

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PREMIER HOMES, INC., ET AL.

Plaintiffs

-vs-

HANNA COMMERCIAL, LLC, ET AL.

Defendants-Cross-Claim

Defendants-Appellants

and

LAURI M. WEINFELD LIVING TRUST,
LAURI M. WEINFELD AND
IRWIN J. WEINFELD, M.D., AS
CO-TRUSTEES, ET AL.

Defendants-Cross-Claim

Plaintiffs-Appellees

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 2017CA00135

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2016CV00019

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT:

March 20, 2018

APPEARANCES:

For Cross-Claim Defendants-Appellants

For Cross-Claim Plaintiffs-Appellees

MICHAEL S. GRUBER
JASON N. BING
6370 Mt. Pleasant Street, NW
North Canton, OH 44720

SCOTT M. ZURAKOWSKI
JOSEPH J. PASQUARELLA
4774 Munson Street, NW
P.O. Box 36963
Canton, OH 44735-6963

KARL H. SCHNEIDER
21 East State Street, Suite 1700
Columbus, OH 43215

Wise, Earle, J.

{¶ 1} Defendants-Cross-Claim Defendants-Appellants, Hanna Commercial, LLC, Chartwell Auctions, LLC, Joel D. Dutton, and Jared E. Dutton, along with Third-Party Defendant-Appellant Jack C. Davis, appeal the June 6, 2017 judgment entry of the Court of Common Pleas of Stark County, Ohio, denying their motions to stay the claims against them pending arbitration. Defendants-Cross-Claim Plaintiffs-Third Party Plaintiffs-Appellees are Lauri M. Weinfeld Living Trust, Lauri M. Weinfeld and Irwin J. Weinfeld, M.D., as co-trustees and individually, and Dee Mar Lake Properties, LLC.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On November 11, 2015, appellants and appellees entered into an auction agreement whereby appellees hired appellants to auction off their real property consisting of a home and a banquet center. The auction agreement included an arbitration provision in the event of a dispute arising from the agreement. The auction bids were accepted using a multi-parcel method. First the properties were offered separately, then they were offered together. The home was sold to plaintiffs, Premier Homes, Inc., Johannes Schlabach, and Rebecca Gingerich, and the banquet center was sold to another party. This other party did not go through with the purchase of the banquet center. As a result, appellants re-auctioned and resold both properties to Leo and Carol Soehnlén, even though the home had already been purchased by plaintiffs. A dispute arose over the true owners of the properties.

{¶ 3} On January 5, 2016, plaintiffs filed a complaint against several of the appellants and appellees seeking specific performance. Amended complaints were filed on April 14, and June 6, 2016, to include all of the named appellants and

appellees. Plaintiffs asserted claims for specific performance or in the alternative, breach of contract, or in the alternative, promissory estoppel, negligent misrepresentation, violations of R.C. Chapter 4707 governing auctioneers, and intentional interference with contractual or prospective contractual relationships.

{¶ 4} On February 8, 2016, appellees filed a cross-claim against appellants for indemnification and/or contribution (except for Mr. Davis).

{¶ 5} On April 27, 2016, appellants filed a motion to stay the cross-claim pending arbitration pursuant to the arbitration provision in the auction agreement and R.C. 2711.02(B).

{¶ 6} On May 16, 2016, appellees filed an amended cross-claim against appellants, adding claims for breach of contract, breach of good faith, fraudulent inducement/misrepresentation, violations of R.C. Chapters 4707 and 4735, breach of common law fiduciary duty, professional negligence, negligent misrepresentation, and promissory estoppel. In addition, appellees filed a third-party complaint against Mr. Davis for the identical claims, and a third-party complaint against the Soehnlens for declaratory judgment.

{¶ 7} On May 23, 2016, plaintiffs filed a motion to bifurcate the trial, separating their specific performance claim from their other legal causes of action. Plaintiffs also filed a memorandum in opposition to appellants' motion to stay appellees' cross-claim pending arbitration.

{¶ 8} On June 20, 2016, the Soehnlens filed a counterclaim against appellees alleging specific performance, breach of contract, abuse of process, frivolous complaint, and respondeat superior. Also, the Soehnlens filed a cross-claim against plaintiffs

alleging statute of frauds, abuse of process, and frivolous complaint, and included a negligence claim against appellants.

{¶ 9} On October 7, 2016, Mr. Davis filed a motion to stay appellees' third-party claims against him pending arbitration pursuant to the arbitration provision in the auction agreement and R.C. 2711.02(B).

{¶ 10} On October 20, 2016, appellees filed a memorandum in opposition to appellants' motion to stay their cross-claim pending arbitration.

{¶ 11} On October 27, and 28, 2016, a bench trial was held wherein the trial court entertained the specific performance claims of plaintiffs and the Soehnlens. All parties were present. By findings of fact and conclusions of law filed January 9, 2017, the trial court denied both claims for specific performance, finding the auction "was conducted with mistake and patent unfairness" and therefore requiring appellees to perform any sales contract "would be unconscionable."

{¶ 12} On June 26, 2017, the trial court filed a judgment entry denying appellants' motions to stay the proceedings pending arbitration. Appellants filed a notice of appeal of this decision on July 20, 2017.

{¶ 13} On July 28, 2017, plaintiffs dismissed all of their claims against appellants and appellees with prejudice.

{¶ 14} On August 30, 2017, the Soehnlens dismissed their cross-claims against plaintiffs without prejudice. The Soehnlens' counterclaim against appellees was disposed of via a partial dismissal filed August 30, 2017, and a decision on summary judgment filed November 16, 2017.

{¶ 15} This matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 16} "THE TRIAL COURT ERRED IN DENYING THE HANNA PARTIES MOTION(S) TO STAY THE WEINFELD PARTIES' CROSS-CLAIM AND THIRD PARTY COMPLAINT AGAINST THE HANNA PARTIES PENDING ARBITRATION PURSUANT TO THE ENFORCEABLE ARBITRATION PROVISION IN THE AGREEMENT."

I

{¶ 17} In their sole assignment of error, appellants claim the trial court erred in denying their motion to stay appellees' claims in their cross-claim and third-party complaint pending arbitration pursuant to the arbitration provision in the auction agreement between the parties and R.C. 2711.02(B).

{¶ 18} The trial court's June 26, 2017 judgment entry denying appellants' motions for stay states the following in its entirety:

This matter came on for consideration of the application of the Chartwell defendants to stay the proceedings pending arbitration. For the reasons stated in the opposition to said motion, the Court finds said motion not well taken and overrules the same.

It is so ordered.

{¶ 19} At the time of this ruling, the trial court had two opposition memorandums before it, one filed by plaintiffs and one filed by appellees. They are nearly identical,

with the difference being that plaintiffs' memorandum includes a section arguing why they have a direct interest in preventing arbitration between the cross-claimants. The opposition memorandums argued against the stay pending arbitration for the following two reasons: 1) the arbitration provision violates public policy, and 2) the Ohio Arbitration Act does not apply to controversies involving title to real estate such as this case. The public policy reason branched off into two arguments: 1) the arbitration provision would completely eliminate appellees' rights under the Ohio Auction Sales Act (R.C. Chapter 4707), and 2) the arbitration provision contravened appellants' fiduciary duties owed to appellees. The Ohio Auction Sales Act argument also had two branches: 1) the arbitration provision impermissibly eliminated appellees' statutory cause of action, and 2) sending appellees' claims to arbitration would prejudice the ability of plaintiffs and appellees to jointly participate in the Auction Recovery Fund.

{¶ 20} Based upon the language in the trial court's judgment entry, we are unable to determine which reason or reasons it relied upon in denying the motions to stay. Did the trial court rely on the public policy arguments or the title in controversy argument? If the trial court relied on the public policy arguments, did it rely on the statutory rights or fiduciary duty argument or both? If the trial court relied on the statutory rights argument, was it related to appellees' preclusion from their statutory cause of action or the joint participation in the Auction Recovery Fund or both? If the trial court relied on the title in controversy argument, was it because plaintiffs were still involved in the case at that point or a different reason?

{¶ 21} Because we cannot determine which reason(s) the trial court based its decision on, we hereby reverse the June 26, 2017 judgment entry and remand the

matter to the trial court to enter a new judgment entry with specific reasoning. This court's reversal in no way should be construed as a decision on the merits, as we are unable to reach the merits given the sparse language of the judgment entry.

{¶ 22} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby reversed, and the matter is remanded to said court for further proceedings consistent with this opinion.

By Wise, Earle, J.

Delaney, P.J. and

Baldwin, J. concur.

EEW/db