

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

<b>DENNIS R. REARICK and HEATHER</b>	:	
<b>J. REARICK</b>	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>No. 05-00,791</b>
	:	<b>CIVIL ACTION</b>
<b>DONNA J. AULT, Agent for</b>	:	
<b>MILDRED H. YOUNG, a/k/a</b>	:	
<b>MILDRED H. WHITEHOUSE, and</b>	:	
<b>THOMAS G. DUNLAP and LINDA A.</b>	:	
<b>DUNLAP</b>	:	
<b>Defendants</b>	:	

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

Mildred H. Young, a/ka/a Mildred H. Whitehouse, and Thomas G. Dunlap and Linda A. Dunlap, (Defendants) appeal this Court’s Order of August 7, 2007, which granted Dennis R. Rearick and Heather J. Rearick’s (Plaintiffs) June 15, 2007 Motion for Partial Summary Judgment and denied Defendant Dunlap’s June 25, 2007 Motion for Summary Judgment. Defendant Thomas G. Dunlap’s Notice of Appeal and Statement of Matters Complained of on Appeal were timely filed on September 20, 2007 and October 4, 2007 respectively. Defendant Mildred H. Young a/k/a Mildred H. Whitehouse’s Notice of Appeal and Statement of Matters Complained of on Appeal were timely filed on October 1, 2007 and October 10, 2007 respectively. In their Statement of Matters Complained of on Appeal, Defendants Young and Dunlap challenge the Court’s decision on five grounds.

***Background***

The subjects of this dispute are Lots 3 and 4, which are owned by Defendant Young. On August 5, 2002, Plaintiffs and Defendant Young entered into a contractual agreement, captioned

“River lot Agreement”, which is recorded in the Lycoming County Record Book 4625, page 136. The terms of the River Lot Agreement provided that in exchange for Plaintiffs’ services, Defendant Young was to convey to Plaintiffs, approximately five acres in area of real estate, along with access to said real estate.

On November 19, 2004, Plaintiffs and Defendant Young entered into a second agreement captioned “Gift Agreement”. Pursuant to the Gift Agreement, Defendant Young agreed to convey to Plaintiffs the real estate in the River lot Agreement, together with an additional 3.5 acres of real estate. The Gift Agreement provided that Plaintiffs were obligated to cause the real estate to be subdivided, to pay for the subdivision of the real estate, and to contribute toward payment of any roll back taxes. By Article of Agreement, Defendant Young reaffirmed her prior obligations to convey to the Plaintiffs, all of the real estate, along with access to the real estate, agreed to convey real estate to Defendant Dunlap, and reserved some of the real estate for herself. Plaintiffs also assert that Defendants Dunlap and Young represented to Plaintiffs that Lots 3 and 4 would be conveyed by Defendant Young to Plaintiffs. Additionally, Defendants represented to Plaintiffs that Defendant Dunlap would assert no right, title, claim, or interest in said lots. Plaintiffs allege that they fulfilled their obligations under the agreements, which were required to be performed in the past; however, they are unable to perform any future obligations as Young has failed and refused to comply with her contractual obligations. Based on this failure, Plaintiffs have sought Specific Performance, Money Damages, Declaratory Relief, and Equitable/Promissory Estoppel.

In opposition to Plaintiffs’ allegations, Defendant Young alleges that the Gift Agreement lacked consideration. Further, Defendant Young alleges that Defendant Dunlap and Defendant Young entered into a First Right of Refusal to purchase her property on November 19, 2003,

which predates the Gift Agreement. Moreover, Defendant Dunlap denies that he made any oral representations for the conveyance of any real estate to Plaintiffs.

***Discussion***

Summary Judgment may be granted as a matter of law, in whole or in part “after the relevant pleadings are closed, but within such time as not to unreasonably delay trial . . . (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report. . . .” Pa.R.C.P. No. 1035.2. In reviewing a Motion for summary judgment, the Court “views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” Toy v. Metro. Life Ins. Co., 928 A.2d 186, 195 (Pa. 2007) citing Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). “Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt.” Toy, at 195 (Pa. 2007) citing Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991). Defendant Dunlap acknowledged in his deposition, the lack of consideration for the Right of First Refusal. As such, Plaintiffs were entitled to judgment as a matter of law.

Defendants Young and Dunlap challenge this Courts rationale in its August 7, 2007 Order on the following grounds: first; that the Court committed an error of law and abuse of discretion by concluding that Plaintiffs have standing to challenge the November 19, 2003, Right of First Refusal when they are not parties to the same and consequently lack privity; second, that the Court committed an error of law by upholding Plaintiffs’ sole cause of action against Appellant, to wit: Declaratory Judgment, when the parol evidence rule serves to bar any potential cause of action that Plaintiffs may assert against Appellant; third, that the Court committed an

error of law and abused its discretion by permitting Plaintiffs to proceed on their equitable/promissory estoppel claim when Plaintiffs have failed to properly plead the same in their Amended Complaint; fourth, that the Court committed an error of law and abused its discretion by striking, *sua sponte*, the Right of First Refusal from the Lycoming County Registrar and Records Office with the benefit of any evidentiary hearing on the issue; and fifth, by striking, *sua sponte*, the First Right of Refusal the Court violated Appellant's due process rights under the United States Constitution as well as his rights under Article I, Section I of the Pennsylvania Constitution.

First, Defendant Young raised the First Right of Refusal between Defendants Young and Dunlap as an Affirmative Defense to this action. Defendant Young has asserted that the First Right of Refusal she granted to Defendant Dunlap creates in Dunlap, an interest in the real estate, which is superior to Plaintiffs' claim. As such, the Plaintiffs' have standing to challenge the First Right of Refusal to determine if Plaintiffs' equitable interest in the real estate is superior to that of Dunlap's interest in the real estate.

Second, 13 Pa.C.S. § 2202 states in relevant part:

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of contemporaneous oral agreement . . .

As the oral agreements involving Defendant Dunlap were not included in the agreement between Defendant Young and Plaintiffs', and Defendant Dunlap has admitted to participating in said

agreement, the Gift Agreement was not a fully integrated document. Therefore, the parol evidence rule does not bar any claim Plaintiffs may assert against the Defendants.

Third, Pa.R.C.P. No. 1019(a) requires that “the material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” The Pennsylvania Superior court in Estate of Swift v. Northeastern Hospital of Philadelphia, 456 Pa. Super. 330, 337, 690 A.2d 719 (1997), stated, “[w]hile it is not necessary that the complaint identify the specific legal theory of the underlying claim, it must apprise the defendant of the claim being asserted and summarize the essential facts to support that claim.” Plaintiffs have properly pleaded their claim for equitable/promissory estoppel as the averments in paragraphs 38 through 48 of Plaintiffs’ Amended Complaint summarize the essential facts in support of Plaintiffs’ claim for equitable/promissory estoppel as well as apprise the Defendants of the claims Plaintiffs are asserting.

Fourth, as the First Right of Refusal is not a contract, the Court did not commit an error in striking the First Right of Refusal from the Lycoming County Registrar and Records Office without an evidentiary hearing. Defendant Dunlap admitted in his deposition that he did not tender any consideration to Defendant Young in support of the formation of a contract. Since the First Right of Refusal lacks consideration, it is not a valid contract, and provides Defendant Dunlap with no interest in the property. Therefore, as Defendant Dunlap has no interest in the property, a hearing is not required.

Finally, the fourteenth Amendment to the United States Constitution states in relevant part, “No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .” USCS Const. Amend. 14, § 1. Additionally, Article 1 of the Pennsylvania Constitution states in relevant part, “All men . . . have certain inherent and indefeasible rights, among which

are those of . . . acquiring, possessing and protecting property . . . Pa. Const. Art. 1 § 1. The Supreme Court has determined that contractual interest can create a property right. Town of Castle Rock v. Gonzales, 545 U.S. 748, 773 (U.S. 2005). Here, the Defendants rights were not violated under the due process clause of the United States Constitution, nor under Article I, Section I of the Pennsylvania Constitution. The First Right of Refusal lacked consideration to be a valid contract; and thus Defendant Dunlap did not possess any right to the property.

***Conclusion***

For the foregoing reasons, this Court respectfully suggests that it's August 7, 2007 Order granting the Plaintiffs' Motion for Partial Summary Judgment and denying the Defendant Dunlap's June 25, 2007 Motion for Summary Judgment be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, Judge

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