IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TUONI INVESTMENTS, LLC, a Delaware Limited Liability Company	)	
Plaintiff,	)	
v.	)	C.A. No. CPU4-11-002710
MARK RASH AND STEPHANIE RASH	)	
Defendants.	)	

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MEMORANDUM OPINION AND ORDER
ON COMPLAINT OF TUONI INVESTMENTS, LLC

Submitted: November 16, 2012
Decided: February 1, 2013

FLICKINGER, J.

I. Procedural History

This is breach of contract action. On April 12, 2010, Tuoni Investments, LLC ("Plaintiff") filed a Complaint against Mark and Stephanie Rash ("Defendants"). Plaintiff alleges that the parties entered into a conditional contract of sale ("the contract") for real property located at 7 West Conrad Drive, Wilmington, Delaware ("the property") for a monthly payment of $1,687.66 plus a 10% late fee if not paid within 10 days of the due date. Plaintiff states that Defendants were additionally responsible for payment of the homeowner's insurance, property taxes, and utility bills. Plaintiff contends that on September 13, 2012, Plaintiff posted a default notice on the property that informed Defendants that they had thirty days to cure the default. Further, Plaintiff contends that Defendants moved from the property in October 2010, and refused to pay the balance due and owing under the contract, totaling $24,737.90.

Defendants filed an Answer to Plaintiff's Complaint on July 7, 2011. Defendants admitted that the contract existed and that Defendants resided at the property, but denied that they are indebted to Plaintiff in the amount of $24,737.90. On November 13, 2012, the Court held a trial on the Plaintiff's Complaint. For the following reasons, the Court hereby finds in favor of Plaintiff on the Complaint.

II. The Facts

The Defendants entered into the contract with Plaintiff's father, Mr. Tuoni, in February 2008 for the conditional sale of a single family home located at 7 West Conrad Drive, Wilmington, DE. After Mr. Tuoni Sr.'s death, Mr. Tuoni, Jr. inherited the home and became the successor in interest to Tuoni Investments LLC and to the contract.

Mr. Tuoni, Jr. was Plaintiff's only witness. Mr. Tuoni testified that he is the sole owner of the property and then testified as to the contract between the parties. Mr. Tuoni stated that

Defendants paid a $5,000.00 deposit on the property and had a monthly payment of $1,687.66 plus a 10% late fee and utilities.[1] The contract gives Plaintiff the option to terminate the contract in the event of default by Defendants, whereby Plaintiff is then "entitled to retain all payments on the purchase price as and for rental for the use and occupation" of the home.[2] Also, the contract states that "no extension, change, modification, or amendment to this Contract of any kind whatsoever shall be made or claimed by Buyer, except the same shall be endorsed in writing on this Contract and be signed by the parties hereto."[3]

Before the trial, the parties stipulated to four joint trial exhibits. The joint trial exhibits included: (1) conditional contract of sale; (2) joint schedule of payments; (3) Plaintiff's receipts and posting notice; and (4) Defendant's receipts. Plaintiff's receipts began a running account of the Defendants' rent payments beginning on August 14, 2009. Mr. Tuoni admitted he could not find the 2008 receipt book that contained documentation of Defendants' payments from February 2008 through August 14, 2009. Defendants submitted receipts from 2008, which were receipts executed by Mr. Tuoni. Therefore, Defendants never kept a separate running account of their payments, and Defendants accepted Mr. Tuoni's running account, which is the only evidence of payments before the Court. Furthermore, Defendant's provided many of the same receipts that Plaintiff provided from 2009, which also is a record of only Plaintiff's running tabulation of the amount Defendants owe.

Mr. Tuoni testified that Defendants were, for the most part, pretty much behind on payments from the beginning of the contract. However, Mr. Tuoni stated that he kept a tab of what Defendants could pay and carried the balance forward as Defendants were able to make payments toward the months that they were behind. Mr. Tuoni stated that even though

[1] Joint Exb. #1, ¶2.
[2] Joint Exb. #1, ¶8.
[3] Joint Exb. #1, ¶22.

Defendants were supposed to have been charged $1,856.00, which included the late fee each month, he erroneously charged only $1,851.00 per month plus taxes and utilities. Mr. Tuoni testified that Defendants never disputed the amount owed, and that Mark Rash was out of work for awhile, so that Mr. Tuoni was lenient on the payments. However, Mr. Tuoni stated that he never agreed to a modification of the contract, either orally or in writing. Mr. Tuoni claimed that Defendants were behind on rent at $1,851.00 per month from September 2009 through October 2010, and that Defendants owed an additional $1,204.81 from August 2009. Additionally, Mr. Tuoni requested pro-rated taxes in the amount of $259.23[4] and $435.08 for the final water bill.

Both Stephanie and Mark Rash testified for the Defense. Defendants do not deny that the contract existed, or that they were behind on payments. Defendants argue, however, that they do not owe the large amount claimed by Plaintiff. Defendants further allege that there was an oral modification of the contract in that they contend that Mr. Tuoni told them that they only had to pay what they were able to pay, and further, that Mr. Tuoni understood that Defendants were struggling financially. Mrs. Rash insisted that when Defendants were going to leave the property, Mr. Tuoni encouraged them to stay in the property and just pay what they could pay. However, Defendants conceded that the contract between the parties precludes any modification that is not in writing.

Further, when asked by the Court, Defendants were unable to provide any legal authority for the Court to find that the alleged oral modification supersedes the clause in the contract prohibiting such oral modifications.

[4] Joint Exb. Tab 4, pg. 5.

II. Parties' Contentions

At closing, Plaintiff informed the Court that the damages sought were for unpaid rent from August 2009 through October 2010, for a pro-rated tax bill from 2010, and a 2010 water bill. Defendants argue that even though there was a written agreement between the parties, the parties had another oral agreement that Defendants could stay in home and just pay what rent they could afford to pay. Additionally, Defendants contend that they do not owe the large amount claimed by Plaintiff.

IV. Discussion

In civil claims, the plaintiff bears the burden to prove each element of a claim by a preponderance of the evidence.[5] The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists. [6] Further, in order to succeed on the breach of contract claim, Plaintiff must prove the following elements by a preponderance of the evidence: (1) the existence of a contract; (2) that defendants breached an obligation imposed by the contract; and (3) that plaintiff incurred damages as a result of the breach.[7]

Although Defendants argue that there was an oral agreement to modify the contract between the parties, the contract states that all modifications to the contract must be in writing. Defendants concede that there was no written agreement to a modification allowing Defendants to pay only the amount of rent that Defendants could afford to pay. Further, when asked by the Court to provide any law which would allow for an oral modification of a contract that plainly requires a written modification, Defendants were unable to provide such authority.

[5] *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).
[6] *Id.*
[7] *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

Since there is no dispute that Defendants breached the contract between the parties, the only issue for the Court to determine is what amount of damages Plaintiff may recover. The Court finds that Plaintiff has proven by a preponderance of the evidence that Plaintiff is entitled to: (1) $1,204.81 for August 2009 rent; (2) $1,851.00 of rent for each month from September 2009 through October 2010, equaling $24,063.00; (3) $259.23 for taxes; and (4) $435.08 for the 2010 water bill. Defendants failed to prove by a preponderance of the evidence that there was a modification of the agreement or that Defendants paid more than the amounts memorialized in Plaintiff's receipts.

IV. Conclusion

For the reasons stated in this opinion, the Court finds in favor of Plaintiff on the Complaint against Defendants and awards Plaintiff damages in the amount of $25,962.12, plus court costs and pre judgment and post judgment interest at the legal rate until satisfied.

IT IS SO ORDERED this 1st day of February 2013.

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Joseph F. Flickinger III
Judge

JFF/cr

cc: Tamu White, Civil Department Supervisor