

Phelps Props., LLC v Scharett
2007 NY Slip Op 31602(U)
May 17, 2007
Supreme Court, Ontario County
Docket Number: 0097885/2007
Judge: William F. Kocher
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STATE OF NEW YORK

COUNTY OF ONTARIO SUPREME COURT

PHELPS PROPERTIES, LLC.

Plaintiff,

vs.

DECISION

HOWARD SCHARETT d/b/a HOWIE'S AUTO,

Index No. 97885

Defendant,

Appellant appeals from a decision of the Phelps Town court (Faul, J.) dated May 31, 2006. Appellant contends that Justice Faul erred in finding that there was no contract between appellant and Betty Ruthven, that no life estate was created, and that Appellant was not entitled to reimbursement for expenditures related to the property.

Briefly, the facts are as follows: on April 24, 2001, the former owner of the property, Betty Ruthven, signed a handwritten note which stated, "Howard Scharett has my permission to pay the property taxes and have full use and ownership of the building located at 118 Main Street, Phelps, New York." On July 2, 2001, she signed (and had notarized) another note stating that Appellant has "use of 118 Main Street, Phelps, NY." The second note further stated that Appellant "may pay the taxes and make any repairs to the building as needed. If able to possibly gain ownership or at least have use of this address permanently" and that "[t]his is to protect Mr.

and Mrs. Scharett from anyone changing this agreement of said property. If I should pass on during any period this property is to be left to Mr. and Mrs. Scharett.”

In his decision, Judge Faul stated, “Neither of these documents meet the requirements of a real estate contract nor a will. There was no recording of the transfer with the Ontario County Clerk’s Office nor was there any mention of the transfer in the will of Betty Ruthven.”

Appellant’s first argument is that the appellant entered into a valid contract for the purchase of the property and that the contract was breached. “When parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms” (*W.W.W. Associates, Inc. v Giancontieri*, 77 NY2d 157, 162). Appellant argues that Ms. Ruthven’s intentions were clearly stated on the face of the contract. However, a close reading of the documents dated April 24, 2001 and July 2, 2001 indicates that there is no clear, complete writing. In the letter dated April 24, 2001, Ms. Ruthven states, “Howard Scharett has my permission to pay the property taxes and have full use and ownership of the building.” If the intent was to transfer full ownership of the property, there would have been no need to bestow permission to pay property taxes. Appellant argues that this constitutes an offer for the purchase of the property. There is no closing dated stated in the contract and no specified consideration. Furthermore, the first note cannot be said to be clear and unambiguous when Ms. Ruthven and the appellant felt to need to enter into a second contract to clarify the first contract.

The second note does not provide more clarity than the April 24, 2001 note. This note again gives permission to the appellant to use the property. It also states, “[i]f able to possibly gain ownership or at least have use of this address permanently” and that “[t]his is to protect Mr. and Mrs. Scharett from anyone changing this agreement of said property.” The note clearly

recognizes that appellant does not have ownership of the property in that it states “if” appellant is able to gain ownership of the property.

“A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing” (General Obligations Law § 5-703).

With respect to the issue of consideration, both of the notes gave the Appellant permission to pay the taxes. The notes did not require him to do so, nor did they make the payment of the taxes a condition of possessing the property. There is no mention of the amount of taxes owing on the property.

In addition, parol evidence may not be received to supplement an insufficient writing so as to bring it into compliance with the requirements of the Statute of Frauds (see, *O'Brien v. West*, 199 AD2d 369, 370).

Neither the April 24, 2001 writing, nor the July 2, 2001 writing were sufficient to form a contract for the sale of the real property.

In the alternative, Appellant argues that he holds a life estate because no termination date is named in the “contract.” Just as the “contract” was not sufficient to be a contract for the sale of property, it is likewise insufficient to create a life estate.

Appellant cites the case of *Garner v Garrish* (63 NY2d 575). In that case, the parties wrote into the lease that the tenant “has the privilege of termination [sic] this agreement at a date of his own choice” (*Garner v Gerrish*, supra at 577). The Court held that the document created

“a life tenancy terminable at the will of the tenant.” The court state, “the lease expressly and unambiguously grants to the tenant the right to terminate” (*Garner v Gerrish*, supra at 581). The same cannot be said here.

A review of both writings reveal that there is no clear intent on the part of Betty Ruthven to transfer to Appellant a life estate in the property. The July 2, 2001 merely gives the Appellant to right to use the property, pay the taxes, and make repairs. The language “If able to possibly gain ownership or at least have use of this address permanently” does not unambiguously create a life estate. It merely sets a condition that is not followed by a result.

Finally, the Appellant contends that he is entitled to reimbursement for his money and time spent on the property under the theories of unjust enrichment and/or *quantum meruit*.

Appellant has not shown that Respondent was unjustly enriched. A “cause of action for unjust enrichment is stated where ‘plaintiffs have properly asserted that a benefit was bestowed ... by plaintiffs and that defendants will obtain such benefit without adequately compensating plaintiffs’” (*Wiener v Lazard Freres & Co.*, 241 AD2d 114, 119, quoting *Tarrytown House Condominiums v Hainje*, 161 AD2d 310, 313). Moreover, “[w]here defendants have reaped such benefit, equity and good conscience require that they make restitution” (*Wiener v Lazard Freres & Co.*, 241 AD2d 114, supra at 119). “The elements of a claim in *quantum meruit* are: the performance of services in good faith, acceptance of the services by the person to whom they are rendered, an expectation of compensation therefor, and the reasonable value of the services [citation omitted]” (*Freedman v Pearlman*, 271 AD2d 301, 304).

Respondent purchased the property after the taxes were paid and therefore paid market price with no back taxes owing. The previous owner, the estate of Betty Ruthven, received the

benefit of having the taxes paid. Furthermore, Appellant has failed to show how fair market rent during the period of his occupancy compares with the value of improvements he made and the taxes he paid.

In as much that there is no indication that the value of the taxes and the improvements provided by Appellant exceeded the fair market rental value of the property, Appellant is not entitled to recover under a theory of unjust enrichment or *quantum meruit*.

It is hereby ORDERED that the judgment in favor of the Respondent is affirmed and the appeal is denied.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. William F. Kocher
Ontario County Judge

Dated at Canandaigua, New York
this 17th day of May 2007