



Botched Property Description in Offer to Purchase and Contract Results in Lawsuit

by Will Martin & Bill Gifford

The recent case of *Drake v. Hance*, 673 S.E.2d 411 (NC Ct. App. 2009) underscores the critical importance of taking care to properly describe the property in a real estate sales contract.

On June 16, 2005, Eric and Debra Hance entered into an Offer to Purchase and Contract to purchase a home owned by Garry and Wanda Drake. The contract was prepared by a real estate agent who was acting as a dual agent in the transaction. The property was described in the contract as “#15 Legacy Lake (ALL of the property in Deed Reference: Book 1137, Page 244 Union County).” Although the contract only specifically mentioned the purchase of lot 15, the deed referred to in the contract described both lot 15 Legacy Lake and lot 11 Legacy Lake. Lot 15 was the property on which the house was located. Lot 11 was a vacant lot across the street from lot 15.

The closing attorney prepared the deed among other closing documents. The new deed also described the property as “Lot 11 and 15, Legacy on the Lake.” The deed was recorded after closing on September 9, 2005. Eight months later, when the Drakes contracted to sell lot 11 to a third party, they discovered that lot 11 had been included in the transaction with the Hances.

After attempts to correct the mistake were unsuccessful, the Drakes filed a lawsuit in August 2006, alleging that

both lots were mistakenly conveyed to the Hances. They alleged that the conveyance resulted from a mutual mistake of fact and requested the court to reform the deed to reflect the intended transaction. The Hances denied any mistake of fact regarding the deed.

Over the Hances’ objection, the trial court allowed outside evidence to determine the intentions of the parties. The court ordered reformation of the deed by deleting lot 11. The Hances appealed. On appeal, the Hances argued that the trial court erred by allowing the Drakes to present evidence which contradicted and modified the sales contract where all of the documents executed prior to the sale clearly described the property to be conveyed.

The appeal court acknowledged that the parol evidence rule prohibits the admission of evidence to contradict or add to the terms of a clear and unambiguous contract. On the other hand, if the contract leaves it doubtful or uncertain as to what the agreement was, parol (oral) evidence is admissible to determine what the real agreement between the parties was. In the case at hand, the contract included the street address and described the property as “#15 Legacy Lake” but also included a deed reference describing both lot 15 and lot 11. The appeal court concluded that this was an ambiguity, and the trial court therefore did not err in considering

parol evidence to explain or construe the legal description. The trial court had found “exceptionally persuasive” the closing attorney’s testimony that the deed had been improperly prepared due to an error in his office.

The court of appeals concluded that the trial court did not err in admitting parol evidence to determine the intent of the parties, and did not err in reforming the deed when presented evidence of the attorney’s mistake, and therefore affirmed the trial court’s decision.

For unknown reasons, the real estate agent and the agent’s firm were not included in the lawsuit. However, several years of litigation and a lot of legal fees would likely have been avoided had the agent either have taken the time to review the actual deed prior to inserting a reference to it in the contract or not referred to the deed at all. (Note: A year prior to the filing of the *Drake v. Hance* decision, the “All” and “A portion of” check boxes were removed from the Offer to Purchase and Contract as a result of several other reported situations with similar facts.)

Agents must be diligent and careful in completing the property description in a contract. Sufficient information must be included to adequately identify the property and, as the *Drake v. Hance* case demonstrates, that information must not be contradictory. ■