

ROBERT C. BERFIELD and
PEARL JENKINS BERFIELD,
Plaintiffs

vs.

SANDRA L. FISHER, Individually and as
ADMINISTRATRIX of the Estate of
BERVILLA M. RIGGLE,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 04-00,925

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: JUDGMENT ON THE PLEADINGS

Date: November 15, 2004

OPINION and ORDER

Before the Court for determination is the Motion for Judgment on the Pleadings of Plaintiffs Robert C. Berfield and Pearl Jenkins Berfield (hereafter "Berfields") filed July 9, 2004. The Court will grant the Motion.

The case was instituted by the filing of a Complaint on June 9, 2004. Defendant Sandra L. Fisher (hereafter "Fisher") filed an Answer and New Matter on June 30, 2004. Berfields filed a Reply to New Matter on July 9, 2004.

The genesis of this case is a sale of real estate between Berfields and LeRoy H. and Bervilla M. Riggle (hereafter "Riggles"). On November 5, 1999, Berfields conveyed to Riggles two parcels of land by warranty deed for the sum of \$60,000. The deed was recorded at the Lycoming County Office of the Register and Recorder of Deeds. On the same date, Berfields and Riggles executed an agreement, which was also recorded at the Lycoming County Office of the Register and Recorder of Deeds, pertaining to the property. In the agreement, Riggles granted to Berfields, and their heirs, a right of first refusal "... to purchase the property for seventy-five percent of its then fair market value if the property is being sold or any interest therein transferred by any means." Plaintiffs' Complaint, Exhibit 2. The property

transferred from Berfields to Riggles adjoins other property owned by Berfields and their family.

On January 16, 2004, LeRoy Riggle died. On March 10, 2004, Bervilla Riggle died. Fisher was then appointed Administratrix of and is the sole beneficiary of the estate of Bervilla Riggle. Berfields have now expressed a desire to exercise the right of first refusal and purchase the property. Fisher has refused to convey the property to Berfields. Fisher asserts that she is not bound by the agreement between Berfields and Riggles.

Berfields want the Court to find, as a matter of law that the estate of Bervilla Riggle is bound by the agreement and must be compelled to perform the contract. Berfields argue that Fisher, as Administratrix, should be specifically required to perform the agreement and sell the property back to Berfields for seventy-five percent of the fair market value. Berfields argue that there is no language in the agreement that says it terminates upon the death of the parties. In fact, Berfields argue that the language allowing the Berfield heirs to enforce the contract demonstrates an intent to have the agreement survive the death of the parties. Berfields also argue that since the contract does not involve a personal duty, it does not terminate upon the death of the parties and is enforceable against the estate.

In response, Fisher argues that she, as Administratrix, is not bound by the agreement, as it terminated at the death of Bervilla Riggle. Fisher argues that nowhere in the agreement does it say that it survives the death of the parties and that the estate is bound by the agreement. In fact, Fisher asserts that the only language in the agreement concerning heirs has to do with the Berfield heirs. Therefore, Fisher argues that the only heirs bound by the agreement are the Berfield heirs.

The matter before the Court is one of contract interpretation. Parties are free to write their own contracts, and it is the function of the courts to interpret and enforce those contracts. *Ambridge Water Auth. v. Columbia*, 328 A.2d 498, 500 (Pa. 1974). The proper interpretation of a contract is a question of law for the court to answer. *J.W.S. Delavau, Inc. v. E. Am. Transp. & Warehousing, Inc.*, 810 A.2d 672, 681 (Pa. Super. 2002). The issue presented is whether the agreement survived the death of Bervilla Riggle and is therefore enforceable against the estate. To answer this, the Court must determine whether the parties intended for the contract to terminate upon the death of the Riggles.

Once the relevant pleadings are closed, any party may move for judgment on the pleadings. Pa.R.C.P. 1034. In deciding a motion for judgment on the pleadings, a court may only consider the pleadings and documents that are properly attached to the pleadings. *Casner v. American Federation of State, County, and Municipal Employees*, 658 A.2d 865, 869 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. *Felli v. Commonwealth, Dep't of Transp.*, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. *Ibid*; *Casner*, 658 A.2d at 869.

“It is the general rule that contracts made during a decedent's lifetime are not dissolved by the death of the obligor unless they involve peculiar skills or are based on distinctly personal considerations.” *Unit Vending Corp. v. Lacas*, 190 A.2d 298, 300 (Pa. 1963); *see also, Ress v. Barent*, 548 A.2d 1259, 1262 (Pa. Super. 1988). “However, this rule is

subject in the first instance to a construction of the contract itself and the determination from its terms as to what was the intention of the parties.” *Unit Vending*, 190 A.2d at 300. “If a contract fails to provide for the contingency of the death of a party, it is not to be presumed that the contract was intended to terminate with the decedent *Ress*, 548 A.2d at 1262. In this instance, the court “... will adopt the interpretation, which under all the circumstances of the case, ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects to be accomplished.” *Ibid*.

The Court holds that the agreement between Berfields and Riggles does not express intent for it to terminate upon the death of Bervilla Riggle. Although an examination of the agreement does not reveal a clause or statement that provides for the enforceability of the agreement after the death of the Riggles, the agreement cannot be considered ambiguous as to this issue.

What is clear from the language of the agreement is that Berfields and Riggles intended to provide an opportunity for the property to be placed back in the hands of the Berfield family once Riggles’ interest in it ended. This intent is not only manifested in the granting of the right of first refusal, but in the provisions of that right. The right of first refusal permitted Berfields to purchase the property at seventy-five percent of the fair market value. Allowing Berfields to purchase the property at a reduced price would make it easier for Berfields to reacquire the property. The right of first refusal was not only given to Berfields, but also to their heirs. This was done to ensure that even if Berfields preceded the Riggles in death, a family member could still enforce the right and reacquire the property. Finally, the right was exercisable if the property was to be sold or any interest in it transferred by any

means. This obviously would include the legal transfer of title to the heirs of Bervilla Riggle.¹ This broad language was meant to ensure that at any time Riggles relinquished their interest in the property Berfields would have the first opportunity to acquire it. All of this demonstrates that the intent of the agreement was to have the Berfield family reacquire the property once Riggles' interest ended.

In order to effectuate that intent, the agreement could not have been intended to terminate upon the death of Riggles. Upon the death of Riggles, their interest in the property would end. The death of Riggles would result in a transfer of an interest in the property. This occurrence would be encompassed by the broad language of the agreement and trigger the right of first refusal. Therefore, holding that the agreement terminated at the death of Bervilla Riggle and that her estate is not bound by the agreement would frustrate the intent of the parties and be in contradiction of the agreement's language.

“Courts do not assume that a contract's language was chosen carelessly, nor do they assume that the parties were ignorant of the meaning of the language they employed.” *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001). The parties to the agreement must have been aware that the use of such broad language would encompass a situation where the transfer of a property interest would be the result of Riggles' deaths, and therefore, intended for the agreement to apply. If the parties intended for the agreement to apply, then the agreement must have been intended to survive the death of Riggles since that is

¹ “All or any part of the estate of a decedent not effectively disposed of by will or otherwise passes to his heirs as prescribed in this chapter, except as modified by the decedent's will.” 20 Pa.C.S.A. §2101(a).

the only way it could be enforced. Therefore, the agreement did not terminate upon the death of Bervilla Riggle, and Fisher is bound by the agreement.

After finding that Fisher is bound by the agreement, the question becomes what is the appropriate remedy. In their Complaint and Motion for Judgment on the Pleadings, Berfields have sought an order directing Fisher to specifically perform the agreement and convey the property to them. The Court believes this to be an appropriate remedy.

Generally speaking, “[i]t is settled that contract rights of first refusal to purchase realty may be enforced by a decree of specific performance.” *Warden v. Taylor*, 333 A.2d 922, 923 (Pa. 1975). “A decree of specific performance involves the exercise of the equity powers and discretion of the court.” *Wagner v. Estate of Rummel*, 571 A.2d 1055, 1058 (Pa. Super. 1990), *app. denied*, 588 A.2d 510 (Pa. 1991). There is no right to a decree of specific performance. *Ibid*. Specific performance should only be granted if the party seeking it is clearly entitled to it, an adequate remedy at law does not exist, and justice requires it. *Cimina v. Bronich*, 537 A.2d 1355, 1357 (Pa. 1988). Furthermore, specific performance should not be ordered when it appears that such an order would result in a hardship or injustice to either of the parties. *Wagner*, 571 A.2d at 1058.

The Court concludes that specific performance of the agreement will be ordered. Berfields’ right to relief is clear. Fisher, as Administratrix, is bound by the agreement. The death of Bervilla Riggles results, by operation of law (20 Pa.C.S.A. §2101 *et seq.*), in a transfer of her interest in the property to her heirs. By the terms of the agreement, Berfields now have the right of first refusal to purchase the property for seventy-five percent of the fair market value. Berfields do not have an adequate remedy at law. Real estate possesses a unique

character. *Fuisz v. Fuisz*, 563 A.2d 540, 542 (Pa. Super. 1989), *rev'd*, 591 A.2d 1047 (Pa.1991) (The Superior Court's holding that a valid parol gift of land had been made was reversed.). It is because of this unique character that monetary damages cannot adequately compensate for the loss. Justice requires that specific performance be ordered because it would accomplish the goal of the parties when they entered into the agreement. It would give the parties what they bargained for. While as unpalatable as an order of specific performance may be to Fisher, the facts before the Court do not establish that specific performance of the agreement would result in an injustice.

Accordingly, the Motion for Judgment on the Pleadings is granted. An order directing specific performance of the agreement will be issued.

ORDER

It is hereby ORDERED that the Motion for Judgment on the Pleadings of Plaintiffs Robert C. Berfield and Pearl Jenkins Berfield filed July 9, 2004 is GRANTED.

Judgment is entered in favor of Robert and Pearl Berfield.

Sandra L. Fisher, as Administratrix of the Estate of Bervilla M. Riggle, is directed to transfer the property, identified in the deed attached to Plaintiffs' Complaint as Exhibit 1, to Robert and Pearl Berfield. Robert and Pearl Berfield shall pay the estate of Bervilla M. Riggle seventy-five percent of the fair market value of the property. This shall be carried out on or prior to January 31, 2005. If by December 13, 2004 the parties cannot agree on a procedure to determine the fair market value of the property they shall request a court conference to determine the method of establishing that value. Such conference will be held on or before December 23, 2004.

BY THE COURT:

William S. Kieser, Judge

cc: David C. Shipman, Esquire
Craig P. Miller, Esquire
138 East Water Street; Lock Haven, PA 17745
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)