

CHAPTER XXIII

DESCRIPTIONS

STANDARD 23.1

STRICT INTERPRETATION OF UNAMBIGUOUS DESCRIPTION

STANDARD: AN INSTRUMENT CONTAINING A DESCRIPTION OF AN IDENTIFIABLE PARCEL OF REAL PROPERTY, WHICH IS PLAIN AND INTELLIGIBLE, AND WITHOUT MATERIAL AMBIGUITY, IS EFFECTIVE TO CONVEY THE REAL PROPERTY SO DESCRIBED, NOTWITHSTANDING A DIFFERENT INTENT OF THE PARTIES.

Problem A: Mary Doe deeded Blackacre to Richard Roe. The legal description in the deed contained non-material ambiguities, but sufficiently identified Blackacre as the real property being conveyed. Did Roe acquire title to Blackacre?

Answer: Yes.

Problem B: Pursuant to a contract for the sale of Blackacre, Mary Doe, owner of Blackacre, deeded Blackacre to Richard Roe. The legal description in the deed was unambiguous but clearly identified Whiteacre, which Doe also owned. Did Roe acquire title to Blackacre?

Answer: No. Roe acquired title to Whiteacre, but the deed may be subject to an action for reformation.

Problem C: Same facts as in Problem B, except that Roe later deeded Whiteacre to Simon Grant, who was a bona fide purchaser. Did Grant acquire title to Whiteacre?

Answer: Yes. Although Roe's title to Whiteacre might be subject to divestment in an action for reformation brought by Doe, the right of reformation is not available against a bona fide purchaser.

Authorities: Problem A: *Farabaugh v Rhode*, 305 Mich 234, 9 NW2d 562 (1943); *Gawrylak v Cowie*, 350 Mich 679, 86 NW2d 809 (1952); *State, ex rel Director of Department of Conservation v Spencer*, 5 Mich App 1, 145 NW2d 812 (1966); *Arnold v Ellis*, 5 Mich App 101, 145 NW2d 822 (1966).

Problem B: *Kowatch v Darnell*, 354 Mich 197, 92 NW2d 342 (1958).

Problem C: *Juif v State Highway Comm'r*, 287 Mich 35, 282 NW 892 (1939).

Comment: If a description is unambiguous, evidence regarding the intent of the grantor is inadmissible against a later bona fide purchaser. *Juif v State Highway Comm'r*, *supra*.

Note: See Standard 3.3 with respect to the attempted correction of a previously executed deed.

STANDARD 23.2

AMBIGUOUS DESCRIPTION: DETERMINING INTENT OF PARTIES

STANDARD: IF A DESCRIPTION CONTAINS EITHER A PATENT OR A LATENT AMBIGUITY, THE AMBIGUITY IS RESOLVED BY DETERMINING THE ACTUAL INTENT OF THE PARTIES OR, IF NECESSARY, BY APPLYING SETTLED RULES OF CONSTRUCTION TO DETERMINE THE PROBABLE INTENT OF THE PARTIES.

Problem: Molly Hagen intended to sell, and Martin Elli intended to purchase, Blackacre. The call for the southern boundary of the true description of Blackacre was “thence due east 100 feet to the east line of Section 1.” In the deed executed by Hagen, the description of Blackacre was accurate, except that the call for the southern boundary was erroneously given as “thence due east 100 feet to the west line of Lake Huron.” Does the rule of construction that monuments, such as shore lines, prevail over courses and distances apply to defeat the intent of the parties to the deed?

Answer: No. The intent of the parties controls over the rules of construction.

Authorities: Generally: *Moran v Lezotte*, 54 Mich 83, 19 NW 757 (1884); *Smith v Smith*, 71 Mich 633, 40 NW 21 (1888); *Plummer v Gould*, 92 Mich 1, 52 NW 146 (1892); *Negaunee Iron Co v Iron Cliffs Co*, 134 Mich 264, 96 NW 468 (1903); *Glidden v Beaverton Power Co*, 223 Mich 383, 193 NW 862 (1923); *Farabaugh v Rhode*, 305 Mich 234, 9 NW2d 562 (1943); *Curran v Maple Island Resort Association*, 308 Mich 672, 14 NW2d 655 (1944); *Purlo Corp v 3925 Woodward Avenue, Inc*, 341 Mich 483, 67 NW2d 684 (1954); *Gawrylak v Cowie*, 350 Mich 679, 86 NW2d 809 (1957); *McHenry v Ford Motor Co*, 146 F Supp 896 (ED Mich 1956), *rev'd on other grounds*, 269 F2d 18 (1959); *Weimer v Gilbert*, 7 Mich App 207, 151 NW2d 348 (1967); *Michaels v Chamberlain*, 26 Mich App 317, 182 NW2d 360 (1970).

Comment A: The intent of the parties controls over all rules of construction. *Holmes v Trout*, 32 US 171, 8 L Ed 647 (1833); *Paddock v Pardee*, 1

Mich 421 (1850); *Purlo Corp v 3925 Woodward Avenue, Inc, supra*; *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 699 NW2d 272 (2005).

If the actual intent of the parties cannot be determined, courts apply the following rules of construction to determine the probably intent of the parties in resolving an ambiguous description:

1. If an instrument contains a general description of the real property followed by a more particular description, the latter controls. *Jones v Pashby*, 62 Mich 614, 29 NW 374 (1886); *Nichols v New England Furniture Co*, 100 Mich 230, 59 NW 155 (1894).

2. Fixed lines and monuments generally control over contradictory or conflicting statements of courses, distances or quantity. *County of St Clair v Lovington*, 90 US 46, 23 L Ed 59 (1874); *Keyser v Sutherland*, 59 Mich 455, 26 NW 865 (1886); *Nordberg v Todd*, 254 Mich 440, 236 NW 826 (1931); *Farabaugh v Rhode, supra*; *Curran v Maple Island Resort Ass'n, supra*; *People, ex rel MacMullan v Babcock*, 38 Mich App 336, 196 NW2d 489 (1972).

3. A point in a description is a monument only if it indicates a permanent object which is either natural or artificial, *Murray v Buikema*, 54 Mich App 382, 221 NW2d 193 (1974), such as a river or spring, *Stolte v Krentlel*, 271 Mich 98, 260 NW 127 (1935), or a lake, pipe or post, *Keyser v Sutherland, supra*. If a monument cannot be located, or is lost or obliterated, evidence may be admitted to prove its location. *Hess v Meyer*, 73 Mich 259, 41 NW 422 (1889).

4. If monuments identified in a description are inconsistent with fixed lines in the description, such as section lines or quarter lines, the monuments control. *Murray v Buikema, supra*.

5. If courses and distances conflict, courses control. *Bird v Stimson*, 197 Mich 582, 164 NW 438 (1917), *reh den*, 166 NW 1043 (1918).

6. A line designated as running along one of the four primary compass points, such as "west," is presumed to run "due west" according to the true meridian. *Gutha v Roscommon County Road Comm'n*, 296 Mich 600, 296 NW 694 (1941).

7. The word “half” in a description means half in quantity. *Au Gres Boom Co v Whitney*, 26 Mich 42 (1872); *Dart v Barbour*, 32 Mich 267 (1875); *Heyer v Lee*, 40 Mich 353 (1879); *Hartford Iron Mining Co v Cambria Mining Co*, 80 Mich 491, 45 NW 351 (1890). The word “half” as used in a government survey means that part of the section or other parcel being subdivided that is determined with reference to a line which is equidistant from the boundary lines of the parcel. *Edinger v Woodke*, 127 Mich 41, 86 NW 397 (1901).

8. If one part of a description is false or impossible and the omission of that part leaves an adequate and identifiable description, the false or impossible part is rejected and the remaining part of the description is given effect. *Anderson v Baughman*, 7 Mich 69 (1859); *Gilman v Riopelle*, 18 Mich 145 (1869); *Wilt v Cutler*, 38 Mich 189 (1878); *Taber v Shattuck*, 55 Mich 370, 21 NW 371 (1884); *Tuthill v Katz*, 163 Mich 618, 128 NW 757 (1910).

9. A description which contains a customary or generally accepted abbreviation or a numerical figure is not ambiguous. *Harrington v Fish*, 10 Mich 415 (1862).

10. A description which identifies a lot in a recorded plat must identify the plat with particularity. *Warner v Noble*, 286 Mich 654, 282 NW 855 (1938).

11. If a description contains conflicting particulars, the particular as to which there is the least probability of error controls. *Moran v Lezotte*, *supra*; *Curran v Maple Island Resort Ass’n*, *supra*.

12. If, but only if, other rules of construction fail to resolve an ambiguity, a description will be construed strongly against the grantor. *Bolio v Marvin*, 130 Mich 82, 89 NW 563 (1902); *Negaunee Iron Co v Iron Cliffs Co*, *supra*; *Heethuis v Kerr*, 194 Mich 689, 161 NW 910 (1917); *Old Mission Peninsula School District v French*, 362 Mich 546, 107 NW2d 758 (1961).

13. A conveyance is void only if the description is so vague, uncertain or impossible that the real property cannot be identified. *Dwight v Tyler*, 49 Mich 614, 14 NW 567 (1883); *Persinge v Jubb*, 52 Mich 304, 17 NW 851 (1883); *Stampe v Steele*, 209 Mich 205, 176 NW 464 (1920).

Comment B: A patent ambiguity is apparent on the face of the instrument; a latent ambiguity arises from the application of the words of the instrument to the subject described. *Zilwaukee Twp v Saginaw-Bay City Ry Co*, 213 Mich 61, 181 NW 37 (1921).