

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

RANDY J. NEATON,)	
CONSTANCE NEATON,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 351-S
)	
KENNETH L. NEATON, JR.,)	
FRANCES NEATON,)	
)	
Defendants.)	

MASTER'S FINAL REPORT
Date Submitted: October 20, 2006
Additional Argument Submitted
Date Submitted: February 22, 2007
Date Decided: March 13, 2007

Gerald I. Street, Esquire, Dover, Delaware, Attorney for Plaintiffs.

Dean A. Campbell, Esquire, Georgetown, Delaware, Attorney for Frances Neaton.

Kenneth L. Neaton, Jr., pro se.

GLASSCOCK, Master

This is my report on Defendant Frances Neaton’s Motion for Summary Judgment in this action which seeks specific performance of a supposed oral contract for the sale of an interest in real property.

Summary Judgment

The path that leads to summary judgment in this Court is well-worn. Under Rule 56, summary judgment will be granted when a movant demonstrates that no genuine issues of material fact exist and that the moving party is entitled to a judgment, based upon the facts, as a matter of law. If, viewing the record in that light most favorable to the non-moving party, a genuine issue of material fact remains, summary judgment must be denied. *E.g. Henderson v. Chantry*, Del. Ch., No. 1486-K, Strine, V.C.(Feb. 5, 2002)(Mem. Op.) at 5.

Facts

The facts that follow are taken from the record viewed in the light most favorable to the non-moving party, the plaintiffs, Randy and Constance Neaton (“Randy” and “Constance”).¹ Randy and Constance are husband and wife. As of the year 2000, Randy and Constance owned an undivided 60% interest in a vacation property in Middlesex Beach (“the property”). The remaining 40% of the property was owned by the

¹ I refer to the parties by their first names, not out of disrespect, but to avoid confusion.

defendants, Kenneth and Frances Neaton, also husband and wife (“Kenneth” and “Frances”). Randy and Kenneth are brothers. At all times relevant to this matter, then, Randy and Constance owned a 60% interest in the property by the entirety, and Kenneth and Frances owned 40%, by the entirety.² Each couple was obligated to pay its share of the mortgage payment and other expenses in regard to the property. The monthly payments were aggregated in a joint account, and then disbursed as required, by Randy. Kenneth and Randy were also partners in a family tire business.

Evidence of record indicates that Frances relied on Kenneth as the financial decision-maker in their family. At her deposition, Frances had no knowledge of the financial particulars concerning the couple’s marital home. With respect to the beach house, Frances testified that she did not know how much the property cost or what the amount of the mortgage was on the property. She did not know the source of the funds used to purchase the property, whether the property was insured, the amount of the monthly mortgage payments or annual taxes. She signed documents relating to the property without reviewing or understanding them. In other words, she relied on Kenneth’s financial judgment, and Kenneth solely handled their financial affairs with respect to the property.

² Earlier, Kenneth and Randy’s father had owned a 20% interest in the property. By the time the events relevant to this suit commenced, that interest had been transferred to Randy and Constance.

Sometime before January 2001, Frances suggested to Kenneth that the couple sell their interest in the beach house. Kenneth spoke to Randy about the matter, and then told Frances that Randy would be interested in buying the couple's share. At some point before January 2001, Kenneth and Frances stopped paying their monthly share of the expenses on the property. In January 2001, Randy and Kenneth reached an agreement whereby Randy and Constance would buy Kenneth and Frances's 40% interest. According to Randy, the purchase price was based on a value for the property of \$160,000. The amount owed to Kenneth and Frances would be \$160,000, less the mortgage pay-off amount (yielding the total equity in the property), multiplied by .4 (yielding the equity value of the 40% share), less Kenneth and Frances's share of the expenses on the property owing at the time of the sale. No writing reflected this oral agreement.

After the contract was entered into, on three separate occasions, Kenneth requested Randy make partial payment under the contract. Each time, Randy made a payment to an account designated by Kenneth against the purchase price. Each payment was for around \$5,000 and the total of three payments was about \$16,000. One of the three payments was made into an account solely in Frances's name. After entering the January 2001 agreement, Randy and Constance made the entire mortgage payment of \$1100 each month and assumed all other expenses. In summer 2001, Kenneth and Frances spent a final month at the beach house at the end of which they moved everything they believed

to be theirs out of the house, including furniture, light fixtures and window shades.

Frances and Kenneth did not return to the beach house thereafter.

In July 2002, Randy and Constance attempted to finalize purchase of the beach house. They presented an agreement of sale to Kenneth and Frances and attempted to schedule a closing, but Kenneth and Frances refused to attend. The parties disagree as to their understanding of the agreement under which Randy and Constance were to purchase the property. According to Randy, the price was set by the oral contract of January 2001. Kenneth acknowledges that there was an agreement for Randy to purchase the property and that \$16,000 was paid against that purchase but states that the purchase price was to be determined by fair market value at the time of purchase. According to Kenneth, Frances was aware of this agreement with Randy, and agreed with the appraisal he had commissioned which showed the value of the property at \$340,000. According to Kenneth, Frances was willing to sell the property at that price. According to Frances, no contract for sale was ever reached and she denies receiving any of the \$16,000 purchase money which, according to Randy and Kenneth, Randy paid against the purchase of the beach house.

Between the aborted closing attempt in 2002 and the time suit was filed in this matter in 2004, Kenneth and Frances divorced. Pursuant to the terms of their divorce settlement, Frances became the sole owner of the couple's 40% interest in the beach property. She has denied the plaintiffs' claim for specific performance, and seeks a partition of her interest in the property.

Discussion

Frances seeks what is effectively partial summary judgment in this matter. That is, she seeks summary judgment on the plaintiffs' request for specific enforcement, and to proceed directly to the partition requested in her counter-claim. Frances seeks summary judgment on the following grounds:

1) The statute of frauds

Frances points out that, generally, contracts for the sale of lands are unenforceable unless in writing. 6 Del. Code § 2714(a). She acknowledges that among the exceptions to the statute is a situation where the contract has been partially performed. *E.g.*, Shepherd v. Mazzetti, Del. Supr., 545 A.2d 621, 623 (1988). Here, of course, Randy and Constance point to the \$16,000 in payments made, allegedly in partial satisfaction of their obligations under the contract. While Frances suggests that there may be other reasons for those payments, including those arising from the business relationship between Randy and Kenneth, that raises only a factual issue for trial. The fact of the payments together with the fact that the defendants stopped paying their share of expenses and vacated the property, supported by Randy's testimony that the payments were made in furtherance of the oral contract, is sufficient to raise an issue of fact which must be resolved at trial.

2) The lack of specificity of the contract

As Frances points out, the extraordinary remedy of specific performance on a contract for the sale of land will only be provided where the plaintiff demonstrates entitlement to such relief by clear and convincing evidence. Specific performance will not be granted if the terms of the contract are unclear. *E.g.*, Walton v. Beale, Del. Ch., No. 19749, Parsons, V.C. (Jan. 30, 2006)(Mem. Op.) at 3. Here, according to Frances, the terms of the contract, if it existed, were far too vague on price, time of closing, etc. to be specifically enforced. As a grounds for summary judgment, this must fail for at least two reason, however. First, it appears to me that the contract alleged by Randy and described in the Facts section of this report is sufficiently clear to support specific performance, if proved. The dispute with respect to those terms would be the subject of a trial. More fundamentally, even if the terms are not sufficiently proven to permit the extraordinary remedy of specific performance, they may be sufficient to provide a remedy in contract, or under theories of unjust enrichment or otherwise. Therefore, summary judgment is inappropriate on this ground.

3) *Latches*

The alleged contract here was made in January 2001. Randy and Constance made payments on the contract and attempted to schedule a closing in April 2002. Suit was filed in this matter in March 2004, seeking specific performance of the contract. Frances argues that the equitable doctrine of latches precludes a recovery and argues that summary judgment is appropriate here on that ground. An action will be barred by laches where a plaintiff has sat on his rights for an unreasonable period, without bringing suit to vindicate them, and the defendant is disadvantaged as a result, to a degree repugnant to equity. *E.g., Quereguan v. New Castle County*, Del. Ch., No.20298, Parsons, V.C. (Apr. 26, 2006)(Mem. Op.) at 6.

This suit would have been timely under the analogous statute of limitations on a contract at law. Frances argues that a shorter time period should apply, because of the nature of the injunctive relief sought and because in the interim she has gone through a contested divorce proceeding which has changed the nature of her interest in the property. It may be that, in standing by during the divorce proceeding rather than pressing their claim for specific performance, Randy and Constance allowed Frances to become the sole owner of the property as part of the divorce distribution in a way that would make it inequitable to specifically perform the contract. The facts sufficient for such an analysis are not presently before me. Therefore, a judgment on grounds of latches, if appropriate, must await the development of the trial record.

4) *The failure of any contract to engage the interest in the property held by Kenneth and Frances, by the entirety*

Kenneth and Frances owned a 40% interest in the property by the entirety.

Property held by the entirety is owned by the marital unit, not by either individual in his own right. Here, the plaintiffs allege that a contract to sell the property was reached between Kenneth and Randy, based on a property value of \$160,000, in January 2001.

The facts are undisputed that Frances was not a party to this contract. Therefore, even if its terms are proved, the contract is unenforceable against the marital unit unless Kenneth was validly acting as agent for the marital unit, or unless Frances is estopped from denying being a party to the contract. “[O]ne spouse in a tenancy by the entirety has no power to convey any part of that property interest without the actual or apparent authority of the other” Henderson v. Chantry, Del. Ch., No. 1486-K, Strine, V.C. (Feb. 5, 2002)(Mem. Op.) at 1.

Under the patriarchal tradition of the common law, husband and wife were considered one, and the husband spoke for that one. This traditional view has been rejected in this jurisdiction, however. Id., at 5. Instead, this jurisdiction takes the view that “the burden [is] on a party seeking to obtain an interest in land that is jointly held by a married couple to ensure that it has received approval from both spouses or from a spouse who holds a legally authorized right to grant approval (*e.g.*, in the form of written power-of-attorney). Id.

Does evidence exist here so that, read in the light most favorable to the plaintiffs, they may meet at trial their burden of proof of demonstrating Kenneth's ability to legally bind his wife by his agreement with Randy? The record as it now exist includes evidence that Frances relied on Kenneth to make all financial decisions for the marital unit, that she signed documents presented to her by Kenneth binding her to contractual arrangements (including those involving real property) without reading or understanding them, based on Kenneth's recommendation; and that she had suggested that their joint property interest in the property be sold. According to Kenneth, she understood and agreed to the terms for sale under the contract.³ There is extant (albeit disputed) record evidence that Frances was aware that a sale to Randy was to take place, and that she and Kenneth took a "last vacation" at the beach house and then cleared all their property from the home in the summer of 2002. She accepted into a bank account in her sole name one of the three payments made by Randy on the property.

If these factual allegations are all proved, are they, together with the reasonable inferences therefrom, sufficient to overcome the plaintiffs' burden to demonstrate that Kenneth had the authority to bind the marital unit to a contract with Randy? If I were to make a factual decision that Frances routinely let herself be bound in reliance upon Kenneth's decisions for the marital unit, that she had initiated the sale of the property,

³ Of course, Kenneth's version of the contract is different from the one advanced by Randy, Kenneth argues that the agreement was to obtain an appraisal and that the sale would be based on a fair value, *not* \$160,000.

that she was aware of the contract as well as its specific terms, and that she accepted payments under the contract into her bank account, it seems clear that Frances would be bound, either because she had extended authority to Kenneth to make the contract or by estoppel. What is also clear is that this would require accepting portions of various individual's testimony and rejecting other portions of testimony from the same witnesses to create a mosaic of proof under which Frances would be bound. I must deny summary judgment here, however because, on the motion for summary judgment, I must not act as a finder of fact, a matter which is left for trial. Since there is sufficient evidence to support an inference that a contract enforceable against Frances exists, summary judgment must be denied. Moreover, I note that even if the contract Randy alleges is not enforceable against Frances there are other issues which would remain to be tried, including whether that portion of her property interest which Frances received via the divorce settlement from Kenneth should be impressed with a trust in favor of the plaintiffs, whether unjust enrichment has occurred and with what result, etc.

Conclusion

In order to receive specific performance of a contract to buy land, the plaintiffs must prove "by clear and convincing evidence that they have a valid contract to purchase real property and that [they are] ready, willing, and able to perform their obligations under the contract" and that "the balance of the equities favors specific performance.... Further, specific performance will not be granted if the terms of the contract are

unclear....” Walton (Mem. Op.) at 3 (citations and attribution marks omitted). While oral contracts for the sale of real property may be enforced, notwithstanding the statute of frauds, on a demonstration of part performance, this Court recognizes a special burden in such cases, because of the possibility that an injustice may be worked thereby. *See Eaton v. Eaton*, Del. Ch., No. 286-S, Noble, J. (Dec. 19, 2005)(Letter Op.) at 3 (evaluating claim of oral contract to make a will). The plaintiffs here face the challenge of demonstrating, by clear and convincing evidence, that Randy made an oral contract of purchase and sale with Kenneth, that part performance of that contract removes the bar of the statute of frauds, that the contract is subject to specific performance, and that the marital unit is bound because Kenneth was acting as agent for Frances. While this hill may ultimately prove too steep to climb, the plaintiffs can point to material factual disputes remaining on each issue. Because issues of material fact remain to be tried in this matter, Frances’s motion for summary judgment must be denied. The period for taking exceptions to this final report shall not begin to run until my final post-trial report is entered, and any exceptions to this report under Rule 144 are preserved until that time.

The parties should schedule this matter for trial.

/s/ Sam Glasscock, III

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