IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 9, 2014

# GARY ATCHLEY v. TENNESSEE CREDIT, LLC

**Appeal from the Chancery Court for Warren County**
**No. 11073 Larry B. Stanley, Jr., Chancellor**

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**No. M2013-00234-COA-R3-CV - Filed September 16, 2014**

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This appeal arises from the chancery court's decision to rescind a transaction for the sale of property. Purchaser gave Seller a check for $18,000 to buy a piece of property. Purchaser later sent a letter to the Seller attempting to rescind the transaction when he discovered Seller did not have title to the property it attempted to sell. Thereafter, Seller came into possession of the deed to the property and attempted to convey it to Purchaser. Purchaser filed suit in chancery court to rescind the transaction. The trial court held the transaction should be rescinded and the purchase price returned to the Purchaser because the Seller did not own the property at the time of the transaction. Seller appeals, asserting that Purchaser should be compelled to accept the after-acquired-title to the property or, alternatively, that it was entitled to specific performance. We have reviewed the record and the relevant legal principles and have determined that the trial court did not err in rescinding the transaction. The trial court's judgment is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, and W. NEAL MCBRAYER, JJ., joined.

Quentin Scott Horton, McMinnville, Tennessee, for the appellant, Tennessee Credit, LLC.

Thomas O. Bratcher and Robert O. Bratcher, McMinnville, Tennessee, for the appellee, Gary Atchley.

## OPINION

This case involves the rescission of an alleged contract for the sale of property in

McMinnville, Tennessee. In the fall of 2009, Gary Atchley was informed that a piece of property adjacent to his primary residence was being sold by Tennessee Credit, LLC. On September 22, 2009, Mr. Atchley went to Tennessee Credit's place of business and inquired about the property. Randall Dunn, a member-manager at Tennessee Credit, informed Mr. Atchley that he could purchase the property, and Mr. Dunn and Mr. Atchley agreed upon a price of $18,000. Mr. Atchley signed and presented an $18,000 check to Mr. Dunn. Mr. Dunn then wrote the street address of the property on the memo line of the check. On that same day, Tennessee Credit cashed the check.

Two months passed and Mr. Atchley did not receive a deed for the property or any further communication from Tennessee Credit regarding the transaction. In November 2009, Mr. Atchley contacted an attorney to discuss his misgivings about the situation. After conducting some research, Mr. Atchley's attorney discovered that Tennessee Credit did not have title to the property. Mr. Atchley's attorney sent a letter to Tennessee Credit on November 25, 2009, stating:

> This office has been contacted by Mr. Gary Atchley regarding a check which he made to Tennessee Credit on September 22, 2009, in the amount of $18,000.00.
>
> As I understand it, Tennessee Credit was attempting to sell some land to Mr. Atchley which had previously been owned by Sarah Roller and for which Tennessee Credit had a deed of trust. I am unable to find where Tennessee Credit has foreclosed this property so as to be able to convey the land to Mr. Atchley.
>
> Mr. Atchley hereby makes demand for the return of his $18,000.00 so as to rescind any transfer. . . .

On or about December 4, 2009, Tennessee Credit sent a warranty deed for the property to Mr. Atchley's attorney. The warranty deed stated, in pertinent part:

> FOR AND IN CONSIDERATION of the sum of Ten Dollars ($10), cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, I, TENNESSEE CREDIT, LLC, have this day and date bargained and sold, and by these presents do hereby sell, transfer and convey unto GARY ATCHLEY, his heirs and assigns, the following tract or parcel of land located in the Sixteenth ($16^{th}$) Civil District of Warren County, Tennessee, being more particularly described as follows, to-wit . . . .

On May 10, 2010, Mr. Atchley filed a complaint in the chancery court seeking to rescind the transaction and seeking a refund of the $18,000 he paid Tennessee Credit. The complaint alleged that the warranty deed was defective because, among other things, it had an improper acknowledgment.

A hearing was held on October 12, 2012, at which Mr. Dunn and Mr. Atchley testified. Mr. Dunn testified that Sarah Roller, former owner of the property that is the subject of this lawsuit, was incarcerated and that she became delinquent on her payments to Tennessee Credit while she was imprisoned. Tennessee Credit held a deed of trust against the property to secure a promissory note executed by Ms. Roller for the benefit of Tennessee Credit. Mr. Dunn testified that he visited Ms. Roller in jail and that she agreed to sign the deed for the property over to Tennessee Credit in lieu of going through a foreclosure proceeding. Mr. Dunn stated that he "went out and . . . visited people around the neighborhood and told them the place was for sale." He also posted information about the property at the post office and courthouse.

Mr. Dunn testified that, on September 22, 2009, Mr. Atchley came to Tennessee Credit offering to purchase the property. Mr. Dunn testified that Ms. Roller had not signed the deed over to Tennessee Credit when he accepted the check from Mr. Atchley. Mr. Dunn acknowledged that he never told Mr. Atchley that Tennessee Credit owned the property during their conversation on September 22. He explained that once he received a letter from Mr. Atchley's attorney seeking rescission of the transaction, he went back to the jail and had Ms. Roller sign the deed over to Tennessee Credit.

At the conclusion of the hearing, the trial court made an oral ruling stating, in relevant part, as follows:

> Mr. Dunn, you can't sell property you don't own, and you can't act as a real estate agent when you're not one. . . .
>
> This contract is completely invalid, because Mrs. Roller's signature isn't on anything, and you had the right to foreclose, but you didn't own the property, and you didn't have anything from Mrs. Roller saying, Yes, sell my property, and here is what you can sell it for or anything else. . . .
>
> So the bottom line of this case is, you can't sell property you don't own, if you're not a real estate agent, and don't have a signed contract with somebody. So it's invalid on its face, because for the, you know, third time, you can't sell something you don't own.

By order entered October 26, 2012, the trial court held that "any contract which existed between the Plaintiff and Defendant should be rescinded and the Plaintiff should be awarded a Judgment in the amount of $18,000."

On November 9, 2012, Tennessee Credit filed a motion to alter or amend the judgment or for a new trial, arguing that the trial court erred in granting judgment to Mr. Atchley. On December 17, 2012, the trial court entered an order denying the motion. Tennessee Credit appeals.

## STANDARD OF REVIEW

Because this is an appeal from a decision made by the trial court following a bench trial, Tenn. R. App. P. 13(d) governs our review. Thus, we review the record de novo and presume that the trial court's findings of fact are correct "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). We review the trial court's conclusions of law de novo on the record with no presumption of correctness. *Johnson v. Johnson*, 37 S.W.3d 892, 894 (Tenn. 2001).

## ANALYSIS

Tennessee Credit acknowledges that it did not have title to the property when Mr. Atchley attempted to purchase it. Nevertheless, Tennessee Credit argues that the transaction was valid under the doctrine of "after-acquired-title." Mr. Atchley contends that the transaction was invalid because Tennessee Credit did not own the property it was attempting to sell.

Tennessee Credit cites the definition of the "after-acquired-title doctrine" from *Black's Law Dictionary*, which defines the doctrine as "[t]he principle that title to property automatically vests in a person who bought the property from a seller who acquired title only after purporting to sell the property to the buyer." BLACK'S LAW DICTIONARY (9th ed. 2009). We have not found any Tennessee cases that have cited the *Black's Law Dictionary* definition of the after-acquired-title doctrine upon which Tennessee Credit relies. However, the court in *Barksdale v. Keisling*, 13 Tenn. App. 699, 704 (1931), instructs:

> "If a grantor having no title, a defective title, or an estate less than that which he assumes to grant, conveys with warranty or covenants of like import, and subsequently acquires the title or estate which he purported to convey, or perfects his title, such after-acquired or perfected title will inure to the grantee or to his benefit, by way of estoppel."

(quoting 21 C.J., 1074, sec. 39).

In support of its argument that the after-acquired-title doctrine applies in this circumstance, Tennessee Credit cites *Ferguson v. Prince*, 190 S.W. 548 (Tenn. 1916). In *Ferguson*, Ms. Ferguson conveyed the property in question by a "deed containing a general warranty of title" to Mr. Prince on July 13, 1905. *Ferguson*, 190 S.W. at 549. At the time Ms. Ferguson conveyed the deed, she was "without title" to the property. *Id.* Subsequently, on November 30, 1906, Ms. Ferguson acquired title by deed from the rightful owners of the property. *Id.* Ms. Ferguson filed suit, insisting that since she did not have possession at the time she made the conveyance to Mr. Prince, the transaction was void. *Id.* The trial court disagreed, holding that, "[u]pon the acquisition of this title it immediately inured to the benefit of and passed into the defendant, Prince, by virtue of the warranty." *Id.*

*Ferguson* is distinguishable from the instant case. Ms. Ferguson conveyed the property to Mr. Prince by a deed containing a general warranty of title. Indeed, the *Ferguson* court noted that the title passed to Prince "by virtue of the warranty." *Ferguson*, 190 S.W. at 549. In this case, the transaction was consummated purely by Mr. Atchley's providing a check to Tennessee Credit. There was no deed, and there were no warranties through which the title could pass to Mr. Atchley. Moreover, in *Ferguson*, the seller of the property sued to rescind the transaction; the purchaser desired to enforce the transaction and receive the benefit of the after-acquired-title doctrine. *Id.* Here, by contrast, the purchaser sought to rescind the transaction once he discovered that the seller did not have good title to the property. Mr. Atchley notified Tennessee Credit of his intent to rescind the transaction in November 2009, prior to the date on which Tennessee Credit received title to the property from Ms. Roller and prior to the date Tennessee Credit delivered a deed to him. Thus, we find *Ferguson* inapplicable to the case at hand.

We find this case more analogous to *Woods v. North*, 25 Tenn. 309 (Tenn. 1845). North was one of the executors of his father's will and thought he had a right to sell a tract of his deceased father's property. *Woods*, 25 Tenn. at 309-11. Woods purchased the property from North, believing that North had good title to the land. *Id.* at 309. Pursuant to the will, the land belonged to the heirs at law of the deceased, of which North was one. *Id.* The heirs petitioned for a sale of the land and North purchased the land and tendered title to Woods. *Id.* Woods sued, alleging fraud, and sought rescission of the contract. *Id.* at 309-10. The trial court granted a rescission and North appealed, asserting that Woods should be compelled to take the after-acquired-title. *Id.* at 311-12. Our Supreme Court held that "[t]he very proposition to sell the land as executor was a species of fraud." *Id.* at 312. The Court explained that whether a seller who has no right to sell the land intends to defraud the purchaser or not, the effect is the same to the purchaser. *Id.* The Court concluded, "if a party fraudulently sell[s] and convey[s] an estate to which he has no title, the vendee who comes

into equity to rescind the contract will not be compelled to take an after-acquired title from the vendor." *Id.* at 313.

When Mr. Dunn advertised Ms. Roller's property for sale and attempted to sell the property to Mr. Atchley, he knew Tennessee Credit did not have title to the property. Like the executor in *Woods*, Mr. Dunn's representation that he had a right to sell Ms. Roller's property was a "species of fraud." Therefore, in keeping with the principles announced in *Woods*, we do not believe Mr. Atchley should be compelled to take the after-acquired-title from Tennessee Credit.

Tennessee Credit alternatively argues that it was entitled to specific performance of the contract. Specific performance is an equitable remedy that "is not available as a matter of right but is discretionary with the trial court depending on the facts of each case." *GRW Enters., Inc. v. Davis*, 797 S.W.2d 606, 614 (Tenn. Ct. App. 1990); *see also Lane v. Associated Hous. Developers*, 767 S.W.2d 640, 643 (Tenn. Ct. App. 1988) (noting that the remedy of specific performance of a real estate transaction "rests in the sound discretion" of the trial court). A party is not entitled to specific performance unless "the contract is clear, definite, complete, and free from any suspicion of fraud or unfairness." *GRW Enters., Inc.*, 797 S.W.2d at 614. When reviewing the grant or denial of specific performance, an appellate court must determine whether the trial court abused its discretion in light of the circumstances of the particular case. *See Autry v. Boston*, No. E2005-001030-COA-R3-CV, 2006 WL 1132075, at *8 (Tenn. Ct. App. Apr. 28, 2006); *Hillard v. Franklin*, 41 S.W.3d 106, 111 (Tenn. Ct. App. 2000).

As explained above, the transaction at issue here was not "free from any suspicion of fraud." Mr. Dunn's attempt to sell the property prior to foreclosing on the property or having Ms. Roller sign the deed over to Tennessee Credit were factors the trial court considered in declining to grant Tennessee Credit the relief it sought. Under these circumstances, we find that the trial court did not abuse its discretion in choosing not to award specific performance in this case.

## CONCLUSION

In sum, we affirm the trial court's order rescinding the transaction and awarding Mr. Atchley a judgment of $18,000. Costs of the appeal are taxed against the appellant, Tennessee Credit, LLC, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE