

STATE OF VERMONT

SUPERIOR COURT
Orleans County Unit

CIVIL DIVISION
Docket No. 141-6-18 Osev

SAMUEL S. KENT, HANNAH KENT,)
MAYNARD CASSADY KENT, SARAH)
KENT, DAVID NUROV, WENDY)
ROSENOW, and LORI SOLUS,)

Plaintiffs,)

v.)

BRUCE TANNER, Trustee of the TANNER)
FAMILY TRUST, and E. HOWLAND SWIFT,)
ANNE S. TANNER, LILAS BARTON and)
JEAN PHINNEY, Trustees of the SWIFT)
FAMILY TRUST,)

Defendants.)

DEFENDANTS' MEDIATION STATEMENT

The above-captioned matter is scheduled for mediation on September 29, 2020.

Defendants provide this short Mediation Statement to provide the mediator, Gregory Clayton, Esq., with pertinent background and context respecting this boundary dispute.

For decades, the Swift family and its various branches have owned substantial land located on the western shore of Lake Willoughby (the "Lake") in Westmore in the area of what is known as Crescent Beach. If one views a map or aerial photograph of the Lake, Crescent Beach is located at the western elbow of the lake.

On August 18, 1947, Emerson H. Swift conveyed a parcel of land to an acquaintance of his, Sherrill Kent. The parcel being conveyed (the "Kent Lot") was described as follows:

Beginning at the mid-point of the present mouth of the brook on Crescent Beach, said brook now forming the boundary line between the property of Emerson H. Swift and the Land of Isabel H. Swift and Lucy W. Swift. Thence in a northeasterly

direction along the shore of Willoughby Lake for a distance of one hundred feet. Thence inland approximately 33° West of north, a distance of approximately four hundred feet, this line being the continuation of a line passing through (sic) the summit of Mt Pisgah. Thence in a southwesterly direction approximately 53° West of South a distance of approximately one hundred ninety feet to the main brook. Thence in a southeasterly direction along said brook to its mouth and the point of beginning.

The piece herein described is in effect a part of that Land belonging to the late Arthur L. Swift lying to the northeast of the brook which flows in a southeasterly direction from the Paquin property to Willoughby Lake.

A vehicular right of way for automobiles, etc. is also granted from the above described parcel over the property now owned by Emerson H. Swift to the right of way which passes from the highway leading from Westmore to Willoughby Station (Formerly South Barton) to the various camps on the shore of Willoughby Lake lying northeast of said parcel. A foot path right of way is also granted along the sand beach on the shore of Willoughby Lake in a northeasterly direction over the property now owned by Emerson H Swift from the above mentioned parcel.

Even today, the Kent Parcel is a largely wooded, hilly parcel of land leading down to the western shore of the Lake without easily discernible boundaries. Attached hereto at **Tab A** is a Google Earth photograph of the subject property providing some context for the nature of the land at issue.

Over the decades, a number of lay and professional surveys of the various Swift family lots have been conducted. Attached hereto at **Tab B** is a 2012 version of a Truline survey which reflects the culmination of that firm's significant work going back decades. Attached hereto at **Tab C** are excerpts from a December 2013 revision of the Truline survey which was never completed (the "2013 Survey"). The December 2013 revision reflects Defendants' current thinking with respect to the location of the boundaries at issue.

In September 1947, Emerson Swift conveyed the lot labelled as Ty Bryn, L.L.C. on the 2013 Survey to Willis (the "Ty Bryn Lot"). This lot was defined as having 75 feet of frontage on the lake. To the northeast of that lot was another lot with 75 feet of frontage (the "Collins Lot").

Finally, on the next lot up the shore, there was a boulder with a drilled hole located 55 feet from the boundary line with the lot to the southwest. This boulder is shown on a survey plan prepared by Truline in January 1992 (**Tab D**). Regrettably, the boulder no longer exists, but the residence and 1992 survey do.

Over the decades, the boundary points lying along the Lake at distances of 55 feet, 130 feet and 205 feet from the boulder with the drilled hole were monumented and agreed upon ten yards or so inland from the Lakeshore itself. Meanwhile, the Kent Lot extended from the midpoint of the brook as it existed in 1947 along the Lakeshore a distance of 100 feet. This left the remainder parcel now owned by the Swift Family Trust between the Kent Lot and the Ty Bryn Lot (i.e., the “SFT Lot”). Multiple surveys over the years have indicated that the SFT Lot also had a 75-foot frontage following and extending the tie lines established for the Ty Bryn and Collins Lots.

Along the way, Samuel Kent – the son of Sherrill Kent – came to assert a different view as to the boundary lines of the Kent Lot. At one point, he published an entire website devoted to his thinking in this regard. While not a surveyor by trade, Mr. Kent has clearly spent a great deal of time producing claims which would somewhat revise the boundary lines as surveyed by Truline over the decades. Nonetheless, it has never been completely clear to Defendants precisely what Mr. Kent claims the boundaries of the Kent Lot to be. Attached hereto at **Tab E** is the original Complaint and exhibits filed by Mr. Kent in a *pro se* capacity which commenced this litigation in June 2018. Defendants presume that one can theoretically discern his precise position from the *pro se* Complaint and exhibits.

At the end of the day, this is a boundary dispute. Like other disputes of this kind, this litigation involves (i) rough, hilly, wooded terrain in rural Vermont, and (ii) historical deeds that

provide some imperfect guidance as to the boundary lines originally intended by the parties. By now, the relevant land is riddled with survey monuments, unofficial markers, iron pipes and so on as those involved have marked and re-marked claimed boundary points. Members of the Swift family have engaged in exhaustive survey work over the decades. Truline has likewise endeavored to ascertain the relevant boundaries over the years. Mr. Kent has similarly spent much time exploring these issues. Practical experience suggests that neither side will persuade the other on Tuesday that its view is the correct one.

Instead, at mediation, Defendants are prepared to explore the possibility of agreeing upon specific boundary lines that meet the parties' respective needs without the necessity of distilling crystalline precision from deeds that are, by their nature, imprecise. At mediation, the parties are free to define a compromise set of well-defined boundary lines and then adopt those boundary lines through the preparation of an agreed-upon survey and the exchange of quitclaim deeds incorporating the survey. Defendants are fully prepared to have that discussion in good faith with Plaintiffs.

In addition, Defendants are prepared to discuss other matters involving the use of the Kent Lot by renters and others. In recent years, the on-line advertising and renting of the Kent Lot has led to renters using the property who either are unaware of, or disregard, the property rights of adjoining landowners, including the improper use of the entire beach and even making use of Swift family watercraft. There has also been a nature and intensity of use of the Kent Lot and a structure located thereon that is problematic from Defendants' perspective. Some agreement should also be reached with respect to use, maintenance and unauthorized obstruction of the right-of-way crossing the SFT Lot to provide access to the Kent Lot from Old Cottage

Lane. Finally, the condition, location and preservation of the brook forming the boundary between the Kent Lot and the Swift lot to the southwest is an important issue for Defendants.

To date, no settlement proposals have been exchanged by the parties. Representatives of the various branches of the broader Swift family implicated by this litigation will be participating on Tuesday, and those in attendance will have authority to resolve this matter fully on behalf of all Plaintiffs. My clients and I look forward to working with you, Plaintiffs and their counsel in an effort to discuss and reach a good faith resolution of this matter so that the parties can refocus on enjoying their land on the western shore of Lake Willoughby.

Dated in Burlington, Vermont this 28th day of September, 2020.

DOWNS RACHLIN MARTIN PLLC

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