

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, Damages, Statute of Frauds

1. An enforceable contract is formed when the parties to an agreement have a meeting of the minds on the essential terms and subject matter of the agreement.
2. If any part of the agreement is left open for future negotiation, the informal paper cannot be the basis of a binding contract.
3. A meeting of the minds should be determined by a party's outward and objective manifestation of assent rather than a party's undisclosed and objective intentions.
4. The defendant might have given the appearance that he was assenting to the terms of the agreement by signing the contract, but both parties made their assent subject to further agreement; therefore, there can be no mutual assent between the parties because all of the issues surrounding the transaction have not yet been resolved.
5. Because the contract was made subject to several contingencies, one of which is that the contract is subject to the subsequent agreement of the parties, the contract was left open for future negotiation and is not a final and binding agreement between the parties.
6. Loss of bargain damages cannot be obtained in an oral land sale contract without proof of fraud because that is essentially the same as specifically enforcing the contract, which is prohibited by the Statute of Frauds.
7. A party who is injured by the breach of an oral contract subject to the Statute of Frauds may recover reliance damages.
8. Because the plaintiff believed there was a contract and acted reasonably on this belief, he is able to recover the out-of-pocket money he spent in furtherance of the agreement.

Appearances:

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

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

OPINION

Walker, P.J., August 31, 2005

Procedural History and Factual Summary

Plaintiff Gregory Strait has filed a verified Complaint. Defendants Glen and Kenneth Young filed an Answer and New Matter. The Plaintiff has filed an Answer to Defendants' New Matter. Subsequently, the Defendants filed a motion for summary judgment seeking to dismiss the Plaintiff's demands 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. The motion for summary judgment was granted in part and denied in part. The motion seeking to dismiss Plaintiff's demand for specific performance was granted. The motion to limit the available damages was denied. The Plaintiff requests the Court to enforce the agreement between the parties and to award him monies incurred as a result of the enforcement.

In his complaint, the Plaintiff alleges that he and Defendant Glen 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 approximately one hundred acres adjacent to Greencastle Greens Gold Course to Gregory Strait for \$200,000.[1] Sometime prior to March 19, 2002, the Plaintiff alleges that the parties orally agreed to increase the purchase price to \$4,000 per acre. Plaintiff alleges that soon thereafter the Defendants refused to transfer the property to him. Subsequently, the Plaintiff filed his Complaint seeking enforcement of the contract and monies incurred as a result of the enforcement.

Discussion

I. Existence of a Contract

An enforceable contract is formed when the parties to an agreement have a meeting of the minds on the essential terms and subject matter of the agreement. GMH Associates v. Prudential Realty Group, 752 A.2d 889 (Pa.Super. 2000). If any part of the agreement is left open for future negotiation, the informal paper cannot be the basis of a binding contract. Isenbergh v. Fleisher, 18 Pa.Super. 99, 145 A.2d 903 (1958).

Here, the Plaintiff argues that an enforceable contract exists between the parties because he and Mr. Glen Young agreed to all of the essential terms in the contract. The Plaintiff also argues that a meeting of the minds should be determined by a party's outward and objective manifestation of assent rather than a party's undisclosed and objective intentions. The Plaintiff cites Ingrassia Construction Company, Inc. v. John M. Walsh, 337 Pa.Super. 58, 486 A.2d 478 (1984), in support of his contentions. The Defendants argue that there is not an enforceable contract between the parties because the description of the land in the agreement lacks sufficient specificity and there is no clear understanding of how the sale price is to be derived, hence there cannot be a meeting of the minds on these terms. The Defendants also argue that there is no enforceable contract between the parties because one of the contingencies in the agreement is that it is subject to subsequent agreement of the parties, thereby leaving the terms of the agreement still open for negotiation. The Defendants cite to GMH Associates v. Prudential Realty Group, 752 A.2d 889 (Pa.Super. 2000), to support their contentions.

In Isenbergh v. Fleisher, 18 Pa.Super. 99, 145 A.2d 903 (1958), the court held that a writing, which purported to define the terms of an agreement between the parties but was subject to further approval, was not an enforceable contract because the parties did not intend to be bound until the agreement had been approved. In GMH Associates v. Prudential Realty Group, 752 A.2d 889 (Pa.Super. 2000), the court held that a Letter of Intent between parties was not an enforceable contract when that agreement was subject to approval because the approval was an express condition to the formation of a contract.

Here, the Plaintiff Greg Strait and the Defendant Glen Young entered into an agreement for the sale and purchase of Mr. Young's property; however, this agreement is subject to six contingencies. One of the contingencies is that the agreement is subject to the "subsequent agreement of the parties." Following the reasoning of Isenbergh and GMH, this contingency leaves the agreement between Mr. Strait and Mr. Glen Young open for future negotiation and approval which proves that the parties did not intend this agreement to be the final and binding terms of their agreement.

The Plaintiff's argument that a meeting of the minds should be determined by a party's outward and objective manifestation of assent rather than a party's undisclosed and objective intentions fails because this contingency was expressly stated in the agreement. Although Mr. Young might have given the appearance that he was assenting to the terms of the agreement when he signed the document on March 15, 2002, both parties made their assent subject to further agreement. There can be no mutual assent between the parties because all of the issues surrounding the transaction have not yet been resolved. Id. at 900.

As the agreement between Mr. Strait and Mr. Glen Young is subject to several contingencies and to further agreement, it is not a final, binding agreement between them and is not an enforceable contract for the sale of Mr. Young's land to Mr. Strait.

II. Damages

Loss of bargain damages cannot be obtained in an oral land sale contract without proof of fraud because that is essentially the same as specifically enforcing the contract, which is prohibited by the Statute of Frauds. Seidlek v. Bradely, 142 A. 914 (Pa. 1928). However, a party who is injured by the breach of an oral contract subject to the Statute of Frauds may recover reliance damages. GMH Associates v. Prudential Realty Group, 752 A.2d 889, 905 (Pa.Super. 2000).

The Plaintiff is not entitled to loss of bargain damages because this case is addressing the oral modification of a written agreement for the sale of real estate. As there has been no proof of fraud, allowing the Plaintiff to recover loss of bargain damages would be the same as specifically enforcing the agreement.

Although there is not an enforceable contract between the Plaintiff and the Defendants, the Plaintiff believed that there was a contractual relationship and acted reasonably on this belief; therefore, this Court holds that the Defendants shall compensate Mr. Strait for the out of pocket money he spent in furtherance of this agreement in the amount of \$4,272.50.

ORDER OF COURT

August 31, 2005, after conducting a trial and examining evidence and testimony, the Court finds there was no binding contract but orders defendant pay the plaintiff damages in the amount of \$4,272.50.

[1] The Plaintiff alleges that the agreed upon price was \$2,000 per acre. The Plaintiff also alleges that the Defendants agreed to deed the 9.3-acre tract adjacent to the creek.