



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-20-00457-CV

WK PROPERTIES, INC.; WTK Services, Inc.; and WTK Properties, Ltd.,
Appellants

v.

PERRIN SA PLAZA, LLC,
Appellee

From the 150th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-19383
Honorable Mary Lou Alvarez, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: November 24, 2021

AFFIRMED

In the underlying property dispute, the buyer sought a corrected deed because the amended contract identified a shopping center and a pad site, but the deed conveyed only the shopping center. The seller argued that the deed was correct because the sale did not include the pad site.

The trial court granted summary judgment for the buyer, and the seller appeals—arguing the amended contract’s description of the property did not satisfy the Statute of Frauds.

We affirm the trial court’s judgment.

BACKGROUND

On or about July 16, 2014, Wan-Tsing Kwang, acting on behalf of WK Properties, Inc.; WTK Services, Inc.; and WTK Properties, Ltd.¹ (collectively WTK), contracted to sell the Perrin Oaks Plaza shopping center to 901 Investments LLC. The same day, 901 Investments LLC assigned all its rights in the contract to Perrin SA Plaza, LLC.

The original contract identified the property as “situated in Bexar County, Texas at 11823 PERRIN BEITEL, SAN ANTONIO, TX 78217.” Although the contract stated that the property was legally described in “the attached Exhibit A,” it is undisputed that no Exhibit A was attached.

Nevertheless, the contract required WTK to “deliver to Buyer and the title company a true and correct copy of [WTK]’s most recent survey of the Property.” Several months before closing, WTK sent to Perrin SA Plaza and the title company a copy of a “Land Title Survey.” The survey showed the property as 5.045 acres and consisting of Lot 8 and Lot P-36, a contiguous tract of 0.248 acres, with both lots circumscribed by the boundaries of the surveyed property.

After WTK sent the survey but before closing, WTK and Perrin SA Plaza executed a contract amendment. The amendment was “CONCERNING THE PROPERTY AT 11803–11855 Perrin Beitel Road, San Antonio, TX 78217, Perrin Oaks Plaza.” The amendment changed “the Property’s legal description in Paragraph 2A of the [original] contract . . . to NCB 15685 BLK LOT 8 (PLETZ SUBD) and NCB15685 BLK Lot P-36 .248AC.”

At closing, on September 23, 2014, WTK delivered a special warranty deed, with vendor’s lien, which described the conveyed property as “BEING ALL OF LOT 8, NEW CITY BLOCK 15685, PLETZ SUBDIVISION, SITUATED IN BEXAR COUNTY, TEXAS.”

After closing, WTK continued to pay the property taxes on Lot P-36.

¹ Before the sale, WTK Properties, Ltd. owned the shopping center and the pad site, but both the original contract and the amendment misnamed the seller as WK Properties, Inc.

In 2017, when WTK advised Perrin SA Plaza about WTK's plans to sell or develop Lot P-36, Perrin SA Plaza sued WTK. Perrin SA Plaza asked the court, inter alia, to do the following: (1) declare the 2014 sale was for "the entire Property, . . . including the 0.248 Acres"; (2) reform the deed to expressly include the 0.248 acres; (3) remove WTK's cloud on Perrin SA Plaza's title; and (4) award Perrin SA Plaza its attorney's fees.

The trial court granted partial summary judgment for Perrin SA Plaza, and WTK moved the trial court to reconsider its decision. The trial court denied the motion to reconsider and rendered a final judgment for Perrin SA Plaza. The judgment requires WTK to execute a corrected special warranty deed and deed of trust, with corresponding property definitions, that include Lot P-36, the 0.248-acre pad site.

WTK appeals and raises two issues.

PARTIES' ARGUMENTS

First, WTK argues that the amended contract was void because the property description failed to meet the specificity requirements of the Statute of Frauds. More particularly, WTK insists that the amended contract does not describe the property so that it can be identified with reasonable certainty.

Second, WTK argues that the amendment was ambiguous, and the trial court could not grant summary judgment for Perrin SA Plaza because WTK raised fact questions.

Perrin SA Plaza responds that the property description was sufficient to identify it with reasonable certainty, and the trial court properly construed the unambiguous amended contract.

Before we address the parties' arguments, we briefly recite the standard of review and applicable law.

STANDARD OF REVIEW

We review a trial court's grant of a traditional motion for summary judgment de novo. *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 45 (Tex. 2017); *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). In our de novo review, "we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor." *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018); *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

The movant "meets its burden by proving that there is no genuine issue of material fact and it is entitled to judgment as a matter of law." *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017) (citing TEX. R. CIV. P. 166a(c)); *accord Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 681 (Tex. 2017).

"An issue is conclusively established 'if reasonable minds could not differ about the conclusion to be drawn from the facts in the record.'" *Hansen*, 525 S.W.3d at 681 (quoting *Childs v. Haussecker*, 974 S.W.2d 31, 44 (Tex. 1998)).

In such a case, when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues [presented]," a trial court may properly render summary judgment. TEX. R. CIV. P. 166a(c); *accord Lightning Oil*, 520 S.W.3d at 45; *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003).

APPLICABLE LAW

For an instrument that purports to convey a property interest, "[t]he sufficiency of the legal description in [that] instrument . . . is a question of law." *In re Estate of Garcia*, No. 04-06-00120-CV, 2007 WL 748651, at *1 (Tex. App.—San Antonio Mar. 14, 2007, pet. dism'd) (mem. op.) (citing *Haines v. McLean*, 276 S.W.2d 777, 781–82 (Tex. 1955)).

To meet the Statute of Frauds specificity requirement, “[a] property description is sufficient if the writing furnishes within itself, or by reference to some other existing writing, the means or data by which the particular land to be conveyed may be identified with reasonable certainty.” *AIC Mgmt. v. Crews*, 246 S.W.3d 640, 645 (Tex. 2008); *accord Morrow v. Shotwell*, 477 S.W.2d 538, 539 (Tex. 1972).

“Parol evidence is admitted to explain the descriptive words and to identify the land, where the instrument contains the ‘nucleus’ of description.” *Gates v. Asher*, 280 S.W.2d 247, 248 (Tex. 1955); *accord Cavazos v. Cavazos*, 246 S.W.3d 175, 180 (Tex. App.—San Antonio 2007, pet. denied). “If enough appears in the description [as explained, if necessary, by the parol evidence] so that a party familiar with the locality can identify the premises with reasonable certainty, it will be sufficient.” *See Gates*, 280 S.W.2d at 248–49; *Cavazos*, 246 S.W.3d at 180.

SUFFICIENCY OF PROPERTY DESCRIPTION

WTK’s first issue is comprised of three subissues. In them, WTK argues that, under the Statute of Frauds, the amended contract fails to sufficiently describe the land conveyed so that it may be identified with reasonable certainty.

A. Amended Contract Identifies Lot P-36

In its first two subissues, WTK asserts the amended contract fails to identify Lot P-36, and Lot P-36’s description in the amended contract is abbreviated—with no explanatory references for its terms—which makes identification impossible.

The original contract identifies the property as located in Bexar County at “11823 Perrin Beitel, San Antonio, Texas 78217.” This description provides the property’s street address, city, county, state, and zip code.

The contract amendment addresses “THE PROPERTY AT 11803–11855 Perrin Beitel Road, San Antonio, TX 78217, Perrin Oaks Plaza.” This amendment reference adds a common

name, Perrin Oaks Plaza, and a range of street addresses, which refer to a specific shopping center. The amendment revises the property's legal description to be "NCB 15685 BLK LOT 8 (PLETZ SUBD) and NCB 15685 BLK Lot P-36 .248AC." *Cf. AIC Mgmt.*, 246 S.W.3d at 648 ("The 'TR 12' in the property descriptions is an explicit reference, within the four corners of the deed, to existing writings, such as tax tract maps, within [Harris County Appraisal District] records.").

As amended, the contract describes the conveyed property as two lots, each identified by block and lot number; the subdivision; the city, county, state, and zip code; the size of Lot P-36; and the common name of the properties: "Perrin Oaks Plaza." *Cf. id.*

WTK's first and second subissues fail.

B. Amended Contract Defines Property's Size, Shape, Boundaries

In its third subissue, WTK argues the amended contract fails to provide the size, shape, boundaries, city, county, and state of the property to properly identify Lot P-36.

1. BCAD Tax Tract Maps

Although the amended contract includes the city, county, and state for Lot P-36, the amended sales contract pages alone do not provide the size, shape, and boundaries of the conveyed property. However, as WTK's trial counsel explained, the amended contract's property description abbreviations were taken from the Bexar County Appraisal District (BCAD) records.

Under *AIC Management*, the abbreviations were explicit references to BCAD's tax tract maps, and the maps can show a property's size, shape, and boundaries. *See id.; In re Estate of Garcia*, 2007 WL 748651, at *2.

2. Land Title Survey

Besides referencing the BCAD tax tract maps, the amended contract also required WTK to "deliver to Buyer and the title company a true and correct copy of [WTK]'s most recent survey of the Property." Before closing, WTK delivered to Perrin SA Plaza a copy of a "Land Title Survey."

The survey showed the property as a 5.045-acre tract including Lot 8 and Lot P-36—a contiguous tract of 0.248 acres. Both Lot 8 and Lot P-36 are shown within the boundaries of the surveyed property. Further, the survey’s field notes give the metes and bounds of the 5.045-acre tract, which metes and bounds circumscribe the contiguous lots 8 and P-36.

3. *Property Description is Sufficient*

We conclude as a matter of law that the amended contract’s property description was sufficient. *See AIC Mgmt.*, 246 S.W.3d at 648; *Morrow*, 477 S.W.2d at 539.

Nevertheless, if one concluded that the amended contract’s property description was not sufficient without it, the trial court could have properly considered the land title survey, which fully explained the amended contract’s abbreviations. *Cf. Gates*, 280 S.W.2d at 248; *Cavazos*, 246 S.W.3d at 180. Therefore, WTK and Perrin SA Plaza—parties familiar with the locality—could have used the property description information to “identify the [conveyed] premises with reasonable certainty.” *See Gates*, 280 S.W.2d at 248–49; *Cavazos*, 246 S.W.3d at 180.

Thus, the amended contract’s property description—especially when explained by the land title survey—was sufficient. *See AIC Mgmt.*, 246 S.W.3d at 648; *Gates*, 280 S.W.2d at 248–49.

WTK’s third subissue also fails.

C. Distinguishing WTK’s Cases

WTK’s arguments rely heavily on two cases, but both are readily distinguishable.

1. *In re Estate of Garcia*

WTK argues that the facts in this case “relating to the insufficient property description are nearly identical to *Garcia*.”

In *Garcia*, the court concluded the property description was insufficient because the deed did not include the city, county, state, or acreage of the tracts. *In re Estate of Garcia*, 2007 WL 748651, at *1–2.

Here, the amended contract alone contains the block, lot, subdivision, street addresses, city, county, state, zip code, and common name, and the BCAD tax records and the land title survey fully explain the contract's abbreviations. *Garcia* is readily distinguishable on its facts.

2. Mayor v. Garcia

In *Mayor v. Garcia*, the court concluded the property description was insufficient because the contract did not list the county or state, and “the description does not show the total acreage to be sold, nor does it provide the data necessary to arrive at this determination.” *Mayor v. Garcia*, 104 S.W.3d 274, 277 (Tex. App.—Texarkana 2003, pet. dismiss’d w.o.j.). The description included a subdivision name, but it “[did] not provide a tract, block, or lot number consistent with the property Mayor owned.” *Id.* at 279.

Here, the amended contract contains the information *Mayor* lacks and sufficient information to identify the conveyed property with reasonable certainty. *See AIC Mgmt.*, 246 S.W.3d at 645. *Mayor* is also readily distinguishable on its facts.

We overrule WTK's first issue.

AMENDED CONTRACT AMBIGUITY

In its second issue, WTK argues summary judgment was not proper because the amended contract is ambiguous. Specifically, WTK asserts the amended contract has two ambiguities: (1) the original contract listed only a single address and the amendment listed a range of addresses; and (2) the amendment does not explain why the sales price was increased by \$20,000.

We address each in turn.

A. Address Differences

In its first subissue, WTK argues the differences in the original and amended contracts' addresses make the amended contract ambiguous.

The original contract listed only a single street address: “11823 PERRIN BEITEL, SAN ANTONIO, TX 78217.” The amendment changed the street address to a range of addresses: “11803–11855 Perrin Beitel Road, San Antonio, TX 78217.”

WTK asserts that because the street address for Lot P-36 is not included in the address range listed in the amendment, this created an ambiguity and a fact question that precluded summary judgment. We disagree.

The original contract referred to the property at 11823 Perrin Beitel Road, but it did not include any address in its legal description—that was blank. The amendment referred to the property at 11803–11855 Perrin Beitel Road, and it changed the contract’s legal description of the property to “NCB 15685 BLK LOT 8 (PLETZ SUBD) and NCB 15685 BLK Lot P-36 .248AC.”

To the degree that there was any difference between the legal description and the street addresses, the legal description controls over the street addresses. *See White v. Harrison*, 390 S.W.3d 666, 678–79 (Tex. App.—Dallas 2012, no pet.) (citing *Nat’l Convenience Stores, Inc. v. Martinez*, 784 S.W.2d 468, 471 (Tex. App.—Texarkana 1989, writ denied)) (noting that the legal description of a property will control over a common description or street address”).

Therefore, because the amended contract’s property description was sufficient as a matter of law, WTK’s ambiguity argument necessarily fails.

B. Sales Price Change

In its second subissue, WTK argues the amended contract is ambiguous because it does not explain why the sales price was increased by \$20,000.

Texas has a “strong public policy favoring freedom of contract.” *Shields Ltd. P’ship v. Bradberry*, 526 S.W.3d 471, 481 (Tex. 2017). WTK has presented no authority to show how a small percentage change in the contract price requires any explanation to this court. *See Endeavor Energy Res., L.P. v. Energen Res. Corp.*, 615 S.W.3d 144, 153 (Tex. 2020) (reminding courts to

“not forget that parties ‘[a]re free to contract for [even] odd results’” (quoting *Burlington Res. Oil & Gas Co. LP v. Tex. Crude Energy, LLC*, 573 S.W.3d 198, 211 (Tex. 2019) (first alteration in original))).

WTK’s price change argument also fails. We overrule WTK’s second issue.

CONCLUSION

Although WTK argues that the amended contract’s property description was insufficient as a matter of law, we conclude as a matter of law that it was sufficient.

The amended contract’s property description contains the block, lot, subdivision, street addresses, city, county, state, zip code, and common name for the property. Further, the property description explicitly references the BCAD tax records, and the amended contract expressly required a land title survey. These additional writings explain the descriptive words in the amended contract, and they support our conclusion.

We also conclude that the amended contract was not ambiguous, there were no genuine issues of material fact, and the trial court did not err in rendering judgment for Perrin SA Plaza.

Accordingly, we affirm the trial court’s judgment.

Patricia O. Alvarez, Justice