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NO. COA02-1639

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

BETTY CARMON
Plaintiff

v.

Greene County
No. 01 CVD 131

SAMUEL L. CUNNINGHAM
Defendant

Appeal by plaintiff from judgment entered 6 June 2002 by Judge James Copeland in Greene County District Court. Heard in the Court of Appeals 17 September 2003.

Legal Aid of North Carolina, by Elizabeth C. Krabil, for plaintiff.

Samuel L. Cunningham, pro se.

TIMMONS-GOODSON, Judge.

Betty Carmon ("plaintiff") appeals from a judgment of the trial court in favor of Samuel Cunningham ("defendant"). For the following reasons, we reverse the trial court's decision and remand.

The evidence presented at trial tends to show the following: Plaintiff and defendant entered into an Option to Purchase Agreement ("agreement") on 4 June 1999 for Lot #9 in Section 2 of the Red Oak Subdivision in Greene County. The agreement identified defendant as the seller and plaintiff as the buyer of the property.

The purchase price of the property was \$12,500. Since defendant was the only party to sign the agreement, plaintiff's signature does not appear on the writing. When the agreement was signed, plaintiff paid \$450 in consideration for a thirty-day option to purchase the property, which was to be applied to the purchase price. The terms and conditions of the agreement state *inter alia* that the option may be renewed with payment of \$150 monthly to be applied to the remaining balance. Plaintiff made the \$150 per month payments while she sought financing for the balance of the purchase price and shopped for a home to place on the property. There were several consecutive months in which plaintiff failed to make timely payments, however, defendant accepted her tardy payments. While plaintiff was shopping for a home, defendant notified plaintiff that once she placed a home on the property, interest would begin to accrue on the purchase money mortgage. Plaintiff purchased a home and had it placed on the property in November, 1999. Soon thereafter, defendant provided plaintiff a handwritten receipt for the most recent payment, which stated the outstanding balance as well as a charge of \$3.96 interest per day. Plaintiff filed this action seeking declaratory relief from the imposition of interest on the balance of the purchase price, and correction of the balance due on the account.

Following a bench trial, the court entered seven findings of fact as follows:

1. Betty Carmon is a resident of Greene County, North Carolina.

2. Samuel L. Cunningham is a resident of Greene County, North Carolina.
3. The dispute between the parties revolves around an Option to Purchase Agreement.
4. Samuel L. Cunningham's is the only signature that appears on the Option to Purchase Agreement.
5. Betty Carmon did not sign the Option to Purchase Agreement, dated June 4, 1999, that was entered into evidence on May 3, 2002.
6. The Option to Purchase Agreement refers to Betty Carmon as the Buyer and to Samuel L. Cunningham as the Seller.
7. The Option to Purchase Agreement describes the real property being sold and lists the purchase price.

Based on the above findings of fact, the trial court concluded as a matter of law the following:

1. That the parties are properly before the Court and that this Court has jurisdiction over the parties hereto and over the subject matter herein set forth in the Complaint filed on May 25, 2001.
2. That there must be a writing and that both parties must sign said writing in order for there to be a contract for the sale of real property.

The trial court then decreed that "[t]here is no written or verbal contract between Betty Carmon and Samuel L. Cunningham for the sale of real property described in the Option to Purchase Agreement because Betty Carmon did not sign the Option to Purchase Agreement." It is from this judgment that plaintiff appeals.

The issues presented on appeal are whether (I) both the buyer and seller of real property must sign a contract to convey the property; and (II) a valid option contract existed between

plaintiff and defendant where plaintiff did not sign the Option to Purchase Agreement.

The appellate standard of review of a judgment entered after a bench trial is "whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (2002), review denied, 356 N.C. 434, 572 S.E.2d 428 (2002).

In the case *sub judice*, neither the findings of fact nor the conclusions of law support the trial court's decree, which refers to the agreement as a contract for the sale of real property. We disagree with this characterization of the agreement. Our review of the evidence leads this Court to the conclusion that the agreement is an option contract. Accordingly, before we analyze plaintiff's assignments of error, we will address the distinction between a contract and an option contract.

Generally, a contract is an agreement between two or more persons that they will do or refrain from doing a particular act. *McCraw v. Llewellyn*, 256 N.C. 213, 216, 123 S.E.2d 575, 578 (1962). The fact that each party assumes legal liability serves as consideration for the other party, and creates mutuality between the parties. *McCraw*, 256 N.C. at 216, 123 S.E.2d at 578. On the other hand, an option contract is an agreement that binds one party to perform a certain act for a stipulated price within a designated time, leaving it to the discretion of the other party to accept it. *Lawing v. Jaynes*, 20 N.C. App. 528, 536, 202 S.E.2d 334, 340

(1974), *modified by Lawing v. Jaynes*, 285 N.C. 418, 206 S.E.2d 162 (1974). So long as an option contract is not exercised, it is a unilateral writing lacking in the mutual elements of a contract. *Lawing*, 20 N.C. App. at 536, 202 S.E.2d at 340. Thus, the distinction between contracts in general and option contracts lies in the doctrine of mutuality.

We therefore conclude that this agreement is not a contract for the sale of Lot #9 because it lacks mutuality. The agreement contains no promise by plaintiff that she will purchase the property. The only promise in the agreement is made by defendant which grants plaintiff the exclusive right at a cost of \$450 to purchase the property within thirty days for a price of \$12,500, and that the deadline may be extended at a rate of \$150 per month. Plaintiff is not subject to any legal liability by the language of this agreement, and for this reason we hold that the agreement was not a contract for the sale of property.

Furthermore, we conclude that this agreement contains the essential elements of an option contract. Those elements are: (I) a present offer to sell property that is described with reasonable certainty; (II) the offer to sell stipulates a fixed price to be paid for the property; (III) the offer to sell is made irrevocable for a stated period of time; and (IV) the offer is a binding promise on the seller because the buyer gave some consideration in return for the promise of irrevocability. See generally *Kidd v. Early*, 289 N.C. 343, 222 S.E.2d 392 (1976).

The agreement specifically states that "the Seller, for and in consideration of the sum of \$450 to him paid by the Buyer ... does hereby give unto the Buyer ... the exclusive right and option to purchase [Lot #9]," and that the "option shall be for a period of 30 days ..." This language constitutes a present offer to sell the property. The agreement also stipulates a fixed price for the property of \$12,500. The agreement makes the offer irrevocable for thirty days. The agreement constitutes a binding promise on defendant because plaintiff paid the initial \$450 and an additional \$150 per month for the promise of irrevocability. Because each element of an option contract is present in this agreement, we conclude that it is indeed an option contract.

We now address plaintiff's assignments of error. Plaintiff argues that the trial court erred in concluding as a matter of law that both parties must sign a writing in order for there to be a contract for the sale of real property. We agree with plaintiff.

For this analysis, we look to the Statute of Frauds requirements for contracts. The Statute of Frauds was established to prevent fraud and perjury in cases involving contracts. It requires certain contracts, including options to purchase land, to be in writing and signed by the party or parties to be bound by the contract. See N.C. Gen. Stat. § 22-2 and *Craig v. Kessing*, 36 N.C. App. 389, 244 S.E.2d 721 (1978), affirmed by *Craig v. Kessing*, 297 N.C. 32, 253 S.E.2d 264 (1978) (Applies N.C. Gen. Stat. § 22-2 to option contracts for the purchase of property). However, the Statute of Frauds does not require two signatures to constitute an

enforceable contract. When a contract is disputed, the only signature that the trial court must find on the document is the signature of the party against whom the contract is being enforced, i.e. the defendant. *Lewis v. Murray*, 177 N.C. 18, 19-20, 97 S.E. 750, 751 (1919). If the contract is signed by the defendant, it is sufficient to bind him and legal action can be brought against him though the plaintiff may not be bound if the Statute of Frauds is not sufficiently complied with as to her. *Id.*

In the case *sub judice*, the fact that plaintiff did not sign the option contract does not invalidate the agreement. We conclude that an enforceable contract does exist between plaintiff and defendant. We therefore reverse the judgment of the trial court and remand this case for entry of a judgment consistent with this opinion and for a determination of the principle amount owed by plaintiff to defendant for the conveyance of Lot #9 and the amount of interest, if any, due.

Reversed and remanded.

Judges HUDSON and ELMORE concur.

Report per Rule 30(e).