2017 IL App (1st) 160660-U

No. 1-16-0660

Third Division
February 8, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ROBERT E. PINCHAM, Plaintiff-Appellant, v. CHICAGO TITLE LAND TRUST COMPANY, as Trustee of Land Trust No. 1104133 dated 6/28/1997, and ANDREA PINCHAM-BENTON, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 05603 Honorable Moshe Jacobius, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not err in granting defendant's motion to dismiss where no set of facts could establish that plaintiff properly exercised his option to purchase.

¶ 2 Plaintiff Robert E. Pincham appeals from an order granting defendants Chicago Title Land Trust Company (Chicago Title) and Andrea Pincham-Benton's motion to dismiss plaintiff's second amended complaint filed pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), which asserted that plaintiff failed to

state a legally cognizable claim for specific performance, declaratory judgment, or breach of contract. The trial court found that plaintiff did not allege facts that established he exercised his option to purchase 9313 South Wabash Avenue, Chicago, Illinois (the Property). On appeal, plaintiff contends that he sufficiently alleged each element for his three causes of action and that the trial court's dismissal of his claims was error because the court misapplied the law on option contracts by adding terms that did not exist in the lease. Plaintiff alternatively argues that the court erred in dismissing the second amended complaint with prejudice because the option language in the lease was ambiguous and he was able to cure any defects by repleading his causes of action in a third amended complaint. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The following facts are obtained from the pleadings in the record. On June 28, 1997, the property owner Alzata Pincham, who was also the mother of both plaintiff and Andrea, placed the property in a land trust and named Chicago Title as the trustee. Andrea was listed as the sole beneficiary of the trust. On November 1, 1997, at the direction of Alzata, Chicago Title entered into a residential lease with plaintiff for the property for a period of 15 years. The lease set forth the rights and obligations of the parties, including an option for plaintiff to purchase the property. The option provision stated, in its entirety:

> "13. **Option to Purchase**. Tenant shall have an option to purchase the subject property during the term of this Lease. The purchase price during this term shall be Ninety Thousand ($90,000) Dollars. If tenant does not exercise this option and the subject property is subsequently sold, the Tenant shall be compensated for the value of any additions, alterations he has made to the property."

¶ 5 Plaintiff lived at the property throughout the lease term, which was to expire on October 31, 2012. On June 25, 2012, he sent a letter through his attorney to Andrea making an offer to purchase the property. Attached to the letter was a real estate contract that listed the purchase price as $60,000 and stated that the offer was to be financed with cash that he would receive from the estate of his father, R. Eugene Pincham, Sr., upon settlement of the estate. In response to the letter, Andrea's attorney sent a letter dated July 11, 2012, to plaintiff's attorney, which stated "As you may know, the land trust provides for title to pass to Evan Pincham, Robert's son, upon Andrea Pincham's death. Andrea intends to continue to hold title in this land trust and has no interest in selling. Accordingly, she has declined Robert's offer."

¶ 6 On October 12, 2012, prior to the expiration of the term, plaintiff's attorney sent a letter to Chicago Title advising the trustee that plaintiff was exercising his option to purchase the property for $90,000. Shortly thereafter, on October 17, 2012, plaintiff's attorney sent a letter to Andrea's attorney that explicitly stated that it was regarding "Exercise of option to purchase 9313 S. Wabash[.]" The letter offered additional terms set forth below:

> "Your client would agree to sell the real estate to her brother for the sales price of $90,000. The real estate would thereafter be held in a land trust with Robert Pincham as the sole primary beneficiary. His son, Evan Pincham, would be named as the contingent beneficiary who would receive title to the real estate after the death of his father. Robert's wife, Sharon, would waive any homestead or marital rights that she may have to the real estate."

¶ 7 Subsequently, on October 27, 2012, plaintiff's wife Sharon Banks-Pincham, acting as his real estate agent, sent Chicago Title another real estate contract, this time listing the purchase

price as $90,000 and a copy of a cashier's check for $30,000 in earnest money. In a letter dated October 30, 2012, addressed to Sharon, a trust officer for Chicago Title informed her that it was returning the documents because they were sent without a Letter of Direction from a beneficiary. In response to this letter, plaintiff sent the trust officer a letter on January 12, 2013, requesting, *inter alia*, copies of all documents signed by Alzata or R. Eugene Pincham that named Andrea as the beneficiary interest in the land trust for the property. Chicago Title sent him the Deed in Trust and Residential Lease for the property, but did not send other documents that were not a matter of public record or signed by plaintiff.

¶ 8 On April 1, 2014, plaintiff filed a three-count complaint against defendants for specific performance of an option contract, declaratory judgment, and breach of contract. Plaintiff subsequently amended his complaint twice. In response to plaintiff's second amended complaint, defendants filed a motion to dismiss pursuant to section 2-615 of the Code. 735 ILCS 5/2-615. Thereafter the court granted the motion to dismiss and found that plaintiff had not exercised his option prior to the end of the lease term because he did not tender the full purchase price.

¶ 9 ANALYSIS

¶ 10 Plaintiff's arguments are based on his assertion that he properly exercised his option to purchase the property and therefore he contends that he is entitled to specific performance of the option contract, a declaratory judgment, and damages for breach of contract. Defendants maintain that plaintiff never properly exercised his option because he failed to tender the stated purchase price during the term set forth in the lease. The outcome of this case depends upon whether plaintiff complied with the terms of the lease in exercising his option because each of his causes of action requires the existence of a valid contract. See *Chapman v.*

Brokaw, 225 Ill. App. 3d 662, 667 (1992) (holding that the tenant's claims for a declaratory judgment, damages for breach of contract, and specific performance of an option contract fail because no contract existed).

¶ 11 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent from its face. *Bueker v. Madision County*, 2016 IL 120024, ¶ 7. In reviewing a section 2-615 motion to dismiss, the court takes all well-pleaded facts as true and draws all reasonable inferences in favor of the plaintiff. *Edelman, Combs & Latturner v. Hinshaw and Culbertson*, 338 Ill. App. 3d 156, 156-57 (2003). Thus, our review of a court's decision to grant a section 2-615 motion to dismiss is *de novo*. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

¶ 12 In an option contract, the owner of property agrees with another person that he shall have the right to buy the property at a fixed price and within a certain time. *Bruss v. Klein*, 210 Ill. App. 3d 72, 79 (1991) (citing *Morris v. Goldthorp*, 390 Ill. 185, 191 (1945)). A contract for the sale of property, for which specific performance could be granted, does not exist until an option is exercised according to its terms. *Id.* Further, "[t]he lessee must exercise the option in strict conformity with all conditions prescribed and not waived by the lessor." *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 217 (2001).

¶ 13 Here, the plain language in the lease sets the purchase price for the property at $90,000 and sets the time that the purchase must be made by as “during the term of this Lease.” The lease began on November 1, 1997, and continued for 15 years, making the end of the lease term October 31, 2012. Thus, plaintiff was required to purchase the property prior to October 31, 2012. Plaintiff maintains that he did so by sending Chicago Title and Andrea a real estate contract and letters informing them that he was exercising his option, and by tendering

$30,000 in earnest money. Defendants, citing *Chapman v. Brokaw*, 225 Ill. App. 3d 662 (1992), contend that plaintiff did not properly exercise his option.

¶ 14 In *Chapman*, the landlord and tenant entered into an oral lease agreement that gave the tenant the option to purchase the property. *Id.* at 663. The parties verbally agreed to a yearly rental with the tenant paying $610 a month. *Id.* In addition, they agreed that the tenant would have the option to purchase the property for $66,000 at any time prior to September 1, 1989. *Id.* Although the parties intended to memorialize the agreement in a written contract, the terms were never formally written. *Id.* Prior to the expiration of the lease, the tenant attempted to exercise his option by sending the landlord a "Contract to Purchase Real Estate" along with a $1,000 earnest money check. *Id.* at 664. In response, the landlord returned the check and served the tenant with a motion to quit the premises. *Id.* The tenant did not leave. *Id.* Instead, the parties re-negotiated the sale of the property and set a closing date for August 28, 1989. *Id.* The tenant tendered and additional $3,000 in earnest money, but did not attend the closing. *Id.* Nevertheless, the tenant tendered another $4,000 in earnest money. *Id.* Thereafter, on October 17, 1989, the landlord filed a forcible entry and detainer action and the tenant filed a counter-claim for a declaratory judgment, damages for breach of contract, and specific performance of the option agreement. *Id.* The court held that the tenant never properly exercised his option. *Id.* at 666. In doing so, the court reasoned that there were only two terms of the option: (1) that the tenant had until September 1, 1989 (2) to purchase the property for $66,000. *Id.* The court explained that "the only way for [the tenant] to exercise the option, according to its terms, was to tender the sum of $66,000 to [the landlord] prior to September 1, 1989." *Id.*

¶ 15 Similarly, here, plaintiff sent both Andrea and Chicago Title letters indicating that he was exercising his option to purchase the property. He also sent Chicago Title a real estate contract with a purchase price of $90,000 and a copy of an earnest money check for $30,000. Like the tenant in *Chapman*, he made his intent to purchase the property clear, however, he did not tender the full purchase price prior to the expiration of the term.

¶ 16 Plaintiff contends that Chapman is distinguishable from the facts of this case because the contract in that case was oral, whereas the contract in this case was written. This difference does not affect our analysis. Although the court in *Chapman* had to interpret an oral contract, it interpreted it to be very similar to the contract language as it was written here. In *Chapman*, there were only two agreed upon terms: the purchase price and the date by which the purchase needed to be made. Here, the contract expressly set forth two terms: the purchase price of $90,000 and the date by which the purchase needed to be made, October 31, 2012. Plaintiff further asserts that *Chapman* is not analogous to this case because it was adjudicated in front of jury, whereas, here, the case was disposed on a section 2-615 motion to dismiss. Specifically, he argues that we do not know what the jury verdict in *Chapman* would have been if the facts of this case were substituted in. This argument is completely without merit. The *Chapman* court reversed the jury's factual determination as against the manifest weight of the evidence and thus it is the court's legal reasoning, not the jury verdict that informs our analysis.

¶ 17 Contrary to plaintiff's arguments, we find the holding in *Chapman* persuasive. It is well settled that an option contract must be exercised in strict conformity with its terms. *Wolfram Partnership, Ltd.*, 328 Ill. App. 3d at 217; *Napleton v. Ray Buick, Inc.*, 302 Ill. App. 3d 191, 196 (1998); *Chapman*, 225 Ill. App. 3d 662, 667 (1992) (explaining that "[a]n option must be

exercised in strict accordance with its terms."). Here, there were two terms set forth in the lease and plaintiff failed to comply with both of them. It is undisputed that he did not purchase the property prior to October 31, 2012 and that he never tendered the full purchase price. Therefore, the court did not err in finding that plaintiff did not exercise his option.

¶ 18 We note that plaintiff has not cited any cases that specifically hold that the full purchase price does not need to be tendered to exercise an option. Instead, he relies on boiler plate language that he need only be "ready willing and able to perform the contract." *Hoxha v. LaSalle National Bank*, 365 Ill. App. 3d 80, 85 (2006); see also *Artful Dodger Pub, Inc. v. Koch*, 230 Ill. App. 3d 806, 810 (1992). Significantly, in *Artful Dodger*, although the tenant did not tender the full purchase price, the landlord did "not dispute that the option was validly exercised." *Artful Dodger Pub, Inc.*, 230 Ill. App. 3d at 808. Therefore, the court did not decide that issue. Additionally, although plaintiff emphasizes that he was ready, willing, and able to perform the contract, he nevertheless failed to demonstrate that he was ready, willing, and able by tendering the full purchase price.

¶ 19 Plaintiff additionally contends that the language of the lease is ambiguous and therefore the court erred in dismissing the second amended complaint because questions of fact exist as to whether he sufficiently complied with the terms of the lease. Plaintiff concedes, however, that the option language contains only two terms, which were clearly stated. We agree with this assessment. Although the contract could have stated more detail, the contract included the essential terms of an option contract: a fixed price by a date certain. *Keogh v. Peck*, 316 Ill. 318, 328 (1925); *Bruss*, 210 Ill. App. 3d at 79. Thus, here, the terms that were provided were sufficiently clear to enforce and there were no questions of fact to be resolved.

¶ 20 As a final matter, we reject plaintiff's contention that his claims could be cured by repleading them. Plaintiff does not dispute that he did not purchase the property prior to October 31, 2012, and that he never tendered the full purchase price. Therefore, as it is uncontested that these two necessary conditions to exercising the option are not present, there are no set of facts that would entitle plaintiff to relief. The court did not err in dismissing plaintiff's second amended complaint with prejudice.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we find that plaintiff failed to allege that he properly exercised his option to purchase the property. Thus, he did not establish that a contract existed that could have entitled him to specific performance of the option contract, a declaratory judgment, or damages for a breach. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.