[Cite as *Meade v. Kurlas*, 2011-Ohio-1720.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

BRANDON MEADE,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-08-216
	:	O P I N I O N
- vs -		4/11/2011
	:	
DENNIS KURLAS, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV09-03-1339

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RINGLAND, J.

{¶1} Defendants-appellants, Dennis and Robin Kurlas, appeal from the decision of the Butler County Court of Common Pleas ordering a grant of specific performance on a purchase agreement for the sale of property. For the reasons outlined below, we affirm.

{¶2} Beginning on March 25th, 2008, the Kurlases went on a three-day vacation at

the Glade Springs Resort in Daniels, West Virginia. During their stay, they met a local real estate agent who showed them a number of available properties including, among others, an unimproved lakefront property listed at $85,000 by plaintiff-appellee, Brandon Meade. Subsequently, the Kurlases and Mead signed a purchase agreement for the property on March 28, 2008. The Kurlases claim this contract was contingent upon their successfully involving a number of "their friends" to participate in purchasing the property.

{¶3} The contract at issue called for the Kurlases to pay the remaining balance on the contract within 45 days of obtaining their own appraisal on the property. The Kurlases had the property appraised in a timely fashion, with the appraisal valuing the property at $140,000. They were subsequently unable to interest "their friends" in joining them, and therefore, the purchase was never completed.

{¶4} Meade filed suit in the Butler County Court of Common Pleas against the Kurlases in 2009 seeking specific performance of the purchase agreement. In its July 29, 2010 decision, the trial court found that the Kurlases breached the contract and ordered that they complete the purchase of the property as outlined in the contract. The trial court found no contingency within the contract that released the Kurlases if they were unable to convince others to participate in the purchase.

{¶5} The Kurlases now appeal the decision of the trial court, advancing two assignments of error for review.

{¶6} Initially, we note that the Kurlases argue that West Virginia law applies to the case at bar. However, after a thorough review of the applicable law, we find no genuine conflict between the law of Ohio and West Virginia on the issues now before this court. The Ohio Supreme Court has adopted the rule that, "an actual conflict between Ohio law and the law of another jurisdiction must exist for a choice-of-law analysis to be undertaken." *Glidden Co. v. Lumbermens Mut. Cas. Co.*, 112 Ohio St.3d 470, 2006-Ohio-6553, ¶25. Therefore,

having found no conflict of law between Ohio and West Virginia, a choice of law determination is not necessary.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED WHEN IT DETERMINED THAT IT HAD SUBJECT MATTER EQUITY JURISDICTION ON A CLAIM OF SPECIFIC PERFORMANCE."

{¶9} In their first assignment of error, the Kurlases argue that there was an adequate remedy at law available to Meade, and therefore, the trial court erred when it granted specific performance of the contract. This argument lacks merit.

{¶10} "On appeal, the trial court's decision to grant specific performance will not be overturned absent a finding of abuse of discretion." *Fine v. U.S. Erie Islands Co., Ltd.*, Ottawa App. No. OT-07-048, 2009-Ohio-1531, ¶31; *Sandusky Properties v. Aveni* (1984), 15 Ohio St.3d 273. "A trial court abuses its discretion only if its decision is unreasonable, arbitrary or unconscionable." *Withers v. Mercy Hospital of Fairfield*, Butler App. No.CA 2010-02-033, 2010-Ohio-6431, ¶8; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} "Specific performance rests in the sound legal discretion of the court, in view of all the circumstances of the case." *Smith v. Littrell*, Preble App. No. CA2001-02-004, 2001-Ohio-8642, at 11; *Sternberg v. Board of Trustees of Kent State University* (1974), 37 Ohio St.2d 115, 118. Generally, "specific performance is only available when there is no other adequate remedy at law." *Gleason v. Gleason* (1991), 64 Ohio App.3d 667, 672; 84 Ohio Jurisprudence 3d (2005) 299, Specific Performance, Section 8. There is an exception, however, to the affirmative duty to prove that no legal remedy is adequate. "[W]here land is the subject matter of the agreement, the jurisdiction of equity to grant specific performance does not depend upon the existence of special facts showing the inadequacy of a legal remedy in the particular case." *Gleason* at 672, quoting 71 American Jurisprudence 2d

(1973) 144, Specific Performance, Section 112.

{¶12} In this case, Meade testified that he attempted to sell the property after the Kurlases failed to complete the purchase. However, despite his efforts, which included, among other things, placing a sign on the property and informing numerous local agents that it was back on the market, Meade was still unable to find another buyer. In turn, and just as the Kurlases point out, no evidence was offered to calculate an actual sale price against the contract price in order to establish a claim for damages. Therefore, because Meade had no other adequate remedy available at law, we find no abuse of discretion in the trial court's decision to order specific performance. Accordingly, the Kurlases' first assignment of error is overruled.

{¶13} Assignment of Error No. 2:

{¶14} "THE TRIAL COURT ERRED WHEN IT FAILED TO CONSIDER EXTRINSIC EVIDENCE TO DETERMINE THE AMBIGUITIES IN THE WRITTEN CONTRACT OF SALE OF THE PROPERTY."

{¶15} In their second assignment of error, the Kurlases argue that the purchase agreement contained ambiguities, and therefore, the trial court erred by failing to consider extrinsic evidence in interpreting the terms of the contract. However, after a thorough review of the record, including an extensive review of the purchase agreement, we find the language of the purchase agreement to be clear and unambiguous. In turn, as this court has stated previously, "[a] written contract which appears to be complete and unambiguous on its face will be presumed to embody the final and complete expression of the parties' agreement." *Unifirst Co. v. Yusa Co.*, Fayette App. No. CA2002-08-014, 2003-Ohio-4463, ¶25. "A written contract must be construed and interpreted from its four corners without consideration of parol evidence, i.e., evidence that would contradict or vary the terms of the contract. The parol evidence rule bars the use of extrinsic evidence to contradict the terms of a written

contract intended to be the final and complete expression of the contracting parties' agreement." *Winton Savings & Loan Co. v. Eastfork Trace, Inc.*, Clermont App. No. CA2001-07-064, 2002-Ohio-2600, ¶9. (Internal citations omitted.)

{¶16} Therefore, because this court finds the written contract to be the clear, unambiguous, final and complete expression of the parties' agreement, the trial court did not err in failing to consider extrinsic evidence. Accordingly, the Kurlases' second assignment of error is overruled.

{¶17} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.

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