

**ACOMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

ESSEX, SS.

MISCELLANEOUS
NO. 19 MISC 00390 (RBF)

NORTHEASTERN UNIVERSITY,

Plaintiff,

v.

NAHANT PRESERVATION TRUST INC.,
et al.

Defendants.

PLAINTIFF'S MOTION FOR RECONSIDERATION OR CLARIFICATION

In accordance with Land Court Rule 9, Plaintiff Northeastern University ("Northeastern") submits this Motion for Reconsideration or Clarification of the Order dated October 24, 2019 (the "Order"), allowing Defendants' (collectively the "NPT Parties") Motion to Frame Jury Questions. Northeastern requests that the Court reconsider its Order, and upon reconsideration, deny the NPT Parties' Motion. Alternatively, Northeastern requests clarification of the Order. In particular, Northeastern asks that the Court clarify how cases involving claims of adverse possession or prescriptive easements, neither of which are presented here, can control the Court's decision to allow the NPT Parties' Motion and lead the Court to conclude that the NPT Parties have a constitutional right to a jury trial.

Argument

In the Complaint filed by Northeastern in this matter, Northeastern seeks only equitable relief in the form of a declaration that its property located in the Town of Nahant (the “Property”) is not subject to Article 97 protections because Northeastern has not made a dedication of any part of the Property to the Town of Nahant or to the public.

In their Answer, the NPT Parties seek a declaration that a portion of the Northeastern Property has been dedicated by Northeastern to the Town of Nahant or the public, and, therefore, such portion of the Northeastern Property is subject to Article 97 protections.

The NPT Parties also demanded a jury trial on all issues so triable. In their Motion, the NPT Parties argued that they have a constitutional right to a jury trial on the dueling declarations sought by the parties on the dedication issue. Pursuant to Mass. R. Civ. P. 38, the NPT Parties moved that this Court frame issues pursuant to G.L. c. 185 § 15. Northeastern opposed the Motion.

In its Order, the Court reviewed and discussed the well-settled proposition that cases involving only equitable relief do not warrant a jury. The Court stated that “[t]he question...is whether or not Nahant Preservation is claiming more than equitable relief...and whether the determination that land has been dedicated to public use is a claim in equity, or, rather, is a claim that presents proper questions for a jury to decide.”

The Court then reviewed and discussed cases involving claims of adverse possession and claims for prescriptive easement.¹ The Court noted that cases involving claims of adverse

¹ The Court cited the cases of *Gardner v. Essex County Comm'rs*, 183 Mass. 189, 190 (1903); *Wilkins v. Jewett*, 139 Mass. 29, 30 (1885); *Elysium, LLC v. UDrive, LLC, et al.*, Land Court Misc. Case No. 17MISC00691 (January 5, 1992) and *Hutchins v. Maloomian*, 32 Mass.App.Ct. 950 (1992).

possession stand for the proposition that “[c]laims to ownership of property have a right to a jury.” There are no adverse possession claims presented here.

The Court states in the Order that “the common-law doctrine of dedication concerns a right in the public to title in property.” The Court cites to *Smith v. City of Westfield*, 478 Mass. 49, 58-62 (2017) as support for the statement. But *Smith* did not so hold. In *Smith*, the Supreme Judicial Court held that the “consequence of a dedication” is that the public “obtains an interest in the land in the nature of an easement.” See *Smith* at 63 (emphasis supplied.) Dedication, then, does not transfer title; it creates an easement, which is an interest in land, but not an ownership of the land subject to the easement. The ownership of the land, the title to the land, remains in the dedicator. It does not pass to the public. Thus, this Court’s reliance on *Gardner, supra*, at 190, that “dedication is akin to claims of adverse possession and prescriptive easement” is misplaced. Dedication claims are not akin to such claims. In an adverse possession claim, one party seeks to divest another of ownership or title of the subject land or the title to some part of it. In a prescriptive easement claim, one party seeks to divest a property owner of an interest in the land; to take from the owner against the owner’s will one of the owner’s bundle of sticks. A dedication claim is very different. It is not a claim that seeks to take title to or even an interest in land. A dedication claim is a claim that the dedicator made a voluntary, unequivocal, permanent, affirmative grant or gift of an easement. The NPT Parties do not claim that they have adversely possessed Northeastern’s property and that they now “own” the Northeastern property or some portion of it. The NPT Parties also do not claim that they have established rights in the Northeastern Property by prescription. Rather, the NPT Parties claim that Northeastern made a voluntary, unequivocal, affirmative and permanent grant of an easement over a portion of its property to the public or the Town of Nahant.

The Court also cites the cases of *Sprague v. Waite*, 34 Mass. 309, 320 (1836) and *City of Boston v. Lecraw*, 58 U.S. 426, 436 (1854) for the proposition that a dedication claim is a claim that must be put to a jury. The cases do not support this conclusion. In *Sprague*, the claim was a claim of trespass, an action at law that must be tried to a jury. The defendant set up dedication as a defense to the trespass claim. It was not the defense of dedication that created the right to a jury. It was the plaintiff's claim of trespass. The case *Lecraw* also was a claim at law. In *Lecraw*, the plaintiff sued the City of Boston for damages, which a jury awarded. See, *Lecraw* at 427. The dedication issue was once again part of an action at law and it was for this reason that the "question" of dedication was put to the jury that was deciding a case at law. These are not cases where, as here, the parties presented only equitable claims, seeking dueling declarations whether, as a matter of law, a party had made a dedication of its property or not. Accordingly, *Sprague* and *Lecraw* do not stand for the proposition that in a dedication case seeking only equitable relief there is a constitutional right to a jury.

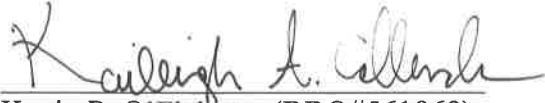
For the foregoing reasons, this Court should reconsider the Order and reverse it.

Alternatively, Northeastern respectfully requests that the Court further clarify how the cases it relies on control and lead to the conclusion that this case involving purely equitable claims must go to a jury.

Wherefore, Northeastern respectfully requests that the Court reconsider its Order and upon reconsideration reverse the Order and deny the NPT Parties' Motion to Frame Jury Issues. Alternatively, Northeastern respectfully requests that the Court clarify the basis for its application of the cases it cites to the claims presented in this action.

NORTHEASTERN UNIVERSITY,

By its attorneys,



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i hereby certify that a true copy of the
above document was served upon the
attorney of record for each party by
email-hand on October 30, 2019

