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| Anna L. Yoder, LaRue J. Jolin, George Null,: | IN THE COURT OF COMMON PLEAS OF |
| Estate of Thelma Null Hendricks by Anna | : LYCOMING COUNTY, PENNSYLVANIA |
| Null Yoder, Executrix, | : |
| Plaintiffs | : |
| | : |
| vs. | : NO. 07-01,870 |
| | : |
| Hattie Jolin, heir of Evelyn Null Jolin; | : |
| Edwin G. Dauber, sole heir of Genevieve | : |
| Null Dauber; Donald Hotchkiss, Barbara | : |
| Lundy, Gloria Lewis, sole heirs of Esther | : |
| Null Hotchkiss; David G. Null and | : |
| Brad D. Null, | : |
| Defendants | : CIVIL ACTION |

Date: March 10, 2008

OPINION

This opinion and order are entered in relation to the preliminary objections to the Plaintiffs Complaint in an Action to Quiet Title, the objections having been filed on September 12, 2007 by the Defendant, Edwin G. Dauber.

The land involved in this action consists of an 83 plus acre tract situated partly in Lewis and partly in Cogan House Townships and consists of rural mountain forested land, (hereafter referred to as the "Property"). According to the pleadings, the interest of Woodrow Null in the Property prior to his death consisted of a 7/54 interest. Woodrow Null received a 6/54 interest by virtue of the Deed dated May 2, 1950 and recorded in Deed Book 371, page 325. He also inherited a 1/54 interest in the property through intestacy as a result of the death of his brother, Daniel Null, who died intestate on July 1, 1973, as recited in paragraph 17 of Plaintiff's complaint.

Woodrow Null died July 15, 1985. His Last Will and Testament was probated on June 10, 1988. Genevieve Dauber was appointed Executrix of the Estate of Woodrow Null. As Executrix she quit-claimed an interest in the Property to Anna Yoder and Thelma Hendricks as tenants in common by virtue of the deed in question, Lycoming County Record Book 1344, page 213 dated October 31, 1988. This quit-claim deed contains a reference introducing the description that is as follows:

“All that certain portion of land situated in Lewis and Cogan House Townships, County of Lycoming, and Commonwealth of Pennsylvania, bounded and described as follows:”

This is followed by a description of 83 acres. The description is followed by the following recitals:

“BEING the same premises conveyed unto Daniel Null, Evelyn Null Jolin, Thelma Null Hendricks, Genevieve Null Dauber, Mildred Null Scruggs, Woodrow Null, Esther Null Hotchkins, George Null, and Annie Null Yoder by Deed dated May 2, 1950, and recorded in Deed Book 371 at Page 325.

The said Woodrow Null passed away on July 15, 1985 and left a Will which was probated on June 10, 1988, with Genevieve Dauber being appointed as Executrix of the Estate.

This deed conveys all that interest, right and title to the below described property which the decedent received by virtue of the deed dated May 2, 1950, and recorded in Deed Book 371 at Page 325.”

There is no description of property that follows the quoted recital and referenced to as “the below described property.” The deed after the above quoted statement, only contains the attestation clause, the appropriate signatures and an acknowledgement. The quoted recital is the second recital referencing in Deed Book 371, page 325. The deed contains no written

reference to Woodrow Null acquiring any interest in the property from or as a result of inheritance from his brother Daniel Null.

At argument on the preliminary objections held October 31, 2007, Plaintiffs, through counsel, agreed that the preliminary objection to the complaint's request for relief of directing the Defendants to commence an action for ejectment was proper and it was agreed that the court could enter an order striking that claim for relief. The court will enter such an order.

The Plaintiffs, through counsel, have also agreed that the preliminary objections to the allegations of the complaint in paragraphs 24, 25, and 27 concerning the matter in which the interest of the various parties are ascertained should be withdrawn. The court will also enter an order to that effect.

The remaining preliminary objections to the complaint involve preliminary objection number 4(c) and preliminary objection number 6, both of which raise a demur to the action. Preliminary objection 4(c) raises a demur on the basis that allegations concerning the Plaintiffs having to pay inheritance taxes on an interest in the property is insufficient under the law to allow them to obtain any interest in the property. Preliminary objection number 6 asserts that the Deed at issue is "crystal clear" and "that the only interest conveyed...(to Plaintiff's predecessor)...Woodrow Null 'received by virtue of a deed dated May 2, 1950 and recorded in Deed Book 371 page 325' did not include the 1/54 interest which Genevieve Dauber inherited from Woodrow Null".

Following argument, the court has ascertained the issue to be determined in these preliminary objections is whether the quit-claim deed of October 31, 1988 recorded in Lycoming County Record Book 1344, page 213 is without doubt as to its facial meaning and

conveys to Anna L. Yoder and Thelma Hendricks as tenants in common the entire 7/54 undivided interest of Woodrow Null in the property, or is ambiguous as to whether it conveys the 7/54 interest or only Woodrow Null's original 6/54 interest.

Plaintiffs' complaint seeks to have their ownership of the 7/54 interest thus derived from Woodrow Null through their predecessors confirmed. Defendant Dauber, purports to own an undivided fractional interest in the 83 acre tract as a result of inheriting it from his mother, Genevieve Null Dauber. Although it is not clear to this court based upon the pleadings filed thus far and the pending preliminary objections, we perceive that Edwin Dauber asserts his claim to the Property includes all or part of the 1/54 interest in the property which Woodrow Null had inherited from Daniel Null.

Plaintiff's complaint asserts that Deed Book 1344 page 213 operates to clearly convey the entire 7/54 undivided interest of Woodrow Null to Thelma Hendricks and Anna Yoder. Defendant, Edwin G. Dauber's, demur asserts that the deed clearly excepts and reserves and/or clearly does not include the 1/54 interest Woodrow Null inherited from Daniel Null.

"The primary object in the interpretation of any written instrument is to ascertain and effectuate the intention of the parties." *Hardes v. Penn Charcoal & Chemical Co.*, 175 Pa. Super. 431; 107 A.2d 176 (Pa. Super. 1954); *Ress v. Berent*, 378 Pa. Super. 397, 548 A.2d 1259 (1988).

"Where the language of a deed is clear and unambiguous the court must consider the plain meaning of the words used rather than what the parties may have intended." *Estate of Bruce*, 372 Pa. Super. 16, 538 A.2d 923 (1988).

“An instrument, however, is not ambiguous simply because the parties cannot agree upon the proper construction.” *Metzger v. Clifford Realty Corp.*, 327 Pa. Super. 377, 476 A.2d 1 (1984). There must be “objective indicia” that the terms are susceptible to different meanings. *Z&L Lumber Co. v. Nordquist*, 348 Pa. Super. 580, 502 A.2d 697 (1985).

In making the determination whether the terms are clear and unambiguous, the court not only considers the words of the writing, but the alternative meanings suggested by counsel, and the extrinsic evidence offered in support of those meanings. *Krobin Refrigerated Xpress Inc. v. Pitterich*, 805 F.2d 96 (3rd. cir. 1986)(interpreting Pennsylvania law).

If an ambiguity is found to exist, and “[w]here the terms of a deed are *doubtful*, the court will adopt construction which is most in favor of the grantee and against the grantors.” *Walker v. Walker*, 153 Pa. Super. 20, 23, 33 A.2d 455 (1943); *Ansbeny v. Brodheads Forest and Stream Assn.*, 315 Pa. 513, 174 A.2d 97 (1961).

Redeemer vs. Eastern, 61 Pa. D & C.2d. 476 (Northampton Co. 1973) aptly cites *Brookbank v. Benedum-Trees Oil Company*, 131 A.2d 103 (1957) footnote 6, for the following often recognized rules of construction:

“(1) the nature and quantity of the interest conveyed must be ascertained from the instrument itself and cannot be orally shown in the absence of fraud, accident or mistake and we seek to ascertain not what the parties may have intended by the language but what is the meaning of the words;

“(2) effect must be given to all the language of the instrument and no part shall be rejected if it can be given a meaning;

“(3) if a doubt arises concerning the interpretation of the instrument it will be resolved against the party who prepared it;

“(4) unless contrary to the plain meaning of the instrument, an interpretation given it by the parties themselves will be favored;

“(5) ‘to ascertain the intention of the parties, the language of a deed should be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.’”

“When we read that ‘all the estate, right, title, interest, property, possession, claim and demand whatsoever’ of the grantors is to be conveyed, [*5] the [**479] conviction grows that this was meant to be a fee, or certainly to the full extent of the grantor’s title’:
Yuscavage v. Hamlin, 391 Pa. 13, 137 A.2d 242 (1958).

We conclude that the deed given by Genevieve Dauber as Executrix of the Estate of Woodrow W. Null to Anna Yoder and Thelma Hendricks recorded in Lycoming County Record Book 1344, page 213 and dated October 31, 1988 is ambiguous as to whether it conveyed all of the right, title and interest of Woodrow Null or if it was intended to only convey the 6/54 interest he had acquired by the recited 1950 deed in Deed Book 371, page 325 to the exclusion of the 1/54 interest he had inherited from his brother, Daniel. The basis of this ambiguity includes: 1) the combination of the statutory construction which must be given to the deed; 2) the specification of the recitals referencing that this conveyance is based upon Woodrow Null’s acquisition of the interest he acquired by deed and omitting reference to his inherited interest; 3) the vagueness created by the lack of a described property following “the below described property” recital; 4) the application of the applicable rules of deed construction, especially those that require us to give effect to all the language of the deed and to construe the deed in the light of the subject matter.

1. A release and quit-claim deed by statute is defined to include,

“...all right, title, interest, property claim and demand whatsoever, both in law and equity, in or to the lands or premises released, or intended so to be so that neither the grantor or grantors or his or their personal representatives, his or their heirs or assigns, shall, at

anytime thereafter, have claim challenge or demand the said lands and premises, or any part thereof in any manner whatever.”
21 P.S. § 8. (emphasis added).

By statute, any deed conveying or releasing lands

“...unless an exception or reservation be made therein shall be construed to include all the estate, right, title, interest, property, claim and demand whatsoever of the grantor or grantors...”
21 P.S. § 3. (emphasis added).

2. The deed contains two very similar recitals. The first stating it “being the same premises... (to Woodrow Null)...in Deed Book 371 at Page 325”. The second states “This deed conveys all that interest ...to the below described property...(received by Woodrow Null)...by virtue of...Deed Book 371 at Page 325.” The first recital in and of itself may not operate as limitation of this deed conveying all the 7/54 interest of Woodrow Null. The question that is not clearly answered by the deed itself is what is the purpose and intent of the second recital. By stating “all” of Deed Book 371 page 325, does it mean “only all” and thus exclude one 1/54 interest Woodrow Null inherited from Daniel Null? If not what logical purpose does this second recital serve as it references property described “below” of which there is none. We are compelled, however, to give some effect to the language of the second recital. It is likely that given the relationship of the parties in the questioned deed (Deed Book 1344, page 213) Defendant will be able to offer evidence they were aware the interest of Woodrow Null in the subject property included not only the 6/54th interest he had required by deed but the interest he had inherited from his brother.

Defendant asserts the second recital’s reference to property “below” must be construed as an exception and reservation. This exception and reservation of the 1/54 interest would be by implication in that Defendants argue the interest conveyed is specifically limited to the 6/54

interest. It is the Defendants' contention that the last paragraph with the "below" language should be construed as placing a limitation on the grant of conveyance to only the 6/54 interest from the source deed and not the 1/54 interest Woodrow held as a result of his inheritance from Daniel Null.

Plaintiffs argue in opposition that this language is not an exception and reservation limiting the conveyance. Plaintiffs assert they can offer extrinsic evidence in the form of a prior deed executed by Genevieve Dauber on November 25, 1987 to show a very clear example of limiting language. See Plaintiff's Exhibit "D". In the 1987 deed, Genevieve as the grantor, expressly limits the interest conveyed in the deed by stating:

"EXPRESSLY RESERVING AND EXCLUDING any interest Grantors may have received by inheritancy by reason of the death of Daniel Null and Woodrow Null."

Plaintiffs contend this example language is significant because it demonstrates that Genevieve knew how to incorporate limiting language into a deed to avoid conveyance of an interest obtained from inheritance. Therefore, they argue if Genevieve had wished to convey to Yoder and Hendricks an interest less than the entire 7/54 which Woodrow held at his death, she could have done so. We find, however, Plaintiffs resort to extrinsic argument to support their claims substantiates the ambiguity of the deed; it also shows evidence of the awareness of the parties as to Woodrow Nulls inherited interest and an intent to keep the inherited interest separate from his other interest in the property.

It may be that neither party may be able to produce sufficient extrinsic evidence which will allow this dispute to be resolved except by court interpretation. Nevertheless, at this pleading stage to so do without further pleadings and allowing of an opportunity for the parties to produce such evidence would be premature.

Accordingly, the language in the deed is found to be ambiguous as to the purpose, intent and meaning. Due to this apparent ambiguity, the court must look outside the four corners of the document to effectuate the parties' intent. Therefore the demur must be denied.

ORDER

It is ORDERED and DIRECTED that the Plaintiffs' Claim for Relief directing the Defendants' to commence an action for ejectment is stricken from the Complaint. Paragraphs 24, 25, and 27 of the Complaint are marked withdrawn. The demur set forth by preliminary objection 4(c) to the allegation of Plaintiffs having paid inheritance taxes is granted in so far as such an allegation being insufficient under law to allow Plaintiffs to obtain any interest in property, however, the allegation so asserting set forth in paragraph shall remain only as an allegation that Plaintiff, Anna L. Yoder, paid the inheritance taxes as alleged in paragraph 24 of the complaint. Preliminary objection number 6 asserting a demur to the complaint is denied.

Defendant, Edwin G. Dauber, shall file an answer to the complaint within 20 days after notice of the entry of this order.

BY THE COURT:

William S. Kieser, Judge

cc: Daniel K. Mathers, Esquire
Lester L. Greevy, Jr., Esquire
Judges
Rebecca Penn, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)