

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD FEIST & TERRIE FEIST : No. 02-00,582
:
:
vs. : CRIMINAL DIVISION
:
:
DIANE L. CAPRIO and :
SANDRA L. ALLEN, :
Defendants : 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE

This Opinion is written in support of this Court's orders dated July 22, 2003 and August 22, 2003. The reasons for the Court dismissing the plaintiffs' complaint for specific performance are contained in the order dated July 22, 2003. The Court would rely on that order and briefly supplement it in this Opinion.

First, the Court would clarify that when it found Ms. Read was not acting contemptuously of the Court, it meant it did not believe Ms. Read acted with malice, ill-will or bad motive toward the Court. Ms. Read did, however, intentionally fail to satisfy the lis pendens by the time of closing on Saturday, May 24, 2003 at 10:00 a.m. in violation of the Court's Order dated March 25, 2003.

Second, the Court rejects Ms. Read's assertion that the closing would continue until Tuesday, May 27, 2003 when the paperwork could be filed in the courthouse. Such an "interpretation" is contrary to the language of the Court

order, which states, "The parties shall close on this property **no later than** May 24, 2003."

Finally, the Court notes that specific performance is an equitable remedy. The Pennsylvania Superior Court has stated:

A decree of specific performance is not a matter of right, but of grace. Such a decree will only be granted if the plaintiff is clearly entitled to such relief, there is no adequate remedy at law, and the chancellor believes that justice requires such a decree. * * * In addition, specific performance should not be ordered where it appears that doing so may result in hardship or injustice to either party.

Barnes v. McKellar, 434 Pa. Super. 597, 609-610, 644 A.2d 770, 776 (Pa. Super. 1994) (citations omitted). The Court believes it would be unjust to the defendants to permit the plaintiffs to proceed with their complaint for specific performance. The original closing on the property in question was scheduled for Spring 2002. When that closing was not consummated, the plaintiffs initiated this action to compel the defendants to sell the property to them. The court started a non-jury trial in this case on March 5, 2003. The testimony could not be completed on that date and the trial was continued to March 25, 2003. On that date, the parties reached a settlement agreement, which was memorialized in a Court order. Closing was scheduled for May 12, 2003 at 10:00 a.m. On May 12, 2003, the defendants appeared at the plaintiffs' bank to proceed with closing, but the plaintiffs did not. Shortly before 10:00 a.m, plaintiffs' counsel contacted defendants' counsel

and informed her that closing would not take place until Richard Feist inspected the property because his brother believed the defendants had either thrown something into the pond on the property or damaged the structure on the property. The defendants arranged for Mr. Feist to inspect the property at a later date, and the brother's allegations were not true. Closing was again scheduled, this time for May 24, 2003 at 10:00 a.m. Everyone appeared at the closing but, since the plaintiffs failed to comply with the Court order dated March 25, 2003 by failing to remove or satisfy the lis pendens, closing did not proceed. While there may be some dispute regarding the reasons for the failed closing in the Spring of 2002, it is clear that the closings on May 12 and May 24, 2003 failed to be consummated due to the actions or omissions of the plaintiffs and their attorney. Given these circumstances, the Court finds that the plaintiffs are not entitled to specific performance as a matter of law. Furthermore, the purpose of the March 25, 2003 settlement order was to provide closure and finality to this case. The lis pendens was going to be removed and the plaintiffs were going to either purchase the property by May 24, 2003. If the plaintiffs failed to close on the property by May 24, 2003, the defendants would be free to sell the property to someone else. It would be patently unfair to allow the plaintiffs to disregard the provisions of the March 25, 2003 order yet still proceed with their complaint in specific performance.

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: Robin Read, Esquire
Denise Dieter, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)