

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-015038

06/09/2015

HONORABLE KATHERINE COOPER

CLERK OF THE COURT  
D. Harding  
Deputy

DOUGLAS OFFERMAN

LAWRENCE K LYNDE

v.

GRANADA L L C

RICHARD V MACK

UNDER ADVISEMENT RULING

On June 8, 2015, the parties conducted a trial to the bench. Having considered the testimony and other evidence presented, counsels' arguments, and the applicable law, the Court now rules as follows:

This litigation pertains to residential real property located at the physical address of 7742 E. Granada Road, Scottsdale, Arizona 85257 ("Property") and legally described as follows: Lot 1, of HACIENDA DEL REY, according to Book 195 of Maps, page 14, records of Maricopa County, Arizona.

On or about July 18, 2012, Plaintiff Offerman and Defendant Granada LLC entered into a Residential Lease Agreement ("Agreement") for the Property. That Agreement provided that Offerman would lease the Property from Granada with the term of the lease to be August 4, 2012 to August 31, 2012 thru August 31, 2014 and the monthly rent to be \$1,900.00.

As part of the Agreement, Granada's principal Gilbert Houseaux, a licensed realtor, acted as agent for Granada and for Offerman.

The Agreement contains the following "Additional Terms":

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At the completion of the 24 month lease, the Tenant **has the option to purchase property** at 7742 E. Granada Rd. for a sale price to be determined at that time by an independent appraiser acceptable to both Tenant and Landlord. (Terms and Conditions to be stipulated by both parties at such time).

If the Tenant chooses to exercise **his right to purchase this property** at the end of the 2 year lease agreement, he shall be credited \$200.00 of each \$1,900.00 of monthly rent paid towards the purchase.

The acceptable condition of the property when Tenant takes occupancy will be considered the condition Tenant agrees to accept at time of closing. All inspections and contingencies to be performed and satisfied prior to initial move-in. Property to be sold As-Is. (Emphasis added.)

Houseaux prepared the Agreement, including the above Additional Terms.

Houseaux knew and understood the difference between a “right of first refusal” and an “option to purchase” property.

Houseaux understood that \$200.00 of Mr. Offerman’s monthly rent was to be credited as a down payment upon Plaintiff’s exercise of the purchase option.

Beginning April 30, 2014, Offerman notified Houseaux in writing that he was exercising the purchase option, and Offerman and Houseaux exchanged communications about the sale. Houseaux and Lisa Balbona, a licensed realtor working with Houseaux, acknowledged in writing and verbally the sale of the Property to Offerman. Exhibits 6, 16. Balbona, on behalf of Houseaux, sent Offerman’s counsel a proposed Purchase Contract. Exh. 6.

When Houseaux did not respond to Offerman’s requests for an independent appraisal of the Property, Offerman obtained his own appraisal in October 2014.

Offerman continued to live in the Property after the lease term expired and continues to pay rent of \$1,900.00 per month.

Offerman has secured financing to buy the Property.

In Arizona, for an enforceable contract to exist, there must be an offer, an acceptance, consideration, and sufficient specification of terms so that the obligations involved can be ascertained. *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass’n*, 139 Ariz. 209, 212, 677 P.2d

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1317, 1320 (App. 1983), *citing Savoca Masonry Co., Inc. v. Homes and Son Const. Co., Inc.*, 112 Ariz. 392, 394, 542 P.2d 817, 819 (1975).

The parties entered into a binding agreement whereby Offerman has a right to buy the Property at the end of the 24-month lease term. The Additional Terms are clear and unambiguous. They expressly grant Offerman an “option” or “right” “to purchase” the Property. This “right” is not contingent on Houseaux’ decision to sell. It is a “right” vested by the language of the Additional Terms and supported by consideration in the amount of \$1,900 rent, \$200 of which is specifically to be applied to the purchase price.

Houseaux’ testimony that the parties intended that Offerman could buy only if and when Houseaux decided to sell is not credible. It contradicts the express language of the Additional Terms. Houseaux testified that he understood at the time the difference between a “right of first refusal” and a purchase option. After Offerman notified Houseaux that he was exercising his option, Houseaux acknowledged the sale of Property verbally and in writing and even sent (through Balbona) a proposed Purchase Contract.

Houseaux contends that the agreement is not enforceable because the “Terms and Conditions” of the sale are material terms not specified. The Court finds the Agreement is not void for indefiniteness. *Holaway v. Realty Associates*, 90 Ariz. 289, 367 P.2d 643 (1961). The absence of items such as the name of the title company, Offerman’s lender, and other details cited by Houseaux does not render the agreement to purchase unenforceable. These terms are not material to the fundamental and express agreement that Offerman has a right to purchase. The material term is the purchase price which is addressed in the Agreement. The parties shall agree to an independent appraisal to determine the purchase price. Obviously, the sale will not happen if Offerman cannot pay for the Property. But the rest of the details mentioned by Houseaux are not fatal to the Agreement.

**IT IS HEREBY ORDERED:**

- Finding in favor of Plaintiff Offerman and against Defendants Granada LLC and Gilbert Houseaux.
- That Plaintiff is entitled to specific performance of the Agreement.
- That the purchase price shall be determined by an independent appraiser selected by the parties. The date of valuation shall be August 31, 2014, the end of the lease term. The parties shall select an appraiser no later than **June 26, 2015**. If the parties cannot agree on an appraiser, they shall each submit two (2) names

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with resumes to the Court by **June 30, 2015**, and the Court will select the appraiser. The parties will share the cost of the appraisal 50/50.

- Plaintiff shall be entitled to the following credits against the purchase price: \$200 per month for each month's rent paid from August 4, 2012 to the date of close of the sale; \$1,900 security deposit, and \$250 cleaning deposit.
- The parties shall cooperate in all respects of the specific performance needed to effect the sale.
- This case is an action arising out of a contract. Offerman is the prevailing party and is entitled to recover his reasonable attorneys' fees pursuant to A.R.S. § 12-341-01, including attorneys' fees incurred through the close of escrow. Offerman shall submit an application for fees no later than 30 days after close of escrow.