

TWENTY-EIGHTH JUDICIAL CIRCUIT  
OF VIRGINIA

C. RANDALL LOWE, JUDGE

LARRY B. KIRKSEY, JUDGE

ISAAC ST. C. FREEMAN, JUDGE



COMMONWEALTH OF VIRGINIA  
PLEASE REPLY TO THE ABINGDON OFFICE

WASHINGTON COUNTY  
P.O. Box 289  
ABINGDON, VIRGINIA 24212  
(276) 676-6260

CITY OF BRISTOL  
497 CUMBERLAND STREET  
BRISTOL, VIRGINIA 24201  
(276) 645-7351

SMYTH COUNTY  
109 W. MAIN STREET  
MARION, VIRGINIA 24354  
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CHARLES H. SMITH, JR., RETIRED

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October 30, 2007

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Bristol, VA 24202

Thomas Whittaker  
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Bristol, VA 24202

Shelia Whittaker  
20302 Haskell Station Road  
Bristol, VA 24202

Re: City of Bristol, Virginia v. Samuel W. Allison, et al  
Case No.: CL01-181

City of Bristol, Virginia v. Carson Barker, et al  
Case No.: CL06-315

Dear Counsel and Parties:

The Court entered an order on December 12, 2006 directing that respondents involved, both those *pro se* and those represented by counsel, on the issue of reversion were to provide the Court with the following information:

1. Full name.
2. Mailing address.
3. Names as they appear on your deed.

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4. Indexing number on deed (Deed Book page number or Instrument number).
5. Attach copy of deed with area outlined that you claim creates a reversion to the property holder.
6. Make any other legal argument you wish to make regarding the reversion issue.

The order also directs that after the filing of said position letters by the defendants, the City of Bristol, Virginia would have an opportunity to respond. The Court has received responses from the following parties: Carson Ervin Barker, The Barter Foundation, Inc., Ruppert Gerald Beaney, Rebecca Jane Cuddy, Roger F. Cuddy, Frank Davis, Elizabeth Davis, Michele Demetriades, Peter Demetriades, Sherrill A. Foran, Linda C. Foran, SallyAnne M. Heltzel, Leta K. Leonard, Lisa Leonard, Fred McCracken, David Whittaker, Thomas Whittaker and Shelia Whittaker. The City of Bristol, by counsel, thereafter filed a response in opposition to Defendants' claim of ownership by reversion.

The Court would note first this has been a time consuming opinion because the Court has compared each deed presented by the Defendants in this matter to determine if there are any variations in the deeds. This was complicated by the fact that many of these deeds are from the late 1800's when deeds were handwritten rather than typed. The issue of reversion revolves around the language in the deeds that the Court must interpret. The Court has reviewed this language on numerous occasions in an attempt to read the language with a fresh mind and eye to discern the meaning of the deeds in regard to any reversionary clause.

In reviewing the deeds of those persons who have filed responses pursuant to the order of the Court, the Court finds that the language concerning reversion in each deed appears to be exactly the same or any differences were of no consequence to the ultimate issue. Therefore, the Court shall use as an example one deed found in Deed Book 36 Page 335 of the Clerk's Office of the Circuit Court of Washington County.

The deed, in the first paragraph, sets forth the intention of Bristol Coal and Iron Narrow Gauge Railroad Company, (hereinafter referred to as a Railroad) to operate a railroad from Bristol-Goodson, in Washington County, through the property of the landowner named in this particular deed in Washington County, Virginia, through Scott County to a point near Big Stone Gap in Wise County, and eventually extend the lines to Cumberland Gap. The second paragraph indicates for these purposes, the said railroad company proposes and desires to purchase from Thomas Moore and wife, landowners in this example deed, a belt of land twenty five (25) feet in width, lying equally on either side of the center line of the railway track. The third paragraph indicates Thomas Moore and wife recognize the benefit to their property of having the railroad crossing said property. The fourth paragraph indicates the amount of consideration paid by the railroad

to the Moores, and the Moores granting in fee simple, with general warranties the land which description is more fully set forth in said paragraph. The fifth paragraph indicates the Moores will grant the railroad the right to use water from the springs on said property. The sixth paragraph indicates the Moores expressly agree in the event the said railroad shall be finally located and established on the Moore property that the Moores acknowledge full and complete compensation for such land and release and quit claim against the railroad on account of any such lands and the construction of the railroad through their property.

The Court has paraphrased the above outlined portions of the deed so the deed can be placed in context and read as a whole. However, the remaining paragraphs deal more specifically with the issue of reversion and the Court will set forth the remaining paragraphs in their entirety as follows:

This Conveyance shall go into effect whenever the said company shall begin to locate its Road through the lands of the said Thomas Moore & wife so far as to allow the necessary facilities for prosecuting the construction of the work: and when the said Company shall have constructed their Road through his lands, shall become forever firm and binding, in all its scope, effect and purpose.

And if for any reason the said Railroad herein contemplated is not constructed or completed within the time required by its charter or by any other act that may hereinafter be passed by the legislature of Virginia and the enterprise for any reason should be abandoned, then in that event the land herein conveyed is to revert to the said Thomas Moore and wife, their heirs or assigns, and the said Thomas Moore and wife are not, nor shall their heirs or assigns have any claims in law, equity, or otherwise against the said company or its, officers or stockholders, or any of them officially or individually, for damages by reason of the failure to construct said road, or by reason of the digging and removal of any earth, in the cutting, destroying, or taking of any of the timber on said land or any part thereof.

The landowners point the Court to the language that states: "... and the enterprise for any reason should be abandoned, then in that event the land herein conveyed is to revert to the said (particular landowner) their heirs or assigns". The City of Bristol maintains when the provision is read as a whole, the reversion provision is only applied if the railroad is not constructed or completed within the time required by its charter or some other act passed by the Virginia legislature. The Court has read and reread this provision and has come to the conclusion the language in the deed is clear on its face.

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The railroad company was conveyed a fee simple interest in what they describe in the deeds as a road. The road on which the railroad was to place its tracks was described in the deed and the railroad was eventually built and operated. Furthermore, the Court, as previously stated, has read and reread these deeds, trying to use a fresh and open mind, in order to be fair to all parties. However, the Court can come to no other conclusion as to the meaning of the deed than the reversion provision only applied if the railroad was not constructed in the first place. The facts are not in dispute that the railroad was completed and, therefore, the condition subsequent, which would invoke the reversion provision, was satisfied thereby causing the reversion provision to be extinguished.

The Honorable M. M. Long, Jr., Judge, in the Circuit Court of Scott County, Virginia considered a deed with similar language. Judge Long addressed the issues in that case by memorandum opinion dated September 21, 1982 and by subsequent orders entered December 3, 1982 and March 25, 1983. In that matter, Judge Long came to the same conclusion that cessation of the railroad operation did not create a reversion. See Walter Barker v. Lonesome Pine Enterprises, Inc., Scott County, March 25, 1983, at Law Order Book 43, page 112 in the Circuit Court Clerk's Office of Scott County, Virginia and Walter Barker v. Lonesome Pine Recreation Corporation and Southern Railway Company and Virginia and Southwestern Railway Company, order entered December 3, 1982. The matter was appealed to the Supreme Court of Virginia. By order entered April 17, 1984, the said appeal was refused with the Supreme Court indicating no reversible error in the judgment complained of, which order is of record in Law Order Book 44, page 381 in the Circuit Court Clerk's Office of Scott County, Virginia.

Accordingly, the Court finds the deed states if the railroad is built, then the possibility of reversion is extinguished. The railroad was built. Therefore, the condition of reversion was satisfied and the railroad and its assigns owned a fee simple interest in the property conveyed.

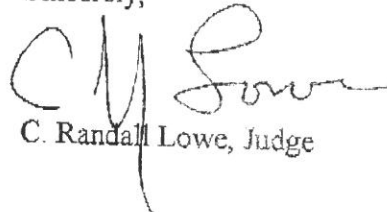
There are other separate issues raised by individual property owners that need to be heard by the Court. In order to bring this matter to a conclusion, the Court will set December 14, 2007 at 2:00 p.m. for a pre-trial conference to set those remaining matters for trial. If a trial date is not requested at that time, then the Court will hold that those issues have been waived.

Further, the Clerk will mail to the parties a copy of this letter and the costs of postage will be charged against the City of Bristol, Virginia.

I would request Mr. Bressler prepare a ruling reflecting the ruling of the Court.

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Sincerely,



C. Randall Lowe, Judge

CRL/lis

cc: Laura K. Harris  
Jessie Roark  
Mary Roark  
Stella F. Andis  
Lisa M. Blaylock  
Bobby Houser  
Howard Hutton  
Fannie M. Keen  
Ronnie E. Ball  
Jerry Blaylock  
Bert A. Cook  
Debra Houser  
Billie A. Justus  
Earnest L. Leonard  
Jackie L. Leonard  
William D. McCracken, Jr.  
Jackie R. Ball  
Linda Blaylock  
Vera M. Cook  
Anna J. Hutton  
Andrew Keen  
Debbie B. Leonard  
George Peters  
James I. Whitaker  
Richard A. Woelkers, Jr.  
Mary M. Vestal  
Faith a. Woelkers  
Peggy J. S. Wyatt  
Sula Barker  
Sherry A (Odum) Gill  
Adam Smith  
William K. Timmons

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Janice Self  
Lisa Smith  
Steve Wise  
Perry L. Jacobs  
Ralph Self  
Connie Timmons  
Mary Ann Stevens