

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

R.H. LEFEVER,	:	
Plaintiff	:	
	:	
v.	:	No. 05-01,896
	:	CIVIL ACTION
JASON McCLOSKEY and MANDIE	:	
McCLOSKEY,	:	
Defendants	:	

JASON McCLOSKEY and MANDIE	:	
McCLOSKEY,	:	
Plaintiffs	:	
	:	
v.	:	No. 06-01,604
	:	CIVIL ACTION
R.H. LEFEVER,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on November 2, 2006, and November 21, 2007. On October 6, 2005, R.H. Lefever (Plaintiff) filed an action for possession of real property with Magistrate District Judge James G. Carn. Magistrate District Judge Carn entered an order for possession in favor of Plaintiff and against Mandie McCloskey and Jason McCloskey (Defendants) on October 20, 2005. Defendants appealed that Order on October 24, 2005. In response to the Defendants' appeal, Plaintiff filed a Complaint on November 14, 2005 for breach of contract, and a demand for rent in arrears in the amount of \$1,250.00. On August 8, 2006, Defendants filed a Complaint against Plaintiff for Promissory Estoppel, Specific Performance, and Unjust Enrichment.

Background

On April 28, 2002, Plaintiff's first wife, the Defendant Mandie McCloskey's mother, was killed in a car accident. Plaintiff was also seriously injured in said accident. Due to the accident, Plaintiff received life insurance proceeds and then used those proceeds to help his children. The instant matter arises from Plaintiff's purchase of a house in which the Defendants currently reside.

In Plaintiff's Complaint, he alleged that in January of 2003 the parties entered into an oral lease for 2570 Newberry Street, Williamsport, PA. The Plaintiff stated that the rent was \$600 dollars per month. Also pursuant to the agreement, the Defendants were to cut the grass and otherwise maintain the property. Plaintiff alleged that Defendants failed to pay rent since moving into the property and thus, demanded rent in arrears. Additionally, Plaintiff alleged that Defendants broke windows and failed to reasonably care for the property, thus breaching their oral contract to maintain the property in a reasonable condition.

In Defendants' Complaint, they alleged that Plaintiff promised to sell the property to them, by making arrangements in the future, and that they detrimentally relied on said promise. Defendants also alleged that they conferred a benefit to the Plaintiff in remodeling the house and providing \$8,000 for the purchase of the property. As such, Defendants argued that retention and sale of the property by Plaintiff, without payment to the Defendants would result in inequity.

Trial in this matter began on November 2, 2006. After Defendant Mandie McCloskey's direct testimony, Plaintiff offered to sell the house to Defendants for \$85,000. In the Court's November 3, 2006 Order, regarding the settlement agreement, the Court ordered Defendants to attempt to obtain mortgage financing, a commitment letter, or determine whether financing through a commercial lender will be approved within thirty (30) days. The Court also ordered

that if commercial financing is not an option, then the parties were to cooperate together, and that Plaintiff shall take back a mortgage on the house in the amount of \$85,000. The Court further ordered that the interest rate will be set at no greater than prime minus one percent and that Defendants will assume both the payments for taxes and insurance. Moreover, the Court ordered that if good faith negotiations fail or the Defendants are unable to obtain financing, the Defendants must make the property available for sale by March 1, 2007. On March 5, 2007, the Court extended the deadline to April 1, 2007.

On March 28, 2007, Defendants filed a Motion to Rescind the Settlement Agreement. On May 23, 2007, the Court, by agreement of the parties, granted said motion. Defendants were also ordered to begin paying \$500.00 per month, starting on June 15, 2007, to Casale & Bonner, P.C., until further Court order, for their use of the premises.

Due to the rescission of the settlement agreement, trial in this matter resumed on November 21, 2007, at which time Counsel for Plaintiff moved this Court to conform evidence to the pleadings, which included a claim for Ejectment. The Court granted said motion. At trial, Plaintiff testified that on or about January 19, 2003, he purchased at an auction, the property at 2750 Newberry Street, Williamsport, PA for \$85,000. Plaintiff purchased the house for the Defendants, and their children to live in, as Plaintiff felt Defendant's current house was too small. Plaintiff testified that the Defendants did not make any payments on the house. Following the purchase of the house, Plaintiff testified that Defendants made repairs to the house, in which he helped pay for. Plaintiff also testified that he made all the house and tax payments and that while the Defendants lived in the house, they did not make any payments towards the house. Plaintiff testified that there came a point where he was unable to afford the house due to his current income and costly prescription medications. Plaintiff testified further that he conveyed to

Defendants his inability to afford the house and that he needed to sell the property. Plaintiff stated that he made an effort to sell the property in late spring of 2006, through Fish Real Estate Agency, but the Defendant Jason McCloskey physically chased out the Fish Real Estate Group. Plaintiff also testified that he went to the Magistrate seeking possession of the residence. Moreover, Plaintiff testified that although Defendants wanted to buy the property from him, and wanted Plaintiff to take back the mortgage on the property, he portrayed to Defendants that he was unable to carry the mortgage.

Monique McFadden, Plaintiff's daughter, also testified that in the summer of 2005, she witnessed the conversation between Plaintiff and Defendant Mandie McCloskey regarding the purchase of the house. Ms. McFadden testified that Plaintiff informed Defendant Mandie McCloskey that he was unable to carry the payments on the house. Further, Ms. McFadden testified that Plaintiff let Defendant Mandie McCloskey know what the house was appraised at, and that she needed to go through Fish Realty if she was interested in purchasing the house.

Defendant Mandie McCloskey also testified at trial as to Plaintiff's purchase of the house for Defendants. Defendant Mandie McCloskey stated that on July 31, 2002, she and Defendant Jason McCloskey provided Plaintiff with \$8000.00 from Defendant Jason McCloskey's Workers' Compensation settlement, which was used as a down payment on the property. Defendant Mandie McCloskey also testified that Plaintiff never told her he wanted to lease the property. She testified further that on numerous occasions, she asked when Plaintiff wanted to start payments, offered to pay taxes and insurance, and asked Plaintiff to put the agreement in writing, to which he refused. Defendant Mandie McCloskey testified further that she, Defendant Jason McCloskey, and Plaintiff all purchased the materials for the numerous repairs Defendants made to the home. Defendant Mandie McCloskey testified that Plaintiff demanded she buy the

property from him in the spring of 2005 for \$118,000. Defendant also testified that there was no written agreement to buy the house, and that from January 2003 until last year, she and Defendant Jason McCloskey did not make any rent payments.

At trial, Defendant Jason McCloskey testified that Plaintiff purchased some of the materials for the repairs, but did not help with the repairs. Defendant Jason McCloskey stated that the oral agreement was that the Defendants would make payments in the future, but there was no agreement on what the payments would be or when they would start, but that the payments would not exceed \$550-\$600. Additionally, Defendant Jason McCloskey testified that there was no discussion of what the interest rate would be. Defendant Jason McCloskey further testified that he and Defendant Mandie McCloskey never paid any of the taxes on the property. Finally, Defendant Jason McCloskey testified that he and Defendant Mandie McCloskey offered to pay taxes and make payments before Plaintiff's demand of \$118,000 to buy the house.

Lastly, Michele Lefever testified that her father, the Plaintiff, told her that he wanted to help Defendants with the house. Ms. Lefever also testified that Plaintiff told her that Defendants will be paying him back, without interest, for the purchase price of the house. Ms. Lefever testified further that on April 29, 2005, Plaintiff said to Mandie McCloskey, "I have to sell it, get out." Finally, she stated that Plaintiff never mentioned needing payments.

Discussion

Statue of Frauds Bars Enforcement of the Oral Agreement

The Statute of Frauds bars enforcement of oral agreements for the sale of real estate. 33 P.S. § 1. However, an oral contract for real estate can be taken out of the Statute of Frauds if the following requirements are met. As laid out by the Pennsylvania Supreme Court, the three requirements to take an oral contract for real estate out of the Statute are: (1) full, complete, and

satisfactory proof of the contract terms, (2) exclusive, continuous, and maintained possession, taken in pursuance of the contract, and (3) performance or part performance cannot be compensated in damages. Kurland v. Stolker, 533 A.2d 1370, 1373 (Pa. 1987).

The Court finds that the oral agreement entered into between the Plaintiff and Defendants is barred by the Statute of Frauds. While the Court finds possession to be exclusive, continuous, maintained, and taken in pursuance of the oral contract, the other two requirements are not met. First, from the testimony and assertions presented by both Plaintiff and Defendants, the Court cannot find full, complete, and satisfactory proof of the terms of the oral agreement. Even if the Court accepts the Defendant Jason McCloskey's testimony that there was an oral agreement, whereupon, the Defendants would make payments in the future, with the payments not exceeding \$550-\$600, that agreement is insufficient to provide full, complete, and satisfactory proof. Second, the Court finds that Defendants improvements to the property can be compensated in damages. The Defendants have receipts for the materials they purchased to make the repairs and thus, proof that their performance can be compensated in damages. Since the three requirements are not met, the oral agreement is barred by the Statute of Frauds. As Defendants have failed to obtain commercial financing and the Court can find nothing established in the law that requires Plaintiff to finance Defendant's purchase of the house, the Defendants must vacate said premises.

Defendants have not met their burden of proof for Promissory Estoppel

Promissory Estoppel is an equitable remedy that makes an otherwise unenforceable agreement binding to prevent injustice. See Crouse v. Cyclops Indus., 745 A.2d 606, 611 (Pa. 2000). Restatement (Second) of Contracts, § 90(1), provides that:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or

forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

The burden of proof is on the party who asserts the claim of Promissory Estoppel. See Thatcher's Drug Store v. Consol. Supermarkets, 636 A.2d 156, 160 (Pa. 1994) “One of those elements is that enforcement of the promise must be necessary to avoid injustice. Significantly, satisfaction of [this] requirement may depend on the reasonableness of the promisee's reliance, on its definite and substantial character in relation to the remedy sought . . .” Id. at 160.

The Court finds that Defendants' reliance on the alleged oral agreement is misplaced as “nothing was done to formalize the promise.” Id. at 160. Plaintiff and both of the Defendants testified that the oral agreement was never written down. Even if the Court accepts Defendant Jason McCloskey's testimony regarding the alleged oral agreement, the oral agreement did not provide the amount of payments or when the payments would start. Further, while the Defendants may argue that they moved out of their apartment and into the property owned by Plaintiff in reliance on the oral agreement, this is not enough to show that Plaintiff made a promise which Defendants reasonably relied upon. The Defendants were renting an apartment prior to moving to their current residence, and thus moving put them in the same position. Additionally, although the Defendants made numerous repairs to the house, and Defendant's argued that they would not have made such repairs if they were only tenants, it is important to note that Plaintiff also purchased some of the materials to make these repairs. As Defendants reliance on an incomplete agreement is not reasonable, there is no injustice by not enforcing said agreement.

Plaintiff would be unjustly enriched if Defendants were not compensated for their improvements to the property

In order “[t]o recover based on unjust enrichment, there must be . . . (1) an enrichment and (2) an injustice if the unenriched party does not recover for that enrichment.” Cambria-Stoltz Enters. v. TNT Invs., 747 A.2d 947, 953 (Pa. Super. Ct. 2000) (citing (Chesney v. Stevens, 644 A.2d 1240, 1243 n.4 (Pa. Super. Ct. 1994))). However, most significant to recovery “is that the enrichment of the defendant is unjust.” Cambria-Stoltz, 747 A.2d at 953 (quoting Chesney, 644 A.2d at 1245). In order to be unjustly enriched, the claimant must show that the party for whom recovery is sought “receive[d] a benefit wrongfully or passively.” Wilson Area Sch. Dist. v. Skepton, 895 A.2d 1250, 1253 (Pa. 2006). When unjust enrichment is proven, “the amount which . . . tenants may recover . . . is the value of the benefit they have conferred upon . . . landlord.” Cambria-Stoltz, 747 A.2d at 954 (quoting Chesney, 644 A.2d at 1245).

Defendants paid for slightly more than half of the materials used to improve the property and performed the improvements themselves. As such, the Court finds that Plaintiff would be unjustly enriched if the Defendants did not recover for the increase in value to the property. The house was purchased for \$85,000.00 and after all the repairs were made was appraised at \$118,000.00. Therefore, Defendants efforts increased the value of the property by \$33,000.00. Defendants are entitled to \$12661.05, upon Plaintiffs sale of the property, which represents the increase in the value of the property, minus the \$2338.95 in materials purchased by Plaintiff, the \$8,000.00 payment, and the \$26,000.00 of rent owed by Defendants.¹

¹ Since June 15, 2007, Defendants have made regularly monthly rental payments in the amount of \$500.00 to Casale & Bonner, P.C. The Court subtracted \$3,500.00 which represents the amount paid since June, from the total amount of rent owed for the last four years.

Defendants are not entitled to Specific Performance

“From the moment an agreement of sale of real estate is executed and delivered it vests in the grantee what is known as an equitable title to the real estate.” Payne v. Clark, 187 A.2d 769, 770 (Pa. 1963). “[I]f the terms of the agreement are violated by the vendor, the vendee may go into a court of equity seeking to enforce the contract and to compel specific performance.” Id. at 770-71 (and cases cited therein). To grant specific performance is within the Court’s discretion. Id. at 771. Specific performance “should only be granted where the facts clearly establish the plaintiff’s right thereto; where no adequate remedy at law exists; and, where the chancellor believes that justice requires it. Id. (and cases cited therein).

The Court finds that the alleged oral agreement is barred under the Statute of Frauds. As there is no binding agreement the Defendants do not have equitable title to the property. Therefore, the Defendants are not entitled to Specific Performance as a remedy.

VERDICT

AND NOW, this _____ day of January 2008, the Court hereby finds in favor of the Plaintiff on his claim for Ejectment, for the Defendants on their Unjust Enrichment claim, and against the Defendants with respect to their claims of Promissory Estoppel and Specific Performance. The Court hereby **ORDERS AND DIRECTS** the Defendants vacate the property within ninety (90) days of the date of this Order. Additionally, the Court hereby **ORDERS and DIRECTS** that the Plaintiff render to the Defendants the amount of \$12661.05, upon sale of the property.

By the Court,

Nancy L. Butts, Judge

xc: Joseph F. Orso, III, Esq.
Jennifer Ayers, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
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