

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

HAROLD BRUCE MAGNUSSON,)	
)	No. 65968-5-1
Appellant,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
ARNAR ROY MAGNUSSON and)	
JACQUELINE MAGNUSSON,)	
)	
Respondents.)	FILED: March 5, 2012

Grosse, J. — Based on an ambiguous agreement between family members, the trial court determined that Harold “Bruce” Magnusson had an equitable interest in a parcel of land owned by Arnar “Roy” and Jacqueline Magnusson and ordered the sale of the property. Bruce appeals the distribution of the proceeds of the sale, arguing that he was entitled to an opportunity to cure his breach of the agreement and purchase a portion of the property to avoid forfeiture of his interests. Because Bruce fails to establish any abuse of discretion in the trial court’s balancing of the equities, we affirm.

FACTS

In 1990, Bruce Magnusson purchased an unimproved 10 acre tract of land in Whatcom County for \$49,000, with \$19,000 down and the balance on a note and deed of trust. Bruce’s parents, Sverrir and Erla Magnusson, provided the \$19,000 down payment. In 1991, Bruce¹ and his parents orally agreed that (1) he would quit-claim the property to them; (2) they would take out a bank loan

¹ For purposes of clarity, we refer to the parties by their first names.

secured by the property to buy a modular home; (3) he would repay them for all money they paid for the home and property; and (4) upon his repayment to them, they would re-deed the property to him. In 1991, Bruce deeded the property to his parents. By 1993, the parents had paid off the note and deed of trust for the property, obtained a \$60,000 loan with the property as collateral, and purchased and installed a modular home on the southerly five acres of the property. Bruce and his daughters then moved into the home.

In July 2002, the parents quit-claimed the property to Bruce's brother, Roy Magnusson, and his wife Jacqueline. In return, Roy and Jacqueline discharged certain loans they had made to the parents and assumed the \$32,000 balance on the 1993 bank loan for the modular home.

Thereafter, also in July 2002, Bruce, Roy, and Jacqueline signed an Agreement stating that because Bruce had "considerable interest in the south 5 acres of this 10 acre parcel," the parties agreed that (1) Roy and Jacqueline would make monthly payments on the \$32,000 "mortgage to Wells Fargo Home Mortgage, Inc., on the south 5 acres of the property" and Bruce would reimburse them; (2) Roy and Jacqueline would pay \$5,000 to the parents "on behalf of Bruce to be charged to Bruce at the time of selling the property;" (3) "When the property is sold and the mortgage paid in full, Roy and Jacqueline should get paid the value of the north 5 acres," as well as expenses incurred on Bruce's behalf; and (4) Roy and Jacqueline should pay Bruce a reasonable portion of the taxes he paid on the property and "Bruce should then be issued ownership of

the south 5 acres and the improvements thereon or the remaining funds from the sale.”

In August 2002, Roy and Jacqueline gave the parents \$5,000 on behalf of Bruce as mentioned in the Agreement. In October 2002, Roy and Jacqueline paid off the balance of the Wells Fargo mortgage. In 2003, Bruce reimbursed Roy and Jacqueline for the \$5,000 payment to the parents. By December 2008, when Roy informed Bruce of his intent to sell the property, Bruce had not made any additional payments to Roy and Jacqueline. Bruce asked that he be allowed to discharge his debt under the Agreement by paying Roy and Jacqueline \$45,000 at \$2,500 per month beginning in February 2009. Roy did not agree.

On February 10, 2009, Roy and Jacqueline entered into an agreement to sell the property to a third party. On February 12, Bruce mailed Roy and Jacqueline a check for \$7,000, which they retained but did not cash. On February 27, Bruce filed a complaint to quiet title. In his amended complaint, Bruce alleged he owned the “south 5 acres’ of the property by the doctrines of resultant trust, adverse possession, equitable mortgage, and express agreement between the parties,” and asked the court to quiet title to the “south 5 acres” to him subject to an equitable mortgage in favor of Roy and Jacqueline securing his obligation to pay them all amounts set forth in the 2002 Agreement. In the alternative, Bruce requested partition. He also sought damages for trespass. Roy and Jacqueline answered, claimed affirmative defenses, and asserted counterclaims for quiet title and ejectment, for damages for the improper filing of a lis pendens, and, in the alternative, for partition. In May and August 2009,

Bruce sent to Roy and Jacqueline an additional \$53,300 in checks, which they also retained without cashing.

In August 2009, the trial court considered testimony, evidence, and argument at a bench trial. In its oral ruling, the trial court found that although Bruce had no legal interest or title to the property as of January 1991, the 2002 Agreement indicates that the parties agreed that Bruce had “some sort of equitable interest” in the property. The court held that the Agreement was ambiguous, and that its ambiguity must be interpreted against Bruce, who apparently proposed it. The court stated that the Agreement was not a purchase and sale agreement for property because (1) the Agreement is internally inconsistent; (2) the Agreement is ambiguous as to whether Bruce is to receive the property or a share in the proceeds of a sale; (3) the Agreement gives no guidance regarding remedies for breach or provisions for notice in the event of breach; and (4) the language of the Agreement ensuring reimbursement to Roy and Jacqueline at the time of a sale appears to contemplate that Bruce might not pay. The court observed that Bruce was essentially seeking specific performance of the Agreement, despite his breach and “unclean hands” after making no payments and failing to “live up to his side of [the] agreement in any way, shape, or form whatever.” Based on its finding that Bruce breached the Agreement, the court stated that the remedy contemplated in the Agreement “would be to sell the property and divide the proceeds and make sure that [Roy] was made whole for any expenses that he put into it.” The court therefore

ordered the sale of the property.

After additional proceedings in July 2010, the trial court entered judgment in favor of Bruce in the amount of \$15,148, as his net equitable interest, as well as prejudgment interest, statutory attorney fees, and costs.

Bruce appeals.

ANALYSIS

Bruce first claims that the trial court erred by failing to accept the 2002 Agreement as a real estate contract subject to the Real Estate Contract Forfeiture Act, chapter 61.30 RCW. He contends that under the Act, he had the right to notice and opportunity to cure his default and because he did not receive these statutory rights, the trial court erroneously divided the sale proceeds.

Under RCW 61.30.020(1), “A purchaser’s rights under a real estate contract shall not be forfeited” unless certain notices are given and recorded. A “real estate contract” is defined under the Act as “any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price.” RCW 61.30.010(1).

Here, it is undisputed that the Agreement is ambiguous in that it, as the trial court observed, refers both to a distribution between Bruce, Roy, and Jaqueline of the proceeds of a possible sale of the entire property, presumably to some third party, as well as to a possibility that Bruce be “issued ownership” of a portion of the property after reimbursing Roy and Jaqueline in monthly installments for mortgage payments. Bruce has also failed to challenge the trial

court's determination that the ambiguity in the Agreement must be interpreted against him. Despite Bruce's self-serving description of the Agreement as a contract for Roy and Jacqueline to retain title to the 5 acres until Bruce pays the purchase price of the outstanding Wells Fargo mortgage in monthly installments of \$712.91, at which time Roy and Jacqueline promised to issue a deed to Bruce for the south 5 acres, presumably after a proper subdivision, the trial court's interpretation that the parties intended "to try to find a way to sell the property or allow Bruce Magnusson to have access to the front [5] acres" until the mortgage was paid off or the property was sold is equally valid. Under these circumstances, Bruce fails to demonstrate any error of law in the trial court's determination that the Agreement did not constitute a real estate contract and was therefore not subject to the provisions of the Real Estate Forfeiture Act.

Next, Bruce contends that even if the Agreement is not a real estate contract, he was entitled under principles of equity to notice and an opportunity to cure his default. Relying on Pardee v. Jolly,² Bruce argues that Roy and Jacqueline unreasonably refused his offer to cure when "[he] did everything necessary to preserve his equitable interest in the home" by tendering "\$60,300 to pay off the debt on the south 5 acres." In Pardee, the parties entered into an option to purchase real estate and the optionee paid the entire amount due under the option contract but failed to timely notify the optionor of his intent to exercise the option according to the terms of the contract.³ Based on the

² 163 Wn.2d 558, 182 P.3d 967 (2008).

³ Pardee, 163 Wn.2d at 562.

insufficiency of the trial court's findings regarding the equities, the Supreme Court remanded the matter for the trial court to determine whether the optionee was entitled to an equitable grace period where his written notice of intent to exercise was "a couple of weeks" late and he had invested over \$20,000 and 2,500 hours of work and the optionor allowed him to continue working on the property and procured his assistance in reissuing certain checks while believing that the option had already terminated.⁴

Here, however, the trial court considered the equities and determined that although Bruce was entitled to an equitable interest in the property based on any money or work he could establish that he invested in the property or improvements, he was not entitled to "the equivalent of a specific performance" of his interpretation of the Agreement as a contract to purchase the south 5 acres of the property. It was undisputed that Bruce did not offer to pay any amount to Roy for the mortgage amount identified in the Agreement from 2002 until February 2009, nearly two months after Roy expressed his intent to sell the property to a third party. Although the trial court noted Bruce's "unclean hands," it also stated that Bruce would not forfeit all his interest in the property and that the remedy for his breach of the Agreement would be that contemplated by the Agreement, that is, a sale of the property and a division of the proceeds ensuring that Roy "was made whole for any expenses he put into it."

In matters of equity, trial courts have broad discretionary powers to fashion equitable remedies and we review the trial court's consideration of the

⁴ Pardee, 163 Wn.2d at 562, 575-77.

equities for abuse of discretion.⁵ Bruce fails to establish that the trial court abused its discretion in determining that equity did not require Roy and Jacqueline to accept payment from Bruce in February, May, and August 2009 in return for title to the south 5 acres as satisfaction of the 2002 Agreement after Bruce had failed to offer any payment for over six years and Roy and Jacqueline had entered into an agreement to sell the entire 10 acre property to a third party as contemplated in the 2002 Agreement.

Finally, without citation to authority, Bruce claims that the trial court's division of the proceeds of the sale was inequitable. He complains that the trial court found Bruce liable for 68 percent of the property taxes but awarded him only 6 percent of the proceeds from the sale. He claims that the trial court should have allowed him the equitable right to cure his default, entitling him to 68 percent of the proceeds less the reimbursement he owed to Roy and Jacqueline.

But it is undisputed that Bruce's parents paid the entire purchase price of the 10 acre parcel. Bruce does not challenge the trial court's findings that he paid \$3,200 in 1993 to install a well and that as of July 2002, he had paid \$29,000 toward the \$60,000 bank loan obtained by the parents in 1993 to purchase and install the modular home in which he and his daughters lived. It is undisputed that Roy obtained title to the 10 acres from the parents in 2002. Bruce also does not dispute that he did not pay any money to Roy and Jacqueline for the amount remaining on the bank loan or the property taxes

⁵ Sorenson v. Pyeatt, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006).

between the signing of the 2002 Agreement and Roy and Jacqueline's February 10, 2009 agreement to sell the property to a third party. Under these circumstances, Bruce fails to demonstrate any abuse of discretion in the trial court's determination that Bruce's equitable interest in the property was \$32,200 and awarding him a distribution of sale proceeds in that amount, less 68 percent of property taxes Roy and Jacqueline paid between 2002 and 2009 and amounts Roy and Jacqueline paid to prepare the south 5 acres and modular home for sale.

Affirmed.

Grosse, J.

WE CONCUR:

Spencer, J.

Cox, J.