IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

SARA FEINSTEIN	:	APRIL TERM, 2004
Plaintiff	:	
	:	No. 6471
v.	:	
	:	
GREGG CRUMLEY	:	
and	:	
SAUL and MARCIA SCHWAIT, h/w	:	
and	:	
MICHEAL and BRIGITTE	:	
RUTENBERG, h/w	:	
and	:	
MARK RANDALL	:	
and	:	
JEFFREY GREENHOUSE	:	
and	:	
MICHAEL KANTROWITZ	:	(Commerce Program)
and	:	
CARRIAGE COURT CONDOMINIUM	:	
ASSOCIATION	:	Superior Court Docket
Defendants	:	No. 2586EDA2005

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O P I N I O N

Albert W. Sheppard, Jr., J. …… October 4, 2005

This Opinion is submitted relative to this court's Order of August 2, 2005, denying plaintiff's Motion for Post-Trial relief.

For the reasons discussed, this court respectfully submits that its Order should be affirmed.

INTRODUCTION

Sara Feinstein ("plaintiff") is the owner of condominium unit 1-C/D at the Carriage Court Condominium, located in Queen Village, Philadelphia. Defendants are the unincorporated Carriage Court Condominium Association and its members. Plaintiff argues that she is entitled to two assigned parking spaces. The defendants contend that she is entitled to only one space.

A two-day bench trial was conducted on June 21, 2005 and July 6, 2005. On July 11, 2005, this court entered an Order granting judgment in favor of defendants and against plaintiff.

On July 25, 2005, plaintiff filed a Motion for Post-Trial Relief, alleging that "(a) judgment should have been entered in favor of plaintiff and against defendants as plaintiff was a bona fide purchaser without actual or constructive knowledge of the restriction in regard to the limited common element parking space; and (b) the Court improperly admitted into evidence prior agreements of sale, real estate multi-list documents, documents relating to other units in the Condominium and advertising materials for the Condominium at the time of the Public Offering."

On August 5, 2005, the court denied plaintiff's Motion for Post-Trial Relief. This appeal ensued.

BACKGROUND

Plaintiff purchased unit 1/C-D on December 1, 2000. She is the third owner of this unit. Initially, plaintiff's residence was two separate units, with separate entrances, kitchens, etc. Exh. P-2. However, before Rita Shapiro, the original owner of the units,

sold unit 1-C/D to a Michael Kantrowitz, Ms. Shapiro created a single, combined unit, with only one means of ingress and egress. Exh. D-1.

During negotiations for the initial sale to Mr. Kantrowitz, he was given the option to be assigned one or two parking spaces. The purchase price was greater for the assignment of two parking spaces. Mr. Kantrowitz chose one parking space. Id. Thereafter, Mr. Kantrowitz sold the property to Jonathan Ambrosino, who sold the property to plaintiff. Id.; Exh. P-8. The Agreements of Sale between Rita Shapiro and Michael Kantrowitz and between Michael Kantrowitz and Jonathan Ambrosino made clear that the property was being conveyed with one parking space. Exh. D-1; Exh. D-2. However, plaintiff's Agreement of Sale was silent on this issue. Exh. P-8.

Plaintiff first saw unit 1-C/D in the fall of 2000. N.T. 7/6/2005 at 10. John Brown, the seller's broker, testified at trial that he told plaintiff that the unit came with one parking space. Id. at 9. He testified that he recalled this because it was an important issue in the sale. Id. Plaintiff testified that no such statements were made to her at the open house by Mr. Brown. Id. at 31. Prior to closing on the unit in December 2000, plaintiff never spoke to any of the individual defendants, nor did she ever speak with any officer of the defendant Condominium Association about the issue of parking. See Joint Statement of Uncontested Facts.

DISCUSSION

I. Plaintiff's Motion for a Judgment Notwithstanding the Verdict is Denied.

The Pennsylvania Supreme Court set out the standard for reviewing a Motion Notwithstanding the Verdict:

> We must determine whether there was sufficient competent evidence to sustain the verdict . . . We view the evidence in the light most favorable to

> the verdict winner and give him or her the benefit of every reasonable inference arising there from while rejecting all unfavorable testimony and inferences . . . Moreover, "[a] judgment n.o.v. should only be entered in a clear case and any doubts must be resolved in favor of the verdict winner." . . . Finally, "a judge's appraisement of evidence is not to be based on how he would have voted had he been a member of the jury . . ." . . . A court may not vacate a jury's finding unless "the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of movant." . . .
>
> Birth Center v. St. Paul Companies, Inc., 567 Pa. 386, 787 A.2d 383 (2001)

(internal citations omitted).

A. Plaintiff had Notice of the Restriction Regarding Parking.

Plaintiff relies on 21 P.S. §351 for the proposition that the restriction - - that is, plaintiff is allowed only one parking space instead of two - - is not to be given effect because it was not part of the agreement of sale attendant to her purchase of unit 1-C/D. 21 P.S. §351 provides in pertinent part:

> All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, . . . shall be recorded in the office for the recording of deeds in the county where such lands, . . . are situate. Every such deed, . . . which shall not be acknowledged or proved and recorded, as aforesaid, shall be . . . void as to any subsequent bona fide purchaser . . . duly entered in the prothonotary's office of the county in which the lands, . . . are situate, *without actual or constructive notice unless such deed*, . . . shall be recorded, . . . before the recording of the deed . . . under which such subsequent purchaser, . . . shall claim . . .

(Emphasis added.)

Furthermore, plaintiff correctly cites a Pennsylvania Supreme Court case for the proposition that the burden of proving notice is upon the party asserting unrecorded rights in the property. Lund v. Heinrich, 410 Pa. 341, 348, 189 A.2d 581, 585 (1963).

The broker, John Brown, testified that he told plaintiff at the open house for unit 1-C/D that the unit was assigned one parking space. Mr. Brown testified as follows:

Q. What did you tell Miss Feinstein about the parking?

A. That the property included one parking space.

The Court: Why? Was it an important feature?

The Witness: The value of the parking in the City. Because parking is a hot commodity . . .

N.T. 7/6/2005 at 9.

This court found Mr. Brown to be a credible witness. Thus, this court found that plaintiff was on notice, prior to her purchasing the unit, that as the owner of unit 1-C/D, she was entitled to only one parking space.

In sum, viewing the evidence in the light most favorable to defendants, as the verdict winners, and giving defendants "the benefit of every reasonable inference arising there from while rejecting all unfavorable testimony and inferences"[1] as this court must do, this court denied the requested Post-Trial Relief.

B. Plaintiff's Claim that Judgment Should be Entered in Favor of Plaintiff and Against Defendants Because the Recorded Documents Provide that Plaintiff is the Owner of Two Units, Each of Which is Assigned One Parking Space.

Plaintiff asserts that because the recorded documents allegedly provide that plaintiff is entitled to two parking spaces, plaintiff could not have been on notice that the unit was restricted to one parking space. Consequently, says plaintiff, judgment should be entered in her favor.

[1] Birth Center, 567 Pa. at 397-398.

Plaintiff argues that Article 5 of the Declaration of Condominium provides for the assignment of one of the eight parking spaces for each of the eight units.[2] In relevant part, paragraph 5.1 of the Declaration provides:

> 5.1 Limited Common Elements: Portions of the Common Elements are marked on the Plans as Common Elements which may be assigned as Limited Common Elements. The Limited Common Elements consist of:
>
> The parking spaces as shown on the plan which shall be assigned by Declarant to each Unit. The Declarant shall assign the parking spaces as Limited Common Elements for the exclusive use of Unit Owners.

(Emphasis added.)[3]

Neither the Declaration of Condominium nor the Amendment to the Declaration of Condominium states that there are eight units. In fact, these documents are silent as to how many units make up the Carriage House Condominiums. Therefore, the cited provision - - ¶ 5.1- - of the Declaration does not support plaintiff's assertion that each of the eight units is assigned one parking space, entitling her to two parking spaces.

This court submits that defendants have demonstrated that plaintiff received notice that she was entitled to only one parking space.

C. This Court Properly Allowed the Introduction of Evidence Related to the Restriction Regarding Parking.

At trial defendants moved for the admission into evidence of several documents. The documents were: (1) agreements of sale between Shapiro and Kantrowitz and between Kantrowitz and Ambrosino, (2) Miles & Generalis, Inc. advertising brochure, (3) print-out of real estate multi-list ad, (4) Parking space rental notice, (5) Section PM-

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[2] Without citing to documentary evidence, plaintiff, in her Motion for Post-Trial Relief states that "[t]here are eight (8) parking spaces and eight (8) units in the Condominium." Plaintiff's Motion for Post-Trial Relief at p. 3.

[3] The Amendment to the Declaration of Condominium and the Declaration of Condominium contain identical language relating to the assignment of parking spaces.

602.0 of the Philadelphia Property Maintenance Code, (6) Minutes of the Carriage Court Condominium Board Meetings of 10/24/00, 10/2/01, 4/9/02, 6/24/03, 4/20/04, (7) Certification Statement from Philadelphia Department of Licenses & Inspections, (8) Public Offering Statement for Carriage Court Condominiums, and (9) the Bylaws of the Carriage Court Condominiums.

Plaintiff argued that these documents are barred by the parol evidence rule, are not relevant and therefore, are not admissible. The court overruled plaintiff's objection.

In reviewing a challenge to the admissibility of evidence, a ruling by the trial court will be reversed only upon a showing that it abused its discretion or committed an error of law. Kehr Packages, Inc. v. Fidelity, 710 A.2d 1169, 1172 (Pa. Super. 1998). For evidence to be admissible, it must be both competent and relevant. Peled v. Meridian Bank, 710 A.2d 620, 625 (Pa. Super. 1998), appeal denied, 556 Pa. 711, 729 A.2d 1130 (1998). Evidence is competent if it is material to the issue to be determined at trial and relevant if it tends to prove or disprove a material fact. Turney Media Fuel, Inc. v. Toll Brothers, 725 A.2d 836, 839 (Pa. Super. 1999.)

With regard to relevancy, Pa.R.E. 401 Relevant Evidence defines "relevance" as follows:

> [E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Furthermore, relevant evidence is admissible if its probative value outweighs its prejudicial impact. Commonwealth v. Schwartz, 419 Pa. Super. 251, 651 A.2d 350, 359 (1992), appeal denied, 535 Pa. 617, 629 A.2d 1379 (1993). See Ratti v. Wheeling Pittsburgh Steel Corp., 758 A.2d 695, 707-708 (Pa. Super. 2000).

The parol evidence rule would apply if there were a contract between the plaintiff and the defendants. The Pennsylvania Supreme Court has held that "[o]nce a writing is determined to be the *parties' entire contract*, the parol evidence rule applies . . ." Yocca v. The Pittsburgh Steelers Sports, Inc., 578 Pa. 479, 498, 854 A.2d 425, 436 (2004). There is no contract between plaintiff and the defendants. There is only the Deed and Condominium documents all of which are silent on the disputed issue.

Plaintiff's Deed was silent as to the assignment of parking spaces. Further, the Declaration of Condominium and the Amendment to the Declaration do not state whether, as the owner of unit 1-C/D, plaintiff was entitled one or two parking spaces. So, this court had to decide, without the benefit of a writing that set out how many parking spaces were assigned to unit 1-C/D, whether plaintiff was properly assigned one parking space. Within this context, this court properly considered other evidence that provided history of the allocation of parking spaces and that shed light on whether it was proper for plaintiff to be assigned one parking space.

The Agreements of Sale between Shapiro and Kantrowitz and between Kantrowitz and Ambrosino demonstrated that Mr. Kantrowitz was specifically assigned one parking space for unit 1-C/D. Mr. Ambrosino's Agreement of Sale made clear that Mr. Ambrosino was assigned one parking space for unit 1-C/D. Exhs. D-9, D-10.

The Miles & Generalis, Inc. advertising brochure and the print-out of real estate multi-list ad showed that the unit was being advertised as having one parking space. Exhs. D-3, D-4. Similarly, the parking space rental notice showed that the Condominium Association had rented the eighth parking space to a third person. Exh. D-5.

Section PM-602.0 of the Philadelphia Property Maintenance Code provided that if plaintiff had purchased two separate units, which plaintiff proffers, the existence of only one means of ingress and egress would have been in violation of the Philadelphia Fire Code. See Exh. "I" of Answer to Plaintiff's Motion for Summary Judgment.

The Minutes of the Carriage Court Condominium Board Meetings of 10/24/00, 10/2/01, 4/9/02, 6/24/03, 4/20/04 which plaintiff sought to exclude made clear that the Condominium Association repeatedly told plaintiff that she was **not** entitled to two parking spaces. Exhs. D-7 through D-11.

The Certification Statement from Philadelphia Department of Licenses & Inspections showed that that Department affirmed that the Carriage House Condominiums consisted of seven units. See Exh. "C" of Defendants' Answer to Plaintiff's Motion in Limine.

The Bylaws of the Carriage Court Condominiums define "limited common element" to include parking. Additionally, the Bylaws provide for the assignment of limited common elements to unit owners. Id.

This evidence which plaintiff complains should have been excluded at trial is relevant to the issue presented, that is, whether plaintiff, as the owner of a unit which was originally two separate units, had the right to two parking spaces.

This court concluded that, based on the totality of the evidence presented, plaintiff failed to prove by a preponderance of the evidence that she was entitled to two parking spaces.

CONCLUSION

For the reasons discussed, this court respectfully submits that its Order of August 2, 2005 be affirmed.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.