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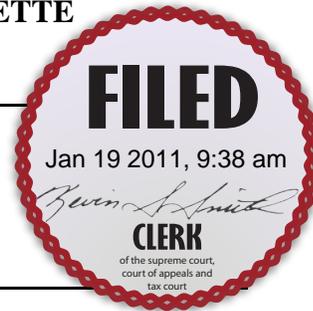
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**IN THE
COURT OF APPEALS OF INDIANA**



KATHY LYNCH,)

Appellant-Plaintiff,)

vs.)

No. 37A03-1004-CC-193

DARYL and ELIZABETH ACKERMAN,)

Appellees-Defendants.)

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable John D. Potter, Judge
Cause No. 37C01-0911-CC-668

January 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a bench trial, Kathy Lynch appeals the judgment in favor of Daryl and Elizabeth Ackerman (collectively the “Ackermans”). Lynch raises the sole issue of whether the trial court erred in finding that her contract with the Ackermans was unenforceable. Concluding that the trial court erred and that the contract was enforceable, we reverse and remand.

Facts and Procedural History

In October 2006, the Ackermans signed an agreement to rent with an option to buy a home from Lynch. Although all signed the agreement in October 2006, the terms state the Ackermans’ occupancy and monthly payments began in September 2006. The agreement, entitled “RENT WITH OPTION TO BUY CONTRACT,” includes the total home price, down payment amount, interest rate, monthly payment amount, payment instructions, late payment penalty details, and the following statements:

This contract will be upheld until the dissolution of marriage between Douglas and Kathy L. Lynch-Baughman in 2007. All payments will apply to the ownership of mortgage unless renter/buyers choose, all payments will be assumed as rent only. Upon dissolution, a new contract will be written. . . .

Length of contract-5 yrs-September 1, 2011-balance due in full by obtaining a bank mortgage by this date. Decision will be up to mortgage holder to continue this original contract if requested by renter/buyers.

Taxes will be paid by Kathy Lynch.

Insurance will be paid by Kathy Lynch. . . .

. . . If the rent/ mortgage falls behind 90 days, the house should be put up for sale. All profit will go the [sic] buyers after mortgage and all legal fees pertaining to the home are paid.

Appendix to Brief of Appellant at 72.

In August 2009, Lynch filed suit in small claims court to evict the Ackermans for failure to pay rent for over a year. Following a hearing, the presiding judge provided candid comments but declined to enter a judgment, and instead transferred the matter to the circuit court. The parties then finalized a partial settlement, which led to the Ackermans returning possession of the home to Lynch on November 1, 2009.

Lynch filed a complaint on or about November 25, 2009 in the circuit court, alleging the Ackermans' breach of contract and seeking damages. On March 12, 2010, a bench trial was held, at which Lynch appeared represented by counsel and the Ackermans appeared pro se. At trial Lynch argued the Ackermans were at least sixteen months behind in payments, and although the Ackermans conceded that under the terms of the agreement they were behind, they contended the amount owed was less than Lynch alleged but did not specify an amount. The Ackermans also conceded they did not execute a writing of their intent to exercise their option to purchase, although the trial revealed they and Lynch understood the Ackermans' intended to exercise that option at some point because the Ackermans performed substantial landscaping on the property and renovated the home's interior. Lynch testified that finalization of her divorce mentioned in the agreement took longer than expected, and was not finalized until April 2009.¹

Neither party requested special findings of fact or conclusions of law pursuant to Trial Rule 52(A). Following trial, the trial court entered an order which reads:

The Court . . . finds that the parties' contract states as follows:

¹ The exact date Lynch's divorce became finalized is unclear from the record.

“This contract will be upheld until the dissolution of marriage between Douglas and Kathy L. Lynch-Baughman in 2007.”

The Court further finds that Douglas and Kathy L. Lynch-Baughman’s divorce was final in the year 2009, prior to the filing of this case regarding the rent with option to buy contract.

The Court therefore finds that this contract is unenforceable against the buyers, Daryl and Elizabeth Ackerman, and the Plaintiff shall take nothing by way of her complaint.

Id. at 12.

Lynch now appeals.

Discussion and Decision

I. Standard of Review

Here neither party requested special findings of fact and the trial court was not required to enter such findings. Our standard of review of the trial court’s sua sponte findings and general judgment are well-settled:

Sua sponte findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. When a court has made special findings of fact, an appellate court reviews sufficiency of the evidence using a two-step process. First, it must determine whether the evidence supports the trial court’s findings of fact; second, it must determine whether those findings of fact support the trial court’s conclusions of law. Findings will only be set aside if they are clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. In order to determine that a finding or conclusion is clearly erroneous, an appellate court’s review of the evidence must leave it with the firm conviction that a mistake has been made.

Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997) (quotations and citations omitted).

II. Enforceability of the Contract

The Ackermans concede the contract was enforceable when entered in 2006. Brief of Appellees, Daryl and Elizabeth Ackerman at 20. Indeed, the face of the agreement contains the requirements of a valid contract – offer, acceptance, consideration, and manifestation of mutual assent. See Family Video Movie Club, Inc. v. Home Folks, Inc., 827 N.E.2d 582, 585 (Ind. Ct. App. 2005); see also Conwell v. Gray Loon Outdoor Mktg Grp., Inc., 906 N.E.2d 805, 813 (Ind. 2009) (stating “[t]o be valid and enforceable, a contract must be reasonably definite and certain,” at least as to material terms). The Ackermans also concede they were delinquent in payments at least by June 2008. Br. of Appellees, Daryl and Elizabeth Ackerman at 22; Transcript at 47, 49-51. The Ackermans contend they owe less than what Lynch proposes, but they do not specify an amount or estimate how much less.

These concessions and disagreement as to the amount owed demonstrate that the evidence does not support the trial court’s finding that the contract is unenforceable. Enforceable at its inception, no act or omission by either party rendered the contract unenforceable prior to finalization of Lynch’s divorce. Therefore, we conclude the contract was indeed enforceable against the Ackermans at least up to the date that Lynch’s divorce became finalized in April 2009. Accordingly, we remand to the trial court for determination of damages owed to Lynch.

Further, we consider whether the Ackermans owed Lynch for the period beginning on the date Lynch’s divorce became final and ending on the date the Ackermans returned the property to Lynch, November 1, 2009. We acknowledge the lease contract’s self-limiting

provision that it would only be upheld until Lynch's divorce became finalized, but address this question with a discussion of whether the Ackermans were holdover tenants during this period.

Generally, when a tenant remains in possession of real property beyond the term of his lease, he becomes a holdover tenant and the lease is renewed. City of Bloomington v. Kuruzovich, 517 N.E.2d 408, 411 (Ind. Ct. App. 1987), trans. denied. This renewed lease is subject to the same terms and conditions as the original lease. Id. The Ackermans may argue they were not holdover tenants, but in fact were trespassers. See Houston v. Booher, 647 N.E.2d 16, 19 (Ind. Ct. App. 1995) (“When a lessee under a lease for a definite term holds over after the expiration of that term, the lessor has the option of treating the lessee as a tenant or a trespasser.”). Because this could lead to other liabilities, i.e., criminal liability under Indiana Code section 35-43-2-2, the Ackermans might rather argue the contract remained in effect and they were tenants continuing to pay their rent.

The record is unclear on the Ackermans' actual status, and therefore we conclude the Ackermans might be estopped from arguing they were not holdover tenants and would not owe Lynch for this period. Estoppel is an equitable doctrine which prohibits “one who by deed or conduct has induced another to act in a particular manner [from] adopt[ing] an inconsistent position, attitude, or course of conduct that causes injury to such other.” Brown v. Branch, 758 N.E.2d 48, 52 (Ind. 2001). We conclude they “might” be estopped because it is unclear if the Ackermans paid rent during this period or performed any other act that would factually estop them from refuting their holdover tenant status. Therefore, on remand,

we also direct the trial court to determine the amount, if any, the Ackermans owe Lynch for the period beginning on the date of Lynch's finalized divorce and ending on November 1, 2009.

Conclusion

The contract was enforceable up until the date of Lynch's divorce. Accordingly, we reverse the trial court's judgment and remand for determination of damages the Ackermans owe Lynch prior to the date her divorce became finalized. In addition, on remand we order the trial court to determine the amount, if any, the Ackermans owe Lynch under the terms of the contract for the period beginning on the date of Lynch's finalized divorce and ending on November 1, 2009.

Reversed and remanded.

RILEY, J., and BROWN, J., concur.