IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

EUGENE SCHOOL DISTRICT NO. 4J, a common school district of the State of Oregon, Plaintiff, v. CITY OF EUGENE, a municipal subdivision of the State of Oregon, Defendant.	Case No. 16-07-03046 OPINION and ORDER

Summary

This declaratory judgment action requires the court to determine whether a 1938 deed by the City of Eugene to Eugene School District No. 4J contains a restriction that limits the use of the deeded property as a "recreation area." Although the deed's recital, a non-operative clause, contains language discussing the use of the property as a "recreation area," the deed's operative clauses do not contain such a restriction. Ultimately, the court rules that this recital language has no legal effect because it shows only the City's motive in deeding the property to the District, and not that the City burdened the land with an exclusive and perpetual restriction that limits the use of the property as a "recreation area."

Discussion

I. Factual and Procedural Background

This dispute arises out of a 1938 conveyance by Defendant City of Eugene (City) to Plaintiff Eugene School District No. 4J (District). The property conveyed was a 17-acre athletic field on Willamette Street where the Civic Stadium is now located (Property).

Prior to the conveyance, the City Council discussed an amendment to the City Charter to authorize a property tax to pay off a debt on the Property and then donate the Property to the District. At a meeting on January 31, 1938, Mayor Large stated that it should be emphasized in the ballot title that the Property was to be deeded to the District "for use as a civic recreational area." At a meeting on April 25, 1938, a representative of the District

pointed out that the purpose of the Charter Amendment was to pay off outstanding bonds and deed the Property to the District "for athletic field and playground purposes." The representative then submitted an alternative proposed ballot title that would ask whether the Charter Amendment should authorize a tax to be applied in payment of outstanding bonds and to deed to the District the Property "for athletic field and park purposes."

In 1938, the voters of the City of Eugene approved the Charter Amendment to authorize a property tax to pay off a debt on the Property and then donate the Property to the District. The Charter Amendment provided that the City would deed to the District the Property "to be used by the School Board as an athletic field." After the voters approved the Charter Amendment, the City donated the Property to the District.

The deed contains a recital that states, in part, that the Property is "to be used as a recreation area for the School District and for the municipality." The operative clauses following the recital do not specify that the Property is deeded to the District for recreational use.

The sole question before the court is whether the deed contains a restriction that limits the use of the Property as a "recreation area." In this posture, the court's decision is informed by Plaintiff's Motion for Summary Judgment (OJIN 4) and Defendant's Opposition to Plaintiff's Motion for Summary Judgment (OJIN 13), and City's Motion for Summary Judgment (OJIN 7) and Plaintiff's Response to Defendant's Motion for Summary Judgment (OJIN 10).

II. Legal Analysis

The District argues that it is the owner in fee simple of the Property, without any limitation or restriction on the purposes for which the Property may be used. The District contends that the purpose specified in the recital for the Property is, at most, merely a recitation of the City's "desire" or "motive" in conjunction with the conveyance of the Property.

The City argues that the deed conveying the Property to the District and the extrinsic evidence surrounding the conveyance demonstrate that the City intended to convey, and the District intended to accept, the Property subject to the deed restriction requiring that the Property be used as a recreational area.

A. Language Denoting Recreational Use of the Property

The deed contains a recital that states, in part:

> ". . . that the property . . . be deeded to School District No. 4 of Lane County, to be used as a recreation area for the School District and for the municipality."

The deed's granting and habendum[1] clauses (operative clauses) provide:

> ". . . That the City of Eugene . . . has bargained and sold, and by these presents does grant, bargain, sell and convey unto the purchaser, School District No. 4 of Lane County, Oregon, its successors and assigns, all the following bounded and described real property . . . TO HAVE AND TO HOLD, the above described and granted premises unto the said School District No. 4 of Lane County, Oregon, its successors and assigns forever."

These provisions raise two issues: (1) whether the deed in its entirety should be examined in determining whether the deed contains a restriction that limits the use of the Property as a "recreation area," and (2) whether the deed contains such a restriction.

1. The Deed in its Entirety is Examined

The City agues that the court must examine the deed in its entirety, giving the recital and the operative clauses equal weight. In *Palmeteer*, the Oregon Supreme Court provided that in construing a deed, the court must look to the entire instrument, and not to separate parts thereof, to ascertain the intention of the parties.[2] Effect must be given to all of the language used by the grantor in expressing his intention as to the kind and character of estate which he intends to convey.[3] Thus, the whole deed should be read, and, if possible, effect should be given to the habendum clause as well as to the clause containing the words of the grant, as the object of the habendum clause is to enlarge, limit, or explain the estate conveyed.[4]

The City concedes that both the granting clause and the habendum clause appear to convey the Property in fee simple. But the City argues that the court should also consider the recital. In *Miller*, the Oregon Supreme Court provided:

> The overriding rule in the construction of contracts is that the intention of the parties prevails. The refusal to give any weight to the recital if the operative provisions are 'clear' is nonsense, because it ignores the doubt which a conflict between the two may raise as to whether the operative provisions accurately report the intention of the parties. . . The recitals must necessarily concern the contract in some manner; otherwise, there would be no object in including them.[5]

Thus, *Miller* requires the court to examine the deed in its entirety in determining whether the deed contains a restriction that limits the use of the Property as a "recreation area."

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[1] BLACK'S LAW DICTIONARY (8th ed. 2004) defines "habendum clause" as "[t]he part of an instrument, such as a deed or will, that defines the extent of the interest being granted and any conditions affecting the grant."
[2] *See Palmateer v. Reid*, 121 Or 179, 183 (1927).
[3] *See id*.
[4] *Id*.
[5] *Miller v. Miller*, 276 Or 639, 647 (1976).

2. The Deed Does Not Contain a Restriction that Limits the Use of the Property as a "Recreation Area"

The District argues that the purpose specified for the Property is, at most, merely a recitation of the City's "desire" or "motive" in conjunction with the conveyance of the Property. In *Stansbery*, the Oregon Supreme Court divided conveyances containing words relating to a specified use of the land transferred into four categories: (1) where a condition subsequent is created; (2) where a conditional limitation is prescribed; (3) where a trust is declared; and (4) where the motive of the grantor is announced or the intention of the grantee is revealed, without stating a condition, or prescribing a limitation, or creating a trust, or imposing an obligation of any kind.[6] The District argues, and the court agrees, that the first three categories do not apply to this dispute, and that the fourth category does apply.[7]

The first two *Stansbery* categories do not apply because they involve conveyances whereby title to property will terminate in the grantee and be returned to the grantor upon the occurrence of a specified condition.[8] The District provides two reasons why the City properly does not claim that it should get the Property back in any event: (1) there is no language in the conveyance from the City to the District which might be construed to allow the City to reacquire the Property if it were no longer used as a "recreation area"; and (2) both the granting clause and the habendum clause unambiguously state that the City is transferring the title in fee simple, without condition, to the District, "its successors and assigns, forever."[9]

The third *Stansbery* category does not apply because the deed does not declare a trust. The Oregon Supreme Court provides, that, as a general rule, where a conveyance is held to create a trust, the language of the deed not only specifies the purpose for which the land is to be used, but also expressly states, for example, that the realty shall be used for the purpose "only," or "forever," or "for no other purpose," or shall be held "in trust" for a defined purpose.[10] Although here the recital specifies the recreational purpose for which the Property is to be used, nowhere does the deed state that the Property shall be used for that recreational purpose "only," or "forever," or "for no other purpose," or that it shall be held "in trust" for that recreational purpose. Thus, the deed does not declare a trust.

The fourth *Stansbery* category does apply. The recital provides that the Property is "to be used as a recreation area for the School District and for the municipality," without indicating how long that use should continue. This dispute is thus analogous to *Stansbery*, in which the writing at issue conveyed property to defendant church "for the purpose of a parsonage, church, etc.," without indicating how long that use should

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[6] *See Stansbery v. First Methodist Episcopal Church*, 79 Or 155, 172-73 (1916).
[7] The City argues that *Stansbery* has been superseded by *Palmateer*. The court finds that *Stansbery* has not been superseded by—and is actually consistent with—*Palmateer*.
[8] *See Clark v. Jones*, 173 Or 106, 108 (1943).
[9] *See* ORS 93.120 ("Any conveyance of real estate passes all the estate of the grantor, unless the intent to pass a lessor estate appears by express terms, or is necessarily implied in the terms of the grant.").
[10] *See Stansbery*, 79 Or at 173.

continue.[11] In *Stansbery*, plaintiffs contended that the land itself must be used for the specified purpose, and that it must be so used perpetually.[12] The Oregon Supreme Court noted that plaintiffs could not prevail unless the deed (1) specified a purpose which is exclusive, and (2) by appropriate language expressed or imported a perpetual use of the land itself for that exclusive purpose.[13] Because the writing did not say that the land was conveyed for the purpose of a church and parsonage "only" or "forever" or "none other" or "no other" or "for no other purpose," the court held that the conveyance did no more than "to express the motive of the grantors or to announce the intention of the grantee."[14] *Stansbery* further notes:

> words indicating an exclusive purpose and signifying permanency must appear in order perpetually to fetter upon the land the burden of an exclusive use, and sound reason underlies and gives stability to the rule. The law not only favors the vesting of estates, but when the fee is conveyed all doubts should, as a rule, be resolved in favor of a free use of the property and against restrictions.[15]

Like *Stansbery*, here the deed in its entirety neither expresses nor implies that the Property must be used exclusively for recreational purpose, or that the Property must be used for such purpose forever. Instead, the deed is silent as to how long recreational use shall continue. Additionally, the District's use of the Property is further evidence that the parties did not intend that the Property would only be used for recreational purpose forever. Although the District has used the Property for its various athletic teams from 1938 through the present, it is undisputed that since 1946 the District has used the Property for other than recreational purposes. Since approximately 1946, the Property was used by the District's Transportation Department, for school bus storage and maintenance, and related activities, and for the department's administration offices. The Transportation Department's use of the property continued until 1995. Since 1995, the District has also used the Property as a satellite storage and maintenance facility, and for auxiliary parking for South Eugene High School. In addition, the Eugene Emeralds professional baseball club has used the Civic Stadium as its home park from 1969 through the present.[16]

Moreover, in 1960, the District deeded a portion of the Property subject to the 1938 deed back to the City (1960 Portion). The 1960 deed does not contain the words "recreation area," and the City was not required to use the 1960 Portion as a recreation area. The 1960 Portion is now a part of the Amazon Parkway. That the City used the 1960 Portion for a non-recreational use is additional evidence that the parties did not intend that the Property would only be used for recreational purposes forever. Accordingly, the language denoting the specified recreational use of the Property does no more than

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[11] *Id.* at 174.
[12] *See id.* at 173.
[13] *Id*.
[14] *Id.* at 173-74, 176.
[15] *Id.* at 176-77.
[16] The court doubts that renting Civic Stadium to a professional baseball team is use as a "recreation area" as contemplated by the recital language of the deed.

express the City's motive in donating the Property or announce the District's intention in accepting the Property and has no legal effect.

3. The Extrinsic Evidence Does Not Contain a Restriction that Limits the Use of the Property as a "Recreation Area"

The City also argues that if the court finds that the recital and operative clauses render the deed ambiguous, the court should also consider extrinsic evidence to determine the parties' intent. Where a deed is ambiguous, the court not only examines the language of the deed itself, taken as a whole, but also the extrinsic evidence surrounding the execution of the deed.[17] Because the recital is inconsistent with the operative clauses, under *Miller*, a question exists about the parties' intent, and the court is required to consider evidence of the circumstances under which the conveyance was made.[18]

The extrinsic evidence presented by the City includes the City Council's resolution, the City Council meeting minutes, and the ballot measure. The extrinsic evidence refers to the specific purpose for which the City conveyed the Property as follows: "to be used by the School Board as an athletic field;" "for athletic field and park purposes;" "for athletic and playground purposes;" and "for use as a civic recreational area." The City argues that this extrinsic evidence clearly shows its intent to convey the Property to the District subject to the restriction.

Although the extrinsic evidence presented by the City may show the City's intent to convey the Property to the District subject to the restriction, the outcome remains the same because the specified use language falls under the fourth *Stansbery* category. The extrinsic evidence refers to various purposes for which the City conveyed the Property to the District, but nowhere expresses or implies that any of those various purposes is exclusive or perpetual. Thus, the specified use language in the extrinsic evidence, like the specified use language in the recital, has no legal effect.

B. Secondary Arguments

The District further argues that no covenant exists. Because the City does not claim a covenant, it is unnecessary to address this argument.

The City further argues that because both the District and the City were aware that the City wished to convey the Property subject to the recreational use restriction, the District should be held to its understanding of the conveyance and its acceptance of the Property, subject to the restriction. But the District argues, and the court agrees, that the language does not operate to restrict or limit the District's use of the Property in any way.

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[17] *See Wirostek v. Johnson*, 266 Or 72, 75 (1973).

[18] *See Miller v. Miller*, 276 Or 639, 647 (1976) ("If, in the particular fact context, the recitals appear to be inconsistent with the operative clauses, as a matter of common sense there is an ambiguity or question about the intent of the parties, and evidence of the circumstances under which the contract was made should therefore be admitted as an aid in determining the parties' assumed or actual intent.").

III. Conclusion

In construing a deed, the court is required to look at the entire instrument to ascertain the intention of the parties. If the parties intend to restrict the deeded property to an exclusive and perpetual use, the deed—or if the deed is ambiguous, the extrinsic evidence surrounding the execution of the deed—must contain language specifying the restriction and that the restriction is exclusive and perpetual.

In the 1938 deed by the City to the District, neither of the deed's two operative clauses—the granting clause and the habendum clause—specifies that the Property is deeded to the District for recreational use, let alone that the Property is deeded to the District exclusively and perpetually for recreational use. Thus, the deed's operative clauses do not contain a restriction that limits the use of the Property as a "recreation area."

Nor does the deed's recital, a non-operative clause, contain a restriction that limits the use of the Property as a "recreation area." Although the recital states, in part, that the Property is "to be used as a recreation area for the School District and for the municipality," this language has no legal effect because it does not specify that the recreational use is exclusive and perpetual. The extrinsic evidence surrounding the execution of the deed likewise refers to various purposes for which the City conveyed the Property to the District without specifying that any of those various purposes is exclusive or perpetual. The recital and the extrinsic evidence thus show only the City's motive in deeding the Property to the District, and not that the City burdened the Property with an exclusive and perpetual recreational use restriction.

IT IS HEREBY DECLARED AND ORDERED that Eugene School District No. 4J holds the Civic Stadium property in fee simple, free and clear of any and all claims by the City of Eugene, and that the District, its successors, and assigns, may use the property for any lawful purpose, without further restriction or limitation, forever.

The District shall prepare the judgment, which shall by reference incorporate this Opinion and Order.

Dated: April 3, 2007.

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Karsten H. Rasmussen, Circuit Judge