

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

FRANK GARNESKI	:	C.A.#01-12-076
EXECUTOR OF ALICE GARNESKI	:	
EXECUTRIX OF FRANK D. GYLES	:	
Plaintiff	:	<i>Trial Date: October 15, 2004</i>
v.	:	<i>Decided: November 24, 2004</i>
	:	
TERRY HACK AND	:	
ROSE HACK	:	
Defendant(s)	:	

William B. Wilgus, Esquire, attorney for Plaintiff
Richard E. Berl, Esquire, attorney for Defendants

DECISION AFTER TRIAL

In this action the Court is called upon to make the determination whether the Defendants, who executed a promissory note to purchase the decedent’s mobile home, satisfied their obligations under the note. The Court conducted a trial and took testimony and evidence on October 15, 2004. This is the Court’s decision.

BACKGROUND

Frank Gyles (hereinafter, the “decedent”) made his Last Will and Testament on May 17, 2000. In the will he designated Terry R. Hack and Rose L. Hack (hereinafter the “Defendants”) to receive his mobile home at Massey’s Landing, Lot 42A upon his death.

On July 28, 2000 the decedent sold his mobile home to the Defendants for \$40,000. The sale was memorialized by a promissory note. The note required the Defendants to pay a \$10,000 down payment at

the time the note was signed and \$10,000 annually on August 1 until the obligation was satisfied.

The Defendants' paid the initial \$10,000 via check on July 28, 2000. The mobile home has been titled and registered in the Defendants' names since that date.

The decedent died on November 15, 2000. Prior to his death, the decedent moved into a nursing home and designated Alice Garneski as his personal representative. Mrs. Garneski is now also deceased. This action has been maintained by her executor, Frank Garneski.

DISCUSSION

The inquiry before the Court in this action is purely an issue of fact. To succeed the Plaintiff has the burden of proving that the Defendants did not fulfill their obligation under the note by a preponderance of the evidence. *See, Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709, 713 (Del. Super. 1967). For the following reasons this Court finds the Plaintiff failed to meet its burden.

The parties agree that the Defendants have not paid any portion of the \$30,000 to the decedent's estate since the time of the decedent's death. The factual determination remains as to whether the Defendants paid the money to the decedent prior to his death. The Defendants contend that they paid the \$30,000 in cash to the decedent on October 13, 2000.

The Plaintiff argues that the October 13, 2000 transaction never occurred. First, the Plaintiff argues that there is no record that the transaction took place. Second, the Plaintiff contends that it is illogical and uncommon for individuals to transact \$30,000 in cash. Finally, the Plaintiff attempts to discredit the Defendant by showing inconsistencies

between his letter post-marked December 7, 2000 and his testimony before the Court.

The Plaintiff's sole witness, Mr. Garneski, testified that he helped his wife maintain the affairs of the decedent both before and after his death. Mr. and Mrs. Garneski reviewed all of the decedent's bank records, accounts and personal property at the time of his death. Mr. Garneski claimed that there was no evidence of the decedent's receipt of \$30,000. Thus, he concluded that the money remained unpaid. Further, Mr. Garneski helped prepare an inventory list of the decedent's safe on October 4, 2000, which included the note at issue. On October 4, the promissory note did not indicate that it had been satisfied.

The Defendant, Mr. Hack, testified that he retrieved the decedent's safe on October 12, 2000, per the decedent's request. The following day, he claims that he paid the decedent \$30,000 in cash to satisfy the balance due on the promissory note. Mr. Hack testified that in exchange for the \$30,000 the decedent gave him the original note and told him to write that the note was "paid in full."

The Plaintiff argues that it is illogical and uncommon for individuals to engage in cash transactions when dealing with a \$30,000 debt. In support of its argument the Plaintiff directs this Court's attention to the fact that the down payment of \$10,000 was paid in the form of a check. Additionally, the Plaintiff argues that the absence of a receipt for the transaction is an indication that the transaction never took place.

The Defendant stated that he satisfied the obligation in cash because the decedent requested cash payment. He further stated that he often engages in cash transactions and keeps large sums of cash at his home.

The Defendant sought to show that he converted other property into cash so that he could pay the decedent in cash. Namely, the Defendant converted personal property, mutual funds and his share in certain real property. (Exh. C, D and E). The Defendant also receives cash for his deer processing business.

Other than the notation on the note itself, neither party presented a receipt to show the \$30,000 was paid to the decedent prior to his death. Although it is generally good business practice to request a receipt for a cash payment, this Court recognizes that the relationship between the decedent and the Defendants was friendly and informal. Under such circumstances traditional business practices are sometimes overlooked. Additionally, the Court believes that the decedent was likely capable of creating a receipt or making a signed notation that the note was satisfied on the note itself. The Defendant concedes that he wrote the “paid in full” notation upon the decedent’s direction to do so. The Plaintiff urges that such circumstances are suspicious. However, the Plaintiff offers no proof to show that the notation was not made at the direction of the decedent.

The Plaintiff attempts to discredit the Defendant’s testimony by directing the Court’s attention to a letter from Mr. Hack to Mrs. Garneski on December 7, 2000. (Exh. 3). Soon after the decedent passed away, Mrs. Garneski requested the Defendants to inform her of the contents of the safe that Mr. Hack retrieved on October 12, 2000. Mr. Hack responded, “There was nothing in the box that Frank gave me.” (Exh. 3). However, when Mr. Hack testified, he admitted that the safe contained a copy of the decedent’s will, the original purchase agreement for the mobile home at issue, and a bill of sale for the decedent’s 1999 Ford Taurus.

Despite this inconsistency, the Court cannot conclude that the Defendants never paid the decedent the remaining balance on the note.

The Court finds the testimony of Kirk Hess to be credible and weighs his statement accordingly. Mr. Hess testified that the decedent engaged in cash transactions on a regular basis, and that he engaged in a large cash transaction with the decedent in 1999. Mr. Hess was present at the transaction between the Defendants and the decedent on October 13, 2000. According to his testimony, he witnessed Mr. Hack hand the decedent a manila envelope with what he believed contained the cash to pay off the note at issue. Mr. Hess did not count the cash inside the envelope nor did he see the decedent examine its contents. However, Mr. Hess' statements are consistent with the testimony offered by the Defendant regarding the October 13, 2000 transaction.

The Court is not convinced that the \$30,000 transaction took place, nor is the Court convinced that the transaction did not take place. As mentioned above, the Plaintiff must prove its case by a preponderance of the evidence. A preponderance of the evidence exists when the party bearing the burden of proof presents the evidence most worthy of belief and the fact finder determines that it is possible to accept that party's version of what happened. *Guthridge* at 713. However, when the evidence offered by each party is in even balance, then the party bearing the responsibility to prove something by a preponderance of the evidence has failed. *Id.* This Court finds that the evidence offered by both the Plaintiff and the Defendants in this matter is in even balance. Therefore, the Plaintiff has failed to meet its burden of proving that the Defendants did not fulfill their obligation by a preponderance of the evidence.

CONCLUSION

The Plaintiff failed to establish that the Defendants did not satisfy their obligation under the note by a preponderance of the evidence. Therefore, this Court enters judgment in favor of the Defendants.

IT IS SO ORDERED this _____ day of November 2004.

Judge Rosemary Betts Beauregard