01/17/90 JOHN FILASKY AND CYNTHIA FILASKY v. MARCUS

1990 | Cited 0 times | Court of Chancery of Delaware | January 17, 1990

MEMORANDUM OPINION

JACOBS, VICE CHANCELLOR

The plaintiffs, John and Cynthia Filasky, brought this action for specific performance to compel the defendant, Marcus von Schnurbein, to convey to them a forty-two acre tract of land called Drummond Farm. The plaintiffs base their claim of entitlement to specific performance upon three separate agreements between the parties. The defendant has moved, pursuant to Chancery Court Rule 12(c), for a judgment of dismissal based upon the pleadings. This is the decision of the Court on that motion.

I.

The plaintiffs are farmers who, at all pertinent times, were in possession of Drummond Farm as tenants of the defendant. On October 7, 1985 the parties entered into an agreement of sale (the "October 7 agreement") in which the plaintiffs agreed to purchase Drummond Farm for $85,000. On the day that contract was executed, the plaintiffs tendered a $10,000 down payment and the closing was scheduled to take place on or before December 11, 1985. Before the closing occurred, however, the real estate agent who had been handling the sale informed the plaintiffs that defendant von Schnurbein did not want to go through with the sale, because he (von Schnurbein) had been unable to purchase another farm that he had planned to buy with the proceeds of the Drummond Farm sale.

Thereafter, on November 20, 1985, the parties entered into a second contract, captioned "AGREEMENT FOR RIGHT OF FIRST REFUSAL" (the "November 20 agreement"). The November 20 agreement recites that in consideration of one dollar and "other good and valuable consideration," [1] the plaintiffs agree to render the October 7 agreement "null and void." Under that agreement the defendant then returned the plaintiffs' downpayment and granted them a right of first refusal, under which if the defendant decided to sell the Drummond Farm on or before October 7, 1986, the plaintiffs would be entitled to purchase it for $84,000. [2] If, however, the defendant received a "good faith offer" for the property after October 7, 1986, (i) he would notify the plaintiffs of the terms of the offer, (ii) the plaintiffs would then have thirty days to notify defendant that they intended to purchase Drummond Farm, and (iii) if plaintiffs decided to purchase, they would do so "under the same terms and conditions as the original offer received by the seller."

The November 20 agreement does not define the term "original offer" as it appears in the foregoing sentence. The plaintiffs allege that they were led to believe that that term referred to the terms of the original October 7 agreement of sale. The defendant disagrees and in his answer alleges that "original offer" means the "good faith offer" that would trigger the plaintiffs' right of first refusal under the November 20 agreement. Defendant concedes, nevertheless, that for the purpose of this motion, "good faith offer" refers to the terms of the October 7 agreement.

Thereafter, the parties had no further contact concerning this matter for over two years. On December 1, 1987, the defendant's attorney, William S. Hudson, Esquire, telephoned the plaintiffs and inquired whether they wished to buy the Drummond Farm for $85,000. The plaintiffs answered affirmatively, and on December 2, 1987, Mr. Hudson sent a letter to the plaintiffs. Although the legal effect of that letter is a subject of dispute, it constituted either a proposal to enter into negotiations, or an offer to enter into a contract, or a memorandum confirming the existence of a contract to sell the plaintiffs the Drummond Farm for $85,000. The plaintiffs then wrote to the defendant on January 5, 1988, advising that they had received a mortgage loan commitment which they had to accept on or before January 20, 1988, and for which the closing date had to be on or before February 15, 1988. On January 6, 1988, Mr. Hudson informed the plaintiffs that the sale was conditioned upon the defendant buying another farm. Ultimately, no sale resulted from any of these communications.

On May 16, 1988, Mr. Hudson advised the plaintiffs that the defendant had received a $189,000 offer for Drummond Farm. On June 6, 1988, the plaintiffs notified Mr. Hudson that they intended to purchase the farm for $85,000 under their right of first refusal. No sale ever occurred, and this action for specific performance followed.

In support of his motion for judgment on the pleadings, the defendant argues that, even if all of the plaintiffs' allegations are taken as true, and all legitimate inferences arising therefrom are construed in the plaintiffs' favor, the complaint must be dismissed because it fails to give notice of a cognizable claim. Gabelli & Co. Inc., Profit Sharing Plan v. Liggett Group, Inc., Del. Ch., 444 A.2d 261, 263 (1982) aff'd, Del. Supr., 479 A.2d 276 (1984); see also, Michelson v. Duncan, Del. Supr., 407 A.2d 211, 217 (1979); Wier v. Fairfield Gallaries, Inc., Del. Ch., 377 A.2d 28, 31 (1977). The Court cannot agree, for which reason the motion must be denied.

II.

The defendant contends that the original October 7 agreement is without legal effect, because the November 20 agreement explicitly renders it null and void. The plaintiffs do not deny that they contracted, in the November 20 agreement, to rescind the October 7 Agreement, but maintain that they did so only on the condition that the November 20 agreement gave them a right of first refusal to purchase Drummond Farm for $85,000. The defendant contests that point, but for purposes of this motion, concedes that the November 20 agreement grants the plaintiffs an $85,000 right of first refusal. Accordingly, I assume, in deciding this motion, that the November 20 agreement supersedes the October 7 agreement in that respect. [3]

The defendant argues, however, that the plaintiffs' right of first refusal is unenforceable, because it constitutes an unreasonable restraint on alienation, citing McInerney v. Slights, Del. Ch., C.A. No. 1096-S, Allen, C. (April 13, 1988). In McInerney, Chancellor Allen held that a right of first refusal at a fixed price for an unlimited time period could not be enforced as written, because it would operate as an unreasonable restraint on alienation. The Court reasoned that, in a rising market such a right of first refusal would effectively preclude a sale, because the only person entitled to sell the property could do so only at a price significantly below the property's fair market value. McInerney, Mem. Op. at 15. The McInerney decision, however, rests upon quite different particularized circumstances. Therefore, it does not necessarily control the question of the enforceability of the November 20 agreement. In McInerney, the Court noted that "a right of first refusal at a fixed price constitutes an unreasonable restraint on alienation unless . . . 'the restraint reasonable under the circumstances.'" Id. at 17, quoting Restatement of Property, § 413(2)(a) (1936). The Court then proceeded to enumerate the following indicia of reasonableness:

1. the . . . imposing the restraint has an interest in land which he is seeking to protect by the enforcement of the restraint;

2. the restraint is limited in duration;

3. the enforcement of the restraint accomplishes a worthwhile purpose;

4. the type of conveyances prohibited are ones not likely to be employed to any substantial degree by the one restrained;

5. the number of persons to whom alienation is prohibited is small . . . ;

6. the one upon whom the restraint is imposed is a charity.

Id. at 17-18. Because none of those factors was present, and because there were no other offsetting or countervailing factors, the Court in McInerney concluded that the fixed price and unlimited duration aspects of the right of first refusal made the restraint unreasonable. Id. at 18. In this case, however, the record indicates several factors that would tend to establish that the restraint is reasonable.

To be specific, the complaint alleges facts that if established at trial, could support a Conclusion that the restraint is reasonable. [4] Until November 20, 1985, the plaintiffs were entitled, under the October 7, 1985 contract (which the defendant concedes was valid), to buy Drummond Farm for $85,000. Presumably that contract for the sale of land would have been specifically enforceable. See Restatement (Second) of Contracts, § 360, Comment e (1981). Therefore, the plaintiffs could have compelled the defendant to sell Drummond Farm to them for $85,000. Instead, however, the plaintiffs agreed to release the defendant from his obligation to sell them the farm on which they lived and worked.

For purposes of this motion, it may be inferred that the defendant promised, in exchange for the plaintiffs' agreement to release him from the October 7 agreement, that if he later decided to sell Drummond Farm, the plaintiffs would be entitled to buy it at the October 7 contract price. The plaintiffs may have insisted upon that quid pro quo because of a concern about being dispossessed by new owners. In any event, the record permits the Conclusion (for present purposes only) that the plaintiffs remained in possession of the farm, and relinquished their then-existing right to buy it for $85,000, in exchange for a guarantee that if the defendant sold the farm in the future, he would offer it to plaintiffs at that same price. As thus viewed, the plaintiffs' right of first refusal represented a reasonable compromise that would enable the defendant to defer selling Drummond Farm until he could buy another farm, yet preserve the plaintiffs' contractual right to acquire Drummond Farm for $85,000.

By so ruling, the Court has not necessarily concluded that the restraint on alienation is reasonable, or even that the plaintiffs' position correctly interprets the November 20 agreement. The Court holds only that based upon the allegations of the complaint, the plaintiffs may be able to establish that the November 20 agreement constitutes a reasonable restraint on alienation after a trial on the merits. Accordingly, the Court is unable to rule that the pleadings, on their face and as a matter of law, do not give notice of a cognizable claim for specific performance of the November 20 agreement.

III.

Lastly, the Court concludes that the plaintiffs also have given notice of a cognizable claim based on their argument that their communications with Mr. Hudson in December, 1987, gave rise to a contract that, independently of the October and November, 1985 agreements, entitles them to purchase Drummond Farm. On December 1, 1987 the plaintiffs and Mr. Hudson discussed the sale of Drummond Farm. The following day, Mr. Hudson wrote the plaintiffs a letter indicating that he was writing "to confirm . . . whether . . . [they were] willing to go through with the settlement based upon the previous agreed purchase price of $85,000. I understand from our Discussion that this is agreeable to you." The plaintiffs contend that that language confirms the existence of an oral contract reached during the conversation which occurred the previous day.

The defendant first argues that the Hudson letter cannot possibly evidence an enforceable contract, because it does not satisfy the Statute of Frauds, 6 Del.C. § 2714, since it was not signed by either the defendant or his agent, and is not saved by any common law exception to that statute. However, the plaintiffs allege that Mr. Hudson (i) was the defendant's agent, (ii) caused the letter to be sent on his firm's letter-head, which lists him as a member of the firm, and (iii) caused his name to be typed at the bottom of the letter. One definition of "signature" is "any symbol executed or adopted by a party with present intention to authenticate a writing." 6 Del.C. § 1-201(39). It is therefore plausible that the marks on the December 2, 1987 letter, indicating that it was authored by Mr. Hudson, were adopted by him to authenticate that letter. The record is certainly not sufficient to compel a contrary Conclusion as a matter of law. It therefore cannot be said, as a matter of law, that the Hudson letter fails to satisfy the statute of Frauds requirement that it be a memorandum of the agreement "signed by the party to be charged therewith." 6 Del.C. § 2714(a).

The defendant also argues that even if the December 2 letter does satisfy the Statute of Frauds, it is not a contract but, rather, is an expression of willingness to enter into negotiations that is, at most, an offer. The defendant points out that some of the language in the letter is tentative and simply seeks "confirmation in writing as to your acceptance of the proposal." The defendant may well be correct. On the other hand, the letter does refer to a "previous agreed purchase price" and to Mr. Hudson's understanding that the plaintiffs had agreed to buy Drummond Farm for $85,000. Those references support a Conclusion that the Hudson letter did confirm the existence of a contract. At a minimum, the letter is ambiguous, and on this motion that ambiguity must be resolved in favor of the plaintiffs. See Gabelli, 444 A.2d at 263.

Because I conclude that the plaintiffs have given notice of at least two cognizable claims that could support an award of specific performance, the defendant's motion for judgment on the pleadings is denied. IT IS SO ORDERED.

1. Despite these recitals, the plaintiffs allege that, in fact, they received no consideration from the defendant.

2. The purchase price would have been $84,000, rather than $85,000, because the contract set the price at $2,000 per acre for forty-two acres.

3. The plaintiffs have raised numerous arguments to the effect that the November 20 agreement should either be treated as if it incorporates an $85,000 price term (without regard to what that contract actually provides) or that it should be avoided entirely, in favor of the October 7 agreement. I need not decide that issue, because for purposes of this motion it will be assumed that the November 20 agreement includes a right of first refusal at $85,000.

4. Given the procedural posture of this case, it is not necessary for the Court affirmatively to conclude that the restraint is reasonable as a matter of fact or law. If the Court cannot conclude from this record that the restraint is unreasonable as a matter of law, then it must rule that the complaint gives notice of a cognizable claim to enforce the November 20 agreement as the plaintiffs would construe it. See Gabelli, 444 A.2d at 263.