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Strait v. Young

GREGORY STRAIT, Plaintiff, v.
GLEN A. YOUNG AND KENNETH L. YOUNG, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2002-1384

Contract; Statute of Frauds (33 P.S. § 1); Specific Performance, Damages

1. The purpose of the Statute of Frauds is to prevent the enforcement of unfounded fraudulent claims by requiring that contracts pertaining to interests in real estate are supported by written evidence.
2. The Statute of Frauds is not a mere rule of evidence, but a limitation on the judicial power to order specific performance of a contract.
3. When a party to an executory agreement in writing for the sale of land succeeds in reforming it by oral testimony, he reduces the whole agreement to a parol contract, and deprives himself of the right to have it specifically performed.
4. By admitting the existence of an oral modification to the written agreement, Plaintiff Gregory Strait effectively "shot himself in the foot" with regards to his demand for specific performance.
5. If the plaintiff could provide a showing, by a fair preponderance of the evidence, that the defendants viewed the agreement as a bad bargain and decided that they did not want to sell for this reason, then the plaintiff would be entitled to his loss profits.

Appearances:

Steven J. Schiffman, Esq., *Counsel for Plaintiff*

James M. Stein, Esq., *Counsel for Defendants*

OPINION

Walker, P.J., April 9, 2003

Procedural History and Factual Summary

Plaintiff Gregory Strait has filed a verified complaint. Defendants Glen and Kenneth Young filed an answer with new matter. The plaintiff has filed an answer to defendants' new matter. Subsequently, the defendants filed a motion for summary judgment seeking to dismiss Plaintiff Strait's demand for specific performance and to limit available damages to monies the plaintiff can prove were expended on account of the alleged purchase and expenses incurred on faith of the contract. These two issues are ripe for disposition.

In his complaint, Plaintiff Gregory Strait alleges that he and Defendants Glen and Kenneth Young entered into an agreement for the purchase and sale of real estate located in Franklin County, Pennsylvania. The

contract was allegedly executed on or about March 15, 2002, whereby Glen Young agreed to sell 100 acres adjacent to Greencastle Greens Golf Course to Gregory Strait for \$200,000. Sometime prior to March 19, 2002, Plaintiff Strait alleges that the parties orally agreed to increase the price of the property to \$4,000 per acre. Soon after, plaintiff alleges that Defendants Glen and Kenneth Young refused to transfer the property to Gregory Strait. Subsequently, Plaintiff Gregory Strait filed a complaint seeking enforcement of the contract and monies incurred as a result of the enforcement.

Along with their motion for summary judgment, defendants filed their brief in support of their motion for summary judgment. In their brief, the defendants argued that if the written agreement was orally modified, then Plaintiff Gregory Strait was precluded from seeking specific performance under Pennsylvania law. The defendants also argued that the Court should limit the available damages to those monies the plaintiff can prove were expended on account of the alleged purchase and expenses incurred on faith of the contract. The defendants also properly filed the praecipe to list for oral argument under Rule 39.211.2 of the Rules of Court for the 39th Judicial District.

Plaintiff Gregory Strait filed his brief in opposition to the defendants' motion for summary judgment. In his brief, the plaintiff argued that if the Court granted the defendants' motion for summary judgment, then the Court would be allowing the defendants to use the Statute of Frauds as a sword instead of a shield. The plaintiff also argued that the Court should not limit the available damages because he should have the opportunity to show that the defendants acted in bad faith when they failed to comply with the agreement.

Oral argument was held before this Court on March 6, 2003.

The Court has reviewed the record, the defendants' motion for summary judgment, the defendants' brief in support of their motion for summary judgment, plaintiff's brief in opposition to defendants' motion for summary judgment and the applicable law.

This opinion and order result from such review.

Discussion

Summary judgment is appropriate "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." Pa. R. Civ. P. 1035.2(1). The party moving for summary judgment bears the burden of proving that there is no genuine issue of material fact. *Laich v. Bracey*, 776 A.2d 1022 (Pa. Commw. Ct. 2001). The non-moving party may not just rest upon the pleadings themselves without responding to a motion for summary judgment. The non-moving party must adduce sufficient evidence on issue to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. See *Ertel v. Patriot-News Co.*, 674 A.2d 1038, 544 Pa. 93 (Pa. 1996); see also Pa. R. Civ. P. 1035.3(d) requiring the non-moving party to respond to a motion of summary judgment or the court may enter summary judgment against him. In other words, the non-moving party has some responsibility.

Here, Defendants Kenneth and Glen Young move for summary judgment in regards to the plaintiff's demand for specific performance. In order to show that the plaintiff will be unable to satisfy a necessary element of the cause of action, the defendants argued that the Statute of Frauds (33 P. S. § 1) precludes specific performance of oral contracts for the sale of land. The defendants cite *Empire Properties, Inc. v. Equireal, Inc.*, 674 A.2d 297, 449 Pa. Super. 476 (Pa. Super. Ct. 1996) and *Target Sportswear, Inc. v. The Clearfield Foundation*, 474 A.2d 1142, 327 Pa. Super. 1 (Pa. Super. Ct. 1984) to support their contentions.

The Pennsylvania Statute of Frauds states:

all leases, estates, interests of freehold or term of years, or any uncertain interest of, in, or out of any messuages, manors, lands, tenements or hereditaments made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents, thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

33 P. S. § 1 (1951).

The purpose of the Statute of Frauds is to prevent the enforcement of unfounded fraudulent claims by requiring that contracts pertaining to interests in real estate be supported by written evidence. See *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa. Super. 85 (Pa. Super. Ct. 1982).

There could be no doubt that the Statute of Frauds becomes applicable in the case at bar. Defendants

Kenneth and Glen Young own a 100-acre tract of land adjacent to the Greencastle Greens Golf Course. Defendant Glen Young allegedly agreed to sell his land to Gregory Strait for about \$200,000. This agreement became part of a written agreement, which was allegedly executed on or about March 15, 2002. After this, the water becomes even more murky because soon after the agreement was executed, the plaintiff alleges that the parties orally agreed to increase the price of the written agreement. It is at this point, the defendants allege, that the written agreement between the plaintiff and the defendants became unenforceable for purposes of specific performance.

First, the defendants cite *Empire Properties, Inc. v. Equireal, Inc.*, 674 A.2d 297, 449 Pa. Super. 476 (Pa. Super. Ct. 1996) to support this contention. In *Empire Properties*, the Superior Court stated:

The Statute of Frauds directs that agreements for the sale of real estate shall not be enforced unless they are in writing and signed by the seller. The purpose of the statute is to prevent perjury or fraudulent claims. The Statute of Frauds does not void those oral contracts relating to land which fail to comply with the statute's formal requirements. It is to be used as a shield and not as a sword, as it was designed to prevent frauds, not to encourage them. Therefore, even though oral contracts for the land **may not be specifically enforced**, it may form the basis for an action to recover damages.

Empire Properties, 674 A.2d at 484, 449 Pa. Super. at 301. [Citations omitted.] [Emphasis added.]

The plaintiff cites *Empire Properties* in his claim that the defendants are attempting to use the Statute of Frauds as a "sword instead of a shield." While it is important to note that the Superior Court in *Empire Properties* cautioned that the Statute of Frauds should not be used as a sword, the Court was making reference to *Equireal Inc.*'s arguments seeking to exclude evidence of the oral modification. The Court allowed *Empire* to introduce evidence of the oral modification in its claim for recovery damages. "Empire Properties did not seek to specifically enforce the agreement to purchase the land from [*Equireal, Inc.*] ... [but rather *Empire Properties*] is seeking only compensatory damages." *Empire Properties*, 674 A.2d at 486, 449 Pa. Super. at 302. *Empire Properties* was not seeking specific performance.

Here, this Court is under the impression that the plaintiff would like the contract specifically performed, among other things. This is remarkably different than the plaintiff in *Empire Properties*. With that said, it is axiomatic that this Court lacks authority to order specific performance of an oral contract for the sale of land or of a written contract that was orally modified. Plaintiff Gregory Strait, in his demand, is seeking specific performance. The Court fails to see how the plaintiff's demand for specific performance should survive the defendants' motion for summary judgment.

Lending further credence to the Court's position is the Superior Court's interpretation of the Statute of Frauds in *Target Sportswear, Inc. v. The Clearfield Foundation*, 474 A.2d 1142, 327 Pa. Super. 1 (Pa. Super. Ct. 1984). "The Statute of Frauds is a declaration of public policy requiring that contracts for the conveyance of real estate be supported by written evidence signed by the party to be charged. The statute [of Frauds] is not a mere rule of evidence, but a **limitation on judicial power to order specific performance of a contract** in the absence of a writing." *Target Sportswear*, 474 A.2d at 1147, 327 Pa. Super. at 10. [Citations omitted.] [Emphasis added.] Accordingly, this Court is limited in its power to order specific performance of a contract for the sale of real estate in the absence of a writing.

Additionally, "when a party to an executory agreement in writing for the sale of lands succeeds in reforming it by oral testimony, he reduces the whole agreement to a parol contract, and deprives himself of the right to have it specifically performed." *Brown v. Aiken*, 198 A. 441, 447, 329 Pa. 566, 579 (Pa. 1938). As the Supreme Court stated, the party seeking enforcement essentially "pulls down the house on his own head." *Id.* By admitting the existence of an oral modification to the written agreement, Plaintiff Gregory Strait effectively "shot himself in the foot" with regards to his demand for specific performance.

Consequently, this Court holds that defendants' motion for summary judgment seeking to dismiss plaintiff's demand for specific performance is granted.

In their motion for summary judgment, Defendants Kenneth and Glen Young also sought a declaration from this Court limiting the "available damages to monies the plaintiff can prove were expended on account of the alleged purchases and expenses incurred on faith of the contract." Defendants' brief in support of their motion for summary judgment, at p. 4. The defendants argued that the plaintiff is not entitled to loss benefit of his bargain. To support this contention, the defendants cite *Empire Properties, Inc. v. Equireal, Inc.*, 674 A.2d 297, 449 Pa. Super. 476 (Pa. Super. Ct. 1996).

This Court is unsure whether the defendants read the entire Superior Court opinion in *Empire Properties*. Although the Superior Court stated that the measure of damages equals the "money that was paid on account of the purchase and the expenses incurred on the faith of the contract[,]" *Empire Properties*, 674 A.2d at 302, 449 Pa. Super. at 486, it did not stop there. The Court did not state that the plaintiff is **only**

entitled to those damages expended on account of the alleged purchases and expenses incurred on the faith of the contract. In fact, the Superior Court specifically stated "where a [seller] ... arbitrarily and without reasonable excuse, in order to escape the effects of a bad bargain, refuses to comply with his contract, the [buyer] ... is entitled not only to compensatory damages but to damages arising from the loss of his bargain." *Empire Properties*, 674 A.2d at 304-305, 449 Pa. Super. at 491. Of course, the plaintiff still bears the burden of proving such damages by a fair preponderance of the evidence. *Id.*

Here, in viewing the evidence in the light most favorable to the non-moving party (plaintiff), this Court cannot state that the defendants did not act arbitrarily and without reasonable excuse. The record suggests that the defendants refused to sell the 100-acre tract of land because they wanted more money. The defendants viewed the agreement as a bad bargain and decided that they did not want to sell. If the plaintiff could provide a showing of such by a fair preponderance of the evidence, then the plaintiff would be entitled to his loss profits. Consequently, defendants' motion for summary judgment to limit the available damages to monies expended on account of the alleged purchases and the expenses incurred on the faith of the contract is inappropriate at this stage of the proceedings.

As a result, defendants' motion for summary judgment to limit the available damages to monies expended on account of the alleged purchases and the expenses incurred on the faith of the contract is denied.

Conclusion

After reviewing the record, the defendants' motion for summary judgment, the defendants' brief in support of their motion for summary judgment, plaintiff's brief in opposition to defendants' motion for summary judgment and the applicable law, this Court finds that the defendants' motion for summary judgment is granted in part and denied in part according to the following:

1. Defendants' motion for summary judgment seeking to dismiss plaintiff's demand for specific performance is granted because the plaintiff is precluded from seeking specific performance of an oral contract for the sale of real estate or an oral modification of written agreement for the sale of real estate.
2. Defendants' motion for summary judgment to limit the available damages to monies expended on account of the alleged purchases and the expenses incurred on the faith of the contract is denied because, in viewing the evidence in the light most favorable to the non-moving party (plaintiff), this Court cannot state that the defendants did not act arbitrarily and without reasonable excuse.

ORDER OF COURT

April 9, 2003, after reviewing the record, the defendants' motion for summary judgment, the defendants' brief in support of their motion for summary judgment, plaintiff's brief in opposition to defendants' motion for summary judgment and the applicable law, this Court finds that the defendants' motion for summary judgment is GRANTED in part and DENIED in part according to the following:

1. Defendants' motion for summary judgment seeking to dismiss plaintiff's demand for specific performance is GRANTED.
2. Defendants' motion for summary judgment to limit the available damages to monies expended on account of the alleged purchases and the expenses incurred on the faith of the contract is DENIED.

The Plaintiff alleges that the agreed upon price of the land was \$2000.00 per acre. The Plaintiff also alleges that the defendants agreed to deed 9.3 acres tract adjacent to the creek.

This section was repealed insofar as it applies to leases by Act 1951, April 6, P.L. 69 § 601, section 250.601 of Title 68, Real and Personal Property.