

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD JOACHIM and WENDY JOACHIM,	:	NO. 07 – 02,485
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
GEORGE OHLINGER and MARIE OHLINGER,	:	
Defendants	:	Motions for Summary Judgment

OPINION AND ORDER

Before the Court are cross-motions for summary judgment, filed by the Defendants on March 6, 2009, and by the Plaintiffs on March 16, 2009. Argument on the motions was heard April 21, 2009.

On August 14, 2006, the parties entered into a commercial lease whereby Plaintiffs leased two properties from Defendants, with the intent of operating a bed and breakfast. The lease called for the payment of rent in the amount of \$200 per month, and ran for an indefinite term, month to month. The lease also indicated that any improvements made during the term of the lease would become the property of Defendants upon its termination. On August 15, 2006, the parties entered into two agreements of sale with respect to the same two properties and some personal property contained in each. Closing dates were provided for in each agreement: December 15, 2006 for one and January 1-31, 2007 for the other. The Plaintiffs indicated to the Defendants that they would not be able to close until they sold their house, and Defendants agreed to wait for that occurrence. When the closing dates came and went without closings, and Plaintiffs continued to lease the properties, Defendants agreed to continue to wait. Thus, the written contracts were modified by an oral agreement, and it is this oral agreement that forms the basis of Plaintiff's claims against Defendants.

In May 2007, Defendants indicated to Plaintiffs that "something had to be done." Plaintiffs did not pay the rent for July or August 2007, and removed themselves and their property. At some point after May 2007, Defendants told Plaintiffs they should leave, but it is unclear whether this occurred before or after Plaintiffs moved out.

In their suit against Defendants, Plaintiffs seek reimbursement for the expenses incurred in making repairs and improvements to the property. In their Counterclaim, Defendants seek specific performance of the agreements of sale, damages for breach of the agreements of sale, and various damages with respect to a claim for breach of the lease: non-payment of rent, reimbursement for real estate taxes and a water bill, and reimbursement for repairs alleged necessary by Plaintiffs' modifications. In the motions for summary judgment, Defendants seek to dismiss all claims brought by Plaintiffs, and Plaintiffs seek to dismiss the claims brought by Defendants based on the agreements of sale. For the reasons which follow, the Court will grant both motions in their entirety.

It is clear to the Court that Plaintiffs breached the agreements of sale. When the dates for closing came and went and no new dates were inserted into the contracts, the contracts thereafter are to be construed as providing for closing within a reasonable time. *See* Kearney v. Hogan, 25 A. 1076 (Pa. 1893), and Bogojavlensky v. Logan, 124 A.2d 412 (Pa. Super. 1956). Further, Defendants' promise to wait until Plaintiffs sold their house, referencing no particular term, was subject to this "reasonable" term, and as a matter of law, the Court finds the delay until May to be reasonable. Plaintiffs' failure to close when informed that "something had to be done" thus constituted a breach of the agreements of sale; Defendants indication that they would no longer wait as of May 2007 did not constitute a breach.

It is also clear that Plaintiffs breached the lease by failing to make monthly rent payments in July and August 2007, and that Defendants properly terminated the lease. According to the terms thereof, any improvements were to remain the property of Defendants. Plaintiffs thus cannot recover for such improvements.

With respect to Defendants' claim for specific performance, the parties' deposition testimony shows that Plaintiffs are not in a position to purchase the property at this time. As specific performance would be an impossibility, such cannot be ordered.

Finally, with respect to Defendants' claim for breach of the agreements of sale and their request for damages in the amount of the purchase price of both parcels and the personalty,

which is based on their claim that the property has no value whatsoever,¹ such claim is so unsupported by evidence that the Court will not allow it to proceed to trial.

ORDER

AND NOW, this 1st day of May 2009, for the foregoing reasons, both motions for summary judgment are hereby GRANTED. The counter-claim for breach of the lease is hereby referred to arbitration, and may be scheduled for a hearing at this time.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Betty Buckle, Court Administrator's Office
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Randall Sees, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ In paragraph 23 of their Response to Plaintiffs' Motion for Summary Judgment, Defendants allege "they attempted to sell the property at auction and were unable to obtain any bids. Accordingly, the property has no fair market value".