

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Refugio Gallegos Romero, Reyna Rico)
Beltran, and Oscar Gustavo Gallegos,)

Plaintiffs,)

vs.)

Magaly Cueto and Donna Dozier,)

Defendants.)

ORDER

Case No. 2013CP460304

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, S.C.

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This matter came before me for a nonjury trial on May 12, 2014. Plaintiffs were represented by David C. Cook. The Defendants appeared *pro se*. Both sides presented witnesses and exhibits. Based on the testimony, exhibits, and applicable law, I make the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

Plaintiffs filed this action on October 7, 2013. The Complaint contains three causes of action: breach of contract; promissory estoppel; and, negligent misrepresentation. The relief sought under the theories of breach of contract and promissory estoppel is enforcement of a contract to sell real estate. Thus, I treat the action as one for specific performance of a contract to sell real estate. Plaintiffs' negligent misrepresentation claim seeks monetary damages.

Plaintiffs filed an affidavit of default in this action on February 10, 2014, as Defendants had not filed and served a responsive pleading in this action. They did, however, commence an eviction proceeding in the Magistrate's Court on February 20, 2014, based on the same underlying facts. Plaintiffs filed an Answer and Counterclaim in that action, and the action was removed to this court, and consolidated with this action. With Plaintiffs' acquiescence, this action and the Magistrate's Court action were heard on the merits.

FINDINGS OF FACT

The following are the findings of fact of the Court, reported in narrative form, which I find based on all the evidence, and after consideration of any applicable burden of proof. I have also considered the credibility of the witnesses in reaching these findings. Consideration of the credibility of witnesses in this action is essential, as the testimony concerning the essential facts

was inconsistent and contradictory between the parties.

The subject matter of this action is a house and lot located at 326 Piedmont Street in the City of Rock Hill (the "Property"). The Defendants, Magaly Cueto ("Cueto") and Donna Dozier ("Dozier"), are the joint owners of the Property. The Plaintiffs, Refugio Gallegos Romero ("Romero"), and Reyna Rico Beltran ("Beltran"), and their children, one of whom is Plaintiff Oscar Gustavo Gallegos, were living in the Property, originally as tenants.¹

Plaintiffs' claim is premised on a written agreement ("Agreement") signed by Cueto for "Owners", and Beltran for "Renters". It is witnessed by Emma Arias, Cueto's mother. The Agreement was prepared by "Janet", Cueto's niece. All agree that the document was signed on April 1, 2011. It is copied below in its entirety:

March 25, 2011

Magaly Cueto and Donna Dozier agree to rent with the option to own the house located at 326 Piedmont Street Rock Hill, SC. The renters are Reyna Rico Beltran and Refugio Gallegos and their children, Oscar Gustavo Gallegos, Kelly Sinal Gallegos, and Luis Eduardo Gallegos. A payment of \$ 557.00 is due the forth of each month to Bank of America. The renters agree to pay this amount beginning April, 2011 until the loan matures 8/4/2013. This amounts to two years and six months. The renters agree to pay all repairs, property tax, and late charges off and when they occur. No one else may drawall in the house unless approved by the owners. If at any time the renters no longer wants to live in the house; they are to give a thirty day notice and no money is refunded.

In return Magaly Cueto and Donna Dozier agree to sell the house at the price of \$ 34,000 when the loan matures 8/4/2013. All money toward rent and rest only is applied toward the \$ 34,000. At the time of 8/4/2013, the renters and owners will make a contract with a lawyer. The owners are willing to owners financial the house up to fifteen years at the interest rate of 7% if so desired; or they may pay the owners the due amount with no interest; meaning paid in full.

The owners and renters must agree to this contract or it is void. The childrens are not responsible for any payment now or in the future.

Magaly Cueto
Owners

April 1 - 2011
Date *MC*

Reyna Rico B.
Renters

April 1, 2011
Date

Emma Arias
Witness

Date

Although neither signed the Agreement, I find that both Dozier and Romero were present when it was signed. I further find that both authorized and permitted their respective co-parties to sign on their behalf, that is, Cueto for Dozier and Beltran for Romero. I find this based on the fact that neither objected to another signing on their behalf, and the fact that the Agreement specifically uses the plural terms "Owners" and "Renters" below the lines where Cueto and Beltran signed. Also, while Dozier disputes that the signed document is the agreement she

¹ It is acknowledged that the Agreement is for the benefit of Romero and Beltran as purchasers, and Oscar Gustavo is not a real party in interest in this action.

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intended, she admits that an agreement was to be typed by Janet from handwritten notes that Dozier made.

When they sought to purchase the Property, Plaintiffs were current in all their payments up through the date of trial; however, the 2013 taxes have not been paid to date. The testimony was that the balance due under the Agreement was \$12,800. However, applying the language of the Agreement, and accepting that all payments were made through May, 2014, the balance due is \$12,834. Other than payment of the balance due, Plaintiffs have fully performed under the Agreement.

CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law.

A. **The Parties' Contract.**

“The cardinal rule of construction in interpreting any contract is to ascertain and give effect to the intention of the parties. Such intent should be gleaned, as nearly as possible, from the instrument itself. *Erkes v. Kasparek*, 303 S.C. 70, 72, 399 S.E.2d 6, 8 (1990); *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). “A contract should receive sensible and reasonable construction and not such construction as will lead to absurd consequences or unjust results.” *Holden v. Alice Manufacturing, Inc.*, 317 S.C. 215, 231, 452 S.E.2d 628, 631 (Ct.App. 1994); *Bruce v. Blalock*, 241 S.C. 155, 127 S.E.2d 439 (1962).

“[I]n order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. . . . The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct.App. 2009). Where these prerequisites are met, specific performance is an appropriate remedy. *Id.*, 383 S.C. at 426, 679 S.E.2d at 531.

In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram v. Kasey's Associates*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000).

While certainly inartfully drawn, the Agreement is clear in its essential terms as it relates to the purchase of the Property by Plaintiffs. Defendants agreed “. . . to rent with the option to own [the Property] . . .” to Romero and Beltran. In return, Romero and Beltran were to make monthly payments of \$557.00 to Bank of America “. . . beginning April, 2011 until the loan [matures] 8/4/2013.” Defendants agreed to sell to Plaintiffs “. . . at the price of \$34,000 when

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the loan matures [sic] 8/4/2013.” All rental payments were to be “. . . applied toward the \$34,000.” Thus, the Agreement contains all of the required elements of an enforceable contract.

Thus, I conclude that the parties made an enforceable contract for the purchase and sale of the Property. I further conclude that Plaintiffs have performed as required by the terms of the Agreement. Even if Plaintiffs have not fully performed, they are entitled to the benefit of their bargain by virtue of their substantial performance. *See Clardy, supra*, 383 S.C. at 428, 679 S.E.2d at 531; *see, also, Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 384, 166 S.E.2d 308, 311 (1969); and, *Coastal Seafood Co., Inc. v. Alcoa South Carolina, Inc.*, 298 S.C. 466, 381 S.E.2d 502 (Ct.App. 1989). The Defendants have received substantially all that they bargained for. *Id.*

Also at issue is whether Dozier is bound by the Agreement by reason of Cueto’s signing on behalf of “Owners.” More specifically, was Cueto acting as Dozier’s agent when Cueto executed the Agreement? A principal-agent relationship may be proved by showing either actual, or apparent authority of one party to act for another. *R & G Const., Inc. v. Lowcountry Regional Transp. Authority*, 343 S.C. 424, 540 S.E.2d 113 (Ct.App. 2000).

The apparent authority of an agent results from conduct or other manifestations of the principal’s consent, whereby third persons are justified in believing the agent is acting within his authority. [citation omitted.] Such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf. *Id.*, 343 S.C. at 433-434, 540 S.E.2d at 118.

Based on the findings of fact herein, Dozier was present when Cueto signed the Agreement for the “Owners” (plural), and Plaintiffs were also present. Thus, by her conduct, Dozier manifested her consent to Cueto signing for them both, and Plaintiffs were justified in believing that both Dozier and Cueto were bound by Cueto’s signature.

In summary, I conclude that the parties had a valid contract of purchase and sale as to the Property, and both Cueto and Dozier are bound by the terms of the Agreement.

I further conclude that Defendants have breached the Agreement, and Plaintiffs are entitled to specific performance as a remedy. Upon payment of the balance due under the Agreement, Defendants shall execute and deliver their deed to Plaintiffs Moreno and Beltran conveying fee simple title to the Property.²

B. Negligent Misrepresentation.

At the conclusion of the evidence, I directed a verdict as to Plaintiffs’ claim of negligent

² The discussion of specific performance deals with Plaintiffs’ causes of action for breach of contract and promissory estoppel.

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misrepresentation. Based on the record presented, I conclude that there was no representation upon which to base a cause of action for negligent misrepresentation.

"A claim of fraud or misrepresentation must ordinarily be based on "... a present or pre-existing fact, and cannot ordinarily be predicated on unfulfilled promises or statements as to future events." *Davis v. Upton*, 250 S.C. 288, 291, 167 S.E.2d 567, 568 (1967), citing *Thomas & Howard Co. v. Fowler*, 225 S.C. 354, 82 S.E.2d 454 (1954). A mere breach of contract does not give rise to a claim of fraud. *Holland v. Spartanburg Herald-Journal Co.*, 166 S.C. 454, 165 S.E. 203, 84 A.L.R. 1336 (1932).

C. Eviction.

As I find and conclude that Plaintiffs are entitled to enforcement of the Agreement, and are thus entitled to purchase the Property according to the terms of the Agreement, it follows that Defendants are not entitled to have Plaintiffs ejected from the Property.


ORDER

Based on the findings of fact and conclusions of law herein, it is ordered as follows:

1. Plaintiffs are granted judgment against the Defendants, jointly and severally, for specific performance of the Agreement.
2. Upon payment to Defendants of the sum of \$12,834.00 by certified check, Defendants are ordered to execute and deliver a deed to the Property to Refugio Gallegos Romero and Reyna Rico Beltran. Such payment and delivery of a valid deed shall be completed within thirty days of the date of this order.
3. Payment of property taxes due on the Property shall be the responsibility of Plaintiffs.
4. Plaintiffs claim for negligent misrepresentation is dismissed with prejudice.
5. Defendants' claim for eviction is dismissed with prejudice.

AND IT IS SO ORDERED.

June 13, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

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