NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MARTY V. CAIRNS Appellant v. MARLENE V. CAIRNS Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1623 WDA 2012

Appeal from the Order September 20, 2012
In the Court of Common Pleas of Westmoreland County
Civil Division at No(s): 2192 of 2007

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and MUSMANNO, J.

MEMORANDUM BY OTT, J. FILED: December 24, 2013

Marty V. Cairns ("Son") appeals from the order of the Court of Common Pleas of Westmoreland County, entered on September 20, 2012, which directed Son and Marlene V. Cairns ("Mother") to close on a sales agreement the parties entered into and Son to tender the balance of the purchase price on the date of closing. Son raises two arguments: (1) the court's September 20, 2012 order erroneously added to and materially changed its final order, dated August 24, 2011; and (2) the court erred by refusing to conduct a hearing on damages sustained by Son as a result of prior injunction orders removing him from the property before compelling him to make any payments toward the purchase price. Son's Brief at 6. Based on the following, we affirm.

The facts and arduous procedural history are as follows. For several years, Mother and Son have been involved in a contentious dispute over a residence and 105.3 acre farm ("the Property") located in Cook and Donegal Townships, in Westmoreland County. Mother was the owner and acquired the Property from her husband, Franklin Richard Cairns, in 1968.[1]

In 2003, Mother and Son agreed that Mother would sell the Property to Son. Son then drafted an agreement of purchase and sale ("the Sales Agreement"), which included a provision that Son would take possession, but not title, of the property.[2] Additionally, the Sales Agreement provided for the sale of the property for $280,000, payable in minimum monthly installments of $2,000, with interest at the rate of 3% per year.[3] Moreover, the Sales Agreement gave possession of the property to Son upon signing and did not include any interest in Mother's favor that would allow her to reside at the house for the duration of her lifetime.

Subsequently, in 2005, after entering into the sales agreement in June of that year, Son moved into the main living quarters of the house and Mother moved into the basement. Son began making monthly payments of

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[1] Franklin Cairns died in 2001.

[2] At the time, Son was involved in a lawsuit in the State of Maryland and did not want to take immediate title to the property.

[3] The monthly payments were to be credited first to accrued interest, with the balance allocated to unpaid principal.

$2,000.00 to Mother in July 2005 and Mother began paying $500.00 per month to Son as rent.

Five months later, in November, a dispute arose between the parties. In January of 2006, Son informed Mother that he intended to pay the entire outstanding principal balance for the Property. He requested that Mother transfer a general warranty deed to him as provided in the Sales Agreement. Mother declined to convey the deed or to close the transaction. Son continued to make the $2,000 per month payments but placed the payments in an escrow account.

On March 19, 2007, Son instituted a civil action against Mother, seeking specific performance of the terms of the Sales Agreement. The parties filed cross-motions for summary judgment. In Son's motion, he asserted the Sales Agreement was clear and unambiguous, and that he was the fee simple owner of the property. Moreover, he alleged that Mother was improperly seeking to reform the sales agreement to provide her with a life estate. In Mother's motion, she argued Son was not entitled to specific performance because the sales agreement was silent as to a material element of the contract, namely whether she had a life estate or any right to remain on the property.

Subsequently, Mother filed a motion for a preliminary injunction. The trial court entered an order on May 23, 2007, granting Mother a temporary injunction. After an additional hearing, the court entered a second order on

August 17, 2007, directing that the injunction continue pending the final resolution of the underlying action. A panel of this Court affirmed the trial court's ruling. ***See Cairns v. Cairns***, 959 A.2d 455 [1572 WDA 2007] (Pa. Super. 2008) (unpublished memorandum) ("***Cairns I***").

On April 19, 2010, the trial court entered an order that denied both motions for summary judgment but determined that "the parties have a legally valid and enforceable sales agreement, with a life estate reserved to Mother in the subject property." Trial Court Order, 4/19/2010, at 9.[4] Son appealed the trial court's decision. In an unpublished memorandum decision, a panel of this Court determined that "the trial court erred in finding, as a matter of law, that the parties entered an oral agreement that reserved a life estate in favor of Mother." ***Cairns v. Cairns***, 26 A.3d 1203 [777 WDA 2010] (Pa. Super. 2011) (unpublished memorandum) at 10 ("***Cairns II***"). The panel then vacated the trial court's April 19, 2010 order and remanded the matter for further proceedings.

On remand, the trial court entered an order and opinion on August 24, 2011, determining that the Sales Agreement did not reserve a life estate to Mother. The order provided, as follows:

> 1. [Son]'s motion for summary judgment, is hereby GRANTED.

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[4] The trial court clarified its order on May 3, 2010, stating Mother would be responsible for payment of all taxes, insurance and maintenance expenses during the pendency of her life estate.

2. [Mother]'s motion for summary judgment is hereby DENIED.

3. [Son]'s Motion to Enter Order Granting Specific Performance is hereby GRANTED. Accordingly, the parties are directed to close on the Sales Agreement on or before thirty (30) days from the date of this Order.

4. [Son]'s Motion to Vacate Injunction Orders is hereby GRANTED. Accordingly, it is ordered that this Court's Injunction Orders dated May 23, 2007 and August 17, 2007 are hereby VACATED, and [Mother] shall vacate the property on or before thirty (30) days from the date of this Order.

Order, 8/24/2011, at 14.[5] Mother then appealed the trial court's August 24, 2011, order.

A panel of this Court affirmed the trial court's order. It concluded the court did not err in granting Son's motion for summary judgment as there was sufficient evidence to support Son's claim for specific performance.

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[5] Also before the court was Mother's motion to amend her answer and new matter, in which she asserted claims of mutual mistake and that a separate oral agreement had been entered into between Mother and Son to allow her to live on the property. The trial court denied the motion, determining the issue of a separate oral agreement had already been considered and denied by this Court, and that Mother's claim of mutual mistake was not supported by the record. **See** Trial Court Opinion, 8/24/2011, at 9-11. Furthermore, the trial court found it would be prejudicial to Son to allow Mother to amend her complaint to include new defenses because over four years had passed since the filing of the action. ***Id.***

Cairns v. Cairns, 50 A.3d 243 [1471 WDA 2011] (Pa. Super. 2012) (unpublished memorandum) at 6-9 ("***Cairns III***").[6]

Thereafter, on August 20, 2012, Mother filed a motion to enforce court order, requesting that the Property be disposed of in accordance with the court's August 24, 2011 order. A hearing was held on August 24, 2012. Son countered with oral argument that he should be given possession of the house immediately and that no closing be completed until after the determination of any alleged damages by Mother for any improperly granted injunctions dated May 23, 2007 and August 17, 2007, and as a result of a stay entered by the trial court pending Mother's appeal to this Court.

On September 20, 2012, the trial court entered an order, stating, in relevant part:

> WHEREAS, … as noted in footnote No. 3 of this Court's August 24th, 2011 Opinion and Order, [Son] previously filed Motion to Enter Order Granting Specific Performance, which was presented to the Court on April 1st, 2011; and,
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> WHEREAS, as [Son] and [Mother] both currently acknowledge that the Judgment and Order entered by the Superior Court of Pennsylvania dated May 15th, 2012, concluded and affirmed this Court's August 24th, 2011 Order of Court, which among other directives, granted said [Son]'s Motion and directed the parties to close on the sales agreement within thirty days from the date of that order; and,
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> . . .

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[6] Moreover, the panel stated the trial court did not err in denying Mother's motion to amend her complaint, agreeing that her proposed amendments were without merit and they would cause prejudice to Son. ***See id.*** at 9-12.

WHEREAS it is noted that the said October 21st, 2011 Order of Court indicated that during the pendency of the appeal, [Son] shall have access to the subject property, with the exception of the house.

WHEREAS, for purposes of [Son] being able to prepare his claim hereinafter for damages, [Son], accompanied by a constable and/or the attorneys, shall have access to the house to evaluate and inspect, and the cost of the constable shall be the responsibility of [Son]; and

NOW, THEREFORE, after careful consideration, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Pursuant to the terms of the August 24th, 2011 Order of Court, the parties are direct to close on the Sales Agreement on or before Monday, October 22nd, 2012.

2. Accordingly, [Son] is directed to tender the balance of the purchase price on the date of closing.

3. [Mother] is directed to prepare and sign the appropriate recordable deed for the property, with the delivery of the deed being made contemporaneously with the delivery of the balance of the purchase price at closing.

4. [Mother] is also directed to deliver possession of the property to [Son] concurrently with the exchange of the balance of the purchase price at closing.

. . .

6. [Son] is directed to submit a detailed Petition, at the above captioned docket number, setting forth his claims against the Stay Appeal Bond and any other Damage Claims related to this Court's Injunction Orders dated May 23rd, and August 17th, 2007.

7. Said detailed Petition shall be filed by [Son] on or before Wednesday, October 31st, 2012.

8. [Mother] shall file her appropriate responsive pleading on or before twenty (20) days after the date of service upon her, with said pleading including any counterclaims.

9. Thereafter, the parties shall have until December 28th, 2012 to conduct discovery as to such claims, defenses and counterclaims.

10. After the conclusion of said discovery, and upon motion of either party, the Court will schedule an Evidentiary Hearing to determine the respective claims and counterclaims.

Order of Court, 9/20/2012, at 2-4. Son filed the present appeal.[7]

In his first argument, Son contends the court's September 20, 2012 order erroneously added to and materially changed its August 24, 2011 order. Specifically, he claims the earlier order only directed the parties to "close on the Sales Agreement," which under the plain terms of the agreement, merely required him to pay the purchase price in installments with a minimum monthly payment of $2,000.00. Son's Brief at 15, *quoting* Sales Agreement at ¶¶ 3-5. Moreover, Son avers that "closing" on the Sales Agreement meant he was entitled to possession of the property without paying the balance of the purchase price in exchange for a deed, and that he had a contractual right to demand a general warranty deed at a time of his choosing. ***Id.*** Therefore, Son contends the court exceeded the Sales

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[7] On December 7, 2012, the trial court ordered Son to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Son filed a concise statement on December 18, 2012. The trial court issued an order pursuant to Pa.R.A.P. 1925(a) on January 17, 2013, relying on its reasons set forth in its September 20, 2012 order, its August 24, 2011 order, as well as this panel's decision in ***Cairnes III***.

Agreement and materially altered its final order when it added the following additional provisions to the September 20, 2012 order: (1) directing Son to tender the balance of the purchase price on the date of closing; (2) directing Mother to prepare and sign the appropriate recordable deed for the property, with the delivery of the deed being made contemporaneously with the delivery of the balance of the purchase price at closing; and (3) directing Mother to deliver possession of the property to Son concurrently with the exchange of the balance of the purchase price at closing. We disagree.

It is well established that

> [a] lower court is without power to modify, alter, amend, set aside or in any manner disturb or depart from the judgment of the reviewing court as to any matter decided on appeal. Under any other rule, litigation would never cease, and finality and respect for orderly processes of law would be overcome by chaos and contempt. The requirements of orderly procedure mandate that the rights of the parties which were involved in the litigation be conclusively adjudicated on appeal.

Blymiller v. Baccanti, 344 A.2d 680, 681 (Pa. Super. 1975) (citations and internal quotation marks omitted).

Here, the issue turns on the definition of "closing." A "closing" is defined as "[t]he final meeting between the parties to a transaction, at which the **transaction is consummated**; esp., in real estate, the **final transaction** between the buyer and seller, whereby the **conveyancing documents are concluded and the money and property transferred**." Black's Law Dictionary (9th ed. 2009) (emphasis added).

In the August 24, 2011 order, the court directed the parties to close on the sales agreement. In the September 20, 2012 order, the court again directed the parties to close on the sales agreement by requiring Son to tender the balance of the purchase price to Mother, and Mother to deliver the deed and possession of the property to Son. The provisions of the September 20, 2012 order merely laid out the requirements for the two parties to close on the Sales Agreement, as set forth under the general definition of closing, in which the transaction is consummated by Son transferring the purchase price balance and Mother transferring the property. As such, the trial court did not materially alter the August 24, 2011 order when it entered the September 20, 2012 order. Rather, the court was elaborating on the prior order by detailing the parties' requirements for closing on the sale agreement.

Moreover, the factual background concerning this case supports the court's legal conclusion, insofar as the court was granting Son's request for relief. In the complaint, Son averred that he "proffered to [Mother] a proposed deed and a mortgage in the amount of $214,290.71, representing the unpaid principal balance of [his] obligation to [Mother] at that time." Son's Complaint in Civil Action, 3/19/2007, at ¶ 6. Moreover, in the request for relief clause, he stated: "Wherefore, [Son] requests that the Court direct [Mother] to issue a deed to [Son] upon tender by [Son] of a note in the principal amount then due, secured by a first mortgage from [Son] to

[Mother.]. ***Id.***[8,9] Subsequently, in Son's motion for summary judgment, he again reiterated that he "intended to pay [Mother] in full for the Property and requested that she transfer a deed to [Son] as required by the Agreement," and requested that judgment be entered in his favor. Son's Motion for Summary Judgment, 5/20/2009, at 4, ¶ 14. In the August 24, 2011 order, the court granted Son's motion for summary judgment. Therefore, the September 20, 2012 order and its directives did not add to or materially change Son's request for relief that it had granted in the prior order. Accordingly, Son's first argument fails.

Next, Son argues the trial court erred in refusing to conduct a hearing to first determine the damages he incurred from the trial court's injunction orders on May 23, 2007 and August 17, 2007 and the court's stay order on September 30, 2011, requiring him to pay the balance of the purchase price to Mother. Son's Brief at 17-19. He states that during the five-plus year period that he was improperly enjoined from possessing the property in its entirety, he sustained tremendous financial losses as a result of the numerous injunctions and stays, which included but were not limited to repairs, loss of rental income, and loss of prospective financial opportunities.

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[8] ***See also*** Son's Brief in response to Mother's Motion for Preliminary Injunction, 6/15/2007, at 2 (same averment).

[9] We note that in this appeal, Son does not pursue the allegation raised in the complaint that Mother take back the mortgage nor did the Sales Agreement set forth a provision requiring Mother to do so.

Id. at 17-18. He relies on ***Christo v. Tuscany***, 533 A.2d 461 (Pa. Super. 1987), to support his argument.

In ***Christo***, the first issue was whether pursuant to Pa.R.C.P. 1531, the defendants were limited to an action on the bond or the amount of the bond in their claim for damages for their economic losses from injunction proceedings where the plaintiffs were ordered by the trial court to post only a one dollar injunction bond as security for the defendants' damages upon termination of the injunction proceedings. ***Christo***, 533 A.2d at 463.

Rule 1531 provides, in pertinent part:

> (b) Except when the plaintiff is the Commonwealth of Pennsylvania, a political subdivision or a department, board, commission, instrumentality or officer of the Commonwealth or of a political subdivision, a preliminary or special injunction shall be granted only if
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> (1) the plaintiff files a bond in an amount fixed and with security approved by the court, naming the Commonwealth as obligee, conditioned that if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees[.]

Pa.R.C.P. 1531(b)(1). In interpreting the Rule, this Court held "that the bond amount set pursuant to Pa.R.C.P. 1531(b) does not set a limit upon recovery for damages from a wrongly issued injunction." ***Christo***, 533 A.2d at 468.

The second issue in ***Christo*** was whether the defendants should be able to recover as damages their lost interest income on the escrowed security account that was required for the imposition of the injunction.

Without holding an evidentiary hearing on the issue, the trial court found that the defendants' "damages were limited to the one dollar bond" but even if there was no cap, "the damages [the defendants] seek are not recoverable because the [defendants] chose to place their escrowed funds in a low interest account, and because the damages were too remote and speculative to be recoverable." ***Id.*** This Court reversed the trial court's decision, concluding it erred by not holding an evidentiary hearing on the damages issue because "[t]here [was] no reason, as a matter of law, why [the defendants] should be precluded in their attempt to prove and recover all damages accrued by reason of the grant of the preliminary injunction." ***Id.*** at 471.

We find that ***Christo*** is distinguishable from the present matter and therefore, not applicable. Initially, we note that Son has not filed a petition, motion, or complaint demanding damages. It appears he orally raised the issue for the first time at the August 24, 2012 argument proceeding, which concerned Mother's motion to enforce court order.[10] Moreover, unlike the trial court in ***Christo***, the court in the present case did not err by failing to hold an evidentiary hearing on the issue of damages. Rather, the court's September 20, 2012 order clearly calls for an evidentiary hearing after Son

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[10] His request came approximately 11 months after the trial court vacated the two injunctions orders in its August 24, 2011 order.

has filed a petition, Mother has filed a responsive pleading, and discovery has been exchanged. ***See*** Order of Court, 9/20/2012, at 3-4.

Lastly, we note that both ***Christo*** and Rule 1531 are silent as to whether the court must first conduct a hearing to determine a party's damages resulting from injunction and stay orders before the court can require that party to pay the balance of the purchase price to the opposing party. It bears remarking that Son's damages claim is a separate question, and impliedly request for relief, than the specific performance claim he raised in his complaint. Son has presented no other case law on the issue and our research has uncovered no appellate decisions discussing the requirement of an evidentiary hearing on damages stemming from an injunctive relief request before the court may order the parties to close on a sales agreement. Therefore, we conclude that Son's second argument is unavailing. Accordingly, we affirm the court's September 20, 2012 order.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/24/2013