IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

DONNA EVERETT,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 21-0466
	:	
RALPH ELLIOT,	:	
	:	
Defendant	:	

John Lúcas, Esquire — Counsel for Plaintiff

Anthony Roberti, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. - September 13, 2023

Here before the Court is the Appeal of Defendant, Ralph Elliot (hereinafter "Defendant"), from our Order of June 30, 2023, which denied his Motion for Post-Trial Relief. We file the instant Memorandum Opinion pursuant to Pa.R.C.P. 1925(a), respectfully recommending that the aforesaid Order and underlying Decision and Verdict in favor of Donna Everett (hereinafter "Plaintiff") be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is the owner of real property situated at 223 Buck Mountain Road, Weatherly, Carbon County, Pennsylvania, with a legal description of Lot 12, Parcel No, 92-97-B12.12, and Lot 13, Parcel No. 92-27-B12.02.

Defendant is the owner of real property situated at 223 Buck Mountain Road, Weatherly, Carbon County, Pennsylvania, with a legal description of Lot 14, Parcel No. 92-27-B23.

Markle Everett was the prior owner of Lot 12, Lot 13 and Lot 14.

On March 1, 2018, Defendant withdrew nine thousand dollars ($9,000.00) from his account at Police and Fire Federal Credit Union. Defendant testified that in March of 2018, he paid Markle Everett ten thousand dollars ($10,000.00) for approximately two (2) acres of land that was intended to include Lot 13, Lot 14, and part of Lot 12. Defendant produced two witnesses to the monetary transaction at the trial in this matter.

By way of history, Markle Everett acquired Lot 12, Lot 13 and Lot 14 by way of deed dated May 11, 2018 and recorded on May 23, 2018. Mr. Everett conveyed Lot 14 to Defendant, which consisted of 0.554 acres, by way of deed dated May 2, 2019 and recorded on May 6, 2019, for the consideration of one dollar ($1.00) to minimize the tax consequences to Defendant and himself with the actual cash consideration paid from Defendant to Markle Everett being ten thousand dollars ($10,000.00). The county assessed value for Lot 14 was three thousand four hundred fifty dollars ($3,450.00) and

the computed fair market value was seven thousand five hundred fifty-five dollars and fifty cents ($7,555.50).

Markle Everett and Plaintiff were married on June 27, 2019.

Devin Dolinsky, owner of Buck Mountain Landscape Supply, LLC, was hired by Defendant in the summer of 2019 to remove trees from Lot 13 for the installation of a driveway and septic system. Markle Everett assisted with the tree removal as a part-time employee of Buck Mountain Landscape Supply, LLC.

On July 8, 2019, Defendant filed an Application for an On-lot Sewage Disposal System Permit with Lehigh Township, seeking to install a septic system on Lot 14, noting thereon that the size of the subject lot is 0.554 acres. A sewage disposal system permit was issued by Lehigh Township Sewage Enforcement Officer William C. Brior on August 27, 2019 to Defendant for an elevated sand mound septic system. The septic system was installed in September of 2019. At the time of installation, Defendant's surveyor notified him that the site where the septic system was to be installed was not his property. The septic system was installed partially on Lot 13 and partially on Lot 14.

Defendant then spoke with Markle Everett about amending the deed, but Markle Everett died on October 29, 2019, and neither an amended deed nor a corrective deed was ever prepared or filed.

Plaintiff, as administratrix of Markle Everett's estate, conveyed Lot 12 and Lot 13 to herself as surviving spouse by way of deed dated September 16, 2020 and recorded on September 18, 2020.

Plaintiff hired Robert E. O'Neil, a professional land surveyor, in May of 2020 to perform survey work at Plaintiff's property and concluded that the septic system is situated partially on Lot 13 and partially on Lot 14.

On October 6, 2020, Defendant filed a *Lis Pendens* against Lot 13 in the case indexed to Carbon County docket number 20-2427.

In the spring of 2021, Plaintiff filed a Complaint against Defendant seeking the removal of a septic system which he had installed on her property without permission, recovery of possession and monetary damages for economic losses. On February 26, 2021, Defendant filed an Answer, New Matter and Counterclaim averring that he had permission from the previous owner, Markle Everett, to install the septic system based on an oral agreement to convey that property to Defendant, and seeking enforcement of the purported agreement.

Following a non-jury trial held before this Court on June 28, 2022, and upon review of the record and the post-trial submissions

of counsel, we issued a Decision and Verdict in favor of Plaintiff and against Defendant on November 10, 2022.

On November 18, 2022, Defendant filed a Post-Trial Motion pursuant to Pa.R.C.P. 237.1 seeking to have this Court reverse its decision and verdict or, in the alternative, order a new trial. On November 21, 2023, a Supplemental Post-Trial Motion was filed by Defendant objecting to Plaintiff's post-verdict claims for attorney's fees, surveyor costs, doorbell camera costs and service fees. Oral argument on Defendant's Post-Trial Motion and Supplemental Post-Trial Motion was held before the undersigned on January 23, 2023, following which counsel submitted briefs in support of their respective positions. This Court issued an Order on June 30, 2023 denying Defendant's Post-Trial Motion in toto. On that same date, we issued a separate Order relative to Defendant's Supplemental Post-Trial Motion in which we granted said motion as to attorney's fees, surveyor costs and doorbell camera costs and denied said Motion as to Carbon County Civil filing fees, Carbon County Sheriff's department fees and Philadelphia County sheriff's service fees.[1]

Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania on July 6, 2023, and we issued a 1925(b) Order on

[1] In our Order addressing Defendant's Supplemental Post-Trial Motion, we approved Plaintiff's costs in the amount of three hundred ninety-eight dollars ($398.00).

July 7, 2023. In response to our Order, Defendant filed a seventeen (17) page "Concise Statement of Matters Complained of" on July 24, 2023.

ISSUES

In his lengthy "concise statement", Defendant raises numerous issues which we summarize as follows:

1. Whether the argument that the oral agreement between Defendant and Markle Everett included land which Everett did not own on the date of the agreement is answered by the doctrine of estoppel by deed;
2. Whether the agreement is enforceable when it does not describe the subject property;
3. Whether the Court committed an error of law in holding that the installation of the septic system on Lot 13 constitutes a trespass on Plaintiff's property;
4. Whether the Court committed an error of law in finding that Defendant is not entitled to equitable relief based upon the doctrine of unclean hands; and
5. Whether the agreement is enforceable under the doctrine of promissory estoppel where Defendant was informed by his

surveyor that the proposed location of the septic system was outside the boundary of land conveyed to said Defendant.

DISCUSSION

Defendant contends that this Court erred in ruling that the oral agreement for the sale of land was unenforceable because Markle Everett did not own the subject property at the time of agreement. According to Defendant, the fact that Mr. Everett had not yet purchased the subject property on the date that he entered into an agreement with Defendant was held "by at least one court" to be "immaterial" under the doctrine of estoppel by deed.

It appears that the "one court" referenced by Appellant in his concise statement is the Court of Common Pleas of Warren County, Pennsylvania. In Hoffman v. James Paul Lumber Co., 61 Pa.D&C.2d 436 (Warren County, 1970), the trial court held that a former county treasurer, after selling land for taxes at a treasurer's sale and conveying the property by treasurer's deed to the successful bidder, was prevented by the doctrine of estoppel by deed from seeking to establish a prior interest in the property in his individual capacity and from entering judgment upon the successful bidder's tax surplus bond. Aside from the fact that the Warren County Common Pleas Court's decision is not binding on this Court, the case is clearly inapposite.

Pennsylvania courts have held that "[O]ne cannot legally lease or sell that which he does not own or possess without proper authority." Pennsylvania Elec. Co. v. Shannon, 105 A.2d 55, 58-59 (Pa. 1954) (citing Smith v. Glen Alden Coal, Co., 32 A.2d 227 (Pa. 1943)). However, the doctrine of estoppel by deed provides "[w]here one conveys with a general warranty land which he does not own at the time, but afterwards acquires the ownership of it, the principle of estoppel is that such acquisition inures to the benefit the grantee, because the grantor is estopped to deny, against the terms of his warranty, that he had the title in question." Shedden v. Anadarko E. & P. CO., L.P., 136 A.3d 485, 491 (Pa. 2016). Here, the only quantity of land conveyed to Defendant was the .554 acre parcel identified in Lot 14.

In the instant matter, it is undisputed that Markle Everett acquired Lot 12, Lot 13, and Lot 14 by way of deed dated May 11, 2018. Therefore, he did not own the subject property at the time of the oral agreement in March of 2018. Nevertheless, Defendant contends that because Mr. Everett later purchased the property and was able to produce marketable title on the date the parties chose for the conveyance, the doctrine of estoppel by deed should apply. However, during the fourteen (14) month period between the oral agreement and the conveyance, absolutely nothing was reduced to

writing which referenced Defendant having an interest in Lot 12 or 13. It was not until May 2, 2019, that title was transferred to Defendant and the only title that was transferred by Markle Everett was title to Lot 14 which consists of 0.554 acres. Thus, Defendant's argument concerning the doctrine of estoppel by deed is misplaced and without merit.

Defendant next argues that this Court erred in ruling that the oral agreement for the sale of land was unenforceable because the agreement did not fully describe the subject property. The Statute of Frauds requires a contract for the sale of land to be in writing and contain a description of the land which is being conveyed. "A description of the property will satisfy the Statute of Frauds where it describes a particular piece or tract of land that can be identified, located, or found." Zuk v. Zuk, 55 A.3d 102, 107 (Pa.Super. 2012)(internal citations omitted). "A detailed description is not necessary, where the description shows that a particular tract is within the minds of the contracting parties, and intended to be conveyed." Id.

Defendant contends that there was a meeting of the minds between himself and Markle Everett regarding the location of the property subject to the agreement of sale. Defendant maintains that this meeting of the minds may be evidenced by the installation

of the septic system and driveway and by the deed which conveyed to him one of the three adjoining lots. However, at trial Defendant admitted that the precise boundaries of the land he believed he was receiving from Markle Everett were never discussed. (N.T. 66). Defendant testified that it could have been 1.7 or 1.9 acres that was agreed to, as opposed to exactly two acres (N.T. 67). Furthermore, in order for Markle Everett to have conveyed a portion of Lot 13 to Defendant, a subdivision of that lot would have been required and Defendant produced no evidence at the time of trial to demonstrate that the subdivision process had been contemplated or discussed, much less begun.

In the instant matter, other than the oral agreement concerning Lot 14, there was no agreement between Markle Everett and Defendant. The fact that Markle Everett and Defendant never discussed specific boundaries and Defendant testified as to his understanding that the dimensions could have been 1.7 acres or 1.9 acres, shows that there was no meeting of the minds. Boundaries and dimensions are material terms. Fire Tree LTD v. Department of General Services, 978 A.2d 1067 (Pa.Cmwlth. 2009). When seeking an equitable remedy, the Court is not permitted to make a contract. The equitable decree must always conform to a precise contract and here, since there were no precise boundaries or acreage agreed

upon by Markle Everett and Defendant, this Court cannot simply carve out a portion of Lot 13 and transfer it to Defendant because he believes it would be equitable to do so.

Moreover, an alleged oral agreement to sign a contract in the future is nothing more than an unenforceable "agreement to agree." Landon v. Walmart Real Estate Business Trust, No. 2; 12 CV-926, 2015 W.L.149257 (W.D.Pa. 2015). When a party is asserting unrecorded rights to real estate, that party has the burden of proof. Lund v. Heinrich, 189 A.2d 581 (Pa. 1963); Carnegie Natural Gas Co. v. Braddock, 597 A.2d 285 (Pa.Cmwlth. 1991). The burden of proof that must be sustained under such circumstances is very high. Specifically, the "terms of the contract must be shown by full, complete and satisfactory proof", and the proponent must provide evidence "of such weight and directness as to make out the facts alleged beyond a doubt." Kurland v. Stolker, 533 A.2d 1370, 1373 (Pa. 1987); Fire Tree LTD, 978 A.2d at 1075 (Pa.Cmwlth. 2009). Here, Defendant has failed to satisfy his burden of proof.

Next, Defendant argues that the installation of the septic system only constitutes a trespass on Plaintiff's property because this Court erroneously found that the agreement of sale was void. Defendant claims that there would be no finding of trespass if our Decision included a finding of a valid, enforceable agreement of

sale and, therefore, equitable title to the subject property in Defendant.

As an initial matter, this Court had to determine whether an oral agreement existed between Defendant and Markle Everett. The parties stipulated that Defendant withdrew nine thousand dollars ($9,000) from his account at Police and Fire Federal Credit Union on March 1, 2018. Defendant also testified that in March of 2018, he paid Markle Everett ten thousand dollars ($10,000.00) for approximately two (2) acres of land. (N.T. 68). Based upon the evidence and testimony presented, this Court found that an oral agreement for the sale of real property did exist between Defendant and Markle Everett.

The foregoing notwithstanding, we found that the agreement between Defendant and Markle Everett was unenforceable. Pennsylvania has adopted the Statute of Frauds which provides that agreements to transfer real estate are not enforceable unless the material terms contained are in writing and signed by the seller. 33 P.S. §1. Where a party seeks "to take an oral contract for real estate out of the statute", the terms of the contract must be shown by "full, complete and satisfactory proof" including evidence which defines the boundaries and indicates the quantity of land. Kurland, 533 A.2d at 1373. In the instant matter, Markle

Everett and Defendant never agreed upon the precise quantity or dimensions of the tract to be conveyed. Moreover, they never discussed specific boundaries nor the preparation of a metes and bounds description for the parcel. The only writing which includes specific boundaries and dimensions is the deed transferring Lot 14, consisting of .554 acres, from Markle Everett to Defendant. Furthermore, and as noted hereinabove, our Supreme Court in Pennsylvania Elec. Co. v. Shannon held that "[O]ne cannot legally lease or sell that which he does not own or possess without proper authority." 105 A.2d 55, 58-59 (Pa. 1954). It is undisputed that Markle Everett acquired Lot 12, Lot 13, and Lot 14 by way of deed dated May 11, 2018. Therefore, Mr. Everett did not own the subject property at the time of the oral agreement in March of 2018 nor was there any evidence presented at trial that he had an agreement of sale pending with the property owner at the time he had sale discussions with Defendant. As such, Mr. Everett lacked capacity to convey the subject property to Defendant.

After determining that the oral agreement between Defendant and Markle Everett was unenforceable, this Court concluded that Defendant's installation of a septic system on Lot 13 constituted a trespass. "In Pennsylvania, a trespass occurs when a person who is not privileged to do so intrudes upon land in possession of

another, whether willfully or by mistake." Briggs v. Southwestern Energy Production Co., 224 A.3d 334, 246 (Pa. 2020) (internal citations omitted). A trespass may be committed by the continued presence on another's property of a structure, roadway, pipe or other physical object that the defendant has caused to be placed there without the permission of the owner. Restatement (Second) of Torts, § 161 (1965).

Defendant testified he knew that the deed dated May 2, 2019 conveyed only Lot 14 to him and that Lot 14 consisted of 0.554 acres. (N.T. 46). However, prior to the installation of the septic system, a surveyor hired by Defendant informed him that the site where the septic system was to be installed was partially on Lot 13, which he did not own. (N.T. 60). Despite the fact that Defendant knew he did not own the entire property, he proceeded with the project and had the septic system installed partially on Lot 13 and partially on Lot 14. Based upon the foregoing, we found that Defendant's installation of the septic system constitutes an ongoing trespass relative to Plaintiff's property.

Next, Defendant argues that because he installed the septic system on property which he believed was included within his agreement with Markle Everett, the doctrine of unclean hands is inapplicable and he is entitled to specific performance.

> It is well settled that a party 'who comes into a court of equity must come with clean hands. The doctrine of unclean hands requires that one seeking equity act fairly and without fraud or deceit as to the controversy at issue.'… 'A court may deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue.'…

Morgan v. Morgan, 193 A.3d 999, 1005 (Pa. Super. 2018) (internal citations omitted).

In the instant matter, Defendant fails to recognize that he made false statements in his septic application. As previously discussed, Defendant was told by his surveyor that the removal of trees and installation of the septic system were going to be partially performed on Lot 13, in which Defendant had no legal ownership interest. In his testimony, Defendant admitted that although the surveyor did inform him that the septic system would be partially installed on Lot 13, he indicated on his septic application that the system would be installed solely on Lot 14. (N.T. 61). Thus, by falsely representing on the application that the septic system would be installed on Lot 14, Defendant clearly engaged in deceit and misconduct, and has come into court with unclean hands. As a consequence, he is not entitled to specific performance.

In his final claim, Defendant contends that Markle Everett knew of the location of the septic system before it was installed and that the location had been "accepted" prior to his death. Defendant argues that the "acceptance" by both parties of the location of the cleared trees and septic system is strong evidence of the boundaries of the land included in the agreement and that the doctrine of promissory estoppel entitles him to equitable relief. Promissory estoppel provides an equitable remedy to enforce a "contract-like promise that would be otherwise unenforceable under contract law principles." Peluso v. Kistner, 970 A.2d 530, 532 (Pa.Cmwlth. 2009). Here, we note that

> [T]o maintain a promissory estoppel action a claimant must aver the following elements: '(1) the promisor made a promise that [it] should have reasonably expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise.'

V-Tech Services, Inc. v. Street, 72 A.3d 270, 276 (Pa.Super. 2013) (quoting Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 717-18 (Pa.Super. 2005)(internal citations omitted).

Defendant claims that he detrimentally relied on a promise allegedly made by Markle Everett to convey Lot 13 and part of Lot 12 when he removed the trees, installed the septic system and connected his trailer to the system. However, as discussed

hereinabove, Defendant knew that he did not possess an ownership interest in Lot 13 when he removed the trees from the area and installed the septic system partially on that property. As previously noted, the doctrine of unclean hands allows a court to "deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue". Terraciano v. Dep't of Transp., Bureau of Driver Licensing, 753 A.2d 233, 237-38 (Pa. 2000). "The doctrine of unclean hands requires that one seeking equity act fairly and without fraud or deceit as to the controversy at issue". Morgan v. Morgan, 193 A.3d 999, 1005 (Pa.Super. 2018). Therefore, under the facts of this case, we find that Defendant is not entitled to equitable relief under the doctrine of promissory estoppel.

CONCLUSION

Based upon the foregoing, we respectfully recommend that our Order of June 30, 2023, denying Defendant's "Motion for Post-Trial Relief", be affirmed together with our underlying Decree and Verdict dated November 10, 2022.

BY THE COURT:

Steven R. Serfass, J.