IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MICHAEL and MICHELLE RICKARD, Plaintiffs	:	NO. 14 – 02,651
	:	CIVIL ACTION - LAW
vs.	:	
	:	
MARK. D. MARINO, Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the court is a motion for summary judgment filed by Plaintiffs on June 9, 2015. Argument on the motion was heard July 21, 2015.

In their Complaint, Plaintiffs allege that on or about August 1, 2008, they entered a rental/lease agreement and an option-to-purchase agreement with Defendant with respect to a residence owned by Defendant and in which they resided. In connection with the option-to-purchase agreement, they paid a "security deposit/down payment" of $21,263.00. Under that agreement, they were required to secure funding to purchase the property by July 1, 2012. According to the Complaint, since they were unable to secure the funding, Defendant contracted with them (on April 24, 2013) to return the security deposit, contingent upon the property selling, and the property then sold in August 2013. Plaintiffs seek damages of $21,263.00, asserting that by refusing to return the security deposit, Defendant has breached the contract of April 24, 2013.

In his Answer, Defendant contends that Plaintiffs' receipt of the full $21,263.00 was contingent on the property selling at the then listed price but that it sold at a reduced price. In New Matter, Defendant contends that in July 2013, the parties entered an agreement that Defendant would return $6,000.00 of the deposit. In response, Plaintiffs deny agreeing to a return of only $6,000.00.

In their motion for summary judgment, Plaintiffs seek entry of judgment for $21,263.00 based on the facts of the April 24, 2013, agreement and the sale of the property. Defendant posits a different interpretation of the agreement than espoused by Plaintiffs and opposes entry

of judgment. He also offers evidence of the subsequent agreement to return $6,000.00. Considering all of the evidence, the court believes judgment cannot be entered as a matter of law.

> The Rental/Lease Agreement provides in Paragraph 11, that
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> Tenant's security deposit/down payment of $21,263 will be credited against the purchase price at the time of closing of the property pursuant to the completion of the option-to-purchase being exercised. Failure by the tenant to purchase the property in accordance with the option-to-purchase agreement will result in forfeiture of the complete security deposit/down payment.
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> The Option-to-Purchase Agreement provides in Paragraph 4, that
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> …a failure to complete the option-to-purchase agreement by the date agreed upon, will result in forfeiture of all principal earned throughout the agreement, as well as the security deposit.

According to Defendant, when Plaintiffs were unable to secure financing by the July 1, 2012, deadline, the parties orally agreed to extend the term of the option-to-purchase agreement for one year to allow Plaintiffs to continue to seek financing. Defendant informed Plaintiffs in April 2013 that he would not be able to again extend the agreement, past August 2013, and Plaintiffs asked Defendant to provide written confirmation that they would receive a return of the security deposit, with the hope that such a writing would assist them in obtaining financing to purchase the property. The April 24, 2013, agreement is that written confirmation:

> The Option to Purchase Agreement made between Michael & Michelle Rickard (buyers/tenants) and Mark and Regina Marino (owners) expired on July 1, 2012. Mr. and Mrs. Rickard will be receiving the deposit of $21,263, contingent on the house selling.

Defendant argues that since at that time, the parties were still intending that Plaintiffs buy the property (at the price agreed upon in the original option-to-purchase agreement), the agreement to return the deposit was entered with the understanding that *Plaintiffs would be buying the property,* and thus was contingent on that fact. While the April 24 writing does not explicitly so state, the court accepts Defendant's position that such is a reasonable

interpretation which could be made by a fact finder.[1] The evidence of a subsequent agreement to return only $6000.00 is further evidence in support of such an interpretation.[2] Thus, Plaintiffs' position that the contract is not subject to any contingencies and that they are entitled to judgment as a matter of law is not supported by the record at this time.

ORDER

AND NOW, this day of July 2015, for the foregoing reasons, Plaintiffs' motion for summary judgment is hereby DENIED. The arbitration hearing may be scheduled as previously directed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Keely Hitchens, Court Administrator's Office
Jan Rumsey, Esq.
Corey Mowrey, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

[1] The parol evidence rule, which Plaintiffs contend prevents the court from considering any oral discussions preceding the writing of April 24, does not apply in this instance. See De Witt v. Kaiser, 484 A.2d 121 (Pa. Super. 1984)("3 Corbin on Contracts, § 590 (1960), states 'Evidence of the facts tending to show that [] a fundamental assumption was made, though not expressed in writing, should never be excluded by any 'parol evidence rule'.'"

[2] Plaintiffs argue that the alleged agreement to return $6000.00 is unenforceable for lack of consideration. The court is not being asked to enforce that agreement, but only to consider it as evidence of intent with respect to the prior agreement (which, in the court's opinion, also appears to lack consideration). Interestingly, Plaintiffs position that the agreement to return $6000.00 is unenforceable may come back to haunt them in the end.