

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

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CARBON COUNTY
PROTHONOTARY

MATTHEW 2535 PROPERTIES, LLC, :
: Appellee :
: v. : No. 18-1411
: RICHARD E. DENITHORNE and :
PRISCILLA F. DENITHORNE, :
: Appellants :
:

Leo V. DeVito, Jr., Esquire Counsel for Appellee
Lindsey M. Cook, Esquire Counsel for Appellants

MEMORANDUM OPINION

Serfass, J. - February 3, 2022

Here before the Court is the appeal of our Verdict of July 9, 2021 in favor of Matthew 2535 Properties, LLC (hereinafter "Appellee") and against Richard and Priscilla Denithorne (hereinafter "Appellants") and our Order of December 23, 2021 denying the post-trial motion filed by Appellants. We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that our Verdict of July 9, 2021 and our Order of December 23, 2021 be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Appellants are the owners of the property located at 845 Interchange Road, Lehighton, Pennsylvania. Appellants' adult sons operated a restaurant known as Trainer's Inn on the property

through the corporate entity Denithorne Brothers, Inc. until ceasing operation in February 2017. Denithorne Brothers, Inc. paid insurance premiums on the property and Appellants made payments on behalf of Denithorne Brothers, Inc. after Trainer's Inn had closed. Appellants did not personally own the insurance policy on the property. In late 2017, Appellants were approached by Catherine Jaindl-Leuthe, the sole member of Matthew 2535 Properties, LLC, to purchase the property. The parties entered into an Agreement of Sale on January 13, 2018 in the amount of four hundred thousand dollars (\$400,000.00) with closing scheduled on April 30, 2018. However, on March 17, 2018, a fire engulfed the property and Trainer's Inn was destroyed. Appellee twice exercised its right to extend closing by thirty (30) days, but closing did not occur on either May 30, 2018 or June 30, 2018. At issue was the risk of loss provision in the contract, which provided that Appellants would bear the risk of loss until closing and that the parties would cooperate if remediation of the property was necessary "to achieve the desired result of the Buyer without added cost to Seller." (See Agreement of Sale, p. 7, ¶ 16). Appellee asserted that Appellants had breached the contract for their failure to remediate and sought specific performance.

Following a non-jury trial held before the undersigned, we issued our Memorandum Opinion and Verdict on July 9, 2021 wherein we found that Appellants had breached the Agreement of Sale and

judgment was entered in favor of Appellee for specific performance such that within sixty (60) days of the date of judgment, the parties would proceed to closing and consummate the purchase and transfer of the property to Appellee for four hundred thousand dollars (\$400,000.00) minus the amount of insurance proceeds paid to Denithorne Brothers, Inc. for the loss of the restaurant structure, excluding therefrom any amount paid for the loss of equipment and inventory contained within the structure. (Court's Memorandum Opinion and Verdict of 7/9/21).

On July 19, 2021, Appellants filed a Motion for Post-Trial Relief and a supporting brief. Appellants argued that this Court erred in finding that Appellants breached the contract and asserted that the evidence established the current value of the property at three hundred seventy-five thousand dollars (\$375,000.00) based upon an unsolicited offer from CNJ Holdings purportedly received by Appellants following the fire at the subject property. (Appellants' Brief, 7/19/21). Appellants requested that this Court modify the verdict and enter a directed verdict in favor of Appellants, or alternatively, order specific performance for three hundred seventy-five thousand dollars (\$375,000.00). (Appellant's Brief, 7/19/21). On August 18, 2021, Appellee filed a Reply to Appellants' post-trial motion and a brief in opposition. Appellee argued that this Court correctly found that Appellants had breached the contract and that Plaintiff was entitled to specific

performance in the amount of four hundred thousand dollars (\$400,000.00) and requested that this Court deny Appellants' motion and affirm the verdict. (Appellee's Brief, 8/18/21). Following oral argument held on September 20, 2021, we denied Appellant's post-trial motion finding that the third-party offer did not accurately represent the true value of the property and that the insurance proceeds provided the best estimation as to the value of the property. (Court's Order of 12/23/21).

On January 11, 2022, Appellants filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's Verdict of July 9, 2021 and Order of December 23, 2021. That same day, we entered an order directing Appellants to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our order, the Denithornes filed their "Statement of Appelants' [sic] Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b)" on January 26, 2022.

ISSUES

In their Concise Statement, Appellants raise the following issues:

1. Whether the Court erred in finding that Appellants breached the Agreement of Sale; and
2. Whether the Court erred in ordering specific performance of conveying the property for four hundred thousand dollars

(\$400,000.00), less the amount of insurance proceeds paid to Denithorne Brothers, Inc. for the total loss of the restaurant structure, excluding therefrom any sum paid by the insurance company for the loss of personal property contained within the restaurant.

DISCUSSION

We found that Appellants breached the parties' Agreement of Sale and that the purported third-party offer did not accurately represent the true value of the property based upon the reasoning set forth in our Memorandum Opinion issued on July 9, 2021. We reiterated this Court's findings and stated that because no representative of CNJ Holdings testified at trial and that the three hundred seventy-five thousand dollar (\$375,000.00) offer also included purchase of the restaurant liquor license, the insurance proceeds provided the best estimation as to the value of the property in our Order of December 23, 2021 denying Appellants' post-trial motion.

Consequently, we rely upon that Memorandum Opinion and Order and incorporate the same in response to the issues raised on appeal in the instant matter. We have also attached hereto copies of the aforesaid Memorandum Opinion and Order for the convenience of the Honorable Superior Court and respectfully recommend affirmance thereof.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Verdict of July 9, 2021 and our Order of December 23, 2021 be affirmed accordingly.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "S.R. Serfass", written over a horizontal line.

Steven R. Serfass, J.