IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

G. CHOICE FUNERAL CHAPEL, INC.	:	
Plaintiff,	:	
	:	
v.	:	97-00,975
	:	
JOSEPH L. WALKER and SARAH A. WALKER,	:	
Defendants	:	

O P I N I O N

This case involves a contract for the sale of two buildings located at 842 and 844 West Third Street in Williamsport, owned by Rev. and Mrs. Joseph Walker. These properties were to be used to fulfill a vision of Gloria Choice, owner of G. Choice Funeral Chapel, Inc., of Philadelphia, to provide physical shelter and spiritual guidance to recovering drug addicts.

Trusting each other and the Lord rather than a real estate attorney, the parties entered into a contract for sale of the two buildings. When the initial attempt for financing failed, the parties agreed to try other channels. In the meantime, Choice took possession. One year later the financing was hopeless, the buildings were trashed, and the vision had vanished. In its place is a lawsuit.

It is understandable that true believers would rather pray than pay an attorney. However, this case demonstrates that when considering a real estate transaction, even Christians can sometimes benefit from the advice of a lawyer.

Findings of Fact

The following findings are based largely on a credibility assessment of the many witnesses who testified at this two day non-jury trial. Much of the testimony was contradictory–a sure sign that a few of these good Christians were breaking the Ninth Commandment.[1] There is neither space nor time to detail all of the testimony presented. Suffice it to say that the court carefully observed each of the witnesses when testifying and carefully considered all of the evidence in making these findings.

During the summer of 1995 the Walkers entered into negotiations with Gloria Choice, owner of G. Choice Funeral Chapel, for the purchase of two buildings: 842 West Third Street, which was used as the Walkers' residence, and 844 West Third Street, which was being used as a boarding house. Mrs. Choice told the Walkers she had a glorious vision of using the buildings to house and counsel recovering drug addicts and others in need. She planned to call the program the "Tower of Power." The Walkers, being involved in similar work, supported her idea.

On 22 September 1995 the parties entered into a contract for sale of the properties for a purchase price of $98,000. Mrs. Choice signed for G. Choice Funeral Chapel and paid a $12,000 deposit. As with most real estate contracts, the balance was to be paid at the time of closing. If the buyer defaulted on the contract the sellers were authorized to retain the deposit. Paragraph 9 of the contract stated:

> In the event that title to the premises cannot be conveyed by SELLERS to BUYER at settlement in accordance with the requirements of this Agreement for Sale, BUYER shall have the option of taking such title as SELLERS can convey (without any abatement of purchase price), or of

[1] "Thou shalt not bear false witness against thy neighbor."

terminating this Agreement for Sale and being repaid all monies paid on account of the purchase price, as BUYER shall elect.

The agreement was conditioned upon obtaining financing. The parties used a previously prepared contract with blanks which they filled in; they also made various alterations by hand. Clause 16(d), containing the standard language whereby the buyer was to obtain financing, was altered to state that the seller was to obtain a second mortgage. However, the final sentence of that paragraph contained no alterations and stated that in the event the *buyers* are unable to obtain the financing, the deposit would be returned. Testimony explained this discrepancy: the parties had neglected to change the language in the final sentence; they fully intended for the Walkers to obtain the financing.[2]

When the Walker's bank refused to give a second mortgage the parties were not discouraged because they believed the Lord would find a way to complete the deal. Mrs. Choice agreed to try to obtain a mortgage herself. In the meantime, Choice took possession of the properties. This transfer was made in anticipation of the sale that all believed would eventually occur. Choice was to be responsible for maintenance and repairs to the properties, and to pay the mortgage and utilities.

In October 1995 Choice took over, leaving Mrs. Choice's son Eddy Choice in command. That was not a wise choice. Eddy was to screen tenants, supervise the program, maintain the buildings, and collect the rents. Unfortunately, Eddy was extremely lax in his duties, to say the least. The rooming house tenants testified that he was rarely around. Instead of guiding his tenants on the road to righteousness, Eddy himself strayed

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[2] Extrinsic evidence as to the parties' intent was properly admissible because the clause was clearly ambiguous. Department of Transportation v. IA Const. Corp., 138 Pa. Cmwlth. 587, 588 A.2d 1327 (1991).

from the straight and narrow after being led into temptation by a female friend, with whom he admitted spending his nights. No one seems to know where he spent his days. On one of his duties, however, Eddy was faithful: he always came around to collect the rents. The Walkers, not wanting to interfere with this brand new ministry, offered emotional support from a distance and trusted that all was going well.

All was not going well. Rev. Walker's first indication of this was a notice from the Williamsport Codes Department on 16 October 1996, stating that the properties were in gross disrepair. The Walkers inspected the properties and found extensive damage. One witness testified that it looked like a herd of wild elephants had stampeded through the buildings. Another said it looked like a massive flood had raged through the interior. There were holes in the walls, ceilings were falling down, plaster and drywall were sagging, and one bathroom was inoperable. Trash was strewn throughout both buildings.[3] At 842 West Third Street there was a hole in the roof through which one could view the heavens and through which water gushed when it rained, falling three floors and accumulating in the basement. The pipes had frozen and all 18 radiators had exploded. Needless to say, the Walkers took possession of the properties.

By this time, the sale had fallen through. Mrs. Choice had failed to obtain financing because the appraisal did not support the purchase price. On 12 April 1996 she sent the Walkers a letter expressing her willingness to re-negotiate on the selling price. Defendant's Exhibit #4. On 1 July 1996 her newly retained counsel sent a letter stating that Choice was willing to purchase the property at $80,000, but otherwise requested to have its security

[3] Rev. Walker hauled eight loads of garbage to the dump.

deposit returned. Defendant's Exhibit #5. Forgetting that it is better to give than to receive, the Walkers kept the money. Choice then filed this action and the Walkers countersued for damages.

Conclusions of Law

1. G. Choice Funeral Chapel, Inc. is entitled to the return of its $12,000 deposit, because the Walkers were not able to secure financing.

2. G. Choice Funeral Chapel is liable to the Walkers for the damage done to the buildings in the amount of $24,294.

DISCUSSION

A. Return of the $12,000 Deposit

The contract for sale of the properties clearly stated that the deposit was to be returned to Choice if the properties could not be conveyed according to the terms of the agreement. As stated above, one of these terms was that the Walkers were to secure financing. When that effort failed Mrs. Choice agreed to seek financing on her own, which also failed. Clearly, the terms of the agreement could not be complied with, through no fault of the buyer. Therefore, Choice is entitled to the return of its deposit.

The Walkers argue that Mrs. Choice had given them permission to use the money to make various repairs and to pay the back taxes. Any conversations of that nature would obviously be parol evidence, and would not normally be admissible when considering the

terms of an integrated written contract like this one.[4] McGuire v. Schneider, Inc., 368 Pa. Super. 344, 534 A.2d 115 (1987), aff'd, 519 Pa. 439, 548 A.2d 1223. However, counsel for Choice never made a specific parol evidence objection, and even questioned his own witness, Mrs. Choice, about conversations the parties had relating to the terms of the contract.

In any event, whether or not this evidence should be taken into the court's consideration makes no difference to the outcome of the claim. Even if Mrs. Choice did permit the Walkers to use the money to pay for repairs and taxes that does not mean she relinquished her right to have the deposit returned if the closing did not occur. It merely means that she did not require them to place it into escrow until the closing. She allowed them to make use of it in the meantime, to pay for these necessary expenses. There was no evidence to indicate that she essentially *gave* it to the Walkers. In fact, the evidence indicates that the parties were so sure the deal would eventually go through they did not really consider any other scenario. Moreover, Rev. Walker himself admitted on the stand that he assumed the risk for the cost of repairs if the closing did not occur, and that if it did occur, the expenses would have been deducted from the purchase price.

The contract clearly stated that the deposit was to be returned if the closing did not occur, and the court must order the Walkers to do exactly that. This conclusion not only follows from the terms of the contract, but it also produces the fairest result. Any money spent on repairs and taxes eventually benefitted the owner of the property, which is the Walkers.

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[4] Clause 16 of the contract states: "This Agreement sets forth the entire understanding of the parties."

The Walkers argue that the parties orally agreed to extend the agreement past the stated closing date when initial attempts at financing fell through. Of course, the Statute of Frauds prevents this court from enforcing an oral agreement for the sale of real estate unless one of the exceptions applies, none of which are relevant here. 33 P.S. § 1; Long v. Brown, 399 Pa. Super. 312, 582 A.2d 359 (1990). Moreover, the agreement itself stated that it could not be modified unless both parties agreed in writing. Section 16(f). But even if we were to consider the parties' intention to extend the contract, the court fails to see how that evidence might permit the Walkers keep the $12,000 deposit–it would merely mean that they did not have to return it right away, and could keep it until the subsequent attempts at financing also failed. What is relevant, however, is that the parties maintained an ongoing business relationship, with the intention of eventually transferring title from the Walkers to Choice. That evidence is helpful in considering the next issue, namely who took possession of the buildings from October 1995 through October 1996.

B. Damage to the Buildings

1. *Will the Real Lessee Please Stand Up!*

Throughout this entire period the Walkers believed they were dealing with G. Choice Funeral Chapel, Inc. After all, Choice's name was on the contract for sale and the Walkers were giving up possession in anticipation of that sale. Moreover, they had consistently dealt primarily with Mrs. Choice, who had signed the agreement for Choice. Mrs. Choice always communicated in writing them on Choice letterhead. Moreover, her letters of 12 April 1996 and 1 July 1996 demonstrate that she was still attempting to secure

financing to purchase the properties at that time, which was well after the Walkers relinquished possession. The Walkers were therefore unpleasantly surprised when, late in the litigation process, Choice told them they were suing the wrong organization–that Tower of Power Ministries, Inc. had been renting the buildings.[5]

Miracles occur frequently in the Bible, but they are far less common in the business world. This apparent transfiguration of lessees is much more likely to be a shameless sham. The court does not fall for such a transparent effort to cheat the Walkers through an organizational shell game. This attempt may be thwarted on three different bases.

First, according to the Pennsylvania Rules of Civil Procedure, Choice is deemed to have admitted that it was the party to whom the Walkers relinquished possession. Rule 1029(e)(1) states that a party must specifically deny "averments relating to the identity of the person by whom a material act was committed, the agency or employment of such person and the ownership, possession or control of the property to instrumentality involved." Averments not specifically denied are admitted. Rule 1029(b).

Choice never specifically denied that it was the party who took possession of the properties. Paragraph 27 of the Walkers' New Matter avers that Choice was unable to obtain financing by 30 October 1995, so the parties entered into a verbal agreement whereby Choice would lease the properties on a month-to-month lease. Choice filed a responsive pleading stating: "Expressly denied. To the contrary, Seller was to obtain financing by the specified date." Choice said nothing about the averment regarding its

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[5] It appears this issue was first raised near the time for the arbitration hearing. Immediately before the non-jury trial began, counsel for Choice made a motion in limine to exclude evidence relating to the property damage because that damage was done by the Tower of Power.

leasing the properties. Similarly, Choice denied generally several of its responses to the Walkers' Counterclaim regarding damage incurred to the buildings after it took possession.

Moreover, Choice explicitly admitted taking possession. In paragraph 30, Choice wrote: "G. Choice Funeral Chapel, Inc., was given immediate possession of the properties owing to Plaintiff's desire to implement ministries programs. G. Choice Funeral Chapel, Inc., had a fiduciary responsibility to a third party–Tower of Power Ministries, Inc." And finally, in paragraph 32, Choice stated: "Premises were conveyed to Plaintiff in damaged condition."

Through these responses, Choice admitting taking possession of the properties not only by neglecting to specifically deny that allegation, but also by explicitly admitting it received possession. Therefore, Choice will not be permitted at this late date to deny responsibility. That is precisely what Rule 1029(e)(1) is designed to prevent.

Secondly, Choice may be prohibited from denying possession due to the doctrine of equitable estoppel. In order to apply this doctrine the party to be estopped must have: (1) intentionally or negligently misrepresented some material fact; (2) known or had reason to know that the other party would justifiably rely on the misrepresentation; and (3) induced the party to act to his or her detriment based on their justifiable reliance upon the misrepresented fact. Foster v. Westmoreland Casualty Company, 145 Pa. Cmwlth. 638, 604 A.2d 1131 (1992).

This case is a perfect candidate for equitable estoppel. Choice, acting through its agent Mrs. Choice, gave the clear impression Choice was taking possession. All negotiations on the sale of the property were conducted in the name of Choice, and the

contract for sale was signed by Mrs. Choice on behalf of Choice. Possession was delivered as a direct result of the pending sale, which all parties believed would eventually occur. Mrs. Choice's son, Eddy, was designated manager of the buildings.

While it is true that Mrs. Choice had discussed her vision of creating a ministry for recovering addicts named Tower of Power, the court finds that she never told the Walkers when she incorporated that entity, and never informed them they were relinquishing possession to Tower of Power. The court finds the testimony of Melinda Ciletti, who stated otherwise, to be highly uncredible. And although the Tower of Power paid the mortgage and other bills, all payments were sent directly to the appropriate businesses, so the Walkers never saw the checks.

The Walkers had a right to know to whom they were relinquishing possession, for that certainly would have influenced their decision whether to hand over their properties. Whereas Choice was obviously well-blessed,[6] the Tower of Power had little or no assets and apparently still does not. The circumstantial evidence indicates that Tower of Power was funded with Choice money, for it burst on the scene complete with several employees, including a financial director and an Administrator. It was incorporated on 12 October 1995, by Mrs. Choice, probably in order to take advantage of the financial benefits of a non-profit organization while at the same time protecting her well-heeled business from liability.

If Mrs. Choice wanted to operate her ministry under the name of the Tower of Power, she certainly was free to do that. Limited liability is one of the primary benefits of

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[6] The Choice representatives rode into town in a limousine.

corporations.[7] However, she had an obligation to make that known to the Walkers, to give them the opportunity to decline to deal with that entity.

Third, this situation would be an appropriate time to pierce the corporate veil since, as discussed above, Mrs. Choice was apparently using the corporate name of the Tower of Power to cheat the Walkers and escape responsibility for the misdeeds of her son. When one uses a corporate structure to perpetrate fraud, it is appropriate for a court to refuse to extend to that person the benefits of the corporate form. Lumax Industries, Inc. v. Aultman, 543 Pa. 38, 669 A.2d 893 (1995). Piercing the corporate veil in this instance would impose liability on Mrs. Choice, and that is the just result.

If Tower of Power did indeed operate the rooming houses, Choice is free to sue that entity, as its sublessee, and we wish Mrs. Choice luck. In the meantime, we will not force the Walkers to try to squeeze blood from that stone.

5. ***Choice's Obligations as Lessee***

The testimony showed that when Choice took possession of the properties in October 1995, it was pursuant to an oral understanding that Choice would pay the mortgages on the properties and the bills for an unspecified time. Therefore, an implied month-to-month tenancy was created.[8] The Walkers claim that Choice was also to take responsibility for making all the repairs, and the court finds their testimony on this point to be

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[7] It is also one of the reasons Adam Smith, father of capitalism, opposed corporations.

[8] Oral leases for less than three years are not subject to the Statute of Frauds. 68 P.S. § 250.202.

credible. It also makes sense in light of the circumstances the parties were in at that point: Choice was in the process of buying the buildings, and the "rent" was paid directly to the bank, leaving the Walkers with no profit from which to pay for repairs. Moreover, the evidence showed that Choice[9] did actually pay for some repairs, although certainly not *enough* repairs.[10]

Even if Choice did not agree to make all the repairs, it would still have been subject to standard landlord/tenant law, under which Choice had a responsibility to maintain the buildings in their original condition, less normal wear and tear. Under 68 P.S. § 250.502-A, tenants also have a duty to:

> Not permit any person on the premises with his permission to wilfully or wantonly destroy, deface, damage, impair, or remove any part of the structure or dwelling unit, or the facilities, equipment, or appurtenances thereto or used in common, nor himself do any such thing.

Many witnesses testified that the buildings were in good condition before Choice took over and deplorable condition afterward. Normal wear and tear certainly does not include putting holes in the walls and tearing down the ceilings. Therefore, Choice must be liable for all damage of that sort.

As to the exploded radiators, there was a discrepancy in testimony as to the cause. There was nothing wrong with the boiler. It has merely shut down for one of two reasons. One expert believed it was because the water gushing through the three floors from the roof had accumulated in the basement. Another believed Choice simply neglected to put oil in

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[9] The checks were issued from the Tower of Power's account.

[10] Eddy Choice testified that they did this essentially out of the goodness of their hearts, because they could not bear to see their good tenants living in poor conditions. This testimony, as well as nearly every other statement he uttered, was highly uncredible.

the furnace. Whatever the exact cause, Choice is clearly responsible. Eddy, as manager, should not have allowed a flood to occur in the building, nor should he have allowed the furnace to run out of oil. At the very least, Eddy should have notified the Walkers that the furnace was not working. Instead, he did nothing. As a result, the boiler was never restarted, the pipes froze, and the radiators burst.

6. *Calculation of Damages*

Finding that Choice is liable to the Walkers for damage to the buildings is one thing; determining how much it owes is quite another. The Walkers have the burden of establishing their damages to a reasonable certainty, and this court can only award an amount supported by the evidence they have presented. That includes the cost of transporting 8 loads of garbage to the dump ($201.00), cost for cleaning ($250.00), and the cost of mortgage arrears ($2337.00).[11]

As to the cost of the radiator replacement, Rev. Walker introduced two estimates: one made soon after the Walkers regained possession, for $17,000, and one made on 15 March 1999,[12] for $21,506. This discrepancy was explained by plumbing and heating specialist Ray Mr. Bressler, who made both the estimates. Mr. Bressler testified that the old-style radiators required are more difficult to obtain than he had originally thought. Mr. Bressler was a credible witness, and the court finds that the later estimate adequately

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[11] The court found Mr. Walker's testimony credible on this issue, and his testimony is supported by the bank records he submitted. Defendant's exhibit #33.

[12] Mr. Walker testified that the work had not been done in the meantime because the cost was prohibitive.

reflects the Walkers' damages for the radiator replacement..

Rev. Walker also introduced a $5,100 bill for "repairs to boiler and pipe and radiator replacement." This appears to include replacement of the two radiators Rev. Walker found on his own, but it also includes boiler work. The boiler work should not be charged to Choice because testimony indicated that there was nothing wrong with the boiler, although Rev. Walker chose to have it changed from oil to gas. Since neither the bill nor the testimony indicated how much of the cost was for radiator replacement, the court must decline to award the Walkers additional damages based on that bill.

O R D E R

AND NOW, this _____ day of April, 1999, the judgment of the court is that:

1. The defendants, Joseph and Sara Walker, are liable to the plaintiff, G. Choice Funeral Chapel, Inc., in the amount of $12,000.

2. The plaintiff, G. Choice Funeral Chapel, Inc., is liable to the defendants, Joseph and Sara Walker, in the amount of $24,294.

THEREFORE, it is ORDERED that judgment is entered in favor of Joseph and Sara Walker and against G. Choice Funeral Chapel, Inc. in the amount of $12,294.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
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