

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000238-MR

SUSAN DENISE STEINMAN
and SHON RUZSA

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE VERNON MINIARD JR, JUDGE
ACTION NO. 11-CI-00134

BOBBY GEHRING, JR.
D/B/A SUNSTAR HOUSEBOATS and
SUNSTAR HOUSEBOATS, INC.,

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, TAYLOR, AND VANMETER, JUDGES.

COMBS, JUDGE: Susan Denise Steinman and Shon Ruzsa appeal from the findings of fact, conclusions of law, and judgment of the Wayne Circuit Court entered on January 15, 2014. After our review, we affirm.

This case involved a claim for the return of \$20,000 paid by Steinman and Ruzsa to the appellee, Sunstar Houseboats, Inc. In June 2010, Steinman and Ruzsa traveled from their home in Park City, Utah, to Monticello, Kentucky, where they spent several hours touring the houseboat manufacturing facility of Sunstar with its vice-president, Bobby Gehring, Jr. According to their complaint, Steinman and Ruzsa discussed with Gehring the “possible purchase” of a certain houseboat offered for sale from Sunstar’s inventory. According to Gehring, he declined the offer of Steinman and Ruzsa to pay \$5,000 for an option to purchase the boat because it was peak season for Sunstar’s houseboat sales. Steinman and Ruzsa returned to Utah, but negotiations between the parties continued.

Eventually, Steinman and Ruzsa agreed to pay the sum of \$20,000 to Sunstar. Gehring testified that in exchange for the sum of \$20,000, he promised that Sunstar would “hold the boat” for Steinman and Ruzsa for a period of two months. He testified that Ruzsa understood that the option was irrevocable. After some discussion about how quickly and in what form the necessary funds would need to arrive at Sunstar, Steinman and Ruzsa immediately sent to Gehring a certified check for \$20,000. The check was deposited into Sunstar’s account.

Several days later, Ruzsa contacted another Sunstar representative to advise that he and Steinman were no longer interested in purchasing the houseboat. Ruzsa asked for a refund of the \$20,000. When Sunstar refused to return the money, Steinman and Ruzsa filed a complaint against Gehring in Wayne Circuit

Court. Nearly two years later, Steinman and Ruzsa filed an amended complaint to add Sunstar as a party-defendant.

The action was tried by the court on October 30, 2013. On January 15, 2014, findings of fact, conclusions of law, and judgment in favor of Sunstar were entered by the Wayne County Circuit Clerk.¹ Based upon its findings of fact, the trial court concluded that the parties' agreement constituted an option contract. The court held that Sunstar was under an obligation to sell the boat to Steinman and Ruzsa for \$245,000 if they decided to purchase it within the two-month term; that Steinman and Ruzsa were under no obligation to purchase the boat; and that Sunstar was under no obligation to return the \$20,000 that it had accepted as consideration for its promise to "hold the boat" for Steinman and Ruzsa for two months. Steinman and Ruzsa now appeal.

On appeal, Steinman and Ruzsa contend that the evidence was insufficient to support the trial court's conclusion that the parties had entered into an irrevocable option to purchase contract. Ruzsa and Steinman deny that the disputed cash payment was consideration paid to Sunstar for an option to enter into a purchase agreement for the boat to be executed within two-months' time. Instead, they contend that the \$20,000 payment was to be treated as part of the purchase money *if* they elected to exercise the option. They contend that the parties' agreement was not an option contract but rather that it was an oral

¹ The trial court's findings of fact, conclusions of law and judgment are missing from the record transmitted to this Court by the Wayne County Circuit Clerk. We have relied upon the copy attached to the appellees' brief.

agreement to purchase the houseboat. Such an oral agreement would be unenforceable against them under provisions of the Uniform Commercial Code.

In an action tried without a jury, the findings of fact made by the trial court may not be set aside unless they are clearly erroneous. CR² 52.01. Due deference must be given to the opportunity of the trial court to judge the credibility of the witnesses. *Id.*

At trial, Gehring, Steinman, and Ruzsa testified that Steinman and Ruzsa paid \$20,000 to Sunstar in exchange for Sunstar's promise to "hold the boat." Gehring testified that Sunstar accepted the \$20,000 from Steinman and Ruzsa in exchange for its promise to sell the boat to them for the negotiated price if they decided within two months to purchase it. Gehring indicated that he told Ruzsa that the \$20,000 would not be returned if Steinman and Ruzsa elected not to buy the boat. Ruzsa testified that he and Steinman fully intended to purchase the boat when they mailed the certified check to Sunstar but that they later changed their minds. On cross-examination, Ruzsa could not say that he did not know what was to become of the \$20,000 in the event that he and Steinman chose not to purchase the boat.

Steinman and Ruzsa argue that the trial court erred by disregarding their testimony that the parties intended to enter into a contract to purchase the houseboat and that the \$20,000 paid to Sunstar was a down payment toward that purchase. Again, our rules of civil procedure authorize the trial court to judge the

² Kentucky Rules of Civil Procedure.

demeanor and credibility of the witness in any action tried without a jury. CR 52.01. The trial court was free to make any determinations about the credibility of the witness based upon the evidence presented. As an appellate court, we must be mindful that the trial court alone had the opportunity to hear and to observe the witnesses in order to evaluate their credibility. Thus, the trial court was in the best position to make appropriate findings of fact. *Bealart v. Mitchell*, 585 S.W. 2d 417, 418 (Ky.App. 1979). Under the circumstances, the trial court was at liberty to discount the credibility of the testimony of both Steinman and Ruzsa.

Having reviewed the proceedings in their entirety, we conclude that the trial court did not err in its judgment that the parties' agreement was an option contract. The testimony indicates that Sunstar was unwilling to "hold the boat" for \$5,000 while Steinman and Ruzsa decided whether they wanted to make a purchase; however, Sunstar was willing to take the risk for two months if Steinman and Ruzsa agreed to pay \$20,000 for the option. The market was reaching its peak season just as Steinman and Ruzsa expressed interest in purchasing the houseboat; thus, that fact supports Sunstar's position. There is no reason to support an assumption that Sunstar would have been willing to grant an option to purchase the boat without any consideration whatsoever when market demand was at its highest.

Steinman and Ruzsa received what they bargained for -- an opportunity to purchase a specific boat from Sunstar for the agreed sum at any time within the two-month period. The parties were free to reach this agreement, and the trial court found that they had done so. "There is no requirement of the law

that for each right created by a contract in one party the other party must have a reciprocal right of the same nature.” *David Roth’s Sons, Inc. v. Wright and Taylor, Inc.*, 343 S.W.2d 389 (Ky. 1961), citing *Bank of Louisville, v. Baumiester*, 87 Ky. 6, 7 S.W.170 (1888). Under the agreement, Sunstar was committed absolutely to sell the identified houseboat at the negotiated price. It was bound by the terms of the agreement for two-months’ time. Steinman and Ruzsa retained an exclusive right to purchase the boat, and for this option they paid \$20,000 to Sunstar. The evidence is certainly sufficient to support the court’s findings, and its conclusion is legally sound.

Consequently, the judgment of the Wayne Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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