IN THE COURT OF APPEALS

FILED

August 16, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

BRIGHT HOPE UNITED METHODIST CHURCH,	)	KNOX CHANCERY
	)	C.A. NO. 03A01-9602-CH-00062
Plaintiff-Appellee	)	
vs.	)	HON. SHARON BELL
	)	CHANCELLOR
ROBERT SMALL, M.D.,	)	AFFIRMED AND REMANDED
Defendant-Appellant	)	

JOHN O. THREADGILL, Knoxville, for Appellant.

EARL S. AILOR and J. ARTHUR GARRISON, Knoxville, for Appellee.

O P I N I O N

McMurray, J.

This appeal arises from an alleged breach of a real estate contract between a church and a physician. The Knox County Chancery Court found in favor of the church, and awarded a judgment for earnest money, interest and attorney's fees on a promissory note used to secure the earnest money. No damages were awarded on the real estate contract. Both Dr. Robert Small and the church have appealed. We affirm the judgment of the trial court.

This case stems from a rather lengthy and complicated business transaction. Many of the facts, however, are immaterial to this appeal. Briefly stated, on September 7, 1988, the original plaintiff, Bright Hope United Methodist Church, entered into a contract to sell its property to Dr. Robert Small. Dr. Small, who had some experience dealing with real estate contracts in the past, signed the contract. The contract established the purchase price at $250,000, with earnest money in the amount of $5,000.00 secured by a promissory note from the Halls Walk-In Medical Clinic. Closing was to be on November, 1, 1988. The property in question was part of a larger tract that Small and others, including Phyllis Ellenburg, were attempting to purchase as part of a joint venture for a large development.[1] However, when other parcels in the tract

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[1]Ellenburg was made a third party defendant in this action by Dr. Small involving a $100,000 loan from Dr. Small's relatives that was allegedly to be used in connection with the project that they were attempting to undertake. Small also claimed that Ellenburg should be responsible for any damages the church was awarded. Small, however, took a voluntary nonsuit against Ellenburg at the close of plaintiff's proof.

could not be purchased, the deal fell through and Small did not purchase the church property. Small claimed that the purchase of the church property was contingent upon obtaining the other parcels of land, but no mention of such a contingency was made in the contract.

Bright Hope United Methodist Church changed its name to Aldersgate United Methodist Church in 1989. The property in question was sold at auction that year for $126,000 —$124,000 less than the contract price with Dr. Small. In 1992, Aldersgate disbanded, and the congregation merged with another United Methodist Church, forming a new church. The new church, Christ United Methodist Church of Halls, was not made a party to this suit. The Complaint was amended, however, to include the Trustees of the Knoxville District of the United Methodist Church as successors in interest to Aldersgate United Methodist Church.

Dr. Small has raised numerous and lengthy issues on appeal, which we summarize as follows:

1. Whether the real estate contract was void ab initio;

2. Whether the Knoxville District of the United Methodist Church had standing to continue this lawsuit;

3. Whether Dr. Small was personally liable on the real estate contract; and

4. Whether the judgment for earnest money was warranted.

The Knoxville District has also raised the issue of whether it was entitled to damages for the breach of the real estate contract.

As to the first issue, Dr. Small claims that the contract was never enforceable, because Bright Hope failed to follow the Book of Discipline of the United Methodist Church in executing the contract. The Book of Discipline contains the doctrines and bylaws of the United Methodist Church, and is mandatory for all units of the church, including local churches. The Book of Discipline calls for all contracts entered into by local, unincorporated churches, to be signed by two members of the church's Board of Trustees. The contract between Dr. Small and Bright Hope was signed by only one member of the Bright Hope Board. Dr. Small therefore claims that the contract was unenforceable because the church failed to execute it in accordance with its own rules. The Chancellor found that failing to follow the provisions of the Book of Discipline was not a defense available to Dr. Small, but rather would only be available to the church if it attempted to repudiate an unauthorized contract by its trustees. We agree.

Tennessee Code Annotated § 66-2-203 allows the trustees of a church to convey property according to the regulations of such

church or congregation. Clearly, here the church did not follow its regulations since only one trustee signed the contract. However, as found by the Chancellor, Dr. Small is not the proper party to challenge the church under T.C.A. § 66-2-203. That section is a defense available only by the church to repudiate an unauthorized sale by its trustees. We find support for this proposition in a previous decision of this Court. In Hill v. Hill, 34 Tenn. App. 617, 241 S.W.2d 865 (1951), the plaintiff was attempting to subject church property to a debt owed by the defendant-trustee. The plaintiff claimed that the defendant-trustee was not properly selected by the church congregation. We held, inter alia, that the plaintiff had no right to question the selection of the trustee. The same principle applies here. The statute grants religious entities the power to acquire and dispose of property. The provision requiring the church trustees to follow the church's own rules provides the same kind of protection that the United Methodist Book of Discipline does, namely to ensure that the trustees take only those actions that the congregation authorizes them to do. To allow third party buyers, such as Dr. Small, to challenge contracts under the guise of failing to follow church bylaws would, we think, defeat the purpose of the statute and the Book of Discipline, both of which are designed to benefit churches as opposed to providing a method by which third parties may attack decisions reached by the churches. We hold that Dr.

Small cannot challenge the validity of the real estate contract on the ground that it was signed by only one member of the Board of Trustees. The contract was, therefore, not void ab initio.

The second issue Dr. Small raises deals with whether the Knoxville District has standing to continue the lawsuit instigated by Bright Hope after it officially disbanded. Dr. Small claims that the Knoxville District was not the successor in interest of Bright Hope because there was no transfer of its assets.

At trial, a resolution of the 1992 Holston Annual Conference of the United Methodist Church (the regional governing body of the church) was entered into evidence. That resolution discontinued Aldersgate United Methodist Church (Bright Hope's new name), and directed that the assets of Aldersgate be applied "toward the establishment of said new church under the direction of the Knoxville District Board of Trustees." We feel, as did the Chancellor, that this resolution transferred the assets of Bright Hope to the Knoxville District, and directed the Knoxville District to use those assets to assist in the establishment of Christ United Methodist. Dr. Small contends that the resolution transferred the assets of Bright Hope directly to Christ United Methodist. Were this true, it would mean that this lawsuit would fail since that church was not made a party. We respectfully disagree with Dr.

Small's position. If the Holston Conference had intended to transfer the assets directly to Christ United Methodist, there would have been no need to mention the Knoxville District. But by including a direction to the District, we think it obvious that the Conference was transferring the assets to the District, and issuing instructions as to how to dispose of them. If the Knoxville District did not receive the assets, the instructions to it would have been superfluous. We hold that the Knoxville District was the successor in interest of Bright Hope United Methodist Church, and consequently did have standing to continue this suit.

The third issue presented is whether Dr. Small was personally liable on the contract. The Chancellor found that Dr. Small had signed the contract individually. This issue has two facets, namely whether the contract was contingent upon the purchase of other parcels of land needed for the development, and whether Dr. Small was acting in an individual capacity or on behalf of the joint venture when he executed the contract. We agree with the Chancellor's resolution of both issues.

In Tennessee, if a contract is unambiguous on its face, the court is to interpret the contract as written. Petty v. Sloan, 197 Tenn. 630, 277 S.W.2d 355 (1955). The Chancellor, despite the fact that Dr. Small was working as part of a joint venture, found that

he took it upon himself to negotiate with the church, and contracted individually to purchase the property. He included no contingency provisions which allowed him to avoid the sale if other needed property could not be purchased. Although Dr. Small argues that he intended for the contract to be contingent upon the availability of other parcels of land, he did not include such a provision in the contract, nor did he refer to a joint venture. When a contract is clear and unambiguous, the court must interpret it as written, rather than according to the unexpressed intention of one of the parties. Id. at 358. See also Nashville Electric Supply Company, Inc. v. Kay Industries, Inc. et al., 533 S.W.2d 306 (Tenn. App. 1975). The actual contract is plain and unambiguous. While there is a provision for terms and conditions, it is silent as to both the joint venture and any contingencies for the acquisition of other property. Our courts have held that a contract is ambiguous only when it is of uncertain meaning and may be understood in more ways than one. Empress Health & Beauty Spa, Inc. v. Turner, 503 S.W.2d 188 (Tenn. 1973). This is not such a contract. We find that the construction given to the contract by the trial court as to the individual liability of Dr. Small and lack of contingencies was fair and reasonable as well as consistent with applicable law, the language, and expressed intent of the parties. We agree with the judgment of the Chancellor on this issue.

The final issue raised by Dr. Small questions whether the Court erred in awarding damages for the earnest money, interest and attorney's fees.

The earnest money was to be paid in the form of a corporate promissory note secured by the Halls Walk-In Medical Clinic. Attached to the contract is an inartfully drafted document, apparently supplied by the realtor, which purports to be a promissory note. Although the note specifies that it is secured by the Halls Walk-In Medical Clinic, Inc., it is not signed by anyone from the corporation in an appropriate representative capacity. The note in pertinent part reads as follows:

> On or before September 26, or 19 days after date, for value received <u>I</u> promise to pay to the order of Bright Hope United Methodist Church / Volunteer Realty Company the sum of ($5,000) Five Thousand Dollars with interest at the rate of (10) percent from date. ... The undersigned principal and endorsers of this note waive demand, notice and protect thereof, and <u>I</u> agree that if this note is placed in the hands of an attorney-at-law for collection, or has to be sued on, that <u>Robert Small M.D.</u> will pay ten percent attorney's fees in addition to the principal and interest, which fee shall be added to and become a part of the judgement. [sic] (Emphasis added).
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> The note is secured by Halls Walk-In Medical Clinic Inc.
>
> (signed) Robert M. Small M.D.

Although the note claims to be secured by the Halls Walk-In Clinic, it is not signed by Dr. Small as a representative of the Clinic. Rather, it is an individual promise to pay Bright Hope $5,000, and is not contingent upon the happening of any event. We find no merit in this issue.

The remaining issues deal with the award of damages on the promissory note, and further, challenge the Chancellor's finding that the church established no damages on the real estate contract.

As to the real estate contract, we agree with the trial court that the proper measure of damages was the difference between the fair market value of the property and the amount of the contract. See Turner v. Benson, 672 S.W.2d 752 (Tenn. 1984). It was the plaintiff's burden to establish its damages using the proper measure of damages for the breach. The plaintiff failed to meet this burden. The only testimony at trial concerning the fair market value of the property came from Dr. Darris Doyal, who at the time, was District Superintendent of the Knoxville District. Dr. Doyal testified that the fair market value of the church was $250,000, the contract price. Therefore, despite the fact that the property ultimately sold for substantially less than the contract price, the plaintiffs failed to prove that the property's fair

market value was less than the contract price.[2] We therefore agree that the church failed to established that it sustained damages as a result of Dr. Small's breach. We, therefore, concur with the Chancellor's view. Since no damages were awarded for the breach of the real estate contract, the issue of whether the church failed to mitigate its damages is moot.

The final issue raised by Dr. Small charges that the Trial Court erred in awarding interest and attorney's fees on the promissory note, asserting that he had made an offer to settle for the entire amount of the promissory note in 1991. We find no error in awarding interest and attorney's fees as called for in the promissory note. The offer of settlement by Dr. Small was not a tender of cash, but rather was an offer to pay $5,000 in installment payments. We think that the church was within its rights to reject the defendant's offer. We find no merit in this issue.

The judgment of the Trial Court is affirmed. Costs of the Appeal are assessed against Dr. Small and the case is remanded to the trial court for the collection thereof.

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[2] Dr. Doyal admitted at trial that the property was auctioned in the manner of a liquidation sale, because the church was at the time hard pressed for cash.

Don T. McMurray, J.

CONCUR:

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Herschel P. Franks, J.

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Clifford E. Sanders, Sp. J.

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vs.	)	HON. SHARON BELL CHANCELLOR
ROBERT SMALL, M.D., Defendant-Appellant	)	AFFIRMED AND REMANDED

ORDER

This appeal came on to be heard upon the record from the Chancery Court of Knox County, briefs and argument of counsel. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

The judgment of the Trial Court is affirmed. Costs of the Appeal are assessed against Dr. Small and the case is remanded to the trial court for the collection thereof.

PER CURIAM