

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Eric Hudkins,
Plaintiff Below, Respondent**

v.) **No. 101217** (Barbour County 08-C-60)

**Michael L. Benedum,
Defendant Below, Petitioner**

FILED

April 1, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Michael L. Benedum, defendant and third-party plaintiff below, appeals from a March 19, 2010, judgment order and an order denying his motion for new trial entered on April 16, 2010. Respondent Eric Hudkins, plaintiff and third-party defendant below, filed a response brief.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Mr. Hudkins and Mr. Benedum are former friends and business associates in multiple endeavors. In 2008, Hudkins sued Benedum asserting fraud and breach of contract. Benedum and the businesses he owned filed a cross-claim and a third-party complaint against Hudkins and Hudkins's business. The litigation addressed multiple business dealings between them, but a central dispute concerned certain tracts of real property on Brushy Fork in Barbour County. Hudkins owned this property in early 2007. Hudkins alleged that they discussed that Hudkins would sell Benedum the Brushy Fork tracts for \$400,000, and Hudkins prepared a draft deed to that effect, but the transaction ultimately did not take place and Benedum never paid for the property. Hudkins alleged that Benedum wrote in a \$250,000 purchase price and recorded the deed as if the transaction had occurred. Benedum denied these allegations, asserted that Hudkins signed the deed before a notary, and alleged

that Hudkins transferred this property to him as partial repayment of an unrelated debt. Benedum's cross-claim sought to quiet title. At the March 2010 trial, the jury answered special interrogatories finding that (1) Benedum had not committed fraud regarding the Brushy Fork property, but (2) the parties had entered into a contract for the sale of this property which Benedum materially breached.

In his first assignment of error, Benedum argues that Hudkins challenged the validity of the Brushy Fork deed by arguing that Benedum never paid for the property. Benedum argues that this challenge should be unsuccessful because pursuant to West Virginia Code § 36-3-9, a deed for real property does not fail solely for want of consideration. However, the issue at trial was not whether the deed met all of the requirements as to the proper form of a deed under statutory law. The issue was whether Benedum breached the contract by failing to pay for the property. We find that this issue was properly submitted to the jury and there is no basis to overturn the jury's verdict.

In his second assignment of error, Benedum argues that the circuit court erred by failing to instruct the jury on the effect of the Statute of Frauds. The circuit court found that the Statute of Frauds is an affirmative defense that Benedum failed to plead and, moreover, even if the Statute of Frauds was applicable, the deed for the Brushy Fork property was a sufficient writing. We find no error in the court's ruling.

Benedum asserts as his third assignment of error that the circuit court erred by allowing testimony and evidence of property values in the face of written deeds with stated values and consideration. However, the petitioner's brief fails to contain any argument on this assignment of error. Accordingly, we will not address the same.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 1, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh