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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Master-in-Equity

Case No. 2021-CP-08-01441

Christ Fellowship Church, d/b/a a Church in St. Stephen, South Carolina, Respondent,

v.

William H. Johnson and Dustin Kyle Johnson, Appellants.

INITIAL BRIEF OF APPELLANT

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s/ Roman V. Hammes
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s/ Christian T. Wall
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4. Did the trial court err in denying Appellants' reimbursement for insurance premiums paid?

STATEMENT OF FACTS

Procedural History

Christ Fellowship Church ("Respondent") initiated this case by filing an action in the Berkeley County Court of Common Pleas on July 15, 2021, against William Johnson and Dustin Johnson ("Appellants") seeking specific performance by the Johnsons to convey the title to the real property which the Respondent had been leasing from the Appellants since 2012. (Complaint.) Appellants timely filed an Answer and Counterclaims against Respondent on August 5, 2021, alleging breach of contract and seeking eviction of Respondent from the property. (Answer.)

A bench trial was held on October 23, 2023, in the Master-in-Equity Court of Berkeley County. The trial court found in favor of Respondent, finding the contract between the parties to be an installment contract, finding the purchase price under the contract to be $250,000.00, and finding that allowing the termination of the contract would be a penalty and forfeiture and providing Respondent the equity of redemption. (Judgment.)

Appellants appealed the final judgment rendered in favor of Respondents and the Notice

of Appeal was filed and served on January 3, 2024. (Notice.)

Facts

On September 3, 2012, Respondent and Appellant William H. Johnson executed an agreement entitled "Rent With Delayed Option to Buy" (the "Contract"), wherein Respondent would pay a set amount of rent to Appellant in fixed monthly payments until September 2017. (Pltfs Ex. 5). A final balloon payment of $97,500.00 was due under the Contract by October 1, 2017. (Pltfs Ex. 5). If Respondent fully complied with the Contract, Appellant would convey title to the properties to Respondent. (Pltfs Ex. 5) The Contract also provided for a total purchase price of $500,000.00, $250,000.00 of which was to be tendered in the form of five equal contribution letters of $50,000.00 each showing a charitable contribution from Appellant to Respondent. (Pltfs Ex. 5). The Contract contained a clause which stated that failure by Respondent to comply with the terms would nullify the option to purchase and would convert all monies paid to that point into rent, and the relationship between the parties would be that of Lessor/Lessee. (Pltfs Ex. 5)

Respondent never provided said contribution letters. (Transcript pg. 11, line 13-19.) The Contract also required Respondent to carry fire and hazard insurance on the property, naming Appellant as a loss payee. Respondent only carried commercial general liability insurance, and did not name Appellant as a loss payee. (Transcript pg 15, lines 10-19.) Appellant William Johnson then obtained fire and hazard insurance independently to mitigate his risk, at an approximate cost of $3,200.00 per year from 2012 through 2023. (Transcript pg 65, lines 1-21.) The Contract also required Respondent to pay all property taxes on the property. Respondent failed to pay any property taxes. Instead, taxes were paid by Appellant William Johnson. (Transcript pg 15, lines 22-24.) Respondent was also late multiple times in making the monthly payments.

Respondent did not make the balloon payment on October 1, 2017. At trial, Respondent's

witnesses admitted that they failed to make this payment and that they continued to make the monthly payments. (Transcript pg 20, line 12.)

Appellant had his attorney send prompt written notice on three separate occasions informing Respondent that they were in default of the Contract and that the agreement had converted to a lease with no option to purchase. (Dfdt's Exs. 1, 2, & 3.) Respondent did not respond or object in any way to any of the letters, and continued making the rent payments. (Transcript pg 25, line 22.) Eventually, the rent payments stopped and this action was commenced.

STANDARD OF REVIEW

"In an action at equity, tried by a judge alone, [this] Court's standard of review is *de novo*…in short, we have jurisdiction in appeals in equity to find the facts in accordance with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by jury." *Fountain v. Fred's Inc.*, 436 S.C. 40, 47, 871 S.E.2d 166, 170 (2022).

ARGUMENT

I. The trial court erred in ruling the contract was an installment contract instead of a lease with purchase option.

In South Carolina, when a contract is unambiguous, the language of the contract controls the force and effect of the agreement. *Lewis v. Premium Investment Corp.*, 351 S.C 167, 171, 568 S.E.2d 361, 363 (2002). It is not the place of the courts to rewrite the terms of a contract for the parties. *Id*. South Carolina law also requires a party seeking an equitable remedy to act equitably himself. *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967). Option contracts are construed in favor of the Optionor and against the Optionee, and any requirements of the option must be exactly complied with. *Cotter v. James L. Tapp Co.*, 267 S.C. 647, 230 S.E.2d 715 (1976) *see also Southern Silica Min. & Mfg. Co. v. Hoefer*, 215 S.C. 480, 497, 56 S.E.2d 321, 328 (1949) ('(the) argument by the defendant that the Courts do not favor forfeiture and therefore the option to renew

must be granted, overlooks the fact that options because unilateral, are strictly construed against the party claiming the option').

In the instant case, the contract between the parties was clearly a lease agreement that contained an option for the Respondent to purchase the property so long as it complied strictly with the terms of the contract. Respondent was required to carry fire and hazard insurance on the property and name Appellant as a loss payee. Respondent failed to do so. Respondent was required to pay the property taxes on the property. Respondent failed to do so. Respondent was obligated to provide contribution letters acknowledging a $50,000.00 contribution to the church each year for five years. Respondent failed to do so. In order to exercise its purchase option, Respondent was required to make a balloon payment of $97,500.00 by October 1, 2017. Respondent failed to do so.

The Contract clearly and unambiguously states that the payments collected would count toward the ultimate purchase price of the property only if Respondent strictly complied with the terms of the Contract, which it did not. The Contract clearly and unambiguously states that it is a rental agreement and not a land installment contract, and that the option to purchase has conditions precedent.

In its final judgment, the trial court relied on *Lewis* when finding that the Contract in the instant case was an installment contract for land as opposed to a lease with delayed purchase option. However, this case differs from *Lewis* in two key ways. First, the contract in *Lewis* was on its face an installment contract for land. As stated above, the Contract in this case was clearly and unambiguously a lease agreement with an option to purchase. Second, the purchaser in *Lewis* had made approximately 78% of the required payments and substantially met all other obligations. Here, as of the date of default, Respondent paid only $150,100.00, or approximately 30%, of the

$500,000.00 sales price, which was expressly stated in the Contract. (Dfdt's Ex. 8.) This says nothing of the substantial other material breaches of the Contract.

Appellants were further not seeking to eject Respondent from the property until Respondent initiated this action. They were content to continue to lease the property to Respondent under the terms expressed in the letter from Appellants' attorney which was introduced at trial. Having received no verbal or written objection to the letter, and having continued to receive monthly rent payments in accordance with the attorney letters, Appellants believed that was the nature of the relationship between the parties until Respondent initiated this case. In contrast, the seller in *Lewis* was seeking forfeiture of the property subject to the installment contract, and that is what the *Lewis* court held was inequitable and entitled the purchaser to the equity of redemption. The facts in this case are substantially differentiated from *Lewis* and Appellants believe it was error on the part of the trial court to apply *Lewis* to this case and hold the lease with purchase contract to be an installment contract in disguise.

II. The trial court erred in finding the option cancellation provisions of the contract constituted an unenforceable penalty.

The Contract provides in Paragraph 7 that the option to buy was dependent on Respondent's compliance with all of the terms of the Contract. The Contract further states that upon default by the Respondent, all monies paid to that point would be retained as rent. As cited above, the law in South Carolina is that option contracts are construed against the optionee, and the terms of the option must be strictly complied with. Respondent executed the Contract, but failed to fully comply with the option terms. The trial court again relied on *Lewis* in finding that the option cancellation provision constituted a penalty which invoked the equitable right of redemption. However, as has been demonstrated, the contract in this case is not an installment

contract but a lease containing a purchase option. To declare that any clause in such a contract which provides for the cancellation of an option constitutes a penalty and therefore automatically provides a right of redemption to the defaulting lessee would be inequitable, effectively converting all such leases into a type of equitable mortgage. Such a result would remove parties' ability to maintain flexibility in contracting for real property. The trial court erred in applying *Lewis* to the facts in this case and finding the cancellation provision to be a penalty. The facts in this case are substantially different from *Lewis*. Namely, the lessee in this case materially defaulted on nearly every term of the Contract (balloon payment, property taxes, fire and hazard insurance, contribution letters, and late fees.) Notwithstanding, should this Court affirm the trial court's ruling on this issue, Appellants respectfully request this Court to further expound on the remedies available to a lessor/optionor similarly situated as Appellants. Specifically, is foreclosure the only remedy in the event of optionee's default?

III. The trial court erred in finding that the sales price of the property was $250,000.00 instead of the $500,000.00 sales price enumerated in the contract.

"In construing terms in contracts, a court must first look at the language of the contract to determine the intentions of the parties…When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense." *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 896 S.E.2d 328 (Ct. App. 2023) quoting *C.A.N. Enters., Inc. v. S.C. Health & Hum. Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

The contract in this case unambiguously, clearly, and explicitly sets the purchase price of the property at $500,000.00. The first $250,000.00 was to be paid in cash through a combination of the down payment, monthly payments, and the final balloon payment. The remaining $250,000.00 was to come in the form of five equal annual contribution letters showing $50,000.00

contributions for each of the five years. Testimony at trial confirmed that Respondent never provided said letters, with Respondent testifying that the church's accountant told them not to. Respondent's unilateral decision not to honor the terms of the contract does not alter the clear and unambiguous price term in the contract. Regardless of the mode of tender, the clear, unambiguous, and explicit purchase price in the contract is $500,000.00. The trial court erred in disregarding the price term of the contract and finding the sale price to be $250,000.00.

IV. The trial court erred in denying Appellants reimbursement for insurance premiums paid.

The terms of the contract required Respondent to obtain and carry fire and hazard insurance and to name Appellant William Johnson as a loss payee. Respondent failed to do so. Instead, they obtained a general commercial liability policy and did not name Mr. Johnson as a loss payee. In order to mitigate the risk he was exposed to by Respondent's failure to conform to the terms of the contract, he obtained fire and hazard insurance on his own and paid for it with no contribution from Respondent at an approximate cost of $3,200.00 per year from 2012 to 2023. (Transcript pg 65, lines 1-22.) Despite testimony to this effect, the trial court chose to disregard this information when rendering its final judgment. This was error, and Appellants are entitled to reimbursement of the amounts paid towards maintaining the required insurance in the event this Court upholds the trial court's judgement that Appellants must convey title to the property to Respondent.

CONCLUSION

For the foregoing reasons, the record in this case, and any matters raised during oral arguments, William H. Johnson and Dustin Kyle Johnson respectfully request this Court reverse the final judgment of the trial court, find that the contract in this case is a lease with purchase option and not an installment land contract, find that the sales price of the property is $500,000.00 as enumerated in the contract, award reimbursement of the insurance premiums paid by William

Johnson for the maximum period of time allowable under the law, find that the option cancellation provision in the contract is not a penalty or forfeiture and therefore Respondent is not entitled to the equity of redemption.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Christ Fellowship Church, d/b/a a Church in St. Stephen, South Carolina, by emailing a copy of it to Respondent's Counsel of Record, Brooks Roberts Fudenberg, Esq. at brooks.r.fudenberg@fudenberglaw.com.

April 10, 2024

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