

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on* Friday *the* 8th *day of* April, 2011.

Terry D. Godbolt, et al., Appellants,

against Record No. 100219  
Circuit Court No. CL09-16

Shenandoah Investments, L.L.C., et al., Appellees.

Upon an appeal from a  
judgment rendered by the Circuit  
Court of Louisa County.

Upon consideration of the record, briefs, and argument of  
counsel, the Court is of the opinion that there is no error in the  
judgment of the circuit court.

I. Appellants contend that the circuit court erred in failing  
to permit the correction of an alleged scrivener's error in a  
certain deed of trust by reforming the deed of trust to include  
language expanding the scope of the property encumbered. The Court  
disagrees.

The correction of a scrivener's error is a court-  
sanctioned action reforming a contract or other document.  
We note, however, that a court's role in "correcting"  
documents is limited. The rule is well-settled that a  
court is not permitted to rewrite a document or add terms  
not included by the parties. . . . Thus, a change to a  
document because of a scrivener's error presents a  
significant exception to a well-established rule, so we  
must construe that term narrowly.

Westgate at Williamsburg Condo. Ass'n v. Philip Richardson Co., 270  
Va. 566, 575, 621 S.E.2d 114, 118 (2005) (internal citations  
omitted).

The existence of a scrivener's error in a document cannot be proven merely by a finding that the contents of the document are at variance from the intent of the parties as to what the document was to have contained. The error must be apparent in the document such that it can be proven without parol evidence. Id. at 576-577, 621 S.E.2d 114, 119. Thus, the party seeking to reform a written contract or other legal document has the burden to prove that the document contained a "typographical or clerical error" that was not discovered until after its execution and would not have been discovered though an exercise of reasonable prudence. Id. at 577, 621 S.E.2d at 120.

At trial, both the grantor-borrowers and appellants, the secured parties, testified that it was their intent for the deed of trust to encumber both the real property and the non-possessory rights to use the adjoining shore land for recreational and agricultural uses. However, the evidence also showed that none of the parties gave the deed of trust more than a cursory review at the time it was executed. Moreover, no evidence was presented as to what instructions were given to the drafter of the deed of trust, nor was the identity of the drafter established with certainty.

In the absence of such evidence, the circuit court would have had to resort to speculation to find that the alleged defect in the deed of trust was the result of a clerical error on the part of the drafter, and did not arise from some other cause. It might just as readily be speculated that the deed of trust reflected the actual instructions given to the drafter, but that these instructions were erroneous or inexact in reflecting the parties' actual intent.

The circuit court as trier of fact could not resort to speculation or conjecture in order to determine whether the deed of trust was defective because of a scrivener's error or from some other cause. Cf. Nichols Constr. Corp. v. Virginia Machine Tool Co., LLC, 276 Va. 81, 91, 661 S.E.2d 467, 473 (2008). Thus, as the evidence was not sufficient to permit the court to make this determination, appellants failed to meet their burden of proof. Accordingly, the Court holds that it was not error for the circuit court to strike appellants' evidence and enter summary judgment for appellees.

II. Appellants have also assigned error to the circuit court's refusal to render an opinion as to whether the shore land rights were appurtenant to the fee as described in the original deed of trust. However, although appellants alleged in their complaint that the shore land rights were appurtenant to the fee, they did not expressly request that the circuit court make a declaratory judgment to that effect in their prayer for relief. The court found that in the absence of an asserted claim for such relief, it could not render an advisory opinion on that issue.

When a party prays for both special and general relief and no relief may be granted under the special prayer, a court of equity may grant proper relief under the general prayer that is consistent with the case stated in the . . . complaint. However, a general prayer will support relief only for those matters placed in controversy by the pleadings and, thus, any relief granted must be supported by allegations of material facts in the pleadings that will sustain such relief. This rule reflects the principle that although the power of an equity court is broad, that power does not permit a court to adjudicate claims that the parties have not asserted.

Jenkins v. Bay House Assocs., L.P., 266 Va. 39, 44-45, 581 S.E.2d 510, 513 (2003) (internal citations omitted).

In this case, the style of the complaint and the express nature of the action requested in the prayer for relief was to reform the deed of trust to include the description of the shore land rights based on the omission of this language through a scrivener's error. Thus, the allegation of the complaint that the shore land rights are appurtenant to the fee, without more, does not support appellants' contention that they also wished to assert a claim for a declaratory judgment to that effect. Without an express request for declaratory judgment in the prayer for relief, the allegation was not sufficient to have permitted the circuit court to render a declaratory judgment as part of the general relief requested.

Accordingly, the finding by the circuit court, to which appellants have not directly assigned error, that the complaint did not request a declaration that the shore land rights were appurtenant to the fee was not erroneous. Thus, the Court holds that the circuit court did not err in refusing to render an advisory opinion on an issue that was not properly before it.

For these reasons, the judgment of the circuit court striking appellants' evidence and entering summary judgment for appellees is affirmed. Appellants shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

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JUSTICE MIMS and SENIOR JUSTICE CARRICO dissent from Section I.

A Copy,

Teste:

*Patricia L. Hanning*

Clerk