

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

|               |   |                    |
|---------------|---|--------------------|
| GVC and       | : | NO. 00-01,323      |
| JMC, his wife | : |                    |
| Plaintiffs    | : |                    |
| vs.           | : | CIVIL ACTION - Law |
|               | : | IN EQUITY          |
| MES,          | : |                    |
| Defendant     | : |                    |

OPINION AND ORDER

In this equity action Plaintiffs seek specific performance of a real estate sales agreement dated October 26, 1999. The parties agree, and we have previously held, that the agreement is valid and binding. Nevertheless, Defendant seeks to avoid specific performance, recognizing that a monetary claim for damages would still exist, contending that “inequity or hardship may be a valid defense to an action for specific performance”. Payne v Clark, 187 A.2d 769 (1963). Plaintiffs contend no inequity or hardship exists or that any inequity or hardship was due to Defendant’s own acts or to events clearly foreseeable.

Deposition testimony was presented from Dr. Lee Ciccarelli and Dr. Ronald DiSimone, both treating physicians of Defendant. Both doctors expressed the opinion that it would be stressful and might affect Defendant’s health if she were compelled to comply with the provisions of the sales agreement. In particular, Dr. Ciccarelli stated his belief that Defendant’s cardiovascular health was “worse than what it was in October of 1999” and that a move could have “significant stress to her life which could stress her heart, raise her blood pressure, could possibly precipitate a heart attack as I mentioned before”.

Dr. DiSimone expressed the opinion that Defendant, “being an elderly woman with advancing arthritis in her hips and her shoulders, seems to be managing in her present living environment, but probably is not best suited to be moving out of her house at this time”. Both doctors related

significant medical histories, although Dr. Ciccarelli focused particularly on a pulmonary embolism which he felt Defendant “developed or was first detected” in May of 2000.

Defendant herself, despite being given the alternative between “not thinking it through” and “things have changed” as the rationale for her determination not to proceed with the transaction, chose the “not thinking it through” alternative. Based upon our observations of Defendant and the other witnesses presented, a careful consideration of her testimony and a thorough review of the depositions of the doctors, we believe it more likely that Defendant’s current stress is caused by her recognition that she should not have agreed to sell her house rather than her concern that her health problems will be aggravated in the event she is forced to move. We are particularly concerned that Defendant turned down the offer of an apartment in the Williamsport Home, an apartment which apparently would have met her housing needs. We are not satisfied Defendant has made a reasonable effort to secure alternate housing and are convinced she has not taken appropriate steps to relocate simply because she does not wish to move from her home. Unfortunately, she executed a valid agreement of sale requiring that she do so.

With respect to Plaintiffs, we are satisfied they have taken significant steps to alter their position in reliance upon the validity of the sales agreement, including the sale of items of personal property. We resolve credibility issues in favor of Plaintiffs with respect to the execution of the listing agreement for their own home. Specifically, we find that Plaintiffs listed their home before they were advised that Defendant was not going to proceed with the sale. While Plaintiffs have had an opportunity to terminate that listing agreement, we are satisfied from their testimony that they reasonably proceeded in the belief their equity action would be successful and that they should be permitted to acquire this unique home which meets their particular requirements. No issue has been raised by Defendant with respect to the adequacy of the consideration.

While we are sympathetic with Defendant’s belated realization that she would prefer not to move from her home of fifteen years, we do not believe she has established sufficient inequity or hardship to create a valid defense to Plaintiffs’ action for specific performance. We believe all Defendant’s medical problems to have been reasonably foreseeable as natural progressions of diseases or conditions existing at the time of the execution of the sales agreement. We believe the

sanctity of written sales agreements and the certainty created by said agreements ought not to be jeopardized by permitting a party to avoid her contractual obligations under these circumstances. As noted during the hearing, this is not a situation where Defendant suffered an unexpected catastrophic injury which would prevent her from leaving her home. Rather we believe Defendant has simply recognized she made a mistake and is now causing herself added stress and anxiety while dealing with this litigation. If Plaintiffs desire to proceed, we will permit them to do so.

ORDER

AND NOW, this 20<sup>th</sup> day of August, 2001, it is Decreed as follows:

1. Plaintiffs' complaint for specific performance is granted.
2. The parties are directed to comply with all provisions of the sales agreement of October 26, 1999.
3. Closing shall be held no later than October 10, 2001.
4. Plaintiffs shall immediately select a real estate professional to conduct an inspection of the premises to determine its current condition; in the event Plaintiffs elect not to proceed following said inspection, they shall notify Defendant and the Court immediately.

By The Court,

J. Michael Williamson, Judge  
Specially Presiding

cc: David B. Lingenfelter, Esq.  
Daniel K. Mathers, Esq.  
Gary Weber, Esq.  
Hon. J. Michael Williamson