

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-016923

05/22/2018

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
D. Charbagi
Deputy

ROBERT A IVERSON, et al.

FREDERICK C BERRY JR.

v.

CARLOS NAVA, et al.

ROBERT THOMAS SULLIVAN

MINUTE ENTRY

Findings of Fact and Conclusions of Law

This matter was initiated as a forcible entry and detainer action that arose out of an oral landlord tenant agreement. Defendants argued that the action was improper as the parties had an oral lease purchase agreement and thus the matter was removed from Justice Court to the Superior Court. After an evidentiary hearing, this court deemed the oral lease purchase agreement to be invalid as the statute of frauds requires contracts for purchase of land to be in writing. Once that issue was resolved, the next issue was whether Plaintiffs had a right to immediate possession as the rental agreement was allegedly breached for non-payment of rent. Defendants disagreed and argued the amounts paid toward the alleged lease purchase agreement should be treated as rent paid in advance. In addition, they counterclaimed seeking reimbursement for substantial improvements they made to the house as they believed they were purchasing the home.

Since the original hearing in December 20, 2017 and after numerous other hearings in this matter, the court has watched every FTR (For the Record) recording of each hearing in the matter, has read the transcript from the original evidentiary hearing, and has reviewed all exhibits

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admitted during the original hearing. The court has also read and reread all the pleadings filed throughout this matter.

FINDINGS

The Court makes the following findings:

1. The Parties entered into a month-to-month rental agreements whereby Defendants would lease the residence at 1622 W. Avalon Drive, Phoenix, Arizona for \$1400.00 per month. The month-to-month lease began January 2009.
2. At the time, \$1400.00 was a fair and reasonable amount to pay for rent of that home in that location.
3. The parties discussed creating a lease-purchase agreement, however the material terms were never reduced to writing and a conflict existed as to the actual purchase price. However, Defendant did pay an addition \$300.00 per month to Plaintiff toward the purchase of the home.
4. Pursuant to the Statute of Frauds, oral contracts for the purchase of real property are invalid in Arizona. The court was unable to find sufficient writings existed between the parties to constitute a contract with the essential terms agreed upon by the parties.
5. Defendants allege they spent over \$15,000.00 on home improvements made in reliance of the lease-purchase. Although the court has no reason to doubt that they did so, the oral contract for the purchase of the home was invalid. Thus the Arizona Landlord Tenant Act applies to the parties. Plaintiff was unaware of said improvements and did not authorize them as the homeowner/landlord.
6. Defendants claim that Plaintiff should have returned the \$17,400.00 paid toward the purchase of the home (the extra \$300.00 per month paid in excess of the rent). Plaintiff claims that the rent was only \$1400.00 for the first three months and that the rent then increased to \$1700.00. Having weighed the credibility of the parties and the totality of the evidence presented, the Court finds that the \$300.00 was intended to be credited toward the purchase of the home and was not rent.
7. In September 2015, a storm severely damaged the roof of the home. Defendants notified Plaintiff of the numerous roof leaks. Notice was provided via emails and texts. The roof was never repaired. The roof was damaged for the remaining nineteen (19) months of the Defendants' occupancy of the home. The leaks significantly reduced the rental value of the home.

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8. The pool also had a damaged float system. Rather than repair the pool, Plaintiff drained it rendering it unusable for the remainder of Defendants' occupancy of the home. The unusable pool reduced the rental value of the home by more than simply not having a pool would have. Not only was the pool empty, it would fill with debris and rainwater which required Defendant to clean it several times. The pool was non-functioning for sixteen (16) months.
9. Defendants replaced an air condition for \$4800.000 and made plumbing repairs. They did so as they presumed they would buy the home. They did not notify Plaintiff of the issue prior to making the repairs themselves.
10. Defendant alleges he performed or paid \$6,165.00 for pool service and \$7,560.00 for yard service, palm tree trimming and oleander trimming. Plaintiff claims Defendant agreed to do the work and Defendant indicates he did the work under the assumption he was purchasing the home. Pursuant to A.R.S. § 33-1324, landlords and tenants can agree that the tenants will do the work that is usually the landlord's responsibility but that said agreements must be in writing. As the agreement was not in writing, then Defendant could not have been required to maintain the property as it remained the Plaintiff's responsibility. Plaintiff was thus obligated for the costs of yard maintenance and pool maintenance.
11. When Plaintiff refused to sell the property for \$220,000.00 to Defendant. Defendant elected to treat the \$17,400.00 paid towards the purchase as prepaid rent. The \$17,400.00 was not prepaid rent, it was a deposit toward the purchase of the home. Plaintiff should return those funds as the sale of the home never materialized.
12. Plaintiff sent a Notice of Intent to Terminate for Non-Payment of Rent and Termination of Rental Agreement to Defendant on October 9, 2016. Defendant failed to pay the rent that was due on October 1, 2016. Plaintiff began eviction proceedings.
13. The Amended Complaint requested Plaintiff be awarded unpaid rent, costs, attorney's fees, and other damages in the amount of \$4,610.00. Plaintiff also requested a writ of restitution. As Defendants have vacated the property, possession of the property is no longer at issue.
14. The Answer to the Amended Complaint and Counterclaim denied rent was owing as Plaintiff should use the funds paid toward the lease purchase agreement as pre-paid rent. Defendants also claimed an irrevocable option to purchase the home for \$220,000.00, despite the fact that there was clearly never a meeting of minds regarding the purchase price. Defendants also alleged numerous violations of the Arizona Residential Landlord Tenant Act and unjust enrichment in their counterclaim.

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15. Defendants claim to have paid for numerous repairs to the home that should have been paid by Plaintiff. Defendants have failed to notify Plaintiff in writing of the needed repairs. Defendants then claim Plaintiffs were unjustly enriched by their repairs. However, as Plaintiff was unaware of the thousands of dollars in repairs and upgrades made by Defendants, they had no way to object or suggest that they do the repairs themselves. Their repairs included a replacement water heater for \$320.00, new carpet for \$120, blinds for \$60, pool pump for \$450, pool filter for \$500, new air conditioner for \$4,500, plumbing repairs in 2010 for master bath for \$95, 2011 sprinkler repairs for \$600, irrigation repairs for \$100, electrical repairs for \$250, pool equipment repairs for \$395, plumbing repairs in the hall bath and kitchen for \$150, and a new dishwasher for \$395. In addition, they installed new ceiling fans, track lighting, new doors and constructed a rear patio with covering.
16. Although the Court appreciates Defendants made substantial improvements to the home, there was no evidence that they made Plaintiffs aware of the updates prior to updating a home they did not own. Although given the vast number of projects undertaken by Plaintiffs, it is clear to the court that they genuinely believed they were going to purchase the home, they failed to ensure they had that agreement in writing. The appropriate remedy for them may be to pursue an unjust enrichment claim.
17. With regard to the yard maintenance and pool maintenance, the court finds that Plaintiff was well aware that Defendants had taken over those duties and allowed them to do so. A conversation was recalled by both parties involving those duties.
18. With respect to the plumbing and pool issues, the court finds that the landlord was aware of the issues and either allowed Defendant to handle them or elected, in the case of the pool, not to repair the item.
19. With respect to the roof leak, the court finds that the leaks were ongoing and did decrease the value of the home. The court finds that the diminution in value of the home was \$150.00 per month for the roof leaks. This amount takes into account the relatively minimal amount of rain that Phoenix gets over the year but that rain can be significant during the monsoon season.
20. With respect to the decision by Plaintiff not to repair the pool and to leave it empty, the court is much more troubled by this as it could become a breeding ground for mosquitos and it does reduce the use of the backyard. In addition, the pool was clearly a selling point to Defendants when determining to lease the house given the age of their children. The court finds that the value of the home was reduced by \$250.00 per month due to the pool.

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21. The court finds the diminution in value based on the testimony of the parties and Plaintiff's expert.
22. Given the tone and tenor of the litigation as a whole and the reasonableness of the parties in asserting their claims, the court declines to find that the attorneys for Defendants/counterclaimants failed to exercise reasonable care in ensuring that their pleadings were accurate and well-grounded in fact and law.

CONCLUSIONS OF LAW

Based on the Court's findings,

IT IS ORDERED that Plaintiff had a right to immediate possession of the property for non-payment of rent. After the first Judgement for Writ of Restitution was entered by the Clerk of the Court on March 21, 2017, and a Writ of Restitution was issued by the Clerk of the Court on March 31, 2017, Defendants thereafter moved out of the property on March 31, 2017.

IT IS FURTHER ORDERED that Defendants owe Plaintiff unpaid rent from October 2016 through the month that they vacated the premises. The amount of rent Defendants owe Plaintiffs totals \$10,694.90.

IT IS FURTHER ORDERED that due to the reduction in fair market rental value of the rental as a lack of repairs to the pool is \$250.00 per month for sixteen (16) months for a total reduction in value of \$4,000.00

IT IS FURTHER ORDERED that due to the reduction in fair market value of the rental as a result of the interior water leaks is \$150.00 per month for a period of nineteen (19) months, for a total reduction in value of \$2,850.00.

IT IS FURTHER ORDERED that Counterclaimants did pay \$17,600.00 toward the purchase of the home. Said funds are to be repaid to them as the contract was not consummated.

IT IS FURTHER ORDERED dismissing without prejudice Counterclaim Count Five (unjust enrichment).

IT IS FURTHER ORDERED for purposes of the forcible eviction and detainer complaint, Plaintiffs are the prevailing party for purpose of awarding attorney fees and costs. Plaintiffs may file an application for attorney fees and costs regarding the forcible eviction and detainer action together with a form of final judgment within ten (10) judicial days of the electronic filing of this order.

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IT IS FURTHER ORDERED DENYING Plaintiff's request that they may filed for sanctions against Counterclaimants and their attorneys pursuant to Rule 4(c), RPEA.

As for Defendants' Request to Release Deposited Funds,

IT IS ORDERED DENYING the request until the final judgment and attorneys' fees amounts are calculated.

As for the Defendant's/Counter-claimants' Request for Clarification of the Court's December 22, 2017 Minute Entry, the Court does find that Plaintiff/Counter-defendant wrongfully withheld the \$17,600.00 paid toward the purchase of the home. Those amounts should be returned to Defendant/Counter-claimaint as the contract for the purchase of the property was never reduced to writing even though the parties clearly intended to enter into one. However, with regard to the unjust enrichment claim regarding the additions/renovations/repairs made by Defendants to the home, those funds will not be assessed to Defendants as Plaintiff had no knowledge of them.