

[Cite as *A & J Homes, Inc. v. Green*, 2015-Ohio-1290.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101416

A & J HOMES, INC.

PLAINTIFF-APPELLEE

vs.

THOMAS C. GREEN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Parma Municipal Court
Case No. 14 CVG 01075

BEFORE: Kilbane, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 2, 2015

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Thomas C. Green (“Green”), appeals from the judgment of the Parma Municipal Court awarding plaintiff-appellee, A & J Homes, Inc. (“A & J Homes”), restitution of premises in its complaint for forcible entry and detainer. For the reasons set forth below, we affirm.

{¶2} On November 6, 2013, Green entered into an agreement entitled Lease with Purchase Option (“lease with option”) with Samantha Wilson (“Wilson”), owner of 7527 Glencoe Avenue, Brooklyn, Ohio. In relevant part, the lease with option provided:

1. The Landlord agrees to rent to the Tenant and the Tenant agrees to rent from the Landlord [the premises located at 7527 Glencoe Avenue, Brooklyn, Ohio].
2. The term of this lease will be from 11/15/2013 until 28 months.
3. The rental payments will be \$550.00 per month and will be payable by the Tenant to the Landlord on the 1st day of each month, beginning on 12/1/2013.
4. The Landlord agrees to give the Tenant an exclusive option to buy this property for the following price and terms:
 - A. 100 percent of the amount that the Tenant pays the Landlord as rent under this Lease will be held as a deposit and credited against the purchase price of the property if this option is exercised by the Tenant. If the option is not exercised, the Landlord will retain all of these payments as rent under this Lease;
 - B. The option period will be from the beginning date of this Lease until 28 months, at which time it will expire unless exercised.
 - C. During this period, the Tenant has the exclusive option and right to buy the leased property for the purchase price of \$16,000. The

Tenant must notify the Landlord, in writing, of the decision to exercise this option.

- D. Should the Tenant exercise this Option in writing, Landlord and Tenant agree to enter into a standard Agreement to Sell Real Estate. The Agreement will be conditional upon the Tenant being able to arrange suitable financing on the following terms at least (30) days prior to the closing date specified in the Agreement to Sell Real Estate: a mortgage in the amount of \$13,500, payable in 28 monthly payments, with an annual interest rate of 0 percent.

* * *

16. This Lease may only be terminated by 0 days written notice from either party.

{¶3} On March 13, 2014, Wilson sold the property to A & J Homes. On April 2, 2014, A & J served Green with a three-day notice to vacate the premises, claiming nonpayment of rent. On April 8, 2014, A & J Homes filed its complaint for forcible entry and detainer against Green in the Parma Municipal Court, alleging that the rent for the premises is due on the first day of each month and that Green has failed to pay rent. The matter proceeded to hearing before a magistrate on April 24, 2014.

{¶4} A & J Homes presented testimony from its president, Keith Agee (“Agee”), who testified that, after acquiring the property from Wilson, A & J Homes contacted Green to make arrangements for the payment of rent. Agee testified that Green “just went crazy and out of control over the phone.” Agee stated that his reasons for seeking

the forcible entry and detainer are because there has been “no cooperation, no rent, [Green is] disrespectful, wouldn’t let us on the property.” Joseph Lewis (“Lewis”) of A & J Homes testified that when he contacted Green by phone, Green immediately became verbally abusive, saying “F--- you” and “all types of crazy language.” There were no further communications regarding rent because of Green’s reaction. Lewis also determined that Green had accumulated arrearages in the rent owed to Wilson prior to the sale to A & J Homes.

{¶5} Green testified that he could not understand how Agee and Lewis had become owners of the premises, in light of his lease with purchase option. He stated that he attempted to contact Wilson, but she avoided his calls, and he was unable to determine where to send rent payments. He stated, however, that his rental payments were current. Green provided no evidence that he had exercised the option to purchase or obtained financing.

{¶6} On May 13, 2014, the magistrate issued a decision granting A & J Homes restitution of the premises and concluded:

Nothing within the Lease with Purchase Option prohibits the owner, Samantha Wilson, from transferring the property to another * * *.

3. Until the option is exercised, the document remains merely a lease agreement and as such, the Defendant was required to remit \$550 rent by the first day of each month.
4. The Defendant failed to timely remit rent as required.

* * *

6. The Defendant was not unduly deterred or prohibited to remit rent by the actions of the Plaintiff or its representatives.

{¶7} The magistrate ordered Green to vacate the premises by May 18, 2014. Green moved for a stay and asserted that the decision was the subject of an appeal.¹ In opposition, A & J Homes maintained that because Green failed to present objections to the magistrate's decision under Civ.R. 53, he was barred from raising errors in that ruling on appeal. On May 22, 2014, the trial court denied the motion for a stay. On September 29, 2014, A & J Homes sold the premises to David and Lucille Bloom ("Intervenors"), who have been granted leave to intervene in this matter as appellees.

{¶8} Green now appeals and assigns one error for our review.

Assignment of Error

When the trial court ignored the plain language of the agreement at issue, relying on the title of the document instead of the substance of its terms, the trial court erred as a matter of law in holding that the agreement was a lease and that A & J Homes was entitled to evict Mr. Green.

{¶9} Within this assignment of error, Green argues that the trial court erred in determining that the parties entered into an option contract and not a land installment contract pursuant to R.C. 5313.01. Green maintains that he was purchasing the property and that his payments were to be held as a deposit and credited towards the purchase price of the property, with all payments due being equal to the purchase price of \$16,000. In

¹A second motion for a stay was filed in this court on May 30, 2014, but was denied as moot.

opposition, A & J Homes argues that the agreement does not meet the legal requirements for land installment contracts under R.C. Chapter 5313, and its unambiguous terms demonstrate that it is a lease with an option to purchase, and that the option was never exercised. A & J Homes also asserts that the matter is now moot since Green had only a possessory interest in the premises and has moved out following the eviction order. Intervenor likewise assert that Green's agreement with Wilson was simply an option contract and, in any event, Green's interest was extinguished by his failure to make payments. Intervenor further maintain that the action is now moot.

Distinguishing Land Installment Contracts and Option Contracts

{¶10} Our standard of review was explained in *Am. Servicing Corp. v. Wannemacher*, 2014-Ohio-3984, 19 N.E.3d 566 (3d Dist.), ¶ 14-15, as follows:

“‘If a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.’” *Barhorst, Inc. v. Hanson Pipe & Prods. Ohio, Inc.*, 169 Ohio App.3d 778, 2006-Ohio-6858, ¶ 10, 865 N.E.2d 75 (3d Dist.), quoting *Inland Refuse Transfer Co. v. Browning-Ferris Indus. of Ohio, Inc.*, 15 Ohio St.3d 321, 322, 474 N.E.2d 271 (1984). In that case, we apply a de novo standard of review. *City of St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, ¶ 38, 875 N.E.2d 561, citing *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214, 652 N.E.2d 684 (1995).

“However, if the contract is ambiguous, ascertaining the parties’ intent constitutes a question of fact.” *Fadelsak v. Hagley*, 4th Dist. Lawrence No. 02CA41, 2003-Ohio-3413, ¶ 9, citing *Crane Hollow, Inc. v. Marathon Ashland Pipeline, LLC*, 138 Ohio App.3d 57, 74, 740 N.E.2d 328 (4th Dist.2000). “We will not reverse a factual finding of the trial court so long as some competent, credible evidence supports it.” *Id.*, citing *C. E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1974), syllabus.

{¶11} With regard to the contract at issue herein, we note that a land installment contract conveys a present ownership interest in realty. *Am. Servicing Corp.*, citing *Riverside Builders, Inc. v. Bowers*, 10th Dist. Franklin No. 89AP-834, 1990 Ohio App. LEXIS 2315, *12 (June 7, 1990). A lease, on the other hand, creates a possessory interest, or right of possession in real estate. *Eller Media Co. v. DGE, Ltd.*, 8th Dist. Cuyahoga Nos. 83273 and 83286, 2004-Ohio-4748, ¶ 35. Similarly, a lease with an option to purchase property also conveys a present interest in the realty, which may be redeemed upon execution of the option.

{¶12} R.C. Chapter 5313 governs land installment contracts. Pursuant to R.C. 5313.01(A), 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 this state 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.

{¶13} R.C. 5313.02(A) sets forth 16 requirements for land installment contracts, including a provision that, if the vendor defaults on any mortgage on the property, the vendee can pay on that mortgage and receive credit on the land installment contract, and a requirement that the vendee be responsible for the payment of taxes, assessments, and other charges against the property from the date of the contract, unless agreed to the contrary. In addition, such contracts must include, among other requirements, the legal description of the property, and must be recorded in the county land records.

{¶14} Conversely, an option contract for the purchase of real property is defined as “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.” *Am. Servicing Corp.*, 2014-Ohio-3984, 19 N.E.3d 566 (3d Dist.) quoting *Judson v. Lyendecker*, 10th Dist. Franklin No. 12AP-615, 2013-Ohio-1060, ¶ 10. *See also Wolf v. Miller Diversified Consulting, LLC*, 6th Dist. Wood No. WD-07-049, 2008-Ohio-1233, ¶ 22. An option contract “consists of two independent elements: (1) an offer to buy, sell, or perform some act, which becomes a contract if properly accepted; and (2) the binding agreement to leave the offer open for a specified period of time.” *Cent. Funding, Inc. v. CompuServe Interactive Servs., Inc.*, 10th Dist. Franklin No. 02AP-972, 2003-Ohio-5037, ¶ 38.

{¶15} In *Judson*, the parties entitled their agreement “Rental Agreement,” and provided that Lyendecker “may” purchase the property after he accrued \$5,000 for a

potential down payment. Nothing in the agreement obligated him to do so or mandate conveyance of title to the property to him. Rather, it provided for different contingencies depending upon “if” Lyendecker purchased the property. The court therefore held that the agreement simply offered Lyendecker the privilege to purchase the property, and therefore, it was not a land installment contract but was merely an option to purchase.

{¶16} Similarly, in this matter, the agreement was entitled Lease with Purchase Option and provided that Wilson would “rent” the property to Green, and the rental payment would be \$550, due on the first of each month. The agreement also provided that all of the “amount that the Tenant pays the Landlord as rent under this Lease will be held as a deposit and credited against the purchase price of the property if this option is exercised by the Tenant.” If, however, Green did not exercise the option, then Wilson was permitted to “retain all of these payments as rent under this Lease.” In addition, there was no legal description for the parcel, the agreement was not recorded, and other requirements for land installment contracts under R.C. Chapter 5313 were not met. From all of the foregoing, we conclude that the agreement clearly and unambiguously constituted a lease with an option to purchase and not a land installment contract. Therefore, the trial court did not err in concluding that the parties did not enter into a land installment contract, and that the agreement constituted a lease with an option to purchase. Further, in light of the competent, credible evidence that Green did not exercise the option, we conclude that the trial court properly entered judgment for A & J Homes. Moreover, in light of the competent, credible evidence that Green did not pay

the sums due under the agreement, he was barred from recovering against the seller for breach of contract as a matter of law. *Young v. Brookshire Village Properties*, 101 Ohio App.3d 458, 461, 655 N.E.2d 1329 (12th Dist.1995). *See also Nious v. Griffin Constr. Inc.*, 10th Dist. Franklin No. 03AP-980, 2004-Ohio-4103, ¶ 16.

{¶17} Having concluded that Green had merely a possessory interest in the property and not an ownership interest, we further note, with regard to the issue of mootness, that in *Sheehe v. Demsey*, 8th Dist. Cuyahoga No. 99965, 2014-Ohio-305, ¶ 7, this court stated:

“Under Ohio law, a forcible entry and detainer action decides the right to immediate possession of property and ‘nothing else.’” *Cleveland Fin. Assocs., L.L.C. v. Cleveland Banquets, L.L.C.*, 8th Dist. Cuyahoga No. 95009, 2011-Ohio-931 ¶ 11, quoting *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25, 423 N.E.2d 1070 (1981), fn. 11. Therefore, “[o]nce the landowner has been restored to his property, the forcible entry and detainer action becomes moot because there is no further relief that may be granted to the landowner.” *Id.* at ¶ 11. In order to preserve appellate rights, the evicted party must stay the ejectment. *Id.* “[I]f a defendant fails to obtain a stay of execution and/or post a supersedeas bond, all issues relating to forcible entry and detainer are rendered moot.” *Id.*, citing *Tripp v. French*, 9th Dist. Medina No. 02CA0004-M, 2002-Ohio-6996, ¶ 8.

{¶18} In this matter, A & J Homes has been restored to possession. Green did not file objections to the report and recommendation of the referee, and he did not obtain a stay of the order restoring possession of the premises to the owner. Because this matter was simply a forcible entry and detainer action, Green did not have an ownership interest in the premises, and the owner has been restored to possession, the matter is now moot.

{¶19} For all of the foregoing reasons, the assignment of error lacks merit.

{¶20} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Parma Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA A. BLACKMON, J., CONCUR