IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Willistown Woods II Homeowners Association, Appellant	:	
v.	:	No. 1586 C.D. 2009
	:	Argued: March 16, 2010
Willistown Woods II, L.P. and Willistown Woods Associates, Edward Weingartner and Jane Doe	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: April 7, 2010

Willistown Woods II Homeowners Association (Association) appeals from an order of the Court of Common Pleas of Chester County (trial court) denying its petition for relief in which it requested the trial court to strike challenged language from an executed deed. Because the Association recorded the executed deed before filing a contempt petition, the trial court properly denied its request for relief.

At issue in this appeal is a deed for a two-acre parcel of land (Parcel 'A') owned by Willistown Woods II, L.P., a limited partnership, and Edward Weingartner, one of the limited partners and the person controlling the general

partner, Willistown Woods II Development Corporation (collectively, the Limited Partnership) which transferred title of Parcel 'A' to the Association.[1]

[1] This case was previously before our Court on issues that are not on appeal; however, as a matter of background information and of some relevance to this appeal, it is necessary to relate the history of the facts that lead up to those that are now presently before us. In January 1984, the Limited Partnership purchased 44 acres of land in Willistown Township, Chester County, Pennsylvania, containing Parcel 'A' which had a stone farmhouse, a barn, and a spring house. The Limited Partnership agreed to renovate the spring house into a residence for Joann Fruh and her handicapped son in consideration for the purchase. In February 1985, the Limited Partnership submitted a conditional use application to the Willistown Township Board of Supervisors seeking to build 397 dwelling units on the 44 acres. The Board issued a decision granting the application subject to conditions, and the Limited Partnership proceeded to build 204 townhouses on the 44 acres.

The townhouse owners organized a Homeowners' Association which became the petitioner in the proceedings that followed regarding the sale of Fruh's residence, which was not one of the approved townhomes. Following an order from this court dated July 13, 2000, holding that the Limited Partnership had to convey a fee simple interest in the Fruh house to the Association rather than a life estate which had been in dispute, the Limited Partnership refused to convey Parcel 'A' in its entirety. Contempt proceedings were filed by the Association but because the proceedings remained stayed for a period in excess of two years, the Association filed a rule to show cause and sought an order from the trial court directing the Limited Partnership to convey to it a fee simple interest in the entire Parcel 'A'. The trial court issued an order making the rule absolute, issued an attachment and citation of contempt, and scheduled an evidentiary hearing. After the hearing, the trial court issued an order on March 1, 2004, holding the Limited Partnership and Mr. Weingartner in contempt of the previous orders.

Nonetheless, the Limited Partnership still did not convey Parcel 'A' to the Association. The Association filed another contempt petition and the trial court issued an order on July 13, 2005, finding the Limited Partnership and Mr. Weingartner in contempt. The trial court stated that in order to purge themselves from contempt, the Limited Partnership and Mr. Weingartner had to 1) within 30 days of the date of the order, secure a correct legal description of Parcel 'A' and apply to the Township for approval of conveyance of Parcel 'A' to the Association; 2) within 30 days after the receipt of the Township's approval, *execute and deliver to the Association a deed in substantially the form as submitted by the Association*, with the exception of a customary deed with warranty and not a general warranty; and 3) pay the costs of attachment. It is this deed which is now before the Court and is the subject of our appeal.

On July 13, 2005, the Limited Partnership was ordered by the trial court to execute and deliver to the Association a deed that was "substantially in the form as submitted by the Association" for the purpose of transferring title of Parcel 'A' to the Association. On May 1, 2006, the Limited Partnership executed a deed transferring Parcel 'A' to the Association and the executed deed was delivered to the Association on July 25, 2007. The Association recorded the executed deed on March 26, 2008. On February 26, 2009, the Association petitioned the trial court to have "challenged language" stricken from the executed deed. It alleged that the Limited Partnership had added language to page 2 of the deed without obtaining leave of court or seeking the approval of the Association. Specifically, the form of the deed as submitted by the Association provided the metes and boundaries and the following specific language regarding Parcel 'A':

> CONTAINING 2 acres of land more or less
>
> **Being** the same premises which Marjorie M. Fruh, widow, by Indenture bearing date the 13th day of February, A.D., 1986 and recorded at West Chester in the Office for the Recording of Deeds, in and for the County of Chester on the 12th day of May, A.D., 1986 in Record Book 284, page 136, granted and conveyed unto Willistown Woods II Limited Partnership, in fee.
>
> **Being** known as Parcel "A"
>
> **Being** Parcel No. 54-08-0022.
>
> **Excepting THEREFROM** THE FOOTPRINT OF THAT CERTAIN Unit known as the Springhouse and shown on Exhibit "A" hereto, which said Unit shall be held, conveyed, and occupied pursuant to the terms of that certain Declaration of Restrictions, covenants, and Easements for Willistown Woods II record in the Office

> for the Recorder of Deeds of Chester County at Book 981, Page 464, et seq., on September 30, 1987.
>
> **TOGETHER** with all and singular the buildings, except the Springhouse Unit, improvements, ways, streets, alleys, driveways, passages, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, interest, property, claim and demand whatsoever of the said Grantor, as well at law as in equity, of, in and to the same.

However, the deed presented to the Association by the Limited Partnership provided the metes and boundaries but did not provide the above language and instead added the following language:

> CONTAINING 2 acres of land more or less
>
> Excepting there from and there out All that certain lot or piece of ground being known as the spring House being also known as 68 Street road and being set forth in exhibit A attached hereto
>
> Also under and subject to the perpetual and exclusive easement over and through the lands of the grantee herein for exclusive use and access to the spring house including all existing pavement area between the existing stone wall, barn and spring house and giving access to Dartmouth Road. Also granted is the perpetual and exclusive use of the existing Barn for purposes of storage/office and vehicles

Finding that the Association accepted the deed with the altered language without challenge or protest and failed to timely raise any complaint, the

trial court denied the Association's requested relief on July 13, 2009. This appeal by the Association followed.[2]

The Association now argues that the trial court erred by refusing to sit as a court of equity and refusing to review this matter in light of its entire long history. Instead, it contends that the trial court emasculated previous orders of this Court which found the Limited Partnership in contempt when it failed to deed Parcel 'A' over to the Association. Even though the trial court essentially found that it waived its right to reform the deed by not objecting right away and then filing it, the Association contends that the waiver is an equitable remedy that cannot be used by the Limited Partnership as a defense because it has unclean hands to a petition seeking reformation of the deed. The trial court found that a deed could only be reformed if it was shown that the transfer was induced by fraud or other misconduct by the Limited Partnership.[3] Submitting a deed that it knew did not comply with the trial court's order would constitute "other misconduct" which would justify reformation. The Limited Partnership knew that it did not fully comply with the deed as the trial court ordered, and it is inequitable for the trial court to reward that conduct.

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[2] Our scope of review of the trial court's denial of the Association's petition is whether the trial court abused its discretion or committed an error of law. *Daddona v. Thorpe*, 749 A.2d 475 (Pa. Super. 2000).

[3] A court of equity has the jurisdiction and power to reform language in a deed but only can do so where proof of a mistake of fact, fraud, error or other misconduct is proven by clear evidence. *Wagner v. Wagner,* 466 Pa. 532, 353 A.2d 819 (1976); *Doman v. Brogan*, 592 A.2d 104 (Pa. Super. 1991).

The Limited Partnership argues that the trial court properly determined that the Association was not entitled to the reformation of the deed because it was aware of the challenged language and chose to accept and record it anyway. Therefore, there was no misconduct which would require reformation. Additionally, the Association waived its right to challenge the language in the deed by accepting it and failing to request that the Limited Partnership be held in contempt of court. Finally, the language in the deed that was executed by the Limited Partnership and presented to the Association is substantially in the form of the deed that had been submitted to the trial court by the Association. It explains that "just as the owners of the other 204 townhouse units in Willistown Woods II have the exclusive right to park their cars in specific areas and the right to the exclusive use of the areas immediately adjacent to their units, the 'added language' at issue simply confers similar rights on the owners of the Spring House. If, as previously determined by the Commonwealth Court, the Spring House is to be treated as one of the 205 'units' that were approved for the project, then the owners of the Spring House should be afforded rights and privileges similar to those enjoyed by the owners of the other units." (Limited Partnership's brief at 9.)

Addressing the issue of whether the language in the deed was "substantially in the form as submitted by the Association" for purpose of transferring title of Parcel 'A' to the Association, contrary to the trial court's conclusion, there is no question by this Court that the added language is not substantially in the form submitted by the Association. The executed deed that was delivered to the Association provided an easement to the Spring House and perpetual and exclusive use of the existing barn for purposes of storage and/or an

office and vehicles. That language is nowhere to be found in the deed submitted by the Association and, in fact, the Spring House was specifically excluded.

Notwithstanding that the language has changed, the Limited Partnership is correct that because the Association accepted the executed deed and recorded it without any protest or challenge, the Association cannot now argue that the trial court should have reformed the deed. The Association received the executed deed on July 25, 2007, and recorded it eight months later. Eleven months after that, the Association filed its petition. At no time from the date the deed was executed to the time the Association filed its petition did the Association's legal representation change, meaning that counsel for the Association was well aware of the trial court's July 13, 2005 order and its requirement that the Limited Partnership execute and deliver to the Association a deed that was "substantially in the form as submitted by the Association" for purpose of transferring title of Parcel 'A' to the Association. Therefore, when the Association received the executed deed from the Limited Partnership on July 25, 2007, and it read the language in the executed deed which it believed was not "substantially in the form as submitted by the Association," it should have challenged the language at that time. Instead, the Association waited until February 26, 2009, or 19 months, to file its petition challenging the language. It is ironic that the Association makes much of the fact that the trial court knew of the drawn out history of the parties and previous court orders and holds the trial court responsible for not granting its requested relief when it was the responsibility of the Association to review the deed for which it waited so long to finally record. There was no mistake, fraud or error involved here because the Association was well aware of the added language in the deed and

did nothing about it until well after the deed was recorded, not before, when it was the time to act.[4]

Accordingly, the trial court's order is affirmed.

DAN PELLEGRINI, JUDGE

[4] Nothing in this opinion precludes the Association from pursuing a contempt order to enforce the trial court's previous order directing the Limited Partnership to submit a new deed to the Association in the form of the deed that had been submitted by the Association.

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O R D E R

AND NOW, this 7th day of April, 2010, the order of the Court of Common Pleas of Chester County, dated July 13, 2009, is affirmed.

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DAN PELLEGRINI, JUDGE