

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WACHOVIA BANK, N.A.	:	JANUARY TERM 2004
	:	
v.	:	No. 0388
	:	
	:	(Commerce Program)
HERITAGE VILLAGE VENTURES II,	:	
INC.	:	Superior Court Docket
	:	No. 273 EDA 2008
(Appeal of Friends Rehabilitation Program)	:	

OPINION

Albert W. Sheppard, Jr., J. May 27, 2008

This Opinion is submitted relative to the appeal of Friends Rehabilitation Program, Inc. from this court’s Orders dated December 13, 2007 and December 15, 2007, essentially denying its objection to the proposed Sheriff Sale distribution of proceeds.

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

Background

On January 6, 2004, Wachovia Bank, N.A. (“Wachovia”) filed a complaint in mortgage foreclosure against Heritage Village Ventures, II, Inc. (“Heritage”), seeking to foreclose on the property located at 1100-1138 West North Girard Avenue, Philadelphia, Pennsylvania 19123 (the “Property”). At the time, Wachovia held a first priority mortgage lien on the Property in the principal amount of \$1,400,000.00 (the “Wachovia

Mortgage”). The Wachovia Mortgage was security for a note executed by Heritage in favor of Wachovia in the principal amount of \$1,400,000.00 (the “Wachovia Note”). North Philadelphia Financial Partnership (“NPFPP”) held a second priority mortgage lien on the Property in the principal amount of \$1,000,000.00 (the “NPFPP Mortgage”). The NPFPP Mortgage was security for a note executed by Heritage in favor of NPFPP in the principal amount of \$1,000,000.00 (the “NPFPP Note”). In addition to these encumbrances, several other judgment and/or lien creditors held liens against the Property.

On August 3, 2007, NPFPP and Friends Rehabilitation Program, Inc. (“FRP”) entered into an agreement (the “Agreement”). The Agreement, which was drafted by FRP, provided that FRP and NPFPP would form a non-profit corporation (the “Corporation”) pursuant to the laws of Pennsylvania. The Agreement stated that “[t]he purpose of the Corporation shall be limited solely to acquiring and developing the property located at 1100 Girard Avenue, Philadelphia, PA.”¹ The Agreement also set forth provisions for the financing and managing of the Corporation, as well as for the sharing of potential revenues between FRP and NPFPP.

On September 7, 2007, NPFPP, in its sole capacity, purchased the Wachovia Note (at a discount) and Wachovia assigned the Wachovia Mortgage to NPFPP. On September 11, 2007, the Property was sold at the Philadelphia County Sheriff’s Sale to an unrelated third party for \$3,100,000.00. It must be noted that this purchase price was not at all expected and was considerably higher than contemplated by the interested parties. Indeed, the court believes that NPFPP expected to be required to bid in at a much lower price.

¹ See Agreement, at ¶ 1.3.

Subsequently, FRP, sensing that it could participate in the unexpected windfall, advised NFPF that it (FRP) expected NFPF to share its portion of the Sheriff's Sale proceeds with FRP. In response, NFPF made clear that it did not intend to share any portion of the sale proceeds with FRP, since the underlying purpose of the Agreement was thwarted when the Property was sold to a third party and not to NFPF, FRP, and/or the (joint venture) Corporation.

Subsequently, the Philadelphia County Sheriff issued a Schedule of Proposed Distribution of Proceeds from the sale of the Property, pursuant to which NFPF was to receive the balance of all sale proceeds after payment to the City of Philadelphia for prior liens and claims and transfer taxes.

FRP filed a Motion for Additional Distribution of Sale Proceeds and Objection to the Sheriff's Schedule of Proposed Distribution on November 15, 2007. NFPF filed a Motion to Strike, or in the Alternative, Overrule the Objection of FRP to the Sheriff's Schedule of Proposed Distribution. A hearing on these Motions was held on December 13, 2007. In an Order dated December 13, 2007, the court struck FRP's Objection and granted NFPF's Motion to Overrule the Objection. This timely appeal followed.

Discussion

The fundamental rule in contract interpretation is to ascertain the intent of the contracting parties.² It is well-settled that "[t]he intent of the parties to a written contract is deemed to be embodied in the writing itself; when the words are clear and unambiguous, the intent is to be gleaned exclusively from the express language of the

² Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co., 588 Pa. 470, 480, 905 A.2d 462, 468 (2006).

agreement.”³ Further, under ordinary principles of contract interpretation, the agreement is to be construed against its drafter.⁴

FRP contends that the Agreement between FRP and NFPF formed a joint venture and that it was the intent of the joint venture to purchase Wachovia’s senior lien position in order to take steps towards acquiring the Property. FRP further contends that it believed that NFPF was acting as the trustee and/or agent of the joint venture in its negotiations with Wachovia for the purchase of Wachovia’s note and mortgage. FRP therefore asserts that any proceeds derived from the purchase of the Wachovia lien position should be paid to the joint venture formed by FRP and NFPF.

This court disagrees. The Agreement between NFPF and FRP expressly stated that the *sole* purpose of the Corporation was to **acquire and develop** the Property. These terms are clear and unambiguous. The parties’ intent is evident from the express language of the Agreement. It is undisputed that neither NFPF, nor FRP, nor the joint venture Corporation purchased the Property. Instead, the Property was purchased by an unrelated third party at the Sheriff’s Sale. Since the Property was not purchased by NFPF, FRP, or the Corporation, the sole purpose of the Agreement was frustrated. As a result, the Agreement was not operative.

In sum, then, FRP is not entitled to any proceeds from the Sheriff’s Sale of the Property. This court submits that FRP’s Objection to the Sheriff’s Schedule of Proposed Distribution was properly stricken.

³ Delaware County v. Delaware County Prison Employees’ Independent Union, 552 Pa. 184, 189, 713 A.2d 1135, 1137 (1998).

⁴ Ins. Adjustment Bureau, Inc., 905 A.2d at 468, *citing* Shovel Transfer & Storage, Inc. v. PLCB, 559 Pa. 56, 739 A.2d 133, 139 (1999).

Conclusion

For these reasons, this court respectfully submits that its decision should be affirmed.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.