

1 STATE OF OHIO) IN THE COURT OF COMMON PLEAS
2 COUNTY OF TRUMBULL) DIVISION OF PROBATE

3

4 Frank J. Clemente, * Case No. 2007 CVA 0007
5 Plaintiff * Case No. 2007 CVA 0042

6 vs. *

7 Mary Clemente, et al., *

8 Defendants * November 21, 2007

9

10 BEFORE THE HONORABLE THOMAS A. SWIFT

11

12 APPEARANCES:

13 James W. Thomas, Esq.
14 Brian Kren, Esq.
15 42 E. Wilson, PO Box 330
Girard, OH 44420
On Behalf of Frank J. Clemente.

16 Anthony G. Rossi, Esq.
17 151 E. Market, PO Box 4270
On Behalf of John J. Clemente, Jr.

18 Elliot P. Legow, Esq.
19 998 Colonial Drive
Youngstown, OH 44505
On Behalf of Garrick G. Krlich.

20 Emmor F. Snyder, Esq.
21 3 N. State Street
22 Girard, OH 44420
As Guardian ad Litem.

23 COURT REPORTER: Joan M. Pringle

1 THE COURT: This is in the matter of
2 the Estate of Mary Clemente. We have the guardianship
3 matter in which we had the complaint to sell real estate
4 that was filed with the Court on January 31, 2007, and by
5 order of sale or private sale, the Court approved the sale
6 on July 31, 2007. We had a motion to set aside that sale
7 which was filed by Attorney Legow, and we also have the
8 complaint for specific performance that was filed by
9 Mr. Rossi.

10 We had a pre-trial on this case, I believe, October
11 25, and when we left the pre-trial, my recollection is
12 that counsel were going to talk among themselves, and have
13 you made any progress on these cases?

14 ATTORNEY ROSSI: No, Your Honor.

15 THE COURT: Again, correct me if I'm
16 wrong, I think the -- I think what we had talked about was
17 first, if it wasn't resolved, I'm first going forward on
18 the motion to set aside the order of sale.

19 ATTORNEY ROSSI: Yes. I'm going to
20 object, Your Honor, on that motion to set aside. I asked
21 that it be dismissed for a number of reasons.

22 Number one, it can not be heard today in any event.
23 I believe Rule 6(D) of the Ohio Rules of Civil Procedure

1 requires seven days subsequent to the service on the other
2 party. We received a fax yesterday, I believe, around 1
3 o'clock in the afternoon. That motion can not be heard
4 under the Civil Rule.

X 5 More importantly, that motion is nothing more than a
6 *WRONG MOTION FILED?* 60(B) motion, and the individual that filed it has
7 absolutely no standing with this Court to file such a
8 motion and has no standing whatsoever as it relates to the
9 sale of this property as ordered by this Court, and the
10 party filing the motion had not complied with the
11 procedural requirements set forth in Adomeit vs.
12 Baltimore. It's not timely, and our Court of Appeals has
13 indicated timeliness can be as little as 12 weeks after
14 the order is issued. This is almost four months after,
15 and also it's one day before the case is set for trial.
16 It's not timely.

17 The Court also sets forth in Adomeit vs. Baltimore
18 that you have to set forth your reasons for seeking
19 relief, and, in fact, demonstrate that the party entitled
20 to the relief under the grounds of the Civil Rule. This
21 party has absolutely no standing to ask for relief. It
22 would be like Joe Blow walking in off the street. All
23 that this party has done has made an offer to purchase the

1 subject property after the contract has been consummated,
2 so this party has absolutely no standing whatsoever, so we
3 believe that the application should be dismissed, and if
4 not dismissed, certainly it can not be heard today.

5 THE COURT: I will ask Mr. Legow, do
6 you want to respond?

7 ATTORNEY LEGOW: I can't disagree with
8 when the date was filed. It was filed yesterday. I think
9 if the Court would state that we can not proceed on that
10 motion today, I can not disagree.

11 As far as the matter of standing, I think that my
12 client, as we stated in our intervention, our motion to
13 intervene as plaintiffs, that he has made a best offer to
14 purchase this property. There are reasons that we will
15 assert.

16 THE COURT: Well, let's try to keep
17 things -- I'll give you adequate opportunity to present
18 that argument, but I think what -- I'm trying to get some
19 order, some sequence, to what's going on here, and if
20 there is no argument about the motion to set aside the
21 order of sale, if there is an agreement that that can not
22 be heard today, it won't be heard today. I think during
23 our pre-trial there was some discussion about that event,

1 that the motion would be filed, and, again, I am trying to
2 determine whether or not there has been any discussion
3 among counsel to allow that to be heard, but if there is
4 no -- if there is no agreement on the motion, then I am
5 not -- it will not be heard today. Then that will
6 simplify things somewhat, so we can go on the complaint.

7 Again, Mr. Rossi --

8 ATTORNEY ROSSI: Again, Your Honor, my
9 second motion is that the, Mr. Krlich, be dismissed from
10 this case. He has absolutely no right to intervene as a
11 party in this case, and under Rule 24, under intervention
12 of right, he does not qualify. Under permissive
13 intervention, he does not qualify. He has no standing
14 before this Court.

15 THE COURT: And, just for the record,
16 you're referring to Civil Rule 24(A) and 24(B)?

17 ATTORNEY ROSSI: That's correct, Your
18 Honor.

19 THE COURT: Mr. Legow.

20 ATTORNEY LEGOW: Mr. Krlich had an
21 interest in this property because he has made a purchase
22 offer, and he has an interest in the property just as
23 Mr. Rossi's client does who is attempting to purchase the

1 property. We have two competing offers both before the
2 Court.

3 THE COURT: Well, as I indicated
4 initially, the order of sale was July 31 2007, and when
5 was the offer? JULY 24th

6 For the record, why don't you give us the sequence,
7 Mr. Rossi, and then we will get back to that, but you're
8 making a motion now to dismiss?

9 ATTORNEY ROSSI: Yes, Your Honor, for
10 the reason that, number one, my client, the plaintiff,
11 made an oral offer to purchase the property. It was
12 accepted on July 25, 2007 by the defendant in this case.

13 Subsequently, Mr. Krlich presented a letter offering
14 \$30,000.00 for the same property dated August 6, 2007. (NO JULY 24)

15 Our contract had already been consummated. It's done.

16 Now, by virtue of the fact that he made an offer to
17 buy an interest in a property, he claims that gives him
18 the right to intervene in any case that he wishes to is
19 absolutely ludicrous. I can make an offer to buy a piece
20 of property and I can go into any case that I'd like to in
21 the Court? It makes no sense. He has no standing. He
22 may not like the result of the sales transaction but he
23 has no standing.

NO
PROOF

NO
LIE
NO
LIE

1 THE COURT: I believe that or my
2 recollection is that we appointed Attorney Snyder in this
3 matter as an independent third party to serve as guardian
4 ad litem. Mr. Snyder, do you have anything to add at this
5 point?

6 ATTORNEY SNYDER: No, I have nothing
7 to add, Your Honor. It's a matter of --

8 THE COURT: Pardon? Sorry, I can't
9 hear you.

10 ATTORNEY SNYDER: It's a matter of
11 law, and a matter for you to decide.

12 THE COURT: All right.
13 Mr. Legow, do you want to respond?

14 ATTORNEY LEGOW: Yes. Mr. Rossi is
15 apparently referring to a purchase agreement that is dated
16 July 25, 2007 which is attached to this complaint of
17 specific performance. This purchase agreement was not
18 signed by both parties to the alleged agreement. It was
19 signed by the seller, Frank Clemente, guardian of John
20 Clemente, who is hoping to purchase the property, did not
21 sign this agreement, so he's asking for specific
22 performance of a contract that this party, his client,
23 never, never entered into, so his client and my client in

Mary

*HE NEVER SIGNED IT BECAUSE HIS TEMPER WAS TRYING TO
GET A LOWER APPROVAL (HE TOLD ME THIS IN PERSON)*

1 that regard are in the same position.

2 THE COURT: Thank you. I understand
3 what you're saying.

4 ATTORNEY ROSSI: I'd like to respond.

5 THE COURT: Unless you want to add
6 something for the record --

7 ATTORNEY LEGOW: No, not at this
8 point.

9 ATTORNEY ROSSI: I'd like to respond
10 to that, Your Honor.

11 There is a valid contract. Section 1335.05 of the
12 Ohio Revised Code provides for it, and in this particular
13 case, ^{NO ORAL OFFER} an oral offer was made. It was then accepted by the
14 defendant. By virtue of the statute, a person that made
15 the oral offer can demand specific performance of the
16 person that has accepted or signed the memorandum or note
17 of the agreement, which has been done in this case. It's
18 beyond the statute of frauds, and 1335.05 specifically
19 speaks to it, and there is just absolutely no question
20 about it.

21 THE COURT: And which is why I'd like
22 to recognize Attorney Thomas representing the
23 guardianship. What's the position of the guardianship?

1 ATTORNEY THOMAS: The position of the
2 guardianship is, Your Honor, that it's a rather convoluted
3 set of facts, as you know, by looking at the file, but
4 this property was appraised at two different appraisals
5 and two different estates, and I met, along with Attorney
6 Kren from my office, with Magistrate Lightbody prior to
7 the execution of any contract with John Clemente, and we
8 explained the facts and the condition of the house, and
9 the poor marketability of the house. It was agreed after
10 she had reviewed the two appraisals that the appraisal
11 done by Ron Jacobs of the county auditor's office on
12 behalf of the attorney in Mahoning County who was handling
13 the estate of John Clemente, Sr., that we would use his
14 appraisal because we felt it was more realistic, and all
15 the family members that are entitled to (inherit) through
16 this, possibly through this guardianship, all agreed that,
17 and signed consents to the effect, that they were happy
18 with the sale going to John, young John, because he was
19 inheriting a half-interest from his father to begin with,
20 and that they would prefer that the property stay in the
21 family, and on that basis, why, I did prepare a purchase
22 agreement, and John has had some serious health problems,
23 and I don't know how much you have been apprised of this

LIE

LIES

ALL MONEY
GO'S TO
MEDICAIDE

LIE

THIS MUST GO TO TRIAL TWO ATTORNEYS, (A GUARDIAN, FORMER A.T.F. AGENT) AND
(JOHN CLEMENT FIRE CHIEF & WIFE) AND POSSIBLY A JUDGE CONSPIRED TO ROB MEDICAIDE

1 situation but he spent a matter of months in the Cleveland
2 Clinic in isolation, and there was some period of time
3 during this interval that it was uncertain whether he was
4 going to be able to go forward with this purchase or not
5 due to the health conditions that existed. Thereafter, he
6 fortunately made a good improvement but he was not able to
7 get into the office at the time that I had originally
8 hoped that he could. However, his Uncle Frank who was the
9 guardian of Mary came in and executed the contract.

LIE → 10 Thereafter, a day later, after the contract was executed
11 by the guardian, subject to, of course, Court approval, I
12 received a letter from Attorney Legow who advised me that
13 he had an anonymous client who wished to purchase this lot
14 or house, and that was just kind of the tip of the
15 iceberg. Everything just kind of imploded thereafter, and
16 that's why we're here today.

17 THE COURT: Very good. The complaint
18 is for specific performance. What's the position as far
19 as the guardian and the family is concerned?

20 ATTORNEY THOMAS: The family, I can't
21 speak for every member of the Clemente family because I
22 don't represent all of them, but I do represent Frank, and
23 he's the guardian of Mary who is the person that's

*Letter
dated 7/24*

1 entitled to, of course, receive this money through her
2 guardianship, and he's content then and would be pleased
3 to have the specific performance in favor of young John,
4 the owner.

5 THE COURT: Thank you.

6 ATTORNEY LEGOW: Your Honor, you asked
7 the guardian, the attorney for the guardian and the
8 guardian's position but, of course, the Court is the
9 superior guardian of Mary Clemente as you are with every
10 ward in Trumbull County, and I ask that you consider what
11 is in the best interest of Mary, and is a purchase price
12 of \$20,000.00 in her best interest or is a purchase price
13 of \$30,000.00 in her best interest, and I also think that
14 you need to consider the interest of the State of Ohio.
15 Mary is in this county probate court, and she is also a
16 recipient of Medicaid, and whatever funds she receives
17 from the sale of this property will go to reimburse the
18 State of Ohio for some of the costs that they have paid
19 for her nursing home costs, so I believe this Court in the
20 -- your role as superior guardian, you need to consider
21 what you believe to be in the best interest of Mary
22 Clemente, and I believe it's a purchase of \$30,000.00
23 would serve her best interest.

1 THE COURT: Okay.

2 ATTORNEY ROSSI: May I just respond
3 one minute?

4 THE COURT: Yes.

5 ATTORNEY ROSSI: Any other offer that

6 may have been made subsequent to the contract being

7 consummated is immaterial, number one. Number two, the

8 amount of that offer is immaterial. You can have any sale

9 that you would like. After a sale is made, then you get a

10 better offer, well, it's unfortunate, but it's happened,

11 and you follow the law. We have a valid binding contract,

12 and the answer of the guardian in this case specifically

13 said that there is a valid contract, so on the pleadings

14 alone, we should be entitled to judgment.

15 THE COURT: I'm going to agree with

16 that position. I think that the matter was properly

17 before the Court. The offer was considered, and I, based

18 on the information provided to the Court, I approved it by

19 way of the order of sale which is still in effect. I also

20 agree with the position that there was ample opportunity

21 prior to the consummation of the sale for this matter to

22 be -- for a better offer to have been offered, but I'm

23 going to grant the complaint for specific performance

LIE

LIE

NO CONTRACT

1 based on the information that has been provided to the
2 Court.

3 Did you prepare an entry to submit to the Court,
4 Mr. Rossi? Do you have an entry for me to review?

5 ATTORNEY ROSSI: I do not have one,
6 Your Honor. I will have one by Monday if that is
7 satisfactory.

8 THE COURT: Okay.

9 ATTORNEY ROSSI: Or if you'd like, I
10 can go back to the office and get it ready right now.

11 THE COURT: I'd like to get it on
12 record.

13 ATTORNEY ROSSI: I will have it to you
14 this afternoon.

15 THE COURT: Anything more to come
16 before the Court at this time?

17 ATTORNEY ROSSI: No, Your Honor.

18 ATTORNEY LEGOW: No.

19 THE COURT: Thank you.

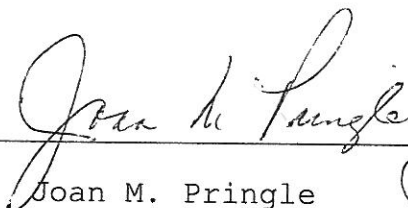
20

21 (Whereupon the matter before the Court
22 was now concluded.)

23 -----

COURT REPORTER'S CERTIFICATE PAGE

I, Joan M. Pringle, do hereby certify that the above and foregoing is a true and accurate record of the proceedings held in the above-captioned case heard before the Honorable Thomas A. Swift as shown by stenotype notes taken by me at the time said hearing was held.


Joan M. Pringle (copy)
Official Court Reporter
Court of Common Pleas
Division of Probate