Franklin County Legal Journal

Volume 20, Issue 41, Pages 216-223

Morningstar v. Hallett

MANDY MORNINGSTAR, Plaintiff, v. SUE A. HALLETT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2000-999, Jury Trial Demanded

Contracts; "As Is" Contracts; Motion for Summary Judgment; Breach of Contract; Implied Warranties

1. Pa.R.C.P. 1035.2 governs summary judgment.

2. The crux of Rule 1035.2 is that a motion for summary judgment includes two concepts: (1) there is no material fact disputed, and (2) there is no evidence sufficient for a jury to find a fact that is essential to the cause of action or defense.

3. The mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial.

4. The standard of review is to accept as true all well-pleaded facts in the plaintiff's pleadings...giving to the plaintiff the benefit of all reasonable inferences to be drawn therefrom.

5. All doubts as to the existence of a genuine issue as to a material fact must be resolved against the party moving for summary judgment.

6. In a breach of contract claim, we look first at the contract to determine whether it gives effect to the parties' intention.

7. In determining the intent of the parties to a written agreement, the court looks to what they have clearly expressed, for the law does not assume that the language of the contract was chosen carelessly.

8. Pennsylvania's acceptance of the term "as is" in the context of the sale of goods is evidenced in U.C.C. Section 2316.

9. Pennsylvania courts recognize "as is" contracts to mean that when something is accepted as is, the buyer is put on notice that there may be liabilities attendant to the purchase.

10. The warranties which may otherwise be implied by law do not attach when the buyer agrees to accept the goods in the condition in which they are found.

11. Pennsylvania accepts unambiguous "as is" language as binding in freely bargained-for contracts.

Appearances:

Stephen D. Kulla, Esq., *Counsel for Plaintiff*

Michael J. Krout, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., January 22, 2003

Introduction

Before the Court is Plaintiff's Motion for Summary Judgment to Plaintiff's Complaint alleging breach of contract. Plaintiff claims that on or about September 2, 1999, Plaintiff and Defendant entered into a sales agreement whereby Plaintiff sold an eleven-year-old horse to Defendant for the sum of $2,950.00. Plaintiff alleges that the horse was delivered to Defendant for which Defendant tendered a check to Plaintiff in the amount of $2,950.00. Defendant is alleged to be in breach of the September 2, 1999, contract for subsequently stopping payment on the tendered check.

This case was first heard by the District Justice who, on February 29, 2000, rendered judgment in favor of Plaintiff. Thereafter, Defendant appealed the District Justice judgment to a Panel of Arbitrators who, on April 26, 2000, also awarded judgment in favor of Plaintiff. Defendant now appeals the Arbitration award demanding a jury trial in the Franklin County Court of Common Pleas.

Plaintiff filed a Complaint in Breach of Contract on May 10, 2000, and Defendant filed her Answer With New Matter and Counterclaim on June 26, 2000. Plaintiff replied on July 10, 2000, to Defendant's New Matter and Counterclaim. Defendant filed a Motion *In Limine* on July 20, 2002, and Plaintiff timely filed an Answer.[1] On August 28, 2002, Plaintiff filed a Motion for Summary Judgment, whereupon the parties submitted briefs and exhibits supporting their opposing positions. On September 27, 2002, Defendant filed the deposition of the Plaintiff (taken on May 24, 2001) in Defendant's Exhibits in Response to Motion for Summary Judgment; however, no deposition of Defendant was filed in this case.[2] Trial was scheduled for the January 2003 Trial Term. Discovery is complete, and this matter is ripe for disposition.

Factual Summary

In August, 1999, Plaintiff Mandy Morningstar (hereinafter "Morningstar") placed an advertisement in the York Daily Record for the sale or lease of a horse that she owned, named Glissen Rhode to Pleasure (hereinafter "the horse"). Defendant Sue A. Hallett (hereinafter "Hallett") saw the advertisement and contacted Morningstar to inquire about the horse. The York Daily Record advertisement in its entirety is as follows:

> SALE OR LEASE
>
> Retired eventer. Lovely 11 year old thoroughbred mare. Flashy bay, 16+ hands, extension jumping & dressage, superb mover, perfect horse for any level rider. Reasonable offer considered to right home. Call 717-749-7749.

On August 18, 1999, Hallett made her first visit to examine and ride the horse at Morningstar's farm on Mentzer Gap Road where the horse was boarded. Hallett's mother, Eleanor Virginia Hallett, and an acquaintance named Jennifer Titemore, an experienced horse-rider, accompanied Hallett to Morningstar's farm. Hallett invited Jennifer Titemore to accompany her so that Hallett could observe and evaluate how the horse moved through its gaits under the direction of another rider, rather than make all determinations about the horse while Hallett, herself, was riding the horse. Hallett had taken her own saddle along with her to Morningstar's farm, and she and Morningstar retrieved the horse from its stall and put a bridle and Hallett's saddle on the horse. Hallett proceeded to mount the horse and walk and trot it in a small ring behind the barn where the horse had been stabled. Hallett stated that she didn't notice anything wrong with the horse as it walked, but noticed the horse was lame when she trotted it. Hallett later went to the farm again for the purpose of examining the horse a second time.

On September 2, 1999, Morningstar and Hallett entered into a contract by signing a written Sales Agreement whereby both parties covenanted that Hallett was buying the horse from Morningstar for the sum of $2,950.00. The signed Sales Agreement in its entirety is as follows:

> SALES AGREEMENT
>
> I, Mandy Morningstar in consideration of two thousand nine hundred fifty dollars ($2,950.00), hereby paid to me by Sue Hallette (sic), sell to Sue Hallette (sic) the following horse: "Glissen" Rhode to Pleasure.
>
> Age: 11 years Color: Bay
>
> Breed: Thoroughbred Sex: Female
>
> Height: 16+ hands Tattoo #: R050
>
> I hereby covenant that I am the lawful owner of said horse, that I have the right to sell the horse, and that I will warrant and defend said horse against claims and demands of all persons. There are no other warranties expressed or implied including fitness for certain

purposes. **The buyer is buying horse as is**. [Emphasis added.] The risk of the horse's death or injury passes to the buyer as soon as the buyer takes possession of the horse. The seller has right to refuse refund for any reason. The seller may recover any and all legal fees if it becomes necessary. The seller is not liable for injury or death of a participant resulting from the inherent risk of equine activities. Said horse has been exposed to stallion and if resulting exposure produces a foal, the foal remains the property of seller.

Executed this second day of September, 1999.

SELLER: (Signature and address of Mandy Morningstar)

BUYER: (Signature and address of Sue Hallett)

A short time after Hallett had tendered her check to Morningstar for the sum of $2,950.00 and had taken possession of the horse, Hallett contacted her bank and authorized a stop payment order on the check and attempted to return the horse to Morningstar. Morningstar refused return of the horse and filed a Complaint in Breach of Contract against Hallett.

Discussion

Pennsylvania Rule of Civil Procedure 1035.2 governs summary judgment and provides as follows:

Rule 1035.2. Motion

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R. Civ. P. 1035.2.

The crux of Rule 1035.2 is that a motion for summary judgment includes two concepts: (1) there is no material fact disputed, and (2) there is no evidence sufficient for a jury to find a fact that is essential to the cause of action or defense. Pa. R. Civ. P. 1035.2 Comment. Accordingly, Pennsylvania courts have stated that the "mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial... We have a summary judgment rule in this Commonwealth in order to dispense with a trial of a case (or in some matters, issues in a case) where a party lacks the beginnings of evidence to establish or contest a material issue." Ertel v. Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996) (citations omitted). In the case at bar, Morningstar, as the party moving for summary judgment, has the burden of the first concept of Rule 1035.2: that there is no genuine issue of material fact. Laich v. Bracey, 776 A.2d 1022 (Pa. Commw. Ct. 2001). Hallett, as the non-moving party in the case at bar, has the burden of the second concept of Rule 1035.2: presenting evidence sufficient for showing the existence of facts essential to her defense in this breach of contract action which, in a jury trial, would have to be decided by the jury in her favor. Ertel v. Patriot-News Co., at 101-102; see also Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986) ("there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party"). "Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Id. A reviewing Court's standard is to "accept as true all well pleaded facts in the plaintiff's pleadings...giving to the plaintiff the benefit of all reasonable inferences to be drawn therefrom...All doubts as to the existence of a genuine issue as to a material fact must be resolved against the party moving for summary judgment." Schacter v. Albert, 212 Pa. Super. 58, 239 A.2d 841 (1968).

Plaintiff Morningstar, movant, asserts that the Sales Agreement that the parties signed on September 2, 1999, is a valid "as is" contract and a complete integration of the parties' intentions: for Morningstar to sell to Hallett the horse ridden by Hallett "as is" and for the sum of $2,950.00, and for Hallett to purchase the horse "as is" from Morningstar for a sum of $2,950.00. Plaintiff's Brief in Support of Motion for Summary Judgment. According to Morningstar's assertion, her duty to perform under the contract was to deliver the horse to Hallett.

Defendant Hallett asserts that the genuine issue of material fact in the case at bar is "the issue of the horse's identity and/or the horse's age" that is listed in the signed Sales Agreement. Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment. In other words, Defendant says the issue is whether the identity and age of the delivered horse is consistent with the identity and age listed in the Sales Agreement. Hallett alleges, therefore, that Morningstar's duty to perform under the contract was to deliver a specific horse whose identity and age was verified through registration documents, tattoos, veterinary statements, sales agreements, and/or receipts.

In a breach of contract claim, we look first at the contract to determine whether it gives effect to the parties' intention. PBS Coals, Inc. v. Burnham Coal Co., 384 Pa. Super. 323, 328, 558 A.2d 562, 564 (1988). "In determining the intent of parties to a written agreement, the court looks to what they have clearly expressed, for the law does not assume that the language of the contract was chosen carelessly." Id. In the case at bar, Morningstar intended to sell for the sum of $2,950.00 the horse that she had described in the York Daily Record advertisement, and knew to be named "Glissen Rhode to Pleasure," the same horse that Hallett rode and examined twice at Morningstar's farm. Hallett intended to purchase for the sum of $2,950.00 the horse that she had examined, rode, and evaluated when she visited Morningstar's farm. At no time did Hallett have the single-minded intent to set out to find and purchase a particular, certifiable eleven-year-old horse specifically identified through registration papers, reputation, or otherwise as "Glissen Rhode to Pleasure." Rather, Hallett intended to purchase for $2,950.00 the horse that she rode and examined at Morningstar's farm, and the contract reflects Hallett's intent. Morningstar did not tell Hallett that she "had papers on this horse." (Deposition of Morningstar, p. 107.) Morningstar represented to Hallett the same information that had been represented to Morningstar when she purchased the horse from the previous owner, whom Morningstar had no reason to doubt. (Deposition of Morningstar, p. 105.) Nowhere in the record is there evidence that prior to the execution of the contract, Hallett questioned Morningstar as to the authenticity of the horse's identity or even that the horse's name and/or age was relevant in Hallett's deliberation of whether or not to buy the horse. Be that as it may, Hallett and Morningstar signed the contract after negotiations between the parties were complete, and they memorialized the terms of their agreement in the written Sales Agreement. Therefore, after reviewing the pleadings and other relevant records, this Court finds that the Sales Agreement is a valid "as is" contract and a complete integration of the parties' intentions.

Defendant Hallett asserts that Morningstar was actually the one in breach of contract because Morningstar did not deliver to Hallett a horse whose name was registered in official documents which were or should have been available to Morningstar. As authority for this position, Hallett cites Unverzagt v. Prestera, 339 Pa. 141, 13 A.2d 46 (1940). However, Hallett's reliance on Unverzagt v. Prestera is misplaced. The Unverzagt court determined that because the defendant in that case failed to comply with a condition precedent in an insurance contract, the insurer was released from the obligations imposed by the contract. See Id. In the case at bar, descriptive details about the horse contained in the written Sales Agreement were made **after** the parties had contracted to the terms of the sale of the horse. There was no condition precedent to Hallett's purchase of the horse. Accordingly, Morningstar's only performance obligation under the contract was to deliver the horse that Hallett rode and covenanted to purchase; Hallett's only performance obligation under the contract was to pay Morningstar the $2,950.00 that she contracted to pay for the horse. Morningstar fully performed the contract, whereas Hallett breached the contract when she stopped payment on the check that she tendered to Morningstar in the amount of $2,950.00.

Defendant Hallett also asserts that the horse's age is a genuine issue of material fact. Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment. Again, nowhere in the record is there evidence to support a finding that Hallett had misgivings about the horse's age before or at the time she signed the Sales Agreement to purchase the horse from Morningstar. In the Spring of 1999, Morningstar had contacted the Jockey Club and had obtained information, not legal registration papers, that Morningstar believed to concern the horse. Through a tattoo match, the Jockey Club information stated that the horse bearing the tattoo submitted by Morningstar was eleven years old and of the same description as the horse Morningstar knew as Glissen Rhode to Pleasure. (Deposition of Morningstar, p. 100.) The information about the age of the horse obtained from the prior owner and from the Jockey Club is consistent with that contained in the Sales Agreement. The legally documented age of the horse was not a condition precedent to the contract.

The September 2, 1999, Sales Agreement is an "as is" contract which specifically states that "...There are no other warranties expressed or implied including fitness for certain purposes. The buyer is buying horse as is." Pennsylvania's acceptance of the term "as is" in the context of the sale of goods is evidenced in Section 2316 of the Uniform Commercial Code which provides in part as follows:

> (1) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the attention of the buyer to the exclusion of warranties and makes plain there is no

implied warranty.

(2) When the buyer before entering into the contract has examined the goods or the sample model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought to have revealed to him.

13 Pa.C.S.A. § 2316(c)(1)(2).

Defendant Hallett has verified that she is an experienced equestrian, both as a rider and a purchaser of horses. When Hallett was considering whether to purchase the horse from Morningstar, Hallett was confident enough in her own equestrian skills to forego having a certified and licensed veterinarian examine the horse before purchasing it. Instead, Hallett relied upon her own observations and assessments about the fitness, performance, and presumably anything else that would be important to Hallett relative to the horse before entering into the contract to purchase same. If age was, indeed, one of the important factors upon which Hallett was basing her purchase of the horse, then she relied upon her own skills in reaching a conclusion regarding that issue since she did not question Morningstar about the authenticity of the horse's age, nor did Hallett request verifying documents. Pennsylvania courts recognize "as is" contracts to mean that "when something is accepted 'as is' the buyer is put on notice that there may be liabilities attendant to the purchase. The warranties which may otherwise be implied by law do not attach when the buyer agrees to accept the goods in the condition in which they are found." PBS Coals, Inc. v. Burnham Coal Co., 384 Pa. Super. 323, 328, 558 A.2d 562, 564 (1988). Now, in effect, Defendant Hallett is asking this Court to make inferences about unambiguous language contained in a Sales Agreement between two parties who are both knowledgeable about the subject matter and have experience in contracts for the purchase and sale of goods, specifically horses. Hallett was put on notice by the "as is" language in the Sales Agreement that there may be liabilities attendant to her purchasing the horse from Morningstar. Hallett freely contracted to purchase goods to which no implied warranties attached. This Court will not detract from Pennsylvania's settled acceptance of unambiguous "as is" language as binding in freely bargained-for contracts.

Conclusion

This Court finds:

(1) that the Sales Agreement signed by the parties on September 2, 1999, is a valid completely integrated contract for the purchase of the horse for the sum of $2,950.00;

(2) that Defendant Hallett contracted to pay Plaintiff Morningstar $2,950.00 for purchase of said horse;

(3) that Plaintiff performed under the contract by delivering the horse to Defendant Hallett;

(4) that Defendant Hallett breached the contract when she stopped payment on the check that she had tendered to Plaintiff Morningstar in the amount of $2,950.00.

Plaintiff Morningstar has shown that there is no genuine issue of material fact. Defendant Hallett has not adduced sufficient evidence for showing that facts exist that are essential to her defense which a jury would have to decide in her favor. Ertel v. Patriot-News Co., *infra*.

For the reasons set forth above, the Motion for Summary Judgment of Plaintiff Morningstar is granted.

ORDER OF COURT

And now this 22nd day of January, 2003, the Court having reviewed and considered the record and pleadings of the above captioned case, IT IS HEREBY ORDERED AS FOLLOWS:

(1) Plaintiff's Motion for Summary Judgment is GRANTED.

(2) Plaintiff's claim for attorneys' fees is GRANTED.

(3) The parties shall exchange exhibits relative to the value of the attorneys' fees claim within thirty (30) days of the date of this Order in an effort to reach an agreement as to the total due Plaintiff.

(4) In the event that the parties are unable to resolve the dollar amount of the claim, then a hearing may be scheduled upon the filing of a Motion by Plaintiff's counsel.

[1] The Court disposed of this Motion by Order of Court dated August 22, 2002.

[2] Plaintiff's Brief in Support of Motion for Summary Judgment attached several pages from deposition of Defendant.