STATE OF MICHIGAN

COURT OF APPEALS

SHIRLEY Y. KLINT,

Plaintiff-Appellee,

v

ELAINE L. CARLSON,

Defendant-Appellant.

UNPUBLISHED
October 12, 2001

No. 224488
Berrien Circuit Court
LC No. 98-004015-CZ

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from a trial court order granting plaintiff's motion for summary disposition and denying her motion for summary disposition. Plaintiff claimed that she was entitled to specific performance of an option contract between plaintiff and defendant, whereas defendant sought to have the option invalidated. We affirm.

Defendant argues that the trial court erred by concluding that the option was not void for lack of time specificity. The option stated that it was open for an indefinite period of time. Generally, conditional agreements to transfer real estate, including options, are to be interpreted as valid for a "reasonable period of time" where they fail to state a specific time limit. *Brauer v Hobbs*, 151 Mich App 769, 777-778; 391 NW2d 482 (1986). Therefore, the trial court correctly concluded that the proper analysis was whether it was reasonable for plaintiff to exercise the option five years after the parties entered into the option agreement.

Defendant further argues that the trial court erred by concluding that the option was exercised within a reasonable time period. The option agreement was entered into by the parties in 1992, but not exercised by plaintiff until more than five years later in 1997. Although we review de novo a decision granting specific performance, factual findings in support of that determination are reviewed for clear error. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). A factual finding is clearly erroneous only where we are "left with a definite and firm conviction that a mistake has been made." *Id*. Defendant bases her argument solely on the elapsed time. Defendant cites no factual circumstances, such as reliance on plaintiff's inaction or increased land values, in support of her contention that the five-year delay was unreasonable. Consequently, we are not persuaded that the trial court's finding that plaintiff exercised her option within a reasonable time was clearly erroneous.

Defendant next asserts that the trial court erred by refusing to void the option based on the parties' mutual mistake. We review a trial court's denial of a party's request for rescission based on mutual mistake for an abuse of discretion. *Lenawee Co Bd of Health v Messerly*, 417 Mich 17, 31; 331 NW2d 203 (1982). An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

A contract may be rescinded where the parties are mutually mistaken about a "basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties." *Shell Oil Co v Estate of Kert*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987). Here, the trial court concluded that there was no mutual mistake. We note that both plaintiff and defendant testified that they were under the impression at the time of the agreement that the option language granted plaintiff a first right of refusal, as opposed to the unfettered right to exercise an option to purchase the lot. Regardless of this apparent confusion, as an equitable remedy, a "trial court will not grant rescission unless the party requesting it is blameless." *Stanton v Dachille*, 186 Mich App 247, 260; 463 NW2d 479 (1990). In the instant matter, defendant conceded that she did not read the contract before signing it. In addition, she testified that she learned that the contract language was not favorable within a few weeks of execution, but elected not to seek amendment or rescission. Accordingly, defendant is not "blameless" for any mutual mistake arising out of the contract terminology, and the trial court did not abuse its discretion by refusing to void the contract for mutual mistake.[1]

Finally, defendant argues that the trial court erred by failing to invalidate the option contract for lack of consideration. Whether there was consideration for a promise is a question of fact. *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84, 87-88; 492 NW2d 460 (1992). Here, the trial court concluded that the consideration for the option was the concurrent purchase of a separate lot. In an analogous situation, our Supreme Court ruled that a sale of stock could serve as consideration for a concurrently executed option for the seller to repurchase the stock. *Halsey v Boomer*, 236 Mich 328, 333-333; 210 NW 209 (1926). In the instant matter, the record indicates that the concurrent sale was formally closed at the same time that the parties agreed to the option; in fact, defendant received payment for the sale during the closing. Moreover, the option states that it was given in consideration of this concurrent sale. Consequently, we find no error in the trial court's finding that the concurrent land sale served as consideration for the option.

Affirmed.

/s/ Janet T. Neff
/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder

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[1] This Court need not disturb a trial court conclusion that reaches the right result, but for the wrong reason. *Begola*, *supra* at 640. Thus, even if the trial court erred by concluding that there was no mutual mistake, defendant was not entitled to relief based on the equitable circumstances.