

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: :
THE ESTATE OF: :
KAY A. KUNTZ, : **No. 41-14-0322**
Deceased : **ORPHANS COURT DIVISION**

OPINION AND ORDER

Before the Court is Roan, Inc.'s (Petitioner) claim for damages based on the contract with Estate of Kay A. Kuntz (Estate) to hold an auction for the sale of the real property of the estate. The claimed damages arise from a planned auction which was stopped by this Court on June 9, 2016, after a Motion for Protective Order was filed on behalf of Lori Ann Kuntz (Beneficiary). A hearing on the Petitioner's claim for damages was held on July 14, 2017. At the conclusion of the hearing the parties wished to brief the issue as to whether the Petitioner is in fact entitled to a claim for damages. After consideration of the testimony presented along with the briefs submitted by Petitioner, Beneficiary and additional counsel for Richard E. and Patricia J. Hull (Co-Executors), for the reasons set forth in this Opinion, Petitioner's claim will be denied.

Background

Kay A. Kuntz (Decedent) died on May 25, 2014. At the time of her death, she left a will, which authorized specific bequests for her four grandchildren and her church with the remainder of the estate to pass to her daughter Lori Ann Kuntz. On July 16, 2015, the Honorable Marc F. Lovecchio heard testimony on a dispute between the Co-Executors and the Beneficiary over the estate debt; the Beneficiary had taken issue with the information being provided to her about the value of the real

property in the Estate and whether she could purchase the property. Judge Lovecchio held that the law supported the Beneficiary's desire to purchase the real estate despite the fact that the Co-Executors have the discretionary authority to sell.¹ He granted the Beneficiary's Motion for a Protective Order and blocked the estate from entering into an agreement of sale for the property along with an creating an obligation on the Estate to provide both a letter of assurance to enable Beneficiary to obtain a mortgage; and, a formal accounting to Beneficiary including calculating a final amount to satisfy the debts and liabilities of the estate.

According to the Estate, it provided a letter of assurance to the Beneficiary dated July 10, 2015, and a final accounting of the Estate dated September 1, 2015. As of March 14, 2016, the Estate alleges that no closing date was set for the Beneficiary to purchase the property. Therefore, on April 15, 2016, the attorney for the Estate entered into a contract with Petitioner signed by the Co-Executors.

The Co-Executors did not have contact with the Auctioneer; Counsel for the Estate received Petitioner's contract and reviewed the document with them. The contract provided for an initial payment of \$3,000.00 by the Estate for advertising costs and to cover expenses to prepare the property for sale. The initial value of the property was listed on the contract as \$180,000.00; however, the number was crossed out and \$200,000.00 was written in with the initials of only the auctioneer listed. The contract between the Estate and auctioneer also included the following liquidated damages provision:

14. In the event that Seller cancels the auction sale or withdraws the Real Estate from sale within thirty (30) days prior to the auction

¹ Opinion and Order, July 15, 2015.

date or refuses to sell the Real Estate once the reserve amount is attained at the auction, the Seller shall pay the Auctioneer ten percent (10%) of the reserve amount together with the advertising costs incurred, if applicable. If Seller enters into an agreement to sell or sells the property at any time between the date of this Agreement and the expiration of thirty (30) days following the date of the auction sale, the Seller shall pay the Auctioneer the premium or commission of the sale price at the percentage specified above; this premium or commission shall be paid whether or not the sale is negotiated by Auctioneer.

The auction of the property was scheduled for June 25, 2016.

Sometime in late May 2016, the Beneficiary received a letter notifying her of the auction date and warning her to remove any items from the real estate that she wished to retain. As a result of that letter and what she perceived as the Estate failing to comply with Judge Lovecchio's order, Beneficiary filed a Motion for Protective Order with this Court to cancel the auction. On June 9, 2016, this Court issued an order cancelling the auction. As a result of that cancellation, Petitioner filed a claim against the Estate for the damages provided for in the contract.

On July 14, 2017, this Court held a hearing on the issue of damages to be paid by the Estate to Roan, Inc. Michael T. Roan testified that he has been involved with auctions since 1980. He explained that for the initial fee of \$3,000.00 he works on preparing the real estate for the auction. His preparatory work consists primarily of abstract work as well as photographs and materials to assist with the advertising for the auction. Roan testified that he does a lot of leg work to advertise and be available to anyone who would want to take a tour of the property in advance of the auction. He also explained that the best times of the year for real estate auctions are in the windows of time from April to the beginning of August and Labor Day through

Thanksgiving. Cancelling the auction reduced the amount of available weekends for conducting his business. He learned after the auction was cancelled that a previous listing had been stopped by another court order. He also testified that he knew that the Beneficiary of the Estate wanted the property.

After the hearing, all Counsel requested the opportunity to brief the issue on whether Petitioner had established sufficient evidence to prevail on its claim.

Discussion

Is the Petitioner, Roan Inc. entitled to a claim for damages when the sale of the estate property was cancelled by the Court?

Where parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement": Martin v. Berens, 67 Pa. 459, 463; Irvin v. Irvin, 142 Pa. 271, 287. "All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract . . . and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms cannot be added to nor subtracted from by parol evidence": Union Storage Co. v. Speck, 194 Pa. 126, 133; Vito v. Birkel, 209 Pa. 206, 208.

Gianni v. R. Russell & Co. 126 A. 791 (Pa. 1924).

"It is axiomatic that when the words of a contract are clear and free from ambiguity, the intent of the parties is to be determined solely from the express language of the agreement". Robert F. Felte, Inc. v. White, 302 A.2d 347 (1973) cited by Commonwealth, Dep't of Transp. v. Semanderes, 531 A.2d 815, (Pa. Commw. Ct. 1987).

In paragraph 14 of the contract for services between Roan and the Estate signed by the Co-executors, the Court finds the applicable language to be clear and

unambiguous. In order for Petitioner to recover his damages, the **Seller** must cancel the auction or withdraw the real estate from sale within thirty (30) days prior to the auction date. The Beneficiary requested the Court issue an order to stop the sale; the Court did so stopping the auction.

In order for this Court to look outside of the terms of the contract, Petitioner must aver fraud, accident or mistake. No such claims are being made here. Therefore, the Petitioner's claim must fail.

ORDER

AND NOW, this 18th day of September, 2017, for the reasons set forth in this Opinion, the Claim against the Estate filed by Petitioner, Roan, Inc. is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Christopher Kenyon, Esquire- Lori Ann Kuntz
Lee Roberts, Esquire- Lori Ann Kuntz
Kristine L. Waltz, Esquire-Co-Executors
Elliott Weiss, Esquire-Estate
Marc Drier, Esquire –Roan, Inc.
Hon. Nancy L. Butts
Gary L. Weber, Esq.