



RED HILL OUTING CLUB v. Robert HAMMOND and another.

143 N.H. 284, Supreme Court of New Hampshire.

No. 97-312. | Dec. 31, 1998.

SYNOPSIS

The trial court found that Red Hill (P) had not substantially breached a condition in the deed granted by Hammond (D) conveying a ski slope by fee simple subject to a condition subsequent.

FACTS

In 1956, the Hammonds (defendants) purchased land in Moultonboro, New Hampshire.

The Hammonds then developed the land for use as a ski slope, and were involved in forming Red Hill Outing Club (plaintiff), which was devoted to operating the ski slope. The Club leased the slope from the Hammonds from 1969 through 1979. The Club further operated a rope tow and provided free ski lessons for its members and residents of the town.

In 1979, the Hammonds conveyed the land to the Club for nominal consideration. The deed contained the condition that the Hammonds could reenter and take possession of the land if, for two consecutive years, the club did not maintain the property as a ski slope and make it available to Moultonboro residents as a ski slope.

The Club stopped providing free ski lessons after 1989, and did not operate the rope tow for the winters of 1992-93 and 1993-94.

The ski slope was completely closed during the second winter.

In October 1994, the Hammonds filed a notice of reentry, on the grounds that the Club had breached the condition by failing to operate skiing facilities for two consecutive years.

The club then sought a declaratory judgment against the Hammonds.

PROCEDURAL HISTORY

The trial court held that the condition subsequent in the deed should be strictly construed.

Therefore, the trial court held, the only condition was that the club “maintain and make available the premises . . . as a ski slope.” Accordingly, the club had not breached during the winter of 1992-93, and the closure during the winter of 1993-94 was not long enough to give the Hammonds a right of reentry. The trial court held that the club retained title to the property.

The Hammonds then appealed.

ISSUE

Will a deed containing a condition subsequent be strictly construed so as to confine the determination of intent to the face of the deed?

HOLDING AND DECISION: (Horton. J.)

- Yes. A deed containing a condition subsequent will be strictly construed to confine the determination of intent to the face of the deed.
- Condition subsequents are viewed with disfavor because of their potential to cause a forfeiture of land.
- The rule of strict construction resolves all ambiguities against forfeiture.
- The trial court did not err in construing Red Hill's (P) obligation as limited to maintaining and making the available as a ski area, as the Club was not required to import meanings not apparent on the face of the deed when it determined the parties' intent.
- The ruling of the trial court is thereby Affirmed.

FINAL NOTE:

Hammond had argued that the Red Hills Ski Club had agreed to provide a rope tow and ski instruction at the property. But the court applied the rule of strict construction, limiting the condition subsequent to the express words contained in the deed.

Other jurisdictions have made similar rulings because a forfeiture is considered to be a drastic remedy to be avoided if at all possible.