SUPREME COURT OF KANSAS

Trear v. Chamberlain

425 P.3d 297 (Kan. 2018) · No. No. 115,819 · Decided August 24, 2018

SUMMARY

The Kansas Supreme Court interprets a 1986 real estate contract granting Kevin Trear a first right to negotiate for adjoining property. The court holds that the contract required an initial opportunity to negotiate directly with the seller, not an opportunity to match terms later agreed with third parties, and that Trear's failure to respond could cause the right to lapse. The court affirms the Court of Appeals' reversal of summary judgment and remands for consideration of the parties' implied duties of good faith and fair dealing.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Biles, J.; Johnson, J.; Beier, J.
JURISDICTION	Kansas
DECIDED	August 24, 2018
DOCKET	No. 115,819
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Trear sought equitable relief, including specific performance and title to property, alleging that a later sale violated his contractual first right of refusal. The district court granted defendants summary judgment on the ground that the provision violated the rule against perpetuities. The Court of Appeals reversed. The Kansas Supreme Court granted review solely on the contractual-compliance issue.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court; the appellate court reviews legal issues and the interpretation and legal effect of written instruments de novo and with unlimited review. Summary judgment is improper when a genuine issue of material fact exists or reasonable minds could differ.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kevin W. Trear v. Susan J. Chamberlain, Nathan Goodell, Jamie Jasnoski

TOPICS

contract interpretation · contracts · real estate · specific performance remedy · standard of review

PRACTICE AREAS

contract law · real estate law · equitable remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether the 1986 contract required Chamberlain to offer Trear the 64-acre parcel at the same price and terms for which it was later sold to Jasnoski and Goodell.
2. Whether Chamberlain's 2013 offer of the entire 73-acre tract, followed by Trear's failure to respond or negotiate, satisfied the contractual first-right-of-refusal provision and caused it to lapse.
3. Whether unresolved claims concerning the implied covenant of good faith and fair dealing required remand rather than entry of judgment for defendants.

HOLDINGS

1. The contract gave Trear a first opportunity to negotiate with Chamberlain for the adjoining property at a mutually agreed price and on mutually agreed terms; it did not require Chamberlain to offer Trear the same price and terms later reached with third-party purchasers.
2. Trear's first right to negotiate lapsed under the contract after Chamberlain offered him the entire covered tract and he failed to respond, make an offer, submit a counteroffer, or otherwise pursue negotiations.
3. The Supreme Court could not direct entry of judgment for defendants because Trear's unresolved claim that Chamberlain breached the implied covenant of good faith and fair dealing remained for determination by the district court.

KEY QUOTATIONS

> *"The primary rule for interpreting written contracts is to ascertain the parties' intent."* (425 P.3d at 302)

> *"In other words, what Chamberlain and Trear bargained for in 1986 was his first right to negotiate with Chamberlain before any other potential buyers could acquire the property."* (425 P.3d at 303)

> *"The contract language simply does not support the panel's holding."* (425 P.3d at 304)

> *"To be sure, Kansas recognizes a duty of good faith and fair dealing is embedded in every contract except those for employment-at-will."* (425 P.3d at 305)

FACTUAL BACKGROUND

In 1986, Kevin Trear purchased Lyon County real estate from Susan Chamberlain and her husband under a contract granting Trear a first right of refusal to purchase adjoining land if the sellers offered it for sale, at a price and on terms mutually agreed upon. In 2013, Chamberlain offered Trear the entire adjoining 73-acre tract, including a house, for $289,000, but Trear did not respond or attempt to negotiate. Chamberlain later listed the tract, again received no response from Trear, and approximately a year later sold 64 acres excluding the house to

Jamie Jasnoski and Nathan Goodell for $91,124. Trear sued for equitable relief, arguing that the later sale violated his right of first refusal.

PROCEDURAL HISTORY

The Lyon District Court entered summary judgment for defendants, concluding that the first-right-of-refusal provision was unenforceable under the rule against perpetuities. The Court of Appeals reversed that ruling, held the provision enforceable under the statute of frauds, and rejected defendants' contractual-compliance argument. The Supreme Court affirmed the Court of Appeals' result for a different reason, holding that the contract did not require a later offer on the same terms as the eventual sale but remanding for consideration of unresolved good-faith-and-fair-dealing claims.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded to the Lyon District Court for further proceedings to determine whether either party breached the implied covenant of good faith and fair dealing and whether that issue affected the lapse of Trear's first right of refusal.

CASES CITED

- Armstrong v. Bromley Quarry & Asphalt, Inc., 305 Kan. 16, 24, 378 P.3d 1090 (2016)
- Superior Boiler Works, Inc. v. Kimball, 292 Kan. 885, 890, 259 P.3d 676 (2011)
- Central Natural Resources v. Davis Operating Co., 288 Kan. 234, 240, 201 P.3d 680 (2009)
- Troutman v. Curtis, 286 Kan. 452, 185 P.3d 930 (2008)
- Thoroughbred Associates v. Kansas City Royalty Co., 297 Kan. 1193, 1207, 308 P.3d 1238 (2013)
- Born v. Born, 304 Kan. 542, 554, 374 P.3d 624 (2016)
- Prairie Land Electric Cooperative v. Kansas Electric Power Cooperative, 299 Kan. 360, 366, 323 P.3d 1270 (2014)
- Waste Connections of Kansas, Inc. v. Ritchie Corp., 296 Kan. 943, 963-65, 968-69, 973, 298 P.3d 250 (2013)
- Anderson v. Armour & Co., 205 Kan. 801, 804-05, 473 P.2d 84 (1970)
- Miller v. Alexander, 13 Kan. App. 2d 543, 552, 775 P.2d 198 (1989)
- Uno Restaurants, Inc. v. Boston Kenmore Realty Corp., 441 Mass. 376, 382-83, 805 N.E.2d 957 (2004)
- Miller v. LeSea Broadcasting, Inc., 87 F.3d 224, 226 (7th Cir. 1996)
- In re Adelphia Communications Corp., 368 B.R. 348, 352-53 (Bankr. S.D.N.Y. 2007)
- Navasota Resources v. First Source Texas, 249 S.W.3d 526, 537-39 (Tex. App. 2008)
- Campbell v. McBurney, 201 Kan. 26, 31-32, 439 P.2d 133 (1968)
- Havens v. Safeway Stores, 235 Kan. 226, 231, 678 P.2d 625 (1984)
- Constellation Development, LLC v. Western Trust Co., 882 N.W.2d 238, 243 (N.D. 2016)

- Atkins v. Webcon, 308 Kan. 92, 419 P.3d 1, 8 (2018)
- Estate of Draper v. Bank of America, N.A., 288 Kan. 510, 528, 205 P.3d 698 (2009)
- First National Bank of Omaha v. Centennial Park, LLC, 48 Kan. App. 2d 714, 729-30, 303 P.3d 705 (2013)
- Bonanza, Inc. v. McLean, 242 Kan. 209, 222, 747 P.2d 792 (1987)
- Laymon v. State, 280 Kan. 430, 437, 122 P.3d 326 (2005)
- Bellamy v. State, 285 Kan. 346, 354, 172 P.3d 10 (2007)