DOCKET NO. MMX-CV-21-6030948-S	:	SUPERIOR COURT
LEON ABRAMCZKY, ET AL	:	J.D. OF MIDDLESEX
V.	:	at MIDDLETOWN
GEORGE LAZOS, ET AL	:	JUNE 4, 2024

MEMORANDUM OF DECISION

The case concerns 13 cottage lots situated on a private road in East Haddam known as "Bailey Road." The cottages are part of a subdivision created in the early 1950s and are shown on Map 245 of the East Haddam land records.[1] These are seasonal cottages, and none of the cottage lots front the lake, however, there is a strip of land approximately fifty-five (55) feet wide that runs from Bailey Road down to the lake. Map 245 shows the location of this strip of land only with an arrow starting on the easterly side of Bailey Road and pointing in the direction of Bashan Lake with a notation "55+/- Right of Way to Bashan Lake." This 55-foot strip of land is the only access to the lake by the cottage lot owners.

The plaintiffs commenced this action to seek a determination that they collectively and individually have the right to use a strip of land fifty-five (55) feet wide (referred to as "disputed property" or "subject property"). The amended complaint dated March 29, 2023, is in seventeen counts. Counts one, three, five, seven, nine, eleven, thirteen, and fifteen allege that the plaintiffs have the right to use the disputed property by deed and by implication arising out of Map 245. In counts two, four, six, eight, ten, twelve, fourteen and sixteen the plaintiffs claim prescriptive easement rights. Count seventeen claims an implied easement for all the lots in the Bailey subdivision under Map 245 on file with the town clerk.

[1] The subdivision was initially 16 lots, but over time have been consolidated into 13 lots.

173.00

The parties are in dispute over what the use rights to the disputed property, if any, are enjoyed by the plaintiffs. The parties agreed to bifurcate the case, starting with a bench trial of the plaintiffs' claims of express deeded use rights and implied use rights under the subdivision map, including the defendants' defenses. Based on the outcome of the first trial, the plaintiffs' prescriptively acquired use claims would be tried at a later date.

The trial addressed the following issues:

(1) Whether the plaintiffs' express deeded use rights regarding the disputed property are rendered null and void under the Connecticut Marketable Title Act (MTA), General Statutes §§ 47-33b et seq.;

(2) If the MTA renders the express deed rights null and void, do the plaintiffs have any implied use rights regarding the subject property under a certain subdivision map identified in the defendants' chain of title;

(3) If the subdivision map is found to have created implied rights favoring the plaintiffs' lots, what is the nature and scope of such implied;

(4) If the plaintiffs' express deed rights survive MTA scrutiny, what uses or rights to the subject property did the parties who created the deeded use rights intend to convey.

Because the court finds that the plaintiffs' express deeded use rights regarding the subject property are rendered null and void under the MTA and have no implied use rights under the subdivision map, Map 245, the court shall only address the first two issues.

FACTUAL BACKGROUND

The initial conveyance creating this subdivision near the shore of Bashan Lake in East Haddam was a deed from Joseph Bailey to Russell G. Bromfield and Marie G. Bromfield by warranty deed dated August 26, 1949. The deed, recorded in Volume 62 at Page 343 of the East

Haddam Land Records stated that "[t]he above premises are conveyed with a right of way approximately 55 feet in width from the private roadway to the lake said right of way is bounded South by land of M. Carlson and north by Helen Kalat." (Plaintiff's Exh. 1).[2]

A second warranty deed dated July 19, 1952, was recorded in volume 66 at Page 480 which clarified and "amplified" the conveyance from Bailey to the Bromfields, referring to a subdivision map showing the "property, rights of way and private roads." (Plaintiffs' Exh. 2). Said deed specifically stated that the 55-foot right-of-way from the private road to the lake was incorporated into the conveyance. It also granted the Bromfields, their heirs and assigns, the right to "anchor a boat in the Lake in front of said right of way and to erect and maintain a dock or float or a similar structure in the Lake directly opposite said right of way." (Id.). The subdivision map, Map 245 entitled Map of Russell G. and Marie G. Bromfield Property, East Haddam, Conn. – July 1952 Bashan Lake District, showed the 16 separate lots and indicated by an arrow the 55-foot right-of-way to Bashan Lake. (Plaintiffs' Exh. 3).

When Joseph Bailey died, his surviving spouse Florence Bailey inherited "three (3) certain pieces or parcels of land belonging to said deceased," the second piece being the disputed 55 foot wide strip of land: " SECOND PIECE: Containing 0.5 acres more or less and being a right of way to the Bromfield property. . ." (Plaintiffs' Exh. 4). When Florence died in 1957, the probate certificate of distribution provided that the same real estate she inherited from Joseph "is bequeathed to Clarence H. Bailey of Portland Connecticut . . . .0.5 acres more or less and being a right of way." (Plaintiffs' Exh. 5) The probate certificate which conveyed the property to Florence

[2] Two months prior to that date, a separate "Right of Way" was recorded granting to the Bromfields "the right of way approximately 55 feet wide, from the private roadway to the Lake" along with "permission to anchor boat off right of way in the lake." (Plaintiff's Exh. 34).

Bailey was dated July 7, 1954, and recorded in Volume 69, Page 511 of the East Haddam Land Records.

It is undisputed that Clarence H. Bailey retained the fee interest to the disputed property until April 21, 1981, when he conveyed the fee by warranty deed to three "Trustees" who were cottage owners at that time. The deed states that the property being conveyed to the Trustees is the "same premises shown as a 55-foot right of way" on the recorded map from 1952 as well as the same premises as the second parcel in a probate distribution from the Estate of Florence Bailey to Clarence H. Bailey. (Plaintiffs' Exh. 6). Then two years later, the Trustees conveyed the property to themselves individually with the following condition: "The condition of this deed is such that the Grantees herein must include his undivided one third interest in this right of way in the sale of his property." (Plaintiffs' Exh. 7).

Each of the deeds to the defendants show a chain of title to their respective lots as well as an undivided 1/3 fee interest in the disputed property, identifying it as the "parcel of land being shown designated as 55 +/- Right of Way to Bashan Lake" on the recorded 1952 map. (Defendants' Exhs. A, B and C).

As to the plaintiffs, the court was provided with the deeds of conveyance showing the conveyance of respective lots to each of the plaintiffs. Each of the deeds of conveyance contained language as to the disputed land. "Together with whatever rights the Grantors have in and to a right of way approximately 55 feet in width from the easterly side of said Private road to lake. Said 55-

foot right of way is bounded on the south by land of J. M. Carlson or assigns and on the north by land of Helen Kolat or assigns." (Plaintiffs' Exh. 12 – 19).[3] [4]

DISCUSSION

The issue before the court is whether the plaintiffs have proved their right of access to the disputed property by deed or implied rights by virtue of the subdivision map.[5]

The plaintiffs in their reply to the court's question regarding the chain of title argue that the root of title is the 1981 deed from Clarence Bailey. Again, as noted earlier, this argument is fatally flawed. See note 4. The court still must determine what the root of title is to answer the issue before the court.

The Marketable Title Act, General Statutes § 47-33b, et seq., "declares null and void any interest in real property not specifically described in the deed to the property which it purports to affect, unless within a forty-year period, a notice specifically recited the claimed interest is placed on the land records in the affected land's chain of title." (Internal quotation marks omitted.) *Irving* v. *Firehouse Associates, LLC*, 95 Conn. App 713, 724, 898 A.2d 270, cert. denied, 280 Conn. 903,

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[3] The plaintiffs' deeds have approximately the same language, except for the conveyance deed into Tyler, which states: "Together with rights and easements as set forth in a warranty deed from Russell G. Bromfield and Marie G. Bromfield to John Karoll dated June 13, 1960, and recorded in Volume 77 at Page 77 of the East Haddam Land Records." (Plaintiffs Exh. 19).

[4] The court was not provided with the chain of title for the plaintiffs dating back to the 1952 deed from Bailey to the Bromfields. It was the court's understanding – and the defendants – that the plaintiffs were claiming the root of title was the July 19, 1952, deed. After trial, the court issued an order to the parties to provide the court with the chain of title from that deed to each of the lot owners. The defendants complied. The plaintiffs' response was somewhat surprising in that for the first time they asserted the claim that the root title for the fee to the disputed property was the April 21, 1981, deed from Clarence Bailey to the Trustees. The date when marketability is being determined the plaintiffs argued is the date of the notice of lis pendens – March 26, 2021. There is a fatal flaw to this argument since the date for determination of marketability "is a few weeks short of the 40-year requirement of §47-33(e)." Under the MTA, the root title transaction must be 40 years or more back in time from when marketability is determined. §47-33b(e).

[5] As noted earlier, the case was bifurcated, so that the determination to be made by this court is whether the plaintiffs' easement/right-of-way exists by virtue of their deeds.

907 A.2d (2006). Thus, a person with marketable record title takes the land "free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title . . ." General Statutes § 47-33-c.

Each of the defendants' 40-year MTA title chain ends or starts with the root title: a Probate Certificate of Distribution from the Estate of Florence Bailey to Clarence Bailey recorded on November 18, 1957 in Volume 74, Page 162 of the East Haddam Land Records. For MTA purposes in establishing the root title, a certificate of distribution is treated as a root title. *Mitchell* v. *Redvers*, 130 Conn. App. 100, 110, n. 14, 22 A.3d 659 (2011). ("We consider the date that the probate certificate [is] recorded . . . to be the effective date of [the] root of title [in such cases].") Id.

Since the filing of the probate certificate on November 18, 1957, up until the last date a defendant took title, October 22, 2020, there have been no recorded claims made against the disputed 55-foot right-of-way nor any other recordings such as affidavits, seeking to preserve the right-of-way. Thus, the defendants have an unbroken record chain of title to their fee interests in the disputed property for a period of 40 years.

There is a question as to whether the reference on Map 245 in the defendants' chain of title to the right-of-way language in deeds in the plaintiffs' chain of title operates to still render the claimed right-of-way viable by establishing implied rights to the right-of-way. The defendants may have been given notice that the plaintiffs purported to have some interest in said right-of-way. The map in the defendants' chain of title referred to the right-of-way and may have alerted the defendants.

"[T]he ultimate purpose of all Marketable Title Acts is to simplify land title transactions through making it possible to determine marketability by limited title searches over some

reasonable period of the immediate past and thus avoid the necessity of examining the record back into distant time for each new transaction." (Internal quotation marks omitted.) *Mizla* v. *Depalo*, 183 Conn. 59, 64 n. 9, 438 A.2d 820 (1981). "[T]he act does not require that the root of title contain a specific reference to the establishment of the easement. It is sufficient if any of the deeds within the forty-year period contain such a reference in the relevant chain of title or if a notice specifically reciting the claimed interest is recorded in the land records in the affected land's chain of title within that forty-year period. A Marketable Record Title is subject to any interest or defect arising out of any title transaction which has been recorded in the record chain of title of the subject property subsequent to the date of the recording of the root of title; provided however, the recording of such a transaction cannot revive or give validity to any pre-root of title defect or interest which has been extinguished by the provisions of § 47–33e. . . Second, and more significant, is the fact that the act operates to extinguish interests that burden a servient estate if those interests are not properly preserved in the forty-year period." (Citation omitted; internal quotation marks omitted.) *Irving* v. *Firehouse Associates, LLC*, supra, 95 Conn.App. at 725–26, 898 A.2d 270. Although the root of title need not contain a specific reference to the establishment of the easement, General Statutes § 47–33d (1) provides that marketable record title is not subject to easements recited in conveyances which are only mentioned by "a general reference . . . unless specific identification is made therein of a recorded title transaction which creates the easement. . ."

"The reason that a general reference to pre-root of title interests is not sufficient to preserve and prevent their extinguishment is to avoid any necessity for a search of the record back of the root of title, as well as to eliminate the uncertainties caused by such general references. Connecticut Bar Association, Connecticut Standards of Title (1999), standard 3.10, comment one. Effectively, it requires one claiming a deeded right-of-way over the property of another to establish

conclusively that at some point, some owner in the servient estate's chain of title made a conveyance validly creating that right-of-way. Otherwise, an invalid or nonexistent right-of-way could ripen into existence over a period of time through the mere insertion into the land records of language asserting it." (Internal quotation marks omitted.) *Johnson* v. *Sourignamath*, 90 Conn.App. 388, 401, 877 A.2d 891 (2005).

"The act never has been applied so as to create an easement that otherwise did not exist, or to preclude a party involved in a quiet title action from claiming that the party asserting the interest or its predecessor in title never held the asserted interest. Rather, the act, subject to certain exceptions, functions to extinguish those property interests that once existed, and would still exist but for the absence from the land records in the affected property's chain of title of a notice specifically reciting the claimed interest. cf. annot., 31 A.L.R.4th 11, § 2[a] (1984) ("general purpose of marketable record title statutes and similar enactments is to clear titles of record from the clouds, encumbrances, conditions, or limitations of old and perhaps abandoned or to-be-abandoned instruments or claims, and possible or ostensible interests or rights, or those of dubious value or validity"); Connecticut Bar Association, Connecticut Standards of Title, supra, c. III, introduction (noting act's dual purpose of limiting title searches and "protect[ing] property owners from the risk of ancient interests and defects in the title by a legislative nullification of such claims and defects")." Id. 401-02

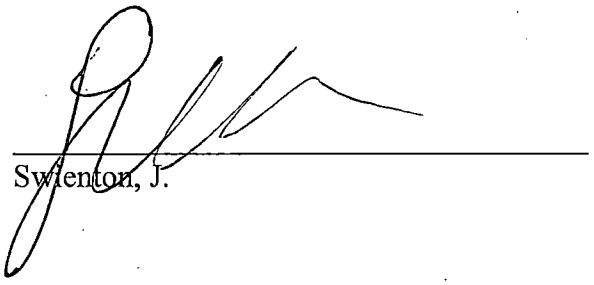
Thus, the plaintiffs' claim to an implied easement derived from the 1952 subdivision map fails as it does not meet the specificity requirements set out in § 47-33d.

CONCLUSION

In accordance with the clear mandate of the Marketable Title Act, the court finds that the root title is the 1957 Probate Certificate of Distribution and the pre-root express deed use rights

claimed by the plaintiffs stemming from the 1949 and 1952 deeds are null and void under the MTA. Further, no implied rights inure to the plaintiff under the 1952 subdivision map because the Bromfields never held title to the defendants' strip of land and because the 1952 map does not specify the origins of the noted right-of-way as required under the MTA.

The court renders judgment in counts one, three, five, seven, nine, eleven, thirteen, and fifteen in favor of the defendants.



Swienton, J.