

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Jerry Powers,)
)
Plaintiff,)
)
-vs-)
)
Rizan Properties, LLC, Anthony Pearson)
And Tiesha Dash,)
)
Defendants.)
_____)

C.A. No.: 2020-CP-23-02076

ORDER
RECEIVED
FEB 25 2021
SC Court of Appeals

This is an action involving a Lease and Option relating to real property located in Greenville County, South Carolina. The case was referred to the undersigned by consent of the parties.

For the most part, the underlying facts in the present action are not in dispute. The parties entered into a Lease in 2011. Thereafter, the parties entered into a Lease and an Option in 2013. It is the 2013 agreements that are the substance of the controversy herein.

Both parties have moved for summary judgment maintaining that, for the most part, the facts are not in controversy and that the issues involve interpretation that can be done without necessity of a trial. Counsel for both parties have thoroughly researched and briefed the issues. Further, during the arguments for summary judgment, both counsel were well prepared and presented clear and persuasive arguments on behalf of their clients.

As relates to the Lease and the Option, Plaintiff contends that even if he had breached the Lease, the breach did not void the Option to purchase because the parties' Option agreement did not so provide. In other words, Plaintiff argues that any Lease terms that he may have violated,

to the extent they may have occurred, the violations or breaches did not necessarily void the Option. Plaintiff further contends that neither the Lease nor the Option makes full compliance with the Lease a condition precedent to Plaintiff's exercising the Option to purchase the real property. And, since the same was not provided for in the Option drafted by Rizan Properties' attorney, the Court may not now rewrite the agreement. See, Jackson v. Rogers, 96 S.E. 962 (SC 1918).

Defendant Rizan contends that the Lease and the Option are all part of the same transaction and must necessarily be read and interpreted together. And, that only as long as all Lease payments were made in full, would the Option remain valid and exercisable. See, Café Assocs., LTD v. Gerngross, 206 S.E.2d 162 (SC 1991). Rizan Properties argues that Plaintiff made no rent payment under the Lease from November of 2018 until such time as Plaintiff's attorney attempted to exercise the Option on October 15, 2019.¹ Rizan contends that Plaintiff had breached the Lease agreement and abandoned any and all rights he may have had under both the Lease and the Option.²

Upon a full review of the record, the Court feels compelled to find that the Lease and the Option must necessarily be read together. Without one, the other cannot stand alone. In light of this ruling, the Court finds that the last rent paid by Plaintiff was November 2018. Thereafter, and while there was some disagreement as to the reasons to vacate, Plaintiff and Jackie Pearson vacated the property, returned the keys to Rizan Properties and moved into and started paying

¹ There may be some disagreement as to whether Plaintiff made his last rent payment in November 2018 or in January 2019. In light of the many months of default and the other factors noted herein, the actual date does not alter the Court's ruling.

² The Court notes that the 2013 Lease and Option were in the name of and executed by Jackie Pearson, Plaintiff and Rizan Properties, LLC. Thereafter Jackie Pearson died. No issue has been raised relating to Plaintiff being able to seek enforcement of the Option as to the entire property. The Court is advised that Anthony Pearson and Tiesha Dash are the only heirs of Pearson and that both are in default in the present action.

rent at a completely different location. While Plaintiff did, for some period of time, maintain yardwork on the property involved herein, this fact alone is not enough to overcome the fact that Plaintiff had breached the Lease by nonpayment of rent for over eleven (11) months, had vacated the premises and had turned over the keys to agents of Rizan Properties, LLC.

In light of the above, and finding that the Lease and the Option necessarily refer to and are part of the same transaction, the Court finds that there was no Option to purchase the property still in existence at the time the Plaintiff attempted to exercise the same through his attorney on October 15, 2019.

Based on the above, it is hereby ordered, adjudged and decreed that Defendant Rizan Properties, LLC motion for summary judgment is granted and that Plaintiff, Anthony Pearson and Tiesha Dash have no further rights regarding the property located at 39 2nd Avenue, Greenville, South Carolina.

Further, all counterclaims of Rizan Properties, LLC have either been dismissed by Rizan or are denied by the Court for lack of sufficient evidence.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2021-01-26 15:14:04 page 4 of 4