

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Patrick Castro, Sr.

Court of Appeals No. OT-11-019

Appellant

Trial Court No. 09CV457H

v.

Bass Haven West, Inc.

DECISION AND JUDGMENT

Appellee

Decided: May 4, 2012

* * * * *

David M. Buda, for appellant.

Steven B. Winters, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the May 9, 2011 judgment of the Ottawa County Court of Common Pleas, which granted summary judgment to appellee, Bass Haven West, Inc., and dismissed the complaint of appellant, Patrick Castro, Sr. Upon consideration of the

assignments of error, we affirm the decision of the lower court. Appellant asserts the following assignments of error on appeal:

A. The decision of the trial court is based upon a mistake of fact.

B. The trial court erred in granting summary judgment while issues of material fact remain unresolved.

{¶ 2} Appellant brought suit against Bass Haven West, Inc., an Ohio corporation that owns and operates a park for manufactured homes. Appellant alleged that he purchased a manufactured home and leased a lot in the park in 2002. In 2005, Bass Haven West, Inc. issued a notice to appellant to surrender the lot or eviction proceedings would be commenced. The parties later agreed to forgo eviction proceedings if appellant would sell the home. The property was finally sold in 2009. After the sale, appellant initiated this suit alleging causes of action for breach of contract and unjust enrichment.

{¶ 3} Bass Haven West, Inc. moved for summary judgment arguing that the evidence was undisputed. Three lot owners attested they complained about the Fourth of July activities taking place on appellant's lot in 2005: drinking, setting off fireworks near boats, noise, foul language, swimming in the canal late at night, and littering. Therefore, on July 6, 2005, Bass Haven West, Inc. notified appellant that he would have to vacate the lot. Afterward, the parties agreed that eviction would be delayed in consideration of appellant attempting to sell his home, but appellant asserts that he never intended to give up his right to challenge the eviction. The property was sold 46 months later. Therefore, Bass Haven West, Inc. asserted that there was no basis for finding a

breach of contract. Alternatively, Bass Haven West, Inc. argued that there was no evidence that appellant sold his home at a loss. Bass Haven West, Inc. also argued that the parties also entered into a new agreement in July 2005 as a compromise. Finally, Bass Haven West, Inc. argues that there is no evidence that it was unjustly enriched in this case and the equitable relief is not available if a contract is recognized.

{¶ 4} In response, appellant opposed the motion for summary judgment on the ground that there is a material question of fact as to whether appellant was responsible for any disturbances during the Fourth of July weekend. Appellant produced his own affidavit and the affidavit of his wife who was a guest at the time. His wife attested that she was present during the time period of issue and did not see any of appellant's guests engage in the excessive consumption of alcohol, any loud turbulent behavior, or use fireworks. She did observe persons across the canal setting off fireworks well into the night. Appellant also argued that he had not waived his right to litigate the breach of contract claim, and that appellant could not limit his damages because the rent structure for the park resulted in appellant being forced to sell his home at less than the fair market value.

{¶ 5} While appellant attested that no one shot off fireworks on his property he admitted in an interrogatory presented by Bass Haven West, Inc. that he was asleep at the time. Appellant also attested that he saw others shooting off fireworks and argued that it was unfair to enforce the rules only against him. But, appellant never attested that he complained about such activities.

{¶ 6} In his first assignment of error, appellant contends that the trial court's judgment contains mistakes of fact and does not address the issues presented. Appellant also argues that the trial court improperly resolved a dispute of facts by finding that the eviction was valid and that Bass Haven West, Inc. had withdrawn its demand that appellant leave the premises. We agree.

{¶ 7} The trial court granted summary judgment to Bass Haven West, Inc. on the ground that there was no breach of contract by Bass Haven West, Inc. This decision seems to imply that there was no breach because there was no active eviction proceeding brought against appellant during the time appellant took to sell his home. These factual findings are not supported by the undisputed evidence. Therefore, appellant's first assignment of error is well-taken.

{¶ 8} In his second assignment of error, appellant argues that the trial court's grant of summary judgment to Bass Haven West, Inc. was erroneous because there are unresolved issues of material fact.

{¶ 9} Summary judgment is reviewed de novo. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 738 N.E.2d 1243 (2000) citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Therefore, applying the requirements of Civ.R. 56(C), summary judgment is appropriate only when it is clear "(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to

have the evidence construed most strongly in his favor.” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 10} It is undisputed in this case that the parties entered into a novation contract after the alleged breach of the lease. “A contract of novation is created where a previous valid obligation is extinguished by a new valid contract, accomplished by substitution of parties or of the undertaking, with the consent of all the parties, and based on valid consideration.” *Williams v. Ormsby*, ___ Ohio St.3d ___, 2012-Ohio-690, ___ N.E.2d ___, ¶ 18, citing *McGlothin v. Huffman*, 94 Ohio App.3d 240, 244, 640 N.E.2d 598 (12th Dist.1994). While appellant asserts that he did not give up his right to challenge whether the eviction was valid, he did in fact do so by entering into the novation agreement.

{¶ 11} Therefore, Bass Haven West, Inc. is entitled to summary judgment in this case as a matter of law. While we agree with appellant that the trial court’s legal analysis is flawed, its ultimate judgment was correct. Therefore, we affirm the trial court’s judgment albeit for different reasons. Appellant’s second assignment of error is not well-taken.

{¶ 12} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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