

Rasmussen v. White, No. 910-12-08 Rdcv (Cohen, J., Jan. 7, 2009)

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[The Attachment referenced in the opinion is available in the case file.]

**STATE OF VERMONT
RUTLAND COUNTY**

CARL RASMUSSEN,)	
MAMIE RASMUSSEN,)	Rutland Superior Court
)	Docket No. 910-12-08 Rdcv
Plaintiffs,)	
)	
v.)	
)	
MARY WHITE,)	
IRENE RASMUSSEN,)	
TOWN OF PITTSFORD,)	
)	
Defendants)	

**PARTIAL DECISION FOR DECLARATORY JUDGMENT
AS TO TOWN OF PITTSFORD**

This matter is before the Court on Plaintiffs' Complaint for Declaratory Judgment, filed December 4, 2008. A hearing was held on December 17, 2008.

Plaintiffs Carl Rasmussen and Mamie Rasmussen are represented by Thomas C. Bixby, Esq. Defendant Mary White appeared at the hearings on December 17, 2008 and December 22, 2008. Mary White also filed a Notice of Pro Se Appearance on December 22, 2008. Defendant Town of Pittsford appeared at the hearings on December 17, 2008 and December 22, 2008, represented by Attorney Jack Facey. Defendant Irene Rasmussen has not appeared and her attorney did not appear for either hearing at her specific direction.

Background

On October 7, 2008 defendant Irene Rasmussen and plaintiffs Carl Rasmussen and Mamie Rasmussen, husband and wife, entered into a transfer of real property in the Town of Pittsford, whereby defendant Irene Rasmussen retained a life estate, remainder to the plaintiffs as tenants by the entirety. The Warranty Deed issued on October 7, 2008 is attached as Attachment #1.

Defendant Irene Rasmussen, also, in the Warranty Deed, reserved the power to sell, mortgage, give, convey, declare in trust, or otherwise transfer the conveyed property with or without the consent of the remaindermen, even if such transfer diminished or eliminated the remainder interest. See Attachment #1.

Defendant Irene Rasmussen, as part of the Warranty Deed, also granted plaintiffs a right of first refusal in and to the conveyed property, in which plaintiffs, prior to any conveyance by defendant Irene Rasmussen, could exercise the right and match the terms of the Grantor's offer. See *Id.*

Defendant Mary White is the daughter of defendant Irene Rasmussen and sister of plaintiff Carl Rasmussen. At the time of the property transfer, defendant Mary White was living on the property with the permission of defendant Irene Rasmussen. On November 14, 2008, defendant Mary White attempted to remove her old trailer and place a new trailer on the property. In the process of removing the old trailer, the trailer split in half. The Town Zoning Officer informed defendant Mary White that the new trailer could not be placed on the property without a permit. Defendant Mary White then obtained a permit for the new trailer and obtained the signature of defendant Irene

Rasmussen, as owner of the property. On December 4, 2008, defendant Town of Pittsford granted the permit to allow a new trailer to be placed on the property.

On December 4, 2008, plaintiffs Carl Rasmussen and Mamie Rasmussen filed a Complaint for Declaratory Judgment and a Motion for Immediate Ex-Parte Injunction, in which plaintiffs requested that the Court grant an injunction against defendants Irene Rasmussen and Mary White to cease and desist placement of the trailer on the property.

On December 4, 2008, Judge Thomas Zonay denied the Motion for Immediate Ex-Parte Injunction, finding that the Motion and accompanying Affidavit of Thomas C. Bixby, Esq., did not clearly establish that immediate and irreparable damage would occur.

In their Complaint for Declaratory Relief, plaintiffs allege that the Town of Pittsford was without jurisdictional authority to grant the Zoning Permit because of the plaintiffs' remaindermen interest in the property. At the hearing on December 17, 2008, the Court reset the hearing to allow the drafter of the deed to testify. At the next hearing, on December 22, 2008, plaintiffs presented an expert and the Court took the issue of ownership under advisement. This Decision deals solely with the issue of the Town of Pittsford's authority to grant the zoning permit.

Discussion

A municipality has the authority to regulate land development in conformance with its adopted municipal plan in the form of zoning bylaws. 24 V.S.A. § 4411(a).

According to representations made during the hearings, the Town of Pittsford requires the signature of the land owner on its zoning permit application. According the

representations made during the hearings, defendant Irene Rasmussen signed the permit application.

Pursuant to the Warranty Deed issued on October 7, 2008, defendant Irene Rasmussen retained a life estate in the property at issue. See Attachment #1. According to the Warranty Deed, Irene Rasmussen reserves “possession and enjoyment of, and the right to income from, the property”, as well as the “power to sell, mortgage, give, convey, declare in trust, or otherwise transfer” the property with or without the consent of the remaindermen, notwithstanding the fact that such transfer may diminish in value or eliminate the remaindermen’s interest. *Id.* Since Irene Rasmussen has reserved complete control over the property, subject to a right of first refusal, the Court concludes that she is “land owner.” Therefore, Irene Rasmussen properly signed the zoning permit application as “land owner.”

Accordingly, there is no cause of action against the Town of Pittsford.

ORDER

Plaintiffs request that the Court declare that the Town of Pittsford had no jurisdictional authority to issue a permit for a new mobile home to be placed on the property.

Based upon the conclusion that Irene Rasmussen is the “land owner,” the Court declares that the Town of Pittsford did have jurisdictional authority to issue the zoning permit. Henceforth, the Town of Pittsford is DISMISSED from the action.

Dated at Rutland, Vermont this _____ day of _____, 2009.

Hon. William Cohen
Superior Court Judge