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CITY OF CALERA, a municipal corporation, and CALERA WATER WORKS BOARD,
PLAINTIFF

VS

JACK L. WARD, JR., and MRS. JACK L. WARD, JR., and JACK LENTON WARD, III, et al,
DEFENDANTS

IN THE CIRCUIT COURT OF

SHELBY COUNTY, ALABAMA

CASE NUMBER CV-87-382

ORDER

THIS CAUSE coming on to be heard on the 2nd day of February, 1989 was submitted on Plaintiff's Complaint and Defendant's Answer thereto. Upon consideration thereof, together with ore tenus testimony and brief by counsel for Plaintiff, the Court enters the following findings of fact, conclusions of law and the following order.

FINDINGS OF FACT

That on November 10, 1956, Lester Stansell and wife, Nell C. Stansell entered into an agreement with Plaintiff granting unto Plaintiff an option to purchase property known as the "Stansell Spring Property." That on January 18, 1957, the said Lester Stansell and wife, Nell C. Stansell, entered into another agreement with Plaintiff regarding the said Stansell Spring Property in which the agreement stated that as part of the consideration of the aforementioned option, the Stansells and their successors in title were to have water rights from the Stansell Spring for their domestic use and their dairying operations. That the agreement also contained the language: "It is further agreed that if the Water Works Board, for any purpose, abandons the operation of said spring for the purpose of furnishing water for the Town of Calera, Alabama, then this contract shall cease to exist." That there was no language in the agreement of January 18, 1957, that stated the said agreement would survive independent of any conveyance of the said Stansell Spring Property, although the agreement did state it was a covenant which would inure to the Stansell's successors in title. That on April 19, 1957, the Plaintiffs purchased the said Stansell Spring Property. That nothing was mentioned in the deed conveying the said property to Plaintiff about the agreement of January 18, 1957. That the Plaintiff has abandoned the said property for furnishing water to the City of Calera, Alabama.

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CONCLUSIONS OF LAW

A contract may provide that it shall terminate upon the happening of a certain event. As was stated in the 1976 Supreme Court of Alabama case of Flowers v. Flowers, 334 So.2d 856, "Parties to contract may either prescribe a fixed term for its duration or may make it depend on some contingency."

Ordinarily, in the absence of fraud or mistake, when a contract to convey has been consummated by the execution and delivery of the deed, the contract becomes functus officio, and the deed becomes the sole memorial and expositor of the agreement between the parties, and upon it thereafter the rights of the parties rest exclusively. Alger-Sullivan Lumber Co. v. Union Trust Co., 207 Ala.138, 142, 92 So.254 (1922). Also see case of Thibodeaux v. Holk, 540 So.2d 1378 (Ala.1989). However, a contract can survive a deed as found in the case of Southeastern Homes, Inc. v. Jackson, 374 So.2d 341 (Ala.Civ.App.,1979) provided such contract contains a survival provision.

ORDER

Accordingly, it is ORDERED and ADJUDGED:

That Plaintiff does not have any obligation to Defendants or any of their successors in title and the agreement dated January 18, 1957 and as recorded in Book 260 Page 869 recorded in the Probate Court of Shelby County, Alabama, is of no further force and effect.

Further, there is no reversionary interest in the Defendant in the land conveyed to Plaintiff by Lester Stansell and Nell C. Stansell in Book 186 Page 370 in the Shelby County, Alabama Probate Office.

That the cost of Court is taxed against the Defendants.

DONE and ORDERED this 11th day of September, 1989.

D. Al Crowson

D. Al Crowson
Circuit Judge

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STATE OF ALA. SHELBY CO.
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JUDGE OF PROBATE

1. Deed Tax		$
2.		
3.	Fee	3.00
4.		
5.		
6.	Fee	$ 1.00
Total		$ 4.00