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J. DAVID NAVARRO, Clerk
By INGA JOHNSON

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RECEIVED
MAR 14 2005
DEPARTMENT OF
WATER RESOURCES

THEODORE AND PHYLLIS
BOHLMAN, husband and wife,

Plaintiffs,

Case No. CVOC0404973D

MEMORANDUM DECISION &
ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

vs.

EDWARD A. LEWIS and PATRICIA A.
LEWIS, husband and wife; TED LEWIS
WATER ASSOCIATION, INC., an Idaho
nonprofit corporation; GARY and
BARBARA GREENWELL, husband and
wife; RON and PAM ARCHULETTA,
husband and wife; and ADA COUNTY, a
political subdivision of the State of Idaho,
and ADA COUNTY COMMISSIONERS
JUDY PEAVEY DERR, RICK
YZAGUIRRE and FRED TILMAN,

Defendants.

This matter came before the Court on the Defendants' Motion for Summary Judgment. The Court heard oral arguments on February 7, 2005, and took the matter under advisement. After considering the arguments of the parties, the Court hereby GRANTS Defendants' Motion for Summary Judgment.

I. BACKGROUND

This case involves a land dispute. On August 31, 1989, Defendant Edward Lewis conveyed 9.59 acres of a 9.62 acre parcel to Plaintiffs Theodore and Phyllis Bohlman.

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Lewis kept 0.03 acres of land around a well and the well itself (the well lot). The Bohlman Deed was not recorded until March 28, 1990.

On November 6, 1989, Lewis submitted an application to Ada County Development Services (ACDS) for a conditional use permit to subdivide his property into four separate five-acre parcels. Under the applicable statutes, Lewis's land, which was zoned as "residence, non-farm," could not be subdivided into lots smaller than five acres. ACDS informed Lewis that if he wanted to divide the 9.62 acre lot into two parcels, he would need to obtain a conditional use permit and obtain a variance allowing for two 4.81 acre parcels.

Lewis filed for a variance and a conditional use permit. A hearing was held on December 28, 1989 to consider Lewis's conditional use permit application. The Ada County Planning and Zoning Commission approved the permit with the caveat that the variance had to be approved by the Board of County Commissioners within one year. The Board approved the variance on January 11, 1990, after a January 4, 1990 hearing.

The Bohlman Deed was recorded on March 28, 1990, conveying 9.59 acres of the 9.62 acre lot to the Plaintiffs. On February 19, 2003, in response to a property status request from Plaintiffs, ACDS sent Plaintiffs a letter stating that the 9.62 acre parcel was a legally nonconforming parcel before their warranty deed was filed. Thus, it could have been legally subdivided into two 4.81 acre parcels. However, because only 9.59 acres of the lot was transferred to the Plaintiffs, the 9.62 acre lot was subdivided in a manner contrary to that approved by Ada County. Thus, ACDS informed Plaintiffs that the property would not be eligible for building permits or further subdivision.

On June 28, 2004, Plaintiffs filed their complaint. On November 24, 2004, the Court granted Defendant Ada County's Motion to Dismiss.

Plaintiffs are suing the nongovernmental defendants for (1) fraudulent inducement; (2) a reformation of instrument that is unconscionable (the 1989 contract for the land sale); (3) a declaratory judgment that the retention of the well lot constituted an illegal subdivision; (4) specific performance of an alleged obligation by Lewis to convey ownership of the well to Plaintiffs and other users of the Ted Lewis Water Association (the water association); (5) a declaration of easements with regard to the well lot for the benefit of the water association and for the shareholders of the water association; (6) a declaration that the applicable restrictive covenants, articles of incorporation, and bylaws of the water association establish a duty on the part of the water association to operate the water system, incur expenses, and assess its shareholders their proportionate share of costs; and (7) a declaration of Lewis as an officious intermeddler and enjoinder of Lewis from assessing the shareholders of the water association for the costs of operation and maintenance of the water systems.

The nongovernmental defendants now seek summary judgment. They argue that the Plaintiffs' claims are barred by the statute of limitations and/or do not state a claim upon which relief can be granted.

II. STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." IRCP 56(c). The Court liberally construes all disputed facts and draws all reasonable

inferences and conclusions supported by the record in favor of the party opposing the motion. Kolln v. St. Luke's Reg'l Med. Ctr., 130 Idaho 323, 327 (1997).

The burden of showing the absence of a material fact sufficient to support summary judgment is on the moving party. Id. "This burden is onerous because even 'circumstantial' evidence can create a genuine issue of material fact." Harris v. State Dept. of Health & Welfare, 123 Idaho 295, 298 (Idaho 1992). However, the party opposing summary judgment must not rest its case solely on speculation or a mere scintilla of evidence because such paucity of evidence does not create an issue of material fact. Id.

III. ANALYSIS

A. FRAUD

The elements of fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it should be acted on by the hearer and in the manner reasonably contemplated; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Northern Frontiers v. State ex rel. Cade, 129 Idaho 437, 439 (Ct. App. 1996). However, for purposes of summary judgment, it is not necessary that fraud be proved by clear and convincing evidence. Hines v. Hines, 129 Idaho 847 (1997).

Idaho Code §5-218(4) provides a three-year statute of limitations for fraud claims. The statute begins to run when the Plaintiffs knew or should have known of the facts constituting the fraud. "When the cause of action accrue[s] in a fraud action is a question of law. However, our cases have consistently held that where discovery of a cause of

action commences the statute of limitations the date of discovery is a fact question for the jury unless there is no evidence creating a question of fact.” McCoy v. Lyons, 120 Idaho 765 (1991).

Defendants contend that Plaintiffs knew about the facts constituting the fraud (the reservation of the .03 acre well lot) on March 28, 1990, at the latest. This date was the date that the Bohlman Deed was recorded. Language in the deed expressly states that the well lot remained in possession of Defendant Lewis.

Plaintiffs contend that they did not discover the fraud until 2003, when Ada County told them that his parcel could not be subdivided because it constituted an illegal subdivision. They claim that Defendant Lewis told them that the reservation of the well lot would not affect their development rights. Lewis denies this allegation.

Lewis argues that, even if it was made, the statement is not actionable because (1) it was a prediction of a future event; and (2) it was an assertion of opinion, which Plaintiffs had no right to rely on.

Predictions of future events are not actionable. However, “[f]alse representations as to future events will constitute fraud, where these events depend upon the acts of the party making the representations, and form the inducement whereby the other party is led into the transaction.” Pocatello Security Trust v. Henry, 35 Idaho 321, 322 (1922). However, in this case Defendant Lewis had no control over Plaintiffs’ development rights. Ada County decided the issue.

Also, Lewis’s assertion was only his opinion of how the reservation of the well lot would affect Plaintiffs’ development rights. Reliance on an opinion of the law is unjustified where there is no relationship between the parties that justifies reliance on

such an opinion. Mitchell v. Barendregt, 120 Idaho 837, 844 (Ct. App. 1991). The Plaintiffs and Lewis were, respectively, buyers and seller in a land deal. Plaintiffs had no justification in relying on Lewis's legal opinion, if he even offered one. Thus, the Court finds that there is no issue of material fact with respect to this allegation of fraud.

Plaintiffs also contend that Lewis committed fraud by failing to turn over ownership of the well lot to the water association as he promised. Plaintiffs argue that this promise was also made in an attempt by Lewis to sell Plaintiffs the lot and keep the well lot. Again this was a prediction of a future event. However, this promise depends on the acts of Lewis himself and could be actionable.

Lewis denies ever making such a promise and there is no evidence of such a promise beyond Plaintiffs' allegations. For the statement to be actionable, Lewis would had to have known that he would not turn over the well lot when he made the statement. There is no evidence of this intention either.

Additionally, Lewis claims that any promises he may have made were later merged into the deed. *See Jolley v. Idaho Securities, Inc.*, 90 Idaho 373, 373-384 (1966). However, the Jolley court also found that fraud prevents merger. Id. at 392-393.

There is not an issue of material fact regarding Lewis's promise about turning over the well lot to the water association. There is no more than an allegation that this was a fraudulent statement. There's no evidence that he knew the statement was false when it was made. Thus, the Court finds that there is no issue of material fact with respect to any of Plaintiffs' fraud claims.

B. CONTRACT CLAIMS

The statute of limitations for an action on a written contract is five years, pursuant to Idaho Code §5-216. The statute of limitations for an action on an oral contract is four years, pursuant to Idaho Code §5-217. Thus any claims relating to the actual contract or to oral contracts have expired. Idaho Code §5-201 provides: "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute." I.C. §5-201. The contract causes of action accrued in 1989 or 1990, at the time of the contracts.

Plaintiffs claim that these contract causes of action are still alive because they are based on fraud. However, this argument fails because there is no issue of material fact with respect to their fraud claims. Consequently, there is no issue of material fact with respect to the Plaintiffs' contract claims.

C. OTHER CLAIMS

Idaho Code §5-224 provides: "An action for relief not hereinbefore provided for must be commenced within four (4) years after the cause of action shall have accrued." I.C. §5-214. Defendants claim the statute has run out on the Plaintiffs' other claims as well. However, the Court finds that this statute of limitations does not apply to the relief sought in this case.

In addition to their fraud and contract claims, Plaintiffs seek: (1) a declaratory judgment that the retention of the well lot constituted an illegal subdivision; (2) specific performance of an alleged obligation by Lewis to convey ownership of the well to Plaintiffs and other users of the water association; (3) a declaration of easements with regard to the well lot for the benefit of the water association and for the shareholders of

the water association; (4) a declaration that the applicable restrictive covenants, articles of incorporation, and bylaws of the water association establish an exclusive duty on the part of the water association to operate the water system, incur expenses, and assess its shareholders their proportionate share of costs; and (5) a declaration of Lewis as an officious intermeddler and enjoinder of Lewis from assessing the shareholders of the water association for the costs of operation and maintenance of the water systems.

1. The Court Refuses to Declare that the Retention of the Well Lot Either Did or Did Not Create an Illegal Subdivision

Lewis argues that the retention of the well did not create an illegal subdivision because at the time of the retention, the lot was next to over five acres of land owned by Lewis. Thus, since the Ada County Code only required lots to be five acres, the subdivision was not illegal.

Lewis further argues that even if keeping the well lot did create an illegal subdivision, this phrase is a term of art used to describe property that is not eligible for further subdivision. Thus, it would be pointless to declare the retention of the well lot as the creation of an illegal subdivision.

It is unclear to the Court as to what Plaintiffs seek by this declaration. Perhaps they really want a determination that the exception of the well lot from the Bohlman Deed was not an illegal subdivision, but rather, as they argue, a de minimis deviation that should not affect their development rights. In other words, they want the Court to overturn the judgment of the Ada County Development Services. The Court refuses to take such an action. The term "illegal subdivision" is a term of art, as argued above. The Court will not substitute its judgment for that of the Ada County Development Services.

Furthermore, the Court will not issue a declaration based on a term of art used by a governmental entity.

2. The Court Refuses to Grant Specific Performance

Specific performance is an extraordinary remedy that provides relief when legal remedies are inadequate. Kessler v. Tortoise Development, Inc., 134 Idaho 264, 270 (2000). In this case, Plaintiffs' only evidence of Lewis's promise to turn over the well lot is a bare allegation. The Court finds that specific performance is not warranted in this case

3. The Court Refuses to Declare any Extra Easements

As Defendant points out, it is difficult to determine what the Plaintiffs seek here. The covenants for the water association provide that every member of the association, which includes the Plaintiffs, shall have an easement across any property for the purpose of building a ditch. The Court will not grant the Plaintiffs any extra easements.

4. The Court Refuses to Issue a Declaration on the Exclusive Duty of the Water Association

Plaintiffs seek to prevent Lewis from operating the water system and charging for that operation. The covenants for the water association state that the association will be responsible for maintaining a water system and for charging its members for that system. However, nothing in the association's documents state that the association exclusively must run the water system.

Lewis is not a member of the water association. However, he is a director in the association. As Defendants point out, nothing in the association's documents require the association to own the well or well lot. Also, the association's covenants state that the

board of directors will handle the business affairs of the association. Therefore, the Court will not grant the requested relief.

5. The Court Finds that Lewis is Not an Officious Intermeddler

The officious intermeddler rule essentially provides that a mere volunteer who, without request therefor, confers a benefit upon another is not entitled to restitution. This rule exists to protect persons who have had unsolicited "benefits" thrust upon them. A person is not an intermeddler if such person has a valid reason for conferring the benefit, such as protecting an interest.

Curtis v. Becker, 130 Idaho 378 (Ct. App. 1997).

The Court finds that Lewis is not an officious intermeddler.

D. REFORMATION

Plaintiffs want their contract with Lewis reformed to include the well lot as either part of their property or the association's property. Reformation is an extraordinary remedy. Reformation can be used in cases of mutual mistake or in cases of unilateral mistake where one party commits fraud or knows of the mistake by the other party. Cline v. Hoyle & Assoc. Ins., Inc., 108 Idaho 162, 164 (1985).

There is no evidence of mutual mistake and Plaintiffs' fraud claim is unsupported by evidence. Plaintiffs do not detail the unilateral mistake but it can be assumed that they thought the well lot would be given either to them or the association.

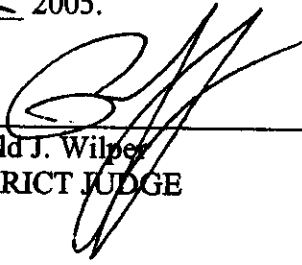
The deed expressly stated that Lewis would retain the well lot. There is no evidence beyond mere allegations that Lewis would give the well lot to the association. There is no evidence to show that Lewis knew that Plaintiffs were under any of these mistaken beliefs. Thus, the Court will not reform the contract.

IV. CONCLUSION

Based on the foregoing, the Court finds that there is no issue of material fact with respect to the Plaintiffs' fraud and contract claims. The Court declines to grant any of the relief requested by the Plaintiffs. Therefore, the Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED

Dated this 4th day of MARCH 2005.



Ronald J. Wilber
DISTRICT JUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7 day of March, 2005, I caused a true and correct copy of the foregoing MEMORANDUM DECISION & ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT to be served by the method indicated below, and addressed to the following:

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J. DAVID NAVARRO
Clerk of the District
Court
Ada County, Idaho

By INGA JOHNSON
Deputy Clerk