THOMAS GEISE, Plaintiff vs LESTER BAKER, Executor of the Estate of Betty Jane Baker, Deceased, Defendant	IN THE COURT OF COMMON PLEAS FOR THE 26TH JUDICIAL DISTRICT, MONTOUR COUNTY BRANCH, PENNSYLVANIA CIVIL ACTION – LAW SPECIFIC PERFORMANCE CASE NO: 300 OF 2014

APPEARANCES:

MARY C. KILGUS, ESQUIRE, Attorney for the Plaintiff
P. JEFFREY HILL, ESQUIRE, Attorney for the Defendant

JAMES, J. September 11, 2015

OPINION

History of Case

Plaintiff filed a complaint on July 9, 2014, seeking specific performance of an agreement of sale dated May 17, 2006, between plaintiff and decedent Betty Jane Baker. The real estate consists of a residence, barn, and outbuildings on approximately 95 acres. Defendant filed an answer with new matter claiming the defenses of fraud, undue influence and confidential relationship, failure of consideration, and unconscionability. Defendant also averred that there was "failure to state a claim upon which relief can be granted."

A non-jury trial was held on August 26, 2015. Plaintiff presented documentary evidence and the following witnesses: Himself, Daniel Deihl, Jeff Foust, and Timothy Bowers, Esq. Likewise, defendant presented documentary evidence and the following witnesses: Himself as executor and Daniel Hartman (a real estate appraiser).

Findings of Fact

After non-jury trial held on August 26, 2015, the court makes the following findings:

1. The real estate (hereinafter "said property") consists of approximately 95 acres located in Liberty Township, Montour County, Pennsylvania. Said property is described with more particularity in Montour County record book 287 page 1435. The address of said property is 50 Keefer Mill Rd., Danville, Montour County, Pennsylvania. The property was in Decedent's family's ownership since about 1850.

2. Plaintiff is Thomas Geise, an adult individual residing at 115 Stecker Hill Rd., Danville, Montour County, Pennsylvania.

3. Defendant is the executor of the estate of Betty Jane Becker, deceased (hereinafter "Decedent") and is the son of Decedent.

4. Decedent Betty Jane Baker died on March 3, 2014.

5. Decedent was mostly a homemaker during her adult years. She worked briefly as a cashier and stock person. She helped her husband farm said property. She graduated from 12th grade. Her husband had taken care of all the family business prior to his death in 1992. After his death, defendant and his brother taught Decedent to drive. Defendant stayed with her for two months after her husband's death to help her get oriented to life without her husband.

6. By Agreement of Sale dated May 17, 2006, decedent and plaintiff entered into a written agreement whereby said property would be conveyed to plaintiff upon decedent's death. The consideration for the transfer was $1.00 payable immediately and $100,000.00 payable at the time of the conveyance. The agreement was recorded in Montour County Record Book 287, page 1439.

7. The purchase price of $100,000.00, less repairs, was to be paid, per the agreement of sale, 90 days following demand by Decedent or within 90 days after her death. She received nothing during her lifetime unless she demanded it. There was no indication that she intended to move from the property or demand the funds before her death.

8. The aforesaid agreement was prepared by Attorney Timothy Bowers who had represented both plaintiff and decedent each in minor legal matters in the past. Attorney Bowers characterized his legal work on this matter as a scrivener. He wrote the agreement based on what the parties told him they wanted.

9. Plaintiff and decedent entered into an Addendum to Agreement of Sale dated August 29, 2008, whereby decedent agreed with plaintiff that he would provide certain upkeep, maintenance, and repair of said property. The cost of the services he provided were to be deducted from the purchase price of the property under the agreement dated May 17, 2006.

10. The August 29, 2008, agreement was prepared by Attorney Bowers, also as the scrivener.

11. In neither the May 17, 2006, agreement, nor the August 29, 2008, addendum, was Decedent counseled legally.

12. Plaintiff was Decedent's neighbor for about 45 years. He has been a close neighborly friend for about 15 years. He lived about a thousand feet away and could see Decedent's house from his house. After he retired in 2004, Plaintiff had frequent contact with Decedent, visiting every two weeks and talking on the phone two to three times each week. When she asked, he took her to the doctor's office, fixed her mower, and helped with other chores with which she needed assistance. As he attested to in the complaint, plaintiff "handled all of the business affairs,

lawn care, shopping, and other matters for many years before her death." Plaintiff and Decedent were close friends in 2006. Decedent trusted plaintiff as a neighbor.

13. Between August 29, 2008, and March 3, 2014, plaintiff performed services (upkeep, maintenance, and repairs) to said property pursuant to the Addendum. The fair market value of the services and bills that plaintiff paid is $11,975.48 (See plaintiff's exhibits D1-5).

14. On May 17, 2006, plaintiff was in a confidential relationship to decedent.

15. The fair market value of said property on May 17, 2006, was $483,500.00.

16. The fair market value of said property on March 3, 2014 was %525,000.00.

17. On May 19, 2006, two days after the sales agreement was dated and signed, Decedent entered into another agreement with another neighbor (Mr. Deihl) whereby he would have the option of paying her $4000.00 for the contents of her house (which were specifically listed). The option was to be exercised within 90 days of her death. The consideration for the option was one dollar. Attorney Bowers prepared the option agreement. From 2006 until Decedent's death, Mr. Deihl did a considerable amount of work helping Decedent. Mr. Deihl had known Decedent well for years prior to 2006. The $4000.00 price was somehow established by Decedent. There was no appraisal.

18. The contents of the house included a considerable number of antiques which had been in Decedent's family's possession for well over a hundred years. The $4000.00 was considerably lower than the actual value of the contents.

19. Mr. Deihl was the witness to plaintiff's August 29, 2008, addendum and to the various receipts (Plaintiff's exhibits D1-D5).

20. At some point prior to 2006, Decedent had sold 15 acres to another neighbor. The price may have been considerably less than the fair market value.

21. Mr. Faust farmed the said property for twenty years up to 2015. Plaintiff and Mr. Deihl seemed to direct Decedent away from Mr. Faust prior to the 2006 agreements. Decedent did not want her son told about the transfer. The son did not know about the transfer until 2012. By 2012, Decedent was not thinking clearly according to neighbors. Mr. Faust knew Decedent quite well through farming the said property and as a neighbor. He was concerned that Decedent was being taken advantage of in her business dealings.

22. From 1992 until the time of her death, Decedent lived at said property by herself. She was estranged from a daughter. One son died in 2009. Another son (the executor) lived several hours away and was not at the house on a regular basis. Defendant son became the executor of Decedent's will in 2011. Before that the named executor was Dan Deihl.

23. The consideration for said property under the May 17, 2006, agreement was inadequate, unfair, and unconscionable.

Discussion

The issue before the court is whether the action for specific performance should be granted or is it defeated by the defenses of confidential relationship and/or unconscionability. "A number of guidelines are well-established with regard to requests that a court order the specific performance of a contractual obligation. A decree of specific performance involves the exercise of the equity power and discretion of the court. … The discretion of the Chancellor must be exercised in a specific performance case in accordance with accepted judicial principles. … A decree of

specific performance of a contract is not a right, but is a matter of grace, and will not be granted unless the party seeking such relief is clearly entitled to it, and the Chancellor believes justice requires such a decree. … In decreeing or refusing to require specific performance of a contract to convey real property, a great deal depends upon the wise exercise of judicial discretion, in light of all circumstances appearing in the transaction. …. The court of equity should not order specific performance where it appears that hardship or injustice will result to either of the parties. … Moreover, specific performance may only be granted where no adequate remedy at law exists….” Wagner v. Estate of Rummel, 391 Pa. Super. 555, 561, 571 A.2d 1055, 1058 (Pa. Super. 1990)(citations omitted).

Confidential Relationship Defense

The first defense asserted is whether a confidential relationship existed between plaintiff and Decedent and whether the agreement is fair and beyond suspicion. “Confidential relationship … is distinguishable from undue influence. While the two terms are sometimes used interchangeably, the latter is used mostly in will contests, and the former is employed most often in contract disputes. Furthermore, one can be in a confidential relationship without

exerting undue influence, just as undue influence can be exerted by one not in a confidential relationship." Biddle v. Johnsonbaugh, 444 Pa. Super. 450, 456, 664 A.2d 159, 162 (Pa. Super. 1995)(citation omitted).

> The general test for determining the existence of such a relationship is whether it is clear that the parties did not deal on equal terms. … 'Confidential relation is not confined to any specific association of the parties; it is one wherein a party is bound to act for the benefit of another, and can take no advantage to himself. It appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed; in both an unfair advantage is possible. Leedom v. Palmer, supra, 274 Pa. at 25, 117 A. at 411. A confidential relationship was again described in Brooks v. Conston, 356 Pa. 69, 76-77, 51 A.2d 684, 688 (1947):
>
> Confidential relation is any relation existing between parties to a transaction wherein one of the parties is bound to act with the utmost good faith for the benefit of the other party and can take no advantage to himself from his acts relating to the interest of the other party: … ". . . a confidential relationship is not limited to any particular association of parties but exists wherever one occupies toward another such a position of advisor or counsellor as reasonably to inspire confidence that he will act in good faith for the other's interest . . . ."
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> Recognizing the nature of fraudulent schemes of this type and the elaborate efforts often employed to conceal it, we have stated:
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> It is no hardship upon an honest man to require a reasonable explanation of every suspicious circumstance, and rogues are not entitled to a veto upon the means employed for their detection.

Frowen v. Blank, 493 Pa. 137, 145-146, 425 A.2d 412, 416-417 (Pa. 1981)(citations omitted).

> A contract may be set aside or rescinded if it can be proven that, at the time of formation of the agreement, the parties did not bargain at arm's length. Frowen v. Blank, 493 Pa. 137, , 425 A.2d 412, 416 (1981)…. One way to show that the parties' did not bargain at arms' length is to demonstrate that the parties were engaged in a confidential relationship at the execution of the agreement. Frowen, 493 Pa. at 144, 425 A.2d at 416….
>
> A confidential relationship is any relationship existing between parties to a transaction wherein one of the parties is bound to act with the utmost good faith for the benefit of the other party and can take no advantage to himself from his acts relating to the interest of the other party. In Re Estate of Mihm, 345 Pa. Super. 1, 7, 497 A.2d 612, 615 (1985). "[A] confidential relationship is not limited to any particular association of parties but exists wherever one occupies toward another such a position of advisor or counsellor as reasonably to inspire confidence that he will act in good faith for the other's interest." Brooks v. Conston, 356 Pa. 69, , 51 A.2d 684, 688 (1945). On one side of a transaction, there is an overpowering influence and, on the other, a weakness, dependence or trust. Frowen, 493 Pa. at 145, 425 A.2d at 416.
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> A confidential relationship is deemed to exist as a matter of law between a trustee and cestui que trust, guardian and ward, attorney and client, and principal and agent. Mihm, 345 Pa. Super. at 8. 497 A.2d at 615. In other cases, however, as between parent and child or brother and sister, the existence of a confidential relationship is a question of fact to be established by the evidence. Id. (citing Null's Estate, 302 Pa. 64, 153 A. 137 (1930)). The mere existence of kinship, however, does not give rise to a confidential relationship, but is a factor to be considered. Id.
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> Once a confidential relationship is found to exist, the law presumes the transaction voidable. At that

> point, the party seeking to sustain the validity of the transaction must affirmatively demonstrate that the contract or transaction was "fair, conscientious and beyond the reach of suspicion." Leedom v. Palmer, 274 Pa. 22, 25, 117 A. 410, 411 (1922)…. More precisely, the proponent of the contract must prove by clear and convincing evidence "that the contract was free, voluntary and an independent act of the other party, entered into with an understanding and knowledge of its nature, terms and consequences . . . ." Kees v. Green, 365 Pa. 368, 375, 75 A.2d 602, 605 (1950).

Biddle v. Johnsonbaugh, supra, 444 Pa. Super. at 455-456, 664 A.2d at 161-162(citations omitted).

Defendant has proven that the relationship between plaintiff and Decedent was a confidential relationship. Once again, as set forth in Finding of Fact #12, "Plaintiff was Decedent's neighbor for about 45 years. He has been a close neighborly friend for about 15 years. He lived about a thousand feet away and could see Decedent's house from his house. After he retired in 2004, Plaintiff had frequent contact with Decedent, visiting every two weeks and talking on the phone two to three times each week. When she asked, he took her to the doctor's office, fixed her mower, and helped with other chores with which she needed assistance. As he attested to in the complaint, plaintiff 'handled all of the business affairs, lawn care, shopping, and other matters for many years before her death.' Plaintiff and Decedent were close friends in 2006. Decedent trusted plaintiff as a

neighbor." Decedent had a high school education and had been primarily a homemaker during her adult life with a brief stint working outside of the home as a cashier. Her late husband had handled all of the family business matters. When the agreement was signed, she was living alone. Her children lived out of the area. She relied on her neighbors for help, mainly plaintiff.[1] Plaintiff was an advisor and counselor to Decedent. His relationship with her would reasonably inspire confidence that he will act in good faith for Decedent's interests.

Under these facts, plaintiff was in a confidential relationship with Decedent. Plaintiff has not proven that the agreement was fair, conscientious and beyond the reach of suspicion. In fact, the agreement was not fair. The agreement is void.

Unconscionability Defense

Unconscionability is a defense to a specific performance action. The courts have addressed this defense at length.

> Unconscionability is a defensive contractual remedy which serves to relieve a party from an unfair contract or unfair provision of a contract. This

[1] Mr. Deihl also helped decedent and had also entered into an apparently lopsided transaction with decedent. However, Mr. Deihl did a great deal of work for decedent. It should be also noted that Plaintiff invested money into the improvement of said property after the 2008 agreement. It would seem that the estate would be unjustly enriched if he were not reimbursed.

> basic explanation of the doctrine was recognized by our Court in Germantown Manufacturing Co. v. Rawlinson, 341 Pa.Super. 42, 491 A.2d 138 (1985), a decision which included an excellent and well-reasoned discussion of unconscionability. One of the most oft-cited statements of the meaning of the doctrine was provided by the United States Court of Appeals for the District of Columbia Circuit in Williams v. Walker-Thomas Furniture Company, 350 F.2d 445, 449 (D.C.Cir.1965): "Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." … In Germantown Manufacturing Co. v. Rawlinson, supra, our Court also noted with approval the pronouncement of the Supreme Court of New Jersey, in Kugler v. Romain, 58 N.J. 522, 544, 279 A.2d 640, 642 (1971), regarding the doctrine: "The standard of conduct contemplated by the unconscionability clause is good faith, honesty in fact, and observance of fair dealing."

Wagner v. Estate of Rummel, 391 Pa. Super. 555, 561-562, 571 A.2d 1055, 1058-1059 (Pa. Super. 1990)

> The doctrine of unconscionability is both a statutory and a common law defense to the enforcement of an allegedly unfair contract or provision in a contract. … Although the party challenging the contract or provision bears the burden of affirmatively pleading and proving the unconscionability…, the actual determination of unconscionability is a question of law for the court. … Once a contract is deemed to be one of adhesion, its terms must be analyzed to determine whether the contract as a whole, or specific provisions of it, are unconscionable. … It is important to note, however, that our supreme court, and the federal courts of Pennsylvania, have "refused to hold contracts unconscionable simply because of a disparity in bargaining power." …

Denlinger, Inc. v. Dendler, 415 Pa. Super. 164, 175-176, 608 A.2d 1061, 1067 (Pa. Super. 1992)(citations omitted).

"The test of unconscionability, as mandated by our supreme court, is twofold. First, for a contract or a term to be unconscionable, the party signing the contract must have lacked a meaningful choice in accepting the challenged provision. Second, the challenged provision must 'unreasonably favor' the party asserting it. …." Denlinger, Inc. v. Dendler, supra, 415 Pa. Super. at 177, 608 A.2d at 1068 (citations omitted).

Defendant has proven both prongs of the unconsionability defense. First, it is extraordinarily clear that the second prong of the defense is present. The entre contract, most specifically the minimal consideration for this valuable real estate, unreasonably favors plaintiff. In 2006, the value of the property was $483,500. Moreover, Decedent did not receive any of that consideration (except for $1.00). Although she could have demanded the $100,000 consideration before her death, it is quite clear that she had no intention of moving from said property. Thus, the $100,000 consideration would paid to her estate. She herself would get nothing.

As to the first prong of the defense, under these facts and circumstances, it is very difficult to argue that Decedent had a meaningful choice. Yes, she could have said no. However, she was living alone. She worked mainly as a homemaker during her lifetime. She had little experience with

business matters. She relied on her neighbors to help her. Plaintiff had become the primary neighbor upon which she relied (in addition to Mr. Deihl who had a contract with similar contractual provisions for the purchase of the personal property). As set forth in Finding of Fact #12, "Plaintiff was Decedent's neighbor for about 45 years. He has been a close neighborly friend for about 15 years. He lived about a thousand feet away and could see Decedent's house from his house. After he retired in 2004, Plaintiff had frequent contact with Decedent, visiting every two weeks and talking on the phone two to three times each week. When she asked, he took her to the doctor's office, fixed her mower, and helped with other chores with which she needed assistance. As he attested to in the complaint, plaintiff 'handled all of the business affairs, lawn care, shopping, and other matters for many years before her death.' Plaintiff and Decedent were close friends in 2006. Decedent trusted plaintiff as a neighbor." Under these facts, Decedent needed help. She was elderly. She had no meaningful choice other than to cooperate with her helpful neighbors and sign the agreement, for fear the help would end.[2]

The agreement was unconscionable. It is void.

[2] The court does not find maliciousness on plaintiff's part. However, the confidential relationship, Decedent's perceived lack of meaningful choice, and the grossly inadequate consideration is clear.

THOMAS GEISE, Plaintiff vs LESTER BAKER, Executor of the Estate of Betty Jane Baker, Deceased, Defendant	IN THE COURT OF COMMON PLEAS FOR THE 26TH JUDICIAL DISTRICT, MONTOUR COUNTY BRANCH, PENNSYLVANIA CIVIL ACTION – LAW SPECIFIC PERFORMANCE CASE NO: 300 OF 2014

DECREE

AND NOW, this 11th day of September 2015, it is ORDERED AND DECREED that plaintiff's claim for specific performance is DENIED and that the agreement of sale dated May 17, 2006, is VOID.

BY THE COURT:

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HONORABLE THOMAS A. JAMES, JR., J.