

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002129-MR

ST. STEPHEN BAPTIST CHURCH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN RYAN, JUDGE  
ACTION NO. 99-CI-002869

ERNEST S. ALLEN and  
ELIZABETH ALLEN

APPELLEE

OPINION  
REVERSING AND REMANDING  
\*\* \*\*

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND GUDGEL, JUDGES.

EMBERTON, CHIEF JUDGE: St. Stephen Baptist Church filed this action seeking specific performance of a real estate sales and purchase contract between it and the owners of the property, Ernest S. Allen and Elizabeth Allen. After the trial court denied St. Stephen's motion for summary judgment, the case was submitted to a jury which found, pursuant to the court's instructions, that the Allens did not understand the contract and St. Stephen's claim was denied. We reverse.

St. Stephen is located on South Fifteenth Street in Louisville, Kentucky. In early 1999, the church approached the

Allens about selling their property. At the time the Allens owned and operated a nightclub located on South Fifteenth Street. Of interest specifically were parcels at 902, 904, 908 and 910 South Fifteenth Street and 1510 and 1512 Breckenridge Avenue. On February 19, 1999, the Allens and the church entered into a written Sales and Purchase Contract for all of such parcels. Pursuant to the contract, the Allens were to sell the property to St. Stephen for \$85,000 and April 15, 1999, was set as the closing date. In consideration for the Allens' promise to sell the property, St. Stephen agreed to pay the purchase price and \$600 of the real estate taxes owed on the property to the Jefferson County Revenue Commission. The contract further stated that "[t]his contract is contingent upon clear title from all the aforementioned properties."

St. Stephen arranged financing, obtained insurance, and delivered a check to the Allens payable to the Jefferson County Revenue Commission. On April 15, 1999, Norman Cleaver, the St. Stephen's representative, appeared for the closing; the Allens, however, failed to appear. The Allens also failed to appear at two other rescheduled closing dates, and on May 4, 1999, returned the \$600 check to St. Stephen.

On May 17, 1999, St. Stephen sought specific performance of the property contract and consequential damages. St. Stephen moved for, and was granted, an injunction preventing the Allens from selling the property to a third party. Subsequently, however, St. Stephen learned the property would be sold at a commissioner's sale on August 10, 1999, at which time

it purchased the nightclub and two parcels of the property at the sale for \$80,000.

The instrument contains all the necessary elements of a binding and enforceable contract. It is definite and specific in its terms and promises to be performed by each party. The Allens agreed to convey title to the property to St. Stephen for a specified sum.<sup>1</sup> As a general rule, the construction of a contract is a question of law for the court. As stated in Sherman & Sons v. United Clothing Stores:<sup>2</sup>

The primary object of construction is to ascertain the intention of the parties, and in this character of case, if the evidence as to this is conflicting, or the facts and circumstances are such as to raise a difference of opinion in the minds of reasonable men as to such intention, the case should be submitted to the jury under appropriate instructions, otherwise it is a question of law for the court. (Citations omitted).

The contract here is a standard real estate contract form, clear and straight forward. The Allens contend, however, that because they could not convey clear title on the date specified for the closing, that the contract did not have to be performed. In Hopkins v. Performance Tire and Auto Service Center, Inc.,<sup>3</sup> and Green River Steel Corp. v. Globe Erection Co.,<sup>4</sup> the courts held that contracts conditioned on obtaining third-party approval were found to be executory and

---

<sup>1</sup> See Kovacs v. Freeman, Ky., 957 S.W.2d 251 (1997).

<sup>2</sup> 214 Ky. 526, 527, 283 S.W. 1022, 1023 (1926).

<sup>3</sup> Ky. App., 866 S.W.2d 438 (1993).

<sup>4</sup> Ky., 294 S.W.2d 507 (1956).

unenforceable. These cases, relied on by the Allens, offer no support for their attempt to escape enforcement of the present contract. In both cases, the contract specified that it would not be binding until approved by a third party. The issue in this case is whether the seller can prevent enforcement of the contract because of a defect in the title where the buyer is willing and able to perform the contract. This question was resolved in Preece v. Wolford:<sup>5</sup>

[I]t is a well-settled principle that an undertaking to sell a larger interest in land than the vendor owns does not relieve him from carrying out the contract as to the interest that he does own. This is also true as to coparceners. (Citations omitted).

St. Stephen is willing and able to perform the contract and accept whatever title the Allens have even if it is not clear title. Since only St. Stephen, not the Allens, is in the position as buyer to object to the lack of clear title, the trial court erred when it did not grant summary judgment in favor of St. Stephen.

The judgment is reversed and the case remanded to the trial court for judgment in favor of St. Stephen and granting specific performance of the contract.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Michael Brown  
Gordon A. Rowe, Jr.  
Clarence A. Wilborn  
WYATT, TARRANT & COMBS, LLP  
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT FOR  
APPELLEES:

Martin Z. Kasdan, Jr.  
Louisville, Kentucky

---

<sup>5</sup> 196 Ky. 710, 713, 246 S.W. 27, 28 (1922).

ORAL ARGUMENT FOR APPELLANT:

Gordon A. Rowe, Jr.  
Louisville, Kentucky