JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17

DENNIS R STEWART	§	
JOYCE A STEWART	§	
APPELLEE	§	
Plaintiff Below,	§	
	§	C.A. No. JP17-21-001033
	§	
VS	§	
	§	
	§	
DONALD E POLK JR.		
APPELLANT		
Defendant Below,		

TRIAL DE NOVO

Submitted: July 19, 2021
Decided: September 14, 2021

APPEARANCES:
David C Zerbato, Attorney for Dennis R Stewart and Joyce A Stewart
Tasha M Stevens, Attorney for Donald E Polk JR.

Alan Davis, Chief Magistrate
Jennifer Sammons, Justice of the Peace
John Martin, Senior Justice of the Peace

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 17

CIVIL ACTION NO: JP17-21-001033

DENNIS STEWART ET AL VS DONALD POLK JR

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

This matter is before the Court as a three-judge panel appeal. Plaintiffs filed the action on March 9, 2021. A single judge heard the case on May 13, 2021, and decided the matter on May 21, 2021, finding in favor of the Plaintiffs. Defendant filed timely for appeal, and a panel consisting of Chief Magistrate Davis, Judge Sammons and Senior Judge Martin heard the appeal on June 22, 2021. At trial, the Defendant moved for judgment as a matter of law. The Court ordered supplementary briefing on the issue and this is the Court's order after consideration of the oral and written arguments on the issue presented. For the reasons stated below, the Court grants the motion and finds in favor of the Defendant.

Facts

The facts necessary for the disposition of this case are relatively undisputed and narrow in scope. Plaintiffs own the subject property. They entered into a conditional sales agreement for that property with Defendant that called for certain monetary transactions to take place within certain time periods. Defendant failed to complete those transactions to close the conditional sales agreement. Plaintiffs gave Defendant extra time to complete those obligations. Defendant did not do so, but proposed an alternative, which was rejected. Plaintiffs then proceeded to reclaim their property under the applicable law.

Positions of the Parties

Defendant moved for judgment as a matter of law after the completion of the Plaintiffs' case-in-chief. Defendant contends that the conditional sales agreement became, by operation of 25 Del. C. §314(d)(3), a landlord-tenant relationship and that all of the rights and duties of the parties were then governed by the requirements of the Residential Landlord-Tenant Code. Defendant further argues that, under the Code, Plaintiffs failed to provide proper notice, and therefore, this action should be dismissed in accord with long-standing statutory construction and precedent in this Court.

Plaintiffs claim that they gave all necessary notice when they provided notice of the initial breach of the conditional sales agreement. Further, the parties entered into an addendum that specifically considered the issue of the Defendant vacating the premises. The Defendant had actual notice at best, and constructive notice at worst, of the need to vacate the property, and therefore the formal notices provided for in the Landlord-Tenant Code are unnecessary and superfluous.

Discussion

In 2008 the General Assembly enacted modifications to 25 Del.C. §314 to include specific provisions that all conditional sales agreements must contain if the seller provides financing, and the final closing of the contract does not take place within one year. Those provisions are contained in subsection (d) of the statute. In

particular, the new provisions require a stated periodic rental value, give the buyer 120 days to redeem after default, and convert the relationship to a landlord-tenant agreement retroactive to the date of the default if the buyer does not redeem the property. The law additionally made the Justice of the Peace Court a court of competent jurisdiction – concurrent with the Court of Chancery – to hear all matters associated with these situations, including one for an accounting after the termination of the agreement.

Defendant urges the Court to look at 25 Del. C. §314(d)(3) as a stand-alone determinant in this case. By the logic of the Defendant, once the buyer is in breach, the seller must give notice of the breach, an opportunity to cure for 120 days and, once the matter is converted by law into a landlord-tenant dispute, a property owner would have to start anew with notices under the Code, which the Plaintiffs here clearly did not. The contention of the Plaintiffs holds that the notices given at the initial breach are satisfactory, that the contract - by virtue of the statutorily required provisions – controls, not the landlord-tenant code.

It seems both parties ask too much of this statute and think too little of it. Read as a whole, the statute strikes a delicate balance in what are quite tricky circumstances. Conditional sales agreements, often called "rent-to-own" agreements are anomalies, not quite a completed sale and not really a rental contract. The addition of subsection (d) and the other modifications in 2008 look to be directed to address this unusual situation with an understanding that a contractual relationship can only be governed by one set of rules at a time, but that the relationship itself is nuanced, continuous, and subject to several potential legal challenges.

The statute modifications first contemplate that there may be a failure, and that failure needs to be governed by rules. The rules provide that the parties have to agree ahead of time on a rental value so that, if there is a breach and a conversion, that term of the new relationship is already established. They give the parties an opportunity to work out the breach and salvage the original intent of the agreement – to transfer the property. In the absence of making good on the original contract, the relationship is then converted to a rental agreement at the amount of the already agreed upon rental value– retroactive to the original breach.

This last nuance is terribly important to the Court's understanding of the current case and its decision on what notices are required when. While the relationship does not convert to a landlord-tenant relationship until 120 days after the owner gives notice of the breach of the installment contract, once it is converted, it has retroactive effect, specifically as to the financial obligations of the buyer. The Court concludes that this means that any notice that the owner intends to rely upon for termination of the tenancy has to come no earlier than the time of the notice of the breach, with some limitations.

Until that point, the relationship is merely a contractual one, not governed by the landlord-tenant code. After that, the Code may or may not become applicable, depending on whether or not the buyer can redeem. Only after that 120 days do we know if the Code was applicable during that period between notice of the breach and the failure to redeem. It stands to reason that the General Assembly would want the parties to have a reasonably expeditious opportunity to resolve a landlord tenant matter after having waited for that 120 days to see if the Code was going to apply or if the buyer was able to redeem. If the Court viewed this as the Defendant contends in this case, the parties would have to start anew with the statutory notices under the Code, after having waited 120 days already. This would not seem expeditious or reasonable.

As the Court interprets this statutory scheme, the parties would be permitted to give notice affecting the potential future landlord-tenant relationship as well as the notice of the breach of the installment contract at the same time, if the circumstances supported it. In the instance of a buyer who has failed to pay any financial obligations, it appears to the Court that a seller could write a notice of the breach and give additional prospective notice that, since the rental amount threshold had not been reached, the announcement also served as notice in case the situation was converted by law into a landlord-tenant code. Under the circumstances that the buyer had paid an amount greater than the rental value, but less than the full contract

amount, there may be no opportunity for the seller to give such a combined notice,[1] as there would be no ground on which to rely on giving the notices required by the Code.

With that as our ground level understanding of how notices may be issued, we turn to the facts of this case. Defendant was unable to obtain financing, yet he still wished to close the contract. Plaintiffs attempted to work with him by entering into an amended contract, giving more time to provide the contract price. In that addendum, the parties agreed that Defendant would leave no later than the end of 2020. In reviewing this addendum, it is not a notice of breach of the original contract. It is what it purports to be – an addendum to the original contract. It contains a promise to vacate on a certain date. It also acknowledges that, if there is a breach, the contract becomes a landlord-tenant relationship.

Further, even were the Court to accept that the addendum functioned as a notice of breach of the first contract, its primary function is to extend the contract and introduce new terms. The first opportunity that the Court is aware of for the Defendant to have breached this new agreement was when he again failed to go to settlement in the prescribed time.

The Court could stretch further to consider the addendum as a written manifestation of the Defendant's right to redeem, as the addendum gives more than 120 days to do essentially what the redemption would do. However, there is no indication that the Defendant was in arrears at this time, meaning that, even if the addendum was considered the notice of breach and an allowance of the time for redemption, the Plaintiff's would not be permitted to give a preemptive notice using landlord-tenant based grounds.

In short, the Court is convinced that the addendum is just that, an amendment to the contract. At the end of the new term, Plaintiffs may have given notice of the breach of the amended contract. Defendant's 120 days to redeem would have started then. If he had been in arrears at that time, they could have issued a notice, compliant with the Residential Landlord-Tenant Code, of a failure under the Code. If he had not been in arrears, they would have had to wait until after the 120 days to give a notice of intent to terminate under the Landlord-Tenant Code. No matter the circumstances, this relationship is now most certainly one of landlord and tenant. Plaintiffs have failed to give any appropriate notice under the Code, therefore an action for possession must fail for lack of notice.

Order

For the reasons stated above, the Court finds in favor of the Defendant, granting the motion to dismiss. Such dismissal is with prejudice as to the claim brought solely with regard to the breach of the conditional sales agreement itself, but is without prejudice as to the landlord-tenant relationship that now exists. Plaintiffs may bring a new action, upon appropriate notice, for termination of the landlord-tenant relationship.

IT IS SO ORDERED 14th day of September, 2021

/s/Alan Davis
Chief Magistrate
For the Three Judge Panel

JUSTICE OF THE PEACE COURT (SEAL) STATE OF DELAWARE

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

[1] The Court does not opine whether a combined notice for the breach of the contract and a termination based on any other grounds is permissible, as it is not subject of this action.