

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001826-MR

KIM AND SCOTT REECE

APPELLANTS

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 00-CI-00170

STACY J. AND PHILLIP BLEVINS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON AND KNOPF, JUDGES; AND MILLER, SPECIAL JUDGE.¹

JOHNSON, JUDGE: Kim and Scott Reece have appealed from an order entered by the Hart Circuit Court on August 14, 2001, which caused interlocutory judgments entered on November 7, 2000, and January 25, 2001, to become final and appealable pursuant to CR² 54.02. Having concluded that the trial court did not err by ruling that certain parol evidence was inadmissible, that the merger doctrine applies, that the lease was not subject to

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

² Kentucky Rules of Civil Procedure.

reformation, and that an equitable mortgage had not been created, we affirm.

The undisputed facts are as follows: The appellees, Stacy and Phillip Blevins, own a home located in Munfordville, Kentucky. In February 1997 the Blevins decided to sell their house due to Phillip's status in the military.³ Shortly thereafter, Kim Reece noticed a for sale sign on the Blevins' property and decided to make an inquiry. Kim met with Stacy on three separate occasions. As a result, on September 9, 1997, the parties entered into an agreement titled "LEASE" which purported to govern the parties' relationship concerning the house over the following three years.⁴

In particular, the document identified the Reeces as the "LESSEES" and the Blevins as the "LESSORS". Under the heading "RENT" the document further provided that the Reeces agreed to pay rent in the sum of \$420.19 per month for a term of three years. Separate headings were also included for "Taxes," "Insurance" and "Utilities". According to the terms of the lease, the Blevins were responsible for all real estate taxes and insurance. The Reeces were responsible for all the utilities, including but not limited to "Yard upkeep and similar type

³ Mr. Blevins was to be stationed in Italy for three years.

⁴ The Reeces continually refer to the contract as a "Purchase agreement." The Blevins, however, refer to the document as a "Lease." We agree with the latter interpretation and will refer to the document as a lease or rental agreement.

expenses[.]@ Most importantly, the lease contained a provision subtitled AOPTION TO PURCHASE,@which provided as follows:

If the LESSORS during the term of this lease or within six months from the expiration of same, determine to sell the premises leased hereby, they shall give the LESSEES the first right to purchase same for the price of sixty-five thousand dollars (\$65,000.00). If the LESSEES purchase the premises, the purchase price shall be reduced by all rental payments made hereunder and the cost, as evidenced by written receipts, all of repairs and maintenance, paid by the LESSEES. Said purchase price shall be paid within thirty days of the written notification by the LESSEES of their acceptance of the offer of sale, the LESSORS shall then execute a general warranty deed to the LESSEES. In the event the premises are not sold by the LESSORS to the LESSEES, the LESSORS shall fully reimburse the LESSEES for the costs of all repairs and maintenance performed by them during the term of this lease.

A dispute has arisen over the nature and meaning of this agreement.

As provided for in the lease, the Reeces made monthly payments for three years, totaling \$15,126.84. Six months prior to the expiration of the lease, however, Kim Reece contacted Stacy Blevins to discuss the status of their agreement. Stacy informed Kim that she did not intend to sell the property and that she intended to move back into the house upon the expiration of the lease. The Reeces were unhappy with this news since they were under the assumption that they would be exercising their Aoption to purchase@once the term of the lease had expired. On July 19, 2000, the Reeces filed this action and demanded specific

performance of the alleged ~~A~~purchase agreement~~@~~and that their payments be adjudged an equitable mortgage on the property.⁵

The Reeces argued before the trial court that despite the express terms of the lease, the contract was actually a purchase agreement whereby the Blevinses were providing owner-financing of the purchase price of the property for the first three years.⁶ The Reeces claimed that the parties agreed on a sale price of \$65,000.00, with the Reeces to make monthly payments of \$420.19 for 3 years, all of which would be applied to the purchase price. According to the Reeces, at the end of the third year they were to obtain bank financing and pay-off the balance of what they owed the Blevinses. The Reeces further claimed that it was their understanding and belief based upon prior negotiations with the Blevinses that the provision in the lease granting them the ~~A~~option to purchase~~@~~was the means by which the Blevinses were financing the sale of the property. The Reeces argued that they never would have signed the document had they realized it was merely a rental agreement. The Blevinses denied the claim that the agreement they entered into with the Reeces was anything more than a rental agreement which contained

⁵ In the alternative, the Reeces demanded compensation for any repairs and maintenance performed on the property. The issues concerning compensation for repairs or maintenance performed by the Reeces during the term of the lease, however, still remain for adjudication by the trial court and are not a subject of this appeal.

⁶ Kim Reece also claims that Stacy Blevins never mentioned that the parties were entering into a mere rental agreement.

a provision granting the right of first refusal to the Reeces, if and only if the Blevinses decided to sell the premises.

On September 11, 2000, the Reeces moved the trial court for a judgment on the pleadings, which was denied by an order entered on November 7, 2000.⁷ The Blevinses subsequently filed their own motion for judgment on the pleadings, which was granted by the trial court by an order entered on January 25, 2001.⁸ The order contained the following language:

The Court finds that the subject Lease, at page 4, granted only a right of first refusal to the Plaintiffs, not an absolute option to purchase and that no equitable mortgage was created thereby. The Court further finds that parol evidence is inadmissible, that the merger doctrine applies, and the Lease is not subject to reformation.

In an effort to make a record for appeal, the Reeces placed certain avowal testimony in the record on July 16, 2001. The avowal testimony contained Kim Reeces' account of the negotiations that took place between her and Stacy Blevins. The avowal testimony also contained the testimony of certain third

⁷ The standard for a judgment on the pleadings is similar to the standard for summary judgment as the moving party must admit, for purposes of the motion, the truth of his adversary's well-pleaded allegation and, also, the untruth of all of his allegations which have been denied by his adversary. See Archer v. Citizens Fidelity Bank & Trust Co., Ky., 365 S.W.2d 727, 729 (1963). Applying this criterion, the trial court reviewed the Blevinses averments as set forth in their answer and concluded that they had effectively denied the allegations set forth by the Reeces in their complaint.

⁸ The trial court did, however, find that as a matter of law the portion of the lease pertaining to reimbursement for any maintenance and repairs performed by the Reeces stated a cause of action and the Blevinses' motion for judgment on the pleadings was therefore denied as it related to that issue. However, as stated in note 3, any issues concerning compensation for repairs or maintenance performed by the Reeces during the term of the lease are not a subject of this appeal.

persons as to the nature of their dealings with the Blevinses.⁹ On July 23, 2001, the Reeces moved the trial court to grant a final judgment pursuant to CR 54.02(1) upon all claims that had been previously adjudicated. The trial court granted the Reeces' motion on August 14, 2001. This appeal followed.

The Reeces argue on appeal that they were induced by fraud or mistake to enter into an agreement with the Blevinses which was not what they understood it to be. Thus, the Reeces claim the trial court erred by failing to find either that the Blevinses should have been required to convey the property to them, or that the payments made under the terms of the lease created an equitable mortgage.¹⁰ The Reeces further argue that the trial court erred by ruling that parol evidence was inadmissible and that the agreement was not subject to reformation.

The Reeces claim that the portion of the lease denoted AOPTION TO SELL@ should be held unenforceable as a matter of law as the payments made under the agreement entitled them to ownership of the property, or, at least, an equitable mortgage against the property. The Reeces rely on the following language

⁹ The Reeces have expressed their desire to present this parol evidence before the finder of fact in an effort to demonstrate that the written agreement entered into on September 9, 1997, did not embody the actual agreement between the parties.

¹⁰ In their appellate brief, the Reeces appear to raise two separate arguments. The Reece's first claim that the portion of the lease granting the Blevinses the option to sell should be held unenforceable as matter of law. The Reeces further claim that their payments under the agreement created an equitable mortgage. These arguments, however, raise the same equitable

from Sebastian v. Floyd,¹¹ in primary support of this proposition:

When a typical installment land contract is used as the means of financing the purchase of property, legal title to the property remains in the seller until the buyer has paid the entire contract price or some agreed-upon portion thereof, at which time the seller tenders a deed to the buyer. However, equitable title passes to the buyer when the contract is entered. The seller holds nothing but the bare legal title, as security for the payment of the purchase price.

The Reeces argue that the same equitable principles enunciated in Sebastian should apply to their case. We disagree because we conclude that their reliance on Sebastian is clearly misplaced as that case centered around a forfeiture clause in an Ainstallment land sale contract.¹² The factual distinctions between the Ainstallment land sale contract@in Sebastian and the rental agreement in the instant case are critical.

The buyer in Sebastian paid an initial down payment which consisted of 26 percent of the purchase price.¹³ The Reeces did not pay a down payment. The buyer in Sebastian also paid insurance and real estate taxes on the property.¹⁴ The

principles.

¹¹ Ky., 585 S.W.2d 381, 382 (1979) (citing Henkenberns v. Hauck, 314 Ky. 631, 236 S.W.2d 703 (1951)).

¹² Id.

¹³ Id.

¹⁴ Id.

Reeces simply paid Arent@as was agreed upon in the lease. We conclude that to extend the holding of Sebastian by analogy to the instance case as urged by the Reeces would constitute a gross misapplication of the law. Accordingly, the Reeces Aequitable mortgage@argument is not supported by the law and is hereby rejected.¹⁵

In their second assignment of error the Reeces claim the trial court erred by ruling ab initio that parol evidence was inadmissible. This argument is premised upon the Reeces= contention that in cases of fraud or mistake the merger doctrine does not apply and parol evidence is admissible. According to the Reeces, the agreement entered into on September 9, 1997, did not embody the actual agreement between the parties because it was based on fraudulent misrepresentations made by Stacy Blevins. The argument follows that the trial court's refusal ab initio to admit parol evidence effectively precluded the Reeces from establishing the alleged fraud. We agree with the Reeces statement of the law pertaining to the admissibility of parol evidence, however, we take issue with their application of the law to the present case. Nonetheless, before addressing the

¹⁵ The Reeces also cite Bays v. Mahan, Ky., 362 S.W.2d 732, 733 (1962), in support of the proposition that a contract will be construed against the party who caused the document to be prepared. Bays, however, also stands for the proposition that words contained in a contract shall be accorded their ordinary meaning unless the context requires otherwise. Simply put, the agreement in question did not contain any vague or ambiguous terms which could possibly lead a court to adjudge the Reeces the beneficiary of an equitable mortgage on the property.

merits of the Reeces=argument, we must first turn our attention to a procedural issue raised by the Blevinses.

The Blevinses claim that the Reeces failed to allege fraud or mistake in their pleadings. The Blevinses further assert that by failing to allege fraud or mistake before the trial court, the Reeces are precluded from raising the issue on appeal. Thus, we must determine whether the Reeces' complaint sufficiently sets forth a cause of action for fraud or mistake. The civil rules governing pleadings provide the starting point for our analysis. CR 8.01 states as follows:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third-party claim, shall contain (a) a short and plain statement of the claim showing that the pleader is entitled to relief and (b) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

Numerous cases have dealt with this provision of the civil rules and it has become a well settled principle that pleadings are to be given a liberal construction in Kentucky.¹⁶ Moreover, since the adoption of the current Rules of Civil Procedure, it is not necessary to state a cause of action with the technical precision previously required.¹⁷ A complaint need only give fair notice of a cause of action and the relief sought.¹⁸

¹⁶ See McCollum v. Garrett, Ky., 880 S.W.2d 530, 532-33 (1994); and Pike v. George Ky., 434 S.W.2d 626, 627 (1968).

¹⁷ Cincinnati, Newport & Covington Transportation Co. v. Fischer, Ky.,

Accordingly, we now turn to the face of the complaint, wherein paragraphs 4 and 5 are particularly relevant:

4. That it was the knowledge, intent, and understanding of the parties when they contracted for and entered into the agreement that they were, in fact, entering into a contract of purchase and sale wherein all the Plaintiffs' payments were to be applied towards payment of the purchase price, and without which the Plaintiffs would not have entered into said agreement. That the credit the Plaintiffs were to receive against the purchase price constitutes an equitable mortgage in favor of the Plaintiffs on the subject property.

5. That in reliance on the Defendants' promise that the parties had a contract for purchase and sale of the subject property, the Plaintiffs performed significant repairs and maintenance to the subject property.

While the terms "fraud" or "mistake" did not appear in the complaint, such an omission is not fatal. As the former Court of Appeals stated in Murphy v. Torstrick,¹⁹ "failure to use the word 'mistake' in a pleading does not deprive the pleader of the right to rely on mistake when the sense of the language in the pleading encompasses mistake." In the case sub judice, the complaint clearly alleged that based upon certain oral promises, the Reeces entered into a written agreement with the Blevinses. The complaint further alleged that in the absence of such promises, the Reeces never would have signed the agreement.

357 S.W.2d 870, 872 (1962).

¹⁸ Security Trust Co. v. Dabney, Ky., 372 S.W.2d 401, 407 (1963).

¹⁹ Ky., 309 S.W.2d 767, 769-70 (1958).

Thus, at a bare minimum the complaint sufficiently set forth a plea of mistake or fraud in entering into the agreement.²⁰

In arriving at this conclusion, we recognize the provisions of CR 9.02 which mandate that all averments of fraud or mistake be stated with particularity. The particularity commanded by CR 9.02, however, does not require minute attention to detail.²¹ It is enough to plead the time, the place, the substance of the false representations, the facts misrepresented, and the identification of what was obtained by the fraud.²² We conclude that the Reeces have met this burden. Moreover, our conclusion finds support in the fact that Kentucky courts have consistently interpreted the civil rules as facilitating decisions on the merits, rather than making determinations based on technicalities.²³

Thus, we will now consider the merits of the Reeces' claim that since they have alleged fraud or mistake concerning

²⁰ In addition, the Blevinses did not seek a more definite statement of the complaint as permitted under CR 12.05.

²¹ [T]he rule [CR 9.02] requiring pleading of fraud and mistake with particularity is to be considered in light of the entire spirit of modern pleading which lays emphasis upon short, concise and direct pleading. @ Scott v. Farmers State Bank, Ky., 410 S.W.2d 717, 722 (1966)(citing United States v. Dittrich, 3 F.R.D. 475 (D.Ky. 1943)).

²² Rule requiring that averments of fraud be made with particularity does not require textbook pleading of all elements of fraud but requires merely that plaintiff set forth facts with sufficient particularity to apprise defendant fairly of charges against him. @ Scott, supra (quoting Union Mutual Life Ins. Co v. Simon, 22 F.R.D. 186 (D.E.Pa. 1958)).

²³ Except for timely filing, at both the trial and appellate level, rules should be applied to provide for a just determination on the merits, rather than to use a technicality to work a forfeiture. @ West v. Goldstein, Ky. 830 S.W.2d 379, 384 (1992).

the parties=agreement that the trial court erred by ruling that
parol evidence was not admissible to prove the agreement was
induced by certain fraudulent or misrepresented statements. The
Blevinses argue that any evidence of prior negotiations is barred
by the parol evidence rule as such negotiations were merged into
the final written document.²⁴ The Blevinses claim that allowing
the Reeces to introduce parol evidence in this case would
“undermine the entire foundation of contract law.”

The parol evidence rule had been described as follows:

When two parties have made a contract and
have expressed it in writing to which they
have both assented as the complete and
accurate integration of that contract,
evidence, whether parol or otherwise, of
antecedent understandings and negotiations
will not be admitted for the purpose of
varying or contradicting the writing.²⁵

The parol evidence rule, however, is not absolute and exceptions
do exist. For example, a party may generally introduce extrinsic
evidence of illegality, fraud, duress, mistake, or failure of
consideration.²⁶ Consequently, the Reeces argue that parol
evidence is admissible herein because it would establish that the
agreement was induced by certain fraudulent or mistaken
representations made by the Blevinses. We disagree.

²⁴ The Blevinses cite Brown v. Union Central Life Insurance Co., 241 Ky.
514, 44 S.W.2d 514, 523 (1931), in support of this proposition.

²⁵ Johnson v. Dalton, Ky., 318 S.W.2d 415, 417 (1958) (quoting Corbin on
Contracts, § 573, p. 215).

²⁶ See Childers & Venters, Inc. v. Sowards, Ky., 460 S.W.2d 343, 345
(1970); and Hopkinsville Motor Co. v. Massie, 228 Ky. 569, 571, 15 S.W.2d 423,
424 (1929).

The Reeces fail to recognize that the mere nonperformance of a parol promise does not render evidence of that promise admissible. Similarly, a case for the admission of parol evidence must be predicated upon more than a mere showing that one of the parties to a written contract claimed that certain representations by the other party were made and should be binding even though they were not incorporated into the written agreement.²⁷

The appellant in Mario's Pizzeria, Inc. v. Federal Sign and Signal Corp.,²⁸ alleged that it was fraudulently induced to enter into a written lease contract by reason of an oral representation by the appellee.²⁹ While the president of the corporation conceded that prior to signing the contract he read and even protested the terms of the agreement, he maintained that he only signed the agreement based upon an oral promise of the appellee, effectively altering the terms of the agreement.³⁰ The oral representation was not incorporated into the written agreement; the appellee denied having made the oral promise; and the lease was clear and unambiguous concerning the point on which

²⁷ See 37 Am.Jur.2d, Fraud and Deceit, ' 480 (2001).

²⁸ Ky., 379 S.W.2d 736 (1964).

²⁹ Id. at 737-38.

³⁰ Id. The contract was a lease agreement providing for the use of an electric sign. The appellant wanted the option to purchase the sign at the end of the lease period. The written agreement, however, contained no such provision.

the parol evidence was sought to be introduced. Accordingly, the former Court of Appeals concluded that there was no genuine issue of material fact to be tried.³¹

In arriving at this conclusion, the Court made reference to American Jurisprudence on Fraud and Deceit and adopted the following annotations:

23 Am.Jur., Fraud and Deceit, Sec. 38, p. 799, states the rule as follows:

It is a general rule that fraud cannot be predicated upon statements which are promissory in their nature when made and which relate to future actions or conduct, upon mere failure to perform a promise—nonperformance of a contractual obligation—or upon failure to fulfill an agreement to do something at a future time or to make good subsequent conditions which have been assured. Such nonperformance alone has frequently been held not even to constitute evidence of fraud.

In 24 Am.Jur., Fraud and Deceit, Sec. 267, at page 107, we find the following statement which we believe should be applicable to the instant case:

. . . But since fraud cannot be predicated merely upon nonperformance of a promise, and the parol evidence rule cannot be defeated by simply claiming that the promises made were fraudulent if they are not such as the law recognizes as fraudulent, the mere nonperformance of a parol promise does not render evidence of the

³¹ Id. at 740. The judgment appealed from was an award of summary judgment (CR 56.03) granted in favor of the appellees.

promise admissible as against the interdiction of the parol evidence rule. To hold otherwise would amount virtually to an abrogation of such rule. Furthermore, a case for the admission of parol evidence does not appear on a showing merely that one of the parties to a written contract understood erroneously that certain representations of the other party would be binding even though they were not incorporated in the contract as prepared.³²

The reasoning from Mario's Pizzeria applies to the case at bar: the Reeces had read the written agreement, they had protested its terms and were thoroughly familiar with its contents but nevertheless signed it, and they now attempt to rely upon an oral promise which was not performed. The nonperformance of this alleged oral promise by the Blevinses does not constitute evidence of fraud and the parol evidence rule cannot be defeated by the Reeces merely making the allegation.

The lease agreement in the case sub judice was clear and unambiguous concerning the point on which the parol evidence was sought to be introduced. The agreement was labeled Alease@ in large letters at the top and throughout the document and the parties were identified as LESSORS and LESSEES in all capital letters. In addition, the line containing the Reeces=signatures was labeled LESSEES. Moreover, the section of the document titled AOPTION TO PURCHASE@ clearly delineated the rights of both

³² Id. at 740 (quoting 24 Am.Jur., Fraud and Deceit, ' 267, p. 107).

parties. Pursuant to the terms of the agreement, the Reeces were merely granted the right of first refusal to purchase the property, if and only if the Blevinses determined to sell the premises. The Blevinses were never under any obligation to sell the property. Accordingly, the trial court did not err by ruling that the parol evidence offered by the Reeces was inadmissible as a matter of law.

The Reeces' arguments pertaining to reformation are similarly without merit since they cannot demonstrate by clear and convincing proof that the written agreement does not embody the actual agreement between the parties because of a mutual mistake or a mistake on the part of one party and fraud on the part of the other.³³ Accordingly, the ruling of the trial court was correct as a matter of law.

For the foregoing reasons, the orders of the Hart Circuit Court are affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

³³ As noted above, the Reeces claim that the trial court's refusal to permit parol evidence precluded them from meeting the burden of proof necessary to reform the agreement. Assuming arguendo, however, that the parol evidence proffered by the Reeces is admissible, such evidence still fails to rise to the level of proof necessary to reform a clear and unambiguous contract. See Hyden v. Grissom, 306 Ky. 261, 206 S.W.2d 960, 266-67 (1947) and Mayo Arcade Corp. v. Bonded Floors Co., 240 Ky. 212, 41 S.W.2d 1104, 1108-09 (1931).

Mike Nichols
Munfordville, Kentucky

Danny J. Basil
Glasgow, Kentucky