

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-21-39

STATE OF MAINE ATTORNEY GENERAL,

Plaintiff

and

BOMAZEEN OLD TIMERS,

Plaintiff-Intervenors

v.

PINE TREE COUNCIL, INC., BOY SCOUTS OF
AMERICA,

Defendant

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

Before the Court are opposing Motions for Summary Judgment. Defendant Pine Tree Council, Inc., Boy Scouts of America (“PTC”) and Plaintiff-Intervenors Bomazeen Old Timers (“Old Timers”) both filed their Motions 4/22/22. After the Motions were fully briefed, oral argument was held on 6/13/22. PTC was represented by Attorney Kyle Noonan. The Old Timers were represented by Attorney Russell Pierce. The Attorney General was represented by Assistant Attorney General Christina Moylan. The Office of the Attorney General requested the Court grant judgment in its favor under Rule 56(c) on PTC’s Motion.¹ For the following reasons, the Attorney General is entitled to judgment as a matter of law on all claims.

¹ The Attorney General has authority under 5 M.R.S. § 194 to enforce the terms of public charities.

Background

In addition to individual filings, Defendant and Plaintiff-Intervenors submitted a Stipulated Statement of Material Fact (“SSMF”). The uncontested material facts are as follows:

In 1944, George C. Averill of Waterville, Maine executed a deed (“the Averill Deed” or “the Deed”) that created a charitable trust consisting of a 330-acre parcel of land with improvements on Great Pond in Belgrade (“Camp Bomazeen”), intended to be held

forever in trust ... for the use and benefit of members of the Boy Scouts of America, said premises to be at all times available for camping purposes to the troops and members of the Boy Scouts of America, and especially for the troops and members of the Boy Scouts of America in the central part of the State of Maine.

SSMF Ex. 1, Averill Deed & Averill Deed Art. FIRST (“Article 1”). The trust instrument also included the following relevant terms:

The Trustees ... may sell, bargain and transfer by a good and sufficient lease, mortgage, or deed any and all real and personal property held by it, provided, however, that written consent to so do is first given by the duly established council of the Boy Scouts of America, under whose jurisdiction said premises are situated ... ; and provided further that the consideration derived by the Trustees from such a transaction shall be used for the purposes and under the conditions set forth in this Trust Indenture.

Id. Art. FOURTH (“Article 4”).

In the event of the death, resignation, or inability to act, of any Trustee herein appointed, then the Executive Board of the Council of the Boy Scouts of America having jurisdiction as aforesaid shall appoint a successor from the vicinity in which the former Trustee resided.

Id. Art. SIXTH (“Article 6”).

Should Trustees fail to be appointed or the Trust fail for any reason, then and in such an event title to the said property herein conveyed and all other property real, personal, or mixed, which has been received by said Trustees under the terms of this Trust shall vest in the duly incorporated Council of the Boy Scouts of America having jurisdiction of the area in which said camp is situated; or, if such Council is not active for any reason or refuses to accept the title, the said title shall vest in the said Boy Scouts of America, a Federal corporation as aforesaid,

and it further provided that either the said duly incorporated Council or the Boy Scouts of America may appoint a new Board of trustees under such conditions and terms as they may see fit, consistent with the general purpose to this trust. Said trust shall be deemed to have failed if (without excluding other reasons) the trustees or their appointed agents shall permit any taxes, assessments of other expenses to be in default for a period of two (2) years or if said property shall cease to be used for the purposes herein set forth for a period of three (3) years.

Id. Art. SEVENTH (“Article 7”).

PTC is the council of Boy Scouts of America having jurisdiction in Belgrade, Maine.

PTC is a public charity in the State of Maine. SSMF ¶¶ 1-2, 16. PTC has four separate districts each consisting of one to five counties in Maine and, across these counties, PTC “prepare[s] boys and girls to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law.” ¶¶ 5-7. PTC has experienced declining scout numbers and has entered into a purchase and sale agreement to sell Camp Bomazeen. ¶¶ 10, 21-22. It proposes to use the proceeds of the sale to pay down PTC debts and support PTC operations, including debts and expenses not strictly related to Camp Bomazeen. ¶ 23.

The Deed named several individuals who would serve as trustees over the trust corpus. ¶ 14 & Ex. 1. In 2008, all the trustees had resigned, died, or were no longer acting as trustees. ¶¶ 18-19. No replacement trustees had been appointed. ¶ 20. In April 2008, PTC recorded a Notice of Compliance with Provisions of Trust with the Kennebec County Registry of Deeds stating that title to Camp Bomazeen had vested in PTC under the terms of the Averill Deed. ¶ 18 & Ex. 3.

Legal Standard

Summary judgment is granted to a moving party where “there is no genuine issue as to any material fact” in the record and the moving party “is entitled to judgment as a matter of law.” M.R. Civ. P. 56(c). Rule 56(c) permits summary judgment, when appropriate, to be rendered

against the moving party. “A material fact is one that can affect the outcome of the case, and there is a genuine issue when there is sufficient evidence for a fact-finder to choose between competing versions of the fact.” *Lougee Conservancy v. CityMortgage, Inc.*, 2012 ME 103, ¶ 11, 48 A.3d 774 (quotation omitted). The facts are considered in the light most favorable to the non-moving party. *Mahar v. StoneWood Transp.*, 2003 ME 63, ¶ 8, 823 A.2d 540.

A court construing the language of a deed first looks within the four corners of the instrument, giving words their ordinary meanings. *Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 24, 967 A.2d 690. To determine the intent of the settlor, a court looks at the instrument as a whole. *Id.* The court only looks to extrinsic evidence where ambiguity is present. *Id.*

Discussion

There is no dispute of material factual bearing on the ultimate issues. Defendants argue that the Trust has terminated by operation of law under Article 7 of the Deed because trustees were not appointed. Plaintiff-Intervenors argue the Court should apply *cy pres* and appoint trustees because the purposes of the Trust have been frustrated by PTC’s failure to appoint trustees. The Attorney General argues that that the Trust has not been extinguished and that PTC has legal title.

To interpret the Deed, the Court looks within the four corners of the instrument itself and considers the Deed as a whole. It is clear from Article 4 that the settlor intended that PTC appoint successor trustees to replace the original trustees whom he named in the Deed. In the event that PTC fail to do so, the Deed dictates that “title shall vest” in PTC, but the parties dispute the meaning of “title” in this context.

In the law of trusts, title takes two forms: legal title and equitable title. Defendant maintains Article 7 bestows both legal and equitable title upon PTC, while the Attorney General argues Article 7 bestows only legal title. The Court believes it would defy the settlor's intent to hold the property "forever in trust" if by failing to appoint successor trustees PTC would receive legal and equitable title to the property, freeing Camp Bomazeen of the trust conditions. *See also Manufacturers Nat'l Bank v. Woodward*, 138 Me. 70, 78 (1941) ("The policy of the law has long been liberal in sustaining trusts designed to carry into effect any public or charitable purpose."); *Miller v. Friendship*, 265 A.2d 608, 610 (Me. 1970) (same).

The Court finds that PTC has succeeded only to legal title of the property and not to equitable title. Supporting the view that equitable title has not vested in PTC, Article 7 of the Deed offers PTC options if it fails to appoint successor trustees. When "title ... vest[s]" in PTC, its first option is to step into the shoes of a trustee, holding legal title. It could also appoint other trustees to take its place under modified conditions consistent with the trust terms. Alternatively, legal title would pass to the national Boy Scouts of America group, which could also appoint other trustees. The Court finds that these are the options for oversight of the Trust at this stage.

Trustees are empowered to sell Camp Bomazeen under Article 4.² Article 4 requires that "the consideration derived by the Trustees from such a transaction shall be used for the purposes and under the conditions set forth in this Trust Indenture." Therefore, the Court finds that if PTC sold Camp Bomazeen, it would be required to use the sale proceeds consistently with the trust purpose.

As the Attorney General points out, the trust purpose puts a special emphasis on camping and members of the Boy Scouts of America in the central part of the State. PTC argues that the

² The Court declines to find that PTC has lost its ability to hold legal title to or sell the trust property by failing to appoint successor trustees.

camping language refers specifically to Camp Bomazeen and in the event that it is sold, the emphasis on camping is not meant to persist. But the Court notes that so long as a charitable trust is not extinguished, the purposes do persist. *Robert E. Traip Academy v. Staples*, 317 A.2d 816 (Me. 1974) (“It is axiomatic that the property of a charitable trust in the hands of a trustee must be applied in accordance with the wishes of the trustor.”); *Jackson v. Phillips*, 96 Mass. (14 Allen) 539, 591 (1867) (“The intention of the testator is the guide, or, in the phrase of Lord Coke, the lodestone, of the court; and therefore, whenever a charitable gift can be administered according to his express directions, this court, like the court of chancery in England, is not at liberty to modify it upon considerations of policy or convenience.”); *see also Freme v. Maher*, 480 A.2d 783, 786 (declining to use the *cy pres* doctrine, which allows minimal modification of trust purposes only when the particular purpose of the trust is impossible, impractical or illegal to accomplish).

The Court finds that PTC’s proposed use of the proceeds to benefit PTC itself and pay off unrelated debts is inconsistent with the trust purposes. If PTC sells the property, the proceeds must not be used only for the Boy Scouts of America in general but also “for camping purposes ... and especially for the troops and members of the Boy Scouts of America in the central part of the State of Maine.” SSMF Ex. 1, Art. 1.

The Court grants summary judgment against PTC and in favor of the Attorney General and holds that Camp Bomazeen remains in trust and that the proposed use of the sale proceeds would violate the terms of that Trust.

The entry is:

Defendant’s Motion for Summary Judgment is DENIED.

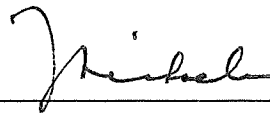
Plaintiff-Intervenors' Motion for Summary Judgment is DENIED.

Summary judgment is GRANTED in favor of State of Maine Attorney General.

The clerk may incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Date: _____

8/3/22

A handwritten signature in black ink, appearing to read "Michaela", written over a horizontal line.

M. Michaela Murphy
Justice, Maine Superior Court