

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

F. CHARLES SUCK, Trustee of the ANNE M.  
WILSON SUCK TRUST,

UNPUBLISHED  
August 27, 1999

Plaintiff-Appellant,

v

MICHAEL P. SULLIVAN,

No. 207488  
Kalamazoo Circuit Court  
LC No. 95-001498

Defendant-Appellee.

---

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

KELLY, J. (dissenting).

I respectfully dissent.

I have a definite and firm conviction that a mistake has been made. The stated consideration for the option was that Mrs. Suck would have a limited life estate in the part of the property on which her summer cottage is located. That life estate could not come into being unless and until the option was exercised with regard to that portion of the property that was subject to the life estate. The trial court correctly found that the life estate was not consideration for the option. The trial court incorrectly found that the survey which Mr. Sullivan ordered and presumably paid for constituted sufficient legal consideration to support the agreement. I believe the facts clearly show that Mr. Sullivan merely ordered the survey for his own purposes in determining the feasibility of division of the property into building sites. The contract itself in section six, entitled "Consideration," makes no reference whatever to the payment for the survey. The payment for the survey was not relied on by the parties to supply the necessary sufficient legal consideration. Section eight of the contract entitled "Survey" provides in its entirety:

Upon execution of this Option Agreement, the Grantee shall order a boundary and improvements survey of the property to be prepared by a registered surveyor. The survey shall show no encroachments on the property to be conveyed. The Grantor shall pay the invoice for the survey at the Closing of the sale of the first parcel purchases by the Grantee. The survey shall be certified to the Grantee.

I believe the trial was incorrect and the majority is incorrect in saying that the facts presented at trial demonstrate that defendant was responsible for ordering and paying for the survey. I believe that finding is clearly erroneous. There is no ambiguity in the above quoted clause which states, "The Grantor shall pay the invoice for the survey ..."

On this basis alone I would reverse. However, I also believe plaintiff's contention that the agreement was uncertain and indefinite in that it did not obligate Mr. Sullivan to divide the property into seven or eight parcels. Defendant admitted the option contract did not obligate him to purchase any particular number of the resulting parcels. Defendant conceded that the option contract, which he drafted, permitted him to purchase the bulk of the property for \$60,000, this on a \$525,000 contract. The contract did not specify how defendant was to divide the property, where the lot-lines were to be placed, and how many lots he was obligated to purchase. Defendant has also noted that the contract did not cover other terms important to plaintiff such as the park benches, gazebo, dock, garden, interior roads, private access, access to the newer garage, protection against increased property taxes and location and placing of excavated or plowed dirt. Thus, I believe the agreement was uncertain and unenforceable.

I would reverse.

/s/ Michael J. Kelly