

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA

Guthmiller Farms, LLP,)
)
Plaintiff and)
Appellee,)
)
vs.)
)
Eugene Guthmiller,)
Charlene Guthmiller,)
)
Defendants and)
Appellants,)
)
And)
)
Jeremy E. Guthmiller)
Defendant and)
Appellee.)

Supreme Court No 20130156; Kidder County
Case No. 22-2011-CV-00030

APPEAL FROM THE KIDDER COUNTY DISTRICT COURT JUDGMENT DATED
MARCH 7, 2013

SOUTH CENTRAL JUDICIAL DISTRICT

BRIEF OF DEFENDANT – APPELLEE,
JEREMY E. GUTHMILLER

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TABLE OF AUTHORITIES

[1] Appellee/ Defendant Jeremy E. Guthmiller adopts and joins in all of the authorities cited in the Appellant's Table of Authorities and brief filed with the Supreme Court by Appellant Eugene and Charlotte Guthmiller, which are fully incorporated herein by reference.

STATEMENT OF THE ISSUES

[2] Jeremy E. Guthmiller adopts and joins in all of the issues presented for review as stated in the Appellant's brief filed with the Supreme Court by Eugene and Charlotte Guthmiller, which are fully incorporated herein by reference.

STATEMENT OF THE CASE

[3] Jeremy E. Guthmiller adopts and joins in the Statement of the Case as stated in the Appellant's brief filed with the Supreme Court by Eugene and Charlotte Guthmiller, which is fully incorporated herein by reference.

PROCEDURAL BACKGROUND

[4] Jeremy E. Guthmiller adopts and joins in the procedural background as stated in the Appellant's brief filed with the Supreme Court by Eugene and Charlotte Guthmiller, which is fully incorporated herein by reference, **SUBJECT TO THE FOLLOWING SUPPLEMENTATION:**

[5] In the final judgment, entered in this case on about March 7, 2013 (App. 74), the Court, in part, decreed:

1. The Defendant Jeremy E. Guthmiller and the Plaintiff Guthmiller Farms, LLP, respectively, each timely exercised their options, each to purchase by contract for deed from the Defendants Eugene and Charlene Guthmiller an undivided one-half (50%) of the following described lands located in Rexine Township, Kidder County, North Dakota:

Township 144 North, Range 70 West

Section 24: S 1/2

Section 25: N1/2

2. Defendants Eugene Guthmiller and Charlene Guthmiller are ordered to enter separate Contracts for Deed for the sale of said property, dividing said lands in equal undivided shares, with Defendant Jeremy E. Guthmiller purchasing an undivided one-half (50%) of said lands, and Plaintiff Guthmiller Farms, LLP, purchasing an undivided one-half (50%) of said lands.

STATEMENT OF FACTS

[6] Jeremy E. Guthmiller adopts and joins in the procedural background as stated in the Appellant's brief filed with the Supreme Court by Eugene and Charlotte Guthmiller, which is fully incorporated herein by reference, **SUBJECT TO THE FOLLOWING SUPPLEMENTATION:**

[7] Jeremy E. Guthmiller is an additional defendant and appellee in this case, who separately filed his answer to the Complaint on or about June 13, 2013. App. 9.

[8] Jeremy E. Guthmiller is the cousin of Terry Guthmiller and David Guthmiller, the owners/partners of Appellee Guthmiller Farms, LLC, and the son of Eugene and Charlotte Guthmiller. (Tr. 81: 19-22).

[9] Pursuant to clause 6 of the purported OPTION AGREEMENT, as stated in a handwritten clause on page 2 of the document and initialed by all the parties to said document, it provides: “[A]t any time, Jeremy E. Guthmiller will have the option to buy in equal; shares, dollar for dollar per this agreement.” App. 15.

[10] Upon the commencement of this litigation, Attorney Charles T. Edin, counsel to Jeremy E. Guthmiller notified Attorney Malcolm Brown and Eugene and Charlotte Guthmiller by letter, dated August 31, 2010, a copy of which is attached as Exhibit B to the Answer filed by Jeremy E. Guthmiller , of Jeremy’s exercise of his rights to participate in the OPTION AGREEMENT. App. 16

[11] The above referenced August 31, 2010 letter states, in part:

This is to notify you that Mr. Jeremy E. Guthmiller exercises his rights to the option to purchase an equal 50% share of the above described property as noted in that certain Option Agreement, dated August 17, 2004, a copy which is attached hereto. Jeremy E. Guthmiller is ready to close at a time and place mutually agreeable to the parties.

Specifically, clause 6 of the Option Agreement provides:

“6) at any time, Jeremy E. Guthmiller will have the option to buy in equal shares, dollar for dollar per this agreement.”

[12] Prior to the Court filing its Findings of Fact, Conclusions of Law, and Order for Judgment on March 1, 2013 (App.68), Jeremy E. Guthmiller concluded the exercise of his option rights to an undivided and equal 50% share of the property described in the OPTION AGREEMENT by filing with the Court and serving the parties with the following documents:

(A) NOTICE OF TENDER BY DEFENDANT JEREMY E. GUTHMILLER OF SIGNED CONTRACTS FOR DEED EXERCISING HIS OPTION RIGHTS, dated February 20, 2013. Supp. App. 4, Register of Actions document 45;

(B) AFFIDAVIT OF JEREMY E. GUTHMILLER, dated February 18, 2013, with attached (i) copy of the August 31, 2010 letter by Attorney Charles T. Edin to Attorney Malcolm Brown P.C. and Mr. and Mrs. Eugene G. Guthmiller, and (ii) Original CONTRACT FOR DEED, dated August 17, 2010, signed by Jeremy Guthmiller on February 18, 2013 Supp. App.6 Register of Actions document 46;

[13] Although the same form of contract for deed purportedly tendered by Guthmiller Farms, LLC was signed by Jeremy E. Guthmiller (Supp. App. 11.), in his above stated Affidavit, dated February 18, 2013, Jeremy E. Guthmiller clarified in paragraphs 8 and 9 that since there had not been an agreement as to the form of the contract for deed, the one tendered by Jeremy E. Guthmiller was “subject to any further direction, revisions or findings of the court.”

8. Even though I have signed and am now attaching this original alternative contract for deed to protect my rights to purchase an undivided 50% of the pertinent lands, I do not imply that there was an agreement as to many of the specific terms of the contract for deed. (Many of the specific terms included in the contract for deed proposed by the plaintiff partnership were never agreed to by the parties, nor was any proposed contract for deed attached to the original Option Agreement.)

9. To make sure that my interest in the undivided 50% option rights are protected, I have simply incorporated the terms from the plaintiff partnership’s proposed contract for deed form. And so, by this conclusion of my exercise of my 50% option rights, this signed and attached original alternative contract for deed is hereby tendered by me to the parties and the court subject to any further direction, revisions or findings of the court.

LEGAL ARGUMENT

[14] Appellee Jeremy E. Guthmiller adopts and joins in the legal argument as stated in the Appellant’s brief filed with the Supreme Court by Appellant/Defendant

Eugene and Charlotte Guthmiller, which is fully incorporated herein by reference,

SUBJECT TO THE FOLLOWING SUPPLEMENTATION:

[15] Jeremy E. Guthmiller has timely and duly exercised his option rights as provided in the purported OPTION AGREEMENT. Supp. App. 4 and 6. There has been no assertion by the other parties to the contrary. To the extent that the Supreme Court affirms the Judgment (App. 74) as requested by Guthmiller Farms, LLC, then Jeremy E. Guthmiller asserts and is entitled to all of his rights under the Judgment to receive a contract for deed from Eugene and Charlotte Guthmiller his equal, undivided 50% interest in the lands described in the contract for deed as set forth in the Judgment. App. 74.

[16] However, Jeremy E. Guthmiller has throughout this litigation (without waiving any of his undivided 50% option rights) alternatively agreed with Appellants Eugene and Charlotte Guthmiller that for all of the reasons asserted by Eugene and Charlotte Guthmiller in this appeal, the purported OPTION AGREEMENT is not enforceable and should be declared by the Supreme Court to be null and void.

CONCLUSION

[17] None of the parties have challenged Jeremy's rights in this matter as set forth herein and in the Judgment. App. 74. However, this brief is being filed to make clear that Jeremy E. Guthmiller supports and joins in all of the assertions and arguments by Eugene and Charlotte Guthmiller and their Attorney Thomas Jackson that the Judgment of the trial court should be reversed and vacated and that the OPTION AGREEMENT should

be declared null and void, subject to the following: that if the Supreme Court affirms the Judgment of the trial Court, then Jeremy E. Guthmiller is entitled to an equal, undivided 50% interest in the land pursuant to a contract for deed from Eugene and Charlotte Guthmiller as provided in the Judgment.

Dated this 18th day of September, 2013.

/s/ Charles T. Edin



CHARLES T. EDIN

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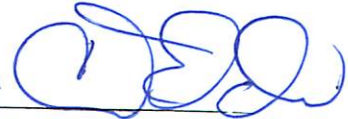
CERTIFICATE OF SERVICE

[17] I hereby certify that a true and correct copy of the foregoing BRIEF OF DEFENDANT – APPELLEE, JEREMY E. GUTHMILLER was on the 18th day of September, 2013, served electronically to the following:

Thomas M. Jackson
Jackson, Thomason & Weiler, P.D.
tjacksonjtw@gmail.com

Malcolm H. Brown
Crowley Fleck PLLP
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/s/ Charles T. Edin



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SEP 18 2013

STATE OF NORTH DAKOTA