

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GN ASSOCIATES, A PENNSYLVANIA :
CORPORATION, :
Plaintiff : No. 07-00008
vs. : CIVIL ACTION – LAW
JUSTIN MACURAK, :
Defendant : Preliminary Objections

ORDER

AND NOW, this ____ day of July 2007, the Preliminary Objections filed by Defendant Justin Macurak in the nature of a demurrer are **DENIED**.

In regard to Defendant’s claim that Plaintiff’s Complaint must be dismissed because Defendant was a minor at the time he entered into the contract with Plaintiff, there are significant factual issues, which preclude the demurrer. It does not appear the Defendant did anything to disaffirm the contract for a significant time after he reached majority. Defendant turned majority age within days of signing the agreement to lease. It is asserted by Plaintiff that Defendant did not raise his age as an issue until Plaintiff filed a lawsuit against him before a Magisterial District Judge (MDJ). This issue cannot be decided without a factual record.

Next, Defendant demurs on the basis that a landlord in Pennsylvania cannot collect damages in the form of rental payments on an agreement to lease when Defendant fails to sign the actual lease. Defendant cites a 1931 case for this proposition, Zook v. Zook, 104 Pa.Super. 374 (1931). In Zook v. Zook, supra, an agreement to lease was entered before the parties, but a lease was not signed by the lessee. The Court held that the agreement could

not support an action for rent as damages although an action for breach could be maintained.

In this case the written agreement to lease, which was admittedly signed by Defendant, contains a provision that the landlord can seek to recover rent as damages if Defendant fails to sign the lease. The Court cannot say at this point that Pennsylvania law would preclude recovery of rent as damages when it is specifically included as part of the agreement between the parties. There may be other issues such as the minority of Defendant, or whether this could be viewed as a contract of adhesion, which cannot be decided at this time.

Accordingly Defendant's Preliminary Objections to the Complaint are hereby **DENIED**. Defendant shall file an answer to the complaint within twenty (20) days of receipt of this Order.

By The Court,

Kenneth D. Brown,
President Judge

cc: Work file
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