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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
In The Circuit Court

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2023-001089

ROBERT F. GOOREY,

Appellant,

v.

DEBORAH A. GOOREY and
SHAWN GOOREY,
of whom SHAWN GOOREY is the

Respondent.

INITIAL BRIEF OF RESPONDENT

March 28, 2024

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STATEMENT OF ISSUES ON APPEAL

- I. IS THERE A TRIABLE ISSUE OF MATERIAL FACT REGARDING THE EXISTENCE OF AN ENFORCEABLE CONTRACT?
- II. IS RESPONDENT A PROPER PARTY TO THE DECLARATORY JUDGMENT IF HE DOES NOT HAVE AN INTEREST IN THE SUBJECT PROPERTY?

STATEMENT OF THE CASE

Shawn is the son of Robert Goorey and Deborah Goorey. In this action, Robert alleges that he entered an agreement with Shawn for Shawn to purchase a permanent home on Robert's behalf for Robert to reside for the remainder of his life. Robert seeks a declaratory judgment that he has an interest in Deborah's property. On or about December 2016, Robert threatened Shawn that he would park his car in Shawn's driveway if Shawn did not find somewhere for Robert to live for \$550 a month or less. Shawn was testing the market at the time and considered allowing Robert to rent from him temporarily if Shawn could purchase a home. Around that same time, Robert opened a joint account with Shawn and gave Shawn autonomy to use the funds at his discretion.

During Shawn's search for an investment property, he discovered that his debt-to-income ratio would not allow him to purchase another home. Deborah, was also in the market to purchase a home. Deborah qualified for a mortgage loan and identified the Property as a potential investment. Shawn offered to assist Deborah by paying the down payment. Shawn, still hoping to find somewhere for his father to live, asked Deborah if she would allow Robert to rent the property, to which she agreed. Shawn's discussions with Robert regarding the purchase of a potential property and his discussions with Deborah regarding her purchase of the subject property, never involved Robert taking title by joint ownership or a life estate. Robert had a foreclosure on his record that was prohibitive to him securing any mortgage loan.

Deborah purchased the property on April 7, 2017, and Robert moved in shortly thereafter. Deborah rented the property to Robert until about March 2020, where she initiated eviction proceedings against Robert. Robert filed this suit for declaratory judgment against Deborah and Shawn on April 13, 2021.

STANDARD OF REVIEW

The appellate court reviews the grant of summary judgment under the same standard applied by the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). The moving party seeking summary judgment must clearly establish the absence of a triable issue of material fact based upon the record presented to the court. *Stanford Fire Ins. Co. v. Marine Contracting and Towing*, 301 S.C. 418, 392 S.E.2d 460 (1990). In determining whether any triable issue of fact exists, the court must view the evidence and all reasonable inferences to be drawn therefrom in a light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). When a court determines whether any triable issue of fact exists, it does not make factual determinations; however, summary judgment is appropriate when the motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Regional Medical Center*, 626 S.E.2d 1, 5, 367 S.C. 242 (S.C. 2006).

ARGUMENT

I. Is there a triable issue of material fact regarding the existence of an enforceable contract?

Robert's ("Appellant") cause of action is based on the existence of a purported contract to purchase land. *See* Record on Appeal, p.____. The Statute of Frauds provides that no action shall be brought to enforce "any contract or sale of lands, tenements or hereditaments or any interest in or concerning them . . . Unless the agreement . . . [or] memorandum or note thereof shall be in writing and signed" S.C. Code Ann. 32-3-10(4). To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled. *Fici v. Koon*, 642 S.E.2d 602, 372 S.C. 341 (S.C. 2007); *Speed v. Speed*, 213 S.C. 401, 49 S.E.2d 588 (1948). The burden of proof is on the party seeking to enforce the contract. *Id.* In the context of a land sale, a description of the property must be in a signed writing; parol evidence cannot supply this essential element. *Id.*

Appellant acknowledges in his Initial Brief that the alleged contract between himself and Shawn (“Respondent”) is oral in nature. Thus, as a threshold matter, Appellant concedes that the alleged contract for Respondent to purchase a home on Appellant’s behalf cannot satisfy the statute of frauds. It is important to note that Appellant’s Initial Brief is the first time that he concedes that the alleged contract between himself and Respondent is oral in nature. In Appellant’s Verified Complaint, he alleges that the terms of the alleged contract “are set out on copies of texts between [Appellant] and [Respondent]”. Record on Appeal, p. _____. If the allegations in Appellant’s Verified Complaint are taken as true, and the text messages memorialize the alleged agreement between Appellant and Respondent, then Respondent is not a proper party to Appellant’s declaratory judgment because the underlying contract is not related to the subject property in this case. The text messages between the parties describe a thirteen-acre tract of land while the subject property is three acres. Even if the Court finds that a contract existed, it has no bearing on the outcome of this case that centers around a legal interest in a different property.

II. Is Respondent a proper party to the declaratory judgment if he does not have an interest in the subject property?

Appellant alleges that Respondent is one of “the persons who have or claim any interest [in the property] who would be affected by the [] declaration of [his] rights.” Appellant seeks to establish an equitable interest in the subject property and argues that oral contracts are enforceable to establish an equitable interest. To support his argument, Appellant cites *Gibson v. Hryzikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987) which states, “courts of equity will compel specific performance of an oral agreement for acquisition of an interest in land despite the statute of frauds where sufficient part performance has occurred.” The court in *Gibson* did not involve a review of a motion for summary judgment, did not involve a purported constructive trust, and did not involve a party who claims no legal relation to the property at issue.

In *Gibson*, the plaintiffs brought an action to enforce specific performance of a lease for a building owned by the defendant. *Gibson*, 293 S.C. at 10, 358 S.E.2d at 174. In *Gibson*, the plaintiffs purchased a business from a third party that was already operating under an existing lease. *Gibson*, 293 S.C. at 11, 358

S.E.2d at 174. After the plaintiffs purchased the building, they spoke with the defendant Hrysikos about executing a new lease agreement and reached an oral agreement on a new lease with the defendant Hrysikos. *Id.* After the defendant Hrysikos reached an oral agreement with the plaintiffs, he executed a conflicting lease with the defendant Collins. *Id.* The plaintiffs later brought an action against the defendant Hrysikos for specific performance. Although the parties in *Gibson* did not execute a signed writing, the defendant Hrysikos acknowledged that” I have drawn the contract up, regardless [if] we ever executed it or not, the contract was there.” *Id.* at 14, 176. It is noteworthy that the plaintiffs in *Gibson* are the lessees and the defendant Hrysikos is the building owner; the third party that the plaintiffs purchased the business from was not a party to the action. All parties in *Gibson*, could claim an ownership interest or possessory interest in the property.

Unlike the plaintiffs in *Gibson*, who sought specific performance from the landlord property owner, Appellant seeks specific performance to establish an ownership interest in a property that Respondent has no legal interest in. Respondent has been very clear that he does not have an interest in the subject property and does not seek to own an interest in the subject property. Record on Appeal, p.____. Appellant acknowledged that Respondent does not have an ownership interest in the property. Record on Appeal, p____. Thus, there is no dispute regarding this material fact. Appellant’s inclusion of Respondent in the underlying action would be likened to the plaintiff in *Gibson* including the third-party seller in the action. Appellant seeks a remedy that he cannot obtain from Respondent in this matter. Even if Appellant is given an equitable interest in the subject property, he will share that interest with Defendant Deborah Goorey in the subject property, not Respondent.

Furthermore, the contract that Appellant alleges he entered with Respondent is for a wholly separate property than the property that is at issue in this case. This is distinguishable from *Gibson*, where the contract applied to the property that was subject to that action. Thus, even if Appellant’s alleged oral contract with Respondent meets the elements of the contract, it is not enforceable in this matter because the contract is for property that is not the subject of this action. The trial court cannot compel specific performance of a contract

that is not related to the subject property from a party that is not an owner of the subject property.

Appellant argues that his verified complaint establishes a dispute of material fact because Appellant allegedly advanced \$35,000 to Respondent. However, the Appellant's allegations, along with all reasonable inferences that can be drawn from those allegations, fails to establish a dispute of material fact in this matter. In his underlying action, the Appellant seeks a judicial determination of "his rights and duties under, his equitable ownership of an interest in the subject real property" Record on Appeal, p. _____. Appellant did not bring an action for conversion, unjust enrichment, or some other cause of action based on an alleged misuse of funds. The trial court noted that Appellant did not complain about alleged misused funds. Record on Appeal, p. _____. Thus, even if the Court accepted Appellant's allegations that Respondent transferred Appellant's funds to Defendant Deborah Goorey to purchase the subject property as true, summary judgment is still proper.

It is undisputed that Respondent does not own an interest in this property. Thus, Respondent is not a proper party to the underlying declaratory judgment because he has no interest in the determination of Appellant's legal rights regarding the subject property. If Respondent assigned the property to Defendant Deborah Goorey by transferring the funds, as alleged in Appellant's verified complaint, then privity of contract between Respondent and Appellant was extinguished and there is now a contract between Appellant and Defendant Deborah Goorey. *See Moore v. Weinburg*, 644 S.E.2d 740, 373 S.C. 209 (S.C. App. 2007). If an enforceable contract existed between Respondent and Appellant, then the specific performance that Appellant now seeks must be against Defendant Deborah Goorey. The grant of summary judgment in Respondent's favor should be upheld because there is no question of fact as to Respondent's interest in the property or the existence of a contract between Appellant and Respondent to purchase the subject property in this action.

CONCLUSION

For the reasons set forth above, the trial court order granting summary judgment in Respondent's favor should be upheld. Appellant has failed to establish an issue triable fact against Respondent Goorey in

this matter.

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