[Cite as *Judson v. Lyendecker*, 2013-Ohio-1060.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Harry Judson,	:	
Plaintiff-Appellee,	:	
		No. 12AP-615
v.	:	(M.C. No. 2011 CVG 041721)
Andy Lyendecker,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 21, 2013

Griffith Law Offices, and *Charles R. Griffith*, for appellee.

William H. Truax, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, P.J.

{¶ 1} Defendant-appellant, Andy Lyendecker, appeals a judgment of the Franklin County Municipal Court in favor of plaintiff-appellee, Harry Judson. For the following reasons, we affirm.

{¶ 2} On November 1, 1989, Lyendecker entered into a "Rental Agreement" with Steven L. Woolfe to lease the property located at 210 and 210 ½ Frebis Avenue. After Woolfe died on December 26, 1993, Judson inherited the property. When Lyendecker failed to pay his rent for the month of October 2011, Judson filed an action for forcible entry and detainer and breach of contract.

{¶ 3} The parties tried Judson's claim for forcible entry and detainer before a magistrate. Judson introduced the "Rental Agreement" and testified that Lyendecker had not paid rent for October, November, or December 2011. Lyendecker argued that the

"Rental Agreement" was actually a land installment contract and that he had paid in accordance to the terms of that contract for over five years. Thus, Lyendecker contended, Judson could only recover possession of his property through foreclosure and judicial sale as provided in R.C. 2323.07. *See* R.C. 5313.07. Lyendecker, therefore, asked the magistrate to dismiss the claim for forcible entry and detainer.

{¶ 4} In his decision, the magistrate disagreed with Lyendecker's argument. The magistrate determined that the "Rental Agreement" was a lease with an option to purchase, not a land installment contract. Based on Judson's testimony, the magistrate found that Lyendecker had never exercised the option. Therefore, the magistrate concluded, the parties' relationship never evolved from a landlord-tenant relationship. Because Lyendecker did not pay his rent as required by the "Rental Agreement," the magistrate found that Judson had established by a preponderance of the evidence his entitlement to a judgment for restitution.

{¶ 5} Lyendecker objected to the magistrate's decision. The trial court held an evidentiary hearing on Lyendecker's objections at which both Judson and Lyendecker testified. In a judgment issued July 12, 2012, the trial court overruled Lyendecker's objections. The trial court also adopted the magistrate's decision, but only after amending the decision to reflect the correct address of the property at issue.

{¶ 6} Lyendecker now appeals the July 12, 2012 judgment, and he assigns the following errors:

> [I.] THE TRIAL COURT'S FINDING THAT APPELLANT DID NOT EXERCISE THE OPTION TO PURCHASE THE REAL ESTATE IS CONTRARY TO THE EVIDENCE PRESENTED AND IS NOT SUPPORTED BY THE WEIGHT OF THE EVIDENCE.
>
> [II.] THE TRIAL COURT'S [sic] ERRED IN FAILING TO FIND THAT THE RENTAL AGREEMENT CONSTITUTED A VALID LAND CONTRACT, THEREBY REQUIRING APPELLEE TO UTILIZE A FORECLOSURE ACTION AND JUDICIAL SALE PURSUANT TO R.C. 5313.07.

{¶ 7} We will address Lyendecker's second assignment of error first. By that assignment of error, Lyendecker contends that the "Rental Agreement" is not a lease with an option to purchase, but a land installment contract. We disagree.

{¶ 8} A land installment contract is

> an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the vendor agrees to convey title in real property located in [the state of Ohio] to the vendee and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation. Option contracts for the purchase of real property are not land installment contracts.

R.C. 5313.01(A). Under a land installment contract, the purchaser acquires equitable title to the property to the extent of the payments made. *Riverside Builders, Inc. v. Bowers*, 10th Dist. No. 89AP-834 (June 7, 1990); *Jefferson Local School Dist. Recreation Council v. Roby*, 10 Dist. No. 85AP-1050 (Sept. 18, 1986), citing *Coggshal v. Marine Bank Co.*, 63 Ohio St. 88 (1900), paragraph one of the syllabus.

{¶ 9} A lease is a conveyance of an estate in real property for a limited term, with conditions attached, in consideration of rent. *Amick v. Sickles*, 177 Ohio App.3d 337, 2008-Ohio-3913, ¶ 19 (4th Dist.); *Bowers*. A lessee holds a present interest in the real property, but the lessee's interest is inferior to and less than the legal title holder's interest in the property. *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389, ¶ 14; *Brenner v. Spiegle*, 116 Ohio St. 631 (1927), syllabus.

{¶ 10} An option contract for the purchase of real property is an agreement wherein the legal titleholder of the property grants another person the privilege, without the obligation, to purchase the real property at a set price within a set time. *Wolf v. Miller Diversified Consulting, LLC*, 6th Dist. No. WD-07-049, 2008-Ohio-1233, ¶ 22; *see also George Wiedemann Brewing Co. v. Maxwell*, 78 Ohio St. 54, 63 (1908) (defining option contracts as "instrument[s] * * * by which one party in consideration of the payment of a certain sum to the other party, acquires the privilege of buying from or otherwise acquiring or selling to such other party an interest in the specified property at a fixed price within a stated time"). An option contract is neither a contract for the sale of real property nor a land installment contract. *Bowers*.

{¶ 11} "The distinction, then, between a land [installment] contract and a lease with an option to purchase is that the land [installment] contract conveys a present ownership interest in realty, while the lease conveys an interest less than ownership."

(Emphasis omitted.) *Id.* Until a lessee exercises the option to purchase, the lessee has no right of ownership, but only those rights which flow from the parties' lease agreement. *Id.*

{¶ 12} To determine whether an agreement is a land installment contract or a lease with an option to purchase, a court must analyze the intent of the parties at the time they executed the agreement. *Fadelsak v. Hagley*, 4th Dist. No. 02CA41, 2003-Ohio-3413, ¶ 10; *Hubbard v. Dillingham*, 12th Dist. No. CA2002-02-045, 2003-Ohio-1443, ¶ 11; *Bowers*. Courts presume that the intent of the parties to a contract resides in the language they chose to employ in the contract. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties. *Sunoco, Inc. v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, ¶ 37. However, where a contract is ambiguous, a court may consider extrinsic evidence to ascertain the parties' intent. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶ 12.

{¶ 13} Here, the parties entitled the contract at issue a "Rental Agreement" and agreed that Woolfe would "rent" to Lyendecker the property at 210 and 210 ½ Frebis Avenue. The contract required a $1,500 deposit and rent of $535 per month, and it allowed for periodic adjustment of the monthly rental amount "to reflect changes in actual payments for property taxes, insurance, and assessments." Woolfe agreed to credit the $1,500 deposit and $200 of the monthly rental payment to a down payment on the purchase of the property. Woolfe also agreed that, "[w]hen the accumulated sum credited toward down payment reach[es] Five Thousand Dollars ($5,000.00), [Lyendecker] may proceed with the purchase of said premises on the terms set forth in paragraph II." Under paragraph II, the parties agreed that the total purchase price of the property would be $45,000. Lyendecker agreed to pay that price in three ways. First, through the down payment. Second, Lyendecker would "assume[ ] and pa[y]" the mortgage that then encumbered the property. Finally, Lyendecker agreed to give Woolfe a second mortgage to secure a purchase payment loan of approximately $15,000. According to paragraph III, "[i]f [Lyendecker] purchase[d] said property as stated above, a GENERAL WARRANTY DEED with release of Dower w[ould] be given

by" Woolfe or his heirs. On the other hand, "[i]f [Lyendecker] d[id] not buy the property, the entire rental and deposit [would be] forfeited to the OWNER."

{¶ 14} Based on the language of the parties' agreement, we conclude that the trial court did not err in finding the agreement constituted a lease with an option to purchase. The parties chose to title their agreement "Rental Agreement," which indicates that they intended to create a lease, not a land installment contract. Moreover, nothing in the agreement obligated Lyendecker to purchase the property. Instead, the agreement stated that Lyendecker "may" purchase the property after he accrued $5,000 for a potential down payment. The agreement, therefore, offered Lyendecker the privilege to purchase; it did not bind him to buy and pay for the property. Additionally, the agreement did not mandate conveyance of title to the property to Lyendecker. Rather, transfer of the title would only occur "if" Lyendecker purchased the property as stated in paragraph II of the agreement. By providing for different contingencies depending upon "if" Lyendecker purchased the property, the agreement shows that the parties viewed the purchase as a possible outcome, not a done deal.

{¶ 15} As the "Rental Agreement" merely gave Lyendecker an option to purchase, it is not a land installment contract. Therefore, we overrule Lyendecker's second assignment of error.

{¶ 16} By Lyendecker's first assignment of error, he argues that the trial court's finding that he did not exercise the option to purchase is contrary to the manifest weight of the evidence. We disagree.

{¶ 17} Appellate courts will not reverse judgments supported by some competent, credible evidence as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280 (1978). " 'Weight of the evidence concerns the inclination of the greater amount of credible evidence, offered in trial, to support one side of the issue rather than the other. * * * Weight is not a question of mathematics, but depends on its effect in inducing belief.' " (Emphasis omitted.) *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). Thus, in reviewing a judgment under the manifest-weight standard, a court of appeals weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the finder of fact

clearly lost its way. *Id.* at ¶ 20. In so applying the standard, the court of appeals "must always be mindful of the presumption in favor of the finder of fact." *Id.* at ¶ 21.

{¶ 18} In the case at bar, Lyendecker testified that he believed that the "Rental Agreement" was a "land contract." In early 1992, Woolfe gave him a document entitled "RENT/OPTION SUMMARY." The summary included a section entitled "AMOUNT PAID," which indicated that $5,774.75 was the "Total Principal Paid." Under "AMOUNT CURRENTLY OWED," the summary listed $25,519.83 owed on the "Waterfield mortgage," i.e., the mortgage that then encumbered the property, and $14,366.70 owed to Woolfe. Woolfe also gave Lyendecker an amortization schedule for a loan of $14,366.70 with a ten percent interest rate and monthly payments of $200.

{¶ 19} After Lyendecker received the "RENT/OPTION SUMMARY," he continued paying the monthly rental amount due under the "Rental Agreement." Woolfe did not transfer the title to Lyendecker. Lyendecker did not assume the Waterfield mortgage, nor did the parties record a second mortgage as security for a purchase payment loan from Woolfe. As Lyendecker explained:

> I was not aware that I had to go to Mr. Judson [or Woolfe] and ask for a deed, as it says in the original rental agreement, which I have read. I thought that would just be -- I was under the assumption, the belief, that it would be provided to me, that they would say I fulfilled that part of the agreement, and it would be sent to me or the owner since he created the document, you know. He'd say, ["]You're done with that part. We'll go to the next part.["]

(July 12, 2012 Tr. 32.)

{¶ 20} Lyendecker also introduced into evidence probate court documents regarding the disposition of Woolfe's estate. In one document, Judson, who was executor of Woolfe's estate, applied for authorization to complete a contract "to sell the real estate" now at issue so that he could close the estate. In the February 10, 1995 judgment entry addressing that application, the probate court found that, "according to the terms of the contract, the purchaser has the right to exercise the option [to purchase] at any time [and] that the Estate would be required to remain open until the purchaser exercised that option[,] which would not be in the best interest of the estate or its creditors." Thus, the probate court ordered transfer of the property to Judson "subject to the completion of

[the 'Rental Agreement']." On March 29, 1995, the property was transferred to Judson pursuant to the February 10, 1995 judgment entry.

{¶ 21} According to Judson, Lyendecker never attempted to buy the property from him or Woolfe. Judson testified that if Lyendecker had told Woolfe that he wanted to exercise the option to purchase the property, then Woolfe would have told Judson that prior to Woolfe's death. Judson used Lyendecker's rental payments to pay the Waterfield mortgage, property taxes, and insurance.

{¶ 22} After weighing the above evidence with the appropriate deference for the finder of fact, we conclude that reversal is unwarranted. Woolfe, apparently, prepared for Lyendecker's exercise of the option by calculating the amount of the second mortgage. However, the necessary steps to complete the purchase never occurred. Woolfe did not transfer title to Lyendecker and, consequently, Lyendecker did not assume any mortgages on the property. Instead of notifying Woolfe or Judson that he wanted to purchase the property, Lyendecker waited for Woolfe or Judson to take some action to consummate the purchase. Because Lyendecker did not request the completion of the purchase under the terms of paragraph II, he never obtained any interest in the property beyond that of a lessee. Accordingly, we overrule Lyendecker's first assignment of error.

{¶ 23} For the foregoing reasons, we overrule Lyendecker's assignments of error, and we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.