



BK: 2018 PG: 576
Recorded: 2/22/2018 at 9:52:54.0 AM
Fee Amount: \$47.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

(SPACE ABOVE THIS LINE FOR RECORDER)

PREPARED BY
 AND RETURN TO: William B. Serangeli, 699 Walnut, 1600 Hub Tower, Des Moines. Iowa 50309;_(515) 244-2600

TAXPAYER INFORMATION: N/A

AFFIDAVIT EXPLANATORY OF TITLE

TO: Lot Eight (8) in Block One (1) of Clanton’s Addition to the Town of St. Charles,
 Madison County, Iowa
 (hereinafter referred to as the (“property”))

STATE OF IOWA)
)SS
 COUNTY OF POLK)

The undersigned, William B. Serangeli, an attorney licensed to practice law in the State of Iowa, being first duly sworn on oath, does hereby depose and state that:

1. I am legal counsel for Darwin Smith Realty, LLC d/b/a EXIT Realty North Star, a real estate brokerage which functioned as the consensual dual agent regarding the sale and purchase of the above-described property in the calendar year 2016.

2. That on February 22, 2016 Ronald Seaton and L. Marie Davis, husband and wife, as “Sellers” entered into a Purchase Agreement dated February 20, 2016 with Brandon Prater and Melissa Prater, husband and wife, as “Buyers” to sell to the Buyers Lots 7 and 8 in Block One (1) of Clanton’s Addition to the Town of St. Charles, Madison County, Iowa.

3. That the sale of the real property subject to the Purchase Agreement referenced above closed on April 13, 2016 with the Buyers paying to the Sellers the full and complete purchase price set forth in the Purchase Agreement.

4. That at the time of the closing, Ronald Seaton and L. Marie Davis as Grantors issued to Brandon Prater and Melissa Prater, husband and wife as Grantees a Warranty Deed that was filed for record in Office of the Recorder of Madison County, Iowa on April 14, 2016 in Book 2016 at Page 939. (The Warranty Deed).

5. The Warranty Deed as filed, contained a scrivener's error in that it listed the property being conveyed as only Lot 7 in Block 1 of Clanton's Addition to the Town of St. Charles, Madison County, Iowa rather than Lot 7 and Lot 8 of Clanton's Addition to the Town of St. Charles, Madison County, Iowa which were both purchased by Brandon Prater and Melissa Prater pursuant to the Purchase Agreement.

6. Subsequent to the recording of the Warranty Deed, L. Marie Davis passed and because the title Lot 8 in Block 1 of Clanton's Addition to the Town of St. Charles, Madison County, Iowa was held in joint tenancy with her husband Ronald Seaton, title to that property passed directly to Ronald Seaton, and there was no inheritance or income tax liability due.

7. That subsequent to the death of L. Marie Davis on December 11, 2016, Ronald Seaton, then single, died testate and through his Last Will and Testament nominated Paul Dean Seaton, his son as the executor of his estate. The Petition for Probate of Will and Appointment of Executor was accepted by the Iowa District Court for Clarke County as Case No. ESPR010058 and was admitted into probate by court order on January 12, 2017.

9. That subsequent to the opening of the Estate of Ronald Seaton,(the "Estate") it was learned by the executor of that estate, that through the scrivener's error, the real property described above had not been included within the Warranty Deed.

10. That on November 2, 2017 the executor of the estate filed a Motion for Hearing on Purchase Agreement seeking court direction as to the disposition of the property described above.

11. That on January 3, 2018 a contested case proceeding was held in the Estate wherein the Court was requested to rule on issues related to the property described above and to what disposition of that property should be made by the Estate.

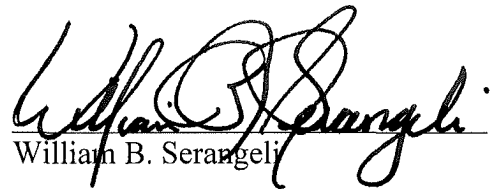
12. That on January 31, 2018 the Court issued a ruling on the real estate issue, a copy of which is attached hereto as Exhibit 1 and incorporated herein as if fully and completely set forth.

13. Following the receipt of the Court's Order on the ruling on real estate, Paul D. Seaton, the executor of the estate of Ronald Seaton executed a Court Officer's Deed conveying Lot Eight (8) in Block One (1) of Clanton's Addition to the Town of St. Charles, Madison County, Iowa to the purchase agreement vendees, Brandon Prater and Melissa Prater, husband and wife as joint tenants with full rights of survivorship.

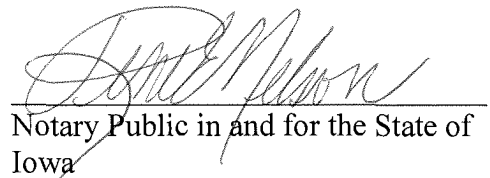
14. That Court Officers Deed which complies with the Court's ruling on real estate was filed of record in the Office of the Recorder of Madison County, Iowa on February 15, 2018 in Book 2018 at Page 518.

15. This Affidavit Explanatory of Title is given as record proof and notice of the events and transactions described above pursuant to Iowa Code Section 558.8 and is governed by the presumptions created within that statute and filed with the permission of the owners of the property in possession thereof.

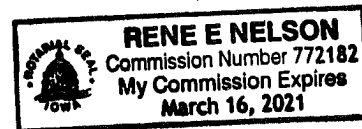
Dated this 22nd day of February, 2018.


William B. Serangeli

Subscribed and sworn to before me by the said William B. Serangeli on February 22, 2018.


Notary Public in and for the State of Iowa

My commission expires: 3/16/21



IN THE IOWA DISTRICT COURT FOR DECATUR COUNTY

IN THE MATTER OF THE ESTATE OF RONALD LUVERNE SEATON, DECEASED	ESPR010058 RULING ON REAL ESTATE ISSUE
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BE IT REMEMBERED that this matter came on for hearing on the final report of the executor on January 3, 2018. The estate appeared by the executor, Paul Seaton, and counsel for the executor, Bryan Witherwax and Kelli Ramsey. Objector Kale Funeral Home appeared by counsel, Elisabeth Reynoldson. Objectors Robert and Jean Oehlert appeared by Robert Oehlert and by their counsel, Matthew Zinkula. William Serangeli appeared for Exit Realty North and Jon Neimeyer. Following hearing, the record was left open to permit the filing of an amended final report and possible objections thereto. In post-hearing motions, the estate requested permission to withdraw the final report, hire outside counsel to pursue collection of a promissory note, and an extension of time to file an amended final report. The estate also asked the court to rule on the issues related to real estate as presented at the hearing. On the record made and in light of the post-hearing motions, the court makes the following findings of fact, conclusions of law and orders.

EXHIBIT 1

The estate is granted permission to withdraw its final report. Separate orders have been entered addressing the retention of outside counsel and an extension of time to pursue collection of a promissory note.

The real estate issue presented to the court involves the sale or purported sale of real estate in Madison County owned by the decedent and his wife. The real estate consisted of two lots, Lots 7 and 8 in Block 1 of Clanton Addition to St. Charles, Iowa. On February 20, 2016, they entered into a purchase agreement with Brandon and Melissa Prater. That purchase agreement listed the real estate being sold as Lots 7 and 8. From that point forward, Lot 8 disappeared into the Twilight Zone. No other document generated in the sale process, to the extent those documents were introduced at trial, mentions Lot 8.¹ The purchase agreement also listed the street address of the real estate as 305 West Sycamore Street. That street address appears on most if not all of the documents. Some documents include only the street address. Other documents include that street address but only refer to Lot 7 in the legal description.

At the time of the sale by the decedent and his wife, both lots were subject to a mortgage in favor of Great Western Bank. At the time of the hearing, the mortgage had been released only as to Lot 7. Following the hearing, the estate obtained and recorded a release of the mortgage as to Lot 8.

Following the closing of the sale to the Praters, decedent's wife, L. Marie Davis, died. On October 16, 2016, the decedent executed an affidavit stating that

¹ See exhibit 100.

he was the record title holder to Lot 8, as the surviving joint tenant, and requesting that the Madison County Auditor list him as the sole owner of the lot for tax purposes.² The attorney who prepared the affidavit testified that she was not aware of the purchase agreement, did not have a copy of it in her file and did not recall discussing the sale with the decedent.

The purchaser, Brandon Prater, testified that he understood the sale to include both lots. In the summer of 2017, he caused a fence to be built that included both lots. He received permission from the City of St. Charles to construct the fence. He also testified that an internet site, Zillo, still showed a sale listing for the property and that it included both lots. No one knew for sure if or how the taxes on Lot 8 have been paid following the sale. Lot 8 is apparently a bare lot with fruit trees and other plantings on it. All of the buildings included in the sale are located on Lot 7.

Other than the affidavit which the decedent executed, there is no indication that he ever asserted any ownership interest in Lot 8 after the sale closed. There is no evidence that he paid the taxes, visited the property, or pursued other buyers for the lot.

The issue presented to the court is to determine whether or not Lot 8 is a part of the probate estate and what should be done with it. Since the title to the lot

² See exhibit D.

was in the decedent's name at the time of his death, the court concludes that the lot is clearly a part of the probate estate.³ The real problem is what to do with it.

In the court's view, the issue is whether or not the buyers would be entitled to specific performance of the purchase agreement. Specific performance of a contract to convey real estate is not a right, but is granted or denied as a matter of judicial discretion.⁴ It is granted only in extraordinary, unusual cases in which irreparable harm will result in its absence, not as a matter of grace. In determining whether to grant a request for specific performance, the particular facts of the situation must be examined. The request will generally be granted when it serves the ends of justice and when denial would produce a hardship or injustice on either party.⁵ Specific performance is a remedy available particularly in cases of real estate transactions because the court presumes real estate to possess a unique quality such that mere monetary damages may not always constitute adequate remedy for a breach of contract.⁶ "The object of specific performance is to best effectuate the purposes for which a contract was made, and it should be granted upon such terms and conditions as justice requires."⁷

In assessing the evidence before the court in this proceeding, there is nothing that indicates that the purchase agreement was ever amended to remove Lot 8. The buyers thought they were buying it. The sellers did not continue to

³ See generally Iowa Code section 633.351.

⁴ Breitbach v. Christenson, 541 N.W.2d 840, 843 (Iowa 1995).

⁵ *Id.*

⁶ *Id.*

⁷ Berryhill v. Hatt, 428 N.W.2d 647, 657 (Iowa 1988).

market it after the sale closed. It appears to the court that the problem of Lot 8 was one where only part of the abstract was forwarded for updating and no one ever compared the legal description in that abstract with the purchase agreement. It appears to the court that the omission of Lot 8 was a mistake, not a deliberate action intended to indicate that it was not included in the sale. The buyers have acted as though they bought both lots and would suffer some damage if Lot 8 is not conveyed to them. Given the insolvent status of this estate, they would not be able to recover monetary damages to compensate them for their loss. Accordingly the court concludes that the executor should convey Lot 8 to Brandon and Melissa Prater pursuant to and in performance of the purchase agreement.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
ESPR010058 THE ESTATE OF RONALD LUVERNE SEATON

So Ordered

A handwritten signature in cursive script, reading "John D. Lloyd".

John D. Lloyd, District Court Judge,
Fifth Judicial District of Iowa