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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-21-475

JOHN WILLIAMSON APPELLANT V. VAN ALAN HILL AND NANCY HILL APPELLEES	**Opinion Delivered** October 26, 2022 APPEAL FROM THE JOHNSON COUNTY CIRCUIT COURT [NO. 36CV-17-15] HONORABLE DENNIS CHARLES SUTTERFIELD, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

This is an appeal arising from appellant John Williamson's breach-of-contract claim. In the final judgment, the Johnson County Circuit Court found that Williamson had failed to adhere to the terms of a contract regarding the exercise of the option to purchase certain real property and that appellees, Van Alan Hill and Nancy Hill, did not breach the option agreement for the purchase of the property. The circuit court accordingly ruled that the Hills were under no obligation to sell the property to Williamson and were entitled to retain the property pursuant to the terms of the contract. On appeal, Williamson argues that the circuit court erred in its findings. We affirm.

Prior to the contract in dispute in this case, Williamson purchased about 105 acres of land (the Property). Williamson had worked in the oil-service industry but eventually lost his job. He reached out to appellee Van Hill about a possible loan.

On January 11, 2016, Williamson and Hill executed a real estate contract for the sale of the Property. Hill agreed to pay Williamson $60,000 for the Property, and Hill granted Williamson a one-year option to repurchase the Property for $75,000. Williamson testified that the original transaction closed on January 13, 2016. Williamson testified that Curran's Abstract and Title Company drafted the deed for the January 13 transaction and also the option contract, which was signed the same day at Curran's Abstract. After an appraisal was conducted valuing the Property at $150,000, Hill took out a mortgage for the Property on February 17, 2016, in the amount of $127,500.

Paragraph 4 of the option contract states, in relevant part, that "purchaser may exercise its exclusive right to purchase the Premises pursuant to the Option, at any time during the Option Term, by giving written notice thereof to Seller." The option contract defines the option term as ending on or before January 13, 2017, at 5:01 p.m. Paragraph 5(a) of the option contract states that the purchase price shall be the sum of $75,000, and Paragraph (5)(b) states that the closing date shall be January 13th, 2017, or at any other date during the option term as may be selected by the purchaser.

On January 12, 2017, Williamson hired the sheriff's office to deliver a letter to Hill. The letter read:

> This letter is to inform you that per our agreement, I am exercising my option to purchase back the real estate which you currently possess as per our agreement. Tomorrow the specified amount will be made available to you at Curran's Abstract. In exchange per our agreement a warranty deed for the property shall be made available by you. Thank you for your time and I appreciate doing business with you. See you tomorrow.

Hill acknowledged receipt of this letter, responding:

> My secretary told me the sheriff's office dropped off that letter today so you are covered legally on providing notification.[1] The next move is to drop off a check from you to me for $75,000 plus half the closing costs I mentioned in the email I sent you the other day. Keep in mind that the check has to clear, so you may want to bring that by today or early in the morning. We open at 9 AM. It needs to be a cashier's check or a check drawn off of a local bank or you have already run out of time on it clearing before 5 PM tomorrow. Keep that in mind. $75,000 in cash would be fine also!!!! Thanks, Van.

Williamson testified that on January 12, 2017, Hill told Williamson that he would be "off the grid" for a few hours because he was heading to the mountains. Nancy Hill's testimony confirmed that Van Hill went to the mountains for the weekend.

In his testimony, Williamson stated that on January 13, 2017, he informed Hill that he had the $75,000 but requested that he receive the deed upon payment. Williamson testified that Hill responded: "Like I said, not in Arkansas. Deed ain't gonna happen today."

On the afternoon of January 13, 2017, Williamson tendered a $75,000 cashier's check from Randall Cockrum & John (Bill) Williamson to "Curran's Abstract Title Company payable to Van Hill upon clear title." Around 4:00 p.m., Williamson, Sheriff's Deputy Jeff Wood, and Randy Cockrum arrived at Hill's office with the check for $75,000 along with cash for Williamson's half of closing costs in order to exercise the option. However, as Hill had earlier told Williamson, he was not there; Hill had warned Williamson that because of the last-minute nature, it would be impossible to exchange funds for a deed because no one had arranged for any closing, title insurance, deed preparation, or other details. A Century 21 employee made a copy of the check, wrote the time on it, initialed it, and returned the check to Williamson.

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[1]We disagree with Hill that this waives the notification provision as outlined in paragraph 6(b) of the option contract.

Williamson maintained that Hill was primarily at fault for failing to receive the $75,000 and that, as such, he had not abided by the terms of the option contract. Believing he had complied with the terms of the option, Williamson subsequently filed suit.

In his amended complaint, Williamson named several defendants, but all claims against defendants Glover Town and Country Realty, Inc.; DCA Investments, Inc.; and Curran's Abstract and Title, Inc., were ultimately dismissed in a pretrial hearing, leaving only a breach-of-contract claim. On appeal, Williamson argues that the circuit court erred in finding that he failed to adhere to the terms of the contract regarding the purchase of the property and erred in finding that the Hills did not breach the option agreement, and consequently, the judgment should be reversed.

Judgments in bench trials are governed by Arkansas Rule of Civil Procedure 52(a), which provides:

> Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous (clearly against the preponderance of the evidence), and due regard shall be given to the opportunity of the circuit court to judge the credibility of the witnesses.

Ark. R. Civ. P. 52(a).

The supreme court has specifically ruled that clearly erroneous is the standard of review for factual findings in a bench trial. *Poff v. Peedin*, 2010 Ark. 136, at 5–6, 366 S.W.3d 347, 350 ("Therefore, we hold that Arkansas appellate courts should review all appeals from bench trials under the clearly-erroneous standard, and we overrule *Hoffman* [*v. Gregory*, 361 Ark. 73, 204 S.W.3d 571 (2005)] to the extent that it applies the wrong standard of review.") A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Travelers Cas.*

& Sur. Co. of Am. v. Cummins Mid-S., LLC, 2015 Ark. App. 229, at 7, 460 S.W.3d 308, 314.

In the case before us, Williamson frames both of his points on appeal as errors of factual findings concerning which party breached the terms of the contract. However, his arguments question the essential validity of the contract, and that is a question of law for the circuit court. In *Travelers*, *supra*, we held:

> [W]here there is a dispute as to the meaning of a contract term or provision, be it an insurance or other contract, the trial court must initially perform the role of gatekeeper, determining first whether the dispute may be resolved by looking solely to the contract or whether the parties rely on disputed extrinsic evidence to support their proposed interpretation. As Justice George Rose Smith explained, "[t]he construction and legal effect of written contracts are matters to be determined by the court, not by the jury, except when the meaning of the language depends upon disputed extrinsic evidence." Thus, where the issue of ambiguity may be resolved by reviewing the language of the contract itself, it is the trial court's duty to make such a determination as a matter of law.

Id. at 5–6, 460 S.W.3d at 313 (quoting *Elam v. First Unum Life Ins. Co.*, 346 Ark. 291, 297, 57 S.W.3d 165, 179 (2001)).

Here, the parties mostly agree on the essential terms of the option contract at issue:

- The parties are Van Alan Hill and John Williamson a.k.a Absolute Oilfield Services.
- The "execution date" is January 13, 2016.
- The "option term" is January 13, 2016, to January 13, 2017, at 5:01 p.m.

There is no dispute about the financial terms of the option—$75,000. The option contract clearly states at paragraph 4: "In the event the purchaser does not exercise its exclusive right to purchase the Premises granted by the Option during the Option Term, Seller shall be entitled to retain the Option Fee and this agreement shall become absolutely null and void . . . ."

Williamson does not address the additional financial term that provides the buyer and seller will equally split closing costs. Williamson made no arrangements for a closing. The "default by purchaser" provision (paragraph 5(d)) also states that if purchaser (Williamson) fails to close on or before the end of the option term, then seller shall be entitled to retain the property.

Finally, Williamson failed to follow the notice provisions. Williamson failed to deliver any notices or payments to the specified address, and he admits he did not mail or deliver any communications to Hill at the address provided in the option contract. Instead, Williamson contends Hill waived this term. However, paragraph 5(h) plainly states that the agreement can only be modified in writing. We cannot say the circuit court erred in finding that the Hills did not breach the option contract and that they are entitled to maintain ownership of the Property at issue.

Williamson's second appellate point is that the circuit court clearly erred in finding that he failed to adhere to the terms of the option contract. While this point is a partial restatement of his first point, we must turn to the law on options to determine whether Williamson performed—or whether his nonperformance is excused.

"An option is merely an offer by one party to sell within a limited period of time and a right acquired by the other party to accept or reject such offer within such time." *Heartland Cmty. Bank v. Holt*, 68 Ark. App. 30, 36–37, 3 S.W.3d 694, 698 (1999) (citing *Swift v. Erwin*, 104 Ark. 459, 148 S.W. 267 (1912)). "The acceptance of an option . . . must be absolute and unconditional in accordance with the offer made, and without modification or the imposition of new terms in order to constitute a valid exercise of the option. . . ." *Id.*

Here, Williamson's attempt to exercise his option fails because it was not "absolute and unconditional." In fact, Williamson's attempt contradicted the plain terms of the option in numerous ways. First, he failed to deliver any notices or payments to the specified address. In paragraph 6(b) regarding notice, the option reads:

> All notices, demands, and/or consents provided for in this Agreement shall be in writing and shall be delivered to the parties hereto by hand or by United States Mail with postage pre-paid. Such notices shall be deemed to have been served on the date mailed, postage pre-paid. All such notices and communications shall be addressed to the Seller at 610 Private Road #2627, Lamar, Arkansas 72846 and to Purchaser at #478, County Road, #3173, Hartman, Arkansas 72840 or at other such address as either may specify to the other in writing.

As noted, Williamson admits that he did not mail or deliver any communications to Hill at the above address as required by the option contract.

Second, Williamson failed to make any instrument of payment payable to the contracted payee—Van Hill. He made the check payable to Curran's Abstract, which was not a party to the contract. Third, Williamson failed to actually deliver any payment. He never tendered payment to anyone; he showed a check to the title company, but he did not leave the check for Hill. Williamson merely left a photocopy of the check. No timely payment was made.

Finally, Williamson failed to make any effort to set up a closing either within the option term or even after. Williamson never retained Curran's to be a closing agent. These failures show there was never any "absolute and unconditional" acceptance of the terms of the option. Simply put, Williamson has never met the basic overriding requirement of the option contract—that is, to pay $75,000 to Van Hill. Accordingly, we cannot say that the

circuit court erred in finding that Williamson failed to adhere to the terms of the option contract. We affirm.

Affirmed.

WHITEAKER and BROWN, JJ., agree.

Johnathon D. Burgess and *Scott Davidson*, for appellant.

Cullen & Co., PLLC, by: *Tim Cullen*, for appellees.