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Park Station Limited Partnership, LLLP v. Bosse:
A Gift of Land Is Not a Sale Triggering a Right of First Refusal and Rights of First Refusal Do Not Violate the Rule Against Perpetuities

By: Darren Cooper

The Court of Appeals of Maryland held a gift of land is not a sale triggering a right of first refusal and rights of first refusal do not violate the Rule Against Perpetuities (RAP). *Park Station Ltd. P'ship, LLLP v. Bosse*, 378 Md. 122, 835 A.2d 646 (2003). In so holding, the court determined a collateral benefit received from a gift will not transform the conveyance into a sale and interests in property vesting during a party's lifetime do not violate the RAP. *Id.*

James and Lois Bosse (Bosse) owned, in fee simple, a rectangular parcel of land in Anne Arundel County. Park Station Limited Partnership, LLLP (Park) owned, in fee simple, a parcel of land surrounding Bosse's parcel on three sides. In 1986, the parties entered into a contract for reciprocal easements, which granted Park rights of first refusal in the event Bosse wished to sell the parcel. Bosse was required to give Park written notice of a desire to sell and the sale price and terms. Park was required to accept or reject the terms within thirty days or Bosse was free to sell the property to others.

In 2001, Bosse created a religious foundation, Jehovah-Jireh, and decided to gift the parcel to them, which would result in a tax deduction. Bosse informed Park that the transfer was a gift without consideration.

Park contended the right of first refusal applied because the transfer was a sale. Bosse filed for a declaratory judgment in the Circuit Court for Anne Arundel County alleging the land transfer was not within the right of first refusal and the right of first refusal violated the RAP. Both parties filed motions for summary judgment. The circuit court declared the gift was not a sale within the right of first refusal and rights of first refusal do not violate the RAP. Park and Bosse appealed to the Court of Special Appeals of Maryland, but the Court of Appeals of Maryland granted certiorari on its own motion before the case was heard.

The court began its analysis by dissecting Park's unsupported argument that the transfer of property was a sale rather than a gift. *Id.* at 128, 835 A.2d at 650. The court looked to its *Eastern Shore Trust Co. v. Lockerman*, 148 Md. 628, 636, 129 A.2d 915, 918 (1915) interpretation of the plain meaning of "sale," which defined "sale" as transferring to another, for valuable consideration, the title or right to possess property. *Id.* at 129, 835 A.2d at 650.

Fifty years after *Eastern Shore*, the court defined a "sale" involving a right of first refusal. *Id.*, 835 A.2d at 651 (citing *Straley v. Osborne*, 262 Md. 514, 526, 278 A.2d 64, 71

(1971)). Relying on *Eastern Shore*, the *Straley* court held a transfer of property to a corporation without consideration was not a sale, did not violate any right of first refusal held by the corporation, and was a gift. *Id.* at 130, 835 A.2d at 651.

The court next analyzed whether Bosse's tax benefit constituted consideration, making the transfer a sale rather than a gift. *Id.* For a transfer to be a sale, consideration received must be intended to serve as consideration for the transfer. *Id.* For the transfer to be a gift, there must be intent to transfer property, donor delivery, donee acceptance, and no compensation for the transfer. *Id.* at 131, 835 A.2d at 651-52. Therefore, a collateral benefit to a donor, such as a tax benefit, has an altogether different purpose than intended and is not sufficient to make the transfer a sale. *Id.* at 130, 835 A.2d at 651. As a result, the court concluded Bosse received no consideration from the proposed transfer of property to Jehovah-Jireh. *Id.* at 131-32, 835 A.2d at 652. The court found all elements of a gift present and the transfer was not a sale implicating the right of first refusal. *Id.*

The court next addressed Bosse's cross-appeal that alleged the right of first refusal violated the RAP. *Id.* Maryland retains the common-

law definition of the RAP that “no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.” *Id.* Although the RAP generally does not apply to contracts, a contract that creates an equitable right in real property, such as a right of first refusal, subjects the contract to the RAP. *Id.* at 134, 835 A.2d at 653.

The court of appeals stated that the right of first refusal did not include Bosse’s successors or assigns. *Id.* Since the right of first refusal applied only to the Bosses, the right vested when the Bosses sold the property or was extinguished upon their deaths. *Id.* Therefore, the right of first refusal did not violate the RAP. *Id.* at 135, 835 A.2d at 654. The court reinforced its conclusion by applying a principle held in several other jurisdictions that addresses rights of first refusal. *Id.* at 137, 835 A.2d at 655. The principle states rights of first refusal are presumed personal and not transferable or assignable unless the contract granting the right of first refusal clearly refers, grants, or intends such a right to successors or assigns. *Id.* The principle was reiterated in *Vogel v. Melish*, 203 N.E.2d 411, 412-14 (1964), holding it unreasonable to assume parties intend rights of first refusal to survive the death of a party when no provision for the right is made in the agreement. *Id.* Therefore, the court held a right of first refusal does not violate the RAP. *Id.* at 138, 835 A.2d at 656.

The *Park* decision is a significant effort to solidify several principles associated with land transfers – rights

of first refusal and contract construction. The *Park* holding redefines the proper and fair methodology of interpreting potentially ambiguous language. Further, *Park* is important to Maryland landowners who may attempt to protect potential future land interests with rights of first refusal. As clearly enunciated in this case, a landowner with a right of first refusal must be aware that those rights may be impeded if the contract is not properly crafted to include all potential transfers, including gifts.

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