

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DUSTIN M. HOFFMAN and	:	
HANNAH B. HOFFMAN, his wife,	:	
Plaintiffs	:	NO. 08-01556
	:	CIVIL ACTION – LAW
vs.	:	
	:	
RHONDA M. McDONOUGH, a/k/a	:	
RHONDA M. MacDONOUGH,	:	
CHRISTOPHER M. McDONOUGH, her	:	
Husband, RONALD S. SMELTZER, a/k/a	:	
R. SCOTT SMELTZER, MAYNARD F.	:	
SMELTZER, and ADRIENNE M.	:	
SMELTZER, a/k/a ADRIANNE	:	
SMELTZER,	:	
Defendants	:	

**OPINION AND ORDER**

AND NOW, this 30<sup>th</sup> day of September 2011, following a hearing on this matter, this Court makes the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Plaintiffs and individual Defendants (except Christopher M. McDonough) are the record owners of real property known as tax parcel numbers 47-225-119, 47-225-123, and 47-225-124. These parcels jointly known as 8011 Little Pine Creek Road, Waterville, Pennsylvania.
2. Plaintiffs own a one-half (1/2) interest in this real property.
3. Defendants Rhonda McDonough, R. Scott Smeltzer, Maynard F. Smeltzer, and Adrienne Smeltzer own the other one-half (1/2) interest in this real property.

4. On or about December 5, 2006, Defendants (except for Christopher M. McDonough) retained James G. Malee, Esquire, pursuant to a disagreement between Plaintiffs and Defendants as to the use of the property.
5. By correspondence dated December 5, 2006, Attorney Malee recommended either that the parties divide the property into equal shares or that one party purchase the other party's property interest.
6. Defendants retained Marc S. Drier, Esquire, who filed an action in partition on behalf of Defendants (except Christopher M. McDonough) at Lycoming County Docket No. 07-01621.
7. By letter dated October 31, 2007, Attorney Drier memorialized an agreement reached between the parties. Plaintiffs agreed to purchase Defendants' interests in the property for the sum of \$160,000.00 (\$40,000.00 to each of the four co-tenants). In this letter, Attorney Drier stated Defendants' request that they be able to retrieve a memento of their grandfather from the property.
8. On November 21, 2007, Attorney Drier filed a Praecipe to Settle and Discontinue the matter at Docket No. 07-01621 with the Lycoming County Prothonotary.
9. In February 2008, Defendants terminated their relationship with Attorney Drier and retained Christian D. Frey, Esquire.
10. On February 27, 2008, Attorney Frey sent a draft of the parties' agreement to Bradley S. Hillman, Esquire, counsel for Plaintiffs. This draft agreement is known as Agreement No. 1.
11. Agreement No. 1 provides that Defendants will sell their interests in the property to the Plaintiffs for a sum of \$160,000.00. Agreement No. 1 provides for a \$16,000.00

down payment and includes escrow and default provisions. Agreement No. 1 also provided that movable personal property that belonged to Defendants would be excluded from the sale.

12. On March 11, 2008, Attorney Frey sent a second agreement to John R. Zurich, Esquire, counsel for Plaintiffs. This draft agreement is known as Agreement No. 2.
13. Agreement No. 2 included the same provisions as Agreement No. 1, except Agreement No. 2 deleted the escrow and default provisions and provided that movable personal property that belonged to Defendants would be included in the sale.
14. On March 18, 2008, Attorney Frey sent three copies of Agreement No. 2 to Adrienne Smeltzer. These copies were to be executed by all of the sellers, with one copy to be sent to Maynard Smeltzer in North Carolina.
15. On March 26, 2008, Plaintiffs (through counsel) sent signed copies of Agreement No. 2 to Attorney Frey. After receiving these signed copies back from Plaintiffs, Attorney Frey attempted to send Agreement No. 2 to Defendants because Attorney Frey had not received any signed copies of this agreement back from Defendants. However, instead of sending Agreement No. 2 to Defendants, Attorney Frey sent Agreement No. 1 to Defendants.
16. Maynard Smeltzer signed a copy of Agreement No. 1. Attorney Frey received this signed copy of Agreement No. 1.
17. On April 1, 2008, Attorney Frey discovered that he had sent Agreement No. 1 instead of Agreement No. 2 to Defendants. Attorney Frey discussed this mistake with Defendant Rhonda McDonough.

18. Defendant Rhonda McDonough instructed Attorney Frey to remove the signature page of Maynard Smeltzer's signed Agreement No. 1 and attach it to the signed copy of Agreement No. 2.
19. On April 10, 2008, Attorney Frey faxed a fully executed copy of Agreement No. 2 to Plaintiffs' counsel. This copy included the signatures of Rhonda M. McDonough, Christopher M. McDonough, Ronald S. Smeltzer, Maynard F. Smeltzer, Adrienne M. Smeltzer, Dustin M. Hoffman, and Hannah B. Hoffman.
20. Relying on the delivery of Agreement No. 2, counsel for both parties began preparing for a closing on the property, originally scheduled to be held on April 25, 2008. Upon request of Defendants' counsel, the closing was rescheduled to May 2, 2008.
21. Attorney Frey sent the deed to transfer the property to Maynard Smeltzer. On April 21, 2008, Defendant Maynard Smeltzer executed the Deed before a notary public in North Carolina. Defendant Maynard Smeltzer returned the deed, without any limiting instructions, to Attorney Frey.
22. Attorney Frey also received from Defendants executed Owners' Affidavits.
23. Maynard Smeltzer testified that he signed the Deed for the Property and an Owner's Affidavit because he thought a sale of the property was to occur under the terms of Agreement No. 1. This Court finds this testimony not to be credible.
24. On May 2, 2008, neither Defendants nor their counsel appeared at the closing of the property. Plaintiffs were present at the closing.
25. Plaintiffs initiated this action at Docket No. 08-01556 to enforce Agreement No. 2. Defendants filed a counterclaim seeking partition of the property.

26. Other than Maynard Smeltzer, all of the Defendants executed Agreement No. 2.
27. Maynard Smeltzer testified that Agreement No. 1 provided a settlement date for March 31, 2008.
28. Maynard Smeltzer testified that he signed the deed to the property in front of a notary public in North Carolina on April 21, 2008.
29. Maynard Smeltzer acknowledged that the deed that he signed and had notarized: stated the grantors; stated the grantees; stated consideration; and stated the description of the property.
30. Maynard Smeltzer testified that he did not see Agreement No. 2 before signing the deed.
31. Maynard Smeltzer testified that he did not inform Attorney Frey not to attend the closing on the property.
32. Maynard Smeltzer testified that he did not know why neither Attorney Frey nor the other co-Defendants failed to attend the closing.
33. Maynard Smeltzer was not an active participant in this matter from 2008 to the present time. Maynard Smeltzer knew of and consented to his sisters' actions on his behalf.
34. At all relevant times, either Rhonda McDonough or Adrienne Smeltzer acted as the lead persons on behalf of Defendants, including Maynard Smeltzer.
35. At all relevant times, Maynard Smeltzer did not object to his sisters' actions on his behalf, the handling of the resolution of the first suit, the retention of various attorneys, or the negotiation of the terms of the agreements.

36. Maynard Smeltzer did not make any objection to the correspondence of Attorney Drier that set forth the terms of the acceptance of Plaintiffs' offer to purchase Defendants' interest in the property.

37. From the initial contact that the parties had with Attorneys Malee and Drier, it has been Defendants' goal to cause a sale of the property.

**Conclusions of Law:**

1. The parties entered into a valid, binding agreement that Defendants would sell their one-half interest in the property to Plaintiffs for the sum of \$160,000.
2. The Statute of Frauds, 33 P.S. § 1, *et seq.*, has been satisfied by the execution of Agreement No. 2 and the deed to the property.
3. Defendants' words and actions demonstrate an objective manifestation that they assented to the sale of this property.

**OPINION**

The two issues to be decided by this Court in this matter are whether Plaintiffs have satisfied the Statute of Frauds and whether a contract exists for the sale of the property in question. 33 P.S. § 1 provides that estates in land should be assigned, granted, or surrendered in a writing signed by the party that is assigning, granting, or surrendering the property interest. The Superior Court has held that the writing requirement of the Statute of Frauds may be satisfied through multiple documents. In particular, that Court determined

[a]ny number of documents can be taken together to make out the necessary written terms of the bargain provided there is sufficient connection made out between the papers, without the aid of parol evidence, further than to identify the papers to which reference is made, but not to supply a material term to the contract. The purpose of the Statute of Frauds is to prevent the enforcement of unfounded fraudulent claims

by requiring that contracts pertaining to interests in real estate be supported by written evidence.

*Strausser v. PRAMCO, III*, 944 A.2d 761, 765 (Pa. Super. Ct. 2008), citing *Haines v. Minnock Construction Co.*, 433 A.2d 30, 33 (Pa. Super. Ct. 1981) (citations omitted). To be removed from the Statute of Frauds, the writings must indicate “a desire to transfer the property in question, an adequate description of the property, and the stated consideration.” *Long v. Brown*, 582 A.2d 359, 363 (Pa. Super. Ct. 1990); *see also Trowbridge v. McCaigue*, 992 A.2d 199, 203 (Pa. Super. Ct. 2010) (stating that the essential terms for a contract for the sale of real estate are the names of the parties, the description of the property, and the consideration/purchase price). That Court has also held that a signed deed, that was not legally delivered, may be used to satisfy the Statute of Frauds. *Id.* at 362-63. That Court concluded

[i]t would seem rather incongruous to allow virtually any other type of writing to satisfy the Statute yet not allow a signed deed. A deed is a rather formal writing and is widely known to have legal significance. Thus, it would seem to support the reasoning behind the statute, which is the prevention of fraud. We think that virtually no one would frivolously sign a deed purporting to transfer their land. Furthermore, a deed is more likely to include the relevant information in its final negotiated state.

*Id.* at 363, n.1

In this case, there are ample documents of record that support the satisfaction of the Statute of Frauds for the sale of real estate. Both Agreements No. 1 and No. 2 portray that the parties desired to convey and purchase the property in question for the sum of \$160,000.00. In both agreements, the property is described by both postal address and tax parcel numbers. All Defendants in this case signed an original version of one of these two agreements, consenting to these essential terms. In addition, Defendant Maynard Smeltzer executed a deed to transfer his ownership interest in this property to Plaintiffs. Defendant

Maynard Smeltzer executed this deed before a notary public in North Carolina. This Court believes that these documents, when considered as a whole, satisfy the Statute of Frauds for the sale of the property in question.

Since this Court deems that the Statute of Frauds is satisfied, it can now determine whether an agreement for the sale of land was entered into by the parties. The Superior Court has held that the objective manifestation of the parties is the governing factor that this Court considers when determining whether an agreement for the sale of land was entered into, “regardless of subjective beliefs and reservations” about consummating the deal. *Long*, 582 A.2d at 363. That Court stated “[a] true and actual meeting of the minds is not necessary to form a contract.... In ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter.” *Id.* In *Long*, the Superior Court held that a party assented to the sale of their property when they: signed a release of restrictions that stated they wanted to convey the land in question; prepared a document under the heading of “seller”; acquiesced to a survey of the land; and signed a deed that was prepared by the party’s attorney. *Id.*

Similarly, in this case, Defendants’ manifested an objective assent to the sale of this property. When considering Agreement Nos. 1 and 2, the executed deed by Defendant Maynard Smeltzer, and the correspondence between the parties’ attorneys, this Court believes there is no doubt that Defendants’ manifested an assent to the sale of this property. Although Defendants’ argue that the terms of Agreements No. 1 and 2 differ in escrow, deposit, and personal property provisions, these minor discrepancies cannot thwart the evident intention of Defendants to sell the property in question.



In short, this Court believes that the Statute of Frauds has been satisfied and an objective assent to the sale of this property has been manifested by Defendants pursuant to Agreement No. 2.

**ORDER**

AND NOW, this 30<sup>th</sup> day of September 2011, it is hereby ORDERED and DIRECTED that Defendants' specifically perform the Agreement of Sale (Agreement No. 2). Defendants' Counterclaim is DISMISSED.

BY THE COURT,

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Richard A. Gray, J.

RAG/abn

cc: N. Randall Sees, Esquire  
Norman M. Lubin, Esquire  
Gary Weber, Esquire