IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CRYSTAL LAKE CAMPS, INC., Plaintiff	:	NO. 03-01,904
vs.	:	
	:	CIVIL ACTION - LAW
DOROTHY S. ALFORD, GREGORY F. WELTEROTH, and THOMAS W. CORBETT, JR., Pennsylvania Attorney General, Defendants	:	Non-jury Trial

OPINION AND VERDICT

Before the Court is the request for declaratory judgment as contained in Count I of the Complaint filed by Plaintiff, Crystal Lake Camps, Inc. (CLC), and the opposing request for declaratory judgment as contained in Count I of Defendant Welteroth's Third Amended Counterclaim against CLC.[1] Simply put, the dispute arises from two agreements of sale for the same property entered into by Defendant Alford, one with CLC and the other with Welteroth. The parties seek a declaration as to which agreement should prevail.

After a trial held November 8, 2005, the Court makes the following:

FINDINGS OF FACT

1. In 2001, Dorothy Alford was the owner of certain real property located in Lycoming and Sullivan Counties, consisting of two warrants of land, or approximately 926 acres.
2. Crystal Lake Camps, Inc. is a 501(c)(3) non-profit corporation affiliated with the Church of Christian Science.[2]
3. Since approximately 1949, CLC has used certain portions of the property for a religious-based summer camp, and has erected thereon various buildings for that purpose. Until 2001, CLC paid rent to Alford pursuant to an informal arrangement.

[1] CLC has also asked the Court to rule on Count II of that Counterclaim, in which Welteroth seeks an award of rental value, in the event CLC is declared the rightful owner of the property.

[2] The Attorney General has been joined in this action as a result of the non-profit status of CLC, acting as *parens patriae* on behalf of the public at large in matters affecting charitable interests.

4. On May 5, 2001, CLC and Alford entered a written lease agreement which contained an option to purchase certain of the property (generally, the land on which the buildings had been constructed), and a right of first refusal with respect to the remainder.
5. This lease was executed by CLC based on proposed charitable donations which were to be made for improvements to the property, and CLC's wish to maintain ownership of those improvements.
6. In 2002, major improvements to the property were made, at a cost of over $1,000,000.00.
7. Also in 2002, in anticipation of exercising its option and right of first refusal, CLC took steps toward transferring ownership, such as applying for subdivision approval, obtaining an appraisal and arranging for financing.
8. On November 1, 2002, Alford and Welteroth entered a written Agreement of Sale for the entire property,[3] which agreement specifically references the May 5, 2001, lease and the option to purchase contained therein.
9. On February 7, 2003, Alford and CLC entered a written Agreement of Sale for the entire property, thus exercising the option to purchase and right of first refusal.
10. On November 11, 2003, the Alford-CLC Agreement of Sale was amended and also on that date, the closing took place. A deed from Alford to CLC was executed by Alford. A lis pendens indexed against the property by Welteroth at some point prior to closing remains as a cloud on the title, however.

DISCUSSION

Welteroth bases his claim to the property on his Agreement of Sale because it pre-dates CLC's Agreement of Sale. He contends that once he entered the Agreement of Sale with Alford, he became the equitable owner of the premises and CLC was thereafter required to deal with him, not Alford, respecting the option to purchase and right of first refusal. He further contends the option to purchase is invalid and unenforceable because it does not specify a sales

[3] Although the Court is referring to the "entire property" it does appear that in the Alford-Welteroth agreement, the property is described as containing 887 acres, more or less, while in the Alford-CLC agreement, it is described as containing 926 acres. This difference does not affect resolution of the matter, however.

price. Therefore, he concludes, he was not obligated to honor the option or the right of first refusal (which applies only if the option is exercised) and could take title to the property himself. This argument is flawed, however, for it ignores the well-established legal principle of "relation back" which has been held applicable to options to purchase land: when an option to purchase real estate is exercised, the optionee is considered as having had the equitable title to the property from the date of the option and not from the date that it is exercised. Guido v. Township of Sandy, 880 A.2d 1220 (Pa. 2005); Shaffer v. Flick, 520 A.2d 50 (Pa. Super. 1987), citing Hennebont Co. v. Kroger Co., 289 A.2d 229 (Pa. Super. 1972)(citing In re Powell's Appeal, 123 A.2d 650 (Pa. 1956)), Detwiler v. Capone, 55 A.2d 380 (Pa. 1947), Schnee v. Elston, 149 A. 108 (Pa. 1930), Peoples Street Ry. Co. v. Spencer, 27 A. 113 (Pa. 1893), and Phoenixville, Valley Forge & Strafford Electric Railway Co.'s Appeal, 70 Pa.Super. 391 (1918). Thus, if the option is held to be enforceable, CLC 's interest pre-dates Welteroth's interest and title rightfully passed to CLC by way of the November 11, 2003 deed.

With respect to the question of the option's enforceability, it is noted as a preliminary matter that Alford contends Welteroth, as a third party, has no standing to challenge such. Because the Court finds the option indeed enforceable, however, the issue of standing need not be addressed.

The option to purchase is contained in Paragraph 15 of the May 5, 2001, lease, which provides, in pertinent part:

> During the term of this lease, Tenant shall have the right to purchase the Demised Premises, less the land described in Exhibit B, which Landlord is retaining and exclusive of Landlord's personal property … presently in the buildings. The purchase price for such land shall be determined by agreement of the parties based upon the report of a certified appraiser or an individual qualified in property valuation agreeable to both parties. … .

Welteroth contends this clause is void for want of a specified price, which, he claims, makes the contract "too vague and uncertain to be enforced", citing Portnoy v. Brown, 243 A.2d 444 (Pa. 1968). While Portnoy does stand for the proposition that "price is an essential ingredient of every contract for the transfer of property", and that price "must be sufficiently definite and certain", it does *not* indicate that a dollar figure must be specified, as Welteroth contends. Rather, it bestows enforceability on contracts even where price is not specified, if price is

"capable of being ascertained from the contract between the parties", recognizing the legal maxim "that is certain which can be made certain." Id. at 447. Indeed, the Court goes on to find that in the case before it, an option price which was to be determined by the "current market value at the end of the final term" met "the necessary standards required by law with respect to the certainty of the purchase price so as not to preclude specific performance of the option agreement." Id. at 448. Similarly, the language in the option before this Court, "[t]he purchase price for such land shall be determined by agreement of the parties based upon the report of a certified appraiser or an individual qualified in property valuation agreeable to both parties", lends sufficient certainty to the price term to hold the option enforceable.

Moreover, any doubt respecting the intention of the parties has been resolved by their conduct in effectuating the real estate transaction at issue. As was stated in Regscan, Inc. v. Conway Transportation Services, Inc., 875 A.2d 332, 337 (Pa. Super. 2005)(quoting Greene v. Oliver Realty, Inc., 526 A.2d 1192, 1194 (Pa. Super. 1987)), "[b]ecause courts wish to effectuate the parties' intentions, they may enforce an indefinite contract if its terms have become definite as the result of partial performance. One or both parties may perform in such a way as to make definite that which was previously unclear." Here, all doubt as to the price intended by the parties has been extinguished by the consummation of the sale.

To further address Welteroth's argument that by virtue of his Agreement of Sale with Alford, he took equitable title to the property and CLC was thereafter required to negotiate any sale with him rather than with Alford, the Court finds it helpful to consult a recognized authority, Corbin on Contracts. As noted above, the doctrine of "relation back" provides CLC with an equitable interest in the property as of the date of the option, but it also cannot be denied that an agreement of sale for real estate ordinarily passes equitable title to the purchaser. See, e.g., Payne v. Clark, 187 A.2d 769 (Pa. 1963). Thus, as is stated in Section 11.16,

> "Questions concerning these legal relations cannot be answered by starting with a statement that the option holder has or has not an "interest" in the land and then proceeding by deductive logic. The major premise in such reasoning is so obscure that the logical process becomes a mere begging of the question. No more service is rendered by cases that merely declare that the rights of the parties are (or are not) determined by the doctrine of "relation back" to the time the option was given. This is a mere statement of

> the result reached, when what we need is a statement of the reasons for reaching the result.

Corbin on Contracts, Revised Ed., Section 11.16. The author then goes on to provide that statement:

> [T]he holder of an option to buy land has an unconditional right to a conveyance, a power to turn that right into an unconditional right to immediate conveyance by performing the conditions, an immunity from revocation by the option giver, and the legal privilege of performing or not performing the conditions at the holder's option. During the agreed term of the option, the option holder has a right that the option giver shall not repudiate or make performance impossible or more difficult by conveying the land to a third person. These rights are enforceable by all the usual judicial remedies, including judgment for damages, injunction, and decree for specific performance. It is beyond question that those who have bought and paid for an option on the land believe that they have something on which they can rely; they make contracts for the resale of the land, often make valuable improvements on it, and make other important changes of position as evidence of such reliance.
>
> In view of the foregoing, it seems very clear that the option holder should also have rights against third persons, to the effect that third parties shall not interfere with performance by the promisor by contracting with the promisor or by accepting from the promisor a deed of conveyance in breach of the promisor's duty to the option holder.
>
> Just as in the case of contracts for the purchase of land that are not option contracts, a purchaser for value without notice of the option holder's right is equally worthy of protection by the courts and in equal need of it. If such a purchaser gets a deed of conveyance, the option holder has no remedy against the third-party purchaser and must proceed against the option giver for such reparation as may be possible. But as against a third person who is not an innocent purchaser for value, the option holder should have exactly the same rights and remedies as has any other person who has a contract to buy the land; the existence of the "option" (the privilege to perform or not to perform the conditions) should make no difference. One who purchases land with notice that the grantor has given an option to another to purchase such property takes subject to the option and may be compelled to perform the contract which is formed by a subsequent valid exercise of the option to the same extent as a buyer taking subject to an ordinary executory contract of sale. The option holder has priority over the third-party purchaser with notice of the option and may maintain a suit for specific performance against the third-party purchaser. This is supported by the greater number of decisions. The reason is not that the option holder has an "interest" in the land, but because the option holder has contract rights that ought to be respected by

> third persons. It is as a result of this and not as a reason for it, that we may properly say that the option contract has created an equitable interest in the land.

Id.

That these principles have been incorporated into the law of this Commonwealth seems abundantly clear. See In re Romig's Estate, 93 A.2d 884 (Pa. Super. 1953)(the option was an interest in the land dating from the time the option was given and was enforceable as against an alleged purchaser with notice); Kerr v. Day, 14 Pa. 112 (1850)(when the lessee made his option to purchase, he was to be considered as the owner ab initio); Peoples Street Ry Co. v. Spencer, 156 Pa. 85 (1893)(following Kerr .v Day). Therefore, as a third party with notice of the option, Welteroth will not be allowed to interfere with performance by Alford by contracting with her for the sale of the same property.

CONCLUSIONS OF LAW

1. The option to purchase contained in the lease agreement of May 5, 2001, is a valid and enforceable option.
2. CLC effectuated a valid exercise of that option, and also of its right of first refusal with respect to the remaining property, in entering the Agreement of Sale with Alford.[4]
3. The Alford-Welteroth agreement has no legal effect on CLC's agreement with Alford.
4. The Deed of November 11, 2003, passed valid legal title to the property to CLC.

VERDICT

AND NOW, this 18th day of November 2005, for the foregoing reasons, the Court finds in favor of CLC and against Welteroth with respect to both Count I of CLC's Complaint and Welteroth's counter-claim against CLC, both Counts I and II. Upon entry of

[4] The validity of the right of first refusal is not at issue in this matter; Welteroth indicated at the hearing that the "whole case" rested on a determination of the validity of the option.

judgment in accordance with this verdict, the lis pendens indexed against the property shall be stricken.[5]

BY THE COURT,

Dudley N. Anderson, Judge

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[5] The Court incorporates into the instant Opinion and Verdict the description of the property as contained in the Complaint filed in this matter on November 12, 2003.