

Lockwood v. Black
Supreme Court of Alaska.
February 2, 1994
Not Reported in P.2d
1994 WL 16457088

Only the Westlaw citation is currently available.

NOTICE: UNPUBLISHED OPINION

Supreme Court of Alaska.

Howard LOCKWOOD, Appellant,

v.

William C. BLACK and Betty Black, Appellees.

No. S-4674. | No. 1JU-87-2098 CI. | Feb. 2, 1994.

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Walter L. Carpeneti, Judge.

Attorneys and Law Firms

Andrew K. Kurzmann, Law Office of Andrew K. Kurzmann, Anchorage, for Appellant.

Robert S. Spitzfaden, Gruening & Spitzfaden, APC, Juneau, for Appellees.

Before: MOORE, Chief Justice, RABINOWITZ, MATTHEWS and COMPTON, Justices.

MEMORANDUM OPINION AND JUDGMENT*

*1 In this appeal, Howard Lockwood challenges (1) the superior court's use of a summary judgment standard in deciding his motion to prevent dismissal of his lawsuit pursuant to a settlement agreement; (2) the superior court's finding that William and Betty Black did not breach the settlement agreement; and (3) the equity of the superior court's strict enforcement of the settlement agreement. Finding no error, we affirm.

I. FACTS AND PROCEEDINGS

*1 In 1976, Lockwood and his company, Alaska Trust Deed and Mortgage Brokers, Inc. (ATDMB), contracted to buy a parcel of land known as **Colt Island** from the Blacks. Pursuant to that contract, Lockwood established a development plan, subdivided the island, and began selling lots. All payments by lot purchasers went to the Blacks, who applied the payments against the principal and interest owed by Lockwood. In 1987, shortly after final payment by Lockwood was due under the contract, Lockwood and ATDMB sued the Blacks for specific enforcement of the contract, requesting an accurate accounting of the amount still due and additional time to raise financing. The parties reached a settlement agreement on October 10, 1988.

*1 The settlement agreement established \$233,000 as the amount still owed by Lockwood and required payment of this amount by October 31, 1989. The agreement allowed Lockwood to continue to sell lots on a cash basis. All monies received were to be paid to the Blacks and credited against the amount Lockwood owed. Pursuant to the settlement agreement, the parties stipulated and the trial court ordered that the case "shall be dismissed with prejudice after November 30, 1989, unless any party moves prior to November 30, 1989 to prevent dismissal with prejudice." Lockwood made no payments toward the settlement price during the settlement period. He did attempt to sell one lot, to his son-in-law David Thomas, but this sale never closed and the Blacks received no payment.

*1 On October 31, 1989, the last day of the settlement period, Lockwood moved to "reactivate" his original complaint, alleging that the Blacks failed to provide clear title for the Thomas sale and otherwise breached the settlement agreement. After further proceedings, the trial court treated this motion as the motion to prevent dismissal required by the settlement agreement. The court determined that the proper standard for deciding such a motion was one akin to "that employed in defending a motion to dismiss on the pleadings or a motion for summary judgment." The court then ordered an evidentiary hearing to determine if there was a question of material fact as to whether the Blacks breached the settlement agreement.

*1 After the evidentiary hearing, which focused on Lockwood's financing and the events surrounding his attempted lot sale to Thomas, the superior court denied Lockwood's motion to prevent dismissal and dismissed the case with prejudice.

II. DISCUSSION

*1 Initially, we reject Lockwood's contention that the trial court erred in treating Lockwood's motion to prevent dismissal as the equivalent of a motion for summary judgment by the Blacks. Given the procedural stance of the case and the parties' October 1988 stipulation to the court that any claim against strict compliance with the settlement agreement would need to withstand initial judicial scrutiny, application of a

summary judgment standard was appropriate.¹

*2 Under this summary judgment standard and the settlement agreement, dismissal of Lockwood's case is appropriate if the Blacks are entitled to judgment as a matter of law and no genuine issues of material fact remain.² Alaska Civil Rule 56(c). Under the doctrine of accord and satisfaction, the Blacks are entitled, as a matter of law, to dismissal of the case unless Lockwood establishes that the Blacks breached the settlement agreement. See *Restatement (Second) of Contracts*, § 281 (1981); see also *National Bank of Alaska v. Warfle*, 835 P.2d 1167, 1170 (Alaska 1992).

*2 Lockwood's claim of breach centers on the attempted sale of a lot on **Colt Island** to David Thomas. Thomas signed an earnest money agreement for purchase of the lot on August 19, 1989, but the sale failed to close by October 31, 1989, the last day of the settlement period. Lockwood claims that the Blacks unreasonably caused this delay and that, as a direct result of the failure to close this transaction, Lockwood was unable to obtain the financing necessary to pay off the Blacks.

*2 On review of the record, we initially note that no genuine issues of material fact exist concerning the events of this period. We therefore must decide whether, as a matter of law, the facts established could support a finding that the Blacks breached the settlement agreement. Drawing all reasonable inferences of fact in favor of Lockwood and against the Blacks, the evidence is simply insufficient to support a finding of breach. The Blacks had a right to insist on inspecting the Thomas earnest money agreement in order to ensure that it complied with the settlement agreement before releasing their interest in the lot. Because the earnest money agreement was in an escrow account to which they were not parties, the Blacks could not review the agreement without the approval of either Lockwood or Thomas. It is uncontroverted that Lockwood did not communicate even conditional approval for the Blacks to review the earnest money agreement until at least September 14, 1989. From September 14 until October 4, Lockwood's approval was at best implicit in his statements that the Blacks should submit written requests for "information" with their escrow instructions. Neither of his letters touching on the subject affirmatively indicated that he would grant such requests. Once Lockwood explicitly stated that the Blacks could see the earnest money agreement if they submitted escrow instructions, the Blacks responded with the instructions and an executed deed within five days. The parties do not dispute that the Blacks gave permission for the transaction to close on October 16, 1989. In addition, once informed that Thomas would not close without a waiver of possible liability from the Blacks, William Black executed such a waiver on the same day. Because the evidence relied on by Lockwood could not, as a matter of law, support a finding that the Blacks breached the settlement agreement, Lockwood is not entitled to set aside the settlement agreement. Therefore, his motion to prevent dismissal was properly denied.

*3 Finally, Lockwood argues that, even if the agreement was not breached by the Blacks, strict enforcement of the agreement against him would result in an inequitable forfeiture. We disagree. First, because the forfeiture provision before us is the one in the settlement agreement, not the one in the original contract, we look primarily to the performance under the settlement agreement in reviewing the equity of any forfeiture. In this context, we note that Lockwood made no further efforts to develop the property after entering the settlement agreement. Nor did he ever tender any payments under the settlement agreement. The enforcement of a forfeiture provision is appropriate where the buyer has failed to make significant payments. See *Curry v. Tucker*, 616 P.2d 8, 13 (Alaska 1980); *Alaska Placer Co. v. Lee*, 455 P.2d 218 (Alaska 1969). Second, to the extent payments under the original contract are relevant, we observe that, unlike the typical forfeiture situation, the Blacks will not receive a double benefit by retaining these payments and receiving a forfeiture of Lockwood's interest, because all payments attributable to Lockwood came from lot sales, and the lots sold by Lockwood are not included in the land parcel returned to the Blacks.

III. CONCLUSION

*3 For the reasons stated above, the decision of the superior court denying Lockwood's motion to prevent dismissal and dismissing the case with prejudice in accordance with the settlement agreement is AFFIRMED.

BURKE, Justice, not participating.

Footnotes

* Entered pursuant to Appellate Rule 214.

¹ We also specifically reject Lockwood's claim that the trial court failed to give him adequate notice that additional evidence would be considered. The superior court clearly stated that additional evidence was needed and would be received. In addition, Lockwood stated in a prehearing memorandum to the trial court: "Given extrinsic evidence and the hearing, the motion for dismissal would logically be treated as a motion for summary judgment...."

² This court gives *de novo* review to appeals from grants of summary judgment by the superior court. *Kollodge v. State*, 757 P.2d 1028, 1032 (Alaska 1988). We independently review summary judgment rulings to determine whether any genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law. *Drake v. Hosley*, 713 P.2d 1203, 1205 (Alaska 1986).