

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IGNAZIO A. ARENA; JOANNE TADEO;
JOSEPH ARENA; AND, JANET ARENA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

HARRY ARENA AND CHRISTINA ARENA

HARRY A. ARENA

v.

IGNAZIO ARENA; JANET ARENA; JOANNE
TADEO; AND, JOSEPH ARENA

No. 766 EDA 2012

APPEAL OF: HARRY ARENA A/K/A
HARRY A. ARENA AND CHRISTINA
ARENA

Appeal from the Order Entered February 10, 2012
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2007-03592

BEFORE: LAZARUS, J., FITZGERALD, J.^{*}, and STRASSBURGER, J.^{**}

MEMORANDUM BY LAZARUS, J.

Filed: March 6, 2013

Harry A. Arena ("Harry") appeals from the order of the Court of Common Pleas of Montgomery County entering judgment in favor of plaintiffs Ignazio Arena, Janet Arena, Joanne Tadeo and Joseph Arena

* Former Justice specially assigned to the Superior Court.

** Retired Senior Judge assigned to the Superior Court.

("Parents/Siblings"), in the amount of \$280,826.00. After our review, we affirm.

In 1996, plaintiffs Ignazio and Janet Arena, Harry's parents, experienced financial difficulty and were at risk of losing their home. In order to avoid a sheriff's sale, Parents offered to sell their house to their four children, Harry and Siblings, for less than fair market value (\$1.00 plus amount of debt-\$170,038.00), as long as the buyer would pay off their debt and allow them to continue residing in the home for the rest of their lives. Siblings all had homes and family commitments at the time, but Harry, the youngest sibling, was in a position to live at the house with his parents. The parties agree that Harry wanted to buy the property and allow his parents to live there in accordance with the agreement, but he was unable to obtain a mortgage. Siblings obtained a mortgage and paid off Parents' debt, and Harry lived with Parents in the house. Siblings considered Harry's mortgage payments as rent.

Harry married his wife, Christina, in 1998. They and their two children resided in the home with Parents. In 2001, the property was appraised at \$420,000.00. Harry and Christina wanted to obtain title to the home and they purchased the property from Siblings for \$394,000.00. The trial court determined that at the time of the 2001 transaction, the parties agreed that in exchange for obtaining title to the property, Harry and Christina would allow Parents to continue to reside in the home for as long as they lived.

In December 2006, after mounting discord between the families, Harry forced Parents out of the home. Parents and Siblings filed suit against Harry and Christina for breach of the agreement.

A non-jury trial was held before the Honorable Arthur R. Tilson. At trial, Parents and Siblings presented five witnesses, including Siblings, Ignazio Arena (Parent/Father),¹ and Charles Piermani, a family friend who provided accounting and financial services to the entire family. Harry was the sole witness for the defense. The court, relying on *Empire Properties v. Equireal, Inc.*, 674 A.2d 297 (Pa. Super. 1996), concluded that even though the parties' agreement was not in writing, the Statute of Frauds did not void it. The court stated that even though an oral contract for the sale of land cannot be specifically enforced, it may form the basis of an action for damages. The court determined that at the time Parents were forced from the home, the value of the property was \$585,000.00. The court deducted from that amount all "rent" payments, maintenance and other out of pocket expenses Harry put into the property since 1996, for a total "credit" of \$304,174.00. Thus, the court awarded the difference, \$280,826.00, to Parents and Siblings. Harry and Christina appealed.

¹ Parent/Mother, Ann Arena, passed away during the litigation.

The trial court ordered Harry to file a Pa.R.A.P. 1925(b) Statement of Errors Complained of on Appeal.² On appeal, Harry and Christina argue that (1) the court erred in concluding that the agreement was not voided by the Statute of Frauds, and (2) there was no evidence to support the court's damages award.

On appeal, we are limited to a determination of whether the trial court's findings are supported by competent evidence and whether the court committed error in the application of law. *Hart v. Arnold*, 884 A.2d 316, 330-331 (Pa. Super. 2005), quoting *Croyle v. Dellape*, 832 A.2d 466, 470 (Pa. Super. 2003). "Findings of the trial judge in a non-jury case must be given the same weight and effect on appeal as a verdict of a jury and will not be disturbed on appeal absent error of law or abuse of discretion." *Hart*, 884 A.2d at 331. When reviewing the findings of the trial judge, this Court views the evidence "in the light most favorable to the victorious party

² Harry's Rule 1925(b) Statement consists of ten pages and reads more like an argument than a list of errors. In its Rule 1925(a) opinion, the trial court suggested this Court quash on grounds that Harry's statement "does not identify any issues clearly or concisely in compliance with Pa.R.A.P. 1925(b)." Trial Court Opinion, 5/21/2012, at 2. The court, however, in the interest of judicial economy, addressed what it surmised was Harry's claim on appeal -- whether the court erred in concluding that the agreement was not voided by the Statute of Frauds, and whether the evidence at trial supported that finding. We will review these claims as well, in the interests of judicial economy, although we admonish counsel and advise him to consult the rules of court.

below and all evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected." *Id.*

The trial court's findings are especially binding on appeal where, as here, they are based upon the credibility of the witnesses. *Shaffer v. O'Toole*, 964 A.2d 420, 422–23 (Pa. Super. 2009). We will reverse only if the court abused its discretion, or the court's findings lack evidentiary support, or that court capriciously disbelieved the evidence. *Id.* "Conclusions of law, however, are not binding on an appellate court, whose duty it is to determine whether there was a proper application of law to fact by the [trial] court. With regard to such matters, our scope of review is plenary as it is with any review of questions of law." *Id.* *See Zuk v. Zuk*, 55 A.3d 102 (Pa. Super. 2012).

The Statute of Frauds, 33 P.S. §1, directs that agreements for the sale of real estate shall not be enforced unless they are in writing and signed by the seller. "The purpose of the statute is to prevent perjury and fraudulent claims." *Hostetter v. Hoover*, 547 A.2d 1247, 1250 (Pa. Super. 1988). *See also Brotman v. Brotman*, 46 A.2d 175, 177 (Pa. 1946); *Rosen v. Rittenhouse Towers*, 482 A.2d 1113, 1116-17 (Pa. Super. 1984).

The Statute of Frauds does not void those oral contracts relating to land which fail to comply with the Statute's formal requirements. It is to be used as a shield and not as a sword, as it was designed to prevent frauds, not to encourage them. *Fannin v. Cratty*, 331 Pa. Super. 326, 332, 480 A.2d 1056, 1059 (1984), citing *Zlotziver v. Zlotziver*, 355 Pa. 299, 49 A.2d 779 (1946) and *Gerlock v. Gabel*, 380 Pa. 471, 112 A.2d 78 (1955). Therefore, even though an oral contract for the sale of real estate may not be specifically enforced, it may form the

basis for an action to recover damages. **See: Polka v. May**, 383 Pa. 80, 118 A.2d 154 (1955). **Hostetter v. Hoover, supra.**

Empire Properties, 674 A.2d at 302. Harry's attempt to void the agreement now by claiming it does not comply with the formal requirements of the Statute of Frauds fails for several reasons.

First, the Statute of Frauds does not absolutely invalidate an oral contract relating to land; it is intended merely to guard against perjury. **See Zlotziver v. Zlotziver**, 49 A.2d 779 (Pa. 1946). "Accordingly, if the title holder admits, either in his pleadings or his testimony, that he did in fact enter into the contract, the purpose of the statute of frauds is served and the oral agreement will be enforced by the court[.]" **Id.** at 781.

Here, the record indicates that Harry acknowledged the family agreement. In fact, he ratified it twice --first in the original lease-to-own period, from 1996-2001, and again in 2001 after he and Christina bought the property. The trial court found that Harry admitted that as part of the 1996 family transaction, "his parents had the right to continue living in the home indefinitely as part of the underlying contract." Findings of Fact and Conclusions of Law, 2/10/2012, ¶ 22. The court also found that at the time of the 2001 transaction, "all of the parties willingly agreed that in exchange for the Defendants [Harry and Christina] obtaining the title to the property, the Parents would retain the right to live in the home as long as they so chose." **Id.** at ¶ 39. **See also Zuk**, 55 A.3d at 107 ("Pennsylvania courts

have emphasized that the Statute is not designed to prevent the performance or enforcement of oral contracts that in fact were made.”).

Further, “specific evidence that would make rescission of an oral contract inequitable and unjust will take such contract outside of the Statute of Frauds; partial performance, which has benefitted the party invoking the statute, will in appropriate circumstances, bar the invocation of the rule. ***See Estate of Brojack***, 467 A.2d 1175 (Pa. Super. 1983). The record is replete with evidence that Harry reaped the benefit of this agreement. At a time when his credit prevented him from purchasing the property, his siblings obtained a mortgage, and his payments to them ultimately became a “gift of equity” from them and served as a down payment when Harry and Christina purchased the property in 2001. Further, Harry purchased the property at below market value; in 2001, the property was appraised at \$420,000.00, and Harry’s purchase price was \$394,000.00. Harry having reaped the benefits, it would be inequitable to allow Harry to invoke the statute to void the agreement. ***Estate of Brojack, supra***.

Finally, the Statute of Frauds is intended to be used as a “shield” and not a “sword,” that is, to discourage fraud, not to encourage it. ***See Empire Properties***, 674 A.2d at 302. As the trial court stated, “to hold that all of the evidence which was presented in this matter should be precluded by the statute of frauds would permit [Harry] to use the statute as a sword rather than a shield. This would defy the very intent of the statute of frauds.” Trial Court Opinion, at 8.

With due consideration for the scope and standard of our review, we have reviewed the trial transcript. The trial court, sitting as fact-finder, was in the best position to weigh the evidence based upon its assessment of the witnesses' credibility. As the court stated, "Harry Arena admitted that as part of the 1996 family transaction, his parents had the right to continue living in the home indefinitely." *Id.* at 4. Additionally, the court stated: "Based upon witness observations and credibility determinations, this Court determined that at the time of the 2001 transaction, all of the parties willingly agreed to the following: in exchange for the Appellants obtaining the title to the property, Appellee Parents would retain the right to live in the home as long as they lived." *Id.* at 6. The court weighed the evidence and made its findings of fact accordingly. These findings are amply supported in the record, and the court's conclusions of law are properly derived therefrom. We find no error or abuse of discretion. *Hart v. Arnold, supra.*

Additionally, Harry argues that there is no basis for the court's award of damages. This claim, too, is meritless. The parties all requested that the property not be sold in this economic climate. The court, therefore, awarded damages by using the parties' most recent property appraisal from 2006, \$585,000.00, and crediting Harry for each out of pocket expense for maintenance, repairs and improvements from 1997 to 2001, for a total "credit" of \$304,174.00. *See* Findings of Fact, *supra* at ¶¶ 20, 26-33, 47-51. The court, therefore, arrived at a damage award of \$280,826.00. We find no error or abuse of discretion. We note, too, that Harry states that the

court “based the damages on the house’s value in 2006 . . . [b]ut the trial court awarded the damages in 2012.” Appellant’s Brief, at 27. Harry makes no further argument on this point, and makes no claim that he offered another appraisal of the property’s value. Accordingly, we conclude that the court’s award of damages is supported in the record.

Order affirmed.