

Installment sales contract - Sewage Facilities Act - Specific performance -

1. The Pennsylvania Sewage Facilities Act does not apply to a contract of sale for real estate which has an on site sewage disposal system and is not a building site or intended to be one.
2. Where plaintiffs seek specific performance as an alternative to damages, equity is not an appropriate remedy in that money damages are available.

Dwight C. Harvey, Esq., Attorney for Plaintiffs
Donald A. Carosella, Esq., Attorney for Defendants

OPINION AND ORDER

KAYE, J., May 7, 1987:

This matter is before the Court on preliminary objections in the nature of motions to strike and for a more specific complaint which were filed by defendants on March 3, 1987, and which relate to plaintiffs' Amended complaint filed January 29, 1987. The matter was listed for argument by praecipe filed by counsel for plaintiffs on March 16, 1987. Oral argument was held on April 21, 1987, and the matters properly raised and briefed are now in a posture for determination by the Court.

In essence, the Amended Complaint alleged that the parties entered into a written installment sales agreement dated June 21, 1984, under which plaintiffs were to purchase from defendants for the total sum of \$15,000.00, certain real estate improved with a dwelling house, and located in Dublin Township, Fulton County, Pennsylvania. It is further alleged that, prior to execution of the written contract, certain materially false oral representations were made by, or on behalf of, defendants with regard to the condition of certain systems on the property, including the septic tank system, heating system, and a drain, and with regard to the location of a boundary line. Plaintiffs seek rescission of the contract, restitution of funds for repairs made to the property, or, in the alternative, specific performance of the contract, together with injunctive relief. The preliminary objections will be dealt with *seriatim*.

I. THE MOTION TO STRIKE

A. Application of the Pennsylvania Sewage Facilities Act.

Defendants allege that references in the Amended Complaint to the Pennsylvania Sewage Facilities Act, ("the Act"), 35 P.S. § 750.1, should be stricken as the Act is inapplicable to developed real estate. In relevant provides as follows:

- (a) Every contract for the sale of a *lot* as defined in section 2 for which there is no currently existing community sewage system available shall contain a statement in the contract clearly indicating to the buyer that there is no community sewage system available . . .

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- (b) Any contract for the sale of a lot which does not conform to the requirements of subsection (a) shall not be enforceable by the seller against the buyer . . .

§ 750.7a (Footnotes omitted.
Emphasis applied).

"Lot" is defined in the Act as: a part of a subdivision or a parcel of land used as a building site or intended to be used for building purposes, whether immediate or future, which would not be further subdivided . . .

§ 750.2.

As the real estate in question was developed prior to the creation of the contract now in dispute, and had an on-site sewage disposal system in operation, it is neither a "building site" nor "intended to be used for building purposes." Thus, the Act is inapplicable, and the paragraphs of the Amended Complaint seeking relief under this provision of the Act will be ordered stricken.

B. Damages for transporting children to school.

Plaintiffs allege that deficiencies in the dwelling house forced them to move to another location in another School District, and that they thereby incurred the daily expense of transporting three children to a location where they could be transported to

the School District in which the dwelling house was located. They seek to recover their expenses as an item of damages.

Defendants allege these allegations should be stricken as they were unforeseeable or, in the alternative, that these damages could have been avoided or mitigated by plaintiffs.

It would be premature for the Court to rule on this matter prior to a proper pleading of the defense which defendants appear to believe they have available. To do so would require the Court to speculate on facts not yet alleged as the only facts the Court has before it are those averred in the Amended Complaint. This relief will thus be denied.

C. Specific performance of the contract.

As an alternative remedy to rescission and restitution, plaintiffs seek "specific performance" of the sales contract, with abatement from the purchase price of that portion of the purchase price already paid, plus the alleged costs of repairs of defective items, which are not properly pleaded, but which are set forth in the *ad damnam* clause.

Plaintiffs' choice of the equitable remedy of specific performance seems disingenuous in that the facts alleged in their Amended Complaint indicate that they both moved from the real estate on December 14, 1984, and have made no payment under the contract since that which was due in September, 1984. A court sitting in equity has jurisdiction to enforce contractual obligations by ordering specific performance of a contract, *where remedies at law for breach of the contract are inadequate*. 14 Standard Pennsylvania Practice 2d § 79.26. Plaintiffs have not alleged a single fact that could lead the Court to conclude that ordinary money damages in an action at law would fail to compensate them fully. This objective is well taken, and will be granted. However, as it appears that Count III in reality seeks money damages, in the event that plaintiffs review this matter and elect to seek transfer of this matter to the law side of the Court to seek damages, the Court will entertain such a motion.

II. MOTION FOR A MORE SPECIFIC COMPLAINT.

Defendants have not briefed this matter, and thus it will be deemed abandoned. *Hershberger Chevrolet Company v. Ramala Corporation*, 4 Franklin L.J. 107, 111 (1980).



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ORDER OF COURT

NOW, May 7, 1987, defendants' motion to strike number 1 is granted, motion to strike number 2 is denied, motion to strike number 3 is granted, and motion for a more specific complaint number 4 is denied.

Plaintiffs are granted thirty (30) days from this date to file an Amended complaint.

Exceptions are noted for plaintiffs and defendants.

MYERS V. VANTOCH, C.P. Franklin County Branch, No. A.D. 1986-293

Equity - Interrogatories - Pre-Complaint Discovery

1. Pre-Complaint discovery is permitted if it is used to learn facts relating to a cause of action but not to determine whether a cause of action exists.

2. Where defendants refusal to convey real estate may be caused by a pending divorce and property dispute, pre-complaint interrogatories requesting such information are reasonably calculated to lead to admissible evidence.

John W. Frey, Esquire, Counsel for Plaintiff
Jan G. Sulcove, Esquire, Counsel for Defendant

OPINION AND ORDER

WALKER, J., June 29, 1987:

Plaintiff, Tex Myers, entered into an agreement to purchase land owned by defendant in June of 1986. Plaintiff requested that defendant's wife execute the deed with defendant; defendant informed plaintiff that his wife would not do so because of a pending divorce and property dispute. On September 16, 1986, plaintiff instituted suit against defendant by filing a writ of summons. Plaintiff served various interrogatories on defendant by filing a writ of summons. Plaintiff served various interrogatories on defendant in October of 1986 asking, among other things, whether defendant was the subject of a divorce action. Defendant objected to this interrogatory; both parties briefed and argued the matter.



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