

FOR SALE CHEAP – 545 ACRES IN WOOD COUNTY



COUNSEL'S CORNER

In November 2003 William Earl Norris and Martha Sue Norris decided to sell their farm to Eleanor Fox Davis. William and Martha signed not one, not two, but three – *count 'em three* – contracts, all with Eleanor.

In the first contract M/M Norris agreed to sell 215 acres to Ms. Davis. Davis also had the right to acquire more acreage from M/M Norris, being the remainder of the 545-acre farm. In the second, Davis agreed to purchase 10 acres from Norris. The third contract was for approximately 210 acres. The parties closed on the second and third contracts, but left the first pending.

In 2006 Davis sent M/M Norris a letter announcing her intention to exercise the option in the first contract. Counsel for the Norris' did not agree that Davis was entitled to purchase more property, and consequently M/M Norris did not appear at the time and place designated by Davis for closing.

Davis sued M/M Norris for specific performance or damages. Davis lost. Davis appealed.

The Texarkana Court of Appeals first stated that options must be clearly drafted and the purchaser must strictly comply. The Appellate Court concluded that the contract was unclear as to what, exactly, is required to exercise the option. This conclusion was based primarily on the handwritten statement in the contract that: “SELLER WILL HAVE 9 MONTHS NOTICE BEFORE BUYER WILL CLOSE,” coupled with some additional unclear provisions.

The handwritten clause followed a provision granting Davis “. . . an Option and First Right of Refusal until January 1, 2007 to purchase [the property].” But what is the correlation between the January 1, 2007 deadline and the 9-month notice provision? Must nine-month notice be issued before January 1, 2007, or must the closing be completed by January 1, 2007?

At the trial court M/M Norris won a summary judgment based on the single theory that Davis did not timely exercise the option. The Court of Appeals reversed the decision of the trial

court, and remanded the case back to Wood County to figure out what the parties had contemplated to properly and timely exercise the purchase option.

See Davis v. Norris, 06-10-00093-CV, 6th Court of Appeals, Texarkana; October 27, 2011.

Lessons learned:

1. It appears that no brokers were involved. Thanks goodness, since clearly all brokers and agents would have been sued.
2. Option contracts are tricky. Do not draft option contracts, rights of first refusal, rights of first offer or anything similar, in contracts or leases. Or anywhere else for that matter. Even seasoned lawyers often make mistakes in this area.
3. Review option language closely. Everything in an option provision must be spelled out with great particularity – timing, property description, pricing, review and due diligence periods, earnest monies or additional deposits, means by which notice must be furnished, title companies, closing documents, prorations, taxes, etc. Tricky stuff. Seriously.
4. Happy New Year!

Stuart A. Lautin, Esq.*

* Board Certified, Commercial (1989) and Residential (1988) Real Estate Law,
Texas Board of Legal Specialization

Higier Allen & Lautin, PC
5057 Keller Springs Road, Suite 600
Addison Texas 75001
P: 972.716.1888
E: slautin@higierallen.com
W: www.higierallen.com