) the closing date specified in the offer, agreement, or contract, or (b) thirty days from the date of Grantors' notification to Grantee of the election to purchase. This right of first refusal shall apply to any and all offers, agreements, and contracts or variations thereof.

¹ The third right found in Section 4(c) is not presently at issue as it contains a provision concerning the Curtis and Swenson's right to repurchase in the event that Streuli dies during the first ten years of his ownership, but Mr. Streuli's counsel has informed the Court that this may become an issue due to an emerging health concern. For the purposes of the present motion, however, the Court will focus only on the two rights that are clearly implicated by the pleadings at issue.

At some point after the sale, Mr. Streuli deeded the property into his revocable trust, in which he is trustee. The transfer was made expressly subject to the above rights. Additionally, at some point after the sale, Mr. Streuli took some steps to improve the property, including putting down a cement slab.

For purposes of scenarios 4(a) and 4(b), there are factual and legal disputes, at a minimum, about whether the slab amounts to “pouring or laying of concrete for construction of a residential dwelling”; whether Mr. Streuli exhibited a “[wish] to sell or make other such disposition of the Property” by deeding it into trust or by listing it for sale with a realtor. In briefing only, Mr. Streuli asserts that, though the property is listed for sale, he has made no decision about whether to sell it.

2. *The original counterclaim*

Somewhat confusingly, the original counterclaim, seeking to enforce Defendants’ deed reservations, is framed under contract law as though the deed is its own contract rather than, as more conventionally understood, merely an instrument of conveyance—the product of the underlying contract. As framed using contract law terminology, Defendants assert two counts.² Count 1 is for breach of contract. The asserted breach is that Mr. Streuli deeded the property into trust before installing the slab, triggering deed reservation 4(a), and he also exhibited his intent to sell by listing the property for sale. Yet, he did not notify Defendants that Section 4(a) was triggered when he deeded the property into trust, and he did not accede to their attempt to exercise their Section 4(a) right. Count 2 reframes the breach of contract claim as a breach of the covenant of good faith and fair dealing (though still seeking to enforce the deed rather than the underlying contract or any other contract).

3. *The motion to dismiss*

Mr. Streuli seeks to dismiss the original counterclaim under Rule 12(b)(6) for failure to state a claim because: (1) the deed is not a contract that can be breached as such; (2) and even if it were, deeding the property into trust expressly subject to the reservations cannot be construed

² Defendants make extensive allegations about zoning and building permits/law in both the original and proposed amended counterclaim. It is unclear at this time what relevance those allegations have to the controversy between the parties.

to trigger reservation 4(a); and the breach of good faith and fair dealing is impermissibly duplicative of the breach of contract claim.

4. The proposed amended counterclaim

Following the dismissal motion, Defendants filed a motion to amend the counterclaim. V.R.C.P. 13(f), 15(a). The proposed claims now are framed as follows:

Count 1. Breach of contract for violating § 5.5(a) of the Purchase & Sale Agreement. Section 5.5(a) of the Purchase & Sale Agreement sets forth the terms that became deed reservation 4(a). The basis for this claim is in material respects the same as Count 1 of the original counterclaim except that this claim is framed under the Purchase & Sale Agreement.

Count 2. Breach of the covenant of good faith and fair dealing undermining rights set out in § 5.5(a) of the Purchase & Sale Agreement. The basis for this claim is in material respects the same as Count 2 of the original counterclaim except that this claim also is framed under the Purchase & Sale Agreement.

Count 3. This claim is styled “Breach of contract – Warranty Deed.” This claim seeks to enforce reservation 4(a) of the deed. This claim is in material respects the same as Count 1 of the original complaint except that now Defendants expressly acknowledge the doctrine of merger by deed and reframe the claim mostly under more conventional property law concepts and language.

Count 4. This claim is the same in substance as Count 2 of the original complaint. While Defendants expressly acknowledge the doctrine of merger by deed into this claim and seek under this count to enforce the deed rather than any contract, they continue to assert the contract law concept of the implied covenant of good faith and fair dealing.

5. Procedural standards

The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows:

“A motion to dismiss . . . is not favored and rarely granted.” This is especially true “when the asserted theory of liability is novel or extreme,” as such cases “should be explored in the light of facts as developed by the evidence, and,

generally, not dismissed before trial because of the mere novelty of the allegations.” In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party’s factual allegations as true, “‘it appears beyond doubt’ that there exist no facts or circumstances that would entitle the plaintiff to relief.” We treat all reasonable inferences from the complaint as true, and we assume that the movant’s contravening assertions are false.

Alger v. Dep’t of Labor & Indus., 2006 VT 115, ¶ 12, 181 Vt. 309 (citations omitted); see also 5B A. Benjamin Spencer, et al., *Fed. Prac. & Proc. Civ.* § 1357 (4th ed.) (“Ultimately, the burden is on the moving party to prove that no legally cognizable claim for relief exists.”).

Rule 15(a) provides that leave to amend a complaint shall be freely given by the court “when justice so requires.” In Vermont, this provision has been liberally construed in favor of allowing parties to amend their pleadings. *Lillicrap v. Martin*, 156 Vt. 165, 170 (1991). “The principal reasons underlying the liberal amendment policy are (1) to provide maximum opportunity for each claim to be decided on its merits rather than on a procedural technicality, (2) to give notice of the nature of the claim or defense, and (3) to enable a party to assert matters that were overlooked or unknown to him at an earlier stage in the proceedings.” *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 1 (citation omitted). Leave to amend is not always granted, however. It may be denied when the just and expeditious disposition of the dispute between the parties will not be advanced via the amendment. In making that determination, the Court analyzes whether the proposed amendment: (1) would result in undue delay; (2) is brought in bad faith; (3) would result in unfair prejudice to the opposing party; or (4) would be “futile” in that it would fail to state a claim upon which relief can be granted. *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982).

6. Analysis

The court begins by summarizing its understanding of the basic controversy. Defendants believe that Mr. Streuli triggered deed reservation 4(a), and they seek to compel him to sell the property to them according to those provisions. Mr. Streuli thinks that he has not triggered deed reservation 4(a), and he seeks a declaration to that effect, clarifying that he is free to take steps (setting up a sale to a third party) that will trigger deed reservations 4(b), if he wishes to do so.

The Court next emphasizes that it focuses on substance rather than labels. See V.R.C.P. 8(f) (“All pleadings shall be so construed as to do substantial justice.”); *Hayes v. Harwood*, 141 Vt. 308, 308 (1982) (“As our cases have stated so many times over the years, it is the substance of the operative instrument that determines its judicial effect, not its label.”).

The matter of Defendants framing their claims under contract law has confused this case, and that confusion affects both the original counterclaim and the proposed amended counterclaim. The court therefore clarifies that, framing aside, there are no apparent disputes about the Purchase & Sale Agreement, the only relevant contract. The doctrine of merger by deed is essentially as follows: “The general rule is that a deed includes all prior negotiations and agreements leading up to its execution and delivery, so that a merger is thereby effected. However, such rule does not apply to real estate contract provisions or other matters not performed or consummated by delivery and acceptance of the deed. In other words, collateral agreements or conditions not incorporated in the deed or inconsistent therewith are not merged in the deed.” 4 Tiffany Real Prop. § 981.05 (3d ed.) (footnote omitted); accord *Murphy v. Stowe Club Highlands*, 171 Vt. 144, 151 (2000); see also 4 Tiffany Real Prop. § 977 (3d ed.) (“The execution, delivery, and acceptance of the deed manifest the parties’ final intentions, making the deed the controlling agreement and voiding any prior terms, whether written or verbal.”).

To the extent relevant to this case, the terms of the Purchase & Sale Agreement related to the reservations are entirely incorporated, and thus merged, into the deed. There are no collateral terms of the Purchase & Sale Agreement in issue. The controversy arises out of the deed rather than the underlying contract that gave rise to it.

To the extent that Mr. Streuli seeks dismissal of the counterclaim because it is improperly framed under contract law, the motion is **DENIED**. The court construes the claims, together, as seeking enforcement of the deed, not some contract right apart from the deed. That is clear enough from the context of the case and the counterclaim regardless of the language used by Defendants.

To the extent that Mr. Streuli seeks dismissal of the counterclaim because it improperly equates the placement of the property into trust with a sale or other disposition for reservation 4(a) purposes, the motion also is **DENIED**. Mr. Streuli’s argument has force but comes too

soon. The outcome of that issue could depend on, among other things, how reservation 4(a) is interpreted as well as other circumstances and nuances not readily apparent in the allegations of the pleadings. In short, this argument will be better addressed once the evidence has developed. See 5B A. Benjamin Spencer, et al., Fed. Prac. & Proc. Civ. § 1356 (4th ed.) (Rule 12(b)(6) “is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff’s case.”). For now, Mr. Streuli has fair notice of the claim Defendants are attempting to assert.

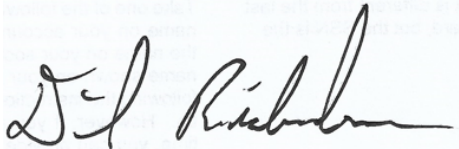
The court construes Counts 3 and 4 of the proposed counterclaim, together, as seeking enforcement of deed reservation 4(a) as a property law matter and not asserting any separate contract rights. So construed, Defendants’ motion to amend is **GRANTED IN PART** insofar as new Counts 3 and 4 go.

Counts 1 and 2 of the proposed counterclaim assert nothing in substance that is not already covered by Counts 3 and 4. Defendant’s motion to amend is **DENIED IN PART** insofar as new Counts 1 and 2 go.

ORDER

For the foregoing reasons, Mr. Streuli’s motion to dismiss is **Denied**. Defendants’ motion to amend is **Granted in part** as to new Counts 3 and 4 and **Denied in part** as to new Counts 1 and 2.

Electronically signed on 7/28/2026 7:58 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge