

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 16, 2006 Session

**ALDERWOODS [TENNESSEE], INC., ET AL. v. THE ALEXANDER
GRANTOR RETAINED ANNUITY TRUSTS, ET AL.**

**Appeal from the Chancery Court for Sumner County
No. 2005C-114 Thomas E. Gray, Judge**

No. M2005-02025-COA-R3-CV - Filed on July 31, 2006

Plaintiff filed this action seeking to enforce its option under a long-term real estate lease to purchase the real estate at a price to be determined pursuant to a procedure set forth in the lease. Defendant admitted Plaintiff had the right to purchase the property but not at the price Plaintiff offered. The trial court granted judgment on the pleadings in favor of Plaintiff pursuant to Tenn. R. Civ. P. 12, from which order the defendant appeals. We have concluded that Defendant's Answer constituted a denial that Plaintiff fully complied with the option provisions in the lease agreement. Therefore, Plaintiff's Motion for Judgment on the Pleadings should not have been granted.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Reversed and Remanded**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and DAVID H. WELLES, SP. J., joined.

Joel M. Leeman, Mark H. Westlake and Mary Beth Hagan, Nashville, Tennessee, for the appellants, The Alexander Grantor Retained Annuity Trusts, et al.

J. Graham Matherne and Andrew J. Pulliam, Nashville, Tennessee, for the appellee, Alderwoods [Tennessee], Inc., d/b/a Alexander Funeral Home and as the Successor in Interest to Alexander Funeral Homes, Inc.

OPINION

Alderwoods [Tennessee], Inc. (Plaintiff) owns and operates a funeral home in Gallatin, Tennessee, which is located on leased property. The lease was entered into between Plaintiff and Paul and Rubye Alexander on January 30, 1991. Paul and Rubye Alexander subsequently assigned all of their interests in the lease to Paula Troutt and Charles Alexander, who in turn assigned their interests in the lease to The Alexander Grantor Retained Annuity Trusts.

The original term of the lease agreement was from January 30, 1991, to January 29, 2006. The lease agreement afforded Plaintiff the option to purchase the property, which Plaintiff could exercise at any time between the end of the fifth year of the lease and the end of the fifteenth year of the original lease term. The option also defined the method by which the parties would determine the purchase price of the property. Pursuant to Section 25 of the lease agreement, the purchase price would be the “fair market value, as determined by obtaining two (2) independent MAI appraisals of the real estate and improvements described in attached Exhibits A and B and calculating the average of the values obtained from such appraisals.”

Plaintiff notified Defendant on May 25, 2004 that it was exercising its option to purchase the property. Being in agreement that Plaintiff had the right to purchase the property, the parties agreed to determine the purchase price by each engaging an appraiser who was a member of the Appraisal Institute (MAI), with the purchase price to be the average of the two appraisals. Plaintiff engaged an appraiser from Atlanta, Georgia, while Defendant retained an appraiser from Nashville, Tennessee. The two appraisals were significantly different. The appraised value determined by Plaintiff’s appraiser was \$1,470,000. The value as determined by Defendant’s appraiser was \$2,375,000.

After examining the two appraisals, Defendant advised Plaintiff it was willing to sell the property for \$2,375,000, the value set by its appraiser, but refused to sell the property for the amount of Plaintiff’s appraisal. When Defendant refused to sell for the lower price, Plaintiff brought this action for specific performance against The Alexander Grantor Retained Annuity Trusts, Paula Troutt and Charles Alexander (Defendants).¹ Defendants filed an Answer and a Counterclaim admitting that the parties agreed to take the average of two independent MAI appraisals, but contending, *inter alia*, that Plaintiff’s appraisal did not conform to industry standards.

Plaintiff filed a Tenn. R. Civ. P. 12.03 Motion for Judgment on the Pleadings in which it asserted that all facts material to its claim for specific performance were admitted or established by the pleadings, and it was entitled to specific performance. The trial court agreed and granted Plaintiff’s motion, from which order Defendant appeals.

STANDARD OF REVIEW

When reviewing an order granting a Tenn. R. Civ. P. 12.03 motion for judgment on the pleadings, “we use the same standard of review we use to review orders granting a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim.” *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999)). Accordingly, we review the trial court’s decision de novo without a presumption of correctness. *Young*, 130 S.W.3d at 63 (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn.1997)).

¹In their Answer, Paula Troutt and Charles Alexander contend they now own the property, not the trusts, because the trusts no longer exist. Whether that is or is not disputed is not relevant to the issue on appeal.

ANALYSIS

To decide the issue presented, we must accept as true “all well-pleaded facts and all reasonable inferences drawn therefrom” alleged by Defendant. *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004) (quoting *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991)). Moreover, we are required to treat as false all of Plaintiff’s allegations that are denied by Defendant. *See Trigg v. Middle Tenn. Elec. Membership Corp.*, 533 S.W.2d 730, 732-33 (Tenn. Ct. App. 1975); *see also Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696-97 (Tenn. 2002). Conclusions of law are not admitted, and judgment on the pleadings should not be granted unless the moving party is clearly entitled to judgment. *Trigg*, 533 S.W.2d at 733.

Plaintiff alleged that it fully complied with the option provision and was entitled to purchase the property for \$1,922,500, the average of the two appraisals. Thus, the issue for the Court is whether Defendant pled sufficient facts in its Answer to constitute a denial, in which event judgment on the pleadings would not be appropriate.

In pertinent part, Plaintiff alleged its “appraisal complied with the requirements of the subject Agreement.” In paragraph 25 of Defendant’s Answer, it denied “the appraisal complied with the requirements of the subject Agreement.” Defendant again disputed the allegation by stating in paragraph three of its Affirmative Defenses:

In view of the nature of the Agreement between these parties and the language set forth in Section 25 of the Lease Agreement it is, of necessity, an implied obligation that each party to that Agreement must obtain a truly “independent” appraisal of the subject property which meets all requirements of the Appraisal Institute and all requirements of the appraisal industry relating to the standard of care for the conduct of such an appraisal. The Plaintiff has not complied with that obligation in that the appraisal upon which it is purportedly exercising its option was not carried out in conformity with the relevant standards for such an appraisal.

Plaintiff contended all that was required by the lease agreement was obtaining two independent MAI appraisals. Defendant admitted the two appraisals were prepared by MAI appraisers; however, it denied that Plaintiff’s appraisal was sufficient, insisting the appraisals had to be prepared in conformity with the applicable standards, and Plaintiff’s appraisal was not. Defendant cited Tenn. Code Ann. § 62-39-329 in support of its contention the mere fact Plaintiff’s appraisal was prepared by an MAI appraiser was not in and of itself sufficient. The statute provides in pertinent part:

It is the intent of this chapter that real estate appraisals be performed in accordance with generally accepted appraisal standards. Therefore, state licensed and/or certified real estate appraisers must comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and any other duly established standards of the commission. . . .

The fact Plaintiff's appraiser is an MAI appraiser does not establish as an undisputed fact that his appraisal was prepared in compliance with the statute or applicable standards. Moreover, whether Defendant's contention that it was not prepared in accordance with applicable standards is factually correct or not is irrelevant for purposes of this motion. The only relevant fact to be considered in this Tenn. R. Civ. P. 12.03 dispute is whether Defendant's Answer constituted a denial that Plaintiff fully complied with the option provisions in the lease agreement. Since Defendant has put at issue whether Plaintiff's appraisal was prepared in accordance with the applicable standards, as required by the statute, we must assume for purposes of this Tenn. R. Civ. P. 12.03 motion that it was not. Moreover, Defendant is entitled to subject Plaintiff and its appraiser to discovery for that purpose.

Therefore, we find Plaintiff's Motion for Judgment on the Pleadings should have been denied. The judgment of the trial court is reversed and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against Plaintiff, Alderwoods [Tennessee], Inc., et al.

FRANK G. CLEMENT, JR., JUDGE