COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

Sheaffer v. Trone

38 Pa. D. & C.3d 394 (Adams Cnty. C.P. 1985) · Decided November 1, 1985

SUMMARY

The court entered judgment on the pleadings for a real estate broker seeking a commission under an exclusive listing agreement. It held that the agreement did not make the commission contingent on completed conveyance and that the seller's subsequent agreement with the buyers established their readiness, willingness, and ability to perform despite provisions concerning payment and liquor-license approval. Judgment was entered for the plaintiff in the amount of $13,200.

CASE DETAILS

COURT	Court of Common Pleas of Adams County, Pennsylvania
WRITING FOR THE COURT	Spicer, P.J.
JURISDICTION	Pennsylvania
DECIDED	November 1, 1985
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for summary judgment based on admissions in the pleadings. Because only the pleadings were involved, the court treated the motion technically as one for judgment on the pleadings under Pennsylvania Rule of Civil Procedure 1034.
STANDARD OF REVIEW	Judgment on the pleadings was appropriate because the pleadings presented no factual issues and the dispute concerned the interpretation of two written agreements.
PRECEDENTIAL VALUE	Published Pennsylvania Court of Common Pleas decision; persuasive and locally precedential value may be limited outside the issuing court.
PARTIES	Plaintiff, a real estate broker v. Richard C. Troné

TOPICS

contracts · real estate · motion for judgment on the pleadings · commercial litigation · civil procedure

PRACTICE AREAS

contracts real estate civil procedure commercial litigation

QUESTIONS PRESENTED

1. Whether the listing agreement made the broker's right to a commission contingent upon final sale and conveyance rather than upon the seller's execution of an agreement of sale.
2. Whether the February 3, 1984, agreement permitted defendant to contest the buyers' readiness, willingness, and ability to perform based on its provisions concerning buyer performance and liquor-license approval.

HOLDINGS

1. The listing agreement did not depart from the general rule that a broker earns a commission upon producing a ready, willing, and able buyer who enters into an agreement of sale. The use of the term "consummated" did not make settlement or conveyance a precondition to earning the commission.
2. The February 3, 1984, agreement estopped defendant from asserting that the buyers were unable to perform. Its provisions concerning buyer performance were not contingencies, and the liquor-license provision did not make the transaction conditional in a manner defeating plaintiff's right to a commission.

KEY QUOTATIONS

> *"The general rule is that a broker earns his commission upon producing a ready, willing and able buyer."* (397)

> *"We rule that the February agreement estops defendant from asserting that buyers were unable to perform."* (399)

FACTUAL BACKGROUND

Plaintiff, a real estate broker, held an exclusive listing agreement providing for a commission if the property was sold by the owner during the listing period, regardless of the person to whom or manner in which the sale was consummated. Plaintiff produced buyers who submitted a written proposal, but defendant did not sign that proposal and instead entered into a different agreement with the same buyers on February 3, 1984. The February agreement concerned the sale and management of a bar and lounge and included provisions concerning buyer performance and delivery of a Pennsylvania restaurant and liquor license, subject to Pennsylvania Liquor Control Board approval.

PROCEDURAL HISTORY

A real estate broker sued Richard C. Troné for a $13,200 commission under an exclusive listing agreement. After defendant admitted executing the listing agreement and a subsequent agreement with the buyers procured by plaintiff, plaintiff sought judgment on the pleadings. The court found no factual issues and entered judgment for plaintiff.

DISPOSITION

other

CASES CITED

- Shumaker v. Lear, 235 Pa. Super. 509, 345 A.2d 249 (1975)
- Zitzelberger v. Salvatore, 312 Pa. 402, 458 A.2d 1021 (1983)
- Lear, 235 Pa. Super. at 513
- Sork v. Rand, 422 Pa. 512, 222 A.2d 890 (1966)
- Filsam Corp. v. Dyer, 422 F. Supp. 1126 (1976)
- Watt v. East End Car Wash, 28 Pa. D. & C.3d 208 (1982)

OPINION

SPICER, J.

SPICER, P.J., For purposes of this opinion, defendant means Richard C. Troné. Plaintiff, a real estate broker, sues for commissions it claims were earned when it produced buyers acceptable to defendant. Its cause of action is based upon a listing agreement which gave it an exclusive right to sell and provided that a commission would be payable if the property were sold by owner during the duration of the listing agreement “irrespective of the person to whom or the manner in which the sale is consummated.” Plaintiff procured buyers who submitted a signed agreement to defendant on January 14, 1984, This proposal contained provisions that sellers would hold a second mortgage and that the transaction was conditioned upon approval by the Pennsylvania Liquor Control Board.

The real estate involved was a business property in Berwick Township, Adams County, Pa. It is a bar and lounge known as the Looking Glass. *396Defendant did not sign the January proposal. However, he entered into another agreement with the same buyers on February 3, 1984.

The contract was entitled “Contract of Management With Agreement of Purchase.” This agreement is attached to the amended complaint as an exhibit. Defendant has admitted executing the listing contract and the “management” contract. Based upon these admissions, plaintiff has filed for summary judgment. Technically, the motion is for judgment on the pleadings since only the pleadings are involved.

See Pennsylvania Rule of Civil Procedure 1034. • There are no factual issues. The sole questions relate to the proper interpretations of two documents signed by the parties, namely the listing agreement and the February contract between defendant and third-person buyers. Defendant argues that plaintiff is not entitled to judgment. He contends that the listing agreement requires that a conveyance occur before brokerage fees are earned.

He also argues that the February agreement does not estop him from raising questions of the ability of the buyers to perform. He bases this second argurnent upon what he considers contingencies in the February agreement.

We begin by examining general principles in this area. The general rule is that a broker earns his commission upon producing a ready, willing and able buyer. Once a seller enters into an agreement of sale which is not subject to contingencies, the seller assumes the risk of the buyer's nonperformance. "Having accepted the buyer, the owner will be estopped from later objecting to the buyer's ability to complete the transaction." Shumaker v. Lear, 235 Pa. Super.

509, 513, 345 A.2d 249, 251 *397(1975); Zitzelberger v. Salvatore, 312 Pa. 402, 458 A.2d 1021 (1983). "The general rule, of course, can be changed by contract. If the parties express their intention to make the commission contingent or conditional, such as by requiring an-actual sale,... the broker does not earn his commission until the condition or contingency has been satisfied.".

(Citations omitted.) Lear, supra, 235 Pa. Super. at 513. Thus, if a broker produces a buyer who agrees to buy subject to contingencies, a fee will not be earned until the contingency has been fulfilled. Sork v. Rand, 422 Pa. 512, 222 A.2d 890 (1966).

However, a contingency is a condition beyond the control of the parties. It involves more than an agreement by either party to perform. Filsam Corp. v. Dyer, 422 F.Supp. 1126 (1976). Two issues emerge from these general principles.

First, does the listing agreement make plaintiffs right to a fee contingent upon a sale and conveyance? Second, does the February agreement preclude defendant from contesting the readiness, willingness, and ability of the buyers to perform? Defendant argues that iise of the word "consummated" in the listing agreement indicates that the parties contemplated settlement as a precondition to earning the fee.

However, when read in context, it appears that "consummated" has been used interchangeably with "sold." If owner sold the property, a fee is due no matter how the sale is consummated. One could conclude that for purposes of fee entitlement, a sale is consummated when an agreement is signed. That is certainly the general rule.

We cannot interpret this listing agreement as departing from the general rule. The Lancaster County Court dealt with a factual situation remarkably similar to the one before us in *398Watt v. East End Car Wash, 28 D.&C.3d 208 (1982).

The difference between the listing agreement in that case and this one is that "effected" and not "consummated" was used. We view the difference as minor. This court concludes that the listing agreement did not change the general rule. There are problems with the second issue which arose out of the method by which the February agreement was signed. Plaintiff had nothing to do with that agreement and it could be argued that contingencies in the contract should not be considered in determining if plaintiff has produced an able buyer.

Nonetheless, we will examine that document to determine if it contains pertinent contingencies. In paragraph one, defendant agreed to convey real estate “subject to the performance by the Buyer/Manager of all the conditions hereinafter set forth.” In paragraph two, buyers agreed to pay $25,000 at the signing of. the agreement and the balance of the purchase within six months.

The only condition of defendant’s conveyance was the performance by the buyers: This does not amount to a contingency. The only contingency in the agreement appears in paragraph three. After providing that defendant would provide a good and sufficient deed at settlement, it was provided “sellers also agree to deliver a Pennsylvania Restaurant and Liquor License at thfe time of conveyance.” Written in immediately after was “subject to approval of the Pennsylvania Liquor Control Board.” There are no other provisions relating to the liquor license.

Thus, the inescapable conclusion is. that the agreement provided defendant would deliver a license if he could. However, failure to deliver -would not affect the transaction. *399Paragraph 26 provides that the brokerage fee due plaintiff would be paid at settlement. Defendant could not, of course, unilaterally change the time when plaintiff could claim his fee.

We rule that the February agreement estops defendant from asserting that buyers were unable to perform. ORDER OF COURT And now, this November 1, 1985, judgment is entered on the pleadings in favor of plaintiff and against Richard C. Troné in the amount of $13,200.