

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PITNEY ROAD PARTNERS, LLC T/D/B/A
REDCAY COLLEGE CAMPUSES I

Appellant

v.

HARRISBURG AREA COMMUNITY
COLLEGE

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 331 MDA 2012

Appeal from the Order Entered January 19, 2012
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-06-06204

PITNEY ROAD PARTNERS, LLC T/D/B/A
REDCAY COLLEGE CAMPUSES I

Appellant

v.

HARRISBURG AREA COMMUNITY
COLLEGE

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 708 MDA 2012

Appeal from the Order Entered March 13, 2012
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-06-06204

BEFORE: OLSON, J., OTT, J., and FITZGERALD, J.*

MEMORANDUM BY OTT, J.:

Filed: February 4, 2013

* Former Justice specially assigned to the Superior Court.

Pitney Road Partners, LLC t/d/b/a Redcay College Campuses I (Pitney) brings these consolidated appeals from the order of January 19, 2012, and the amended order of March 13, 2012, entered in the Court of Common Pleas of Lancaster County, granting, in part, Harrisburg Area Community College's (HACC) Petition to Release Funds from Escrow with respect to "the transfer tax amount," and denying Pitney's Petition for Return of Funds Improperly Deducted from Purchase Price and Sale Proceeds with respect to "the transfer tax amount," in this dispute between Pitney and HACC.¹ Pitney contends: (1) The trial court erred in refusing to order HACC to return to Pitney the amount of \$647,763, representing realty transfer taxes, and (2) The issue concerning amounts for realty transfer taxes should have been submitted to arbitration pursuant to the parties' arbitration agreement. **See** Pitney's Brief at 5. Based upon the following, we affirm.

The present action arises from a dispute between Pitney and HACC involving HACC's Lancaster Campus. Previously, HACC was Pitney's tenant at the site pursuant to three different lease agreements. Each lease agreement contained an option to purchase that allowed HACC to buy the Lancaster Campus.

In October, 2003, Pitney and HACC entered into a lease agreement, by which Pitney agreed to construct, and HACC agreed to lease, additional

¹ We note Pitney has also filed an appeal at 2231 MDA 2011, which was listed at J-A26016-12, and this consolidated appeal was listed consecutively.

facilities on the Lancaster Campus, generally referred to as Phase II. After the Phase II project was completed in 2004, disputes arose between Pitney and HACC. Pitney commenced an action against HACC in the Lancaster County Court of Common Pleas. However, the parties subsequently agreed to submit their claims to common law arbitration. **See** 42 Pa.C.S. § 7341 *et seq.*

The arbitration hearings took place over 18 days between August 30, 2010 and January 6, 2011. The panel determined that HACC was entitled to exercise its options to purchase, and also calculated the purchase price of the Lancaster Campus. On October 20, 2011, after the arbitration panel had issued an Interim Award of Arbitrators, (Interim Award), dated June 14, 2011, and Final Award of Arbitrators (Final Award), dated September 29, 2011, the panel issued a Corrected and Clarified Final Award (Corrected Final Award), which set the purchase price of the Lancaster Campus at \$51,083,974. On November 23, 2011, HACC filed a Petition to Enter Judgment on the Corrected Final Award, and the trial court granted the petition on November 28, 2011.²

² The trial court's November 28, 2011 Order stated, in pertinent part:

It is hereby ordered that said petition is GRANTED, and Judgment is hereby ENTERED upon the following portions of the Corrected and Clarified Final Award:

- [Pitney] is directed to sell the Lancaster Campus to [HACC] on December 15, 2011 ("Closing Date");

(Footnote Continued Next Page)

On December 2, 2011, Pitney filed an emergency motion for reconsideration of the trial court's November 28, 2011 order, asserting that on October 31, 2011, Pitney had filed a petition to vacate the Corrected Final Award, which was still pending in the trial court at Docket No. CI-11-12678. On December 7, 2011, the trial court denied the motion for reconsideration and the petition to vacate.³

Prior to December 15, 2011, the date set for the closing on the Lancaster Campus, a dispute arose between the parties concerning realty transfer taxes. By order entered December 16, 2011, the trial court directed, *inter alia*, that the parties proceed to closing, and that HACC pay the sum of \$321,617.32 into escrow until further determination by the court concerning the possible liability of HACC for additional transfer taxes. The closing took place on December 16, 2011.

On December 29, 2011, HACC filed a Petition to Release Funds from Escrow, and Pitney, on January 6, 2012, filed a Petition for Return of Funds Improperly Deducted from Purchase Price and Sale Proceeds. HACC sought release, *inter alia*, of the escrowed transfer tax amount of \$321,617.32 to
(Footnote Continued) _____

- On the Closing Date, [HACC] is directed to pay to [Pitney] the sum of \$51,083,974 ("Purchase Price").

³ Pitney appealed the denial of the petition to vacate at 2231 MDA 2011, which was listed at J-A26016-12. **See** Footnote 1, *supra*.

HACC, while Pitney sought payment from HACC in the amount of \$647,763, claiming that HACC had improperly deducted \$647,763 from the \$51,083,974 purchase price for the Lancaster Campus.

On January 17, 2012, the trial court held a conference on the cross-petitions, both sides presented argument, and Pitney further requested that the trial court submit the issue regarding transfer taxes to the arbitration panel. On January 19, 2012, the court entered an order that granted, in part, HACC's petition to release the funds, by releasing the escrowed "Transfer Tax Amount" of \$321,617.32, and denied Pitney's petition for return of funds with respect to the transfer tax amount. This appeal followed.^{4, 5}

⁴ By order of January 19, 2012, the trial judge granted, in part, HACC's petition to release funds from escrow, with respect to the amount of \$321,617.32 identified as the "Transfer Tax Amount," denied Pitney's cross-petition for return of funds with respect to "the transfer tax amount," and also directed the parties to brief another pending issue. The order stated it constituted a final order "pursuant to Pa.R.A.P. 341(b)(3), with respect to all issues relating to the 'Transfer Tax Amount.'" Order, 1/19/2012. However, the order did not include an express determination that "an immediate appeal would facilitate resolution of the entire case" as required by Pa.R.A.P. 341(c) of the Rule. Pitney filed a timely appeal, and this Court, on March 7, 2012, issued a rule to show cause, directing Pitney to answer why the appeal should not be quashed as having been taken from an order that is not appealable.

On March 13, 2012, the trial court filed an amended order that conformed with Rule 341(b)(3) and (c), and Pitney filed a timely notice of appeal from the amended order. On April 5, 2012, this Court's March 7, 2012 rule to show cause order was discharged, and the issue was referred to the panel. Upon review, we conclude the court's order of March 13, 2012 sufficiently cured the defect in the January 19, 2012 order. **See** Pa.R.A.P. 1701(b)(1) *(Footnote Continued Next Page)*

In this appeal, Pitney contends that HACC was obligated to pay Pitney \$51,083,974 as the purchase price, and that HACC improperly deducted \$647,763 in transfer taxes from that amount at closing. Pitney claims that the \$647,763 reduction constituted an improper modification of the arbitration award, which the court permitted by denying Pitney's petition for return of funds. Pitney argues that, to the extent there was an ambiguity as to whether amounts for transfer taxes were to be paid to Pitney as part of the purchase price at closing, the trial court should have ordered that the issue be submitted to arbitration pursuant the parties' arbitration agreement.

Our standard of review of the trial court's denial of Pitney's request to submit the transfer tax issue to arbitration is "limited to determining whether the trial court's findings are supported by substantial evidence and whether the trial court abused its discretion in denying the petition." ***GE Lancaster Invs., LLC v. Am. Express Tax & Bus. Servs.***, 920 A.2d 850 (Pa. Super. 2007).

(Footnote Continued) —————

("After an appeal is taken ..., the trial court ... may [t]ake such action as may be necessary to ... correct formal errors in papers relating to the matter").

⁵ Pitney timely complied with the order of the trial court to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

By way of background, each lease contained an option to purchase that allowed HACC to purchase the Lancaster Campus, as follows:⁶

[Purchase Price of Lot 2 and Campus Drive:]

Tenant shall have the option to purchase the Premises, together with any and all easements, options and rights in and to said Premises or appurtenant thereto, exercisable anytime and from time to time on or after July 1, 2008, at a price equal to the sum of the following:

(a) the defeasance amount due under the Permanent Loan; *plus*

(b) one-half (1/2) of the amount of the principal curtailed under the Permanent Loan, any predecessors thereof, and any additional amounts subsequently borrowed by Landlord, with Tenant's approval, for improvements to the Premises; *plus*

(c) one hundred percent (100%) of the state and local Pennsylvania Realty Transfer Tax.

All other costs and expenses allocable to the property being conveyed shall be prorated between the parties as of the closing date.

... If Tenant exercises its option to purchase the Premises and/or the Phase II expansion under this Lease or under the Phase II Expansion Lease, as the case may be, Landlord shall convey for One Dollar (\$1.00) consideration, all of its interest as owner in Campus Drive[.] ... Tenant shall pay the state and local Pennsylvania realty transfer tax and recording fee and Landlord shall pay for obtaining and recording any release that may be required for the conveyance of Campus Drive.

⁶ The lease provisions quoted below are found in Exhibit "G" (excerpts from lease agreements regarding purchase price), attached to Pitney's Brief in Support of Petition For Return of Funds Improperly Deducted from Purchase Price and Sale Proceeds.

[Purchase Price for Lots 3 & 4:]

Tenant shall have the option to purchase Lot 3 and/or Lot 4 . . . The purchase price for Lot 3 and Lot 4 shall be calculated as follows:

(a) One Hundred Seventeen Thousand Dollars (\$117,000) per acre of the subdivided lot; plus

(b) the total value of Construction Costs, excluding the value of real estate as set forth in the Construction Budget, approved by Tenant for improvements erected on property being conveyed and paid by Landlord; plus

(c) one-half (1/2) of the state and local Pennsylvania realty transfer tax.

All other costs and expenses allocable to the property being conveyed shall be prorated between the parties as of the closing date.

[Purchase Price for Lots 5 & 6 and Millennium Drive:]

Tenant shall have the option to purchase Lot 5 and/or Lot 6 . . . The purchase price for Lot 5 and/or Lot 6 shall be calculated as follows:

(a) One Hundred Seventeen Thousand Dollars (\$117,000) per acre of the subdivided lot; plus

(b) the total value of Construction Costs, excluding the value of the real estate as set forth in the Construction Budget, approved by Tenant for improvements erected on the property being conveyed and paid by Landlord; plus

(c) one-half (1/2) of the state and local Pennsylvania realty transfer tax.

All other costs and expenses allocable to the property being conveyed shall be prorated between the parties as of the closing date.

. . . Tenant shall have the option to purchase Millennium Drive
. . . The purchase price for Millennium Drive shall be calculated
as follows:

(a) One-Hundred Seventeen Thousand Dollars
(\$117,000) per acre; plus

(b) one-half (1/2) of the state and local Pennsylvania
realty transfer tax.

All other costs and expenses allocable to the conveyance of
Millennium Drive shall be prorated between the parties as of the
Closing Date.

At closing, HACC paid the transfer taxes for each lot to the taxing
authority. Pitney, however, takes the position that the transfer taxes that
were paid by HACC to the taxing authority were owed to Pitney. Pitney
contends that HACC wrongly deducted the transfer tax amounts from the
purchase price of the Lancaster Campus, and HACC owes \$647,763 to
Pitney.

At the conference hearing, the trial judge rejected Pitney's position, as
follows:

[M]y ruling is that I believe the arbitrators did make a ruling on
this, and it's pretty clear to me what their ruling was.

I do understand the nature of the dispute between the
parties to the interpretation of whether that final award amount
[of \$51,083,974] is the amount HACC is obligated to pay or that
Pitney is obligated — or is entitled to receive.

And listening to the arguments and reviewing the
documents that primarily [HACC] has provided me with and
gone over today, it's clear to me that the proper interpretation of
the arbitrator award is the amount that HACC is obligated to
pay; the bulk of that, obviously, to Pitney, but there are other
items in there specifically addressed by the arbitrators that

determine what HACC's obligation is in terms of payment for this transaction. That's how I view this.

I don't see that as a matter that needs to go back to the arbitrators to be resolved.

N.T., 1/17/2012, at 45–46.⁷ The trial court, in its opinion, further explained:

Essentially, the Court believes that Pitney is asking HACC to pay the transfer tax twice: once to Pitney and once to the appropriate taxing authority. This position is illogical and in conflict with the Panel's Award.

Trial Court Opinion, 4/16/2012, at 2.

We find no basis upon which to disturb the trial court's decision. Pitney's argument that HACC was obligated to pay the amount of transfer taxes to Pitney is undermined by the lease terms, which stated the purchase price as the amount HACC was required to pay upon exercising the option to purchase, not what Pitney was to receive as sale proceeds. The arbitrators tracked the leases, setting forth the "purchase price before tax" and HACC's agreed share of the transfer tax as separate items of the total purchase price for the properties. **See** Exhibits "B" (Interim Award) and "C" (Final Award), attached to HACC's Brief in Support of its Petition to Release Funds from Escrow and in Support of its Response in Opposition to [Pitney's]

⁷ This conclusion echoed the trial judge's earlier statement: "[T]he whole tone of the [lease option to purchase] paragraph is in terms of tenant's [HACC's] obligation to pay. It's not in terms of seller's [Pitney's] obligation to receive — a right to receive. That's not the way it's worded." N.T., 1/17/2012, at 40.

Petition for Return of Funds.⁸ In turn, the settlement sheet prepared by HACC followed the arbitration panel’s purchase price calculations and treatment of the realty transfer taxes. **See** Exhibit “A” (Settlement Statement), attached to HACC’s Brief in Support of its Petition to Release Funds from Escrow and in Support of its Response in Opposition to [Pitney’s]

⁸ The Interim Award (Section D.3) set forth the following calculations:

| | |
|---|---------------------|
| <u>Purchase Price of Lots 3 & 4</u> | |
| Land (\$117,000 per acre: 17.31 acres) | \$2,025,050 |
| +Ultimate Project Costs | 25,205,502 |
| Purchase Price before tax | 27,230,552 |
| +Transfer Tax (1%) | 272,306 |
| Total Purchase Price for Lots 3 & 4 | 27,502,858 |
| <u>Purchase Price of Lots 5 & 6</u> | |
| Land (\$117,000 per acre: 21.29 acres) | \$2,490,930 |
| +Ultimate Project Costs | 2,271,770 |
| Purchase Price before tax | 4,762,700 |
| +Transfer Tax (1%) | 47,627 |
| Total Purchase Price for Lots 5 & 6 | 4,810,327 |
| <u>Purchase Price of Millennium Drive</u> | |
| Land | 168,480 |
| +Transfer Tax (1%) | 1,685 |
| Total Purchase Price for Millennium Drive | 170,165 |
| Total Purchase Price for Lots 3, 4, 5, 6 & Millennium Dr. | <u>\$32,483,350</u> |

Furthermore, Exhibit B of the Final Award calculated the purchase price for Lot 2 and Campus Drive, as follows:

| | |
|---|--------------|
| Purchase Price before tax | \$16,246,808 |
| Transfer Tax (2%) | 324,936 |
| Total Purchase Price | 16,633,365 |
| | |
| Total Price Campus Drive | 1 |
| Total Purchase Price ... Lot 2 and Campus Drive | \$16,633,366 |

Petition for Return of Funds.⁹ At closing, HACC paid Pitney the “purchase price before tax” and paid the taxing authorities the transfer tax amounts.

Applying our standard of review, we find no abuse of discretion in the trial court’s determination that Pitney’s position — that would require HACC to pay transfer tax to Pitney, and also pay transfer tax to the taxing authorities — was “illogical and in conflict with the Panel’s Award.” Trial Court Opinion, *supra*. Therefore, we conclude the trial judge properly

⁹ The settlement statement’s “Summary of Buyer’s Transaction” reflects the following amounts to be paid by HACC:

| | |
|--|-----------------|
| Purchase Price – Lot No. 2 Per Exhibit B To the Final Award, Purchase Price before Tax, adjusted in Seller’s favor by \$60,412 | \$16,307,220.00 |
| Purchase Price – Campus Drive Per Exhibit B to the Final Award, | 1.00 |
| Purchase Price – Lots No. 3 and 4 Per Section D.3 of the Interim Award, Purchase Price before tax | 27,230,552.00 |
| Purchase Price – Lots No. 5 and 6 Per Section D.3 of the Interim Award, Purchase Price before tax | 4,762,700.00 |
| | |
| Transfer Tax – Lot 2 and Campus Drive Per Exhibit B to the Final Award, transfer tax (2%) – Adjusted to reflect revised Purchase Price before Tax of \$16,307,220 | 326,144.42 |
| Transfer Tax – Lots No. 3 and 4 Per Section D.3 of the Interim Award, transfer tax (1%) | 272,305.52 |
| Transfer Tax – Lots 5 and 6 Per Section D.3 of the Interim Award, transfer tax (1%) | 47,627.00 |
| Transfer Tax – Millennium Drive Per Section D.3 of the Interim Award, Transfer tax (1%) | 1,684.80 |

granted HACC's petition for release of funds relating to escrowed amount of \$321,617.32, and denied Pitney's cross-petition with respect to the transfer tax amount, thereby refusing Pitney's request that the court submit the transfer tax issue to arbitration.

Accordingly, we affirm the order of January 19, 2012, and the amended order of March 12, 2012.

Orders affirmed.