

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PALMER J. COTTURO

Appellee

v.

RONALD ANGLE AND SHARON ANGLE

Appellants

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3313 EDA 2011

Appeal from the Judgment Entered January 30, 2012
In the Court of Common Pleas of Northampton County
Civil Division at No(s): CV-2006-5851

BEFORE: MUSMANNO, MUNDY and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED APRIL 18, 2013

Appellants, Ronald Angle and Sharon Angle, appeal from the judgment¹ entered in the Northampton County Court of Common Pleas. Appellants contend the court erred by concluding they breached the contract and by miscalculating the award of damages. We affirm.

We adopt the findings of fact set forth in the trial court's opinion. **See** Trial Ct. Op., 8/19/11, at 2-12. After a bench trial, the court entered its verdict in the amount of \$1,272,564.40 in favor of Appellee, Palmer J. Cotturo, on August 19, 2011. On August 29, 2011, Appellants filed a timely

* Former Justice specially assigned to the Superior Court.

¹ We amended the caption to reflect an appeal from judgment rather than an order denying a post-trial motion. **See generally *Johnston the Florist, Inc. v. TEDCO Constr. Corp.***, 657 A.2d 511, 515 (Pa. Super. 1995) (*en banc*).

post-trial motion requesting judgment notwithstanding the verdict. Appellants' Mot. for Post-Trial Relief, 8/29/11. Appellants did not request a new trial as relief. The court denied Appellants' post-trial motion for relief on November 15, 2011.

Meanwhile, on October 20, 2011, Appellants filed a supplemental motion for post-trial relief requesting a new trial. Appellants' Supplemental Mot. for Post Trial Relief, 10/20/11, at 4. Appellants argued that a new trial was warranted because the court refused to grant a continuance when new counsel was retained. *Id.* at 2, 4. Appellee filed a motion to strike Appellants' supplemental motion and asked the court to deny and dismiss Appellants' motion with prejudice. Appellee's Mot. to Strike Appellants' Supplemental Mot. for Post Trial Relief & New Matter, 10/21/11, at 2 (unpaginated). The record reflects no ruling on Appellee's motion to strike. On October 21, 2011, the court "denied and dismissed with prejudice" Appellants' supplemental post-trial motion; the court did not strike Appellants' supplemental motion as untimely. Order, 10/21/11.

Before judgment was entered, Appellant filed a notice of appeal on December 15, 2011. The notice purported to appeal from the court's October 21, 2011, and November 15, 2011 orders. Appellants' Notice of Appeal, 12/15/11. Judgment was entered on January 30, 2012. Because judgment was ultimately entered, there is no jurisdictional obstacle. **See *Johnston the Florist, Inc.*, 657 A.2d at 515.** The court did not order a

Pa.R.A.P. 1925(b) statement, but filed a Pa.R.A.P. 1925(a) order adopting its August 19, 2011 opinion.

Appellant raised the following ten issues:

1. Did the option agreement . . . between the parties require [Appellants] to grant [Appellee], in addition to the original one year term of the option, an additional six month option period in which to purchase the property at issue[?]
2. Are [Appellee's] claims for damages with respect to the alleged lost opportunity to sell the property to Tucker Homes, LLC ("Tucker"), Toll Brothers, Inc. ("Toll"), or Eliezer Deutsch ("Deutsch") too speculative to permit recovery?
3. Should any calculation of [Appellee's] purported damages for the alleged lost opportunity to sell the property to Tucker, Toll or Deutsch deduct the sums that [Appellee] had agreed would be distributed to his partners, and the sums that he would have otherwise had to pay to third parties from the proceeds of any sale?
4. Did [Appellant] R. Angle breach the option agreement by way of his public comments regarding the variance that [Appellee] obtained with respect to the property?
5. Did any purported breach of the option agreement by [Appellant] R. Angle cause [Appellee] to lose the opportunity to sell the property to Tucker?
6. Did [Appellant] R. Angle breach the option agreement by declining to sign an estoppel certificate with respect to the property requested by Toll?
7. Did any purported breach by [Appellant] R. Angle of the option agreement cause [Appellee] to lose the opportunity to sell the property to Toll?
8. Did [Appellant] R. Angle breach the option agreement by his communications with [Deutsche] in connection with

Deutsch's consideration of a potential purchase of the property?

9. Did any purported breach by [Appellant] R. Angle of the option agreement cause [Appellee] to lose the opportunity to sell the property to Deutsche?

10. Should the trial court have granted the brief adjournment of the trial requested by substituted counsel?

Appellants' Brief at 2-3² (capitalization omitted).

We summarize Appellants' arguments together.³ Appellants suggest that the damages are speculative because Appellee did not enter into binding agreements of sale with Tucker and Deutsch, Tucker had not performed any due diligence, and Appellee had not fulfilled any of the prerequisites for sale. The court, Appellants insist, erred by failing to deduct sums that Appellee was purportedly required to pay to third parties. Appellants maintain that R. Angle's conduct did not violate the option agreement. They allege that the court had no factual basis to conclude that R. Angle's conduct caused Tucker to withdraw. Appellants complain of Appellee's "unclean hands." Appellants suggest the court misinterpreted the option agreement to require R. Angle to sign the estoppel certificate for the

² Except for a few pages, Appellant's brief is unpaginated.

³ Pa.R.A.P. 2119(a) requires that the argument section of an appellate brief "shall be divided into as many parts as there are questions to be argued." Pa.R.A.P. 2119(a). Because Appellants' nine arguments did not correspond with the ten questions presented, Appellants violated Rule 2119(a). We decline to find waiver, however.

transaction with Toll. Nothing in the record, Appellants claim, supports the court's conclusion that R. Angle's refusal to sign caused Toll to withdraw from the project. Appellants posit the court erred by relying on Appellee's parol evidence to hold that the option agreement required an six-month extension of time. They assert that R. Angle's conduct regarding the transaction with Deutsch did not cause Appellee to incur harm. Appellants lastly opine that the trial court erred by refusing their request to continue trial. Appellee refutes Appellants' arguments and further contends that Appellants waived any arguments raised in their untimely October 20, 2011 supplemental motion for post-trial relief. We hold Appellants are not entitled to relief.

Appellants have requested judgment notwithstanding the verdict for their first nine questions presented and a new trial with respect to their last question presented. We state the standards of review for both types of relief:

An appellate court will reverse a trial court's grant or denial of a JNOV only when the appellate court finds an abuse of discretion or an error of law. Our scope of review with respect to whether judgment n.o.v. is appropriate is plenary, as with any review of questions of law.

In reviewing a motion for judgment n.o.v., the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising therefrom, and any conflict in the evidence must be resolved in his favor. Moreover, a judgment n.o.v. should only be entered in a clear case and any doubts must

be resolved in favor of the verdict winner. Further, a judge's appraisal of evidence is not to be based on how he would have voted had he been a member of the jury, but on the facts as they come through the sieve of the jury's deliberations.

There are two bases upon which a judgment n.o.v. can be entered: one, the movant is entitled to judgment as a matter of law, . . . and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant[.] With the first a court reviews the record and concludes that even with all factual inferences decided adverse to the movant the law nonetheless requires a verdict in his favor, whereas with the second the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Questions of credibility and conflicts in the evidence are for the fact-finder to resolve and the reviewing court should not reweigh the evidence. If there is any basis upon which the jury could have properly made its award, the denial of the motion for judgment n.o.v. must be affirmed.

With respect to a request for a new trial, our standard and scope of review follows:

To review the two-step process of the trial court for granting or denying a new trial, the appellate court must also undertake a dual-pronged analysis. A review of a denial of a new trial requires the same analysis as a review of a grant. First, the appellate court must examine the decision of the trial court that a mistake occurred.

At this first stage, the appellate court must apply the correct scope of review, based on the rationale given by the trial court. There are two possible scopes of review to apply when appellate courts are determining the propriety of an order granting or denying a new trial. There is a narrow scope of review: where the trial court articulates a

single mistake (or a finite set of mistakes), the appellate court's review is limited in scope to the stated reason, and the appellate court must review that reason under the appropriate standard.

Conversely, if the trial court leaves open the possibility that reasons additional to those specifically mentioned might warrant a new trial, or orders a new trial in the interests of justice, the appellate court applies a broad scope of review, examining the entire record for any reason sufficient to justify a new trial.

Even under a narrow scope of review, the appellate court might still need to examine the entire record to determine if there is support for any of the reasons provided by the trial court.

The appropriate standard of review also controls this initial layer of analysis. If the mistake involved a discretionary act, the appellate court will review for an abuse of discretion. If the mistake concerned an error of law, the court will scrutinize for legal error. . . .

When determining whether the trial court abused its discretion, the appellate court must confine itself to the scope of review, as set forth in our preceding discussion. If the trial court has provided specific reasons for its ruling on a request for a new trial, and it is clear that the decision of the trial court is based exclusively on those reasons, applying a narrow scope of review, the appellate court may reverse the trial court's decision only if it finds no basis on the record to support any of those reasons. As a practical matter, a trial court's reference to a finite set of reasons is generally treated as conclusive proof that it would not have ordered a new trial on any other basis. Alternatively, where the trial court leaves open the possibility that there were reasons to grant or deny a new trial other than those it expressly offered, or the trial court justifies its decision on the interests of justice, an appellate court must apply a broad scope of review and affirm if it can glean any valid reason from the record.

Braun v. Wal-Mart Stores, Inc., 24 A.3d 875, 890-92 (Pa. Super. 2011) (*per curiam*) (citations, punctuation, and some formatting omitted), *appeal granted on other grounds*, 47 A.3d 1174 (Pa. 2012).

Initially, we address Appellee's claim that Appellants waived the issues raised in their untimely, supplemental post-trial motion. We initially observe that the trial court did not grant Appellee's motion to strike. Further, the court entertained Appellants' untimely, supplemental post-trial motion before denying it on the merits. ***See Behar v. Frazier***, 724 A.2d 943, 947 (Pa. Super. 1999). Because the court declined to strike Appellants' post-trial motion, we similarly decline to find waiver. ***See id.***

With respect to the merits, after a careful review of the record in the light most favorable to the verdict-winner, ***see Braun, supra***, the parties' briefs, and the decision of the Honorable John L. Braxton, we affirm to the extent Appellants challenged the Tucker transaction. ***See*** Trial Ct. Op. at 1-21 (holding record substantiates Appellee's entitlement to and amount of damages;⁴ and Tucker withdrew because of concerns regarding R. Angle's involvement). We also discern no error or abuse of discretion in the court's

⁴ Appellants did not contest or propose an alternative damages calculation; regardless, the trier of fact was free to give little weight to any competing damages calculation. ***See Braun***, 24 A.3d at 891 (holding, "Questions of credibility and conflicts in the evidence are for the fact-finder to resolve and the reviewing court should not reweigh the evidence.").

award of equitable relief, *i.e.*, specific performance of the option agreement.⁵ **See generally Lower Frederick Twp. v. Clemmer**, 543 A.2d 502, 507 (Pa. 1988). To the extent Appellants raised arguments regarding the Toll and Deutsch transactions, they concede on appeal those arguments applied only to the extent this Court did not affirm the trial court's conclusions regarding the Tucker transaction. Appellants' Reply Brief at 7. Because this Court affirms on the basis of the trial court's decision regarding the Tucker transaction, we decline to address the merits of Appellants' contentions addressing the Toll and Deutsch transactions. Finally, with respect to Appellants' last issue, we review the trial court's "grant or refusal of a request for a continuance" for an abuse of discretion. **See Phoenix Mut. Life Ins. Co. v. Radcliffe on the Del., Inc.**, 266 A.2d 698, 701 (Pa. 1970). After careful review, we discern no abuse of discretion by the trial court in denying a continuance.⁶ **See id.** Accordingly, we affirm.

Judgment affirmed.

⁵ We observe that Appellants' "no harm, no foul" arguments do not necessarily negate the import of their prior actions and whether those actions merited the grant of relief.

⁶ Parenthetically, we observe, presumably counsel had knowledge of the trial date when he agreed to enter his appearance and represent Appellants.

J-A20041-12

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambett", written over a horizontal line.

Prothonotary

Date: 4/18/2013