STATE OF MICHIGAN

COURT OF APPEALS

FIRST APOSTOLIC LUTHERAN CHURCH and PAUL L. BEKKALA, Plaintiffs/Counterdefendants-Appellants,	UNPUBLISHED August 30, 2005
V	No. 252866 Oakland Circuit Court
PETER L. BEKKALA, Defendant/Counterplaintiff-Appellee.	LC No. 2003-049659-CZ

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff First Apostolic Lutheran Church ("the Church") owns property that it purchased in 1962 from the father of plaintiff Paul Bekkala and defendant Peter Bekkala. Plaintiffs brought this declaratory action to determine the validity of a provision in the warranty deed that purported to give the grantor, and his heirs, devisees or assigns an option to purchase the property for $1,000 an acre if the Church failed or discontinued using the property for specified purposes. Defendant filed a countercomplaint that essentially also sought a determination of the enforceability of the provision. Plaintiffs and defendant filed cross-motions for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court determined that the provision was enforceable, but rejected defendant's contention that the Church's negotiations to sell the property triggered the option. Plaintiffs appeal by right. We affirm.

Initially, we agree with the trial court that the provision is analogous to the clause considered in *Lantis v Cook,* 342 Mich 347, 358; 69 NW2d 849 (1955), which the Court determined was an option to arise on the happening of a condition precedent.

Relying on *Braun v Klug,* 335 Mich 691, 695; 57 NW2d 299 (1953), plaintiffs contend that the provision precludes the Church from selling to anyone other than the grantor, his heirs, devisees, or assigns and, as such, is void as an unenforceable restraint on alienation.

Plaintiffs' argument is premised on a misinterpretation of the critical language in the deed, to wit:

> . . . subject to the express condition, to which grantee agrees in accepting this deed, that should grantee fail to use, or discontinue using said property for a Church, Parsonage, Old Folks Home, or other accessory religious purpose, said grantee, its successors and assigns shall, at a price of no more than $1000 per acre, sell property to grantor, his heirs, devisees or assigns, at latter's option.

This provision does not prohibit the Church from selling to another. In fact, the reference to the Church's "successors" indicates that the parties contemplated that the Church's transferring its interest in the property to another. The provision provides that upon the happening of a condition precedent, the "grantor, his heirs, devisees or assigns" were granted an option to purchase. The existence of that option does not preclude the sale to another. As plaintiffs' counsel noted at the hearing on the motions, the Church's sale of the property would not trigger the option if, for example, the Church then leased the premises from the grantee and continued using the property for the specified purposes. Because the provision does not limit the potential purchasers, plaintiffs' reliance on *Braun* is misplaced.

Plaintiffs also argue that the unconscionably low fixed price is grounds for invalidating the option as an unreasonable restraint on alienation.

A similar argument was made and rejected in *Lantis*, *supra*. There, the option also specified a fixed price, yet the Supreme Court held it valid:

> Such an option, exercisable upon the happening of a condition precedent, is not regarded as a direct restraint on alienation and is everywhere held valid even though it specifies a fixed price, except in jurisdictions where the rule against perpetuities is in effect as to lands, it would be void if exercisable beyond lives in being and 21 years. The fact that an ordinary option, to arise upon the condition precedent that optioner ceases to use the land for a certain purpose, contains a fixed price does not make it any more a direct restraint on alienation or any less valid on that account. [*Lantis, supra* at 358 (citations omitted).]

Plaintiffs attempt to distinguish *Lantis* on the basis that the provision in that case allowed the grantee to sell to anyone, whereas in the present case, as in *Braun, supra*, the grantee must sell to the grantor, his heirs, devisees, or assigns. As previously explained, however, the provision does not preclude the Church from selling to others. Moreover, if indeed, any issues arise as to what is meant by "heirs, devisees or assigns," they can be resolved by separate litigation. *Stenke v Masland*, 152 Mich App 562, 569; 394 NW2d 418 (1986).

Plaintiffs also assert that reliance on *Lantis* is misplaced because "case law has evolved to the point of recognizing that even indirect restraints are invalid." Plaintiffs primarily rely on *Stenke v Masland Development Co, Inc*, 152 Mich App 562, 569; 394 NW2d 418 (1986) and *LaFond v Rumler*, 226 Mich App 447; 574 NW2d 40 (1997). These cases do not provide a basis for rejecting *Lantis*. Rather, the Court's statement in *Lantis, supra* at 358, that "[t]he fact that an ordinary option, to arise upon the condition precedent that the optioner ceases to use the land for a certain purpose, contains a fixed price does not make it any more a direct restraint on alienation or any less valid on that account," is controlling here.

Plaintiffs also contend that because the option does not specify a time period for its exercise, it is valid only for a reasonable time. And here, forty years exceeds a reasonable time. The option does not specify a particular period for exercising the power of acceptance, but limits it by reference to an event, i.e., the grantee's ceasing to use the property for specified purposes. "[W]hen an option by its terms is to be exercised upon the happening of an event instead of by a fixed date, the optionee is accorded a reasonable time *after* the occurrence of such event within which to exercise the option." 77 Am Jur 2d, Vendor and Purchaser § 50, p 157 (emphasis added). See also *Megal v Kohlhardt*, 11 Wis 2d 70, 81; 103 NW2d 892 (1960). The trial court rejected defendant's argument that the triggering event occurred, and that ruling is not contested.

Plaintiffs' position seems to be that the law should imply a term in the agreement that the event upon which the option is contingent must occur within a reasonable period of time. However, we find *Toledo & A A R Co v Johnson*, 55 Mich 456; 21 NW 888 (1885) instructive in its rejection of a similar argument concerning a payment that was contingent on an event. In that case, in 1871 the defendant agreed to pay $100, "payable in six months after the first cars run over the road" between two points. *Id*. at 457. In 1878, the railroad was completed, and railroad cars began operating on it. The defendant refused to pay. He argued that because the agreement did not specify a time when the cars should run over the road, a "reasonable time" is implied, and he should have been allowed to present testimony with regard to whether the time for performance was reasonable. The Court disagreed, explaining that "[t]he defendant's agreement was to pay on or before six months after the first cars ran over the road from Ann Arbor to Toledo, and he could not be compelled to pay before that event should happen. If he had wished to limit the time beyond which his liability would not extend, he should have incorporated it in the contract." *Id*. at 461. Similarly, if the Church here desired to limit the applicability of the option to a particular time period, it should have negotiated such a limitation into the deed.

Finally, plaintiffs argue that the restriction is too ambiguous to be enforceable. But ambiguity is not a basis for determining that an agreement is unenforceable. *Stine v Continental Casualty Co*, 419 Mich 89, 112; 349 NW2d 127 (1984).

We affirm.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey