

SUPREME COURT OF NEW HAMPSHIRE

Glick v. Chocorua Forestlands Ltd. Partnership

Glick v. Chocorua Forestlands Ltd. P'ship, 157 N.H. 240 (2008) · Decided May 16, 2008

SUMMARY

The New Hampshire Supreme Court considered whether a contractual right of first refusal became an irrevocable option after the property owner entered into a purchase and sale agreement with a third party. The court held that the agreement granted Glick a thirty-day irrevocable option and that Chocorua breached the agreement by rescinding the offer, excusing Glick from formal tender after repudiation. The court remanded for findings concerning whether the stated purchase price was inflated and, if so, for determination of the property's fair market value.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Broderick, C.J.; Dalianis, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	May 16, 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Glick appealed the Superior Court's denial of his petition for specific performance of a contractual right of first refusal. Chocorua cross-appealed the trial court's determination that the parties' agreement created a valid and enforceable right of first refusal.
STANDARD OF REVIEW	Contract interpretation is reviewed de novo. Whether a meeting of the minds occurred and whether a valid contract was created are factual questions reviewed under a deferential standard; the court sustains the trial court's findings and conclusions unless they lack evidentiary support or are tainted by legal error. The Supreme Court also declined to make factual findings in the first instance concerning property size, value, and alleged price inflation.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Michael J. Glick, D.D.S. v. Chocorua Forestlands Limited Partnership

TOPICS

specific performance real estate

specific performance remedy

contract interpretation

contracts

appellate procedure

PRACTICE AREAS

Contracts

Real estate

Specific performance

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QUESTIONS PRESENTED

1. Whether the 1986 agreement created an enforceable right of first refusal despite the parties' contemplation of a separate document.
2. Whether, under the language of the agreement, the right of first refusal matured into an irrevocable thirty-day option when Chocorua executed a purchase and sale agreement and notified Glick, notwithstanding cancellation of the third-party agreement before expiration of the thirty-day period.
3. Whether Glick was required to make a formal tender after Chocorua repudiated the option before he could obtain specific performance.
4. Whether the record permitted resolution of Glick's claim that Chocorua acted in bad faith by inflating the purchase price or restructuring the transaction.

HOLDINGS

1. The agreement granted Glick an irrevocable thirty-day option to purchase the Masonian lots once Chocorua executed the purchase and sale agreement and provided the required notice; the option was not conditioned on the continued existence of the third-party agreement.
2. Glick was not required to make a formal tender of the purchase price after Chocorua repudiated the option because tender would have been a useless act.
3. Because Chocorua breached the irrevocable option by rescinding the offer during the thirty-day exercise period, Glick was entitled to specific performance, subject to determination of the proper purchase price.
4. The 1986 agreement created an enforceable right-of-first-refusal contract even though the parties contemplated preparing a separate document and additional minor terms might have been added.

KEY QUOTATIONS

"We therefore reject both parties' implicit argument that their use of the phrase "right of first refusal" ends the inquiry." (248)

"Given the mandatory nature of this time provision, as well as the lack of any language conditioning Glick's purchasing power upon the continued existence of the P&S Agreement, we hold that the Agreement granted Glick an irrevocable thirty-day option to purchase the Masonian lots." (250)

"Since the evidence indicates that the option was repudiated by Chocorua, equity does not require that Glick show a useless tender." (250)

"Nothing in this language suggests that the trial court believed that those additional terms were material." (253)

FACTUAL BACKGROUND

In 1986, Glick and Chocorua executed an agreement involving conveyances of land and rights of way and granting Glick rights of first refusal over specified Masonian lots. The agreement required Chocorua to notify Glick within fourteen days after executing a purchase and sale agreement with a bona fide purchaser and gave Glick thirty days after notice to exercise the right by tendering the proposed purchase price. In 1998, Chocorua notified Glick of a proposed sale to Cabot, but cancelled that agreement before Glick made a formal tender; Chocorua later sold its partnership interests to Cabot. Glick then sought specific performance, alleging that the cancellation and transaction structure improperly defeated his rights.

PROCEDURAL HISTORY

Glick and Chocorua entered into a 1986 agreement concerning land and rights of way, including rights of first refusal over specified Masonian lots. After Chocorua notified Glick of a proposed sale and then cancelled the third-party purchase and sale agreement, Glick sought specific performance. The Superior Court held that the agreement created an enforceable right of first refusal but denied specific performance because the third-party agreement had been cancelled before Glick exercised the right and because a later partnership-interest sale did not trigger the right. The Supreme Court reversed the denial of specific performance in part, affirmed the finding that an enforceable contract existed, and remanded for findings concerning whether the proposed purchase price was inflated.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court shall determine whether the purchase price in the 1998 purchase and sale agreement was inflated. If inflated, the court shall set a purchase price corresponding to the fair market value of the property in November 1998, when Glick should have been permitted to exercise his right. If not inflated, Glick shall be required to proffer the purchase price stated in the purchase and sale agreement.

CASES CITED

- Riley v. Campeau Homes (Texas), Inc., 808 S.W.2d 184, 188 (Tex. App. 1991)
- Chapman v. Mutual Life Ins. of New York, 800 P.2d 1147, 1150 (Wyo. 1990)
- Vorpe v. Key Island, Inc., 374 So. 2d 1035, 1036-37 (Fla. Dist. Ct. App. 1979)
- Lin Broadcasting Corp. v. Metromedia, Inc., 542 N.E.2d 629, 630 (N.Y. 1989)
- Shower v. Fisher, 737 P.2d 291, 293 (Wash. Ct. App. 1987)
- Polemi v. Wells, 759 P.2d 796, 798 (Colo. Ct. App. 1988)
- Smith Trust v. Smith, 745 N.W.2d 754, 757-59 (Mich. 2008)
- Henderson v. Nitschke, 470 S.W.2d 410, 411-12 (Tex. App. Ct. 1971)
- Swamscot Machine Co. v. Partridge, 25 N.H. 369, 376-79 (1852)
- Turcotte v. Griffin, 120 N.H. 292, 294 (1980)

- Ryan James Realty v. Villages at Chester Condo. Ass'n, 153 N.H. 194, 197 (2006)
- Barclay Square Condo. Owners' Ass'n v. Grenier, 153 N.H. 514, 517 (2006)
- Mobil Oil Guam, Inc. v. Tendido, 2004 Guam 7, ¶¶ 20, 29
- McCarthy v. Wheeler, 152 N.H. 643, 645 (2005)
- Dancart Corp. v. St. Albans Rubber Co., 124 N.H. 598, 602 (1984)
- Erin Food Services, Inc. v. Derry Motel, 131 N.H. 353, 362 (1988)
- Lowell v. First Church of Christ, 101 N.H. 363, 366 (1958)
- Jesseman v. Aurelio, 106 N.H. 529, 534 (1965)
- Vogel v. Vogel, 137 N.H. 321, 322 (1993)
- Quigley v. Capolongo, 383 N.Y.S.2d 935 (App. Div. 1976)
- Bank of Vermont v. Kelley, No. CIV. 93-46-JD, 1994 WL 258860, at *6-7 (D.N.H. Feb. 4, 1994)
- Gleason v. Norwest Mortgage, Inc., 243 F.3d 130, 143 (3d Cir. 2001)
- Gyurkey v. Babler, 651 P.2d 928, 934 (Idaho 1982)
- Cook v. Sullivan, 149 N.H. 774, 780 (2003)
- Pantry Pride Enters., Inc. v. Stop & Shop Co., 806 F.2d 1227, 1231 (4th Cir. 1986)
- Durgin v. Pillsbury Lake Water Dist., 153 N.H. 818, 821 (2006)
- Syncom Indus. v. Wood, 155 N.H. 73, 82 (2007)
- Fleet Bank-NH v. Christy's Table, 141 N.H. 285, 288 (1996)
- Gulf Ins. Co. v. AMSCO, 153 N.H. 28, 43 (2005)
- Lower Village Hydroelectric Ass'n v. City of Claremont, 147 N.H. 73, 75-76 (2001)