

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GETTY REALTY CORP. : CIVIL ACTION
v. :
GOTTFRIED HETTLER, et al. : NO. 97-5637

MEMORANDUM AND ORDER

BECHTLE, J.

FEBRUARY 23, 1998

Presently before the court is Getty Realty Corporation's ("Getty") Complaint requesting specific performance of an option to purchase, Caroline Hettler and Barbara Hettler Endres' (the "Hettlers") opposition thereto and counterclaim for ejectment. For the reasons set forth below, the court will grant the relief requested in Getty's Complaint.

I. BACKGROUND

This is a civil action against the owners of real property requesting specific performance of a purchase option contained in a lease agreement between the parties.¹ This Memorandum represents the court's decision resulting from a bench trial held before the court on January 8, 1998. The material facts in this case are not in dispute. Getty is the assignee of a commercial lease. The property at issue is located in

1. This court has diversity jurisdiction because the amount in controversy exceeds \$75,000.00 and the parties are a citizen of a State and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2).

Northampton Township, Bucks County, Pennsylvania (the "Property"). Getty currently subleases the Property to a third party for use as a gasoline service station. The Property is presently owned by defendants Caroline Hettler and her daughter, Barbara Hettler Endres, both citizens of the Federal Republic of Germany.

Getty Oil Company executed a written lease dated January 12, 1972 with Gottfried and Caroline Hettler. Getty Oil Company is plaintiff Getty's predecessor-in-interest. Subsequent to the lease, Gottfried Hettler passed away. Caroline Hettler and her daughter, Barbara Hettler Endres, presently own the Property as joint tenants with right of survivorship.²

The original lease was for ten years, with three options to extend for 5 years. All three lease extensions were exercised. The lease also contained an option to purchase the Property for \$95,000.00 at the end of the lease. By letter dated July 22, 1997, Getty notified the Hettlers that it would exercise the option to purchase. The lease expired on August 15, 1997. Upon expiration of the lease, the Hettlers contested the validity of the option and gave Getty until September 15, 1997 to vacate the premises. The Hettlers contended that Getty was a holdover

2. In its Complaint, Getty named Gottfried and Caroline Hettler as defendants. Upon discovering that Barbara Hettler Endres had acquired title, the parties stipulated to the naming of Ms. Endres as a defendant. However, the parties did not move to amend the caption to remove the late Gottfried Hettler.

tenant and was required to pay an increased rent of \$4,000.00 per month. Under the lease, Getty had been paying \$750.00 per month.

The only issue the parties dispute is the present value of the Property. The Hettlers have introduced evidence that the fair market value of the Property is \$260,000.00 and with the added value of the lease it is worth as much as \$340,000.00. Getty has challenged this valuation and argues that the value of the Property would actually be reduced by the cost of replacing the underground gasoline storage tanks that Getty owns. The Hettler's witness testified that replacing the tanks would cost between \$35,000.00 and \$57,000.00. Getty's witness estimated that if Getty were to remove the storage tanks upon vacating the Property, the costs of replacing the tanks would be about \$150,000.00.

On September 8, 1997, Getty filed a Complaint and a Motion for Temporary Restraining Order and Preliminary Injunction to prevent its ejection from the Property. In its Complaint, Getty requests that the court (1) grant specific performance of the lease provisions and purchase option and order conveyance of the Property according to the option; (2) enter judgment specifically declaring title of the Property to be vested in Getty, or its subsidiary, in fee simple; (3) enter judgment relieving Plaintiff from liability for rent after July 22, 1997, when Plaintiff exercised the option to purchase; and (4) grant costs, disbursements and attorneys' fees. On November 5, 1997,

the Hettlers filed their Answer contesting the validity of the option to purchase and counterclaiming for ejectment.

The Temporary Restraining Order was granted at a hearing held before the court on September 11, 1997. The Preliminary Injunction was granted at a second hearing held October 24, 1997. Under the Temporary Restraining Order and Preliminary Injunction, Getty continued to maintain possession of the Property and agreed to pay the Hettlers \$750.00 per month rent while the validity of the option was being contested. On January 8, 1998, the court held a final hearing on whether the court should grant the specific relief requested in Getty's Complaint. This Memorandum and Order represents the court's findings and rulings from that final hearing.

For the reasons set forth below, the court will grant the relief requested in Getty's Complaint.

II. DISCUSSION

Getty's underlying claim is that it exercised a valid option to purchase the Property and that defendants wrongfully rejected Getty's offer. In Defendants' Final Hearing Memorandum and oral argument at the hearing, the Hettlers contested the validity of the option to purchase on three grounds. First, the Hettlers argue that the option to purchase violates the Rule Against Perpetuities. Second, they argue that Getty improperly exercised the option to purchase. Third, they argue that an

order of specific performance would be inequitable and unjust. Those arguments will be addressed in that order below.

A. Rule Against Perpetuities

Defendants argue that the exercise of the option occurred 25 years after the date of the lease, thus violating the rule against perpetuities, codified at 20 Pa. Cons. Stat. Ann. § 6104. Defendants cite Barton v. Thaw, 92 A. 312 (Pa. 1912), in support of their contention that the option to purchase is subject to the rule against perpetuities. However, the ruling in Barton has been limited in this regard by Poland Coal Co. v. Hillman Coal and Coke, 55 A.2d 414 (Pa. 1947). Under more recent Pennsylvania case law, options to purchase contained in a lease agreement do not violate the rule against perpetuities if the option is exercisable at a time not more remote than the life of the lease. Id. at 416 (quoting Restatement rule). The Third Circuit has recognized that the rule in Barton was so limited by Poland Coal. Camerlo v. Howard Johnson Co., 710 F.2d 987, 991 (3d Cir. 1983)(noting that "[t]he scope of the Barton decision has been limited by later decisions of the Pennsylvania Supreme Court.")(citing Poland Coal, 55 A.2d at 416). In this case, the terms of the option are located within the lease agreement and the option is exercisable only at the end of the lease and not thereafter. While defendants attempt to distinguish Poland Coal from the instant case, the court finds that the Pennsylvania

Supreme Court's clearly enunciated principal that the rule against perpetuities does not apply to options to purchase contained in a lease and exercisable within the life of that lease bars the application of the rule in this case.

B. Exercise of the Option to Purchase

The Hettlers next argue that Getty improperly exercised the option to purchase, thereby destroying the option. They point out that in Getty's letter, which notified the Hettlers that Getty was exercising the option, Getty attempted to have the title to the Property placed in the name of Getty's subsidiary instead of in Getty's name. In that letter, dated July 22, 1997, Getty stated "we do hereby give notice of our election to exercise our option to purchase the demised premises for Ninety-five Thousand (\$95,000.00) dollars exactly." (Pl.'s Trial Ex. P-8.) The letter continues that "we request that Leemilt's Petroleum, Inc., a wholly-owned subsidiary of Getty Realty Corp., be the entity that takes title to the Fee upon closing of the sale; please advise if this is acceptable." Id. The Hettlers contend that Getty is attempting to exercise the option on behalf of Leemilt's Petroleum, Inc. ("Leemilt's") instead of Getty. They then argue that the option is an offer and that the attempt to exercise the option does not "mirror" the offer and thus destroys it.

Factually, the Hettlers are incorrect in stating that Getty exercised the option on behalf of Leemilt's. It is clear

from the letter above that Getty has exercised the option and is making a request that its subsidiary take title because in its letter, it asks the Hettlers if the method of transfer "is acceptable." Id. The request regarding which entity would take title was simply an attempt to work out the details of the transfer. Under the language of the option, the option "may be exercised by written notice from Lessee to Lessor." (Pl.'s Trial Ex. P-5 at ¶ 15.) Getty gave written notice that it would exercise its option. If the option is exercised, "Lessee shall tender the purchase price to Lessor and . . . Lessor shall deliver to Lessee a full covenant and warranty deed." Id. The Hettlers only need to comply with the option as written in the lease agreement. However, the parties are free to work out the details between themselves, including an agreement as to whether Getty or its subsidiary will take title as Getty has requested. The court finds that Getty has properly exercised the option to purchase.

C. Whether Specific Performance Would be Inequitable

The Hettlers also argue that ordering specific performance would be "inequitable." As evidence of the inequity of specific performance, the Hettlers introduced evidence that the Property could be worth as much as \$340,000.00. Because the option to purchase sets the price at \$95,000.00, the Hettlers argue that the court should not enforce the option.

Under Pennsylvania law, "[a] court of equity should refrain from ordering specific performance where 'it appears that hardship or injustice will result to either of the parties.'" Snyder v. Bowen, 518 A.2d 558, 562 (Pa. Super. 1986)(citing Welsh v. Ford, 127 A. 431, 432 (Pa. 1925)). The court continued that "[t]he word 'hardship,' however, does not encompass every disappointment and economic detriment to which a party has exposed himself by signing an agreement." Id. Regarding contracts for real property, the Pennsylvania Supreme Court has stated that "[i]nadequacy of consideration is not ground for refusing to decree specific performance of a contract to convey real estate, unless there is evidence of fraud or unfairness in the transaction sufficient to make it inequitable to compel performance." Snow v. Corsica Construction Co., 329 A.2d 887 (Pa. 1974); see also In re Estate of Mihm, 497 A.2d 612, 613-14 (Pa. Super. 1985)(quoting Snow); Steuart v. McChesney, 424 A.2d 1375, 1378 (Pa. Super. 1981)(quoting Snow).

In the case at hand, the Hettlers' only argument supporting their claim of inequity is that the option price is below the fair market value. The Hettlers have put forward no evidence of any fraud, misrepresentation, duress, unequal bargaining power, incapacity, unsophistication or any other reason that the lease agreement represented anything other than an arm's length transaction between the parties. The Hettlers have not put forth any evidence that the terms of the lease as a whole were unfair or that these terms were not agreed upon by the

parties. The only reason given for the difference in price between the option price and the present value is the natural force of suburban property value inflation which occurred between 1972 and the present. While the Hettlers are understandably disappointed that they must sell the Property below market value, the court will not go back in time and rewrite the lease agreement. The parties drafted the agreement and the intentions expressed therein will stand. The court finds that the financial disappointment of the Hettlers is not a sufficient ground to void or modify the option to purchase contained in the lease agreement.

D. Summary

As shown above, the intent of the parties is clearly expressed in the lease agreement. The agreement states that the lessee shall have the contractual right to purchase the Property for the agreed upon amount. All the terms of the contract were met. The court finds that there is no reason why the Hettlers should be excused from performance of the option to purchase. The court will grant specific performance of the option as it is written in the lease agreement.

It should be noted that Getty has been paying the Hettlers rent in the sum of \$750.00 per month since the injunctions were in place. Getty has had use of the property during that period and also has had use of the funds that will be applied to the purchase price of the Property. Therefore, Getty

is not entitled to an abatement of that holdover rent and shall continue to pay such rent hereafter, to be apportioned to the date of settlement.

III. CONCLUSION

For the foregoing reasons, the court will grant the relief requested in Getty's Complaint.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this 23rd day of February, 1998, upon consideration of Getty Realty Corporation's ("Getty") Complaint requesting specific performance of an option to purchase, Caroline Hettler and Barbara Hettler Endres' (the "Hettlers") opposition thereto and counterclaim for ejectment and oral argument before the court, IT IS ORDERED that Getty's request for specific performance is GRANTED as follows:

- (1) the Hettlers are hereby ordered to specifically perform the provisions of the lease agreement regarding the option to purchase contained therein; and
- (2) the Hettlers shall, forthwith, take all necessary steps, including the execution and delivery of all necessary documents in order to convey to Getty the leased premises in accordance with the terms of the option provisions of the lease agreement; and
- (3) Getty shall continue to make rent payments as ordered under the Preliminary Injunction granted

October 24, 1997, with the last payment to be apportioned to the date of settlement.

IT IS FURTHER ORDERED that Getty's request for costs, disbursements and attorneys' fees is DENIED except where permitted by applicable federal rule or statute.

IT IS FURTHER ORDERED that the Hettler's request for ejectment is DENIED.

The court retains jurisdiction for the purpose of ensuring compliance with this Order.

LOUIS C. BECHTLE, J.