



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

April 15, 2004

Richard H. Cross, Jr., Esquire
Mark D. Olivere, Esquire
913 N. Market Street, Suite 1001
P.O. Box 1380
Wilmington, Delaware 19899-1380

Donald L. Gouge, Jr., Esquire
800 N. King Street, Suite 303
Wilmington, Delaware 19801

Donald C. Taylor, Esquire
Paula C. Witherow, Esquire
Cooch and Taylor
824 Market Street Mall, Suite 1000
Wilmington, Delaware 19801

Re: *Susane Magness v. Stephanie M. Krewson v. Elizabeth
K. Bragg, Dagmar S. Dunn, Robert P. Long, Jr. and
Michael T.G. Long*, Civil Action No. 20327

Dear Counsel:

Pending before the Court is Susane Magness's ("Magness") motion for contempt pursuant to Court of Chancery Rule 70(b). The motion arises out of an injunction against a proposed sale of a residential property in which Magness claimed a life interest. On June 27, 2003, the Court orally granted Magness's motion for a temporary restraining order, but no order was ever entered. In late 2003, Donald C. Taylor ("Taylor"), counsel

for Defendant Stephanie M. Krewson (“Krewson”), attempted to remedy a complicated issue involving Joseph Setting (“Setting”), the purchaser of the property subject to the restraining order, by devising a creative solution.¹ On December 29, 2003, without notifying Magness or the Court, Taylor had Krewson and Setting sign various documents and take certain actions to put them in a position to conclude a sale of the property by January 27, 2004, if he first was able to obtain a stipulation from Magness or an order of the Court to that effect. Taylor asserts that his actions conformed with the Court’s ruling.² Magness’s counsel disagreed and filed a motion for contempt. Although the parties eventually stipulated to a transaction that went beyond the actions underlying Magness’s motion for contempt, she continues to press her motion.

Technically speaking, Taylor’s actions might have violated the Court’s oral ruling of June 27, 2003. Nevertheless, the Court finds that Taylor acted in good faith, and in what he thought were the best interests of all the parties to avoid harm to a third party (Setting) that could have resulted in liability for Magness or Krewson or both. The Court faults Taylor, however, for failing to provide more timely notice of his plan to Magness and her counsel.

¹ Setting had entered into a contract with Krewson to buy the disputed property in April 2003, before Magness filed this action and before the Court’s TRO ruling.

² *See, e.g.*, Answer to Motion for Contempt (“Def. Ans.”) ¶¶ 8, 13.

Furthermore, the Court considers Magness's continued pursuit of her motion for contempt to be an overreaction and not helpful. In light of the facts presented, including the absence of an unambiguous written order and of any significant harm to Magness and the good faith, albeit belated, actions of Taylor, the Court will not hold Krewson or her counsel in contempt of the June 27, 2003 oral ruling. The reasons for this ruling follow.

I. BACKGROUND³

Plaintiff Susane Magness is the mother of Defendant Stephanie M. Krewson. In May 1998 Magness was a tenant residing at 5012 Kennett Pike, Wilmington, Delaware (the "Property"). Magness learned that the owner was going to sell the Property, but she did not have sufficient funds to buy it. Magness then met with several of her children, including Krewson. After that meeting, Magness renounced her interest as a lifetime beneficiary of an income producing trust to accelerate the interests of the remainder beneficiaries, including Krewson.⁴ Shortly thereafter, Krewson purchased the Property. She let her mother continue living there, but the parties disagree about the terms on which Krewson permitted Magness to stay.⁵ In March 2002, Krewson insisted that her mother

³ This summary is drawn from the Complaint and the papers filed in connection with Magness's motion.

⁴ Krewson's remainder interest was \$ 41,484.02.

⁵ Magness contends that Krewson agreed to give her a rent free, life estate in the Property. Krewson alleges that Magness was obligated to pay rent on the Property comparable to what she previously paid.

begin paying rent. When Magness continued to refuse, Krewson filed an action to evict her.

On April 23, 2003, Krewson notified Magness that she intended to sell the Property to Setting. Two weeks later, Krewson informed her mother that she had entered into a contract of sale. On May 27, 2003, Magness filed this action claiming a life estate in the Property and seeking imposition of a resulting trust on it. Because a sale of the Property was imminent, Magness also moved for a temporary restraining order to enjoin the sale.

On June 27, 2003, Vice Chancellor Strine granted the temporary restraining order in an oral bench ruling, conditioned on Magness posting a bond without surety for \$10,000. In granting the motion, Vice Chancellor Strine noted that he was not concerned about the possible loss of the sale because the location of the property made it highly marketable.⁶ On July 1, 2003, Magness's counsel Richard H. Cross, Jr. ("Cross") submitted a letter to the Court enclosing an unopposed form of order and reported that the required bond had been posted. However, no order was ever entered.

⁶ There is no indication that Vice Chancellor Strine was advised that Setting contemplated a tax-deferred exchange. *See* Def. Ans. ¶ 15. The tax consequences of a sale to Setting became important in the situation that led to the pending motion.

On July 25, 2003, Cross wrote to Taylor regarding the preservation of the Property. Specifically, he “wanted to confirm that [Taylor was] continuing to keep an eye on the Property.” Taylor confirmed that he would do so.

Taylor apparently knew from a fairly early date that Setting needed to close the sale by January 27, 2004 for tax reasons. On December 29, 2003, unbeknownst to Magness or her counsel and notwithstanding the Court’s ruling, Krewson and Setting completed settlement documents. The deed was not delivered, but rather was put in escrow pending Magness’s stipulation to the closing or court order. The proceeds of the sale were to be held in escrow.⁷ After the documents were signed, Krewson’s counsel requested a meeting with Cross.

On January 6, 2004, counsel for the parties met and conducted settlement negotiations, which did not succeed. Krewson’s counsel then advised Magness’s counsel about the actions taken on December 29, 2003, and suggested a possible stipulation consenting to the sale to Setting. On the same day, Magness’s counsel learned that the proposed order submitted on July 1, 2003 had never been entered.

On January 8, 2004, Taylor sent a letter to Cross explaining that Setting, who had signed a contract to purchase the Property before Magness’s action, needed to close the sale by January 27, 2004 for tax reasons.⁸ Taylor stated that if Setting did not close by

⁷ Plaintiff’s Motion for Contempt (“Motion”) Ex. H ¶ 3.

⁸ Motion Ex. G.

that date, he would fail to meet the requirements for a tax-deferred exchange under section 1031 of the Internal Revenue Code and would, as a consequence, incur “large damages.” Taylor also explained that, if Setting incurred this liability, he would likely seek compensation from either Magness or Krewson.

In his letter, Taylor explained that a closing that would pass title to Setting of the remainder interest in the Property might satisfy section 1031 of the Internal Revenue Code.⁹ Taylor also stated his opinion that the transaction on December 29, 2003 did not violate the Court’s oral ruling on the temporary restraining order.¹⁰ In that regard, Taylor emphasized that Magness only claimed a life estate in the Property and Krewson had protected that interest by putting the deed in escrow pending Magness’s stipulation to its delivery and closing or an order of the Court.¹¹ Taylor then sought Magness’s stipulation

⁹ Taylor has represented that a seller of real property must purchase a replacement property within 180 days of the sale of the original property in order to retain the benefits of a tax-deferred exchange under section 1031 of the Internal Revenue Code. He also expressed the opinion that purchasing a remainder interest would be sufficient to satisfy the IRC’s requirements for a tax-deferred exchange. Magness did not contest those averments, and for purposes of this letter opinion, the Court assumes, without deciding, that they are correct.

¹⁰ On January 13, 2003, Cross sent a letter to the Court requesting that the proposed order of July 1, 2003 be entered and made retroactive, effective June 27, 2003. The Court requested that the parties stipulate to the form of order, but they failed to reach an agreement.

¹¹ Taylor also confirmed that Krewson intended to comply with the Court’s ruling even though no order had been entered. Motion Ex. G. It is clear from the record, however, that the parties did not have the same understanding of the Court’s ruling.

to the completion of the sale to Setting upon conditions that would enable Magness to retain her life estate if she ultimately prevailed in this litigation. Magness refused. On January 16, 2004, her counsel filed this motion for contempt.

On January 20, 2004, the Court heard argument on the motion for contempt. In addition, at Taylor's request, the Court met with the parties to discuss Setting's desire to complete the transaction by January 27, 2004.

On January 26, 2004, Setting's counsel sent a letter to Cross informing him that if the deed was not recorded on January 27, 2004, Setting would bring an action against Magness for his tax liability. In the face of this threat and with the assistance of counsel, Magness stipulated to the delivery of the deed to Setting subject to several undertakings by Krewson, including that she deposit the \$55,606.47 she had put in escrow with the Court of Chancery pending the outcome of this case and that she would purchase the life estate from Setting should it ultimately be determined that Magness has a life estate interest in the Property.¹² Magness did not withdraw her motion for contempt.

II. ANALYSIS

Chancery Court Rule 70(b) authorizes the Court to provide relief “[f]or failure to obey a restraining or injunctive order, or to obey or to perform any order,” upon proof of

¹² Stipulation between Magness and Krewson dated January 26, 2004 (“Stipulation”) ¶ 4. Notably, Magness's counsel made repeated statements at the June 27, 2003 TRO hearing that Magness was not opposed to the sale of the Property so long as the equivalent value of the life estate was preserved. *See* June 27, 2003 Tr. at pp. 8, 9, 10, 13, 14.

service or of defendant's knowledge of the order and facts constituting the disobedience. In a contempt proceeding, the Court will not consider an excuse based upon an argument that the order in question was imperfect or erroneous.¹³ If contempt is found, the Court may impose a fine or award damages for the harm sustained as a result of it.¹⁴

In this case, no written restraining order was ever entered.¹⁵ The Court granted Magness's motion for a temporary restraining order at a hearing on June 27, 2003. The parties agree that Magness submitted a proposed order and posted the specified bond on or about July 1, 2003. Due to an administrative oversight, however, the proposed order was not considered the Court.

The proposed order stated:

Defendant is enjoined from selling the property at 5012 Kennett Pike, Wilmington, Delaware. Plaintiff shall first execute a bond without surety in the amount of \$10,000. This order shall remain in effect until further order of this Court or stipulation of the parties.

Krewson admits that the Court granted the TRO. In response to this motion, her counsel Taylor states, "I felt obligated to follow the unsigned Court Order and believe I have

¹³ *Mayer v. Mayer*, 132 A.2d 617 (Del. 1957).

¹⁴ *City of Wilmington v. General Teamsters Local Union 326*, 321 A.2d 123, 125 (Del. 1974).

¹⁵ Court of Chancery Rule 65(d) requires that restraining orders and preliminary injunction orders "shall be specific in [their] terms . . . and describe in detail . . . the act or acts to be restrained." One objective of this rule is to prevent situations like the one presented on this motion.

done so.”¹⁶ By January 2004, when Magness’s counsel learned that no order had been entered, it had become clear that the parties disagreed about the scope of the Court’s ruling. Not surprisingly, Krewson refused at that point to stipulate to Magness’s proposed form of order.

A. Did Krewson Violate the Court’s TRO Ruling?

The first issue presented by Magness’s motion for contempt is whether Krewson violated the Court’s Order. Magness contends the Court’s bench ruling “clearly sets forth that the Property was not to be sold absent stipulation by both Plaintiff and Defendant or alternatively, by order of the Court.”¹⁷ Magness further contends that the transaction Krewson entered into with Setting on December 29, 2003 constituted a sale in contravention of that ruling.¹⁸ Krewson agrees that the Court enjoined her from selling the Property.¹⁹ The parties disagree, however, about the meaning of “sale” in the context of this action.

In Krewson’s Answer to the Motion for Contempt, her counsel explained his understanding of the ruling as follows:

First, the word “selling” could not apply to entering into a contract with Mr. Setting since that contract to sell the property had already been entered

¹⁶ Def. Ans. ¶ 8.

¹⁷ Motion ¶ 13.

¹⁸ *Id.*

¹⁹ Def. Ans. ¶ 13.

into and signed and delivered approximately a month either before the Order was entered or any other action filed on behalf of Plaintiff claiming a life estate in the property. The Order did mean that the property could not be sold to any other party. I believe that the Order meant that there should not be a final settlement on the Setting contract transferring title to Setting without either a stipulation or another Court Order.

It seems clear that the purpose of the Order was to keep title in the Defendant's name in Order that the life estate could pass to the Plaintiff without any further litigation if the Plaintiff was awarded a life estate title interest. However, it allowed changes by stipulation or Order to meet other circumstances.

Krewson goes on to argue that the actions she took in late December 2003 related to concluding a sale to Setting were contingent on either the parties entering into a stipulation or the Court entering an order permitting her to deliver the deed. Those December actions included signing the deed, satisfying the existing mortgage, paying the transfer taxes and delivering possession to Setting.²⁰ Krewson avers, however, that she did not legally deliver the deed to Setting in December 2003. She contends the documentation made clear that the deed would be held in escrow until either the parties stipulated that it could be delivered and recorded with another document protecting Magness's possible life estate or the Court entered an order authorizing delivery of the deed.²¹

²⁰ Although Magness claims a life estate in the Property, she has not lived there since before the TRO hearing in June 2003. Tr. at 6-8.

²¹ See, e.g., Def. Ans. ¶ 6.

In their competing papers on the Motion for Contempt, the parties invite the Court to resolve their dispute by delving into the finer points of the law regarding when a sale occurs. In view of the circumstances, the Court declines that invitation. Indeed, undertaking such an exploration would only compound the already burdensome and unnecessary imposition on the Court's time and resources caused by this motion. I hasten to add, however, that I consider both parties equally responsible for this unfortunate state of affairs.

Several facts lead the Court to conclude that a finding of contempt is not appropriate here. First, the unusual facts of this case support the conclusion that the meaning of the TRO ruling when applied to Krewson's conduct is somewhat ambiguous.²² The complicating factors include Magness's claim to only a life interest in the Property and the lengths to which Krewson's counsel went to protect that interest in Krewson's dealings with Setting. The scales on the question of the scope of the TRO ruling may tip slightly in favor of Magness's interpretation, but that factor is outweighed by other considerations.

For example, in addition to being concerned about the lack of a written order, the Court notes that Magness obtained the ruling in June 2003 solely by making a showing sufficient to support a TRO. Magness's counsel emphasized at the hearing that the

²² See note 15, *supra*.

standard for a TRO is less than for a preliminary injunction.²³ As Vice Chancellor Strine stated, Magness only had to demonstrate the existence of a “colorable claim,” the “threat of imminent irreparable harm and that the balance of hardships tilts her way” to qualify for a TRO.²⁴ Therefore, in terms of the merits, this case remains in a nascent stage. The Court has not yet addressed whether Magness is likely to succeed on the merits of her underlying claim.

Moreover, TRO’s generally are for limited time periods until a preliminary injunction hearing or trial can be held. In that regard, Vice Chancellor Strine repeatedly suggested at the hearing in June that the parties skip the preliminary injunction stage and proceed directly to a prompt trial in or around September 2003.²⁵ Nevertheless, until January 2004, the parties did little or nothing to advance this litigation toward a hearing or trial on the merits. Against this procedural back-drop, the Court is especially reluctant to accord a broad construction to the oral TRO ruling.

Another factor that supports denial of Magness’s motion for contempt is the questionable nature of the harm she allegedly suffered as a result of Krewson’s actions. Magness contends she was harmed in the following respects: (1) she was “bullied” into a stipulation and subjected to “strong-arm tactics [by Krewson and her counsel]

²³ Tr. at 10-11.

²⁴ Tr. at 31.

²⁵ Tr. 22-23, 33-35.

deliberately made in an attempt to manipulate and financially harm” Magness;²⁶ (2) because the Property has been transferred to Setting, who has begun renovations, it will be riskier and more difficult to “unscramble the eggs,” if Magness prevails;²⁷ and (3) if damages are awarded to Magness in lieu of a life estate, Krewson may not have sufficient assets to satisfy the judgment.²⁸ Magness also complains that, after she filed her motion for contempt, Setting’s counsel and Krewson’s counsel demanded that she consent to the recording of the deed under threat of a suit for damages.²⁹ Magness claims these actions occurred at the eleventh hour and deprived her of an opportunity to fully evaluate the facts. She also alleges they caused her to incur more expense in negotiating the stipulation ultimately entered into on January 26, 2004.³⁰

The Court concludes that these allegations are overblown and fail to take into account the significant protections Magness, through her counsel, managed to include in the final Stipulation. For example, the Stipulation provides: “Krewson agrees that, to the extent Magness is successful in obtaining a decision recognizing her life estate interest in

²⁶ Motion ¶ 15.

²⁷ *Id.* ¶ 16. The Court notes that Setting’s prophylactic measures regarding the leaks at the Property do not harm Magness. Furthermore, prior to the Stipulation, such action was permissible with Krewson’s authorization. After the Stipulation, Setting was entitled to take such action on his own accord.

²⁸ *Id.* In the TRO application, Magness estimated her damages at \$135,287.48.

²⁹ Plaintiff’s Response in Support of Motion for Contempt at 1-2.

³⁰ *Id.* at 2.

the Property, Krewson promises to pay Setting for the value of the life estate interest.”³¹ As to Magness’s concerns about Krewson’s financial position, the Stipulation required Krewson to deposit \$55,608.47 with the Register in Chancery to be used to pay any damages that may be awarded to Magness.³² This ameliorates at least part of Magness’s concern. Furthermore, she has never demonstrated any basis for the Court to doubt Krewson’s ability to satisfy any damages that might be awarded. The Stipulation also provides additional protection against the risk of harm to Magness caused by Setting taking an action that reduces the value of the life estate.³³

Lastly, the Court is not persuaded by Magness’s claims that she was bullied or strong-armed into concessions. Magness and her counsel had three weeks to negotiate the Stipulation. While that may not be a comfortable amount of time, the Court considers it sufficient. Similarly, the Court discounts the complaints about threats and bullying, because Magness was represented by able counsel throughout the relevant time period. In fact, Magness’s motion for contempt and her refusal to withdraw it in the wake of the Stipulation smacks of the same type of strong-arm tactics she decries.

³¹ Stipulation ¶ 4.

³² *Id.* ¶ 2.

³³ *Id.* ¶ 5.

B. Attorneys' Fees

Each side accuses the other of egregious conduct warranting an award of attorneys' fees and costs. For the reasons stated below, the Court declines to award any fees or costs to either side.

In light of the Delaware Bar's proud reputation for civility and professionalism,³⁴ the Court takes a motion for contempt and the allegedly contemptuous actions very seriously. Upon a thorough inspection of the record here and the situation faced by the parties, the Court has found that the actions of Krewson and her counsel Taylor did not clearly violate the Court's temporary restraining order ruling and were neither egregious nor undertaken in bad faith. Accordingly, there is no basis for holding them in contempt and awarding fees and costs to Magness.

The Court notes, however, that the actions of Krewson's counsel do not reflect best practices. In particular, Krewson's counsel failed to recognize the degree of additional caution they needed to exercise by virtue of being subject to the Court's June 2003 ruling. It may have been within the prerogative of Krewson's counsel to stage their negotiations first with Setting and then with Magness as they did. Faced with the Court's restraining order ruling, however, they should have conducted those negotiations much

³⁴ *E.g.*, Chief Justice Norman E. Veasey, Welcome to the New Members of the Delaware Bar, Delaware Bar Admission Ceremony, Dover, Delaware (Dec. 15, 2003) transcript *available at* <http://courts.state.de.us/Courts/Supreme%/press.htm>.

sooner and provided ample notice to Magness. By failing to do so, they put inappropriate and unnecessary time-pressure on both Magness and, potentially, the Court.

Having created the unnecessary time pressures and pressed the boundaries of the Court's restraining order ruling by their conduct, Krewson and her counsel are hardly in a position to complain about aggressive countermeasures by the other side. Thus, while the Court questions the advisability of Magness's unsuccessful motion for contempt, it does not doubt her good faith in pursuing it. Accordingly, the Court likewise will deny Krewson's request for attorneys' fees and costs.

III. CONCLUSION

For the reasons stated in this letter opinion, Magness's motion for contempt is denied. The Court also denies the requests of each side for attorneys' fees and costs.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor