14-1106

FILED IN MONROE COUNTY
CIRCUIT COURT
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IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA

ALLEGHENY COUNTRY FARMS, INC.
Plaintiff,

v.

CIVIL ACTION NO.: 08-C-65
ROBERT A. IRONS, CIRCUIT JUDGE

DARRIS HUFFMAN,
et al.,
Defendants.

AMENDED ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

This matter came before the Court on August 5, 2013 for a hearing on cross motions for summary judgment. The plaintiff, Allegheny Country Farms, Inc., [Allegheny Farms] appeared by and through counsel, Jeffry A. Pritt. The Defendants, Darris and Nuetulia Huffman, appeared by and through their counsel, John H. Bryan.

The Court has studied the motions, reviewed the supporting documents, listened to the arguments of counsel and consulted the pertinent legal authorities. As a result of these deliberations, the Court has concluded that the Defendants' motion for summary judgment should be granted.

I. FACTS

The facts in this case are largely undisputed. This lawsuit was initiated to establish the respective rights of the parties to a particular piece of land [the Huffman property]. Allegheny Farms owns land adjacent to the Huffman property. There is a public road on the Huffman property near the lands of Allegheny Farms. There appears to be a gap between the boundary fence separating the properties, and the roadway. Allegheny Farms and Ethel Carper, former owner of the lands now owned by the Defendants, entered into an agreement to change this boundary line, [2006 Settlement Agreement.] This agreement provided that, subsequent to a

survey of the land, a boundary line agreement would be executed whereby Allegheny Farms would pay $1,000 to Ms. Carper in return for a conveyance of any land she owned between the existing boundary fence and the centerline of the public road. Before the survey could be performed, Ms. Carper placed the property up for auction.

The Defendants were the highest bidders at this auction and they signed an acknowledgment that they were aware of the 2006 Settlement Agreement between the Plaintiff, Allegheny Farms, and the owner prior to the auction, Ethel Carper. In pertinent part, the Huffmans signed an acknowledgement which states:

> the tract of real estate [they] have agreed to purchase . . . is subject to that certain SETTLEMENT AGREEMENT entered into by and between Allegheny Country Farms, Inc, a West Virginia Corporation and Ethel Huffman Carper, dated November 16, 2006, wherein the parties thereto agreed to enter and execute a BOUNDARY LINE AGREEMENT in order to establish a boundary line between the tracts of real estate owned by Allegheny Country Farms, Inc. and Ethel Huffman Carper.

In the present action, the Plaintiff seeks to enforce this settlement agreement, entered into between itself and Ms. Carper, against the Defendants.

II. LAW

a. Deeds and Executory Contracts

A deed is an instrument executed with formality and imports full and complete exposure of the intent of the parties. It speaks the final agreement by the clearest and most satisfactory evidence. *Terra Firma Co. v. Morgan*, 223 W. Va. 329, 334, 674 S.E.2d 190, 195 (2008). Formalities include that the contract must pertain to a conveyance in land, intent to convey, and language of conveyance. A contract which fails to include all formalities fails to become a deed, and instead stands as an executory contract to make a deed at a later time.

b. Privity of Contract

In order for the Court to compel a party to uphold a contract, the defendant must be in privity of contract. The rule in West Virginia is that "in order for a contract concerning a third party to give rise to an independent cause of action in the third party, it must have been made for the third party's sole benefit." *Casto v. Dupuy*, 204 W. Va. 619, 623, 515 S.E.2d 364, 368 (1999) (quoting *Robinson v. Cabell Huntington Hosp., Inc.*, 201 W.Va. 455, 456, 498 S.E.2d 27, 32 (1997)). *Casto* involved homeowner plaintiffs who sued their Loan Company and House Inspector retained by the Loan Company on a theory that the Defendants failed to meet their contractual obligation to inspect the house. *Id.* at 366, 621. The Supreme Court articulated the rule: in order for a third party to be in privity of contract, such that he may exercise an independent cause of action, the contract must have been made for the sole benefit of the third party. *Id.* at 368, 623. The Supreme Court ultimately reversed the lower court and remanded the case for further proceedings based on the fact that there were material issues of fact in dispute as to whether the inspector contracted with the loan company for the sole benefit of the plaintiffs. *Id.*

c. Equitable Relief

Specific performance is a form of equitable relief. Equitable has been defined as just or consistent with the principles of justice. *See* Equity 27A Am. Jur. 2d Equity § 1, ("Equity regards as done that which ought to be done.). The longstanding use of equity in courts has developed a robust set of maxims designed to guide the courts in deciding whether to apply or grant equitable relief. *See* Principles and Maxims of Equity, Maxims Applicable to Litigants, 27A Am. Jur. 2d Equity § 92.

Among this extensive list of maxims, a few stand out as well known: who seeks equity must do equity; who comes into equity must come with clean hands; and equity aids the vigilant, not one who sleeps on rights. *Id.* Where a litigant fails to meet a standard of equity, all relief should be denied. *Id.*

III. ANALYSIS

a. Remedies at law compelling the enforcement of the contract are unavailable

Allegheny Farms may not enforce the contract at law for two reasons: the 2006 Settlement Agreement is a mere contract to make a deed, and not a deed itself; and because there is no privity of contract between Allegheny Farms and the Huffmans.

i. The 2006 Settlement Agreement is a contract to make a deed-not a deed.

If the 2006 Settlement agreement satisfies the formalities of a deed, then the inquiry is over, and Allegheny Farms has title to the land. It does not satisfy the formalities. Based on the language of the Settlement Agreement a survey of the land would be conducted, and subsequent to that survey, the land would be conveyed. It is clear to this Court that the 2006 Settlement Agreement was not executed with formality, it did not import the full and complete intent of the party, and it was not the final agreement of the parties. *See Terra Firma Co. v. Morgan*, 223 W. Va. 329, 334, 674 S.E.2d 190, 195 (2008). The Settlement Agreement did not contain the language necessary to rise to the level of a deed, and it did not include a granting clause or an adequate legal description of the land to be conveyed. It was a mere promise to make a deed or boundary agreement in the future. This future execution of a boundary line agreement or deed to the property between the current boundary line and the public road would represent the final

agreement of the parties. This makes the 2006 Settlement Agreement an executory agreement only.

The Plaintiff makes a point to remind the Court that it released its *lis pendens* in good faith that the Boundary Line Agreement would be executed. Although Ethel Carper did not execute the *lis pendens* prior auctioning the property, it must be realized that the Plaintiff did not relinquish any of its rights through said release. A *lis pendens* is nothing more than a notice to buyers that a piece of property has a potential lawsuit pending. A *lis pendens* does not prevent a sale of property. In fact, the bidders were already aware of the potential law suit. If the Plaintiff so desires, it may place another *lis pendens* on the property, but because a *lis pendens* does not prevent a sale, the Plaintiff suffered no detrimental reliance when it released its lis pendens.

ii. There is no privity of contract between the Plaintiff and the Defendants.

A party may assert a contract claim so long as there is privity of contract. With regards to a third party contract, the contract must be made for the third party's benefit for the contract to be enforceable with regards to the third party. *Casto v. Dupuy*, 204 W. Va. 619, 623, 515 S.E.2d 364, 368 (1999). Although the situation is not identical to the homeowners' suit in *Casto*, it is illustrative in this matter. Here, we are presented with a Plaintiff attempting to enforce a contract against a third party. The Defendants were never a party to the contract. They never assented to the terms of the contract, nor were they a part of the bargaining process. The acknowledgement they signed at the auction was required as part of the auction, and was not an agreement but rather an acknowledgement of the contract entered into by Ms. Carper and Allegheny Farms.

The strongest counter argument is that the Defendants in this case were on notice that the land in question was already under contract to be conveyed to the Plaintiff. Further, the

Defendants "agreed to enter and execute a Boundary Line Agreement," in its acknowledgment agreement at the time of purchase. The Court is not convinced that this is a sufficient argument to compel the proposed exchange. Although the Defendants were on notice of the contract, said contract was inherently unclear.

b. Remedies in equity are unavailable.

A Court making judgments in equity must balance the interests and rights of the parties and render a decision consistent with the principles of justice. A remedy in equity is unavailable where there is an adequate remedy at law. In this case, the Plaintiff is seeking a declaratory judgment to establish the boundary line of its border with the Huffman property. The plaintiff has an adequate remedy at law to settle a property dispute and does not need to invoke equity to receive an adequate remedy. Therefore it is appropriate to deny the Plaintiff's specific performance claim and allow Allegheny Farms to pursue the action in its companion case to determine the boundary line between the parties' properties.

Furthermore, this Court is cognizant of the issues impacting the availability of equitable relief for the Plaintiff in this case. The most prominent maxims of equity applicable to this case are the maxim that one must come into equity with clean hands and the maxim that equity aids the vigilant, not one who sleeps on his rights.

i. One must come in to equity with clean hands.

Despite the name, the maxim of clean hands is not always used as a punishment, but can also be used simply to protect the public and the court system. The deed by which Ethel Carper obtained the subject real estate contains a preemptive option, in favor of the Huffman family. This preemptive option provides that before Ethel Carper could sell her land to the general public, it must be first offered to one of the family members. There is no evidence that this

procedure was followed during the negotiations leading to the execution of the 2006 Settlement Agreement.

The Defendants were never a party to this contract, and now contend the contract violated their preemptive right to purchase the land in question. Because of the preemptive option, and the attempt of the Plaintiff to compel a Defendant to perform under a contract it was not a party to, this Court believes the unclean hands doctrine dictates that the Plaintiff's request for relief must be denied.

ii. Equity aids the vigilant, not one who sleeps on his rights.

The doctrine behind the maxim that equity aids the vigilant is that equity should not be applied where the Plaintiff could have been made whole through some other remedy. In the case at hand, there were three instances where the Plaintiff's vigilance could have avoided the need to request specific performance in the first place. First, the Plaintiff could have drafted the 2006 Settlement Agreement to serve as a deed. Second, the Plaintiff could have ensured that a survey took place and the Boundary Line Agreement took effect before the sale. Third, the Plaintiff could have itself purchased the property at the auction. When taken together, these three missed opportunities gives this Court reason to believe that the Plaintiff has slept on its rights, and is not entitled to equitable relief.

IV. CONCLUSION

Based on all of the foregoing, it is clear to this Court that granting specific performance to the Plaintiffs requiring the Defendants to convey the disputed property would be inequitable. Although decreeing specific performance of the 2006 Settlement Agreement would be inequitable, it is appropriate for the Plaintiff to maintain its companion case concerning the location of the property line separating the lands of the parties hereto.

WHEREFORE, it appearing proper to do so, it is hereby ORDERED and ADJUDGED as follows:

1. The Plaintiff's Motion for Summary Judgment is DENIED;
2. The Defendants' Motion for Summary Judgment is GRANTED;
3. The above-styled action is DISMISSED with prejudice and removed from the active docket of the Court;
4. The Circuit Clerk is directed to forward a certified copy of this Order to all counsel of record.

ENTERED: December 17, 2014.

ROBERT A. IRONS, CIRCUIT JUDGE

A TRUE COPY
ATTEST
Clerk, Circuit Court
Monroe Co., W.Va.