PDHonline Course L109 (6 PDH)

Land Boundary Surveys I

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Land Boundary I

Jan Van Sickle, PLS

Module 3

Written Intentions in Deeds

Resolving ambiguities and discrepancies between deeds and facts found in surveying involves not only reading the deed itself, but interpreting it. That interpretation can only be sensible in light of the intention of the parties at the time it was executed. And it is frequently the surveyor who is called upon to unravel this mystery.

> 'Excepting senior rights of others and a valid unwritten right of possession, the intentions of the parties to a deed, as expressed by the writings, are the paramount consideration in determining the order of importance of conflicting title elements.' (Brown, Robillard, Wilson 1986: 80)

> 'In the determination of boundary lines as set in a deed, rules yield to the manifest intention of the parties to the extent that this can be ascertained from the language used, which is the controlling considerations.' (Clark, Grimes, Robillard and Bouman 1987:518)

Here is a case in point.

"Rose PIERCE. Plaintiff (Pierce), Cross-defendant and Respondent,

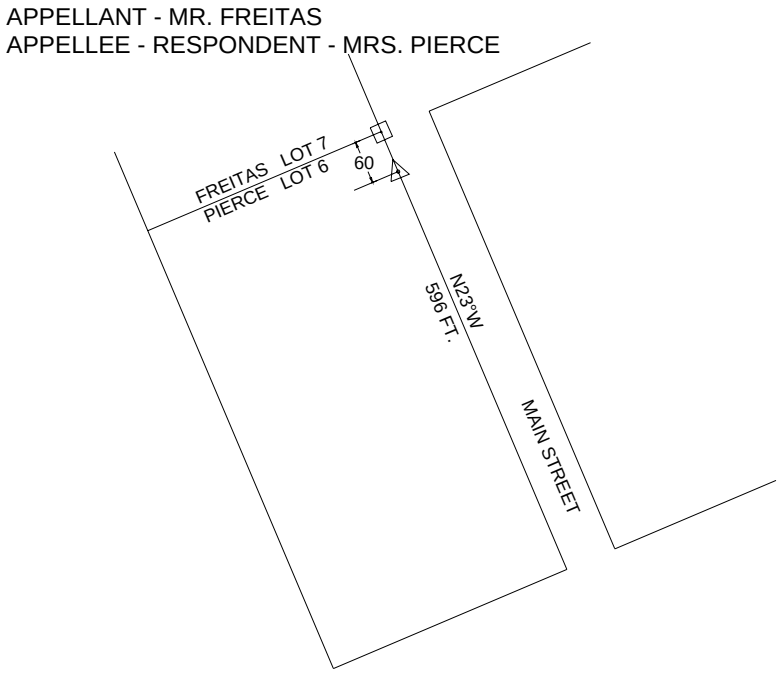
v.

FREITAS. Defendant (Freitas), Cross-complainant and Appellant

Civ. 16180.

District Court of Appeal, First District, Division 2, California.

Feb. 23, 1955"



Comment 1

This was a disagreement about a strip of land across a lot right on Main Street in Santa Clara, California. Mrs. Rose Pierce received the strip in 1948 from her son Manuel. He had purchased

it from Mr. Freitas, Mrs. Pierce's neighbor, the year before. As it happened this 60-foot strip of land was right along the line between their two lots. Mrs. Pierce said it was a 60-foot strip, but Mr. Freitas said it was a 55-foot strip. So they went to the Superior Court of Santa Clara County, and the court agreed with Mrs. Pierce. Mr. Freitas still thought it was a 55-foot strip of land and brought it to the District Court of Appeals. Here is how the Pacific Reporter tells the story.

"Respondent Rose Vierra Pierce in 1952 instituted a quiet title action with respect to a rectangular parcel of real property with a frontage of 60 feet on the southwest side of Main Street in Santa Clara. The parcel had been acquired from appellant Freitas. The deposit receipt in respondent (Pierce)'s name dated August 21, 1946, described the parcel as 2052 Main Street only. The deed dated January 4, 1947 was taken in the name of the respondent (Pierce)'s son Manuel Vierra. It conveyed also another lot not here involved. It described the front of the rectangular lot in question as follows:

'Beginning at a harrow tooth on the southwesterly line of Main Street, distant thereon North 23° 00' West 596.00 feet from the point of intersection of the said southwesterly line of Main Street with the northwesterly line of Reed Street, . . . ; running thence North 23° 00' West along said southwesterly line of Main Street 60.00 feet to a stake set at the common corner of Lots 6 and 7 . . .' By a grant deed of July 13, 1948 Manuel Vierra and his wife conveyed the parcel to respondent (Pierce), the deed containing exactly the same description as the deed from appellant (Freitas) to Manuel Vierra.

It was the appellant (Freitas)'s contention that the above description in the deed signed by him was the result of a mutual mistake as he had agreed to sell a rectangular lot with a frontage of 55 feet only, the description of which should have read: 'Beginning at a harrow tooth on the

southwesterly line of Main street, distant thereon North 23° 00’ West *601 feet* from the point of intersection of the said southwesterly line of Main Street with the northwesterly line of Reed Street . . . ; running thence North 23° 00’ West along said southwesterly line of Main Street *55.00 feet* to a stake set at the common corner for Lots 6 and 7 . . . ‘ In a cross-complaint appellant (Freitas) sought reformation of the deed accordingly.

In support of his contention appellant (Freitas) relied on the escrow instructions signed by him and Manuel Vierra on January 4, 1947, in which the description of the frontage read:”

Comment 2

Note that escrow means a deed, money or something of value delivered to a disinterested person to be delivered to the grantee upon the fulfillment or performance of some act of condition.

“‘Beginning at a harrow tooth on the southwesterly line of Main Street distant thereon North 23° 00’ West *596.00 feet* from the point of intersection of the said southwesterly line of Main Street with the northwesterly line of Reed Street, . . . ; running thence North 23° 00’ West along said southwesterly line of Main Street *55.00 feet* to a stake set at the common corner for Lots 6 and 7 . . . ‘It is conceded by appellant (Freitas) that said description is inconsistent because the actual distance of the monuments, the harrow tooth and the stake as therein described, would be 60 feet. He contends, however, that the escrow holder bank without consulting the parties erroneously resolved the discrepancy in favor of the monuments and that the appellant (Freitas), because he could not read, was not aware either of the discrepancy in the escrow instructions or the alleged mistake in the deed.

The evidence further showed that respondent (Pierce) lived in the house on the parcel in question and that if the boundary appellant (Freitas) contended for were accepted the house would be too near the property line to leave the side line set back required by local law and the parts of the building would even protrude over the property line. Appellant (Freitas) conceded this but testified that respondent (Pierce) had agreed to move the house at her expense. He did not wish to sell 60 feet because that would include part of the garage driveway of his own adjacent home and he did not wish to replace his existing driveway, which curved to the house sold, by a straight one which would require the taking out of one or two trees on his property. Respondent (Pierce) as a witness testified that the moving of the house to conform to a local ordinance had never been mentioned as she had bought 60 feet and there had never been any conversation about buying 55 feet only. She had in 1948 tried to put up a fence on the boundary in accordance with the 60 feet width but appellant (Freitas) had thrown it down and she had abstained from rebuilding because of death threats by appellant (Freitas). She had always paid taxes in accordance with the deed and appellant (Freitas) conceded that he never tried to pay taxes on the five-foot strip in dispute or to have the assessment corrected."

Comment 3

Well, there you have it. Mrs. Pierce contended that the words in the deed description she had were clear and unambiguous. They said 60 feet. And that distances in the description also agreed with the monuments on the ground. Mr. Freitas did not deny that, but he insisted he, the grantor, did not intend to sell a 60-foot strip of land. He said he intended to sell only 55 feet and that was what it had said in the escrow agreement, before the banker changed it. And after all aren't, "the intentions of the parties to a deed, as expressed by the writings" . . . the paramount consideration, (Brown, Robillard, Wilson 1986: 80)? But he also had to agree that the

monuments called for in the deed were 60 feet apart. “Monuments called for in a deed, either directly or by survey, or by reference to a plat which the parties relied on, are subordinate to senior rights, clearly stated contrary intentions, and original line actually marked and surveyed, but are presumed superior to direction, distance or area.” (Brown, Robillard, Wilson 1986: 87).

Comment 4

Here is the court’s decision.

“The court held that respondent (Pierce) was owner in fee of the real property as described in the deeds and refused the reformation sought in the cross-complaint, finding in substance that the allegations on which the action for reformation was based were untrue. . .

On its face the deed signed by appellant (Freitas) conveys the property as claimed by the respondent (Pierce) without any ambiguity or discrepancy. ‘The presumption is that a written instrument deliberately executed expresses the intention of the parties . . .’ ‘It is for the trial court to determine if this presumption has been overcome.’
(Kayser v. German, 3 Cal2d 478, 486, 44 P 2d 1041, 1044)

Moreover the escrow instructions on which appellant (Freitas) relies tend to support respondent (Pierce)'s position. In the conflict between the stated monuments which favor respondent (Pierce) and the stated measurement on which appellant (Freitas) relies, the monuments if ascertained are paramount, (§ 2077, subd. 2, Code of Civil Procedure). The escrow holder bank in drawing up the deed evidently followed this rule. It is true that the rule only applies ‘when the construction is doubtful and there are no other sufficient circumstances to determine it’, (§ 2077, Code of Civil

Procedure), and that in the construction of boundaries the intention of the parties is the controlling consideration.

(Machado v. Title Guarantee & Trust Co. 15 Cal.2d 180, 186, 99 P.2d 245.)

But as to their intention and prior oral negotiation the testimony of the parties is in hopeless conflict, appellant (Freitas) testifying that it was agreed to that respondent (Pierce) would take 55 feet and move the house, respondent (Pierce) that she bought 60 feet and did not speak about moving the house. That under said circumstances the decision of trial court is binding on this court and does not require citation of authority.

Judgment affirmed

NOURSE, Presiding Justice.
DOOLING and KAUFMAN, JJ., concur."
[Pierce v. Freitas, 131 Cal. App. 2d. 65, 280 P.2d 67 (1955)]

Comment 5

In this case the court did uphold the principle that the intentions of parties to a deed, *as expressed by the writings*, are the paramount consideration. So even though Mr. Freitas testified that he intended to sell only 55 feet, in fact he sold 60 feet because the words on the deed said 60 feet not 55 feet. Further, the description in the deed was not the least bit ambiguous and matched the position of the monuments for which it called. The harrow tooth and the stake were 60 feet apart, not 55 feet. "For a monument itself to be controlling it must be (1) called for, (2) identifiable and (3) undisturbed." (Brown, Robillard, Wilson 1986: 88). And it appears that the monuments in this case satisfied all three conditions. Further the description specifically mentions, "60.00 feet *to* a stake," and there is some significance in that word, "to". "'To a stone,' 'to a stake,' 'to the corner of Lot 16,' 'to the point of beginning,' are all examples of the usage of the word 'to' where distance, area, or course given yields by

presumption to the object or point called for." (Brown, Robillard, Wilson 1986: 94). In other words, even if the distances in the deed description proved to be too short or too long, the courses would still have to terminate on the harrow tooth and the stake because the description stipulates they will run "to" those monuments where they stand. Those calls are locative.

Brown, C.M., Robillard, W.G. and Wilson, D.A. (1986) *Boundary Control and Legal Principles*, 3rd edn, New York: John Wiley and Sons.

Clark, F.E., Grimes, J.S., Robillard, W.G. and Bouman, L.J. (1987) *A Treatise on the Law of Surveying and Boundaries*, 5th edn, Charlottesville, Virginia: The Michie Company.