

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

Robert D. Voska, Jr., et al.

Court of Appeals No. S-13-008

Appellants

Trial Court No. 12CVG79

v.

Jeff C. Coffman, et al.

DECISION AND JUDGMENT

Appellees

Decided: December 13, 2013

* * * * *

John M. Kahler II, for appellants.

* * * * *

JENSEN, J.

I. Introduction

{¶ 1} This is an appeal in a forfeiture action of a land installment contract under R.C. 5313.08 and 5313.10 in which the vendors-appellants challenge the trial court's damages award. Appellants argue that the trial court improperly evaluated the fair rental value. Appellants also claim that the trial court's compensatory damages award for

“deterioration and destruction” of the premises was insufficient. For the following reasons, we remand the case for a determination of the fair market value consistent with this decision. We affirm the trial court’s judgment in all other respects.

II. Statement of Facts and Procedural History

{¶ 2} Appellants, Robert Voska and Laura Voska-Moewe, are the owners of a home located at 737 Water Street, Woodville, Ohio 43469. On January 14, 2011, appellants entered into a land installment contract to sell the property to appellees, Kimberlee and Jeff Coffman. Appellees agreed to purchase the home for \$160,000 to be paid in monthly installments over the course of 30 years. For the first 12 months of the contract, the interest rate was set at 8 percent, with a monthly installment payment of \$1,174.02 plus \$300 for taxes and insurance. After 12 months, the interest rate was set to readjust. According to the complaint, appellees defaulted on the contract in May of 2012.

{¶ 3} On July 6, 2012, appellants filed a complaint in the Sandusky County Court, District 2, seeking forfeiture of the land contract and damages under R.C. 5313.08 and 5313.10. Appellees vacated the premises prior to the eviction hearing which was held on July 23, 2012.

{¶ 4} A damages hearing was held on August 13, 2012. At the request of the court, appellant Robert Voska estimated that the fair rental value of the home ranged from \$900 to \$1,000 per month. Mr. Voska also offered testimonial and documentary evidence detailing repairs he made to the premises after appellees vacated the property. By order dated August 14, 2012, the court found,

ORC 5313.08 and R.C. 5313.10 allow recovery of difference in fair rent and payment plus damages for “deterioration or destruction.” [Appellant-Voska] testified that fair rent was 900.00 to 1000.00 per month. [Appellees] paid 1174.02 interest plus principal plus 300.00 for tax and insurance. The difference between the paid \$22,100.30 and fair rental value is negative 5950.00.

Damages Allowed:

Utilities	798.66
Court Costs	150.00
Carpet & Damage	4560.02
½ Plaster & Paint	2510.00
<u>Ceiling & Joist Repair</u>	<u>484.67</u>
Total Damage	8502.33
<u>Less Excess Paid</u>	<u>5902.33</u>
Net Due Plaintiff	2552.03
Judgment for Plaintiff	[\$2,552.03] (Emphasis added.)

{¶ 5} Following objections from both sides, the court held a second damages hearing on September 10, 2012. Appellant Robert Voska argued that he had been “backed into a corner” at the first hearing when asked to evaluate the fair rental value. He argued that the fair rental value was the monthly installment amount set forth in the contract, i.e. \$1,174.02. At the conclusion of the hearing, the trial court announced, “For

these reasons, I determine the fair rental [value] to be fourteen seventy-four-o-two [\$1,474.02] a month.” The trial court apparently intended to include \$300 for unpaid property taxes and insurance in its fair market value calculation. Nonetheless, on September 12, 2012, the trial court “reaffirmed” its prior order and its \$2,552.03 award to appellant Robert Voska.

{¶ 6} Appellants twice attempted to perfect an appeal of the order (case Nos. S-12-040 and S-12-045). This court dismissed both appeals for lack of a final, appealable order. On January 22, 2013, the trial court issued a judgment nunc pro tunc clarifying that the August 14, 2012 judgment included both appellants, Robert Voska and Laura Voska-Moewe.

{¶ 7} Appellants filed a third notice of appeal on February 1, 2013, but the notice was not served upon appellee Kimberlee Coffman. We remanded the case for the limited purpose of effectuating service on Ms. Coffman. On November 5, 2013, the clerk of the Sandusky County Court of Appeals was notified that Ms. Coffman had been served.

{¶ 8} Appellants raise two assignments of error for our review:

Assignment of Error I: The trial court erred in the determination of damages.

Assignment of Error II: The trial court erred in the calculation of the “fair rental value” of the premises.

III. Analysis

{¶ 9} A land installment contract is an agreement by which a vendee immediately gains possession of the premises while legal title is held by the vendor until full payment is made according to the terms of the contract. R.C. 5313.01(A). R.C. Chapter 5313 is essentially a “consumer protection law” designed to “prevent a windfall to a vendor who has previously collected substantial sums under a land contract and/or has actually recovered the property.” (Citations omitted.) *Howard v. Temple*, 172 Ohio App.3d 21, 2007-Ohio-3074, 872 N.E.2d 1260, ¶ 9 (4th Dist.); *see also Bradford v. B&P Wrecking Co., Inc.*, 171 Ohio App.3d 616, 2007-Ohio-1732, 872 N.E.2d 331, ¶ 20 (6th Dist.).

{¶ 10} R.C. 5313.08 applies when a vendee defaults on a land installment contract that has been “in effect for less than five years.” The statute permits a vendor to bring an action for forfeiture of the vendee’s rights in the contract and for restitution of the property. Upon making such an election, however, the vendor’s remedy is limited by R.C. 5313.10. It provides,

The election of the vendor to terminate the land installment contract by an action under section 5313.07 or 5313.08 of the Revised Code is an exclusive remedy which bars further action on the contract unless the vendee has *paid an amount less than the fair rental value* plus deterioration or destruction of the property occasioned by the vendee’s use. In such case the vendor may recover the difference between the amount paid by the vendee on the contract and the fair rental value of the property plus an

amount for the deterioration or destruction of the property occasioned by the vendee's use. (Emphasis added.)¹

{¶ 11} Thus, R.C. 5313.10 limits recovery to an “award for property damage and for the balance of the fair rental value for the holdover period * * *.” *Goodrich v. Sickelbaugh*, 6th Dist. Lucas No. L-85-194, 1986 WL 3447, *2 (Mar. 21, 1986).

{¶ 12} In their assignments of error, appellants argue that the trial court's property damage award for “deterioration and destruction” was insufficient and that the trial court improperly established a fair rental value. Neither appellee filed a brief or entered an appearance in this matter. We address appellants' second assignment of error first.

{¶ 13} The fair rental value is the amount a willing landlord rents the property for and what a reasonable tenant is willing to pay. The installment amount set forth in a land contract is evidence of its fair rental value. *Sanders v. Crawford*, 5th Dist. Stark No. 2006 CA 00194, 2007-Ohio-2326, ¶ 33. *See also Goodrich* at *2. Fair rental value may also include unpaid taxes, insurance, and water charges. *Frey v. Hibbard*, 62 Ohio App.3d 781, 785, 577 N.E.2d 669 (1st Dist.1989).

{¶ 14} By its plain terms, R.C. 5313.10 prohibits a monetary award unless the vendee has paid “less than” the fair rental value. In this case, however, the trial court

¹ R.C. 5313.07 applies to land installment contracts in effect for five or more years or when the vendee has paid 25 percent or more toward the contract price.

determined that appellees had paid more than the fair rental value. It reached that conclusion by establishing a fair rental value of \$900-\$1,000 per month and then declaring that the amount paid over that was an overpayment. How the trial court arrived at the overpayment amount of \$5,902.33 is unclear.

{¶ 15} The trial court failed to consider the installment amount set forth in the contract as evidence of the fair rental value. Therefore, it could not properly evaluate the appellants' loss of income during appellees' holdover tenancy as required by R.C. 5313.10. Appellants are entitled to the fair rental value during the time appellees were in possession of the property but did not pay, including unpaid taxes. *Goodrich* at *2. Therefore, we find appellants' second assignment of error well-taken. We remand the case to the trial court with the instruction that it (1) determine the fair rental value of the property; (2) determine the period of time that appellants were in possession of the property but did not pay; and (3) calculate appellants' award accordingly.

{¶ 16} In their first assignment of error, appellants argue that the trial court's damages award for "destruction and deterioration" under R.C. 5313.10 was insufficient. We review the determination of damages under an abuse of discretion standard. *Dodson v. Maines*, 6th Dist. Sandusky No. S-11-012, 2012-Ohio-2548, ¶ 36. "Abuse of discretion" suggests more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 17} R.C. 5313.10 does not afford recovery for nominal damages. Rather, it compensates the vendor for economic loss occasioned by the vendee's use. "Only actual, not trivial, deterioration is compensable." *Greenlese v. Hicks*, 9th Dist. Summit No. 11938, 1985 WL 10822 (June 26, 1985). Here, the trial court heard testimony from both sides as to the value of the property before appellees took possession and the value after appellees reconveyed it to appellants. The court also reviewed numerous pictures as to the condition of the property and evaluated receipts for various repairs by appellants after appellees vacated the premises. The credibility of witnesses and the weight to be accorded their testimony is for the trier of fact. *Blake Homes, Ltd. v. FirstEnergy Corp.*, 173 Ohio App. 230, 2007-Ohio-4606, 877 N.E.2d 1041, ¶ 63 (6th Dist.). We have reviewed the record and cannot say that the trial court abused its discretion in its property damage award. Appellants' first assignment of error is not well-taken.

{¶ 18} Based on the foregoing, we find that the trial court did not err in awarding appellants \$8,502.33 for deterioration and destruction of the premises. Appellants' first assignment of error is found not well-taken. With regard to appellants' second assignment of error, we remand the case with the instruction that the trial court (1) determine the fair rental value of the property consistent with this decision; (2) determine the period of time that appellants were in possession of the property but did not pay; and (3) calculate appellants' award accordingly. The judgment of the Sandusky

County Court, District 2, is affirmed in all other respects. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed in part
and affirmed in part.

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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
