

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHRIS SUPPLE, by Barbara Folk, attorney-in-fact, Plaintiff	: NO. 16 – 01,647
	:
vs.	: CIVIL ACTION - LAW
	:
	:
DAVID B. RICHARDSON, Defendant	: Non-jury Trial

**OPINION AND ORDER**

Before the Court is Plaintiff’s<sup>1</sup> request for an Order granting him possession of certain real property and ejecting Defendant therefrom, as well as Defendant’s opposing request for enforcement of an alleged agreement of sale of the property.<sup>2</sup> A hearing was held on January 25, 2017, following which Plaintiff requested and was granted the opportunity to provide a short memorandum on the legal issues presented at trial. That memorandum was filed January 30, 2017 and the matter is now ripe for decision.

On April 3, 2015, in a writing signed by both parties, the parties entered a Rental Agreement whereby Defendant rented from Plaintiff a dwelling located at 1457 State Route 14 in Trout Run, Pennsylvania.<sup>3</sup> The Agreement provides for a month-to-month lease and states that it shall continue from month-to-month until otherwise terminated.<sup>4</sup> Defendant began residing in the property as of May 1, 2015, and continues to reside there. Plaintiff sent Defendant a Notice to Quit on

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<sup>1</sup> For all purposes related to the instant suit, Plaintiff was represented by Barbara Folk, his attorney-in-fact. Therefore, when the court refers to “Plaintiff”, it is actually Ms. Folk to whom the court is referring.

<sup>2</sup> This matter began in magisterial district court as an eviction proceeding, which resulted in a judgment for possession in favor of Plaintiff, from which judgment Defendant has appealed.

<sup>3</sup> See Plaintiff’s Exhibit 1.

<sup>4</sup> Id.

September 9, 2016, however, terminating the lease and directing Defendant to vacate the property by October 31, 2016.<sup>5</sup>

At some time before or after Defendant moved into the property, the parties discussed Defendant's desire to purchase the property. Defendant testified that Plaintiff agreed to allow half of his rent payments to be applied to the anticipated purchase price; Plaintiff testified that when he asked to do that, she said "no".<sup>6</sup> In any event, discussions about the proposed purchase included financing and when Defendant related to Plaintiff that he could not obtain a traditional loan, Plaintiff suggested owner-financing.

Sometime shortly after June 10, 2016 Plaintiff provided to Defendant a copy of a letter from Plaintiff's attorney to Plaintiff<sup>7</sup> and a copy of an undated, unsigned "Agreement of Sale."<sup>8,9</sup> Plaintiff testified that when she gave these to Defendant, she told him to discuss them with his attorney and have his attorney call her attorney. Defendant testified that he signed the Agreement of Sale and placed it in Plaintiff's mailbox on July 1. Plaintiff denied ever receiving the document, and testified that she did not hear back from Defendant about the proposed sale, and never saw the signed copy until the eviction hearing before the magistrate on November 17, 2016. The document, introduced as Defendant's Exhibit 2, is signed by Defendant but not by Plaintiff.

Defendant defends Plaintiff's ejectment action by claiming an equitable interest in the property, based on the unsigned Agreement of Sale, and seeks enforcement of that alleged agreement. Plaintiff contends the parties never

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<sup>5</sup> See Plaintiff's Exhibit 3.

<sup>6</sup> A finding about this particular issue is not necessary, however, as will become evident.

<sup>7</sup> Which says, in essence, "here is a proposed agreement, let me know what you think".

<sup>8</sup> See Defendant's Exhibits 1 and 2.

reached an agreement and raises as a defense to Defendant's claim the Statute of Frauds.

"The Statute of Frauds instructs that a purported transfer of an ownership interest in real property is not enforceable unless evidenced in writing and signed by the [party] granting the interest." Trowbridge v. McCaigue, 2010 PA Super 50, 992 A.2d 199, 201 (Pa.Super. 2010). "A writing required by the Statute of Frauds need only include an adequate description of the property, a recital of the consideration and the signature of the party to be charged [with performing]." *Id.*

Zuk v. Zuk, 55 A.3d 102, 107 (Pa. Super. 2012). Here, Plaintiff contends the Agreement of Sale was merely an offer to negotiate and was not signed by her as it was not intended to be the final agreement. The signature need not be on the document itself, however, as was explained in Zuk:

Regarding the signature element, "there is no requirement in the Statute [of Frauds] or the decisional law that a signature be in any *particular* form. Instead, the focus has been on whether there is some reliable indication that the person to be charged with performing under the writing intended to authenticate it." Hessenthaler v. Farzin, 388 Pa. Super. 37, 564 A.2d 990, 993 (Pa.Super. 1989) (emphasis in original) (holding mailgram which appellants sent to appellees confirming sale of real estate constituted "signed writing" for purposes of Statute of Frauds where appellants identified themselves in mailgram, declared their acceptance, and identified property and consideration involved). Importantly:

The purpose of the Statute [of Frauds] is to prevent the possibility of enforcing unfounded, fraudulent claims by requiring that contracts pertaining to interests in real estate be supported by written evidence signed by the party creating the

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<sup>9</sup> Defendant testified that Plaintiff gave him the documents in response to his inquiry about the status of the proposed purchase, which he made in response to her having sent a notice of increase in the amount of the rent.

interest. Pennsylvania courts have emphasized that the Statute is *not* designed to prevent the performance or enforcement of oral contracts that in fact *were* made. Therefore[:]

[W]e should always be satisfied with some note or memorandum that is adequate...to convince the court that there is no serious possibility of consummating fraud by enforcement. When the mind of the court has reached such a conviction as that, it neither promotes justice nor lends respect to the statute to refuse enforcement because of informality in the memorandum or its incompleteness in detail.

Id. at 992-93 (internal citations and quotation marks omitted) (emphasis in original).

Id. Here, however, the court finds no evidence of an authentication of the Agreement of Sale. Plaintiff's testimony, that she was merely offering to negotiate and that when she did not hear back, and at least by the time she sent the Notice to Quit, effectively withdrew the offer, is credible and leads the court to conclude that Plaintiff never "intended to authenticate" the Agreement of Sale such as would make it enforceable.

Defendant also argues that partial performance of the Agreement of Sale takes it outside the Statute of Frauds and that the court should thus nevertheless find an enforceable agreement.

To establish the "part performance" exception to the Statute of Frauds:

The terms of the contract must be shown by full, complete, and satisfactory proof. The evidence must define the boundaries and indicate the quantity of the land. It must fix the amount of the consideration. It must establish the fact that possession was taken in pursuance of the contract, and, at or immediately after

the time it was made, the fact that the change of possession was notorious, and the fact that it has been exclusive, continuous and maintained. *And it must show performance or part performance by the vendee* which could not be compensated in damages, and such as would make rescission inequitable and unjust.

Id. at 108, *quoting Kurland v. Stolker*, 533 A.2d 1370, 1373 (1987)(emphasis added). In support of his assertion that he performed the contract, Defendant testified to having “packed up” Plaintiff’s belongings before he moved in, painted all the rooms but one, removed some wallpaper, replaced a faucet in the kitchen and replaced one screen door. These efforts are all entirely consistent with the Rental Agreement, however, as is the fact of Defendant’s possession of the property, and cannot alone support a finding of performance of the Agreement of Sale. Significantly, the evidence shows that no money changed hands under the Agreement as Defendant continued to pay the rental amount rather than make any payments under any amortization schedule, and that nothing was done by either party in furtherance of the Agreement, such as inspections or deed preparations. The court finds no partial performance such as would take the matter outside the Statute.

Accordingly, the lease having been properly terminated under its terms, and Defendant having no legal or equitable interest in the property, Plaintiff is entitled to possession and the court enters the following:

**ORDER**

AND NOW, this 3<sup>rd</sup> day of February 2017, judgment for possession of the real property located at 1457 State Route 14, Trout Run, Pennsylvania, is hereby granted in favor of Plaintiff. A writ of possession may be issued to the Sheriff upon Plaintiff's request on or after March 1, 2017.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Marc Drier, Esq.  
Andrea Pulizzi, Esq.  
Gary Weber, Esq. (Lycoming Reporter)  
Hon. Dudley Anderson