IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JOHN P. DENISON and DONNA L. DENISON,	)	C.A. No. 03C-01-002 (JTV)
Plaintiffs,	)	
v.	)	
JOHN E. REDEFER, JR., DOLORES R. REDEFER, JOHN E. REDEFER, III, ELIZABETH M. REDEFER, CHRISTOPHER R. REDEFER, JULIANNE REDEFER, and P. JUSTIN REDEFER,	)	
Defendants.	)	

Submitted: December 16, 2005
Decided: March 31, 2006

Steven Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware. Attorney for Plaintiffs.

John A. Sergovic, Jr., Esq., Sergovic & Ellis, Georgetown, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiffs' Motion for Reargument
DENIED

VAUGHN, President Judge

Denison, et al. v. Redefer, et al.
C.A. No. 03C-01-002 (JTV)
March 31, 2006

ORDER

Upon consideration of the plaintiffs' motion for reargument, the defendants' response, and the record of the case, it appears that:

1. The plaintiffs' move for reargument of the Court's order and opinion which denied their motion for partial summary judgment and granted the defendants' motion for partial summary judgment.[1]

2. The facts of the case are set forth in the opinion.[2] Briefly, defendants John E. Redefer, Jr. and Dolores R. Redefer (the "Redefers") owned a residential condominium unit which included a house and a garage. They entered into a sales agreement with plaintiffs John P. Denison and Donna L. Denison (the "Denisons") in which the Redefers agreed to sell to the Denisons, and the Denisons agreed to buy from the Redefers, the portion of the unit upon which the house was located. The agreement provided that the Redefers would retain the portion of the unit upon which the garage was located. Because a partition of the condominium unit violated the condominium regime, the transaction was restructured to provide that the garage portion of the unit would be leased back to the Redefers and certain family members of theirs on a 99-year lease, renewable for another 99 years. Accordingly, the documents for settlement were prepared to convey the fee simple of the entire unit to the Denisons, subject to the 99-year lease back to the Redefers for the garage. Settlement was completed on that basis. At settlement, both the Redefers and the

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[1] *Denison v. Redefer,* C.A. No. 03-C-01-002 (Vaughn, P.J.)(Nov. 30, 2005).

[2] *Id.*

Denisons were represented by counsel. They were both aware of the nature of the transaction, that is, that the transaction was restructured as a sale of the unit with a lease back of the garage. Both agreed to it by completing the transaction. As part of the transaction, the Denisons became lessors under the 99-year lease. The transaction took place in 1987.

3. This action was brought in 2003. The plaintiffs alleged that the lease could not be valid because it constituted an invalid and unlawful attempt to partition common elements associated with the condominium unit; that the lease was at most a license terminable at will; that the lease was unenforceable because it was not recorded in the Recorder of Deeds office within a time frame required by statute; and that the defendants had breached the lease. They sought to have the defendants ejected from the garage.

4. In its opinion denying the plaintiffs' motion for partial summary judgment and granting the defendants' motion for partial summary judgment, the Court rejected all of the plaintiffs' contentions. In doing so, the Court held, in relevant part, that the plaintiffs were equitably estopped from repudiating the agreement which they willingly agreed to in 1987.

5. In this motion for reargument, the plaintiffs contend that the Redefers knew or should have known that the long-term lease violated Delaware law which prohibits partitioning of a condominium unit's common elements because Mr. Redefer was a real estate broker; that equitable estoppel cannot apply in this case because the lease violates an express mandate of condominium law and the dictates of public policy; and that the Court's application of equitable estoppel charges the Denisons with the

knowing conduct of the Redefers and their own lawyer in structuring the transaction in the form of a lease, while it insulates the Redefers from that same conduct although the "lease" was not disclosed to the Denisons until the end of final settlement and there is no factual basis for suggesting that the Denisons knew of any prohibition against partition.

6. The plaintiffs are requesting reargument under Superior Court Civil Rule 59(e), which permits the Court to determine from the motion and answer whether reargument will be granted. A motion for reargument "is not a device for raising new arguments or stringing out the length of time for making an argument."[3] In Delaware, reargument will generally be denied "unless it is shown that the Court overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."[4] A motion for reargument should not be used merely to "rehash the arguments already decided by the court."[5]

7. After considering the plaintiffs' contentions, I remain convinced that they should be equitably estopped from repudiating the transaction to which they agreed in 1987. The record establishes that the parties, meaning the Denisons and the

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[3] *Beatty v. Smedley,* 2003 Del. Super. LEXIS 437, at * 5 (Slights, J.).

[4] *Citifinancial Mortgage, Co., v. Edge,* C.A. No. 02L-02-011 (Del. Super. 2004)(Vaughn, J.) quoting *Monsanto Co. v. Aetna Cas. and Sur. Co.,* Del. Super., C.A. 88-JA-118, Me. Op. at 2, Ridgely, P.J. (Jan. 14, 1994) (*quoting Wilshire Restaurant Group, Inc. v. Ramada, Inc.,* Del. Ch., D.A. No. 11506, Let Op. at 2, Jacobs, V.C. (Dec. 1990)).

[5] *McElroy v. Shell Petroleum, Inc.,* 1992 Del. LEXIS 449.

Redefers and their attorneys in the sense in which I use the word here, became aware that the transaction as originally contemplated violated the condominium regime. I acknowledge that the Denisons did not become aware of that until they were at settlement. The record also establishes that they all voluntarily participated or acquiesced in restructuring the deal in a way which bypassed the perceived legal impediment but still accomplished their original intent. The inferences which necessarily arise from the conduct of the parties and their attorneys also establish that at the time it was thought by the parties that the transaction as restructured was lawful. Equitable estoppel is established because neither party was aware or had any readily reasonable means of becoming aware that their restructured transaction might later be argued to be unlawful, both relied upon the conduct of each other and their attorneys in completing the transaction, and both suffered a prejudicial change of position as a result of the reliance; in the case of the Redefers, letting go of a valuable piece of real estate. The rights of third parties are not involved and no subsequent facts have developed which would justify relieving the plaintiffs from an estoppel.

8. While it is true as a general proposition that the doctrine of estoppel has no application to an agreement which is illegal because it violates an express mandate of law or the dictates of public policy,[6] under the facts and circumstances of this case, I am not persuaded that there is any such illegality or infringement on public policy. I am also not persuaded that the fact that defendant John E. Redefers, Jr. is a real estate broker warrants reargument.

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[6] *Waggoner v. Laster*, 581 A.2d 1127 (Del. 1990).

9. Therefore, the plaintiffs' motion for reargument is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File