COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Kennitra M. Foote v. Monica J. Tate

No. 01-06-00956-CV · No. 01-06-00956-CV · Decided January 31, 2008

SUMMARY

The First District Court of Appeals of Texas affirmed a trial court judgment awarding Monica J. Tate $30,000 for breach of contract and $9,000 in attorney's fees. The court held that Kennitra M. Foote's signed writing constituted an offer that Tate accepted through her conduct, and that Tate's forbearance from selling the property supplied consideration. The court also held that Foote's challenge to the sufficiency of the evidence supporting fraud was moot because the judgment denied all other claims and rested on breach of contract.

OPINION

Kennitra M. Foote v. Monica J. Tate

PER CURIAM.

Opinion issued January 31, 2008 In The Court of Appeals For The First District of Texas

NO. 01-06-00956-CV

KENNITRA M. FOOTE, Appellant V. MONICA J. TATE, Appellee On Appeal from the 270th District Court Harris County, Texas Trial Court Cause No. 2004-65296

MEMORANDUM OPINION

This is a contract interpretation case. Afer a bench trial, the trial court rendered judgment that appellee Monica J. Tate recover $30,000.00 for breach of contract and $9,000.00 in attorney's fees from appellant Kennitra M. Foote. In three questions, appellant contends there is legally insufficient evidence of (1) a valid contract,

(2) consideration, and (3) Tate's fraud claim, on which the trial court denied relief.

We affirm. Facts Van Richard Watkins, Jr. owned a house, but was unable to make the payments. In order to prevent him and his family from being evicted from the family home, Watkins and Tate signed a written contract on March 15, 2004 in which Tate agreed to purchase the home from Watkins. In exchange for Watkins (1) paying Tate $12,000.00 plus expenses and (2) paying Tate's mortgage payments on the home, Watkins would have 90 days, i.e., until June 8, 2004, in which to repurchase the house from Tate. If the $12,000.00 fee was not paid by June 22, 2004, Tate could sell the house with no further obligations to Watkins. After Watkins failed to pay Tate the $12,000.00 and expenses, Tate began calling Watkins. Watkins sought help from his attorney, Foote, who called Tate and set up a meeting. At that meeting, the following document was drafted: Kennitra M. Foote agrees to pay Monica Tate the sum of $32,285.58 (Thirty Two Thousand Two Hundred Eighty Five Dollars and 58/100). This amount is in satisfaction of the debt concerning the payment for services and interest that has accrued as of June 17, 2004. This amount involves payments that are due from Van Richard Watkins, Jr. This amount includes an amount for $2,285.58 which covers the mortgage payment for July 2004. This mortgage payment covers the property located at 3313 Calumet, Houston, Texas 77004. Kennitra M. Foote agrees to pay Monica Tate or her agents by June 24, 2004. Signed: /s/ 6-17-04 Kennitra M. Foote Date Foote paid the July mortgage payment of $2,285.58, but made no further payments. Discussion In questions one and two, Foote contents there is legally insufficient evidence to establish a valid contract. Because this was a bench trial without findings of fact and conclusions of law, all facts necessary to support the judgment and supported by the evidence are implied. See BMC Software Belg., N.V. v. Marchand, 83 S.W.3d 789, 795 (Tex. 2002). In reviewing the sufficiency of the evidence, we must consider the evidence in the light most favorable to fact-finder's decision and indulge every reasonable inference that would support it. City of Keller v. Wilson, 168 S.W.3d 802, 822 (Tex. 2005). Foote specifically challenges the existence of a contract on the grounds that (1) Tate did not sign the writing and (2) Tate gave no consideration. Foote also argues that we should look only to the four corners of the writing because Tate did not plead ambiguity. We agree that the writing signed by Foote by its four corners was not a contract, but was instead an offer. Foote argues, however, that the only legally permissible way for Tate to accept would be in writing. We disagree. Under common law, if an offer does not specify how the acceptance is to be made, then the offeree may accept by any reasonable means. Cantu v. Cent. Educ. Agency, 884 S.W.2d 565, 567 (Tex. App.--Austin 1994, no writ) (citing Restatement (Second) of Contracts §§ 30(2), 63(a), 65 (1981)). Tate accepted the contract when she accepted Foote's payment of the July mortgage, which is supported by the evidence. Foote next argues that no consideration exists for the contract. First we note this Court has previously held that consideration need not be recited or expressed in the contract itself. Vass v. Fisher, 405 S.W.2d 866, 867 (Tex. Civ. App.--Houston 1966, no writ). However, the contract agreement provides consideration as Watkins previously had until June 8, 2004, in which to repurchase the house from Tate. Under the agreement with Foote, Tate agreed to forebear her right to sell the house after June 8, 2004. See Restatement (Second) of Contracts § 71(1), (3)(b) (1981) (consideration may consist of forbearance). Foote does not argue that consideration was inadequate or unfair, but instead that no consideration existed. Accordingly, we hold there is legally sufficient evidence in the record to establish consideration. We overrule questions one and two. In question three, Foote contends there is legally insufficient evidence to support Tate's fraud claim. The judgment recites that Tate recovered based on breach of contract and that all other claims were denied, so this attack on the judgment is moot. Conclusion We affirm the trial court's judgment. Sam Nuchia Justice Panel consists of Justices Nuchia, Hanks, and Higley.