

Duhamel v. Donnelly, No. 395-7-05 Wncv (Teachout, J., Feb. 27, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

PETER NOEL DUHAMEL,
Plaintiff

v.

DONALD H. DONNELLY,
MARJORIE R. DONNELLY,
CHRISTOPHER JOHN,
KRISTI ANNE FLYNN,
Defendants

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) **Washington Superior Court**
) **Docket No. 395-7-05**
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DECISION

Defendants Donnellys' Motion for Summary Judgment, filed January 26, 2006
Plaintiff's Motion for Partial Summary Judgment, filed August 29, 2006

Plaintiff has filed a five-count complaint against Defendants Donnelly, and a request for injunctive relief against Defendants John and Flynn. Plaintiff is represented by Attorney Eric G. Parker. Defendants Donnelly are represented by Attorney Stephen L. Cusick. Defendants John and Flynn are represented by Attorney L. Brooke Dingleline. Before the Court are cross-motions for full and partial summary judgment.

Plaintiff's Complaint of July 7, 2005 asserts that the Donnellys failed to record a corrective deed that Plaintiff and the Donnellys signed in 1994 to sort out easement interests related to their adjoining land parcels in East Montpelier. Certain facts relevant to the summary judgment motions are undisputed. A corrective deed for the purpose of settling easement issues by returning to Plaintiff full ownership of a 27-foot strip of land, was executed in 1994, although the parties did not sign a related property transfer tax return, which return is required for recording in town land records pursuant to 32 V.S.A. §§ 9606, 9608. The parties agreed to postpone or defer recording of the corrective deed,

and there was no intent on either side that the corrective deed become operative immediately, nor at any date certain.

In June of 1998, Plaintiff renewed his interest in seeing the corrective deed recorded and the transfer tax return completed. In a June 25, 1998 letter to Defendant Donald Donnelly, Plaintiff recognized that he and Defendants Donnelly “had [earlier] decided to delay recording [certain conveyances including the corrective deed].” In any event, Plaintiff was by that time interested in filing the corrective deed. See Defendants Donnelly’s Statement of Undisputed Material Facts, filed January 26, 2006, ¶ 15. On or around July 3, 1998, Plaintiff and Mr. Donnelly met and apparently agreed that they would record the deed in the town clerk’s office the following week, though the parties’ particular understanding is disputed, and the Donnellys question both whether the transfer tax form even exists, and whether Mr. Duhamel or Mr. Donnelly retained physical possession of the corrective deed. See Defendant Donnellys’ Response to “Plaintiff’s Statement of Undisputed Facts,” filed September 27, 2006, pp. 6-7.

Whatever the understanding, it is undisputed, and a matter of public record, that there was no recording. Plaintiff, as the grantee, would have been notified by the town clerk had the deed been recorded. See 32 V.S.A. § 9607. Plaintiff did not receive this notice – there being no recording – nor did he inquire of the Donnellys or the town clerk whether the recording was complete. Plaintiff does not seem to dispute that the Donnellys treated the now-disputed parcel as their own – maintaining and mowing it, for example – until they conveyed it to a subsequent purchaser.

The following spring, the Donnellys had their property surveyed. Conspicuous orange flags were placed on their property, marking purported boundaries, which were not consistent with the terms of the 1994 corrective deed. The flags showed that the Donnellys claimed the 27-foot strip of land. The Donnellys subsequently obtained approval for a three-lot subdivision of their property, including the 27-foot strip, and sold two of the lots to Defendants John and Flynn. In so doing, the Donnellys disregarded the terms of the unrecorded 1994 corrective deed, and relied instead on the terms of prior deeds of record.

In this suit, Plaintiff claims fraud, unjust enrichment, breach of contract, and breach of bailment against the Donnellys, and seeks a declaration that John and Flynn are not *bona fide* purchasers and cannot enforce property rights against Plaintiff to the 27-foot strip of land at issue.

In their Motion for Summary Judgment, Defendants Donnelly assert that the claims are barred by the statute of limitations, laches, and the absence of pleadings of essential elements of fraud. In a responsive Partial Motion for Summary Judgment, Plaintiff seeks to establish that the claims are not barred by the statute of limitations. Both parties acknowledge that the relevant limitations period is six years. 12 V.S.A. § 511. The instant question is when the statute began to run.

The Donnellys argue that the statute began to run on July 13, 1998, since that is the date when Plaintiff should have discovered that the Donnellys had not caused the 1994 corrective deed to be recorded as agreed. Specifically, the Donnellys argue that when Plaintiff did not receive notice of the recording from the town clerk, as is required by 32 V.S.A. § 9607, he was on notice that his property interests were affected by whether the deed was recorded or not. Had Plaintiff looked into the matter, he would have discovered the lack of recording. Defendants Donnelly also note that conspicuous survey flags were flying on their land in May of 1999, and for some time thereafter, giving Plaintiff further notice that the Donnellys were not observing the terms of the corrective deed. If Plaintiff Duhamel had not done so already, he had another and further reason to inquire of the town clerk, and thus to discover that the deed had not been recorded. Nevertheless, Plaintiff did not file suit until July 7, 2005.

Plaintiff's position is that the limitations period commenced on July 11, 2004. He argues that the Donnellys commenced, as of July 3, 1998, a systematic pattern of fraud by not telling Plaintiff that they had not recorded the deed. He also argues that the bailment of the deed started on that date. He claims that the fraud and breach of contract and bailment continued until Plaintiff wrote to the Donnellys on July 11, 2004 to inquire about the status of the recording, and that it was not until that date that he should have discovered the status of the recording, as he trusted the Donnellys. He argues, therefore, that when the suit was filed in July of 2005, it was within the period that he believes began in July of 2004.

“[T]he statute of limitation begins to run when the plaintiff has notice of information that would put a reasonable person on inquiry, and the plaintiff is ultimately ‘chargeable with notice of all the facts that *could have been obtained by the exercise of reasonable diligence in prosecuting [the] inquiry.*’” *Agency of Natural Resources v. Towns*, 168 Vt. 449, 452-53 (1998) (emphasis added) (citing *Lamoille County Sav. Bank & Trust Co. v. Belden*, 90 Vt. 535, 541 (1916)).

Plaintiff had sufficient reason, as of mid-July of 1998, to wonder whether the property interest that he was claiming in the 27-foot strip had been recorded to protect it against claims from possible purchasers from the Donnellys. He could not shift that responsibility to the Defendants Donnelly. Although the agreement may have been that the Donnellys would cause the deed to be recorded, it was Plaintiff's job to be aware of any failure on their part to keep the agreement as he understood it, and to act within the limitations period to protect his own property interest. He had enough information as of mid-July of 1998 to put him on notice to investigate, and he should have discovered then that the deed had not been recorded. This applies to all the contract claims and the fraud claim as well. The survey flags on the ground provided an additional reminder to check on the status of his property interests. He did not pursue his claims within six years even of that date.

Because Plaintiff's causes of action accrued as of mid-July of 1998, and his suit was filed more than six years later, the limitations period is exceeded. The Donnellys'

motion must be granted, and Plaintiff's motion must be denied. By implication, this holding terminates the action with respect to Defendants John and Flynn.

Order

For the foregoing reasons,

- 1) Defendants Donnelly's Motion for Summary Judgment is *granted*.
- 2) Plaintiff's Partial Motion for Summary Judgment is *denied; and*
- 3) Attorneys Cusick and Dingleline shall prepare forms of judgment. Any objections shall be filed within five days.

Dated at Montpelier, Vermont this ____ day of February, 2007.

Mary Miles Teachout
Superior Court Judge