Chan v. Chin, 106692/05

Decided: July 29, 2008

Justice Walter B. Tolub

NEW YORK COUNTY
Supreme Court

Justice Tolub.
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Findings of Fact and Conclusions of Law

This matter was tried before this court on April 30, 2008, May 1, 2008, May 5, 2008 and May 6, 2008. This constitutes the court's findings of fact and conclusions of law.

FINDINGS OF FACT

Defendant Shew Foo Chin owns title to the premises known as 79 Eldridge Street, New York, NY (the "property"). The Property is a parking lot in Chinatown. Defendant Susan Chin is Shew Foo Chin's wife and does not have any ownership interest in the property.

Plaintiff Miriam Chan is the principal of Platinum Queens, LLC and 79 Tower, LLC (collectively "Plaintiff"). Ms. Chan is a property investor and manager and holds a real estate sales license in the State of New York.

In 2002, the Defendants needed money to pay off various debts and decided to sell the property. Plaintiff became aware of the Defendant's property through her brother Henry Chan in May 2002. During that same month, Plaintiff arranged to meet Defendants at a Starbucks to discuss the potential purchase of the property. At the meeting, Defendants told the Plaintiff that their initial asking price for the property was $950,000. Plaintiff, who was joined at the meeting by her brother, refused to pay the asking price and requested that the Defendants lower their price. At the end of the meeting, there was no agreement to buy or sell the property.

After the meeting, Plaintiff and Defendants maintained contact and various prices to buy and sell were discussed by the parties. However, no agreement was reached.

On or about July 24, 2002, Ms. Chin called the Plaintiff and asked if she was still interested in the property. Plaintiff replied that she was Ms. Chin then asked Plaintiff to borrow $150,000 in order to give her an opportunity to sell the property, which was subject to an immediate pending judicial auction. Plaintiff then consulted with her lawyer Alexander Seligson who, on that same day, wrote a letter stating that the purchase price for the property was $350,000 and requested that Defendants forward Plaintiff a contract of sale. The letter also set forth a closing date of September 17, 2002. Plaintiff signed the letter and transferred two checks to Ms. Chin totaling $150,000, however no formal contract for sale was produced by either party.

On July 31, 2002, Plaintiff produced another letter which set another purchase price. A portion of that letter reads "I, Miriam Chin owe Shew F. Chin an additional $XXX,000, for the purchase of 79 Eldridge Street, New York, NY property." The "X's" represented figures which were obscured by plaintiff's handwriting. Plaintiff struck through the purchase price and handwrote "$700" in the place of the obscured digits. Plaintiff the made three payments to the Defendants which totaled $300,000. Ms. Chin signed the July 31, 2002 letter on the three occasions that these payments were made to acknowledge receipt of money from Plaintiff. Mr. Chin never signed the letter.

Plaintiff argues that the July 24th letter, the July 31st letter and the various payments constitute the contract upon which she relies for the purchase of the property. No other writing has been produced by either party that can be said to form a contract for the sale of the property.

Plaintiff's own testimony, combined with the terms of the documents she claims constitute the contract, suggest at least seven different prices for the property.

Ms. Chin testified that the amounts given to her by cash and check were loans and that there was never a specific price which was fully negotiated for the property.

The varying prices are a clear indication that the parties did not agree upon a particular purchase price for the property. Even if a price was agreed upon, there is no clear writing to indicate what that the price was.

Over a year after the closing date set in Plaintiff's July 24th letter, the parties met at Mr. Seligson's office on September 26, 2003 and September 29, 2003. Plaintiff and Ms. Chin negotiated over a price and over a cash component in the sale. Ultimately, no agreement was reached and no closing occurred.

CONCLUSIONS OF LAW

Pursuant to General Obligations Law Â§5-703, a sale of real property is void unless the

conveyance and the contract are in writing. The writing does not have to be a formal contract, it may be a piecing together of memoranda, however, for specific performance to be available, all material terms typically encountered in a real estate transaction must be clearly listed (Crabtree v. Elizabeth Arden Sales Corp., 305 NY 48 [1953]; Belbird Realty Corp. v. Wolfson, 221 AD 67 [1st Dept 1927]).

The price for the property is a material component of a real estate contract (Ansorge v. Kane, 244 NY 395 [1927]). The amount to be paid on the signing of a contract is an important element of a completed contact and without it, the transaction is destitute of legal effect and specific performance is impossible (Id. internal citations omitted; also 166 Mamaroneck Avenue Corp., v. 151 East Post Road Corp., 78 NY2d 88 [1991]).

Here, no price was agreed upon between the parties. Therefore, any agreement or contact, to the extent that one existed, is incomplete and unenforceable (Id).

Plaintiff argues that the agreement between the parties falls outside the scope of the Statute of Frauds because the agreement was orally modified and because there was partial performance. The court disagrees.

A contract for the sale of land cannot be orally modified (Lincolnshire Management, Inc. v. Les Gantiers Holdings B.V., 303 AD2d 180 [1st Dept 2003]; also Intercontinental Planning, Limited v. Daystrom, Inc., 24 NY2d 372 [1969]).

As to part performance, pursuant to GOL Â§5-703 (4), courts of equity are vested with the power to grant specific performance of an oral real estate sale's contract based upon part performance. Courts only grant such extraordinary relief where the acts claimed to comprise the partial performance are unequivocally referable to the parties' agreement (Panetta v. Kelly, 13 AD3d 163 [1st Dept 2005]). The actions performed by the moving party must be so intrinsically tied to the agreement that without it, the actions would be considered unintelligible or extraordinary (Sleeth v. Sampson, 237 NY 69 [1923]). Payment of a portion of the entire purchase price, with nothing more, is not considered part performance (Id.)

Therefore, based on the evidence at trial, there was no valid and enforceable contract between the parties and Plaintiff was unable to prove part performance.

However, it is also clear, and acknowledged on the record, that Plaintiff is entitled to the $450,000 she loaned the Defendants. Accordingly, Defendants owe the Plaintiff $450,000 with the appropriate rate of interest from August 1, 2002 and the Plaintiff may enter judgment accordingly.

This memorandum opinion constitutes the court's findings of fact and conclusions of law.

SupremeCourtJusticeTolub