

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO 2011-CA-01233

MARTHA CROW and FICTITIOUS DEFENDANT "A"

APPELLANT

v.

CROW'S SPORTS CENTER, INCORPORATED,
LYNN LAMBERT AND RHONDA LAMBERT

APPELLEES

REPLY BRIEF OF APPELLEE, CROW'S SPORTS CENTER, INCORPORATED, LYNN
LAMBERT AND RHONDA LAMBERT

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Lynn Lambert and Rhonda Lambert

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court may evaluate possible disqualifications or recusal.

Interested Persons

Connection or Interest

Martha Crow,

Appellant

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District One Chancellor

Respectfully submitted this the _____ day of February, 2012.

GREG E. BEARD, P.A.



Greg E. Beard, MS Bar No. [REDACTED]
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I. STATEMENT OF THE ISSUES

ISSUE 1: WHETHER THE TRIAL COURT'S OPINION IS SUPPORTED BY SUBSTANTIAL EVIDENCE-STANDARD OF REVIEW.

ISSUE 2: WHETHER THE CHANCELLOR CORRECTLY FOUND THAT SPECIFIC PERFORMANCE WAS JUSTIFIED IN THE STIPULATED INTERPRETATION OF PARAGRAPH 15 OF THE SECOND AMENDED LEASE AGREEMENT.

ISSUE 3: WHETHER THE CHANCELLOR WAS CORRECT IN FINDING THAT THE CONTRACT SHOULD BE ENFORCED FROM THE PLAIN MEANING OF THE WORDS CONTAINED THEREIN.

II. STATEMENT OF THE CASE

Lynn Lambert and Rhonda Lambert, hereinafter the "Lamberts," and Crow's Sports Center, Incorporated, hereinafter "CSCI," filed suit against Martha Crow seeking specific performance of the option to purchase certain property which is the subject of a Lease Agreement and executed by Martha Crow and her now deceased Husband, Sylvester Crow. The Chancery Court of Prentiss County, the Honorable Talmadge Littlejohn, entered an Order in favor of the Lamberts and CSCI granting specific performance, after finding that the Plaintiffs' had complied with all terms and conditions set forth in paragraph 15 of the Second Amended Lease Agreement. The parties had previously stipulated that interpretation of paragraph 15 was the sole issue before the Court.

III. STATEMENT OF FACTS

On or about May 31, 2005, Sylvester Crow and his wife, Martha Crow entered into a Lease Agreement with CSCI, Lynn Lambert and Rhonda Lambert. [R.8]. The subject matter of this Lease Agreement was a piece of property which is more particularly described in the document which is entitled Second Amended Lease Agreement. [R.8]. Said Lease was drafted by Sylvester and Martha Crow's attorney, the Honorable John Hatcher, and executed by Sylvester and Martha Crow on or

about June 6, 2006, and by the Lamberts on or about June 2, 2005. [R.8]. Sylvester Crow passed from this life on or about the 10th day of April, 2010. [R.8].

That the parties have stipulated that the issue before the Trial Court is whether paragraph 15 of the Contract is ambiguous and subject to interpretation by the trier of fact. That paragraph states in full:

15. OPTION TO PURCHASE: At the conclusion of the term hereof or upon the death of Sylvester Crow or Martha Crow, whichever shall occur first, the LESSEES shall have the option to purchase said property for a fair market value as determined by appraisal by a licensed real estate appraiser or such other term as the parties may negotiate between themselves, which option shall be first evidenced by a written notice from the LESSEES to the succeeding LESSORS with proof of the appraisal and evidence of the ability to exercise same or with such offer as the LESSEE may choose to make to LESSORS and if less than the appraised value to be then accepted in writing or rejected in writing by the LESSORS within in sixty (60) days, at which instance the Option shall be for the appraised value and if the LESSEES have not secured an appraisal then LESSOR may do so in substitute same by giving a copy of same to LESSEES, who shall pay said amount as the sales price unless they reject same within ten (10) days of receipt thereof, at which time the Option to Purchase shall cease and it shall cease if it has not been exercised within the sixty (60) days of the first right of option at the conclusion of the Lease or the death of one of the LESSORS. [R.8].

That by letter dated May 25, 2010, CSCI and the Lamberts informed Martha Crow of their decision to exercise the option to purchase the property. [R.8]. They included in that correspondence an appraisal by a licensed real estate appraiser and evidence of their ability to purchase the premise. [Appellant's Record Expert Exhibit 3]. Martha Crow has refused to accept the offer to purchase.

IV. SUMMARY OF ARGUMENT

This matter is before this Honorable Court on appeal from an opinion rendered by the Honorable Talmadge Littlejohn, sitting Chancellor in the Chancery Court of Prentiss County, Mississippi, whereby the Chancellor ordered specific performance of a Contract according the terms

of the Contract. [Appellant's Second Record Experts]. That opinion should not be disturbed so long as it is supported by substantial evidence.

The Chancellor in his Opinion found that the terms of the Contract were unambiguous and any interpretation should not favor the person who drafted the Contract, the Appellant's. The Appellants would have this Court assume the intent of the parties was not contained within the Contract. The Chancellor clearly found that the intent of the parties was found within the four corners of the document and it was outlined with specificity in paragraph 15 of the Second Amended Lease Agreement. Therefore, the Chancellor correctly entered a judgment requiring specific performance.

V. ARGUMENT

ISSUE 1: WHETHER THE TRIAL COURT'S OPINION IS SUPPORTED BY SUBSTANTIAL EVIDENCE-STANDARD OF REVIEW.

An Appellate Court should not disturb the factual findings of a Chancellor when they are supported by substantial evidence unless reasonable certainty exists that the Chancellor "abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard." *Gandy v. Estate of Ford*, 17 So.3rd 189, 192 (¶ 6) (Miss. Ct. App.2009). Whether a contract exists or not and its terms are questions of fact and should be resolved by the Chancellor as the finder of fact. *Id.* The Appellants herein question the substance of the Judgment rendered by the Chancery Court of Prentiss County, Mississippi. In Issue No. 1 of the Appellants Brief, they question whether the Court appropriately interrupted paragraph 15 of the Second Amended Lease Agreement and in Issue No. 2 they question whether the Chancellor's decision to disallow evidence of the Appellant's appraisal. Issue No. 1 is clearly an appeal of the substance of the Judgment and the Chancellor's decision

needs only to be supported by substantial evidence. Issue No. 2 asks this Court to consider the intentions of the parties which is inappropriate in this case when paragraph no. 15 of the Second Amended Lease Agreement clearly sets forth the steps to be taken by the Appellees' upon the death of Sylvester or Martha Crow or completion of the terms of the contract regarding payment. Paragraph 15 of the Second Amended Lease Agreement states with specificity that the "...LESSEE shall have the option to purchase the property at a fair market value as determined by appraisal by a licensed real estate appraiser..." [R.8]. The Lessees retained the services of a licensed real estate appraiser who conducted the appraisal and thereafter the Appellees performed all other steps required to complete the purchase of the subject property. [Appellant's Record Expert Exhibit 3]. Therefore the Chancellor's Judgment was based upon substantial evidence and should not be overturned. See also, Aspired Customs Homes, LLC v. Melton, 2010-CA-00429-COA (Miss. App. 2011).

ISSUE 2: WHETHER THE CHANCELLOR CORRECTLY FOUND THAT SPECIFIC PERFORMANCE WAS JUSTIFIED IN THE STIPULATED INTERPRETATION OF PARAGRAPH 15 OF THE SECOND AMENDED LEASE AGREEMENT.

When dealing with contractual relationship where real estate is involved the Court has found that specific performance is particularly appropriate "because of real estate's unique nature." Houston v. Willis, 24 So.3d 412, 418 (¶19) (Miss Ct. App. 2009).

The parties have been conducting themselves under a Contract which has been in place since 2005 and is valid and binding. Contract construction is a question of law left to the Courts to decide. Parkerson v. Smith, 817 So. 2d 529, 532 (¶ 7) (Miss.2002). Parol or extrinsic evidence should not be used as the Court seeks to determine the purpose and the intent from an objective reading of the Contract. This four corners test is applied when the Court seeks to determine the agreement between

the parties. One South, Inc. v. Hollowell, 963 So.2d 1156, (Miss. 2007). The Contract “should be construed in a manner which makes sense to the intelligent laymen familiar only with the basics of the English language.” Pursue Energy Corp. v. Perkins, 558 So.2d 349, 352 (Miss. 1990). The “Court should not go outside the ‘four corners’ of the contract to determine the parties’ intent.” unless the contract is unclear. One South, Inc. at 1162 (¶10). Even if ambiguity is found in the contract that ambiguity must be “construed against the party who drafted it.” Wade v. Selby, 722 So.2d 698, 701 (¶ 9) (Miss. 1998). If the contract is not clear then the Court may consider extrinsic or parol evidence. One South, Inc. at 1162-63 (¶10).

The Contract states “at the conclusion of the term hereof or upon the death of Sylvester Crow or Martha Crow, whichever shall occur first, the LESSEES shall have the option to purchase said property for a fair market value as determined by appraisal by a licensed real estate appraiser...” [R.8]. The Appellees had an appraisal conducted on May 12, 2010 by Grace Long, a certified general real estate appraiser. [Appellant’s Record Expert Exhibit 3]. That appraisal is exactly what the Contract anticipated and represents the fair market value as determined by a licensed real estate appraiser. The Appellees have complied with both the letter and intent of the Contract and do not feel that anything further is necessary. Reading the Contract, using the directions issued by the Court rely upon the in case of Belager-Price v. Lingle, 2008-CA-02102-COA (Miss. App. 2010), 28 So.3d 706, there is no ambiguity in the language and if such did exist the interpretation would be against the drafter’s of the Contract which is your Appellant herein.

ISSUE 3: WHETHER THE CHANCELLOR WAS CORRECT IN FINDING THAT THE CONTRACT SHOULD BE ENFORCED FROM THE PLAIN MEANING OF THE WORDS CONTAINED THEREIN.

The Appellant herein attempts to have this Court overturn the Chancellor's finding that the paragraph 15 of the Second Amended Lease Agreement is subject to interpretation other than using the words printed on the page. Crows retained the services of the Honorable John A. Hatcher to draft the Lease and any interpretation of the Lease should be in favor of the Appellees. *Wade v. Selby*, 722 So.2d 698, 701 (¶ 9) (Miss. 1998). There simply is no discrepancy as to the language contained in paragraph no. 15 of the Second Amended Lease Agreement. It states plainly that the "LESSEES shall have the option to purchase said property for a fair market value as determined by appraisal by a licensed real estate appraiser..." [R.8]. The Lamberts in this case obtained an appraisal from a licensed real estate appraiser and followed each and every step required to exercise the option to purchase the real estate. [Appellant's Record Expert Exhibit 3]. The method by which the Appellees were to exercise the option to purchase the real property was developed and drafted by the Appellants and they should have to abide by their agreement. The Appellees did not choose this method. The parties struck a bargain and the Appellees are entitled to the benefits of that bargain.

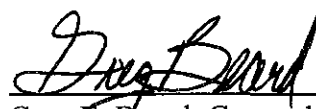
VI. CONCLUSION

Clearly, the Appellants are not satisfied with the end result of the contractual relationship which had begun several years ago. The Appellees have precisely and specifically complied with all the terms of the Contract which was drafted by the Appellants. The Trial Court considered the stipulation of the parties, paragraph 15 of the Second Amended Lease Agreement, and found that specific performance was proper. That Judgment of this Court was supported by substantial evidence and not erroneous in any manner. And finally the this Court should not seek to find the intention of

the parties when the intention of the parties is clearly outlined in the four corners of the document which is the Second Amended Lease Agreement. For the reasons stated above this Court should affirm the decision of the trial Court.

Respectfully submitted, this the 8th day of February, 2012.

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CERTIFICATE OF SERVICE

I, Greg E. Beard, attorney for Appellees, do hereby certify that I have on this date _____ hand-delivered, _____ faxed, and/or X placed in the United States Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Honorable Talmadge Littlejohn
District One Chancellor
P.O. Box 869
New Albany, MS 38652

Seth Pounds, Esquire
1700 North Second Street
Booneville, MS 38829

This the 8th day of February, 2012.


GREG E. BEARD