NO. COA08-154

NORTH CAROLINA COURT OF APPEALS

Filed: 16 September 2008

R. MICHAEL LOCKLAR,
Plaintiff,

v. Davidson County
No. 03 CVS 01504

BROKERS, INCORPORATED and
1ST STATE BANK,
Defendants.

Appeal by plaintiff from order entered 19 July 2007 by Judge C. Preston Cornelius in Superior Court, Davie County. Heard in the Court of Appeals 18 August 2008.

Sparrow Wolf & Dennis, PA, by James A. Gregorio, for plaintiff-appellant.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Reid L. Phillips, for defendants-appellees.

WYNN, Judge.

The doctrine of laches applies "[i]n equity, where lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim."[1] In the instant case, Plaintiff R. Michael Locklar brought claims for breach of contract and breach of good faith eight years after negotiations broke down

[1] *Teachey v. Gurley*, 214 N.C. 288, 294, 199 S.E. 83, 88 (1938).

regarding an option to purchase property from Defendant 1st State Bank. Because the record shows this lapse of time changed the condition of the property and the relations of the parties, we affirm the trial court's order of summary judgment based on the doctrine of laches.

Mr. Locklar brought an action against Defendants 1st State Bank and Brokers Incorporated on 16 May 2003, stating that he had previously been granted an option to purchase for $25,000 a 12.02-acre tract of property (the "option property") in Davidson County by 1st State Bank's predecessor, Financial First Federal Savings Bank. The tract of land had been subdivided from a larger parcel comprising 32.61 acres in total, 20.59 acres of which Mr. Locklar had purchased earlier from the bank. The option to purchase the remaining 12.02-acre tract, signed 24 June 1993, contained the following language:

> Buyer acknowledges that Seller has disclosed to Buyer the fact that contaminants have been discovered in the soil and ground water under a portion of the property described above and has furnished to Buyer reports from Seller's environmental consultants with respect to such property. If Buyer exercises his option, Seller reserves the right to exclude from this sale a portion of the property not to exceed 5 acres, generally consisting of the portion to the rear of the Dillard Plastics property, and being the area affected by the contaminants and a reasonable buffer as determined by Seller in good faith, after consultation with Seller's environmental consultants. The purchase price of the remaining portion of the property (the "Option Property") shall not be reduced as a result of such exclusion.

Moreover, the bank was required to "give a legal description

or survey of the area to be excluded and of the Option Property to [Mr. Locklar] on or before July 23, 1993." For each day beyond that date that the bank failed to provide the survey to Mr. Locklar, the option to purchase would be extended one day beyond its stated expiration date of 22 June 1994.

On 17 October 1994, an attorney for 1st State Bank sent Mr. Locklar's attorney a letter enclosing "a copy of a plat excluding a tract of land not to exceed five acres . . . which would not be included in the area [Mr. Locklar] had the option to purchase." The letter also stated that 1st State Bank had "negotiated a settlement with the adjoining landowner whereby they have agreed to purchase the five acre area in question" and asked if Mr. Locklar would be willing to execute a quitclaim deed for the five acres in question. Mr. Locklar's attorney responded by letter dated 21 October 1994, acknowledging receipt of the "survey" sent by 1st State Bank and noting that Mr. Locklar "wanted to buy the entire tract and the only reason for agreeing to the exclusion was so that he would not acquire any property that was contaminated." Thus, the attorney explained that Mr. Locklar was "not willing to sign a quitclaim deed for the proposed acreage without any additional information[,]" as "it appears . . . that the monitor wells barely affected the property" and he "d[id] not understand why such a large acreage has been reserved" because "[h]e assumed that only a small portion would have been required to satisfy any environmental concerns."

Attorneys for 1st State Bank then shared with Mr. Locklar and

his attorneys a letter from R&A Environmental Consultants noting that "[u]nder the current circumstances these 3.88 acres [earmarked for exclusion] appear to be more than sufficient to remove the potential for contamination migrating onto the residual portions of the First State Bank Property." Nevertheless, the letter went on to say that "if any future owners of the First State Bank property choose to install one or more water supply wells on the site . . . there is a possibility that the natural direction and rate of groundwater flow beneath the site may be altered[,]" potentially leading to additional contamination. In light of that risk, the environmental consultants suggested that "it would be prudent to request an expansion of the excluded property to five acres to provide an additional buffer." The letter further outlined the risks of nitrate-containing groundwater, particularly to pregnant women and small children.

In back-and-forth communications between the parties over the five months that followed, Mr. Locklar continued to object to the size of this "buffer," contending that less than five acres could be excluded and that the bank had failed to provide him with sufficient information to evaluate the reasonableness of the proposed five-acre buffer. He informed 1st State Bank that he intended to have his own environmental consultants evaluate the issue, to which 1st State Bank responded by stating that such an evaluation was unnecessary and that the option to purchase did not provide him with the right to do so. Around February 1995, the parties stopped communicating. At some point in 1996, 1st State

Bank posted a "For Sale By Owner" sign on the option property, which was visible from the highway that ran past the tract; Mr. Locklar admitted in his deposition that he drove on that highway past the property nearly every day and saw a sign later posted by Brokers Incorporated, but he denied that he ever saw the sign posted by 1st State Bank.

Following one exchange in 1997, in which Mr. Locklar offered to purchase the property if only 1.25 acres were excluded, the parties were out of contact until July 2000. However, by deed dated 23 May 2000, 1st State Bank conveyed the entire option property–all 12.02 acres, with no excluded portion–to Brokers Incorporated for $150,000, without providing notice to Mr. Locklar.

Thereafter, Mr. Locklar brought this action contending that his interest in the option property was "prior to and superior to any interest Brokers may have been conveyed by Bank," and that the option to purchase "entitled [him] to exercise [that interest] as soon as the Seller complied with its duties" under the option to purchase. He also contended that the bank "failed and continues to fail to furnish" the survey required under the option to purchase, and he acknowledges that he did not exercise the option. Thus, in his complaint, Mr. Locklar alleged that 1st State Bank had breached the option to purchase by (1) failing to provide the required survey of the excluded property; and (2) "[a]cting in bad faith by designating an improper or unreasonable amount of excluded property, and by conveying the property to Brokers knowing [Mr. Locklar's] prior claim to the property." The complaint asked the

trial court to establish title to the option property in 1st State Bank, negating Brokers Incorporated's interest, to declare the option to purchase to be valid and enforceable, and to order 1st State Bank to provide the required survey and convey the option property to Mr. Locklar upon payment of the option price. Alternatively, Mr. Locklar sought $100,000 in money damages as compensation for the breach of the option to purchase by 1st State Bank. Mr. Locklar filed a notice of lis pendens against the property on the same day he filed his complaint.

Both defendants filed their answers on 21 July 2003, asserting in part that Mr. Locklar's claims were barred by the doctrines of laches, waiver, and estoppel. Brokers Incorporated filed a voluntary petition for bankruptcy on 22 November 2004 and served notice on the trial court that Mr. Locklar should be "enjoined and restrained from continuing or taking any further steps in this action, or in any way interfering with or disturbing the property or assets of [Brokers Incorporated] until further order of the United States Bankruptcy Court." The option property was subsequently sold as part of the liquidation of Brokers Incorporated. On 15 June 2007, the defendants filed a joint motion for summary judgment, asserting that the option to purchase had expired, at the latest, on 21 September 1995, well before the sale of the option property to Brokers Incorporated, and that discovery had shown that the exclusion of the five acres was made in good faith. Following a hearing on the motion, the trial court granted summary judgment to the defendants in an order entered 19 July

2007.

Mr. Locklar appeals, arguing that the trial court erred by granting summary judgment because: (I) the trial court failed to consider evidence that was legally and factually significant; (II) a genuine issue of material fact remains as to whether 1st State Bank acted in good faith; and (III) a genuine issue of material fact remains as to whether Mr. Locklar's claims were barred by the doctrine of laches. Because we affirm the trial court's grant of summary judgment on the grounds of laches, a dispositive basis for the judgment, we decline to consider Mr. Locklar's second argument as to good faith. Likewise, the evidence that Mr. Locklar asserts the trial court failed to consider is not relevant to negate the application of the doctrine of laches to the facts of this case.

As held by our Supreme Court, "laches may be raised properly on a motion for summary judgment." *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 181, 581 S.E.2d 415, 424 (2003). The doctrine of laches will be applied "[i]n equity, where lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim. . . . Hence, what delay will constitute laches depends upon the facts and circumstances of each case." *Teachey v. Gurley*, 214 N.C. 288, 294, 199 S.E. 83, 88 (1938). Appellate review involves a three-part analysis:

> (1) Do the pleadings, affidavits and exhibits show any dispute as to the facts upon which defendants rely to show laches on the part of plaintiffs? (2) If not, do the undisputed

> facts, if true, establish plaintiffs' laches? (3) If so, is it appropriate that defendants' motion for summary judgment, made under G.S. 1A-1, Rule 56(b), be granted?

Williams, 357 N.C. at 181, 581 S.E.2d at 424 (quoting *Taylor v. City of Raleigh*, 290 N.C. 608, 621, 227 S.E.2d 576, 584 (1976)).

In the instant case, 1st State Bank and Brokers Incorporated rely upon several key facts, including the following, to support their claim for laches:

> (1) The option to purchase, dated 24 June 1993, explicitly allows for the exclusion of "a portion of the property not to exceed 5 acres . . . and being the area affected by the contaminants and a reasonable buffer *as determined by Seller* in good faith, after consultation *with Seller's environmental consultants*." (Emphasis added).
> (2) Mr. Locklar acknowledged receipt of the "survey" of the proposed five acres from 1st State Bank on 21 October 1994, some 455 days after the 23 July 1993 date specified in the option to purchase as the deadline for provision of the survey.
> (3) The option to purchase was thus extended for 455 days beyond the original 22 June 1994 expiration date, to 20 September 1995.
> (4) Mr. Locklar did not exercise his option to purchase at any time between 24 June 1993 and 20 September 1995.
> (5) Although 1st State Bank posted a "For Sale By Owner" sign on the option property at some point in 1996, 1st State Bank did not sell the property to Brokers Incorporated until May 2000.
> (6) Even after learning of the sale to Brokers Incorporated, Mr. Locklar did not file his complaint until May 2003.

With the exception of his statement that he did not see the "For Sale" sign posted by 1st State Bank despite driving by it nearly every day, Mr. Locklar does not dispute any of these facts. Moreover, these facts support 1st State Bank's and Brokers

Incorporated's claim for laches, as the "lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim," *Teachey*, 214 N.C. at 294, 199 S.E. at 88, namely, the option property was sold to Brokers Incorporated in 2000. This sale took place five years after the option to purchase would have expired according to its express language concerning 1st State Bank's obligation to provide a survey to Mr. Locklar. Moreover, with the exception of one exchange in 1997, the sale took place five years after Mr. Locklar had been in regular contact with 1st State Bank concerning the property. Additionally, Mr. Locklar waited another three years before filing his complaint, eight years after his negotiations with 1st State Bank had broken down.

Had Mr. Locklar brought his claims in a more timely manner, this issue might have been resolved before the sale of the option property to Brokers Incorporated, or at least before the property was sold again to a third party as part of the liquidation of Brokers Incorporated. Moreover, to accept as true Mr. Locklar's position that the option to purchase has never expired because 1st State Bank has never provided a survey conducted "in good faith" would be to allow Mr. Locklar to extend the option to purchase indefinitely, until his arbitrary definition of "good faith" was satisfied or 1st State Bank agreed to sell him the amount of property he demanded.

The record confirms that Mr. Locklar made no showing of bad faith by 1st State Bank; indeed, despite the suggestion that 1st

State Bank was excluding more acreage than necessary in order to maximize its profits, the letter from the environmental consultants shows that the five-acre exclusion was recommended and thus reasonable, and the express language of the option to purchase allowed for an exclusion of that size. Likewise, the option to purchase explicitly stated that it was 1st State Bank, not Mr. Locklar, who had the authority to determine the "reasonable buffer" "in good faith, after consultation with [its] environmental consultants." Nothing in the record supports the notion that Mr. Locklar should have been permitted to hold the option property hostage and prevent its sale through his unwillingness to abide by the terms of the agreement he signed. Accordingly, we affirm the trial court's grant of summary judgment.

Affirmed.

Chief Judge MARTIN and Judge HUNTER concur.

Report by Rule 30(e).