

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THOMAS M. RANDIS and LISA A. RANDIS,	:	
Plaintiffs	:	DOCKET NO. 12-00,651
	:	CIVIL ACTION – LAW
vs.	:	
	:	
LEROY E. PITTENGER, SR. and	:	
JOYCE A. PITTENGER,	:	
Defendants	:	

OPINION AND ORDER

This matter comes before the Court on Plaintiffs’ Motion for Judgment on the Pleadings.

This matter arises out of a familial dispute over a farmhouse and barn. Plaintiffs wish to eject Defendants from the property. Defendants assert that they have an oral life estate in the property and that they are entitled to possession of the farmhouse for the remainder of their lives.

Plaintiffs request judgment on the pleadings because an oral life estate violates the Statute of Frauds. *See* 33 P.S. § 1. The Court agrees with Plaintiffs.

I. Procedural History

1. On March 16, 2012, a judgment was entered in this matter by Magisterial District Judge Gary A. Whiteman. On March 26, 2012, the judgment was appealed.
2. On April 16, 2012, Plaintiffs filed a complaint stating one count: ejectment.
3. On May 21, 2012, Defendants filed an Answer with New Matter and Counterclaims asserting three counterclaims: reformation, rescission, and declaratory judgment.
4. As of June 11, 2012, the pleadings were closed. *See* Plaintiffs’ Response.

II. Findings of Fact

1. This matter affects the property located at 307 Loudenslager Road, Eldred Township, Williamsport, Lycoming County, Pennsylvania. This property is identified as Lycoming County Tax Parcel No. 11-311-222.

2. Defendants are the natural parents of Plaintiff Lisa A. Randis (formerly known as Lisa A. Brungard).
3. By deed dated February 2, 1976, Defendants acquired the underlying property from Guy E. Loudenslager and Irene M. Miller. *See* Lycoming County Record Book No. 753, pgs. 32-35.
4. On February 23, 1999, Plaintiff Lisa Randis and her then-husband Gary R. Brungard entered into a sales agreement with Defendants. This agreement stated that the property located at R.R. #1 Box 461, Williamsport, Lycoming County, Pennsylvania, would be sold by Plaintiffs to Defendants for the sum of \$81,000.00. The agreement stated that the property being sold constituted approximately 17.5 acres and included with it “a farm house, [a] bank barn, [a] 2 car garage, [a] horse barn, and other structures.” Plaintiff Lisa Randis, Gary Brungard, and Defendants signed this agreement.
5. On March 12, 1999, Defendants special warranty deeded the property to Plaintiff Lisa Randis and Gary Brungard for the sum of \$81,000.00. *See* Lycoming County Record Book No. 3247, pgs. 51-60. In this deed, Defendants excepted and reserved four parcels and two easements. The deed recites that the property is the same premises deeded to Defendants from Guy E. Loudenslager and Irene M. Miller at Lycoming County Record Book No. 753, pg. 32.
6. The March 12, 1999 Special Warranty Deed does not reserve a life estate interest in the property.
7. On March 12, 1999, Plaintiff Lisa Randis and Gary Brungard acquired a purchase money mortgage against the property located at R.R. #1 Box 461, Eldred Township,

Williamsport, Lycoming County, Pennsylvania. *See* Lycoming County Record Book No. 3247, pgs. 61-74. The mortgage identifies the mortgaged property as Lycoming County Tax Parcel No. 11-311-222. The note is for the principal amount of \$81,000.00. The mortgage's exhibit describing the mortgaged property does not reserve a life estate in the property to Defendants.

8. On January 3, 2001, the mortgage on the property was satisfied. *See* Lycoming County Record Book No. 4041, pgs. 25-26. *See also* Lycoming County Record Book No. 3247, pg. 61.
9. On June 5, 2007, Plaintiff Lisa Randis and Gary Brungard entered into an equitable distribution order resulting from their divorce action. In that Order, the parties agreed that Plaintiff Lisa Randis would be rewarded all rights, title, and interest in the marital property located at 307 Loudenslager Road, Eldred Township, Williamsport, Lycoming County, Pennsylvania.
10. On July 2, 2007, Plaintiff Lisa Randis and Gary Brungard special warranty deeded the property that they acquired from Defendants to solely Plaintiff Lisa Randis. *See* Lycoming County Record Book No. 6069, pgs. 24-29. The deed recites that the property is the same premises deeded to Plaintiff Lisa Randis and Gary R. Brungard from Defendants at Lycoming County Record Book No. 3247, pg. 51.
11. On October 31, 2008, Plaintiff Lisa Randis deeded the property to herself and her new husband, Thomas M. Randis. *See* Lycoming County Deed Book No. 6494, pgs. 45-51. The deed recites that the property is the same premises deeded to Plaintiff Lisa Randis from Plaintiff Lisa Randis and Gary R. Brungard at Lycoming County Record Book No. 6069, pg. 24.

12. Defendants have resided in the farmhouse since 1976. At the time that the Complaint was filed, Defendants were in possession of the farmhouse.

13. Plaintiffs served a notice to quit, dated January 31, 2012, on Defendants. Plaintiffs requested Defendants remove themselves from the premises by March 3, 2012.

14. It is undisputed that Defendants' alleged life estate in the property is not reduced to writing.

III. Conclusions of Law

Judgment on the Pleadings

1. Pursuant to Pa. R.C.P. 1034, “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.”
2. A motion for judgment on the pleadings may be entered by this Court “when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law,” similar to a demurrer. *Mellon Bank, N.A., v. Nat’l Union Inc.*, 768 A.2d 865, 868 (Pa. Super. Ct. 2001) (citations omitted).

Action in Ejectment

3. A plaintiff may file an ejectment action when another is in possession of his land. *Siskos v. Britz*, 790 A.2d 1000, 1005-06 (Pa. 2002). Since ejectment is a possessory action, a plaintiff may succeed in this action only when he is out of possession and he has the immediate right to possession. *Id.* (citing *Brennan v. Shore Brothers, Inc.*, 110 A.2d 401, 402 (Pa. 1995)).
4. The ejectment action is proper in this instance because Defendants were in possession of the farmhouse when the complaint was filed. *See Siskos*, 790 A.2d at 1009.

5. In order to succeed in an ejectment action, a plaintiff must prove by a preponderance of the evidence that he has paramount title to a parcel that he is out of possession. *Billig v. Skvarla*, 853 A.2d 1042, 1050-51 (Pa. Super. Ct. 2004) (citing *Doman v. Brogan*, 592 A.2d 104, 108 (Pa. Super. Ct. 1991)).
6. Based upon the chain of title, Plaintiffs have proven by a preponderance of the evidence that they have paramount title to the farmhouse.

Statute of Frauds

7. Section 1 of the Statute of Frauds, 33 P.S. §§ 1-8, provides that estates in land cannot be granted without a writing; specifically, the section provides:

From and after April 10, 1772, *all leases, estates, interests of freehold or term of years, or any uncertain interest of, in, or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making and creating the same*, or their agents, thereunto lawfully authorized by writing, shall have the force and effect of *leases at will only, and shall not*, either in law or equity, *be deemed or taken to have any other or greater force or effect*, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding; except, nevertheless, all leases not exceeding the term of three years from the making thereof; and moreover, that no leases, estates or interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall, at any time after the said April 10, 1772, be assigned, granted or surrendered, unless it be by deed or note, in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereto lawfully authorized by writing, or by act and operation of law.

33 P.S. § 1 (emphasis added).

8. The Statute of Frauds prohibits an oral contract for the conveyance of land. 33 P.S. § 1; *Firetree, Ltd. v. Dep't of Gen. Servs.*, 978 A.2d 1067, 1068 (Pa. Cmwlth. Ct. 2009). If the conveyance is not written, it cannot be enforced. *Id.* at 1073.
9. The only relevant factual issue with regard to the Statute of Frauds is whether the life estate agreement was written. *See Firetree*, 978 A.2d at 1072.

10. Defendants admit that their alleged life estate in the property was conveyed orally and that no writings establish this estate.

11. In *Kurland v. Stolker*, 533 A.2d 1370 (Pa. 1987), our Supreme Court provided that a party arguing that an agreement should be taken outside of the Statute of Frauds should provide “indubitable proof” of the agreement so that there is *no doubt* as to the agreement’s meaning and purpose. *Id.* at 1373. Specifically, the Court held:

[i]n the absence of equities sufficient themselves to take the case out of the statute [of frauds], it operates as a limitation upon judicial authority to afford a remedy unless renounced or waived by the party entitled to claim its protection. Our case law is very explicit as to the requirements which must be met to take an oral contract out of the statute. The terms of the contract must be shown by full, complete, and satisfactory proof. The evidence must define the boundaries and indicate the quantity of the land. It must fix the amount of the consideration. It must establish the fact that possession was taken in pursuance of the contract, and, at or immediately after the time it was made, the fact that the change of possession was notorious, and the fact that it has been exclusive, continuous and maintained. And it must show performance or part performance by the vendee which could not be compensated in damages, and such as would make rescission inequitable and unjust.

Id. at 1372-73.

12. In this case, Plaintiffs have not waived the protection of the statute, and Defendants are unable to provide indubitable proof as to their alleged life estate to bring it out of the Statute of Frauds. *See id.*

13. When parties have an oral agreement that falls outside of the Statute of Frauds, “[a]t best, the party with an oral agreement will establish a tenancy at will.” *Id.* at 1073.

Judgment Granted

14. Our Supreme Court has held that judgment on the pleadings is appropriate when an agreement for the transfer of land is not in writing and an essential part of the transaction would be proven through oral testimony. *Pierro v. Pierro*, 264 A.2d 692, 695 (Pa. 1970).

15. There are no material facts in dispute on the question of whether Defendants' counterclaims are barred by the Statute of Frauds because Defendants' alleged life estate is not in writing, nor can the estate be proven by indubitable proof. *See Firetree*, 978 A.2d at 1071; *Kurland*, 533 A.2d at 1373.

16. In this instance, it is appropriate to grant judgment on the pleadings to Plaintiffs and to dismiss Defendants' counterclaims.

IV. Discussion

This matter arises out of a family dispute over a farmhouse. In 1976, Defendants acquired this farm property. In 1999, Defendants deeded this property to their daughter and her then-husband. Throughout 1999 and 2008, Defendants' daughter deeded the property between herself and her former and current husbands. In 2008, Plaintiffs acquired the property jointly. Since 1976, Defendants have lived in the farmhouse on the property. However, on January 31, 2012, Plaintiffs requested that Defendants move out of the farmhouse by March 3, 2012; Plaintiffs based this request upon their paramount title to the home. This Court is obliged to uphold Plaintiffs' request due to their right to immediate possession of the property.

Defendants argue that Plaintiff Lisa Randis admitted to the existence of the life estate during her divorce proceedings and cites to *Boyd Estate*, 146 A.2d 816 (Pa. 1958), in support of their argument. Specifically, Defendants note that Plaintiff Lisa Randis's divorce counsel wrote letters to her then-husband's counsel concerning the life estate. Additionally, Defendants note a petition filed by Plaintiff Lisa Randis's divorce attorney stating that "[t]he parties agreed that [Defendants] could reside on their property for their life times." Motion Ex. 3.¹ The Court does not agree with *Boyd's* applicability.

¹ The Court notes that the petition was denied. *See* Motion Ex. 3.

Generally, parol evidence is admissible when evidence clearly shows that the entirety of the parties' agreement cannot be found or is not properly stated in the written agreement. *See Scott v. Bryn Mawr Arms*, 312 A.2d 592, 595 (Pa. 1973); *Dunn v. Orloff*, 218 A.2d 314, 316 (Pa. 1966); *Boyd*, 146 A.2d at 820-21. In *Boyd*, the Court admitted parol evidence to supplement a written agreement, specifically a construction contract. *Boyd*, 146 A.2d at 820-21. In *Boyd*, contractors and subcontractors were disputing why Boyd, deceased at the time of trial, obtained a note prior to his death. *Id.*

The Court does not find *Boyd* applicable in this instance because that case does not address the Statute of Frauds issue currently before the Court. The Court agrees with Defendants that *Boyd* stands for the proposition that parol evidence may be admitted to supplement a written agreement when it clearly shows that the writing does not properly state the agreement that the parties intended; the Court also agrees that parol evidence may be used when the parties have admitted that a writing does not constitute the parties' entire agreement. *See id.* However, the Court does not believe that the parol evidence rule can be used as a means to undermine the Statute of Frauds, and the Court has found no authority stating as much. Also, Court takes issue with finding that a divorce counsel's petition and letters to opposing counsel amount to an admission. *See generally Scott*, 312 A.2d 592 (1973) (addressing whether an attorney's actions may be deemed admissions on behalf of his client for parol evidence purposes).

The Court does not take this decision lightly, and it is unfortunate that the parties' relationship has deteriorated to this point. However, this Court is bound to uphold the public policy behind the Statute of Frauds. Defendants argue that a fraud occurs by upholding the statute. Defendants allege that they have a life estate in the home that should be upheld. However, Defendants admitted in their New Matter that "the parties agreed that no life estate

language should appear in the deed, in order to benefit the Defendants' estate planning and nursing home planning." New Matter, ¶ 4. In their New Matter, Defendants admit to this Court that their alleged life estate was omitted from the deed to their daughter for the purpose of defrauding other entities. The Court cannot grant equity to those who come to the Court with unclean hands. Regardless of the decision that the Court makes today, a form of injustice prevails.

The Court enters the following Order.

ORDER

AND NOW, this 7th day of December, 2012, after oral argument on Plaintiffs' Motion for Judgment on the Pleadings and for the reasons stated above, it is hereby ORDERED and DIRECTED that Plaintiffs' motion is GRANTED. Defendants' counterclaims are DISMISSED. The lis pendens entered against the property on September 7, 2012, is hereby STRICKEN.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Corey J. Mowery, Esq.
Kristine L. Waltz, Esq.
Gary L. Weber, Esq.
Prothonotary