

IN THE COURT OF APPEALS 01/30/96
OF THE
STATE OF MISSISSIPPI
NO. 94-CA-00780 COA

FREDERICK J. HUNTER, M.D., P.A.

APPELLANT

v.

BAPTIST MEMORIAL HOSPITAL - GOLDEN

TRIANGLE, INC.

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WOODROW WILSON BRAND, JR.

COURT FROM WHICH APPEALED: LOWNDES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

KELLY HARDWICK

COLOM LAW FIRM

ATTORNEYS FOR APPELLEE:

FRANKLIN WILLIAMS

AUBREY E. NICHOLS

GHOLSON, HICKS, NICHOLS & WARD

NATURE OF THE CASE: OPTION CONTRACT-SPECIFIC PERFORMANCE

TRIAL COURT DISPOSITION: HOSPITAL'S MOTION FOR SPECIFIC PERFORMANCE

GRANTED

BEFORE THOMAS, P.J., COLEMAN, AND PAYNE, JJ.

COLEMAN, J., FOR THE COURT:

The Lowndes County Chancery Court granted Baptist Memorial Hospital - Golden Triangle, Inc. (Baptist Memorial) specific performance of an option to purchase contained in a lease agreement with option to purchase (Agreement) executed by Frederick J. Hunter, M.D., P.A., (Hunter) lessor, and Golden Triangle Regional Medical Center (Golden Triangle), on August 31, 1990. Golden Triangle had assigned this lease to Baptist Memorial. To support his grant of specific performance to Baptist Memorial, the chancellor determined: (1) that Golden Triangle Regional Medical Center had properly and legally assigned the Agreement to Baptist Memorial; (2) that Hunter accepted the assignment; and (3) that Baptist Memorial had given proper and timely notice to Hunter of its exercise of its option to purchase the property which was the subject of the Agreement. We affirm the chancellor's decision.

I. The Facts

Throughout this opinion we refer to the corporation, Frederick J. Hunter, M. D., P. A., as "Hunter" and to the physician who formed this corporation, Dr. Frederick J. Hunter, as "Dr. Hunter." On August 31, 1990, Hunter and Golden Triangle executed the Agreement. Pursuant to its terms Hunter leased its lot and the medical office building located on it to Golden Triangle. Dr. Hunter had previously practiced his profession in that building. The Agreement gave Golden Triangle "the exclusive right and option to purchase the leased premises . . . *at any time during the term of this lease* by notifying Hunter in writing of its desire to purchase the Premises." The "term of the lease" was described in the following language:

1. The term of the lease shall be for a period of thirty-six (36) months from the 1st day of September, 1990 to the 1st day of September, 1993.

Golden Triangle began making the monthly lease payments in the amount of \$4,000.00 after it and Hunter had executed the Agreement. The Agreement required Golden Triangle to pay the monthly payment on Hunter's debt which it owed Deposit Guaranty National Bank and which was secured by a first mortgage lien directly to that Bank and to pay the balance of each monthly payment directly to Hunter "at a place specified in writing by Hunter. First Golden Triangle and then Baptist Memorial paid all thirty six monthly payments which the Agreement required when they became due. Dr. Hunter accepted for Hunter Baptist Memorial's payment of its share of all thirty six payments as they became due under the Agreement.

The Agreement included this right of assignment:

[Golden Triangle] Hospital shall have the right at any time during the term of this agreement to assign all of its rights and obligations hereunder provided, however, that in

the event of such assignment, the Hospital shall not be released from its obligations hereunder.

On March 19, 1993, Golden Triangle assigned the contract to Baptist Memorial.

Included in the Hospital Lease Agreement between Golden Triangle and Baptist Memorial was the following "Assignment and Assumption of Contracts" provision:

As of the Commencement Date, subject to all required approvals, Lessor [Golden Triangle] acting on behalf of the Hospital hereby agrees to assign, transfer and delegate all rights, obligations and duties of the Hospital under the agreements, leases, contracts and commitments of the Hospital as listed on Schedule 19.9 (collectively the "Hospital Contracts") and Lessee [Baptist Memorial] shall accept such assignment and delegation and shall assume the payment and performance under the Hospital Contracts from and after the Commencement Date.

Included in Schedule 19.9, the list of the "Hospital Contracts," was the name of "Hunter, Dr. Frederick J.," for a contract dated 8/31/90. "Frederick J. Hunter, M. D., P. A.," was omitted from this list. Other parties to contracts were included on this list by corporate name.

On or about July 27, 1993, David Hogan, Interim Administrator and Vice President of Baptist Memorial, posted by certified mail, return receipt requested, a letter to Frederick J. Hunter, M. D., P. A., c/o Dr. Frederick Hunter, 1073 Oak St., Salem, Oregon 97301. The purpose of this letter was to notify Hunter of Baptist Memorial's "intent to exercise its option to purchase as set forth under the terms and provisions of the Agreement." The postal service marked the envelope in which the letter had been mailed "[r]efused" and returned it to Baptist Memorial. Baptist Memorial then sent a second letter dated August 9, 1993 to Hunter by regular mail. Thus, as Hunter argues in its brief, "[t]he earliest possible time that Dr. Hunter could have received notice was after August 9, 1993, which is within thirty (30) days of the termination of the lease agreement."

Subsequently, on or about August 23, 1993, there was communication between Baptist Memorial and Dr. Hunter regarding Baptist Memorial's attempt to exercise the option to purchase that would expire on September 1, 1993. Included in the communication was an undated note which Dr. Hunter sent to Bill Lancaster, Assistant Administrator of General Services, in which he wrote:

Dear Mr. Lancaster:

As per our [telephone conversation] 23 August 1993, I understand that Baptist Memorial Hospital - Golden Triangle Inc. are exercising their option to purchase office building and property located 2225 5th Street N. as per Lease Agreement 31 August 1990.

If any problems please write to 1073 Oak St., Salem, Or.

Sincerely,

F. Hunter, M. D.

On or about September 23, 1993, Baptist mailed a letter and assumption warranty deed to Dr. Hunter. Seven days later on September 30, Baptist faxed a copy of the September 23rd letter, proposed assumption warranty deed, and other documentation to Dr. Hunter. He did not respond to either communication. On November 8, 1993, Lancaster again sent Dr. Hunter a letter certified mail, return receipt requested, with which he enclosed another assumption warranty deed. Although he received this letter, Dr. Hunter, as before, made no response. On December 10, 1993, Lancaster wrote Dr. Hunter a letter, which he posted certified mail, return receipt requested. In his letter of December 10, Lancaster advised Dr. Hunter that "[i]f this matter has not been concluded by January 3, 1994, BMH-GT will authorize Aubrey E. Nichols, Attorney at Law, to file suit to enforce the terms and provisions of the option agreement."

After September 1, 1993, the date on which the Agreement expired, Baptist Memorial engaged in negotiations with the Internal Revenue Service to pay in full an existing tax lien enrolled against Dr. Hunter which encumbered the building and lot. As a consequence of those negotiations, with the Internal Revenue Service, Baptist Memorial paid the Internal Revenue Service \$94,581.27, in return for which payment the Internal Revenue Service agreed to issue its Certificate of Discharge after Hunter's deed to Baptist Memorial had been recorded. The Certificate of Discharge released this building from the tax lien. Baptist Memorial also paid the 1993 ad valorem taxes assessed against this property to Lowndes County in the amount of \$1,906.47 and the 1993 ad valorem taxes to the City of Columbus in the amount of \$4,004.87. Thus, Baptist Memorial paid a total of \$100,492.61 to satisfy these three liens, the payment of all of which directly benefitted Hunter. Baptist Memorial accordingly satisfied its obligation to pay Hunter's equity of \$100,000.00 by paying these three items, all three of which were Hunter's personal obligations secured by liens.

The Agreement imposed upon Hunter the obligation to provide the assumption warranty deed by which it would convey the subject property to Baptist Memorial. Hunter never provided Baptist Memorial with this assumption warranty deed after Baptist Memorial gave notice that it would exercise its option to purchase this lot and building.

II. Litigation

After Hunter continued to ignore its letter dated December 10, 1993, Baptist Memorial filed suit for specific performance in the Lowndes County Chancery Court. At the trial on Baptist Memorial's complaint for specific performance, Hunter did not personally appear, although he was represented by counsel throughout the trial. Bill Lancaster, Assistant Administrator for Support Services for Baptist Memorial, was the sole witness. After the hearing, the chancellor rendered the following opinion from the bench:

This Court is called upon to compel specific performance of the lease agreement with option to purchase executed by the parties on August 31st, 1990. The terms of the lease are clear and concise. Although no authorities have been cited, it is argued by the defendant that the lease and the option is not enforceable for failure to give timely notice and to close the transaction to purchase within 30 days or before the expiration of the terms of the agreement. The existence and terms of the lease have not been disputed. The lease itself provides that it is for a period of 36 months from the first day of September, 1990, until the first day of September, 1993.

A clear reading of paragraph number 15 reflects the right to purchase and imposes a 30 day closing period. That paragraph further provides the purchase price subject to the encumbrances enumerated therein and further provides in part:

In the event the hospital exercises its option to purchase the leased Premises, transfer of title shall be by assumption warranty deed provided by Hunter which shall convey a good and merchantable fee simple title in and to the leased Premises free and clear of all liens and encumbrances except and those that are enumerated therein.

Clearly, the notice given by the hospital on July 27th, 1993, constituted timely notice. Even though it was not received by Dr. Hunter, by his subsequent acknowledgment of the second notice and accepting such as is reflected by his letter, which is exhibit 6, there was a meeting of the minds of the notice of intent and acceptance. No authority has been cited whereby the defendant could defeat the contract by not timely performing that required of him.

On the other hand, the plaintiff is under a continuing obligation in the event of a breach to minimize and mitigate damages and to protect his own interest and investment. If there be any untimeliness, it would be on behalf of Dr. Hunter for his failure within the 30 day period to transfer title as enumerated in the lease. The only requirement of timeliness on the plaintiff was to give its notice of intent during the period of the lease. The 30 day closing period was a mutual obligation. Certainly its failure to comply is covered by paragraph 18 of subject lease.

Regarding the argument and allegation of the defendant on assignment, paragraph 17 provides for the right of assignment and if there be any defect, that is between the two corporations and it is not a right or benefit that inures to the defendant.

The Court is, accordingly, of the opinion that the plaintiff is entitled to the relief that it seeks and counsel may prepare a judgment accordingly.

Hunter appeals from the final decree which granted Baptist Memorial specific performance of the Agreement.

III. Discussion and Analysis of the Issues

In his brief Hunter has assigned the following three issues for this Court's consideration and resolution:

I. Whether There Was a Proper Assignment Between Golden Triangle Regional Medical Center (Golden Triangle) and Baptist Memorial - Golden Triangle Regional Medical Center (Baptist) of the Option to Purchase in the Lease Agreement Between Frederick J. Hunter, M. D., P.A., and Golden Triangle Regional Medical Center, and If So, Does Frederick J. Hunter, M. D., P. A., Have the Option to Ratify the Contract Between Baptist and Golden Triangle?

II. Whether the Trial Judge Correctly Applied the Legal Standards Regarding Specific Performance?

III. Whether the Plaintiff Gave Timely Notice to Exercise the Option of the Lease Contract Between the Parties?

A. Standard of Review

To begin our consideration of these three issues, we note that the scope of this Court's review of a chancellor's decision is limited in that an appellate court may not disturb his findings if they are supported by substantial evidence unless it finds there is an abuse of the chancellor's discretion or the chancellor was manifestly wrong, clearly erroneous, or applied an incorrect legal standard. *Bowers Window & Door Co. v. Dearman*, 549 So. 2d 1309, 1313 (Miss. 1989).

First Issue:

I. Whether There Was a Proper Assignment Between Golden Triangle

Regional Medical Center (Golden Triangle) and Baptist Memorial Golden Triangle Regional Medical Center (Baptist) of the Option to Purchase in the Lease Agreement Between Frederick J. Hunter, M. D., P. A., and Golden Triangle Regional Medical Center, and If So, Does Frederick J. Hunter, M. D., P. A. Have the Option to Ratify the Contract Between Baptist and Golden Triangle?

Hunter argues that because Schedule 19.9 to the Hospital Lease Agreement described the Agreement as "Hunter, Dr. Frederick J.," for a contract dated 8/31/90 rather than "Frederick J. Hunter, M. D., P. A., the technically correct name of the Lessor, the Hospital Lease Agreement failed to assign the Agreement to Baptist Memorial. Hunter then asserts that because the Hospital Lease Agreement failed to assign the Agreement to Baptist Memorial, Baptist Memorial has no right to enforce the Agreement against it.

In *Klehm v. Grecian Chalet, Ltd.*, 518 N. E. 2d 187, 190 (Ill. App. Ct. 1987), the question was whether the omission of the word "deed" in the term "trust deed" rendered the assignment of that trust deed invalid and thus unenforceable. The Illinois Court of Appeals wrote:

[A]n assignment of a trust deed . . . need only to assign or transfer the whole or a part of some particular thing, debt, or chose in action and *it must describe the subject matter of the assignment with sufficient particularity to render it capable of identification.*

Klehm, 518 N. E. 2d at 196. (citations omitted).

This Court finds that while the Agreement was listed in the name of Dr. Hunter, rather than the name of Dr. Hunter's professional corporation, the addition of its correct date, 8/31/90, was sufficient to render it capable of identification as between Golden Triangle and Baptist Memorial, the parties to the Hospital Lease Agreement. The description was so sufficient that Baptist Memorial continued making payments in accordance with the Agreement to both Deposit Guaranty National Bank, the holder of the first mortgage lien which encumbered the subject lot and building, and to Hunter.

Hunter also argues that because Baptist Memorial was not bound by the Hospital Lease Agreement as a consequence of the arguably defective description of the Agreement, it first had to ratify the Hospital Lease Agreement as it pertained to Hunter before it could enforce the Agreement against Hunter. This meant that performance of the contract was within the sole discretion of Baptist Memorial. In a "[w]hat's sauce for the goose is sauce for the gander" argument, Hunter maintains that if Baptist Memorial had the option of ratifying the assignment of the Agreement by Golden Triangle to it, then so should Hunter enjoy that same privilege. Although Hunter confesses that it could find no direct authority for its "sauce" argument, it suggests that *Mitchell v. Atlas Roofing Manufacturing Co.*, 246 Miss. 280, 149 So. 2d 298 (1963) analogously supports this possibly novel argument. In *Mitchell*, the Mississippi Supreme Court held that when a contract provided that it

"shall be fully binding upon the parties, their heirs, successors and assigns," a successor or assign of one of the original parties to the contract "does not become bound by the contract unless he ratifies or adopts the contract." *Mitchell*, 149 So. 2d at 303.

Because Hunter cites no authority to support this argument, we are not obligated to consider it. "Appellant's failure to cite authority in support of these assignments of error precludes this Court from considering these claims on appeal." *Century 21 Deep S. Properties, Ltd. v. Corson*, 612 So. 2d 359, 370 (Miss. 1992). Nevertheless, actions speak louder than words! Hunter through Dr. Hunter accepted Baptist Memorial's payments for the lease of Hunter's building and lot from March 19, 1993, the date that Golden Triangle assigned the Agreement to Baptist Memorial, until the expiration the Agreement on September 1, 1993. Moreover, Dr. Hunter wrote a note to Baptist Memorial in August, 1993, the contents of which we have quoted. In the note he expressed his understanding that Baptist Memorial was exercising its option to purchase the property which was the subject of the Agreement; but he did not object in that note to closing the sale pursuant to the terms of the Agreement.

In *Koenig v. Calcote*, 199 Miss. 435, 25 So. 2d 763, 767 (1946), the supreme court wrote:

In 12 *C.J.S.*, Cancellation of Instruments, § 38, p. 996, it is stated that 'where a party, with knowledge of facts entitling him to rescission of a contract or conveyance, afterward, without fraud or duress, ratifies the same, he has no claim to the relief of cancellation. An express ratification is not required in order thus to defeat his remedy; any acts of recognition of the contract as subsisting or any conduct inconsistent with an intention of avoiding it, have the effect of an election to affirm.'

In accordance with this quotation we find that Hunter's acceptance of Baptist Memorial's payment of the balance of the monthly payments which Golden Triangle owed it as the original lessee and his note to Baptist Memorial were "acts of recognition of the [Agreement] as subsisting" and "conduct inconsistent with an intention of avoiding it." Hunter's actions ratified Golden Triangle's assignment of the Agreement to Baptist Memorial.

We conclude our discussion of this issue by finding that the description of the Agreement in Exhibit 19.9 to the Hospital Lease Agreement was adequate to support Golden Triangle's proper assignment of the Agreement to Baptist Memorial and that Hunter's actions were more than sufficient to ratify the assignment, if, as Hunter argues, its ratification of the assignment of the Agreement were necessary. We therefore decide this issue adversely to Hunter.

Second Issue:

II. Whether the Trial Judge Correctly Applied the Legal Standards Regarding Specific Performance?

In *Simmons v. Bank of Mississippi*, 593 So. 2d 40, 42-43 (Miss. 1992), the supreme court recited these basics of contract interpretation:

In *UHS-Qualicare, Inc. v. Gulf Coast Comm. Hosp.*, 525 So. 2d 746 (Miss. 1987), we find:

It is said that the first rule of contract interpretation is to give effect to the intent of the parties. More correctly stated, our concern is not nearly so much what the parties may have intended as it is what they said, for the words employed are by far the best resource for ascertaining intent and assigning meaning with fairness and accuracy.

A like sentiment is proclaimed in *Cherry v. Anthony, Gibbs, Sage*, 501 So. 2d 416 (Miss. 1987) to the effect that

The most basic principle of contract law is that contracts must be interpreted by objective, not subjective standards. A court must effect a determination of the meaning of the language used, not the ascertainment of some possible but unexpressed intent of the parties.

(citations omitted). We retain these basics as we consider this issue.

The heart of Hunter's argument on this issue is the following sentence in its brief, "Baptist, by its own admission, has never put Hunter, P. A., in default of the option to purchase by tendering payment." In response to this assertion, we quote from the Agreement:

In the event Hospital exercises its option to purchase the leased Premises, *transfer of title shall be by assumption warranty deed provided by Hunter* which shall convey a good and merchantable fee simple title in and to the leased Premises (emphasis added).

That this clause required Hunter to provide the assumption warranty deed to the subject property after Baptist Memorial had exercised its option to buy it is above and beyond ambiguity. This clause in the Agreement makes it plain and clear that after Baptist Memorial notified Hunter that it intended to exercise its option to buy the lot and building, it then became Hunter's obligation to provide the assumption warranty deed by which the corporation would convey title to the property to Baptist Memorial. Hunter never provided this assumption warranty deed, so it was Hunter that had breached the Agreement -- and not Baptist Memorial.

Pursuant to the Agreement, had Hunter provided the assumption warranty deed, then it would have become Baptist Memorial's obligation to pay the corporation its equity of \$100,000.00. That was the point established by the Agreement when Baptist Memorial's failure to tender the money would constitute its breach of the Agreement -- and not before. Thus Hunter's contention that "Baptist has never put Hunter, P. A. in default of the option to purchase by tendering payment" is not consistent

with the terms of the Agreement. Hunter, not Baptist Memorial, was in default. This issue is not so much whether the chancellor applied the correct standard of law, but instead whether he correctly interpreted the terms of the Agreement.

Hunter correctly cites *Thompson Funeral Home, Inc. v. Thompson*, 162 So. 2d 874, 877 (Miss. 1964) to support the proposition that the trial court's grant of specific performance is "not a matter of right, but of sound legal discretion." In *Leach v. Tingle*, 586 So. 2d 799 (Miss. 1991), the Mississippi Supreme Court examined and discussed the extraordinary remedy of specific performance with regard to the enforcement of contractual agreements. In framing their decision, the majority in *Leach* relied on the earlier decision of *Duke v. Whatley*, 580 So. 2d 1267 (Miss. 1991), wherein the court held that "[b]efore a court may order specific performance of a contract, it must find the contract reasonably complete and reasonably definite on material points." *Leach*, 586 So. 2d at 802 (citing *Duke*, 580 So. 2d at 1272-74). The supreme court has established jurisprudence that further states that "A contract is sufficiently definite if it contains matter which will enable the court under proper rules of construction to ascertain its terms, including consideration of the general circumstances of the parties and if necessary relevant extrinsic evidence." *McGee v. Clark*, 343 So. 2d 486, 489 (Miss. 1977) (quoting *Jones v. McGahey*, 187 So. 2d 579, 584 (Miss. 1966)).

Pursuant to the previously quoted standard for the interpretation of a contract, this Court finds that the chancellor "interpreted [the Agreement] by objective, not subjective standards," and that he "[e]ffect[ed] a determination of the meaning of the language used, not the ascertainment of some possible but unexpressed intent of the parties." We again affirm the chancellor on this second of Hunter's issues and decide it adversely to Hunter.

Third Issue:

III. Whether the Plaintiff Gave Timely Notice to Exercise the Option of the Lease Contract Between the Parties?

In its brief on this issue, Hunter argues that "[t]he lease required that the purchase close within thirty (30) days after written notice of the intention of Baptist to purchase the subject property." It then maintains that "[t]o enable Hunter, P. A. to close the purchase within thirty (30) days they must have received notice at least thirty (30) days prior to the termination of the lease to prevent the option from expiring." Hunter then notes that there is no evidence it received written notice from Baptist Memorial until August 23, 1993, which was only nine days before the lease was set to terminate.

Robinson v. Martel Enterprises, Inc., 337 So. 2d 698 (Miss. 1976), is the bedrock on which Hunter rests his argument. In *Robinson*, Martel Enterprises, Inc. executed a "Lease & Option to Purchase" with D. G. Robinson. This agreement provided for Robinson's payments of annual rental payments to Martel, and it gave him an option to purchase the property for a purchase price of \$200.00 per acre. The Lease & Option to Purchase contained the following provision:

4. The grantee herein reserves unto himself an option to purchase said property from the grantor or its assigns or successors in office, the aforementioned described property for a purchase price of \$200.00 per acre, said option to be exercised before December 31, 1973, by giving of notice to the grantee herein at its address aforementioned by U.S. postage prepaid mail, *at least 30 days in advance of the exercising of said option.*

Id. at 700 (emphasis added). Robinson gave Martel Enterprises, Inc., notice of his exercising of this option on December 6, 1973, which was only twenty five days before the agreement expired on December 31. The supreme court held that Robinson had not given notice of exercising his option at least thirty days before the option expired and therefore was not entitled to specific performance of the option by Martel Enterprise, Inc. In its brief Hunter offered the following quote from *Robinson* to suggest that Baptist Memorial had chosen to select its own time for performance of the Agreement:

The Court further stated in [*Lewis v. Woods*, 4 Howard 86 (Miss. 1839)] that:

A party cannot be permitted to violate his contract and wait until he sees that his bargain will be profitable, and then invoke the aid of a Court of Chancery to have it executed. Both time and circumstances are to be taken into consideration, for time may be of the very essence of a contract, otherwise a party might select his own time for performance. 4 Howard at 88.

Robinson, 337 So. 2d at 703.

We now compare the notice clause in the Agreement with the notice clause in the Lease & Option to Purchase in *Robinson*. The notice clause in the Robinson Lease & Option to Purchase required that the option to purchase was to be exercised before December 31, 1973, by giving notice to Martel Enterprises, Inc., U.S. postage prepaid mail, *at least 30 days in advance of the exercising of said option*. Stated differently, the Robinson clause required Robinson to give Martel Enterprises, Inc., notice of his intent to exercise his option thirty days before he actually exercised it. If Robinson were to exercise his option at all, his option required him to do it no later than December 31, 1973. However, if he intended to exercise his option on the date his option expired, then he must give Martel Enterprises, Inc. notice of his intent to exercise his option thirty days before he actually intended to do so. He breached this notice requirement by giving notice only twenty five days before the day his option expired.

In contrast to the Robinson notice, the provision for the execution of the option in the case *sub judice* gave Golden Triangle "the right to exercise this option to purchase *at any time* during the term of this lease by notifying Hunter in writing of its desire to purchase the Premises." The Agreement expressly stated that "[t]he term of the lease shall be for a period of thirty-six (36) months from the 1st day of September, 1990, to the 1st day of September, 1993." August 23, 1993, by which date Hunter concedes that he had received Baptist Memorial's notice that it exercised its option to purchase the Premises, was the tenth day before the lease agreement expired. Thus, pursuant to the previously quoted clause, Baptist Memorial had the right to exercise its option to buy Hunter's Premises on August 23, 1993, because that date fell within the term of the lease.

The Agreement then provided that "[u]pon the exercise of the option to purchase, the transaction shall be closed within thirty (30) days from the date of such written notice." In other words, Hunter and Golden Triangle had agreed that the parties to the Agreement would have thirty days following Golden Triangle's exercise of the option to close the transaction. If notice were given on August 23, 1993, then Hunter and Golden Triangle had until September 22, 1993 to close the transaction, even if the agreement for the lease of the Premises had expired on September 1, 1993, twenty one days earlier.

Other courts have approached the issue of whether the optionee timely exercised an option from the perspective of whether the lease is construable as entire and indivisible, and the option and other provisions of the lease as interdependent. *See* H. D. Warren, Annotation, *Termination of Lease as Termination of Option to Purchase Therein Contained*, 10 A.L.R 2d 884 (1950). The converse perspective is:

[T]hat where a lease of property contains an option to purchase, the right to enforce the option is not necessarily dependent upon the subsistence of the lease as such, if the lease is not entire and indivisible, and the option (and consideration therefore) and other provisions of the lease are not interdependent.

We find that the lease agreement and the option to purchase were actually separate agreements although they were incorporated into the same document. Thus, the option provisions contained in the lease agreement with option to purchase were not dependent on the lease provisions, and they were divisible from and not interdependent with the lease provisions. We therefore conclude from our interpretation of the provisions of the option contained in the Agreement, that Baptist Memorial exercised its option to buy the lot and building in a timely fashion. Thus we resolve this issue adversely to Hunter.

IV. Conclusion

As an appellate court, we may not disturb the chancellor's findings if they are supported by substantial evidence unless we find there is an abuse of the chancellor's discretion or the chancellor was manifestly wrong, clearly erroneous, or applied an incorrect legal standard. We earlier noted that "[t]he most basic principle of contract law is that contracts must be interpreted by objective, not subjective standard" and that "[a] court must effect a determination of the meaning of the language used, not the ascertainment of some possible but unexpressed intent of the parties." While we have considered and resolved the three issues which Hunter presented for our consideration, the basic issues were whether Golden Triangle had assigned the Agreement to Baptist Memorial and whether the chancellor correctly interpreted the terms of the Agreement. The first issue involved the chancellor's findings of certain facts and the application of appropriate legal standards to those facts which he found; but the second issue was a matter of whether the chancellor was manifestly wrong in his interpretation of the terms of the Agreement, *i. e.* "a determination of the meaning of the language used." Consistent with our standard of review, unless we can find that the chancellor was manifestly wrong, clearly erroneous, or applied an incorrect legal standard, we must affirm his grant of specific performance to Baptist Memorial. We affirm the chancellor's decision to grant Baptist Memorial specific performance.

**THE JUDGMENT OF THE CHANCERY COURT OF LOWNDES COUNTY IS
AFFIRMED. APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**