

RENDERED: MARCH 25, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000515-MR

JOSEPH L. BECK, JR.

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 03-CI-00100

CECIL CHAPMAN and
SUANNA CHAPMAN

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER, SENIOR
JUDGE.¹

BARBER, JUDGE: This case concerns whether Cecil Chapman and
Suanna Chapman (the Chapmans) are entitled to rescind a contract
made with Joseph L. Beck, Jr. (Beck) for the conveyance of a
portion of the Chapman's farm located mostly in Shelby County,

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and
KRS 21.580.

Kentucky. The circuit court found that the contract was not supported by adequate consideration; that the contract lacked mutuality of obligation, and that Beck had overreached the Chapmans and induced them to enter the contract based on false information about the value of their property. We agree with the circuit court that the contract is lacking in consideration due to a failure of mutuality of obligation. Thus, we affirm its judgment.

Beck is an experienced, licensed real estate broker and developer who focuses most of his activities in Jefferson County, Kentucky, which Shelby County borders. In 1998 Beck purchased property in Jefferson County on the Shelby County line, with an eye to developing it into residential lots for \$3,000.00 per acre. This property had ready access to a public road and utilities and became known as Dunbar Springs.

In 2000 Beck purchased property for development adjoining Dunbar Springs for \$3,400.00 per acre that also had ready access to a public road and utilities. This development was originally known as Sylvan Hill but was later dubbed Hunt Country Estates. Hunt Country Estates lies primarily in Jefferson County, but a small portion is located in Shelby County.

Next to the Hunt Country Estates is the Chapmans' farm. The Chapmans' farm of approximately 165 acres more or

less is located mostly in Shelby County and, at the time of the contract in dispute, the portion of the property Beck was interested in had no access to a public road or utilities.

In October 2000 Beck approached the Chapmans and offered to purchase 100 acres of their farm adjoining Hunt Country Estates for \$2,500.00 per acre. Initially Beck spoke to Cecil Chapman who indicated his agreement. However, Suanna Chapman's agreement was also needed so Beck left the written offer with Cecil. Later the Chapmans notified Beck that they did not agree to his original proposal. Beck returned to the Chapmans and added language to the proposal. Another addendum to the agreement was made in November 2000. The contract and all of its additions were drafted by Beck. Sometime during their negotiations Cecil Chapman told Beck that he thought the property was worth at least the same amount as the price paid for the acreage of Hunt Country Estates (\$3,400.00 per acre) and he wished to receive that amount for his property. Beck responded that the Chapmans' property was only worth \$2,500.00 to him and he would not pay any more for it.

There is no dispute among the parties about the terms of the contract. The essential terms of the contract are as follows: (1) the Chapmans promised to convey 100 acres of their farm in return for receiving \$2,500.00 per acre; (2) this

promise was conditioned on the occurrence of two contingencies² incumbent on Beck; (3) that if the Chapmans received another offer for their property that was at least the same amount of money they would notify Beck in writing who would then be obligated to either close on the property within two weeks or release the Chapmans from the contract; (4) Beck would cause to be constructed a gravel road from the adjoining subdivision to the Chapmans' remaining property for the Chapmans' use. The contract also provided that if Beck did not buy the property and release the Chapmans to sell it to a third party then the Chapmans would reimburse Beck for the cost of the road. By the terms of the contract Beck was obligated to purchase the Chapmans' property not before one year from the date of execution and not after five years. Further, Beck did not pay any monetary consideration at the time the contract was executed. The contract is obviously one for an option in favor of Beck to purchase the property within five years from the date of its execution.

Thereafter a survey of the property was conducted in which Cecil Chapman assisted the surveyor in locating the intended boundaries. The gravel road was constructed which then gave the Chapmans access to a public road and a minor

² The content of the contingencies is irrelevant to the substantive issues in this appeal and were satisfied by Beck.

subdivision plat was recorded showing the property intended to be conveyed which turned out to be 98.13 acres.

In January 2003 the Chapmans notified Beck that they did not intend to abide by the contract. No resolution of the situation was reached and the Chapmans filed suit seeking damages, or, in the alternative, rescission of the contract. Beck counterclaimed for damages and specific performance. A bench trial was held, and, as noted above, the court granted the Chapmans' request to rescind the contract.

We review the findings of fact of the trial court under the clearly erroneous standard while its conclusions of law are reviewed *de novo*. CR 52.01. The construction and interpretation of a contract are questions of law for the court. Island Creek Coal Co. v. Wells, 113 S.W.3d 100, 103 (Ky. 2003). Provisions in a contract are construed most strictly against its drafter. Pulliam v. Wiggins, 580 S.W.2d 228, 231 (Ky.App. 1978).

In order to form a valid contract there must be consideration. The contract in this case is not supported by monetary consideration; however, money is only one type of consideration that may support a contract. Mutual promises are a valid form of consideration as long as there is some benefit to the promisor or detriment to the promisee. More v. Carnes, 309 Ky. 41, 56, 214 S.W.2d 984, 991 (1948); Association of Army

& Navy Stores v. Young, 296 Ky. 61, 65, 176 S.W.2d 136, 138 (1943); Robbins v. Robbins, 246 Ky. 411, 55 S.W.2d 31, 35 (1932). The fact that Beck's promise to buy is conditioned on two contingencies does not invalidate the contract. Consolidated Realty Co. v. Richmond Hotel & Building Co., 253 Ky. 463, 69 S.W.2d 985, 988 (1934).

Although mutual promises may supply consideration for a contract, the contract also must contain mutuality of obligation or it will still fail a consideration analysis. Here, the basic promises exchanged in the contract are the Chapmans' promise to sell and Beck's promise to buy.

The fundamental contention of the Chapmans, and the holding of the circuit court, is that the contract lacks mutuality of obligation. Mutuality of obligation is similar to consideration and stands for the principle that both parties to a contract must assume some legal liability to the other or else it will be found to be lacking in mutuality, and, therefore, consideration. David Roth's Sons, Inc. v. Wright and Taylor, Inc., 343 S.W.2d 389, 390 (Ky. 1961). There is no necessity for each party to a contract to have reciprocal rights of the same kind. Id.

In this case the Chapmans argue that Beck's obligations under the contract are truly illusory. They say that the Chapmans have obligated themselves to sell while Beck

has not obligated himself to buy and the building of the road is not a benefit or detriment since the Chapmans are obligated to reimburse Beck if the property is not conveyed.

The question of mutuality in a contract, such as the one at issue, boils down to whether Beck "has in actuality no fixed obligations under the contract." Id. at 391. If there are fixed obligations even though a right of termination exists in one party, the contract is not lacking in mutuality.

Buckaway v. J-Town Center, Inc., 475 S.W.2d 642, 645 (Ky. 1972).

In the contract at issue it is plain that Beck has no fixed obligations. Under the contract Beck is not obligated to purchase the property at any time. He simply has an option to purchase and must exercise that option within five years from the date of execution of the contract. In order to make this option binding on the Chapmans the contract must contain some other consideration or obligation on the part of Beck in order to support the Chapmans' promise to sell. The only other possible consideration in the contract is the obligation of Beck to construct a gravel road to the Chapmans' remaining property. This is truly no consideration since the Chapmans must repay Beck if he decides not to buy the property. Thus, it can be seen from an examination of this contract that Beck's promise to buy in exchange for the Chapmans' promise to sell is illusory - Beck has not assumed any legal liability to the Chapmans. The

contract therefore lacks consideration. David Roth's Sons, Inc., supra.

Given our view that the contract is unenforceable due to a lack of consideration, there is no need to address the other arguments made by the parties on appeal. The judgment of the circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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