

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
2015-CP-36-00443

Robert G. Shirey,)
)
Plaintiff,)
)
vs.)
)
Gwen G. Bishop, Cassandra Robinson, and)
TD Bank, N.A.,)
)
Defendants.)

ORDER DISMISSING
MOTION FOR RECONSIDERATION

FILED
NEWBERRY COUNTY
2017 JUL 28 PM 3:39
ELIZABETH P. FORK
CLERK OF COURT

RECEIVED

AUG 09 2017

SC Court of Appeals

Defendants Gwen G. Bishop and Cassandra Robinson filed a Notice of Motion and Motion to Reconsider and Memorandum in Support of Defendants' Bishop and Robinson Motion to Dismiss dated May 31, 2017. Defendants Bishop and Robinson seek the reconsideration of the following items:

1. That the contract of sale expired on August 12, 2015.
2. That the contract between Bishop and Robinson superseded plaintiff's contract of Sale.
3. That the oral agreement between plaintiff and defendant Bishop did not extend closing date.

At the Motion hearing, attorney for defendants Bishop and Robinson argued that the contract had expired on August 12, 2015, and it must be a new contract in writing.

Tender of funds by plaintiff to plaintiff's attorney does not constitute closing.

This Court does not agree. Had defendant Bishop refused to close on the 13th when

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contacted by Pope and Hudgens office, Mr. Pyatt's argument may be controlling. But since she agreed or acquiesced, Mr. Pyatt's argument is without merit.

The Bishop/Robinson contract supersedes that of plaintiff's contract. Defendant Robinson's contract with defendant Bishop was never recorded. Therefore, plaintiff had no knowledge or notice of this contract. It is argued by defendants that defendant Robinson was a bona fide purchaser in good faith. This Court would deny that. This Court would find that defendant Robinson discovered the contract between defendant Bishop and plaintiff and at the last minute, defendant Robinson took necessary steps to make sure that the property was transferred to defendant Robinson instead of plaintiff. It was argued earlier that the defendants Bishop and Robinson were not in a confidential relationship. This Court made a finding that they were in a confidential relationship. Both parties indicated that defendant Bishop had faith, trust and confidence in the representations made by defendant Robinson. Both defendants testified that there was much contact between each other, much visitation, and much talking. The facts develop that earlier defendant Bishop had entered into a contract of sale with defendant Robinson to sell subject property to her for simply the payments owed to the mortgage company. When defendant Robinson stopped making the payments, the payments were made up by defendant Bishop. The Court rightfully found that there was a confidential relationship between the two defendants.

Mr. Pyatt claims that the only person who could call defendant Robinson in default under the first contract would be defendant Bishop and defendant Bishop never did and; therefore, the Court erred in finding that the first contract with Ms. Robinson was in default. The Court properly ruled that because of her payments, many of which were in arrears during the period that

defendant Robinson was making payments, and her failure to continue to make payments in spite of defendant Bishop's testimony that by making the mortgage payment that was tantamount to paying rent to defendant Robinson; however, the rental that was paid by defendant Bishop directly to TD Bank, not first to defendant Robinson and then Robinson paying TD Bank. Mr. Parker, attorney for plaintiff, argued that the contract would expire on August 12th. The money was there on August 12th. Had defendant Bishop demanded the money on August 12th, the closing would have occurred. That defendant Bishop failed to provide plaintiff a payoff of the mortgage which she was required to do. That Mr. Parker would be unable to get the payoff of the mortgage without the consent of defendant Bishop. The fact that on August 13th, defendant Bishop went to her doctor's office and indicated she needed a doctor's excuse for not attending the closing is a clear indication that she knew and understood that she had agreed to an extension and if the writing were required by the statute of frauds, it is indicated as a result of the doctor's note which defendant Bishop requested.

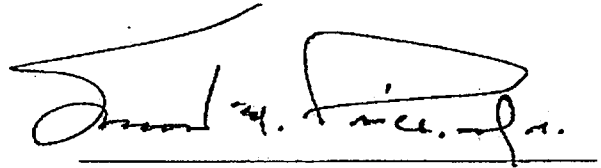
Mr. Parker also indicated that the Court's finding that plaintiff is not entitled to loss of rent on the issue of loss of rent indicated that it is the law in South Carolina that any landowner can discuss the value of his or her real estate and with that the value of rent or loss of rent.

On reply, Mr. Pyatt argues that the valid contract to enforce expired at 12 midnight on August 12, 2015. He further argued that there was no evidence that defendant Bishop was required to get a payoff and inform Mr. Parker or plaintiff. Mr. Pyatt further argued that after midnight of August 12, 2015, anything done was of no legal consequence because the contract had expired.

For the reasons set forth above, the arguments of defendants Bishop and Robinson are

dismissed. That the argument as to the ability to add rental damages for loss of rent to plaintiff is further dismissed.

IT IS SO ORDERED.



SAMUEL M. PRICE, JR.
Special Referee for Newberry County

Newberry, SC
July 28, 2017

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