

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY'

Miriam Anderson, :
 : C.A. No. 05-08-0053
 Plaintiff, :
 :
 v. :
 :
 Bonnie McDonald and :
 Teddy McDonald, :
 :
 Defendants. :
 :

Decision after Trial.

Trial: March 22, 2006

Decided: March 23, 2006

Judgment is entered for the Plaintiff, Miriam Anderson

John S. Grady, Esquire, Grady & Hampton, LLC, 6 North Bedford Street, Dover, Delaware 19904, Attorney for Plaintiff.

Bonnie McDonald-Gilday, F8 Sixth Street, Millsboro, Delaware 19966, Pro Se Defendant.

Teddy McDonald, F1 Sixth Street, Millsboro, Delaware 19966, Pro Se Defendant.

Trader, J.

In this civil action for breach of contract to purchase a mobile home, I hold that the plaintiff is entitled to recover the sum of \$10,000.00 under the contract as liquidated damages. Accordingly, judgment is entered in behalf of the plaintiff for the sum of \$10,000.00, plus prejudgment interest at the legal rate from January 4, 2005, plus costs of these proceedings.

The relevant facts are as follows: Shortly after Labor Day 2004, the plaintiff met with the defendants and discussed the purchase of her mobile home. At this time, the plaintiff was in a dire financial condition and she needed to sell her mobile home to pay off the mortgage debt as well as other outstanding debts. Therefore, she decided to sell the mobile home to the defendants for \$10,000.00 under the market value.

On November 2, 2004, the plaintiff agreed to sell the mobile home to the defendants for the sum of \$30,750.00 and the defendants made a down payment of \$3,000.00. It was a provision of the contract that if the defendants backed out of the sale for any reason, they would pay a \$10,000.00 inconvenience payment to the plaintiff.

The pertinent provision of the contract of the sale provides as follows:

If the buyer[s] back out for any reason they will lose any monies already paid and will also pay a \$10,000 inconvenience payment to the seller as her home was priced low for a quick sale and it has already take[n] two months to reach this point in the deal.

Although there were taxes on the mobile home, those taxes would have been paid out of the settlement of the property. Settlement was to be held January 4, 2005 on the site of the mobile home. Plaintiff was finally advised that the defendants did not have the funds to go through with the settlement. As a consequence of this, the mobile home was repossessed and the plaintiff was compelled to file for bankruptcy. At trial the plaintiff, Miriam Anderson, testified

and the defendant, Bonnie Gilday, testified, but the defendant, Teddy McDonald, did not appear for trial.

The plaintiff contends that the \$10,000.00 inconvenience payment constitutes a provision for liquidated damages. I agree.

A liquidated damage clause is a standard contractual provision designed to determine in advance the measure of damages awardable by the breaching party to the non-breaching party. 22 Am. Jur. 2d *Damages* Sec. 489 (2003). “It is, in effect, the parties’ best guess of the amount of injury that would be sustained in a contractual breach, a way of rendering certain and definite damages which would otherwise be uncertain or not easily susceptible of proof.” *S.H. Deliveries v. TriState Courier & Carriage*, 1997 WL 817883, at *2 (Del. Super., May 21, 1997).

In contrast, a “penalty” is an amount inserted into a contract that serves to punish the breaching party “irrespective of the damages sustained.” *Id.* The distinction between the two is pivotal, as a clause regarded as a penalty is void as against public policy, whereas a valid liquidated damages clause is to be enforced according to its terms. *Id.* The question of whether it is a valid liquidated damages clause or an invalid penalty is a question of law. *Id.* at *3.

In *S.H. Deliveries, supra*, the Superior Court laid out a two-part test for determining whether a stipulated sum represents liquidated damages or serves as a penalty:

[A] stipulated sum is for liquidated damages when (1) the damages for which the parties might reasonably anticipate are difficult to ascertain (at the time of contracting) because of their indefiniteness or uncertainty, and (2) the amount stipulated is either a reasonable estimate of the damages which would probably be caused by the breach or is reasonably

proportionate to the damages which have actually been caused by the breach.

Id. at *2.

There is a presumption in favor of the validity of the liquidated damage provision. *Id.* at *3. Therefore, it up to the party opposing the liquidated damages clause to demonstrate that it is invalid and unenforceable. The prevailing view is that determining whether a stipulated sum is for liquidated damages or a penalty is a question of law for the court's resolution. 22 Am. Jur. 2d *Damages* Sec. 499 (2003). Additionally, it matters not whether actual damages are proven or that the liquidated damages are substantially larger than actual damages so long as liquidated damages were a reasonable estimate of the damages which would have been caused. *Piccotti's Restaurant v. Gracie's*, 1988 WL 15338 at *3 (Del. Super. Feb. 23, 1988).

In the case before me, the amount of damages would be difficult to ascertain. Because of the repossession of the mobile home and subsequent bankruptcy, it is impossible to determine the damages from a resale of the mobile home.

Secondly, the amount of liquidated damages is not excessive in the context of the facts of this case. The plaintiff was absolutely dependent on the sale of this property to pay off many of her outstanding debts. When the sale fell through, she was forced to file a petition in bankruptcy. In *TriState, supra*, at *5, which concerned the sale of assets in the amount of \$100,000.00, a \$50,000.00 liquidated damages provision was construed by the Superior Court to be "reasonable in light of the surrounding facts and circumstances." Based on *TriState, supra*, I also conclude that the amount agreed upon in the contract before me is reasonable in light of the

surrounding facts and circumstances of the case. Therefore, the liquidated damage provision will be enforced.

Accordingly, judgment is entered in behalf of the plaintiff, Miriam Anderson, and against the defendants, Teddy McDonald and Bonnie Gilday for the sum of \$10,000.00, prejudgment interest at the legal rate from January 4, 2005, plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge