

2012 IL App (2d) 110903-U
No. 2-11-0903
Order filed June 29, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PRANAV PATEL and JYOTIKA PATEL,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiffs-Appellants,)	
)	
v.)	No. 06-CH-511
)	
VALERIE McGRATH and HARRIS BANK)	
HINSDALE, N.A.,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court's judgment that defendant's attorney's disapproval of the parties' real-estate sales contract was not based solely on the purchase price, and thus was not a breach of the contract, was not against the manifest weight of the evidence, as the court was entitled to credit defendant's testimony that the disapproval was based on her inability to purchase a new residence.

¶ 1 The plaintiffs, Pranav and Jyotika Patel, appeal the trial court's judgment in favor of the defendants, Valerie McGrath and Harris Bank Hinsdale, N.A. The Patels sought specific performance of a real estate contract, arguing that the disapproval of the contract by McGrath's attorney was based solely on purchase price in violation of an attorney approval clause in the

contract. The trial court found that the contract was not disapproved based solely on purchase price. That determination was not against the manifest weight of the evidence. Accordingly, we affirm.

¶ 2

I. BACKGROUND

¶ 3 On March 11, 2006, McGrath accepted the Patels' offer to buy her residence in Burr Ridge, Illinois. The contract contained an attorney approval clause that provided in part that the attorneys for the parties could disapprove or modify the contract within five business days after acceptance, but disapproval or modification of the contract could not be based solely on the stated purchase price.

¶ 4 Within five business days, the Patels' attorney sent a letter requesting modifications to the contract. That same day, McGrath's attorney rejected the modifications and disapproved the contract without providing any reason. The property was relisted shortly after at a higher price.

¶ 5 The Patels filed a complaint against McGrath and Harris Bank (collectively McGrath), seeking specific performance of the contract. McGrath moved for dismissal, arguing that her attorney properly disapproved the contract within the attorney review period.

¶ 6 The trial court noted that the proposed modifications did not concern price and found that the letter from the Patels' attorney constituted a counteroffer that was not accepted by McGrath, leaving no contract in place. Thus, the court dismissed the complaint with prejudice.

¶ 7 The Patels appealed, and we reversed, determining that the letter from the Patels' attorney was not a counteroffer and instead was merely an invitation to further discuss or clarify terms, thus leaving the contract intact. We then determined that there was an issue of material fact whether the contract was disapproved based solely on purchase price, in violation of the attorney approval clause. Thus, we remanded for further proceedings. *Patel v. McGrath*, 374 Ill. App. 3d 378, 384 (2007).

¶ 8 After remand, a bench trial was held on the issue of whether the contract was disapproved solely because of the purchase price. The evidence showed that McGrath decided to sell the property in order to move closer to a restaurant that she operated in Geneva. McGrath hired Bryan Bomba, a real estate broker, and, after reviewing comparable sales in the area ranging from \$600,000 to \$2.5 million, the property was listed at \$1,299,900.

¶ 9 The Patels quickly viewed the property and felt that it was perfect for them. They submitted an offer for \$1,275,000, and McGrath countered with the asking price, which the Patels accepted. The contract was then disapproved by McGrath's attorney a few days later under the attorney approval clause. Shortly thereafter, McGrath instructed Bomba to relist the property at \$1.8 million. Bomba testified that McGrath did not give him a reason for the change in price. In April 2006, McGRATH asked Bomba to temporarily remove the property from the market. Sometime after that, the listing agreement between Bomba and McGrath ended, and Bomba did not have any further contact from McGrath.

¶ 10 In January 2007, McGrath decided to sell the property to Ted Schmidt, a neighboring landowner and attorney, who had previously expressed interest in the property. McGrath and Schmidt negotiated a price of \$1.6 million. On January 18, 2007, McGrath and Schmidt entered into a contract that split the price into two amounts, \$800,000 for the real property and \$800,000 for personal property. There was no additional personal property included in the sale than there would have been had the Patels bought the property. The split of the price reduced the amount she would have to pay for tax transfer stamps and title insurance, and it may have had some capital gains tax implications. The Patels presented evidence that back taxes were due on the property, with the 2004 taxes having been sold before McGrath entered into the contract with them and the 2005 taxes

overdue. The redemption period on the 2004 taxes was approaching when the property was sold to Schmidt, and the taxes were paid at the time of the sale.

¶ 11 McGrath testified that, when she entered into the contract with the Patels, she owned a restaurant and was commuting several hours each day to work long hours there. She wanted to move closer to the restaurant and found property in Elburn that she described as “lovely” and was next to the property of a friend. Thus, she decided to sell her current residence and move. McGrath then contacted Bomba and set the purchase price after consulting with him. She said that she wanted to price the property to sell quickly. She did not seek to make the sale contingent on her purchase of the property in Elburn.

¶ 12 After entering into the contract with the Patels, the sale of the property in Elburn fell through and McGrath asked her attorney to disapprove the contract. She said that she asked Bomba to cancel her listing agreement and he refused, so she asked him to set a higher price that she felt would keep the property from selling. She said that she pulled a number out of her head and set the amount at \$1.8 million. She later asked that the property be temporarily removed from the market when Bomba asked her to take some time to think about it because he was hoping to make a deal happen.

¶ 13 In late 2006, McGrath again decided that she needed to move closer to the restaurant. She testified that her boyfriend, who operated the restaurant with her, was getting very run down and she believed that it was from the long hours and the commute. He later was diagnosed with terminal cancer. She said that his exhaustion played a large role in the decision to sell the property and that she contacted Schmidt because, years earlier, he had expressed interest in the property. She said that she did not contact Schmidt about the property when it was previously for sale.

¶ 14 McGrath testified that she did not intentionally fail to pay her 2004 taxes. Instead, she said that she was very busy with the restaurant and that paying the taxes slipped her mind. She did not recall receiving a bill for the 2005 taxes. She said that she had the money to pay the taxes and was surprised when she learned that they were overdue.

¶ 15 McGrath testified that Schmidt suggested splitting the purchase price between the personal and real property and that she was not aware of any benefit in that to her when she agreed to it. McGrath's former husband, an attorney who assisted with the transaction, also stated that it was Schmidt who wanted the property values divided. When specifically asked, McGrath stated that the purchase price of the contract with the Patels had nothing to do with why her attorney disapproved the contract, nor did the delinquent taxes.

¶ 16 The trial court found that McGrath's testimony was credible and that the purchase price was not the reason for the disapproval of the contract. Instead, the court found that the contract was disapproved because, if it was not, McGrath would have had no place to live. The Patels appeal.

¶ 17

II. ANALYSIS

¶ 18 Pointing to circumstantial evidence in the case, the Patels argue that the trial court's determination is against the manifest weight of the evidence because the evidence showed that the sole motivation for the attorney disapproval of the contract was the purchase price, resulting in a breach of contract.

¶ 19 We review a trial court's decision following a bench trial to determine if the judgment is against the manifest weight of the evidence. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009). "A judgment is not against the manifest weight of the evidence unless the opposite conclusion is clearly evident." *Id.* "For a judgment to be against the manifest weight of the

evidence, the appellant must present evidence that is so strong and convincing as to overcome, completely, the evidence and presumptions, if any, existing in the appellee's favor." *Raclaw v. Fay, Conmy & Co.*, 282 Ill. App. 3d 764, 767 (1996). "In a bench trial, the trial court sits as the trier of fact, hearing the witnesses and reviewing the direct presentation of the evidence, and it therefore is in the best position to make credibility determinations and factual findings." *Prignano v. Prignano*, 405 Ill. App. 3d 801, 810 (2010). Under an attorney approval clause, an attorney need not state the reasons for disapproval of a contract. *Patel*, 374 Ill. App. 3d at 384. However, the attorney may not disapprove the contract for a reason that is prohibited. *Id.*

¶ 20 Here, it was prohibited for McGrath's attorney to disapprove the contract on the basis of purchase price, and the trial court found that price was not the basis of the disapproval. Instead, the court found that the disapproval was based on McGrath's inability to purchase property in Elburn. The purchase of that property or of a suitable place for McGrath to live had not been made contingent in the contract with the Patels, so the loss of the Elburn property was a believable reason for disapproval of the contract. The court found McGrath's testimony to this effect credible, and its determination is not against the manifest weight of the evidence.

¶ 21 The Patels point to circumstantial evidence that purchase price might have played a role, such as the tax issues and the increase in price. But McGrath explained those matters, testifying that she relisted the property at a higher price because she could not get out of her listing agreement and wanted to deter a sale. She said that she did not intend to miss tax payments and had the money to pay the taxes, and she specifically testified that purchase price was not the reason for the disapproval. The court, as the finder of fact who heard the testimony and observed the witnesses, was entitled to believe her.

¶ 22

III. CONCLUSION

¶ 23 The trial court's determination that the contract was not disapproved based solely on purchase price is not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 24 Affirmed.