IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

JAMES L. HOWARD,	)	
	)	
Plaintiff/Appellant,	)	**Davidson Chancery No. 91-3472-I**
	)	
VS.	)	**Appeal No. 01A01-9603-CH-00138**
	)	
J. HOWARD SHANKLE and	)	
BOBBIE J. SHANKLE,	)	
	)	
Defendants/Appellees.	)	

FILED

December 31, 1996

Cecil W. Crowson
Appellate Court Clerk

APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE
THE HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR

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AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

BEN H. CANTRELL, J.

In this case, Plaintiff, James L. Howard, filed suit against the Defendants, J. Harold Shankle and Bobbie J. Shankle, seeking damages based upon breach of a land sales contract. Defendants filed a counter-complaint seeking damages based upon breach of the land sales contract and a declaratory judgment. The Chancellor conducted a non-jury trial and dismissed all causes of action that Plaintiff asserted against the Defendants with prejudice, dismissed all causes of action that the Defendants asserted against the Plaintiff with prejudice and granted the Defendants' request for a declaratory judgment. Plaintiff has appealed the trial court's judgment, arguing that the Chancellor's construction of the land sales agreement was in error. For the reasons stated hereafter, we affirm.

FACTS

In January of 1987, the Defendant, J. Harold Shankle, offered to sell to the Plaintiff a one-half interest in commercial real estate located near Interstate Highway 65 in Davidson County, Tennessee ("the property") for $262,500. Plaintiff accepted Defendant's offer and agreed to buy a one-half interest in the property for $262,500. On February 19, 1987, the Defendants entered into a Contract for Sale of Real Estate with the Plaintiff and Plaintiff's wife. On February 25, 1987, the Defendants conveyed to the Plaintiff a warranty deed which consummated the sale of the property. Defendant, J. Harold Shankle, signed a corresponding document for the benefit of the Plaintiff ("the Side Agreement"). The Side Agreement provided as follows:

> This letter is to serve as my guarantee that you will incur no loss on the I-65 Industrial Park North property. If this property does not sell within 24 months from the date of our transaction, I will purchase the portion that has not sold if you so desire. If the property does not sell, I will pay interest on your investment at the current rate not to exceed 12%.
>
> /s/ J. H. Shankle

Plaintiff financed the purchase of the property with a purchase money note for $262,500 (the "$265,000 note") from First American National Bank ("First American"). First American did not require the Defendants to co-sign the note because Plaintiff pledged

more than enough collateral to secure the $262,500 note. Defendant, J. Harold Shankle, however, did co-sign the $265,000 note at the request of the Plaintiff.

Pursuant to the side agreement, Defendant, J. Harold Shankle, reimbursed Plaintiff for the net costs that Plaintiff incurred on the $262,500 note to First American from a period beginning February of 1987 and ending on October of 1990. Defendant also paid $19,853.73 in taxes on the property, $74,000 for excavation work performed on the property and $55,972.36 for other improvements made upon the property.

On July 6, 1988, Plaintiff and Defendant signed a $90,000 promissory note from First American("the $90,000 note") to finance improvements on the property. A total of $75,000 was drawn on this $90,000 note. Defendant made all interest payments on the $90,000 note, paying a total of $35,624.67.

On April 14, 1992, John D. Dunn, a relative of the Plaintiff who was acting as the Plaintiff's trustee, purchased the $262,500 note from First American. Dunn purchased the $262,500 note after the dispute arose between the Plaintiff and Defendants. Dunn, thereafter, called upon the Defendants to pay the $262,500 note plus interest.

ISSUES PRESENTED FOR REVIEW

I.

The first issue before this Court is whether the trial court erred in ruling that the February 25, 1987 transaction between the parties was a sale of a one-half interest of the property in dispute. It is the Plaintiff's contention that the transaction in question between the parties was a loan rather than a sale of real property. Plaintiff contends that he loaned the Defendant $262,500 and couched the loan in terms of a contract of sale of real property as a favor to the Defendant who needed additional liquidity to capitalize his business.

The overwhelming evidence in this case, however, indicates that a sale of real property occurred. The contract for the sale of real estate dated February 19, 1987 was signed by the Plaintiff as buyer and the Defendant, J. Harold Shankle, as seller. Plaintiff admitted in his trial testimony for the court below that Plaintiff entered into this contract of sale with the Defendant. Plaintiff also recorded a warranty deed which evidenced his one-half interest in the property.

The bank documents evidencing the $262,500 note that Plaintiff signed after purchasing the property which list the Plaintiff and Plaintiff's wife as borrowers and the Defendants as sellers of the property further substantiate the fact that a sale of property occurred. Moreover, the deed of trust securing the $90,000 note to improve the property lists the Plaintiff and Defendants as owners of half-interests in the property.

Furthermore, the Side Agreement signed by both the Plaintiff and the Defendant states that the Defendant would re-purchase that portion of Plaintiff's property that has not sold within twenty-four months of the date of sale to the Plaintiff if the Plaintiff so desires. Thus, the Side Agreement further evidences that a sale of property occurred.

The parol evidence rule is a rule of substantive law intended to protect the integrity of written contracts. Maddox v. Webb Constr. Co., 562 S.W.2d 198, 201 (Tenn. 1978). Because courts should not look beyond a written contract when its terms are clear, Newark Ins. Co. V. Seyfert, 392 S.W.2d 336, 348 (Tenn. Ct. App. 1964), the parol evidence rule provides that contracting parties cannot use extraneous evidence to alter, vary or qualify the plain meaning of an unambiguous written contract. GRW Enters., Inc. V. Davis, 797 S.W.2d 606, 610 (Tenn. Ct. App. 1990)

Although exceptions to the parol evidence rule exist, Plaintiff has raised no exceptions that are applicable in this case. Thus, Plaintiff's contention that the trial court should have considered evidence of the parties alleged agreement to enter into a loan agreement rather than a contract for the sale of real property is without merit.

Because it is undisputed that the parties entered into a contract of sale on February 19, 1987 and that a warranty deed for the property was transferred from the Defendants to the Plaintiff on February 25, 1987, the trial court did not err in finding that the February 25, 1987 transaction was a sale of real property.

II.

The second issue before this Court is whether the trial court erred in holding that the Side Agreement between the Plaintiff and the Defendant was a two-year, buy-back option agreement. The Side Agreement expressly provides that "[i]f this property does not sell within twenty-four months of the date of our transaction, I will purchase the portion that has not sold if you so desire."

Interpretation of a written agreement is a matter of law and not of fact. APAC-Tennessee, Inc. v. J.M. Humphries Const. Co., 732 S.W.2d 601 (Tenn. Ct. App. 1986). In APAC, this Court said:

> The cardinal rule for interpretation of a contract is to ascertain the intention of the parties in consideration of the instrument as a whole. Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc., 521 S.W.2d 578 (Tenn. 1975); Rodgers. v. Southern Newspapers, Inc., 214 Tenn. 335, 379 S.W.2d 797 (1964). In construing contracts, the words expressing the parties' intentions should be given their usual, natural and ordinary meaning, and neither party is to be favored in their construction. Brown v. Tennessee Auto. Ins. Co., 192 Tenn. 60, 237 S.W.2d 553 (1951); Ballard v. North American Life & Casualty Co., 667 S.W.2d 79 (Tenn. Ct. App. 1983). In the absence of fraud or mistake, a contract must be interpreted and enforced as it is written, even though it contains terms which may be thought harsh and unjust. Ballard v. North American Life & Casualty Co., supra; E.O. Bailey & Co. v. Union Planters Title Guaranty Co., 33 Tenn. App. 439, 232 S.W.2d 309 (1949).

732 S.W.2d at 604.

Tennessee law upholds contracts providing for buy-back or re-purchase agreements. Upchurch v. Upchurch, 466 S.W.2d 886 (Tenn. Ct. App. 1970).

Because the Side Agreement between the parties expressly provided that the Defendant would purchase that portion of property that has not sold within twenty-four

months if the Plaintiff so desires, the trial court did not err in its holding that the Side Agreement between the Plaintiff and the Defendant was a two-year buy-back option agreement.

III.

The third issue before this Court is whether the trial court erred in ruling that the Side Agreement expired and was never exercised by the Plaintiff.

Under Tennessee law, options to sell real property are within the statute of frauds. GRW Enterprises, Inc. v. Davis, 797 S.W.2d 606, 612 (Tenn. Ct. App. 1990); Griese-Traylor Corp. v. First Nat'l Bank, 572 F.2d 1039, 1042 (5th Cir. 1978) (construing Tennessee law); Restatement (Second) of Contracts § 125 comment c (1979); 2 A. Corbin, Corbin on Contracts § 417 (1950). The exercise of an option to purchase real property, likewise, is covered under the statute of frauds. Branstetter. V. Barnett, 521 S.W.2d 818 (Tenn. Ct. App. 1974).

According to the parties' Side Agreement, the burden was placed upon the Plaintiff to exercise the buy-back option at the end of the two year period. Because the Plaintiff has offered no evidence that he exercised this option in writing, the Court finds that the option expired and was never exercised by the Plaintiff.

IV.

The fourth issue before this Court is whether the trial court erred in holding that the Defendant, J. Harold Shankle, signed the $262,500 note as an accommodation party.

T.C.A. § 47-3-415(1) defines an accommodation party as "one who signs [an] instrument in any capacity for the purpose of lending his name to another party to it." The essential test of an accommodation party's status is the purpose for which one signs an instrument. Commerce Union Bank v. Davis, 581 S.W.2d 142,144 (Tenn. Ct. App. 1978). While an accommodation purpose may be determined by ascertaining a party's subjective intent, a purpose other than accommodation may be inferred by the receipt of any benefit

by the party claiming accommodation status, since the "receipt of proceeds from the instrument or other direct benefit" is "generally inconsistent with accommodation status." Id.

In this case, Plaintiff signed a promissory note for $262,500 from First American in order to purchase the property from the Defendant. Plaintiff pledged more than enough collateral to fully collateralize this note. It was the Plaintiff, and not First American, who requested that the Defendant sign the note. Defendant, therefore, signed the note as an accommodation party due to the more than sufficient collateral pledged by the Plaintiff. Although the Defendants did receive a benefit from the loan made by First American to the Plaintiff, the benefit was merely securing the Plaintiff as a buyer to purchase the half interest of the property in question. The proceeds that the Defendant received from the note, therefore, served as adequate consideration for the sale of the property.

Thus, it is the opinion of this Court that the court below did not err in determining that the Defendant signed the note as an accommodation party.

V.

The fifth issue raised upon appeal is whether the trial court erred in ruling that Plaintiff and Defendant are tenants in common with respect to the property in question and that Plaintiff is responsible for his pro-rata share of costs for the development of the property. Because we have determined that the parties entered into a two-year buy-back option agreement and that the option expired, unexercised by the Plaintiff, the Plaintiff, therefore, became a tenant in common with the Defendant at the end of the two-year option period. As a co-tenant of the property in question, the Plaintiff is responsible for the Plaintiff's pro-rata share of costs for the development, improvement and taxes upon the property. Furman & Co. v. McMillian, 70 Tenn. 121 (1878).

Thus, we conclude that the court below did not err in ruling that the Plaintiff and Defendants are tenants in common with respect to the property in question and that the

Plaintiff is responsible for his pro-rata share of costs for the development of the property.

VI.

Finally, because of this Court's disposition of the foregoing issues, this Court upholds the trial court's dismissal of all causes of action that Plaintiff asserted against Defendant, J. Howard Shankle. Thus, Plaintiff, likewise, has no viable causes of action against the Defendant, Bobbie J. Shankle.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to Appellant, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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CRAWFORD, J.

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CANTRELL, J.