

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LORRAINE Y. ST. HILAIRE,)
)
 Plaintiff)
)
 v.) **Civil No. 89-0154 P**
)
 UNITED STATES OF AMERICA,)
)
 Defendant)

**MEMORANDUM DECISION AND ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT¹**

In this action to quiet title both parties claim ownership of a parcel of land situated on the southwesterly side of Seaside Avenue in Saco, Maine ("premises").² Before the court are cross-motions for summary judgment. Pursuant to Fed. R. Civ. P. 56(c) the court shall render summary judgment if there remains "no genuine issue as to any material fact" and if "the moving party is entitled to a judgment as a matter of law."

The facts are not in dispute. Both parties trace their respective chains of title to Ruby Gurney deLima who in 1913 inherited land which included the premises. At issue is the construction of a November 17, 1933 deed from DeLima to Irving S. Boothby. The defendant claims title through this

¹ Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

² This court has jurisdiction pursuant to 28 U.S.C. ' ' 1346(f) and 2409a(a).

deed, while the plaintiff claims title through a 1939 devise of DeLima's residuary estate to Nicholas Stravroudis.

The deed from DeLima to Boothby states in relevant part:

I do hereby remise, release, bargain, sell and convey, and forever quit-claim unto the said Irving S. Boothby . . . all my right, title and interest in and to the marsh land situate on the southwesterly side of Seaside Avenue in said Saco, bounded and described in the following deeds: Simeon H. Hutcherson to Silas Gurney, dated October 13, 1879 and recorded in York County Registry of Deeds, Book 369, Page 527; Caleb C. Marshall, et als. to Silas Gurney, dated October 13, 1881 and recorded in said Registry of Deeds, Book 383, Page 239 and Bradbury Patterson to Silas Gurney, dated October 29, 1879 and recorded in said Registry of Deeds, Book 371, Page 19.

Reference being hereby made to the above named deeds for a more particular description of the property herein intended to be conveyed.

Meaning and intending by this deed to convey to said Grantee all my right, title and interest in and to all the real estate which I now own on the southwesterly side of said Seaside Avenue which formerly belonged to said Silas W. Gurney and which descended to me as his heir at law.

Exhibit A to Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment ("Plaintiff's Memorandum"). Both parties agree that the premises were not included in the real estate described by metes and bounds in the referenced deeds of Simeon H. Hutcherson, Caleb C. Marshall and Bradbury Patterson.³ It is also undisputed that at the time of the DeLima to Boothby conveyance the premises were part of the real estate which DeLima owned on the southwesterly side of Seaside Avenue and which formerly belonged to Silas W. Gurney. The plaintiff contends that, because the "meaning and intending" clause cannot expand the specific grant of property made earlier in the deed, the premises were not conveyed to Boothby and that, therefore, she acquired title to the premises through the Stravroudis chain. The defendant, on the other hand, argues that the "meaning

³ Certified copies of these deeds are attached to the Plaintiff's Memorandum as Exhibits E, F and G.

and intending" clause should be given full effect as a specific grant which cannot be limited by the earlier reference to other deeds, that any ambiguity in the deed should be construed against the grantor and that, therefore, the United States acquired title to the premises through the Boothby chain.

Under Maine law, in construing a deed the court is required to ascertain the intent of the parties from the instrument itself. *Page v. Nissen*, 254 A.2d 592, 594 (Me. 1969). Such a determination often requires the application of certain developed rules of law. *Id.* at 594-95. Thus, the Law Court has stated that "[i]f, in the effort to ascertain the real intent of parties, one of these rules is encountered it must control, for no positive rule of law can be lawfully violated in the search for intent." *Id.* at 595 (quoting *Maker v. Lazell*, 83 Me. 562, 565, 22 A. 474, 475 (1891)).

I first determine the effect of the reference to the earlier deeds. In doing so, I am guided by the following controlling principles:

References to prior conveyances are made for varying purposes. They are made sometimes for the purpose of showing the source of title; sometimes to show the identity of the land conveyed; sometimes, and generally by way of caution, to afford a more definite description. It is probably true that in the larger number of cases the reference is made to show the source of title. . . . *But a reference to other deeds, when it appears that it was so intended, makes them a part of the description, as much as if their language had been copied as a part of it.*

Perry v. Buswell, 113 Me. 399, 402, 94 A. 483, 484 (1915) (emphasis added). *See also Marr v. Hobson*, 22 Me. 321, 327 (1843) (where grantor does not profess to give an accurate and minute description of the premises intended to be conveyed, a referenced deed "becomes a material part of the description . . . and is to be treated in the same manner as though its contents were copied").

The deed in this case first generally describes the property to be conveyed as "marsh land situate on the southwesterly side of Seaside Avenue in said Saco," and then proceeds to the particular description: "bounded and described in the following deeds" Exhibit A to Plaintiff's

Memorandum. Thus, it appears that the grantor intended to make the referenced deeds part of the property description. Applying the rule of construction articulated in *Perry v. Buswell*, those deeds became part of the description "as if their language had been copied" into the Boothby deed. The effect of the first paragraph, therefore, was to provide a particularly described grant of marshland which unambiguously excluded the premises.

In next determining the effect of the subsequent "meaning and intending" clause, I take note of the following rules of construction: (1) a particular specific and definite grant by metes and bounds cannot be enlarged or diminished by a later general description in a "meaning and intending" clause, *Elwell v. Borland*, 131 Me. 189, 191, 160 A. 27, 28 (1932); see also *Bicknell Mfg. Co v. Bennett*, 431 A.2d 35, 38 (1981) (*Elwell v. Borland* canon of interpretation precludes a general summarizing clause from expanding a metes and bounds description); *Smith v. Sweat*, 90 Me. 528, 533, 38 A. 554, 556 (1897) ("meaning and intending" clause in a deed, at the end of a particular description of the premises by metes and bounds, does not enlarge or limit the grant); *Brown v. Heard*, 85 Me. 294, 297, 27 A. 182, 183 (1893) ("meaning and intending" clause following a metes and bounds description "is merely a help to trace the title, but cannot enlarge the grant"); (2) greater reliance must be placed on a prior specific description than on an attempted re-description, *Hathorn v. Hinds*, 69 Me. 326, 329 (1879); (3) in ascertaining the intent of the grantor, all ambiguities are resolved against the grantor and in favor of the grantee, *Kinney v. Central Maine Power Co.*, 403 A.2d 346, 350 (Me. 1979); and (4) where there is no ambiguity in the fixed and definite boundaries of the parcels conveyed, greater importance cannot be attached to a mere reference to a source of title or an intention clause, *Smith*, 90 Me. at 534, 38 A. at 556.

Applying these rules to this case, I conclude that the prior specific and unambiguous grant

which excludes the premises cannot be expanded by the "meaning and intending" clause.⁵ Accordingly, the plaintiff's motion for summary judgment is hereby **GRANTED** and the defendant's cross-motion is hereby **DENIED**.

It is **ORDERED** that within ten (10) days of the filing date hereof counsel shall submit to the court an agreed-upon form of judgment.

Dated at Portland, Maine this 24th day of April, 1990.

David M. Cohen
United States Magistrate