

Circuit Court for Baltimore County
Case No. 03-C-19-000016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1860
September Term, 2019

KELLY WELLS

v.

TREVOR WELLS

Berger,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: August 17, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A party cannot enter into an agreement, fail to do what the agreement requires, and then reap the benefits of its own failures.

BACKGROUND

While they were married, Trevor and Kelly Wells jointly owned real estate, which included both the marital home and a farm on which Kelly taught horseback riding and coached polo. When they divorced, the parties entered into a Separation and Property Settlement Agreement, which among other things, established a detailed process for the disposition of this property. We set out the relevant language:

11. REAL PROPERTY.

11.1. Middletown Road Property. The parties own as tenants by the entirety the fee simple property known as 21225 Middletown Road, Freeland, Maryland 21053, hereinafter referred to as the “Farm”. The property is subject to the joint indebtedness of the parties secured by the lien of a mortgage held by Mid-Atlantic Farm Credit, mortgagee, which has an approximate present principal balance of \$385,000. Wife shall have the nonassignable and exclusive right to occupy the Farm as her principal personal residence until the first to occur of any one of the following terminating events: (i) her death; (ii) three (3) months after the parties’ youngest living child’s graduation from high school; (iii) Wife ceasing to use the premises as her and the children’s principal personal residence; or (iv) Wife’s failure or refusal to pay during the period of her occupancy the monthly mortgage payment, taxes, and expenses hereinafter set forth. . . .

11.2 Upon the termination of Wife’s right to occupancy or sooner at Wife’s option, Wife may elect to purchase Husband’s equity in the Farm by written notice mailed to Husband. Should Wife, within thirty days after the termination of Wife’s right to occupancy not elect to purchase Husband’s equity in the Farm then Husband may elect, within forty-five days after the occurrence of the terminal event, to succeed to Wife’s rights of purchase and obligations pursuant to Paragraph 11.3 below. If neither party elects to purchase the other party’s equity in the Farm within the prescribed time, the Farm shall be listed for sale and sold to a third party in accordance with Paragraph 11.4 below. Should Wife elect to purchase Husband’s equity in the Farm, Wife shall pay Husband not later than six (6) months after the

youngest living child's graduation from ~~college~~ high school,^[1] an amount equal to one-half of the parties' equity in the Farm and shall remove Husband from the existing mortgage. . . . Should the parties be unable to agree as to the fair market value of the Farm, both parties shall select an appraiser whose Opinion as to fair market value shall be binding, or if they cannot agree upon a single appraiser, each party shall select an appraiser, certified by either the American Society of Appraisers, the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers. Both shall appraise the fair market value of the Farm and the appraisals shall be added together and the sum shall then be divided by 2 unless the appraisals vary over 7.5% from one another. In that event both parties shall select a third appraiser, each party to pay one-half of that appraiser's fee. The appraisal that varies in the greatest degree from the remaining two appraisals shall be disregarded and the two remaining appraisals shall then be added together and divided by two. The amount reached shall be considered, for the purpose of this Agreement, to be the fair market value of the Farm. Each party shall be responsible for the charges incurred for the appraisal submitted by him or her. . . .

11.3 Should Wife, within thirty days after the termination of Wife's right to Occupancy not elect to purchase Husband's equity in the Farm then Husband may elect, within forty-five days after the occurrence of the terminal event, to elect to purchase Wife's equity in the Farm upon the same terms and conditions set forth in Paragraph 11.2. . . .

11.4 If the Farm has not been sold in accordance with the terms of Sale of Farm set forth in a separate document executed at the time of this Agreement, either party may seek a sale in lieu of partition of the Farm in accordance with the Terms of Sale of the Farm document.^[2]

Wife may continue to reside in the Farm until the closing on a sale, and the parties shall continue to pay the expenses of the Farm in accordance with the terms of Paragraph 11.1. Upon the sale of the Farm, the net proceeds of sale shall be divided equally between the parties. . . .

¹ This handwritten change in the agreement makes it consistent with ¶11.1, was approved and signed by both parties, and is not contested here.

² This is a reference to a separate document, executed by the parties on the same date and reproduced below.

The agreement also contained a separate document attached as an appendix to the agreement, called the “Terms of Sale of Farm.” That document, referenced in ¶11.4, provided:

Terms of Sale of Farm

Upon the termination of Wife’s exclusive right to occupy the Farm, if she does not exercise her option to purchase Husband’s equity interest and if he does not exercise his option to purchase her equity interest, then the parties shall list the Farm for sale with a real estate agent (“agent”) to be selected by agreement of the parties at an agreed upon initial asking price. If the parties are unable to agree upon a listing agent, they shall each select an agent and those two agents shall select a third person as the listing agent. If no contract for the sale of the Farm has been accepted by the parties after the expiration of 90 days from the date on which the Farm was listed for sale, and further provided that no proposed contract has been submitted and is “pending” the parties’ approval at that time, then the parties shall re-evaluate the asking price for the Farm. Husband and Wife agree that the listing agent shall determine the re-evaluated asking price for the Farm unless both parties disagree with the listing agent’s determination. If both parties disagree with the listing agent’s determination of the re-evaluated asking price, then the listing agent shall provide a different figure for the re-evaluated asking price until either Husband or Wife is in agreement with the listing agent, at which point a listing price shall be set. This procedure for re-evaluating the asking price shall continue with each subsequent 90-day cycle. Either party shall have the right to accept, on behalf of both parties, any bona fide offer to purchase the Farm submitted by a third party at a price which is equal to or more than ninety-eight percent (98%) of the asking price. For example, if the Farm has an asking price of \$600,000, either party may accept any offer, on behalf of both parties, of \$588,000 or more. The parties may accept any other offer only by express agreement between them. Both parties shall fully cooperate with the broker in an effort to sell the Farm. . . . If no contract for the sale of the Farm has been accepted by the parties after the expiration of nine (9) months on the date on which the Farm was first listed for sale, and further provided that no proposed contract has been submitted and is “pending” the parties’ approval at that time, then each party shall have the right to institute formal proceedings for sale of the Farm in lieu of partition and to have an independent Trustee appointed to conduct the sale of the Farm.

Thus, according to the agreement and its attached appendix, there were four options for the disposition of the property: (1) Kelly had the first option to buy Trevor out; (2) if Kelly declined, then Trevor had the option to buy out Kelly; (3) if neither party exercised their option, then the property would be sold by an agent; and finally, if none of the other options occurred, (4) either party could petition the court for a judicial sale of the property in lieu of partition. The agreement also provides the timing and a method for ascertaining fair market value for each of the options:

- **Option #1** (Kelly exercises her option and buys out Trevor)—Kelly may exercise her option to buy out Trevor’s interest at any time until 30 days after the terminating event, which in this case was 3 months after their youngest child’s high school graduation.³ The price-setting mechanism for Option #1 has several steps, which are set out in ¶ 11.2: (1) the parties can agree on the fair market value; (2) if the parties cannot agree on a fair market value, they can jointly select an appraiser to set the fair market value; and (3) if they can’t agree on an appraiser, the parties each pick an appraiser and their appraisals are averaged.⁴ The buyout must be completed within 6 months of their youngest child’s high school graduation.⁵
- **Option #2** (Kelly declines to exercise her option, Trevor exercises his option and buys Kelly out)—If Kelly declines her option, Trevor has the option to buy out Kelly. Trevor’s time limit for exercising this option is 45 days after

³ After some initial disagreement, the circuit court determined that the parties’ youngest child graduated from high school on June 2, 2018. Neither party has contested that finding and it is well-supported in the record. We will, therefore, accept that date as the basis for all computations in this Opinion. Thus, the terminating event occurred 3 months later, on September 2, 2018 and Kelly was required to notify Trevor by 30 days after the terminating event that she intended to exercise her option, i.e. by October 2, 2018.

⁴ There is also a fail-safe here. If the parties each select an appraiser and their appraisals differ by more than 7.5%, then the parties pick a third appraiser, throw out whichever appraisal differs most from the other two, and average the remaining two.

⁵ As noted above and below, graduation was June 2, 2018. Thus, the buyout should have been effectuated by December 2, 2018.

the terminating event, which is 30 days after graduation.⁶ The price-setting mechanism for Option #2 is precisely the same as for Option #1.

- **Option #3** (Neither party exercises option; sale by agent)—If each party declines to exercise their options, the property was to be sold by a real estate agent. The process for selecting the real estate agent and determining the sale price is set forth in the document entitled, “Terms of Sale of Farm.”⁷
- **Option #4** (Judicial sale in lieu of partition)—¶11.4 provides that if the property has not been sold, either party can seek a judicial sale in lieu of partition.

The course of conduct was not exactly as the parties had envisioned in drafting the agreement. We have created the following chronology from documents attached to the parties’ pleadings and evidence admitted at trial. Neither at trial nor on appeal do the parties contest the admissibility or authenticity of these documents, argue that there were other significant records, or other communications. Rather, they admit that this was the universe of their communications on the subject, but contest the legal significance of these communications:

June 2, 2018	Kelly and Trevor’s youngest child graduates from high school. ⁸
September 20, 2018	Kelly’s counsel sends a letter to Trevor’s counsel stating, “Please accept this notice that Kelly Wells is electing to exercise her right to purchase Trevor Wells’ equity in [the Farm].” The letter asks “please let me know your client’s estimate of the fair market value of the property so that we

⁶ Graduation was June 2, 2018. *See supra*, n.3. The terminating event was 3 months later, that is, September 2, 2018. Trevor then had 45 days to exercise his option, or until October 17, 2018.

⁷ We do not undertake an analysis of these provisions because they did not occur and are not contested.

⁸ *See supra* n.3.

can determine if the parties can agree on that point, or if an appraisal of the property will be required. If so, please let me know if ... [you] have identified a proposed appraiser.” Trevor never provides an estimate of fair market value.

October 15, 2018

Trevor has an appraiser inspect the Farm.

October 22, 2018

Kelly sends Trevor a text message asking, “[d]id you get the results of the appraisal?” Trevor does not respond.

November 9, 2018

Kelly’s counsel emails Trevor’s counsel asking, “[p]lease let me know if your client’s appraisal [of the Farm] has been completed and what value was given for the property so that my client can determine if she is agreeable to the fair market value of the property, or, if she needs to get an appraisal herself.”

November 11, 2018

Trevor’s counsel responds to Kelly’s counsel, telling him, “[w]e need some assurance that your client is capable of obtaining financing and completing this transaction by the December 4th⁹ deadline. Therefore, if your client remains interested in buying the farm, please provide on Monday, November 12th, a copy of her lender[’]s pre-approval letter. If your client is going to want her own separate appraisal, I suggest she begin the process immediately. It has been our observation that it takes about 30-45 days to complete an appraisal and the December 4th Deadline is mere weeks away. If your client is unable to finalize the closing by the December 4th deadline it is Mr. Wells desire that the Farm be immediately placed for sale. He has two realtors in mind. Please ask your client for the names of two realtors that she recommends handle the sale. We can request listing agreements from each and have the Farm ready

⁹ See *supra* n.3.

to be listed for sale immediately following the passing of the December 4th deadline.”

Kelly’s counsel responds the same day, “[w]e need to establish the fair market value to determine the amount of financing needed. Please provide me with your client’s valuation of the property so we can determine if the value is going to be an issue.”

November 13, 2018

Kelly has the Farm inspected by an appraiser.

November 20, 2018

Kelly sends Trevor a text message stating, “[w]here are the results of your appraisal? My appraisal will be [d]one and to me today. I got a home inspection done too those results will be done this afternoon too. We need to compare appraisals and it’s been well over a month since your appraiser was here.”

Trevor tells his counsel Kelly has received her appraisal, and his counsel immediately demands a copy of the appraisal from Kelly’s counsel, “[y]our client informed mine that she has received her appraisal. It would speed things along if you get a copy to me before the start of the Thanksgiving holiday. I will accept a scanned copy if that is easiest for you.”

November 21, 2018

Kelly’s counsel responds, “I have received a copy of [Kelly’s] appraisal ... dated November 13, 2018. Once your client’s appraisal is ready, please let me know and we can exchange the appraisals.”

November 28, 2018

Trevor’s appraiser completes his appraisal and sends it to Trevor and Trevor’s counsel.

November 30, 2018

Kelly’s counsel emails Trevor’s counsel, “Ms. Wells is prepared to proceed with the buyout of Mr. Wells’ interest in [the Farm] pursuant to the terms of the Separation Agreement and has funds available to make the payment to Mr. Wells.

Again, my client has had an appraisal completed and will provide you with her valuation as soon as we receive Mr. Wells’ appraisal. This will allow us to determine the fair market value of the property for the equity calculation.” Kelly’s counsel also includes a list of “the amounts needed to determine the reimbursement to Ms. Wells” for expenses incurred by Kelly in maintaining and renovating the house, as well as invoices and receipts supporting the expenses.

- December 1, 2018** Trevor’s counsel requests further documentation of the reimbursement expenses Kelly is requesting.
- December 2, 2018** Kelly’s deadline to pay Trevor expires.
- December 3, 2018** Trevor’s counsel emails Kelly’s counsel, “[w]hile I am delighted that Ms. Wells ‘has funds available to make the payment to Dr. Wells’, neither you nor I currently know what is the proper amount.” Trevor’s counsel said this was because Kelly had “refused to disclose her appraised value,” because there were “deficiencies in the information provided” to calculate Kelly’s sought reimbursement, and because “[o]n November 21, 2018, rather than provide copies of the mortgage statements showing the amount Ms. Wells has paid toward the principal and interest on the loan, your response was <Your client can also contact the mortgage company to confirm the payments that have been made.>” Trevor’s counsel concluded by saying “Ms. Wells having failed to meet the December 2, 2018, deadline pursuant to the terms of the June 23, 2014, Separation and Property Settlement Agreement, I suggest we select a realtor to immediately list the farm for sale.”
- December 6, 2018** Trevor’s counsel provides Kelly with a copy of Trevor’s appraisal.

PROCEDURAL HISTORY

For reasons that we do not understand, Trevor filed a new complaint seeking judicial sale of the property rather than a motion for judicial sale in the existing divorce case.¹⁰ In that new case, Kelly then filed a counterclaim seeking specific performance, in other words to be allowed to exercise her option to buy out Trevor. The circuit court held a two-day trial, at the conclusion of which it entered an order dismissing both Trevor’s complaint and Kelly’s counterclaim with prejudice. Both sides have timely appealed.

STANDARD OF REVIEW

Settlement agreements are enforceable contracts. *Erie Ins. Exch. v. Estate of Reeside*, 200 Md. App. 453, 460-61 (2011). Maryland courts employ the objective theory of contracts, thus we must ask how a reasonable party would understand the duties and obligations described in the contract. *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019). We review the circuit court’s contract interpretation as a matter of law, without deference. *Id.* at 392.

ANALYSIS

The circuit court made two findings. *First*, it held that the agreement required the parties to try to sell the property through Option #3 (sale by agent) before Trevor was allowed to petition the court for Option #4 (judicial sale in lieu of partition). *Second*, it held

¹⁰ Maryland Rule 14-302(a) provides that “[a]t any stage of an action, the court may order a sale if satisfied that the jurisdictional requisites have been met and that the sale is appropriate.” Thus, in our view, Trevor should have filed his motion for judicial sale in the existing divorce proceedings and not as a new complaint. As neither party has raised this as an issue, however, we shall not comment on it further.

that Kelly was ineffective in exercising her option to buy out Trevor’s interest because she failed to make payment by 6 months after their youngest child’s high school graduation. We review these findings in reverse order.

The trial judge held as a matter of contract interpretation that Kelly’s failure to make payment by December 2, 2018 constituted a failure to exercise her option. We think that the circuit court’s interpretation misunderstands the agreement. We interpret the agreement to require that during a party’s option period, the other party—what we will call the non-option party—is required to take steps to ascertain the price: the non-option party must provide an estimate of the property’s fair market value; if the parties don’t agree on the estimates, the non-option party must help pick an appraiser; if the parties don’t agree on an appraiser, the non-option party must hire an appraiser and exchange their appraiser’s appraisal with the option-party. The non-option party cannot simply refuse to undertake the steps necessary to ascertain the price and thereby effectively veto the option party’s option. It is no answer that the agreement did not identify a specific date by which the non-option party was required to undertake the necessary steps to ascertain the fair market value. Under Maryland law, we read agreements objectively, as reasonable contracting parties would. *Credible Behavioral Health*, 466 Md. at 393. We can imagine a disagreement about how *early* during an option period a reasonable party would have to provide the information necessary to ascertain the fair market value to permit the option

party to obtain financing. But there can be no argument that providing that information *after* the conclusion of the option period was objectively reasonable. It was not.¹¹

At trial, the evidence was uncontroverted that Kelly indicated that she wanted to exercise her option and became the option party. The evidence was also uncontroverted that Trevor, as the non-option party, took none of the steps that he was contractually obligated to take as the non-option party: he did not exchange his view of the fair market value; he did not help pick a mutually-agreeable appraiser; and most critically, he did not provide Kelly with his appraiser’s appraisal in time that she could obtain financing and complete the buyout by the December 2nd deadline.¹² By so doing, Trevor breached the agreement. Alternatively, we hold that no reasonable finder of fact could find, given these facts, that Trevor did not breach the agreement. Thus, to the extent that the circuit court found that Trevor did not breach the agreement, that was an abuse of its discretion.

We reverse the trial court’s finding that Kelly failed to exercise her option and hold instead, that Trevor breached the agreement. We return the matter to the circuit court to allow it to establish, with input from the parties, the terms of a new option period for Kelly (and other relevant dates), reasonably extrapolated from the parties’ prior agreement.

¹¹ Trevor’s failure to participate in the ascertainment of the fair market value also constituted a breach of the implied covenant of good faith and fair dealing, which is part of this agreement and of every contract executed in the State of Maryland. *Clancy v. King*, 405 Md. 541, 565-66 (2008).

¹² We also consider Trevor’s November 11, 2018, demand for proof of Kelly’s financing to have been without basis and likely intended to obstruct Kelly’s ability to exercise her option as she could not procure financing until a final, definitive price was determined.

As to the second issue, the trial court held that Trevor’s effort to seek a judicial sale of the property (what we have called Option #4) was premature because the parties had not yet attempted to sell the property together through an agent (what we have called Option #3). We have held above, in effect, that because of Trevor’s breach, we must restore Kelly’s option. Nobody has argued and the agreement does not support that a party can seek a judicial sale (Option #4) before the completion of the parties’ respective option periods (what we have called Options #1 and #2). We agree with the circuit court that Trevor’s attempt to force a judicial sale was premature although we reach that conclusion because of slightly different reasoning. Nonetheless, we affirm the circuit court’s decision on Trevor’s appeal.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND REVERSED IN PART AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS ASSESSED TO APPELLEE/CROSS-APPELLANT.