2011 IL App (4th) 110177-U

Filed 10/28/11

NO. 4-11-0177

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of LYNN M. CRAMSEY, Deceased, BETSY J. RODERICK and RONALD E. CRAMSEY, as Administrators of the Estate of LYNN M. CRAMSEY, Petitioners-Appellees, v. GARY P. CALLOWAY, BROWN COUNTY STATE BANK, and UNKNOWN OWNERS and NONRECORD CLAIMANTS, Respondents-Appellants.	)	Appeal from Circuit Court of Adams County No. 10CH75 Honorable Thomas J. Ortbal, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly granted summary judgment to petitioners who were seeking to enforce an option to purchase real estate. Although the purported consideration (the conveyance of a farm) occurred one day before the option agreement was executed, the consideration is sufficient because the evidence shows the promisor in the option agreement requested the farm's conveyance.

¶ 2 Respondent, Gary P. Calloway, appeals the February 2011 summary-judgment order mandating he sell certain property, pursuant to the terms of an option to purchase real estate property (option agreement), to petitioners, Betsy J. Roderick and Ronald E. Cramsey, as administrators of the estate of Lynn M. Cramsey, deceased. Calloway argues the option agreement is unenforceable because Betsy and Lynn gave no consideration in exchange for the promise. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 1999, Lynn and Betsy (under the name Betsy J. Cramsey), husband and wife, entered into an agreement to purchase real estate, a farm, with Michael Pavlick (purchase agreement). Under the terms of the purchase agreement, Betsy and Lynn agreed to sell a farm to Pavlick, and Pavlick granted Betsy and Lynn the option to purchase the farm back according to a formula. On September 21, 1999, Betsy and Lynn conveyed the farm to Golden Triangle Whitetails, Inc. (Golden Triangle Whitetails), a corporation of which Pavlick was the president. According to Betsy's affidavit, Pavlick requested the farm be conveyed to Golden Triangle Whitetails.

¶ 5 On September 22, 1999, Golden Triangle Whitetails executed an option to purchase real estate (option agreement), pursuant to which Golden Triangle Whitetails granted Betsy and Lynn "an option to purchase" the farm back with the same terms set forth in paragraph 8 of the July 1999 agreement to purchase real estate. The option agreement stated the consideration for it "is the simultaneous sale of the real estate from Optionee to Optionor, and other valuable consideration." The option agreement also provided it was binding upon successors and assignees of the parties.

¶ 6 In October 2008, Golden Triangle Whitetails conveyed the farm to Calloway. The corporate warranty deed to Calloway states the farm is subject to the September 22, 1999, option agreement.

¶ 7 The record contains an affidavit signed by Betsy. According to the affidavit, by letter dated July 29, 2009, petitioners notified Calloway of their intent to exercise the option. By letter dated September 17, 2009, petitioners notified both Calloway and Golden Triangle

Whitetails they were prepared to close the transaction in 30 days of the notice and pay the option price in full.

¶ 8 In June 2010, petitioners filed their complaint, seeking an order directing Calloway to comply with the terms of the option. The parties filed cross-motions for summary judgment. In his summary-judgment motion, Calloway indicated he refused to sell the farm to petitioners because, according to Calloway, the option to purchase was unsupported by consideration and was merely an offer subject to withdrawal at any time before the optionees unequivocally accepted the offer. In his motion for summary judgment, Calloway maintained he withdrew the offer on August 5, 2010.

¶ 9 In February 2011, the trial court granted summary judgment in petitioners' favor. The court concluded the September 21, 1999, sale of the farm to Golden Triangle Whitetails was the consideration supporting the September 22, 1999, option to purchase. The court found immaterial the fact one day separated the two events.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. Past-Consideration Doctrine

¶ 13 Calloway argues the September 21, 1999, sale of the farm cannot constitute the consideration for the September 22, 1999, option to purchase. Calloway maintains "once consideration for a promise has been conferred prior to the promise on which the alleged agreement is based, there is no consideration and[,] therefore[,] no contract."

¶ 14 Petitioners, contending Calloway's cases are distinguishable, maintain consideration supports the option because the record establishes the sale of the farm and the option were

part of the same agreed-upon deal, as a mutual exchange of promises. In reliance, petitioners rely on section 210 of *Corbin on Contracts*, which they assert states the following: "A promise is never held to be made enforceable by reason of past events unless those past events have such a relation to the promise as to constitute its inducing cause." 1A A. Corbin, Corbin on Contracts §210, at 275 (1943)

¶ 15 In his reply brief, Calloway counters petitioners' mutual-exchange-of-promises argument by emphasizing Pavlick and Golden Triangle Whitetails must be viewed as two separate entities. Calloway contends the July 1999 purchase agreement was between Pavlick, individually, as there was no mention of Golden Triangle Whitetails in that agreement, and the September 21, 1999, deed and the September 22, 1999, option involved Golden Triangle Whitetails. Calloway contends the face of the option agreement does not mention the July 1999 purchase agreement. Calloway further maintains "Illinois law does not permit consideration of evidence extrinsic to the clear and unambiguous language of the agreements *** to interpret the parties' intent or impute the acts of an individual to a corporation." Calloway thus seems to conclude because extrinsic evidence cannot be considered, the face of the option, the deed, and the purchase agreement do not indicate consideration supports the option.

¶ 16 Consideration is a prerequisite for an enforceable contract. See *Equistar Chemicals, LP v. Hartford Steam Boiler Inspection & Insurance Co. of Connecticut*, 379 Ill. App. 3d 771, 778, 883 N.E.2d 740, 746 (2008). Consideration is defined as "the bargained-for exchange of promises or performances, and may consist of a promise, an act or a forbearance." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487, 680 N.E.2d 1347, 1350 (1997).

¶ 17 As Calloway argues, generally, there is no consideration and thus no valid

contract "if the alleged consideration for the promise has been conferred prior to the promise upon which alleged agreement is based." *Worner Agency, Inc. v. Doyle*, 133 Ill. App. 3d 850, 856-57, 479 N.E.2d 468, 473 (1985). There are exceptions to this rule, including where "the consideration was rendered at the request of the promisor." *Doyle*, 133 Ill. App. 3d at 856-57, 479 N.E.2d at 473.

¶ 18 While Calloway maintains our review of the option agreement may not extend to extrinsic evidence, the case law shows, while parol evidence is inadmissible to *change* the terms of a written agreement, it is admissible when a party alleges a lack of consideration. See *Land of Lincoln Savings & Loan v. Michigan Ave. National Bank of Chicago*, 103 Ill. App. 3d 1095, 1101, 432 N.E.2d 378, 383 (1982) ("Parole evidence of prior contemporaneous agreements is admissible *** in certain circumstances, those being where a party alleges that there was *** a lack of consideration."); see generally *Kendall v. Kendall*, 71 Ill. 2d 374, 377, 375 N.E.2d 1280, 1282 (1978) ("[T]he long-established rule is that the real or actual consideration for a deed of conveyance may be shown by parol or extrinsic evidence."). The question of whether consideration supports an agreement is a question of law. *Johnson v. Johnson*, 244 Ill. App. 3d 518, 528, 614 N.E.2d 348, 355 (1993). We turn to the record to determine *de novo* whether consideration supports the option agreement. See *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292, 757 N.E.2d 481, 491 (2001) (noting summary-judgment orders are reviewed *de novo*).

¶ 19 In this case, the facts are not in dispute and show the alleged consideration (the September 21, 1999, conveyance of the farm) occurred before the promise (the September 22, 1999, filing of the option agreement). Despite the one-day passage of time between the two

events, the option agreement is valid, however, because an exception noted in *Doyle* applies: "the consideration was rendered at the request of the promisor." *Doyle*, 133 Ill. App. 3d at 857, 479 N.E.2d at 473.

¶ 20 The record reveals the consideration (sale of the farm) occurred at the promisor's (Golden Triangle Whitetails's) request or invitation as part of the agreement with Betsy and Lynn. According to the option agreement, Pavlick was the president of Golden Triangle Whitetails. According to Betsy's affidavit, Pavlick requested petitioners sell him the farm on the condition he would give them the option to repurchase the land. Supporting this fact is the existence of the July 1999 purchase agreement signed by Lynn, Betsy, and Pavlick, which gives rise to the reasonable inference Lynn and Betsy put their farm on the market and Pavlick offered to purchase it. In the affidavit, Betsy further averred Pavlick requested the property be conveyed to Golden Triangle Whitetails. The record shows Betsy and Lynn conveyed the property to Golden Triangle Whitetails and, consistent with the July 1999 purchase agreement signed by Pavlick, Golden Triangle Whitetails signed the option agreement within one day of the conveyance. Golden Triangle Whitetails invited the conveyance of the farm. Thus, the fact the conveyance occurred one day before the option agreement was given does not negate the validity of the option agreement. Betsy and Lynn did incur a detriment–they released ownership of their farm. Sufficient consideration supports the option.

¶ 21 None of Calloway's cases require a different result. For example, in *Johnson*, the court found a lack of consideration for a promissory note signed up to three years after the first transfer of funds from the promisee to the promisor. *Johnson*, 244 Ill. App. 3d at 520, 528, 614 N.E.2d at 350, 355. In *Gladstone v. McHenry Medical Group*, 197 Ill. App. 3d 194, 196-97,

202, 553 N.E.2d 1174, 1176, 1180 (1990), the court rejected the argument made by the petitioner physician that his pre-1960 efforts to create a partnership was the consideration necessary to support a promise to repay him made by physicians added to the partnership well after that date. In *Doyle*, the court found an exception to the past-consideration rule applied and held the promise to pay a finder's fee was supported by adequate consideration. *Doyle*, 133 Ill. App. 3d at 859, 479 N.E.2d at 474. In addition, we note in rendering our opinion, we have treated Pavlick and Golden Triangle Whitetails as separate legal entities.

¶ 22 Having found the sale of the farm sufficient consideration for the option agreement, we need not consider petitioners' contention consideration was satisfied by a mutual exchange of promises.

¶ 23 B. Preexisting Duty Rule

¶ 24 Calloway argues, alternatively, the sale of the farm cannot be consideration for the option under the preexisting-duty rule. Calloway maintains "[t]he transfer to Golden Triangle [Whitetails], at Pavlick's request, constituted a benefit provided by Pavlick, individually, to Golden Triangle rather than a benefit conferred by [Lynn and Betsy] to Golden Triangle [Whitetails]." Calloway reasons because Lynn and Betsy owed a preexisting duty to Pavlick, "any consideration flowing from the September 21, 1999 conveyance flowed directly from Pavlick, individually, to Golden Triangle [Whitetails] rather than from [Lynn and Betsy] to Golden Triangle [Whitetails]."

¶ 25 Calloway's tortured argument fails. Under the preexisting duty rule, when "a party does what it is already legally obligated to do, there is no consideration because there has been no detriment." *DiLorenzo v. Valve & Primer Corp.*, 347 Ill. App. 3d 194, 201, 807 N.E.2d

673, 679 (2004) (quoting *Johnson v. Maki & Associates, Inc.*, 289 Ill. App. 3d 1023, 1028, 682 N.E.2d 1196, 1199 (1997)). Lynn and Betsy conveyed the property to *Golden Triangle Whitetails*. The record fails to show Lynn and Betsy were "already legally obligated" to do so under the July 1999 purchase agreement (with Pavlick individually) or by any other prior agreement.

¶ 26 C. "Materiality" of the One-Day Passage of Time

¶ 27 Calloway next argues the trial court erroneously introduced a materiality requirement to its past-consideration analysis. Calloway emphasizes the trial court's conclusion the passage of one day between the September 21, 1999, conveyance of the farm and the September 22, 1999, execution of the option agreement was "not material." Calloway concludes "materiality" of a specific period of time is not a factor in the application of the past-consideration doctrine.

¶ 28 We need not address whether the trial court improperly introduced a new factor into the past-consideration analysis. Even assuming the trial court erred on this ground, resolution of this argument would have no effect on the outcome of this case. We, reviewing the issue *de novo*, have concluded the past-consideration doctrine does not apply and the option agreement is valid, without considering the materiality of the one-day passage of time. We may affirm on any ground appearing in the record. See *Holtkamp Trucking Co. v. Fletcher*, 402 Ill. App. 3d 1109, 1115, 932 N.E.2d 34, 40 (2010) ("[W]e can affirm a judgment for any reason the record supports, regardless of whether the trial court relied on that reason.").

¶ 29 D. Betsy's Affidavit

¶ 30 Calloway next argues the trial court erroneously relied on the uncontradicted

affidavit of Betsy. Although Calloway makes this argument, it is not clear on why he believes the court's consideration of Betsy's affidavit was improper. Calloway cites case law stating legal conclusions and self-serving opinions in affidavits are not taken as true on summary judgment, yet does not identify what portion of Betsy's affidavit falls into these categories. Calloway then maintains the affidavit does not contain facts entitling petitioners to relief or statements to contradict the dates of the option agreement and the conveyance of the farm. This argument seems best suited for the argument regarding whether consideration exists, not on whether admission of the affidavit was improper.

¶ 31 In response to Calloway's argument, petitioners emphasize Calloway did not challenge the sufficiency of the affidavit before the trial court and has forfeited consideration of its sufficiency now. We agree. See *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 628, 572 N.E.2d 1154, 1159 (1991) ("The sufficiency of an affidavit in support of or in opposition to a motion for summary judgment cannot be challenged for the first time on appeal.").

¶ 32 Nonetheless, we note the affidavit alleges facts, not conclusions, that are relevant to our analysis of whether an exception to the past-consideration doctrine applies and thus whether consideration exists. Of particular relevance is the allegation Pavlick asked the conveyance be made to Golden Triangle Whitetails.

¶ 33 III. CONCLUSION

¶ 34 For the stated reasons, we affirm the trial court's judgment.

¶ 35 Affirmed.