

THE STATE OF NEW HAMPSHIRE

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SUPREME COURT

DOCKET NO.: 2017-0198

Loon Valley Homeowner's Association

v.

**Lewis G. Pollock and Edward Wallack,
Executor of the Estate of Norman Wallack**

APPELLANT'S BRIEF

(Docket No.: 215-2015-CV-00201)

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Stake, Jeffrey E., "The Uneasy Case for Adverse Possession" (2001). *Articles by Maurer Faculty*. Paper 221. Maurer School of Law: Indiana University.

QUESTIONS PRESENTED

1. Did the Trial Court err when it ruled in favor of the Defendants on the basis of its finding of a permissive arrangement between Lewis Pollock and the Association, and thus that the Association's use of Lot 12 was not adverse?
2. Did the Trial Court err when it ruled that the Plaintiff had not established that it had utilized Lot 12 exclusively during the twenty-year (20) prescriptive period?
3. Did the Trial Court err when it ruled in favor of the Defendants in that the Plaintiff did not prove its claim of adverse possession of Lot 12 notwithstanding that a witness who was the real estate agent for at least half of the units at Loon Valley Homeowner's Association over twenty-seven (27) years, including the son of Lewis Pollock, was never made aware of any permissive arrangement regarding Lot 12?

**THE STATE OF NEW HAMPSHIRE
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DOCKET NO.: 2017-0198

Loon Valley Homeowner's Association

v.

Lewis G. Pollock, et. al.

APPELLANT'S BRIEF

(Docket No.: 215-2015-CV-00201)

INTRODUCTION

The Plaintiff-Appellant, Loon Valley Homeowner's Association, (the "Association") appeals the decision of the Grafton County Superior Court (the "Superior Court" or "Trial Court") dated February 14, 2017 in favor of the Defendant-Appellees, Lewis G. Pollock and the Estate of Norman Wallack (the "Appellees"), ruling that the Association had not met its burden of proof that it acquired title by adverse possession to a certain parcel of land which abuts the properties of several Association members ("Lot 12"). For the reasons set forth herein, the Association submits that the Superior Court decision was in error and requests that this Honorable Court overturn its findings and rulings.

FACTUAL BACKGROUND

Lewis Pollock and Norman Wallack are former officers of the Association. Mr. Wallack passed away in 2014. Lot 12 is a .24 acre open, grassy area with several trees and no permanent structures other than a wooden fence which extends east from the property's western boundary and then turns approximately 103 degrees north, ending at Pollard Road. (See Appellant's Ex. 1,

Page 32 and Ex. 11, Page 59). The Defendants took title to the source tract containing Lot 12 as tenants in common by warranty deed in 1978. (See Appellant's Ex. 7, Page 53). While Mr. Pollock and Mr. Wallack were members of the Association at that time, they acquired the tract in their individual capacities to facilitate the transaction. (See Appellant's Ex. 13, Page 60). The two subdivided the tract and conveyed Lot 13 to another owner. (See Appellant's Ex. 8, Page 55). Mr. Pollock and Mr. Wallack intended to subsequently "add [Lot 12] on to the Loon Valley common land." (See Appellant's Ex. 13, Page 60). However, a conveyance to the Association was never recorded.

While the fence currently serves as an unofficial barrier between Lots 12 and 13, its original location was between Lots 12 and 11 – the latter being the parcel on which the nine (9) original units were constructed. See Order on the Merits, 2, February 14, 2017, (MacLeod, J.). William Northfield purchased unit five in 1977 (see Appellant's Ex. 2, Page 33) and, because the fence had been relocated at the Association's expense in 1979, Mr. Northfield believed Lot 12 had been added to the Association's common area. See Order on the Merits at 4. At that time, the Association members and their guests began utilizing Lot 12 for various purposes, including recreational sports, and other unit owners began maintaining the fence, landscaping the surrounding area, and employing the services of property maintenance professional. Id. at 6. Neither Mr. Pollock nor Mr. Wallack ever discussed their ownership of Lot 12 with Mr. Northfield. Id. at 4.

The Association has paid the real estate taxes on Lot 12 since 1979. Id. Mr. Pollock's brother, Harry Pollock, paid the taxes out of Association funds from 1979 until 2007. Id. at 7. At some point in 2007, Mr. Pollock's son-in-law, Grant Scott, took over Harry's responsibility and paid the taxes out of Association funds until 2014. Id. In recent years, Paul Montminy, who

purchased unit 7 in 1990 (see Appellant's Ex. 3, Page 37), became responsible for processing the tax bills for the Association. See Order on the Merits at 7-8. When he and others became aware that the Town of Lincoln was separately taxing the land they came to know as Lot 12, the Association discovered that it did not in fact hold title to the property. Id. at 8. Mr. Pollock and Mr. Wallack had sold their units in 1990 and 1998, respectively. (See Appellant's Ex. 3, Page 37); Order on the Merits at 11.

All current Association members were unaware that Lot 12 was owned by Mr. Pollock and Mr. Wallack until Mr. Montminy started processing the Association's tax bills. Before then, Mr. Montminy never knew Lot 12 was separate from the Association's common area. See Order on the Merits at 8. John Stamos, who purchased unit ten in 2007 (see Appellant's Ex. 4, Page 45), also believed that Lot 12 was part of the Association's common area, in part because he purchased these properties directly from Harry Pollock who never informed him of any distinctive ownership or permissive arrangement regarding Lot 12. See Order on the Merits at 5-6. Nor was Stephen Sexton, who purchased unit 6 in 2014 (see Appellant's Ex. 5, Page 50), ever aware of any such distinction or permission regarding Lot 12, notwithstanding that he purchased his unit directly from the treasurer responsible for paying the taxes on the property, Grant Scott. See Order on the Merits at 6. Lot 12 was situated such that it appeared to be part of the Association's common area. Id. No one outside of Mr. Pollock and Mr. Wallack's families ever had reason to question otherwise.¹

¹ This impression was shared by Thomas Tremblay, a realtor with Coldwell Banker Linwood Real Estate in Lincoln who testified that he has sold five units at the Association and never knew Lot 12 was not part of the Association because the Association's boundaries, as delineated in part by the fence, seemed apparent. He was never made aware of any permissive arrangement regarding Lot 12 and, for the last 25-30 years, believed it was part of the Association's common area.

SUMMARY OF THE ARGUMENT

The Trial Court erred when it held that the Association had not proven that it adversely and exclusively utilized Lot 12 from 1995 until Mr. Pollock “revoked his permission” in 2015. First, the Trial Court erred as a matter of law by failing to apply the requisite burden shifting framework under Sandford v. Town of Wolfeboro, 143 N.H. 481, 485 (1999). Second, it erred by finding the existence of a permissive arrangement between Mr. Pollock, Mr. Wallack, and the Association when same lacks evidentiary support. The Trial Court’s holding in that regard presupposes knowledge of the alleged permissive arrangement by the Association members who actually used Lot 12 from 1995 to 2015. Its holding also runs contrary to the historic purpose and philosophy of the doctrine of adverse possession and achieves an unjust result. Finally, the Trial Court erred when it assumed that Mr. Wallack actually used Lot 12 from 1995 to 1998 without any evidentiary support, thereby erring in its holding that the Association had not utilized Lot 12 exclusively during those years.

STANDARD OF REVIEW

The New Hampshire Supreme Court reviews a trial court’s application of law to facts de novo and accords deference to a trial court’s findings of historical fact where those findings are supported by evidence in the record. Blagbrough Family Realty Trust v. A & T Forest Prods., 155 N.H. 29, 33 (2007) (citing Elwood v. Bolte, 119 N.H. 508, 510 (1979); Tech-Built 153 v. Va. Surety Co., 153 N.H. 371, 373 (2006)). The Trial Court’s factual findings and rulings will not be upheld when they lack evidentiary support or are legally erroneous. N.H. Fish & Game Dep’t v. Bacon, 167 N.H. 591, 596 (2015). The Court does not decide whether it would have ruled different than the Trial Court, but rather, whether a reasonable person could have reached the same decision based upon the same evidence. Id.

In evaluating the merits of an adverse possession claim, courts are to construe “[e]vidence of adverse possession of land . . . strictly.” Blagbrough Family Realty Trust, 155 N.H. at 33. In order to obtain title by adverse possession, the adverse possessor must prove, by a balance of probabilities, twenty years of adverse, continuous, and uninterrupted use of the land claimed so as to give notice to the owner that an adverse claim is being made. Blagbrough Family Realty Trust, 155 N.H. at 33; Sandford v. Town of Wolfeboro, 143 N.H. 481, 484 (1999). “In addition, adverse use is trespassory in nature, and the adverse possessor’s use of the land must be exclusive.” Kellison v. McIsaac, 131 N.H. 675, 679 (1989); Seward v. Loranger, 130 N.H. 570, 576-77 (1988).” “The success or failure of a party claiming adverse possession is not determined by the subjective intent or the motives of the adverse possessor.” Kellison, 131 N.H. at 680. “Rather the acts of the adverse possessor’s entry onto and possession of the land should, regardless of the basis of the occupancy, alert the true owner of the cause of action.” Id.

ARGUMENT

I. The Trial Court erred by failing to apply the appropriate legal standard as set forth in Sandford v. Town of Wolfeboro, 143 N.H. 481, 485 (1999).

New Hampshire Courts apply a burden shifting framework when deciding upon the factual question of adverse use of property. “[T]o establish a *prima facie* case on adverse use, a claimant must initially produce evidence of acts of such a character that create an *inference* that the claimant adversely used the landowner’s property, that is, used it without permission.” Sandford v. Town of Wolfeboro, 143 N.H. 481, 485 (1999) (citation omitted). To meet this burden, a claimant need not “produce affirmative evidence of absence of permission . . .” Id. “Once the claimant satisfies the initial burden of production, that burden then shifts to the landowner to produce evidence that the claimant’s intrusive acts were, in fact, permitted.” Id. at 486 (citation omitted). However,

“[T]he claimant always maintains the burden of persuasion on the issue of absence of permission . . .” Id.

The Association carried its burden of production at trial by creating an inference of adverse use. The Association produced, through Mr. Northfield, a letter from Mr. Pollock stating that he and Mr. Wallack “intend to add [Lot 12] onto the Loon Valley common land.” (See Appellant’s Ex. 13, Page 60). The Trial Court heard evidence that, upon receipt of the letter and after witnessing the relocation of the fence opening up Lot 12 in 1979, Mr. Northfield perceived that Lot 12 had accordingly been conveyed to the Association. From that point forward, he and his guests utilized Lot 12 in the same manner as the true owner. While Mr. Northfield’s subjective intent is not controlling², his perception of possessing an ownership interest in Lot 12, when coupled with his use of the property thereafter, demonstrates that his use of the property was without regard to Mr. Pollock’s and Mr. Wallack’s alleged consent – i.e. adverse use. See Bonardi v. Kazmirchuck, 146 N.H. 640, 642 (2001) (holding adverse use is use “not in reliance upon the owner’s toleration or permission, but without regard to the owner’s consent.”). Further, John Stamos, Paul Montminy, and Stephen Sexton all, throughout the years, utilized Lot 12 without knowledge of Mr. Pollock’s and Mr. Wallack’s ownership, and consequently without reliance upon their toleration or permission.

Perhaps more importantly, however, the Trial Court failed to apply the burden-shifting framework of Sandford to the facts of the present case. New Hampshire Courts have stressed the importance of employing Sandford in determining adversity:

Under the [Appellant’s] formulation, there would be no need for a court to consider whether the claimant produced sufficient evidence to create an inference of use

² See Kellison, 131 N.H. at 680 (holding, the “success or failure of a party claiming adverse possession is not determined by the subjective intent or the motives of the adverse possessor.”)

without permission, nor indeed whether the owner produced sufficient evidence as to permission. A court's sole inquiry would be whether there was evidence in the record demonstrating express permission for the use. This analysis would be perfunctory: if such evidence exists, then the owner prevails; otherwise, the use is adverse.

See Elizabeth Merry, Trustee v. Gilbert M. Costa and Natalie M. Costa, Co-Trustees, Docket No. 211-2015-CV-00020, Belknap County Superior Court, Order on the Merits at 14, June 23, 2016, (Ignatius, J.). Here, the Trial Court employed such a perfunctory review by neglecting to make any findings regarding the Association's initial burden of production. Had it done so, the Association submits that the burden would have then shifted to the landowner to produce evidence of permission. However, the Trial Court merely evaluated the merits of the Association's claims against its burden of persuasion, and accordingly erred as a matter of law.

II. The Trial Court erred when it ruled that the Association's historic use of Lot 12 was not adverse on the basis of a permissive arrangement between Lewis Pollock, Norman Wallack, and the Association.

The Trial Court held that the "evidence is consistent with Lewis Pollock's testimony that he and Norman Wallack gave permission to the Association to use Lot 12 on the condition that the Association pay Lot 12's taxes, its maintenance costs, and to move the fence." See Order on the Merits at 9. The Association submits that the Trial Court misconstrued the evidence, which tends to show that the Association members' use was adverse from 1995 to 2015.

First, Mr. Pollock's testimony that such a permissive arrangement was reached among the Association members in the late 1970's has gone completely uncorroborated, as no other witness at trial could verify the existence of such an arrangement. Indeed, the circumstantial evidence tends to show quite the opposite – that any permission from Mr. Pollock and Mr. Wallack, whether real or otherwise, was never communicated to anyone outside of the Pollock and Wallack families. Any use agreement only between the Pollock and Wallack families would have been ineffective

to convey permission to the Association because such an arrangement would have been exclusively among the true owners. Further, as noted, Mr. Northfield received notice of their intention to add Lot 12 to the common area and then witnessed the relocation of the fence in perceived affirmation of that intention. There was no testimony produced at trial that any Association member was aware of this “permissive arrangement” between 1995 and 2015. Therefore, the only reasonable conclusion is that the Association members’ use of Lot 12 from 1995 to 2015 was adverse, as it was not in reliance upon Mr. Pollock’s and Mr. Wallack’s toleration or permission, and was with regard to, or even knowledge of, any alleged consent. See Bonardi, 146 N.H. at 642 (holding adverse use is use “not in reliance upon the owner’s toleration or permission, but without regard to the owner’s consent.”) Thus, the Trial Court erred when it held that the Association members were using Lot 12 on a permissive basis between 1995 and 2015 when they were never aware of such an arrangement.

Second, the Trial Court cited Town of Warren v. Shortt, 139 N.H. 240, 244 (1994) in that, “[w]hen a use of another’s land began under the person’s permission, it cannot become adverse in nature without an explicit repudiation of the earlier permission.” See Order on the Merits at 10. The Trial Court then held that “the Plaintiff has failed to persuade the court that the Association’s use of Lot 12 should have alerted the defendants that the Association, as a legal entity, had repudiated the defendants’ permission.” Id. However, the Association submits that the case at hand is distinguishable from Shortt. In order to repudiate a landowner’s permission, the adverse user must first be aware that there is permission to repudiate. As discussed, aside from Mr. Pollock’s self-serving testimony, there was no testimony before the Trial Court that any Association member, and therefore the Association as a legal entity, was ever aware of any

permissive arrangement. Accordingly, Shortt is inapplicable to the instant matter and the Trial Court's holding of adversity founded thereon has produced an unjust result.

Third, the Trial Court's holding runs afoul of the common law purpose of the doctrine of adverse possession. Mr. Pollock and Mr. Wallack sold their units at the Association long before 2015. In doing so, they abandoned any practical utility of Lot 12 to them personally. Since 1990 and 1998, Mr. Pollock and Mr. Wallack, respectively, have merely been absentee landowners. (See Appellant's Ex. 3, Page 37); Order on the Merits at 11. By holding that the Association's sole means of acquiring Lot 12 by adverse possession was by repudiating a permissive arrangement unknown to the members of the Association, the Trial Court essentially held that the Association's inability to adversely possess Lot 12 would have continued in perpetuity, and that the Association would be forever unable to succeed on a claim of adverse possession. This result is not only unjust, but stands in stark contrast to the historic foundation and purpose of the doctrine of adverse possession where the Defendants abandoned Lot 12, had no practical use for it for several decades, and in all likelihood did not recall their record ownership thereof before being reminded by Mr. Northfield, resulting in a perceived windfall for Mr. Pollock to the detriment of the Association. See Stake, Jeffrey E., "The Uneasy Case for Adverse Possession" (2001). *Articles by Maurer Faculty*. Paper 221. Maurer School of Law: Indiana University, page 39 (citing Richard A. Posner, *Economic Analysis of Law* (5th ed. 1998) at 89) ("The adverse possessor would experience the deprivation of the property as a diminution in his wealth; the original owner would experience the restoration of the property as an increase in *his* wealth.").

III. The Trial Court erred when it ruled that the Association's use of Lot 12 was not exclusive from 1995 to 2015.

The Trial Court held that it is "undisputed that Norman Wallack maintained a continuous presence at the Association until 1998. Therefore, as Mr. Pollock revoked his permission in 2015,

the plaintiff has, at best, only demonstrated that it had 'exclusive' possession of Lot 12 for roughly seventeen years, three years short of the required twenty." See Order on the Merits at 11. The Association submits that this holding is in error.

One of the requirements of adverse possession is exclusivity. Seward v. Loranger, 130 N.H. at 576-577. "Use or occupation in common with neighbors, third persons, or the public is not exclusive possession." Id. (citing 2 C.J.S. Adverse Possession § 56, at 729).

It is undisputed that the Association did not use Lot 12 in common with neighbors or the public, and in fact posted no trespassing signs on one occasion to keep neighbors off the property. Moreover, the Trial Court did not hear testimony from any member of the Wallack family, nor from Mr. Pollock regarding Mr. Wallack's personal use of Lot 12 from 1995 to 1998. There is no evidence in the record, and the Trial Court did not find, that Mr. Wallack ever actually utilized Lot 12 during those years. See Order on the Merits at 11. Rather, the Trial Court merely assumed that because Mr. Wallack did not sell his unit until 1998, he must have been using Lot 12 during that time. Regardless of the continuity of his presence at the Association, the record is silent as to any evidence suggesting that Mr. Wallack ever stepped foot on Lot 12 from 1995 to 1998. Accordingly, the Association submits that the Trial Court's ruling as to exclusivity lacks evidentiary support and should be overturned by this Court. See N.H. Fish & Game Dep't, 167 N.H. at 596 (holding "[t]he Trial Court's factual findings and rulings will not be upheld when they lack evidentiary support or are legally erroneous.").

Moreover, even assuming *arguendo* that Mr. Wallack did occasionally enter Lot 12 from 1995 to 1998, his actions are insufficient to defeat the Association's claim of adverse possession. This Court has recognized that entry upon land by the record owner "does not necessarily interrupt adverse possession." See Barbara F. O'Malley & a. v. Aaron Little & a., Docket No.: 2016-0491,

Opinion Issued: August 31, 2017, Page 4 (citing Gallo v. Traina, 166 N.H. 737, 739 (2014) (“holding that a party failed to demonstrate that a trial court committed reversible error, where the trial court asserted that a ‘mere casual entry by the record owner for a limited purpose is not necessarily sufficient to destroy adverse possession’”))³. Because there is no evidence of any use of Lot 12 by Mr. Wallack from 1995 to 1998, it is unreasonable to speculate, as the Trial Court did, that Mr. Wallack’s use during those years was anything other than mere casual entry. Accordingly, the Trial Court committed reversible error where it failed to make any findings regarding Mr. Wallack’s use of Lot 12 from 1995 to 1998, yet assumed Mr. Wallack used Lot 12 in a manner sufficient to defeat the Association’s claim of adverse possession when the only logical assumption based on the facts demonstrate that his use thereof can constitute nothing more than mere casual entry.

CONCLUSION

For the foregoing reasons, the Appellant, Loon Valley Homeowner’s Association, submits that the Trial Court erred in finding that the Association had not adversely and exclusively utilized Lot 12 for twenty (20) years. The totality of the evidence regarding permissive use by the Association from 1995 to 2015 and Mr. Wallack’s actual use of Lot 12 from 1995 to 1998 lack evidentiary support. Accordingly, the Association respectfully requests that this Honorable Court overturn the findings and rulings of the Trial Court.

REQUEST FOR ORAL ARGUMENT

The Appellant requests oral argument before the full court, estimated at fifteen minutes, to be presented by Attorney Paul T. Fitzgerald.

³ see also “Alukonia v. Kashulines, 97 N.H. 298, 300 (1952) (holding that a survey of a property did not interrupt the continuity of an adverse possession claim over that property).”

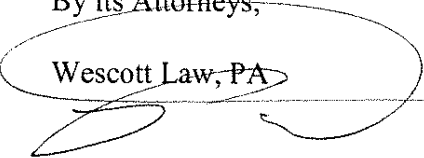
Respectfully submitted,

Loon Valley Homeowner's Association

By its Attorneys,

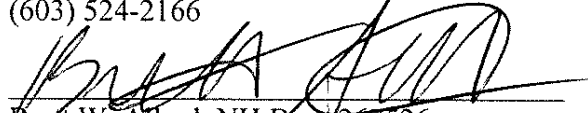
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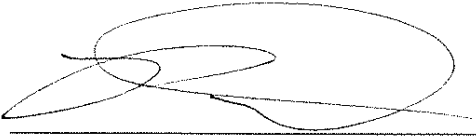
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CERTIFICATION OF SERVICE

I certify that on the above date a complete copy of the foregoing *Appellant's Brief* was mailed via First Class Mail to Attorney William Pribis, Counsel for the Appellees.



Paul T. Fitzgerald, NH Bar #807

I certify that on the above date a complete copy of the foregoing *Appellant's Brief* was mailed via First Class Mail to Attorney William Pribis, Counsel for the Appellees.



Brett W. Allard, NH Bar #267526

APPENDIX

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS.

Docket No. 15-CV-201

Loon Valley Homeowner's Association

v.

Lewis G. Pollock, *et al.*

DECREE

The plaintiff, Loon Valley Homeowner's Association (the "Association"), sued the defendants, Lewis G. Pollock and the Estate of Norman Wallack, seeking to quiet title to certain land abutting the Association's common property on the theory of adverse possession. The court held a bench trial on the matter on December 8, 2016, and December 9, 2016, during which it received numerous exhibits and heard testimony from William Edward Northfield, Paul Montminy, Tom Tremblay, John Stamos, and Stephen Sexton for the plaintiff, and Lewis Pollock for the defendants. Based on the evidence, the parties' arguments, and the applicable law, the court finds and rules as follows.

I. Findings of Fact

In 1972, Lewis Pollock ("Mr. Pollock") and his brothers, Harry and Edward Pollock, purchased a vacation home and accompanying land in Lincoln, New Hampshire. They then conveyed the property to a trust and divided the parcel into two lots: Lot 11 (upon which the house remained) and Lot 7. Lot 7 is roughly square, its northerly border beginning just south of the Lot 11 house, and its southerly border

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2/16/17

CC: P. [Signature] Wm. Bishop

ending along the Kancamagus Highway.¹ Lot 11 is roughly L-shaped, its northerly boundary beginning along Pollard Road, and its southerly boundary ending along Lot 7's northerly border.

After purchasing the property, the Pollocks constructed nine condominiums on Lot 11, numbering them Units 1 through 9. They then designated the existing house on Lot 11 as Unit 10. In 1973, the Pollocks incorporated the Association,² and conveyed Lot 11³ and its improvements to the Association. (*See, e.g.*, Defs.' Ex. 12, Declaration of Loon Valley.) Subsequently, Mr. Pollock assumed ownership of Unit 7, Harry Pollock assumed ownership of Unit 10, and Edward Pollock assumed ownership of Unit 9. Over the next several years, Mr. Pollock invited his law partners (Dennis O'Connor and Alan Jacobs), and several friends and clients (Dennis Caulfield, Norman Wallack, David Friend, Alan Pearlman, and William Northfield) to purchase the seven remaining Units and to join the Association. Pursuant to the Association's governing documents and the deeds by which Association property was conveyed,⁴ each member of the Association was granted individual ownership of a certain Unit and the land upon which it was directly situated, along with an "easement of use and enjoyment" for the Association's "Common Property," which consisted of all Lot 11 land and improvements but for the Units themselves and the land located directly thereunder. (*See id.*)

In 1978, a house and land abutting Lot 11 to the west became available for purchase. Believing the property would make a good addition to the Association, Mr. Pollock solicited members of the Association to help purchase the property. Only Mr.

¹ The Kancamagus Highway was often referred to as Main Street throughout the trial.

² *See, e.g.*, Defs.' Ex. 12, Articles of Association of Loon Valley Association; *id.*, Bylaws of Loon Valley Association.

³ Lot 7 was not conveyed to the Association because the Pollocks hoped to develop the parcel in the future for commercial purposes as it abutted the town's major thoroughfare.

⁴ *See, e.g.*, Defs.' Exs. 2-5.

Wallack agreed to collaborate with him, and the two men purchased the property for approximately \$60,000. They soon realized, however, that the cost of updating the home as they had planned would be financially unviable, and decided to remarket the property. Soon thereafter, to help delineate the property, Mr. Pollock had a fence installed that separated the land from Lot 11.⁵

In the spring of 1979, Messrs. Pollock and Wallack sold the house along with the northern portion of the land ("Lot 13") at a loss of approximately \$12,500. The two men retained ownership, however, of approximately .24 acres of the southern portion of the property ("Lot 12"), which abutted Lot 11. The question of whether the Association has since acquired ownership of Lot 12 through adverse possession is the central dispute of this litigation. The court's narrative to this point is based predominately on Mr. Pollock's testimony and is largely uncontested.

Mr. Pollock testified that he and Mr. Wallack retained Lot 12 hoping to add it to the Association to offset their loss. Despite Mr. Pollock's efforts, however, the members of the Association were unwilling to compensate the men in exchange for adding Lot 12 to the Association. Mr. Pollock explained that after unsuccessfully seeking direct compensation in exchange for adding Lot 12 to the Association, he and Mr. Wallack agreed to allow the members of the Association to use Lot 12 indefinitely on the condition that the Association maintain Lot 12, pay Lot 12's property taxes, and relocate the fence dividing Lots 11 and 12 to its current location, where it roughly marks the boundary between Lots 12 and 13. Mr. Pollock characterized this arrangement as akin to a lease. Mr. Pollock further testified that the Association agreed to this arrangement and that the arrangement was well known to the members of the Association, including Mr.

⁵Contrary to this point, Mr. Northfield testified that the fence existed prior to 1977.

Northfield, who Mr. Pollock described as particularly interested in the details of the arrangement. The court finds Mr. Pollock's testimony to be credible and persuasive.

It is uncontested that, since 1979, the Association has paid Lot 12's property taxes and upkeep costs, which generally consist of seasonal mowing and landscaping, and that the Association relocated the fence in 1979 at its expense and has continued to maintain the fence since that time. Currently, Lot 12 is mostly a grassy lawn, apart from several trees and landscaped shrubbery that line the fence. (See Pl.'s Ex. 1, Aerial Photograph of Lot 12 and Surround Property.)

Contrary to Mr. Pollock's account, William Northfield testified that he never discussed with Mr. Pollock, or anyone else, the fact that Mr. Pollock and Mr. Wallack ever owned Lot 12.⁶ Nor does Mr. Northfield believe that he ever discussed with anyone the reason for the fence's relocation, despite the fact that moving the fence ostensibly increased the Association's common property by roughly fifteen percent, and Mr. Northfield's Unit had been only five or ten feet from the fence in its original location, closer than any other Unit.⁷ Nevertheless, and while acknowledging that his presence at the Association between 1978 and 1982 was sporadic, Mr. Northfield recalled learning some time in 1979 that the Association had paid to relocate the fence and understood this to mean that Lot 12 had formally become part of the Association's common property. When asked to expand on the basis of his understanding, Mr. Northfield stated that he vaguely recalled hearing of a proposal to transform the house on Lot 13

⁶ Contradicting this fact, Mr. Northfield admitted that while preparing for trial he discovered in his possession a letter from Mr. Pollock to Harold Trojano, a surveyor, written in 1979. Referring to the sale of Lot 13, the letter states, *inter alia*, that "[Mr. Pollock and Mr. Wallack] have entered into an agreement . . . to sell . . . the house with part of the land and to retain part of the land which we intend to add on to the Loon Valley common land." (Pl.'s Ex. 13.) Mr. Northfield had no memory of reading this letter prior to discovering it, and he could not determine how he originally obtained the letter.

⁷ Mr. Northfield's Unit is now approximately 80 feet from the fence.

into an additional Association Unit, implying that it was reasonable to assume that Lot 12 had been added to the common property although the Lot 13 house had not.

Mr. Pollock and Mr. Northfield were the only members of the Association in 1979 that testified at trial. Paul Montminy purchased Unit 7 around 1989 from Mr. Pollock. Mr. Montminy never communicated directly with Mr. Pollock, however, and instead conducted the purchase entirely through real estate agent Tom Tremblay.⁸ Prior to closing, Mr. Montminy toured the Association twice, during which he was not informed that Lot 12 was distinct from the Association's common property. The deed granting Mr. Montminy ownership of Unit 7 made no reference to Lot 12 and described "Unit 7 as shown on plan entitled 'Site Plan of loon Valley' by Trojano-Rhines Surveys, Inc. dated December 1973, recorded at the Grafton County Registry of Deeds at Book 1189, Page 19." (Pl.'s Ex. 3.) This Site Plan does not include Lot 12 within the Association's boundaries. (Def.'s Ex. 2.) Instead the area that is now considered Lots 12 and 13 are labeled "Land of Pierre and Gemma Asselin."⁹ Mr. Montminy did not examine the Site Plan prior to closing.

John Stamos purchased Unit 10 from Harry Pollock in 2007. Prior to closing, Mr. Stamos toured the Association several times and was never informed that Lot 12 was distinct from the Association's common property. Mr. Stamos also met with Harry Pollock on three occasions before closing. On one such occasion, the men met outside near the Association's pool, and Harry gestured toward Lot 12 when referencing the benefits of the Association's common property but did not indicate that Lot 12 was in anyway not a part of the common property. Like Mr. Montminy's deed, the deed

⁸ Mr. Tremblay testified that he facilitated the sale of five Association Units roughly between 1990 and 2007, and at no time during this period did he understand that Lot 12 was distinct from the Association's common property.

⁹ Mr. Pollock and Mr. Wallack purchased land that became Lots 12 and 13 from the Asselins in 1973.

granting Mr. Stamos ownership of Unit 10 made no reference to Lot 12 and described Unit 10 by citing the same Site Plan.¹⁰ (Pl.'s Ex. 4.) Also prior to closing, Mr. Stamos learned from his real estate agent that the Pollock family owned Lot 7 and intended to sell the land.¹¹ Not wanting Lot 7 to be sold to a party unaffiliated with the Association, Mr. Stamos purchased Lot 7 simultaneously with purchasing Unit 10.¹²

Stephen Sexton purchased Unit 6 in 2014 from Grant Scott, Norman Wallack's son-in-law. Prior to purchasing Unit 6, Mr. Sexton communicated with Mr. Scott roughly 25 times, although he never met Mr. Scott in person. At no time during these communications did Grant Scott indicate that Lot 12 was distinct from the Association's common property. Like Mr. Montminy's and Mr. Stamos's deeds, the deed granting Mr. Sexton ownership of Unit 6 does not reference Lot 12 and describes Unit 6 by citing the same Site Plan. (Pl.'s Ex. 5.) Mr. Sexton did not examine the Site Plan prior to closing.

Mr. Montminy, Mr. Stamos, and Mr. Sexton each testified that when they joined the Association they assumed that the Association's common property included all land bound by the fence dividing Lots 12 and 13. They also testified that they never observed any member of the Pollock or Wallack families restrict any Association member from using Lot 12. All parties agreed that members of the Association, including the Pollock and Wallack families, primarily used Lot 12 for recreation activities, such as sports. Mr. Montminy testified that Lot 12 has always been professionally maintained simultaneously with, and indistinguishably from, the Association's common property,

¹⁰ Mr. Stamos did not examine the Site Plan prior to closing.

¹¹ Lot 7 is located directly south of Unit 10 and consists of woods and a path/driveway connecting the Association's common area and the Kancamagus Highway. Members of the Association historically used Lot 7 to dump landscaping debris and to access the Kancamagus Highway.

¹² Regarding the sale of Lot 7, Mr. Pollock testified that he insisted that the deed conveying Lot 7 grant the Association an easement for the path/driveway leading to the Kancamagus Highway. Mr. Stamos allowed Association members to continue to dump debris on Lot 7 for approximately two years after he purchased the property, at which time he requested that they stop.

and that over the years members of the Association have personally contributed to Lot 12's landscaping by planting small shrubs. John Stamos testified that members routinely harvest apples and raspberries that grow on Lot 12, sometimes using the fruit to make pastries that are distributed to members of the Association. William Northfield testified that at some point the Association erected "no trespassing" signs on the fence to deter neighbors from straying onto the Association's common property, which in his opinion included Lot 12.

Messrs. Pollock and Northfield both agreed that the Association has historically been run informally. In its earliest years, Mr. Pollock acted as the Association's President, and Harry and Edward Pollock acted as Co-Directors. The Pollock brothers made most decisions effecting the Association with limited input from other members, and the Association rarely held official meetings. According to Paul Montminy, Harry Pollock "ran" the Association from at least 1989 to 2007. Mr. Montminy described Harry Pollock's management as secretive, and that Harry often ignored inquiries into the allocation of Association dues. According to Mr. Northfield, however, the management of the Association has been less informal since Mr. Stamos⁴³ joined it in 2007, at which time the Association began holding annual meetings and recording minutes.

Regarding the payment of Lot 12's property taxes, Mr. Pollock testified that Harry Pollock paid the taxes on behalf of the Association from 1979 until 2007, at which time Grant Scott assumed this responsibility. After Mr. Scott sold his Unit in 2014, there was a restructuring of the Association's management, and both Mr. Montminy and Mr. Stamos became Association Treasurers. Sometime thereafter, Mr. Scott instructed Paul

⁴³ Mr. Stamos is the current Association President.

Montminy to change Lot 12's tax bill into Mr. Montminy's name. Mr. Montminy later visited the Lincoln Tax Collector's office and discovered that the Association had been paying two separate tax bills, one for Lot 11 and the other for Lot 12.¹⁴ At this point, Mr. Montminy and Mr. Stamos investigated the ownership of Lot 12, and learned for the first time that Mr. Pollock and Norman Wallack were the owners of record and that the Association had been paying Lot 12's tax bill since 1979.

Members of the Association then asked William Northfield to contact Mr. Pollock, hoping Mr. Pollock would execute a quit claim deed so that the Association could merge the titles of Lots 11 and 12. In February of 2015, Mr. Northfield discussed the matter with Mr. Pollock over the telephone. Mr. Northfield testified that Mr. Pollock did not seem to grasp the issue, and that he asked Mr. Northfield to send him an email following their conversation so he could consider the issue in depth. As requested, Mr. Northfield sent an email to Mr. Pollock the day following their conversation. The email used the term "Lot 12" to describe the disputed parcel and stated that the Association "may be required to bring a claim of adverse possession, in order to merge [Lots 11 and 12]" if Mr. Pollock did not execute a quit claim deed. (Defs.' Ex. 4.)

Mr. Pollock testified that William Northfield did not use the term "Lot 12" during their phone conversation, and therefore Mr. Pollock mistakenly believed Mr. Northfield was describing Lot 7, which the Pollocks had sold to Mr. Stamos in 2007. After receiving the email, Mr. Pollock testified that he immediately understood the issue, and decided to notify the Association that he revoked his permission for the Association to use Lot 12. The court finds Mr. Pollock's testimony to be credible.

¹⁴ For a copy of Lot 12's 2012 property tax assessment see Pl.'s Ex. 10.

II. Rulings of Law

“To acquire title to real property by adverse possession, the possessor must show twenty years of adverse, continuous, exclusive and uninterrupted use of the land claimed so as to give notice to the owner that an adverse claim is being made.” *Mastroianni v. Wercinski*, 158 N.H. 380, 382 (2009).

Adversity

“Adverse use has been defined as a use without license or permission. . . .” *Town of Warren v. Shortt*, 139 N.H. 240, 244 (1994) (quotation and brackets omitted). The court finds that the evidence is consistent with Lewis Pollock’s testimony that he and Norman Wallack gave permission to the Association to use Lot 12 on the condition that the Association pay Lot 12’s taxes, its maintenance costs, and to move the fence. Consistent with this finding, it is uncontested that the Association’s administrators paid Lot 12’s property taxes on behalf of the defendants from 1979 to 2014, and there is no evidence that any member of the Association sought to merge the titles of Lots 11 and 12 prior to 2014, suggesting that these administrators at least understood that the defendants’ owned Lot 12 and that the Association’s use of Lot 12 was somehow permissive. Even if the court were to credit William Northfield’s testimony that he was never apprised of such an arrangement, Mr. Northfield’s mere lack of knowledge does not necessarily suggest that no such arrangement existed.

Nonetheless, the plaintiff argues that it “has met its burden of proof . . . because it has demonstrated that it has used the Lot for twenty years in an adverse, exclusive, and continuous manner such that Mr. Pollock and Mr. Wallack either knew or ought to have known that the Association’s use was not in reliance upon . . . their toleration or

permission, but without regard to their consent.” (Pl.’s Post-Trial Memo. at 6.) The court disagrees.

“[E]xisting rights in land should not be lost unless the owner has been put on guard sufficiently to enable him or her to take preventive action with reasonable promptness.” *Mastroianni v. Wercinski*, 158 N.H. 380, 383 (2009) (quotation omitted). Therefore, “[t]he success or failure of a party claiming adverse possession is not determined by the subjective intent or the motives of the adverse possessor. Rather the acts of the adverse possessor’s entry onto and possession of the land should, regardless of the basis of the occupancy, alert the true owner of the cause of action.” *Blagbrough Family Realty Trust v. A & T Forest Prod., Inc.*, 155 N.H. 29, 33 (2007) (citation omitted). Moreover, “[w]hen a use of another’s land began under that person’s permission, it cannot become adverse in nature without an explicit repudiation of the earlier permission.” *Town of Warren v. Shortt*, 139 N.H. 240, 244 (1994).

Even if the court were to assume, without deciding, that Messrs. Pollock and Wallack should have known that numerous members of the Association subjectively believed that the Association in fact owned Lot 12, the plaintiff has failed to persuade the court that the Association’s use of Lot 12 should have alerted the defendants that the Association, as a legal entity, had repudiated the defendants’ permission. To the contrary, the evidence overwhelmingly demonstrates that the Association fully complied with the defendants’ conditions, principally by paying Lot 12’s taxes, and that the Association’s members used Lot 12 as the defendants contemplated, that is for recreational purposes consistent with the Association’s communal environment. Furthermore, members of the Pollock and Wallack families—who more than likely understood that Messrs. Pollock and Wallack owned Lot 12—“ran” the association, at

least in large part, until 2014. *See, e.g., Ucietowski v. Novak*, 102 N.H. 140, 145 (1959) (“The nature of the use may be inferred from the manner, character and frequency of the exercise of the right and the situation of the parties.”).

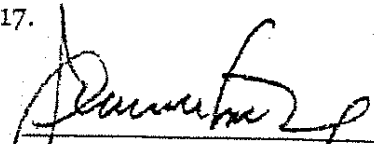
Exclusivity

Moreover, even if the court were to assume, again without deciding, that the Association’s use of Lot 12 was such that the defendants should have known that the Association had repudiated the defendants’ permission, the plaintiff has failed to demonstrate that such a use was “exclusive” for a twenty year period. “In order for possession to be exclusive for purposes of adverse possession, the claimant must shut out or wholly exclude the rightful owner from possession of the property during the required statutory period. . . . Thus, a possession that does not amount to an ouster of the owner of land is not sufficiently exclusive to support adverse possession.” 3 Am. Jur. 2d *Adverse Possession* § 63 (2016) (citations omitted); *see also Brandao v. DoCanto*, 951 N.E.2d 979, 986 (Mass. App. Ct. 2011) (“A claimant’s use is ‘exclusive’ for purposes of establishing title by adverse possession if such use excludes not only the record owner but all third persons to the extent that the owner would have excluded them.” (quotation omitted)); *Striefel v. Charles-Keyt-Leaman Partnership*, 733 A.2d 984, 993 (Me. 1999) (“‘Exclusive’ possession and use means that the possessor is not sharing the disputed property with the true owner or public at large.”); *see, e.g., Seward v. Loranger*, 130 N.H. 570, 576, 547 (1988) (discussing exclusivity requirement). Here, it is undisputed that Norman Wallack maintained a continuous presence at the Association until 1998. Therefore, as Mr. Pollock revoked his permission in 2015, the plaintiff has, at best, only demonstrated that it had “exclusive” possession of Lot 12 for roughly seventeen years, three years short of the required twenty.

III. Conclusion

For the foregoing two separate and independent reasons, the court finds and rules that the plaintiff has failed to prove its adverse possession claim. Accordingly, the plaintiff's request for a ruling that it has obtained title to Lot 12 is DENIED.

SO ORDERED, this 14th day of February 2017.


Lawrence A. MacLeod, Jr.
Presiding Justice

RECEIVED
MAR 13 2017

BY:

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

GRAFTON, SS.

Docket No. 15-CV-201

Loon Valley Homeowner's Association

v.

Lewis G. Pollock, *et al.*

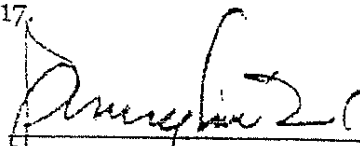
ORDER on MOTION to RECONSIDER

The plaintiffs have filed a Motion for Reconsideration (Index #28) of the court's final decree of February 14, 2017. (Index #27). The defendants object. (Index #29).

Upon consideration of the pleadings and arguments set forth, the court finds and holds that there are no issues of fact or law which were not previously considered by the court or which warrant a different result than that determined by the court in its prior order.

As such, the Motion for Reconsideration is DENIED.

SO ORDERED, this 13th day of March 2017.


Lawrence A. MacLeod, Jr.
Presiding Justice

CLERK'S NOTICE DATE

3/13/17

cc: P. Fitzgerald; W. P. Pabis

EXHIBIT 1



WARRANTY DEED

EDWARD Z. POLLOCK, HARRY L. POLLOCK and LEWIS G. POLLOCK, Trustees of the Linc-Pol Realty Trust under Declaration of Trust dated October 13, 1972, recorded Grafton County Registry of Deeds at Book 1186, Page 323, with a mailing address of 24 Partridge Road, Lexington, Massachusetts for consideration paid, grant to WILLIAM E. NORTHFIELD and SANDRA S.

NORTHFIELD as joint tenants with rights of survivorship, of Pollard Road, Lincoln (Street Address) (Town or City) Grafton, New Hampshire (County) (State)

WITH WARRANTY COVENANTS

a certain Living Unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton, State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit #5 as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December, 1973, recorded Grafton County Registry of Deeds in Book 1189, Page 19, (the "Plan"), and including front closet overhang, rear wings and any other portions of the Living Unit which are either not shown on the Plan or not built on a foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described as follows:

Commencing at a point marking the southerly corner of the subject property which point is located twenty-five (25) feet, more or less, approximately S62° 19' 33" E of a point marking the westerly corner of Living Unit 5 as shown on the Plan, which latter point is located 21.60 feet, more or less, from an iron pipe at an angle

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
COMMISSION
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in the westerly sideline of the Loon Valley property along land now or formerly of Pierre and Gemma Asselin, which pipe is also 63.00 feet, more or less, approximately S 12° 15' 30" W of a point marking the southerly corner of Living Unit 4 as shown on the Plan; thence from said southerly corner of Living Unit 5 approximately N 62° 19' 39" W 25.00 feet, more or less, to a point which is the westerly corner of Living Unit 5; thence approximately N 27° 40' 21" E 31.92 feet, more or less, to the northerly corner of the subject property; thence approximately S 62° 19' 39" E 25.00 feet, more or less, to a point in the westerly sideline of Living Unit 6 which is the easterly corner of the subject premises; thence approximately S 27° 40' 21" W 31.92 feet, more or less, along a line which separates Living Unit 5 from Living Unit 6 and along an extension of said line to the point of beginning.

Intending to convey a portion of the premises conveyed to Linc-Pol Realty Trust by deed of Lewis G. and Lynn J. Pollock dated October 13, 1972, recorded Grafton County Registry of Deeds, Book 1186, Page 330.

Also conveying an easement of use and enjoyment, in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973, recorded Grafton County Registry of Deeds Book 1211, Page 137, as supplemented and amended from time to time (said Declaration as so supplemented and amended hereinafter called the "Declaration"), including without limitation the following:

- (1) The right and easement, in common with others, of access to and from the Living Unit conveyed hereby from and to a public highway over access roads and foot paths constructed and to be constructed at Loon Valley;
- (2) Nonexclusive easements for structural support and encroachment as established by the original construction of the Living Unit conveyed hereby and certain party wall rights, as provided in the Declaration;
- (3) The right and easement in common with others, to use the Common Property for common and accepted social and recreational purposes, and to have the Common Property maintained by the Loon Valley Association, consistent with the provisions of the Declaration and the Rules and Regulations adopted pursuant thereto; and
- (4) The right to have certain exterior maintenance of the Living Unit conveyed hereby performed by the Loon Valley Association as provided in the Declaration.

This conveyance of a Living Unit and certain easements appurtenant thereto is made subject to the covenants, restrictions, easements, charges, liens and other provisions of the Declaration and the aforesaid Rules and Regulations, including without limitation the following:

- (1) Nonexclusive easements for structural support and encroachment as established by the original construction of other Living Units and certain party wall rights, as provided in the Declaration;
- (2) The obligation to pay to the Loon Valley Association assessments to be applied to the improvement, operation and maintenance of, and the payment of certain expenses relative to, the Common Property, and for certain maintenance and expenses relative to Living Units, which obligation shall be secured by a lien for assessments, all as provided in the Declaration; and
- (3) The utility easements and the agreements regarding utilities set forth in the Declaration or otherwise presently of record at the Grafton County Registry of Deeds.

The benefits and obligations hereunder shall inure to and be binding upon the heirs, devisees, representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Trustees of Linc-Pol Realty Trust, duly authorized, have caused their names and seals to be hereunto affixed this 16th day of MAY 19 77.

WITNESS:

[Signature]
[Signature]
[Signature]

LINC-POL REALTY TRUST

By [Signature]
Trustee

By [Signature]
Trustee

By [Signature]
Trustee

The undersigned grantee(s) acknowledge(s) that ~~xxxxx~~/they ~~xxx~~/have read the Declaration of Loon Valley, the Bylaws of Loon Valley Association, and the aforesaid Rules and Regulations, and Accept the provisions thereof and of this deed.

William C. Northfield
Grantee

Sandra S. Northfield
Grantee

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THE STATE OF Massachusetts
COUNTY OF Middlesex

On this the 16th day of May, 1977,
before me, the undersigned officer, personally appeared
Louis H. Pollack, Henry L. Pollack, and
Edward J. Pollack, known to me (or satisfactorily proven)
to be the duly authorized Trustees of Linc-Pol Realty Trust
and that as such, they executed the foregoing instrument
on behalf of Linc-Pol Realty Trust for the purposes therein
contained. Before me,

Laura E. Antonelli
Justice of the Peace/Notary Public

NEW ENGLAND MERCHANTS NATIONAL BANK, for consideration
paid, does hereby release and discharge the premises conveyed
by the hereinabove deed from the lien of mortgage given to it
by Linc-Pol Realty Trust by mortgage deed dated May 10, 1973,
recorded Grafton County Records, Book 1194, Page 78, provided,
however, that in all other respects said mortgage shall remain
in full force and effect.

NEW ENGLAND MERCHANTS NATIONAL BANK

Date: MAY 23 1977

by Robert D. Cooper
Its ASSISTANT REAL ESTATE OFFICER

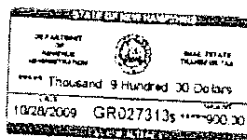
Received and recorded: June 23, 1977 5:30 A.M.

Grafton County Registry of Deeds
Charles A. Wood, Register

BK 3656PG0388

Doc # 0017051 Oct 20, 2009 10:51 AM
Register of Deeds, Grafton County

Handwritten signature



E. Paul Montminy

WARRANTY DEED

I, Robert Hennessey of 341 East Broadway, South Boston, MA 02127, for consideration paid, grant to Paul D. Montminy of 207 Hemlock Street, Manchester, NH 03104 and Marc R. Montminy of 9 Lincoln Street, Exeter, NH 03833, as joint tenants with rights of survivorship, the following:

A certain Living Unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton and State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit 7 as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December 1973, recorded at the Grafton County Registry of Deeds at Book 1139, Page 19 (the "Plan"), and including front closet overhang, rear wings and any other portions of the Living Unit which are either not shown on the plan or not built on the foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described in deed recorded at Book 1926, page 253.

Also conveying an easement of use and enjoyment in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973, recorded at Grafton County Registry of Deeds at Book 1211, Page 137, as supplemented and amended hereinafter called the "Declaration", including without limitation the rights enumerated in Book 1926, Page 253.

Meaning and intending to convey all my right, title and interest in the property described at Book 1926, Page 253.

This is not homestead property.

BK3656PG0389

Dated: October 15, 2009.

Robert R. Hennessey
Robert Hennessey

Commonwealth of Massachusetts

County of Suffolk

On this 15th day of October, 2009, personally appeared before me the above named Robert Hennessey who acknowledged the foregoing to be his free act and deed.

Marjana Capo
Notary Public



MARJANA CAPO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 19, 2012

WARRANTY DEED

FOR CONSIDERATION PAID, We Paul D. Montminy of 189 North Main Street, Rochester, County of Strafford and State of New Hampshire, and Marc R. Montminy, of 378 Notre Dame Avenue, Manchester, County of Hillsborough and State of New Hampshire, GRANT TO Paul D. Montminy of 189 North Main Street, Rochester, NH 03367; Marc R. Montminy, of 378 Notre Dame Avenue, Manchester, NH 03102; and Robert Hennessey of Padres de Santiago Apostol, Casilla 919, Santa Cruz, Bolivia,

as Joint Tenants With Rights of Survivorship

A certain Living Unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton and State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit 7 as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December 1973, recorded at the Grafton County Registry of Deeds at Book 1189, Page 19 (the "Plan"), and including front closet overhang, rear wings and any other portions of the Living Unit which are either not shown on the plan or not built on the foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described as follows:

Commencing at a point marking the southerly corner of the subject property which point is located 7 feet, more or less, approximately South 27 degrees 40 minutes 21 seconds West of a point marking the Westerly corner of Living Unit 8 as shown on the Plan, which latter point is located approximately North 43 degrees 13 minutes 35 seconds West, North 62 degrees 19 minutes 39 seconds West, South 27 degrees 40 minutes 21 seconds West, and North 62 degrees 19 minutes 39 seconds West, Ninety and Seventeen Hundredths Feet (90.17'), Twenty-Five and Seventeen Hundredths Feet (25.17'), Seven Feet (7.0') and Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, respectively, of an iron pipe marking the Easterly corner of the Loon Valley property; thence

Running approximately North 62 degrees 19 minutes 39 seconds West Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, to a point in the Southeasterly sideline of Living Unit 6; thence

Approximately North 27 degrees 40 minutes 21 seconds East Thirty-One and Ninety-Two Hundredths Feet (31.92'), more or less, along a line which separates Living Unit 7 from Living Unit 6 and along an extension of said line to a point at the Northerly corner of the subject property; thence

Running approximately South 62 degrees 19 minutes 39 seconds East Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, to a point in the Northwesterly sideline of Living Unit 8; thence

Approximately South 27 degrees 40 minutes 21 seconds West Thirty-One and Ninety-Two Hundredths Feet (31.92') along a line which separates Living Unit 7 from Living Unit 8, and along the extension of said line to the point of beginning.

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BK 1926 PG 0258

GRANITE STATE
TITLE SERVICES, INC.
100 FARMINGTON ROAD
ROCHESTER
NEW HAMPSHIRE
03067

STATE OF NEW HAMPSHIRE

DEPARTMENT OF REVENUE ADMINISTRATION
REAL ESTATE TRANSFER TAX

NOV 30 91

\$ 42.90

ONE HUNDRED AND 42/100 DOLLARS

25377

VOID IF ALTERED

BK1926 PG0259

MEANING AND INTENDING to describe and convey the same premises conveyed to Paul D. Montminy and Marc R. Montminy by Warranty Deed of Boris A. Molchanov Ann H. Pollock, Lynn J. Pollock and Lewis C. Pollock, dated July 13, 1990, and recorded at Book 1371, Page 372, Grafton County Registry of Deeds.

Also conveying an easement of use and enjoyment in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973, recorded at Grafton County Registry of Deeds at Book 1211, Page 187, as supplemented and amended from time to time (said Declaration as so supplemented and amended hereinafter called the "Declaration"), including without limitation the following:

1. The right and easement, in common with others, of access to and from the Living Unit conveyed hereby from and to a public highway over access roads and foot paths constructed and to be constructed at Loon Valley;
2. Non-exclusive easements for structural support and encroachment as established by the original construction of the Living Unit conveyed hereby and certain party wall rights, as provided in the Declaration;
3. The right and easement in common with others to use the Common Property for common and accepted social and recreational purposes, and to have the Common Property maintained by the Loon Valley Association, consistent with the provisions of the Declaration and the Rules and Regulations adopted pursuant thereto; and
4. The right to have certain exterior maintenance of the Living unit conveyed hereby performed by the Loon Valley Association as provided in the Declaration.

This conveyance of a Living Unit and certain easements appurtenant thereto is made subject to the covenants, restrictions, easements, charges, liens and other provisions of the Declaration and of the aforesaid Rules and Regulations, including without limitation the following:

1. Non-exclusive easements for structural support and encroachment as established by the original construction of other Living Units and certain party wall rights, as provided in the Declaration;
2. The obligation to pay to the Loon Valley Association assessments to be applied to the improvement, operation and maintenance of, and the payment of certain expenses relative to, the Common Property, and for certain maintenance and expenses relative to Living Units, which obligation shall be secured by a lien for assessments, all as provided in the Declaration; and
3. The utility easements and the agreements regarding utilities set forth in the Declaration or otherwise presently of record at the Grafton County Registry of Deeds.

THIS IS NOT HOMESTEAD PROPERTY OF THE GRANTORS.

IN WITNESS WHEREOF, we have hereunto set our hands this 26TH day of AUGUST, 1991.

Richard L. Davis
Witness
(acts both)

Paul D. Montminy
Paul D. Montminy

Witness

Marc R. Montminy
Marc R. Montminy

WK1926 pg0260

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Personally appeared the above named Paul D. Montminy and Marc R. Montminy, and acknowledged the foregoing instrument to be their free act and deed.

Before me, this 26 day of AUGUST, 1991

Richard L. Boies
Justice of the Peace/Notary Public

RECEIVED
31 AUG 30 AM 9:05
GRAFTON COUNTY REGISTRY OF DEEDS

EXAMINED, ATTEST *Crist A. Elliott*
GRAFTON COUNTY REGISTRY OF DEEDS

WARRANTY DEED

7/13/90

We, Boris A. Molchanov and Ann M. Pollock, both with a mailing address of Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, Suffolk County, Massachusetts, 02109 and Lynn J. Pollock and Lewis G. Pollock, with a mailing address of c/o Lewis G. Pollock, Choate, Hall & Stewart, Exchange Place, 53 State Street, Boston, Suffolk County, Massachusetts, 02109, for consideration received, grant to Paul D. Montminy, of 189 North Main Street, Rochester, New Hampshire, 03867, an undivided one-half (1/2) interest and to Marc R. Montminy, of 378 Notre Dame Avenue, Manchester, New Hampshire, 03102, an undivided one-half (1/2) interest, as tenants in common, with WARRANTY COVENANTS,

012866

A certain Living Unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton and State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit 7 as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December, 1973, recorded at the Grafton County Registry of Deeds at Book 1189, Page 19 (the "Plan"), and including front closet overhang, rear wings and any other portions of the Living Unit which are either not shown on the plan or not built on the foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described as follows:

BK 1871 Pg 0372

Commencing at a point marking the southerly corner of the subject property which point is located 7 feet, more or less, approximately South 27 degrees 40 minutes 21 seconds West of a point marking the Westerly corner of Living Unit 8 as shown on the Plan, which latter point is located approximately North 43 degrees 13 minutes 35 seconds West, North 62 degrees 19 minutes 39 seconds West, South 27 degrees 40 minutes 21 seconds West, and North 62 degrees 19 minutes 39 seconds West, Ninety and Seventeen Hundredths Feet (90.17'), Twenty-Five and Seventeen Hundredths Feet (25.17'), Seven Feet (7.0') and Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, respectively, of an iron pipe marking the Easterly corner of the Loon Valley property; thence

Running approximately North 62 degrees 19 minutes 39 seconds West Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, to a point in the Southeasterly sideline of Living Unit 6; thence

Approximately North 27 degrees 40 minutes 21 seconds East Thirty-One and Ninety-Two Hundredths Feet (31.92'), more or less, along a line which separates Living Unit 7 from Living Unit 6 and

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
STATE TAX
COMMISSION
788.00
JUL 19 1990

EXHIBIT
1
7/13/90
Boris A. Molchanov
Ann M. Pollock

along an extension of said line to a point at the Northerly corner of the subject property; thence

Running approximately South 62 degrees 19 minutes 39 seconds East Twenty-Five and Seventeen Hundredths Feet (25.17'), more or less, to a point in the Northwesterly sideline of Living Unit 8; thence

Approximately South 27 degrees 40 minutes 21 seconds West Thirty-One and Ninety-Two Hundredths Feet (31.92') along a line which separates Living Unit 7 from Living Unit 8, and along the extension of said line to the point of beginning.

MEANING AND INTENDING to describe and convey all and the same premises conveyed to the grantors herein by Quitclaim Deed of Eileen R. Tablos, Thomas R. Pollock, Ann H. Pollock, Boris A. Molchanov, Lynn J. Pollock and Lewis G. Pollock dated September 28, 1988 and recorded in the Grafton County Registry of Deeds at Book 1766, Page 75.

Also conveying an easement of use and enjoyment in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973, recorded at Grafton County Registry of Deeds at Book 1211, Page 187, as supplemented and amended from time to time (said Declaration as so supplemented and amended hereinafter called the "Declaration"), including without limitation the following:

1. The right and easement, in common with others, of access to and from the Living Unit conveyed hereby from and to a public highway over access roads and foot paths constructed and to be constructed at Loon Valley;

2. Non-exclusive easements for structural support and encroachment as established by the original construction of the Living Unit conveyed hereby and certain party wall rights, as provided in the Declaration;

3. The right and easement in common with others to use the Common Property for common and accepted social and recreational purposes, and to have the Common Property maintained by the Loon Valley Association, consistent with the provisions of the Declaration and the Rules and Regulations adopted pursuant thereto; and

4. The right to have certain exterior maintenance of the Living Unit conveyed hereby performed by the Loon Valley Association as provided in the Declaration.

This conveyance of a Living Unit and certain easements appurtenant thereto is made subject to the covenants, restrictions, easements, charges, liens and other provisions of the Declaration and of the aforesaid Rules and Regulations, including without limitation the following:

BK1871 Pg0373

1. Non-exclusive easements for structural support and encroachment as established by the original construction of other Living Units and certain party wall rights, as provided in the Declaration;

2. The obligation to pay to the Loon Valley Association assessments to be applied to the improvement, operation and maintenance of, and the payment of certain expenses relative to, the Common Property, and for certain maintenance and expenses relative to Living Units, which obligation shall be secured by a lien for assessments, all as provided in the Declaration; and

3. The utility easements and the agreements regarding utilities set forth in the Declaration or otherwise presently of record at the Grafton County Registry of Deeds.

This is not homestead property of the grantors.

IN WITNESS WHEREOF, we have hereunto set our hands this 13th day of July, 1990.

Larry J. Martin
Witness

Boris A. Molchanov
Boris A. Molchanov

Larry J. Martin
Witness

Ann H. Pollock
Ann H. Pollock

Larry J. Martin
Witness

Lewis G. Pollock
Lewis G. Pollock

Larry J. Martin
Witness

Lynn J. Pollock
Lynn J. Pollock

STATE OF NEW MEXICO
SANTA FE, SS.

The foregoing instrument was acknowledged before me this 13th day of July, 1990 by Boris A. Molchanov, Ann H. Pollock, Lewis G. Pollock and Lynn J. Pollock.

RECEIVED
90 JUL 30 PM 2:51
GRAFTON COUNTY
REGISTRY OF DEEDS

Victoria J. [Signature]
Justice of the Peace/
Notary Public
My commission expires 7-31-94



EXAMINED, ATTEST Carol A. Elliott
GRAFTON COUNTY REGISTRY OF DEEDS

BK1871 Pg0374

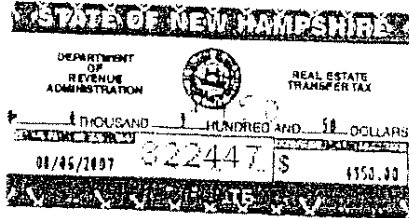
014098

2007 AUG -6 PM 1:17

BK 3435PG0480

EXHIBIT 4

GRAFTON COUNTY
REGISTRY OF DEEDS



NE. Title d Escrow
841 Main St
Tewksbury MA 01976

WARRANTY DEED

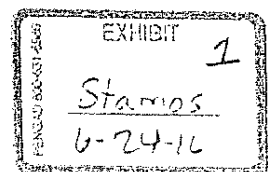
WE, HARRY L. POLLOCK and SUSAN H. POLLOCK, husband and wife, both with a mailing address of 2 Partridge Road, Lexington, MA 02420, for consideration received, grant to JOHN G. STAMATOPOULOS and SUSAN STAMATOPOULOS, husband and wife, both with a mailing address of 26 Ledgewood Drive, Derry, NH 03038, as joint tenants with rights of survivorship, with WARRANTY COVENANTS,

A certain living unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton, State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit #10 (a/k/a 205 Main Street, Unit #10) as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December, 1973, recorded Grafton County Registry of Deeds in Book 1189, Page 19, (the "Plan"), and including front closet overhang, rear wings and any other portions of the Living Unit which are either not shown on the Plan or not built on a foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described as follows:

Commencing at a corner of the subject property which corner is located approximately S 80° 01' 14" W 60.99 feet, more or less, of an iron pipe marking the easterly corner of the Loon Valley property; thence approximately S 60° 36' 04" W 22.53 feet, more or less, to a point; thence approximately S 29° 23' 56" E 1.0 feet, more or less, to a point; thence approximately S 60° 36' 04" W 6.08 feet, more or less, to a point; thence approximately N 29° 23' 56" W 1.0 feet, more or less, to a point; thence approximately S 60° 36' 04" W 14.03 feet, more or less, to the southernmost corner of the subject property; thence approximately N 29° 23' 56" W 9.20 feet, more or less, to a point; thence approximately S 60° 36' 04" W 3.41 feet, more or less, to a point; thence approximately N 29° 23' 56" W 10.25 feet, more or less, to a point; thence approximately N 60° 36' 04" E 3.41 feet, more or less, to a point; thence approximately N 29° 23' 56" W 9.57 feet, more or less, to a point; thence approximately N 60° 36' 04" E 19.32 feet, more or less, to a point; thence approximately N 29° 23' 56" W 5.52 feet, more or less, to a point; thence approximately N 60° 36' 04" E 6.32 feet, more or less, to a point; thence approximately S 29° 23' 56" E 5.52 feet, more or less, to a point; thence approximately N



8K 3435PG0481

50° 36' 04" E 14.42 feet, more or less, to a point; thence approximately N 29° 23' 56" W 3.81 feet, more or less, to a point; thence approximately N 80° 36' 04" E 8.43 feet, more or less, to a point; thence approximately S 29° 23' 56" E 3.61 feet, more or less, to a point; thence approximately N 60° 36' 04" E 4.17 feet, more or less, to a point; thence approximately S 29° 23' 56" E 12.07 feet, more or less, to a point; thence approximately S 60° 36' 04" W 10.02 feet, more or less, to a point; thence approximately S 29° 23' 56" E 16.25 feet, more or less, to the point of beginning.

Also conveying an easement of use and enjoyment, in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973 recorded in Grafton County Registry of Deeds at Book 1211, Page 187, as supplemented and amended from time to time (said Declaration as so supplemented and amended hereinafter called the "Declaration") including without limitation the following:

- (1) The right and easement, in common with others, of access to and from the Living Unit conveyed hereby from and to a public highway over access roads and foot paths constructed and to be constructed at Loon Valley;
- (2) The right and easement in common with others, to use the Common Property for common and accepted social and recreational purposes, and to have the Common Property maintained by the Loon Valley Association, consistent with the provisions of the Declaration and the Rules and Regulations adopted pursuant thereto; and
- (3) The right to have certain exterior maintenance of the Living Unit conveyed hereby performed by the Loon Valley Association as provided in the Declaration.

This conveyance of a Living Unit and certain easements appurtenant thereto is made subject to the covenants, restrictions, easements, charges, liens and other provisions of the Declaration and of the aforesaid Rules and Regulations including without limitation the following:

- (1) The obligations to pay to the Loon Valley Association assessments to be applied to the improvement, operation and maintenance of, and the payment of certain expenses relative to, the Common Property, and for certain maintenance and expenses relative to Living Units, which obligation shall be secured by a lien for assessments, all as provided in the Declaration; and
- (2) The utility easements and the agreements regarding utilities set forth in the Declaration or otherwise presently of record at the Grafton County Registry of Deeds.

The benefits and obligations hereunder shall inure to and be binding upon the heirs, devisees, representatives, successors and assigns of the respective parties hereto.

MEANING AND INTENDING to describe and convey all and the same premises conveyed to the within grantors by Warranty Deed of Edward Z. Pollock, Harry L. Pollock and Lewis G. Pollock, Trustees of the Linc-Pol Realty Trust dated April 10, 1975 and recorded in the Grafton County Registry of Deeds at Book 1259, Page 0106.

This is not homestead property of the grantors.

IN WITNESS WHEREOF, we have hereunto set our hands this 21st day of July, 2007.

John Chamberlain
Witness

Harry L. Pollock
Harry L. Pollock

John Chamberlain
Witness

Susan H. Pollock
Susan H. Pollock

~~State of New Hampshire~~
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Grafton

On this 21st day of July, 2007, before me, the undersigned notary public, personally appeared Harry L. Pollock, who proved to me through satisfactory evidence of identification, which was Mass. Driver's license or [] _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

JOHN CHAMBERLAIN
★ NOTARY PUBLIC - NEW HAMPSHIRE ★
My Commission Expires October 20, 2007

John Chamberlain
Notary Public
My Commission Expires:

~~State of New Hampshire~~
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Grafton

On this 21st day of July, 2007, before me, the undersigned notary public, personally appeared Susan H. Pollock, who proved to me through satisfactory evidence of identification, which was Mass. Driver's license or [] _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

JOHN CHAMBERLAIN
★ NOTARY PUBLIC - NEW HAMPSHIRE ★
My Commission Expires October 20, 2007

John Chamberlain
Notary Public
My Commission Expires

Heidi H. [Signature] REGISTER
GRAFTON COUNTY
REGISTRY OF DEEDS

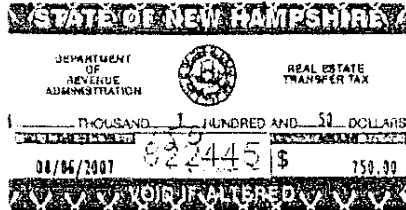
014072

2007 AUG -6 AM 11:48

BK 3435PG0382

GRAFTON COUNTY
REGISTRY OF DEEDS

75



WARRANTY DEED

I, HARRY L. POLLOCK, married, of 2 Partridge Road, Lexington, Massachusetts 02420, for consideration received, grant to JOHN G. STAMATOPOULOS and SUSAN V. W. STAMATOPOULOS, husband and wife, both with a mailing address of 26 Ledgewood Drive, Derry, NH 03038, as joint tenants with rights of survivorship, with Warranty covenants,

A certain tract of land together with any improvements located thereon, situated in the Town of Lincoln, County of Grafton, State of New Hampshire, identified as Parcel X on a certain plan entitled "Site Plan of Loon Valley, dated December, 1973, recorded at the Grafton County Registry of Deeds at Book 1189, Page 19", the said premises being more particularly bounded and described as follows:

Beginning at an iron pipe located on the northwesterly side of the Kancamagus Highway at the easterly corner of land now or formerly of Dolores W. Wellington; thence

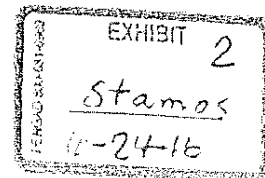
In a northeasterly direction along a curve concave to the subject premises with a radius of 1,965 feet a distance of 137.13 feet along the northerly bound of the Kancamagus Highway to an iron pipe at the southerly corner of land now of formerly of Bernard Rogers; thence

North 24° 24' 02" West a distance of 94.61 feet to the southeasterly corner of premises of Loon Valley Condominium; thence

South 71° 15' 17" West a distance of 143.30 feet to a concrete post at the northerly corner of said Wellington land; thence

South 28° 19' 06" East a distance of 142.96 feet to the point of beginning

MEANING AND INTENDING to describe and convey all and the same premises conveyed to the within grantor by Warranty Deed of Edward Z. Pollock,



BK 3435PG0383

Harry L. Pollock and Lewis G. Pollock, Trustees of the Linc-Pol Realty Trust dated May 1, 2007 and recorded in the Grafton County Registry of Deeds at Book 3405, Page 0977.

EXCEPTING AND RESERVING an easement and right of way for ingress and egress, by pedestrian and vehicular traffic, to and from premises known generally as Loon Valley Condominium, and also to include reasonable parking privileges in proximity to Unit 10, the so-called Boyle house, over and across the southwesterly portion, and near the southwesterly boundary, of the premises conveyed hereby for the use and benefit of the owners of units of the said Loon Valley Condominium, subject, however, to the obligation on the part of Loon Valley Condominium to repair and maintain the said right of way and easement. The easement and right of way excepted and reserved herefrom shall inure to the benefit of Loon Valley Condominium and its unit owners and shall run with the land.

This is not homestead property of the grantor or his spouse.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of July, 2007.

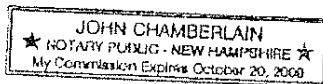
John Chamberlain
Witness

Harry L. Pollock
Harry L. Pollock

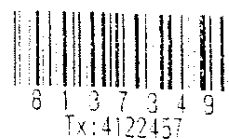
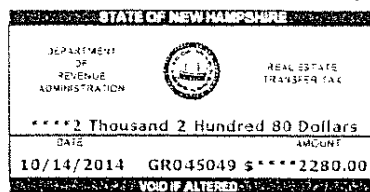
State of New Hampshire
COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Grafton

On this 21st day of July, 2007, before me, the undersigned notary public, personally appeared Harry L. Pollock, who proved to me through satisfactory evidence of identification, which was [] Mass. Driver's license or [] _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

John Chamberlain
Notary Public
My Commission Expires:



William H. [Signature] REGISTER
GRAFTON COUNTY
REGISTRY OF DEEDS

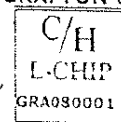


4088-0426

10/14/2014 1:04 PM Pages: 3
 REGISTER OF DEEDS, GRAFTON COUNTY

Return: S Sexton
 12059 Miramar Shores Dr
 Houston, TX 77065

Keely M. Mahan



WARRANTY DEED

170

KNOW ALL MEN BY THESE PRESENTS that we, Grant D. Scott and Cindy L.

Scott, husband and wife, both of 112 Kensington Lane, Swampscott, County of Essex, Commonwealth of Massachusetts, for consideration paid, grants to Stephen J. Sexton and Idalia Garza-Sexton, husband and wife, as joint tenants with rights of survivorship, both of 12059 Miramar Shores Drive, Houston, County of Harris, State of Texas, with **WARRANTY COVENANTS**, the following:

A certain Living Unit in Loon Valley, which Loon Valley is located on Pollard Road in the Town of Lincoln, County of Grafton, State of New Hampshire, together with the land situated directly under said Living Unit, all of which is more particularly bounded and described as follows:

Being Living Unit 6 as shown on plan entitled "Site Plan of Loon Valley" by Trojano-Rhines Surveys, Inc. dated December, 1973, recorded Grafton County Registry of Deeds in Book 1189, Page 19, (the "Plan"), and including front closed overhang, rear wings and any other portions of the Living Unit which are either not shown on the Plan or not built on a foundation.

The said Living Unit is conveyed together with the land located directly thereunder which is displaced by the foundation thereof, whether full or slab (on those sides where there is a foundation), which land is more particularly bounded and described as follows:

Commencing at a point marking the southerly corner of the subject property which point is located fifty (50) feet, more or less, approximately S 62° 19' 39" E of a point marking the westerly corner of Living Unit 5 as shown on the Plan, which latter point is located 21.6 feet, more or less, from an iron pipe at an angle in the westerly sideline of the Loon Valley property along land now or formerly of Pierre and Gemma Asselin, which pipe is also 63.00 feet, more or

less, approximately S 12° 15' 30" W of a point marking the southerly corner of Living Unit 4 as shown on the Plan; thence from said southerly corner of Living Unit 6 approximately N 62° 19' 39" W 25.00 feet, more or less, to a point which is the westerly corner of Living Unit 6 and which is also the southerly corner of Living Unit 5; thence approximately N 27° 40' 21" E 31.92 feet, more or less, along a line which separates Living Unit 5 from Living Unit 6 to the northerly corner of the subject property; thence approximately S 62° 19' 39" E 25.00 feet, more or less, to a point in the westerly sideline of Living Unit 7 which is the easterly corner of the subject premises; thence approximately S 27° 40' 21" W 31.92 feet, more or less, along a line which separates Living Unit 6 from Living Unit 7 and along an extension of said line to the point of beginning.

Also conveying an easement of use and enjoyment, in and to the Common Property as defined in the Declaration of Loon Valley dated as of the 21st day of December, 1973, recorded Grafton County Registry of Deeds, Book 1211, Page 187, as supplemented and amended from time to time (said Declaration as so supplemental and amended hereinafter called the "Declaration"), including without limitation the following:

(1) The right and easement in common with others, of access to and from the Living Unit conveyed hereby from and to a public highway over access roads and foot paths constructed and to be constructed at Loon Valley;

(2) Nonexclusive easements for structural support and encroachments as established by the original construction of the Living Unit conveyed hereby and certain party wall rights, as provided in this Declaration;

(3) The right and easement in common with others, to use the Common Property for common and accepted social and recreational purposes, and to have the Common Property maintained by the Loon Valley Association, consistent with the provisions of the Declaration and the Rules and Regulations adopted pursuant thereto; and

(4) The right to have certain exterior maintenance of the Living Unit conveyed hereby performed by the Loon Valley Association as provided in the Declaration;

The conveyance of a Living Unit and certain easements appurtenant thereto is made subject to the covenants, restrictions, easements, charges, liens and other provisions of the Declaration and of the aforesaid Rules and Regulations, including without limitation the following:

(1) Nonexclusive easements for structural support and encroachment as established by the original construction of other Living Units and certain party wall rights, as provided in the Declaration;

(2) The obligation to pay to the Loon Valley Association assessments to be applied to the improvement, operation and maintenance of, and the payment of certain expenses relative to the Common Property, and for certain maintenance and expenses relative to Living Units, which obligation shall be secured by a lien for assessments, all as provided in the Declaration; and

(3) The utility easements and the agreements regarding utilities set forth in the Declaration or otherwise presently of record at the Grafton County Registry of Deeds.

The benefits and obligations hereunder shall inure to and be binding upon the heirs, devisees, representatives, successors and assigns of the respective parties hereto.

Meaning and intending to describe and convey the same premises conveyed to Grant D. Scott and Cindy L. Scott by virtue of the Warranty Deed of Norman Wallack dated April 11, 1998 and recorded in the Grafton County Registry of Deeds at Book 2321, Page 603 and also by Warranty Deed to Grant D. Scott and Cindy L. Scott from Stuart K. Wallack and Ann V. Wallack, dated February 7, 2002 and recorded in the Grafton County Registry of Deeds at Book 2634, Page 644.

And we, Grant D. Scott and Cindy L. Scott, release all rights of homestead and other interests therein.

IN WITNESS WHEREOF, we have hereunto affixed our hands this 9th day of October, 2014.

PA

Witness

PA

Witness

Grant D. Scott

Grant D. Scott

Cindy L. Scott

Cindy L. Scott

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared Grant D. Scott and Cindy L. Scott, the above-named persons, known to me to be the said named persons, and made solemn oath that the foregoing statements are true and correct to the best of their knowledge and belief and that they acknowledged their signatures as their free act and deed. Before me this 9th day of October, 2014.

PA

Notary Justice of the Peace

My commission Expires: 5/23/2019

PAMELA J. KOEHLER
Justice of the Peace - New Hampshire
My Commission Expires May 23, 2019

deed into Pollock & Wallack

WARRANTY DEED

GEMMA ASSELIN, unmarried, of Lincoln, Grafton County, and State of New Hampshire, for consideration paid, grants to LENIS G. POLLOCK and NORMAN M. WALLACK, both of Loon Valley, Pollard Road, Lincoln, Grafton County, New Hampshire, as tenants in common, with WARRANTY covenants,

Two certain tracts or parcels of land with the buildings thereon situated in Lincoln, Grafton County, New Hampshire, bounded and described as follows:

TRACT I: Beginning at a point on the southeasterly side of the Pollard Road, so-called, said point being a westerly corner of land formerly of William Seales, now known as the Loon Valley Village Townhouse property and marked by an iron pipe set in the ground, thence in a southwesterly direction along the limits of said Pollard Road a distance of one hundred (100') feet to an iron pipe set in the ground; thence running in a southeasterly direction in part by Tract II hereinbelow a distance of one hundred fifty (150') feet to an iron pipe set in the ground; thence running in a northeasterly direction by said Tract II a distance of one hundred twenty-seven (127') feet, more or less, to an iron pipe set in the ground at said Loon Valley land; thence running in a northwesterly direction by said Loon Valley land a distance of one hundred fifty (150') feet, more or less, to the point of beginning.

Meaning and intending to convey all of Lots 276 and 278 as drawn on a Plan of Lots of the Town of Lincoln by M. H. Churchill, November 22, 194 , and described in a deed of Grafton Realty Corporation to Pierre Asselin and Gemma Asselin, as joint tenants, dated April 12, 1957, and recorded in Book 939 Page 143 of the Grafton County Registry of Deeds.

TRACT II: Beginning at the easterly corner of Tract I above; thence along the southeasterly line of said Tract I one hundred twenty-seven (127') feet, more or less, to the southerly corner thereof; thence northwesterly along the southwesterly line of said Tract I one hundred thirty-seven (137') feet, more or less, to an iron pipe marker in said line; thence turning an interior angle of 86° 30' and running southwesterly twenty-five (25') feet, more or less, to an iron pipe marker; thence turning an interior angle of 90° and running southeasterly one hundred fifty (150') feet more or less, to an iron pipe marker; thence turning an interior angle of 90° and running northeasterly one hundred forty-seven (147') feet, more or less in part along said Loon Valley land to an iron pipe marker; thence running North 11-1/2° West 8-1/2 feet, more or less, along said Loon Valley land to the point of beginning.

All bearing are observed magnetic as recorded April 1959.

STATE OF NEW HAMPSHIRE
TAX COLLECTOR
OF REAL PROPERTY
13750
1959

1345 771

Intending to convey all of the premises conveyed by the deed of Grafton Realty Corporation to Pierre Asselin and Gemma Asselin, as joint tenants, dated June 4, 1959, recorded in Book 928 Page 238 in the Grafton County Registry of Deeds.

Pierre Asselin died April 20, 1972, in Hanover, New Hampshire.

I hereby release my rights of homestead in this property. Excepting and reserving to GEMMA ASSELIN the right to remain in occupancy of the premises for thirty (30) days from the date hereof.

WITNESS my hand this 22 day of JUNE, 1978.

[Signature]
WITNESS

[Signature]
GEMMA ASSELIN

STATE OF NEW HAMPSHIRE
GRAFTON, SS.

June 21, 1978

Personally appeared GEMMA ASSELIN known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged the same to be her voluntary act and deed.

Before me,

[Signature]
Justice of the Peace, Notary Public

Received and recorded: July 10, 1978 8:30 A.M.

[Signature]
Register

1368

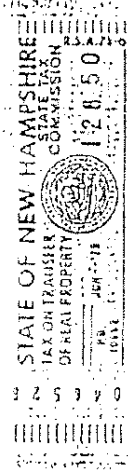
264

Portion cut
to Keough
(lot 13)

WARRANTY DEED

We, NORMAN WALLACK and LEWIS G. POLLOCK, both of Pollard Road, Lincoln, County of Grafton and State of New Hampshire, for consideration paid, grant to PENNY KEOUGH and CARL KEOUGH of Pollard Road, Lincoln, County of Grafton and State of New Hampshire, as joint tenants with rights of survivorship, with WARRANTY COVENANTS, a certain tract of land, together with the buildings and other improvements located thereon, situate in said Lincoln, said tract of land being more particularly bounded and described as follows:

Commencing at a point in the southeasterly sideline of Pollard Road, so-called, said point being 10 feet southwesterly of the westerly corner of land formerly of William Seales, now known as the Loon Valley Village Townhouse property, said 10 feet being measured along said southeasterly sideline of Pollard Road; thence approximately south 28° 13' 06" east, parallel to the southwesterly line of said Loon Valley Village Townhouse property to a point which is 28 feet distant from the southeast corner of the residence located on the subject premises, which point is also 49 feet 5 inches from the concrete base post of Loon Valley Village Townhouse Unit No. 4; thence approximately south 69° 35' 21" west 82 feet, more or less, to a point which is 26 feet 2 inches from the southwest corner of the garage located on the subject property, which point is also 33 feet 9 inches from the southwest corner of the aforesaid residence; thence running in a generally northwesterly direction to the southwest corner of the aforesaid garage; thence turning at an angle of approximately 90° and running in a generally southwesterly direction on a line which is a continuation of the southeasterly sideline of said garage to the southwesterly line of the premises conveyed to the Grantors by deed of Emma Asselin dated June 22, 1978; thence running in a generally northwesterly direction along said southwesterly sideline to its point of terminus at an iron pipe marker; thence turning and running in a generally northeasterly direction 25 feet, more or less, along the northwesterly sideline of said premises acquired from Asselin to an iron



pipe marker; thence turning and running in a generally northwesterly direction along the southwesterly boundary of said premises acquired from Asselin to a point in the southeasterly sideline of said Pollard Road; thence running in a generally northeasterly direction along said southeasterly sideline of Pollard Road to the point of beginning.

Intending to convey a portion of the premises conveyed to the Grantors by the aforesaid deed of Gemma Asselin dated June 22, 1978, recorded Grafton County Registry of Deeds, Book 1345, Page 791.

Subject to any easements or liens of record.

Real estate taxes are prorated as of the date hereof and, therefore, the Grantees hereby assume all responsibility for the 1979 real estate tax bill and agree to indemnify the Grantors from all liability in connection therewith.

Reserving, however, to the Grantors an easement of access by foot and by vehicle between Pollard Road and the portion of said premises acquired by said Asselin deed which is being retained by the Grantors herein, said easement to cover the parcel of land lying between the southwesterly side of the aforesaid garage and the southwesterly boundary of the premises conveyed hereby and to connect with the driveway located northwesterly of said garage and to include the area encompassed by said driveway.

By accepting this deed, Penny Keough and Carl Keough agree that we or the survivor of us will not convey any interest in the above-described premises without first giving the Grantors or the survivor of them the option to purchase such interest as is to be offered for sale, for such consideration as we or the survivor of us will accept for the sale thereof. Notice of such option shall be transmitted to the Grantors or the survivor of them in writing by certified mail, return receipt requested, and shall describe the interest to be offered for sale and the consideration which will be acceptable for said sale. In order to exercise such option

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the Grantors or the survivor of them must signify the intent to do so in writing by certified mail, return receipt requested, postmarked within fifteen (15) days of receipt of notice of such option, and shall within thirty (30) days of receipt of said notice tender the required consideration; otherwise such option shall be deemed to have been declined. On tender of said consideration, we or the survivor of us shall forthwith deliver a valid warranty deed conveying good and marketable title to the said interest; if the Grantors or the survivor of them do not exercise such option as aforesaid, we or the survivor of us may sell the said interest to any purchaser, but not for a consideration less than that specified in such notice unless the requirements of this paragraph has been discharged with respect to such lesser consideration. If the said interest is not so sold within three calendar months after mailing of notice of option, then prior to any such subsequent sale an option shall again be extended in the same manner, and subject to the same conditions as hereinbefore specified. This right of refusal shall be binding upon the said Keoughs, their executors, administrators, heirs and devisees, and any successors in interest by inheritance or devise therefrom, only for a period of forty (40) years from the date of this deed. This right of refusal shall not apply to a conveyance from a Grantee to his lineal descendant for nominal or no consideration, in which event such lineal descendant shall hold title subject to the right of refusal as set forth herein. This first refusal will be subordinate to any mortgage deed from the grantee to any bank, to any foreclosure deed resulting from foreclosure of any such mortgage and to any Quitclaim Deed in lieu of foreclosure of any such mortgage.

(Not homestead property.) - 4 -

The Grantees hereby indicate their acceptance of the terms of this Deed.

Penny Keough
Penny Keough

Carl H. Keough
Carl Keough

IN WITNESS WHEREOF, we have hereunto set our hands this 31st day of May, 1979.

WITNESS:

[Signature]
[Signature]

Norman Wallack
Norman Wallack

L. G. Pollock
Lewis G. Pollock

THE STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

The foregoing instrument was acknowledged before me this 31st day of May, 1979 by Norman Wallack.

[Signature]
Justice of the Peace / ~~Notary Public~~

THE STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

The foregoing instrument was acknowledged before me this 31st day of May, 1979 by Lewis G. Pollock.

[Signature]
Justice of the Peace / ~~Notary Public~~

Received and recorded: June 11, 1979 8:30 AM

1368

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[Signature]

LEWIS G. POLLOCK
LOON VALLEY
POLLARD ROAD
LINCOLN, NEW HAMPSHIRE 03251

May 2, 1979

Mr. Harold Trojano
Trojano-Rhinen Surveys, Inc.
Glove Hollow
Plymouth, NH

Dear Mr. Trojano:

It was good to talk with you once again and I thank you for agreeing to be of help to us, as you have every time in the past that we have called upon you.

As I told you on the telephone, we have purchased the house and land owned by Gemma Asselin on Pollard Road, Lincoln, New Hampshire which abuts the Loon Valley property. Title to the Asselin property was taken in the name of two of the owners of the Loon Valley property (i.e. Lewis Pollock and Norman Wallack) in order to facilitate the transaction. We have entered into an agreement with Carl and Penny Keough to sell to them the house with part of the land and to retain part of the land which we intend to add on to the Loon Valley common land.

John Pendleton is our lawyer, as I mentioned to you, and whatever information you prepare, please send to him at the following address:

John B. Pendleton, Esquire
Gallagher, Callahan and Gartrell
P.O. Box 1415
Concord, NH 03301.

I am enclosing a copy of a Loon Valley property map so you can see how it sits next to the old Gemma Asselin house along Pollard Road and along a side yard and along the back yard of the ex-Asselin property. I am enclosing a homemade map which we prepared to show how we would like to subdivide the Asselin property.

Mr. Harold Trojan
May 2, 1979
Page Two

We intend to subdivide the property and reserve and not deed to the Keoughs some of the side yards and some of the back yard. The new property line would be as follows:

The new property line for the property to be deeded to the Keoughs would begin on Pollard Road 10 feet to the West of the Easterly point of the land, then it would run Southerly from Pollard Road cutting through the present side yard to a point at the back of the house which is 28 feet from the Southeast corner of the house and 49 feet 5 inches from the concrete base post of Loon Valley Unit #4. The new line would then run Westerly through the present back yard 82 feet to a point which is 26 feet 2 inches Southwest corner of the garage and 33 feet 9 inches from the Southwest corner of the house.

The property line would run from this point Northerly directly to the Southwesterly corner of the garage (following in a straight line the Westerly line of the garage) and then from the Southwesterly corner of the garage turn and run Westerly (following the Southerly line of the garage) to the existing property line.

We, the sellers, also intend to retain a vehicular easement running to Pollard Road along the entire remaining property area West of the garage (as shown on the dots on the enclosed plan).

If you think we should be present at the property when you come, I will be pleased to meet with you at your convenience at the property site on any Saturday or Sunday or early evening on almost any weekday, if you think that would be required.

As I told you, the Keoughs have been living in the house for sometime and we must pass papers not later than the end of May and a closing has been scheduled for May 31, 1979.

Sincerely,


Lewis G. Pollock

LGP/djl
Enclosures

cc: John B. Pendleton, Esquire
Norman Wallack