Carlos v. Whipps, 6 ROP Intrm. 43 (1996)
MARIANO W. CARLOS,
Appellant,

v.

SURANGEL WHIPPS,
Appellee.

CIVIL APPEAL NO. 10-95
Civil Action No. 583-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: December 19, 1996

Counsel for Appellant: *Pro se*

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice

MILLER, Justice:

Appellant Mariano Carlos brought this action to quiet title in the land known as Tochi Daicho Lot 1600. The trial court entered judgment in favor of appellee Surangel Whipps. We reverse and remand.

BACKGROUND

Tochi Daicho Lot 1600 was owned by Teresa Tirso, who is now deceased. On January 3, 1984, Tirso executed a deed conveying "Parcel 1600" to Surangel Whipps. On August 15, 1988, Tirso executed a deed of transfer that purported to convey Lot 1600 "less the government property as shown in Civil Action No. 73-76 less the part of this land that had been purchased by Mr. Surangel Whipps," to Mariano Carlos, in return for the legal work which he had performed for her over the years. In 1993, Carlos contacted Whipps to determine what piece of Lot 1600 he had bought from Tirso, and Whipps responded that he had purchased the entire lot. Carlos then brought this action.

⊥44 The heart of this dispute lies in the language used in the warranty deed by which Tirso conveyed her property to Whipps. At trial, Carlos claimed that the words "Parcel 1600" were the product of a mistake and that the deed should have read "partial 1600", thereby conveying only part of the lot. In addition, Carlos argued that the term was so uncertain as to render the deed

inoperative. Whipps asserted that "Parcel 1600" is synonymous with "Lot 1600" and that the evidence shows that he purchased the entire lot. The trial court found for Whipps, holding that, while the term "Parcel 1600" may have been the product of a mistake, the mistake was unilateral and not mutual, and that the six year statute of limitations bars such a claim in any event. Further, the trial court found that the term "Parcel 1600" was sufficiently definite, when viewed in light of the extrinsic evidence, to refer to all of Tochi Daicho Lot 1600.

ANALYSIS

Carlos cites numerous errors in the trial court's decision as bases for this appeal. This Court need only address one of them -- the ambiguity of the deed -- for it is dispositive. [1] Carlos argues that the term "Parcel 1600" is not certain enough to adequately describe the land at issue; therefore the deed is ineffective to convey that land. The trial court considered the deed along with the other extrinsic evidence, and determined that the term "Parcel 1600" adequately described and referred to the whole of Tochi Daicho Lot 1600. We disagree.

In general, a deed is void if the language used to describe the land being conveyed is not sufficiently certain. *Salii v. Omrekongel Clan* , 3 ROP Intrm. 212, 214 (1992). In such cases of uncertainty, the courts have allowed the use of extrinsic evidence to determine the true intent of the parties:

> In most jurisdictions now where the description of land in a deed is vague, uncertain, or indefinite, parol evidence is admissible to explain and remove the uncertainty and to identify the property intended to be conveyed, thus giving effect to the intention of the parties to the instrument.

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23 Am. Jur. 2d *Deeds* § 310 (1983).

As stated, the trial court found that the terms in the deed were certain enough for the deed to be operative. Yet the court made this finding by referring to the extrinsic evidence in the record. Specifically, the court stated:

> The extrinsic evidence offered at trial clearly establishes that the parties were discussing purchasing a part of Tochi Daicho Lot No. 1600 and this is the only land to which the term "parcel 1600" could possibly be referring.

Trial Court's Findings of Fact and Conclusions of Law and Analysis at 7. Thus, while the trial court did not say so explicitly, it impliedly found that the term "Parcel 1600" was ambiguous standing alone, but could be made sufficiently certain by the use of extrinsic evidence.

We believe, in any event, that the phrase "Parcel 1600" is ambiguous. While it is

[1] Carlos also filed a Rule 60(b) motion that questioned whether the words "Parcel 1600" were actually present on the deed when Teresa Tirso signed it. We do not reach that issue, or whether Carlos was entitled to raise it by post-judgment motion, because we believe that reversal is appropriate even if it is assumed that she did sign such a deed.

possible that "1600" was intended to refer to Tochi Daicho Lot 1600, and that "Parcel" was intended to describe the whole of that lot, we do not believe that either, much less both, of those interpretations are inevitable. Thus, while one of the definitions in Webster's Third New International Dictionary (1981), quoted by the trial court, *see* Trial Court's Findings at 8, is consistent with an intention to convey the whole lot, the primary definition given for "parcel" is "a component part of a whole".[2] Likewise, Black's Law Dictionary (6th ed. 1990), defines parcel as "[a] part or portion of land", but also says that it may be synonymous with "lot." See also The American Heritage Dictionary (Second College Edition 1985) (defining "parcel", inter alia, as "[a] portion or plot of land, usually a division of a larger area"). We conclude, therefore, that the trial court was required to review the extrinsic evidence "to explain and remove the uncertainty and to identify the property intended to be conveyed", *see* p. 44 *supra*, by the parties to the deed at issue here.

⊥46 We agree with the trial court that "1600" was clearly intended to refer to Tochi Daicho Lot 1600. Unlike the trial court, however, we find that the extrinsic evidence in the record overwhelmingly points to the conclusion that the parties intended to convey only a portion of Tochi Daicho Lot 1600, rather than the whole lot. Although the testimony as to their course of dealings is not entirely consistent, there is no evidence that the parties ever discussed the possibility of Whipps purchasing the entire Tochi Daicho Lot 1600 from Teresa Tirso. A review of Whipps' testimony, in particular, makes clear that his contention that he purchased the entire land is based not on any discussions to that effect with either Teresa or her son Valentine, but solely upon his own understanding of the word "Parcel".[3] Rather, their discussions were at all times within the context of his request for a lot 200' x 200'[4] or, at best, not less than 200' x 200' in size.[5] Thus, when asked why he had prepared a deed with language reserving easements and rights of way through the lot -- language unnecessary to a purchase of the entire lot -- he explained: "[W]hen we wrote the document, we were thinking about 200 x 200." (Tr. 158)

To be sure, as the trial court noted, discussion of a lot not less than 200' x 200' in size is not inconsistent with a purchase of the whole lot. But that testimony is still not evidence that the parties had discussed a sale of the whole lot, or that that was what they intended by the term "Parcel 1600".[6]

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[2] Remarkably given the contentions discussed above, *see* p.44 *supra*, and much to the surprise of the author of this opinion, the same dictionary lists "partial" as a synonym of the adjectival form of "parcel".

[3] *See, e.g.*, Tr. 153-154:

> So . . . you wanted 200 x 200, but when you see the word Parcel 1600 used, you thought it was talking about this entire lot and then that's why you claim that you bought the entire lot?
>
> That's my assumption.

[4] *E.g.*, Tr. 165: "[W]hen we discuss with Teresa Tirso, I ask her 200 x 200."

[5] *E.g.*, Tr. 182: "When . . . we have a discussion that's what we were base[d] on, no less than 200 x 200."

[6] Notably, the trial court did not rely on this testimony in finding that "Parcel 1600" was

⊥47 In concluding otherwise, the trial court relied solely upon Carlos' initial reaction upon reading the deed, and the dictionary. The latter, as discussed above, *see* p. 45 *supra*, provides no clear guidance. As to the former, we have noted above that Whipps' own understanding, based solely on his own assumption and not on the parties' dealings, does not shed light on their intention. Carlos' understanding of the deed, as a third party who was not involved in the negotiations at all, is, if anything, less useful in that regard. Carlos' understanding may have been relevant, as the trial court found, in determining when the statute of limitations on his mistake claim began to run. It was not relevant, however, to the trial court's efforts do "giv[e] effect to the intention of the parties to the [deed]." *See* p.44 *supra*. We are thus compelled to find that the trial court's equation of "Parcel 1600" with the entirety of Lot 1600 is clearly erroneous.

CONCLUSION

We accordingly reverse the judgment of the trial court and remand for further proceedings. On remand, the trial court may either find that there is sufficient extrinsic evidence to delineate which portion of Tochi Daicho Lot 1600 was to be conveyed [7] or declare that the deed is void for uncertainty, and issue an appropriate judgment. *See Salii v. Omrekongel Clan*, 3 ROP Intrm. at 216 (affirming cancellation of deed and remanding to determine purchase price and interest owed and value of improvements made by appellants).

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synonymous with Tochi Daicho Lot No. 1600. Instead, having already reached that conclusion, it found this testimony relevant only in rejecting Carlos' mistake theory.

[7] We leave to the trial court's discretion to determine whether a new trial should be held, and the scope of any such trial.