

Lake Bella Vista Dam: Arkansas Court of Appeals Addresses Dispute Regarding Maintenance Responsibilities



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The Court of Appeals of Arkansas (“Court”) addressed in an April 6th Opinion a dispute regarding responsibility for the maintenance of a dam. See 2022 Ark. App. 155.

The dispute involved the Lake Bella Vista Dam in Northwest Arkansas.

Cooper Realty, Inc. (“Cooper”) constructed Bella Vista Lake and Lake Bella Vista Dam (“Dam”) between 1915 and 1918. Cooper transferred ownership of the property to Bentonville/Bella Vista Trailblazers Association (“Trailblazers”) in 2000 as a gift for the benefit of the general public. It was subsequently developed as a park.

In 2005 the City of Bentonville (“Bentonville”) and Trailblazers executed a conveyance agreement transferring the property and Dam to the City subject to various conditions and terms. The conveyance agreement had language which stated that Bentonville:

... shall maintain the dam and in the event of damage or destruction replace or repair the same.

The Court also notes:

... This requirement to maintain, replace, or repair the dam is contained in section 8 of the conveyance agreement; another part of section 8 states: “It is specifically agreed that the provisions of this Paragraph 8 shall survive closing.” Similarly, sections 5, 6, 7, and 9 of the conveyance agreement contain clauses expressly stating that they also survive closing.

Cooper and the Trailblazers are stated to have executed a correction limited warranty deed in 2006. Trailblazers executed a special warranty deed that gifted the property to the City. This deed stated that the:

... use of the property is further restricted and burdened and shall be used exclusively for public passive recreational activities,” and if the property were ever used for any other purpose, then ownership of the property reverts to Trailblazers.

The Dam is stated to have been damaged by heavy rains between 2008 and 2011 and in response the City:

- Applied for and received federal and state funding to replace the dam

- Commissioned an environmental assessment to analyze the environmental and social impacts of improvements to the Dam
- Represented the terms of the conveyance agreement as binding in its communications to other government agencies and the public

Because of the substantial cost to replace the Dam Bentonville is stated to have questioned whether the conveyance agreement was binding. It filed suit seeking a declaratory judgment that its obligations were defined only by the special warranty deed. The conveyance agreement was argued to have merged into the special warranty deed and therefore Bentonville argued it was not bound to maintain, repair, or replace the Dam.

Cooper responded that the conveyance agreement contained several provisions that were expressly agreed to survive closing.

The Circuit Court granted Bentonville summary judgment determining that the conveyance agreement had merged into the special warranty deed. It held that only the provisions expressly contained in the deed could be enforced.

The Court on appeal states that it is a general principle of law that an agreement made for the sale of lands merges into a deed subsequently executed. As a result, it framed the issue as whether Arkansas law contains an exception to the merger rule for contractual provisions or agreements that are expressly intended to survive closing and not merge into the deed.

Exceptions to the doctrine of merger in Arkansas law are noted to include mutual mistake of fact, misrepresentation, or the perpetration of a fraud. The burden is on the grantee to overcome a presumption that the prior contract provisions merge into a subsequently executed deed.

Cooper argued on appeal that Arkansas law also recognizes an exception for contract provisions intended to survive closing. In other words, the merger doctrine is held to not trump the parties' express intent, citing *Roberts v. Roberts*, 42 Ark. App. 180 (1993). Bentonville responded that *Roberts* is inapplicable because it is a divorce case.

The Court rejects Bentonville's argument stating that *Roberts* and an additional Arkansas case:

. . . clearly state that merger does not occur where the parties intended the contract provisions to survive after closing.

The Court reverses the Circuit Court's grant of summary judgment, noting:

- Arkansas law recognizes the intent exception to the merger rule
- Plain language of the agreement articulates an intent that the provisions regarding upkeep of the Dam shall survive closing
- Special warranty deed contains a reversion clause stating that if the property is not used for the intended purpose of public recreation, it reverts to Trailblazers (i.e., an intent to create an ongoing obligation)
- Bentonville actually performed obligations in the conveyance agreement such as commissioning an environmental assessment
- Bentonville represented the terms of the conveyance agreement as binding in its communications

While the Court reverses the grant of summary judgment, it states there are still disputed questions of fact regarding the validity and enforceability of the contract for the Circuit Court to consider.

A copy of the Opinion can be downloaded [here](#).