

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-016923

12/22/2017

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

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. As contracts for the purchase of land must be in writing, this court deemed the oral lease purchase agreement to be invalid. Once the lease purchase agreement was deemed invalid, the next issue was whether Plaintiffs had a right to immediate possession as the rental agreement was allegedly breached for non-payment of rent and whether the tenants may counterclaim for reduction of rent for the landlord's failure to repair the roof, plumbing, and pool. Tenants also counterclaim seeking reimbursement for substantial improvements they made to the house as they believed they were purchasing the home.

As the order which the court intended to release in July 2017 addressing these issues was somehow never published, before drafting this order, the court has watched every video recording (FTR) of each hearing held in this matter, has read the transcript from the original evidentiary hearing, and has reviewed all the exhibits admitted during the original hearing. In addition, the court has reread the myriad pleadings filed in this matter. The court has also considered the applicable case law, statutes and rules of court.

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The Court makes the following findings:

- The Parties entered into a month-to-month rental agreement whereby Defendants would lease the residence at 1622 W. Avalon Drive, Phoenix, Arizona for \$1400.00 per month starting January 2009. As no lease was signed, the oral agreement will be treated as a month-to-month lease.
- The parties attempted to modify their lease agreement in March 2009, to create a lease-purchase agreement. No part of this agreement was reduced to writing. The parties never had a meeting of minds regarding the ultimate purchase price or the timing of when the house would be purchased. See Exhibit 6, 10, 11, and 12.
- In reliance of the lease purchase agreement, Defendants paid an additional \$300.00 per month for sixty (60) months for a total of \$17,400.00.
- Pursuant to the Statute of Frauds, oral contracts for the purchase of real property are not valid in Arizona. Insufficient writings exist between the parties for the Court to find a contract with the essential terms agreed upon by the parties. (For example, the purchase price, date of sale, down payment amount, nor financing terms were agreed upon.)
- As they believed they were purchasing the home, Defendants spent over \$15,000.00 on home improvements including new doors, fixtures, etc. Plaintiff did not authorize these improvements nor was he aware of them.
- Plaintiff did not return the \$17,400.00 paid toward the purchase price of the house, despite being unwilling to sell the home to Defendants for what Defendants thought was the agreed upon purchase price. Plaintiff claimed he had raised the rent from \$1400.00 to \$1700.00 and that the extra \$300.00 was not part of a deposit toward the purchase of the home. Given the totality of the evidence presented, the court did not find that claim credible and finds that the \$300.00 was intended to be applied to the purchase of the home.
- Despite having notice, Plaintiff failed to repair a roof leak and a float system in the pool, which has rendered the pool unusable. Plaintiff had the pool drained rather than repair it. Plaintiff's counsel in his closing argument during the evidentiary hearing agreed that the rental value of the home should be reduced due to the roof and pool issues. No evidence was presented as to how much the fair market rental value of the home would be impacted by significant roof leaks and a non-functional pool, especially as these conditions lasted for many months. The court declines to assign an arbitrary number to

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the appropriate amount of reduction to the rental value for such significant failures to maintain the property in a fit and habitable condition.

- Defendants replaced an air conditioner that cost \$4800.00 and made needed plumbing repairs. Defendants did this assuming that they were purchasing the home. They did not notify the Plaintiff of the issues with the AC unit and the plumbing prior to paying these expenses. Exhibit 7, 24, 33, and 38.
- Defendant paid \$6,165.00 for pool service and \$7,560.00 for yard service, palm tree trimming and oleander trimming. Plaintiff argues that Defendant was willing to do the work, which he was as he believe he was purchasing the home. This agreement was never reduced to writing as required by A.R.S. § 33-1324. As the lease purchase agreement was invalid and this matter proceeded as an eviction, Court will require the parties to comply with the Arizona Residential Landlord and Tenant Act. Defendant is liable for the costs of pool and yard maintenance.
- When Plaintiff refused to sell the property for \$220,000.00, Defendant stopped paying rent on the grounds that he now treated the \$17,400.00 paid toward the purchase of the home as advance rent. There was no agreement between the parties that he could do so. The appropriate remedy would have been to file suit to recover the down payment funds and for any claims of unjust enrichment.
- Plaintiff then sent a Notice of Intent to Terminate for Non-Payment of Rent and Termination of Rental Agreement to Defendant on October 9, 2016. Defendant did not pay the rent that was due on October 1, 2016. Plaintiff initiated eviction proceedings.
- The Amended Complaint requested Plaintiff to be awarded unpaid rent, costs, attorney's fees, and other damages in the amount of \$4,610.00. Plaintiff also requested that a writ of restitution issue. As Defendants have vacated the property, the issue of possession no longer exists.
- The Answer to the Amended Complaint and Counterclaim denied rent was owing as Defendants has already paid \$17,400.00 toward the lease purchase agreement and that Plaintiff should use those funds as pre-paid rent. Defendants also alleged Plaintiff has breached an irrevocable option to purchase the property for \$220,000.00. They affirmatively pleaded that Plaintiff violated A.R.S. Section 33-1324 by failing to maintain the premises in a fit and habitable condition. Defendants counterclaimed for breach of contract, breach of the covenant of good faith and fair dealing, violation of A.R.S. Section 33-1321, Violations of A.R.S. Section 33-1324, and unjust enrichment.

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- The Amended Reply to the Amended Counterclaim asked that the amended counterclaim be dismissed as the amended counterclaim failed to state a claim against Plaintiff upon which relief can be granted pursuant to the Arizona Landlord Tenant Act and the Arizona Rules of Procedure for Eviction Actions, that the statute of limitations and the statute of frauds bars some of the counterclaims, and that Defendants are guilty of laches and unclean hands.
- Defendant paid for numerous repairs to the home that should have been paid by Plaintiff. He claims Plaintiff was unjustly enriched by the following improvements and repairs made to the property: replacement water heater for \$320.00, new carpet for \$120.00, blinds \$60.00, pool pump replacement for \$450.00, replacement pool filter for \$500.00, new air conditioning unit for \$4,500.00, plumbing repairs in 2010 to master bath for \$95.00, 2011 sprinkler repairs for \$600.00, irrigation repairs for \$100.00, electrical repairs for \$250.00, pool equipment repairs for \$395.00, plumbing repairs in the hall bath and kitchen \$150.00, and new dishwasher for \$395.00. In addition, the following items were replaced and/or upgraded: ceiling fans, track lighting, new doors, and the construction of a rear patio and patio covering.
- The Court finds of those claimed repairs, Plaintiff was aware of the need to repair the plumbing for \$245.00 and electrical repairs for \$250.00. The remainder of the other repairs were made without first notifying Plaintiff of the need to make the repairs.
- Although the Court appreciates Plaintiff was enriched by Defendants treating the rental house as their home, there was no evidence that Plaintiff was made aware of the updates to his home being made prior to Defendants making said improvements. Exhibit 38.
- Plaintiff violated A.R.S. § 33-1324 by failing to maintain the roof, plumbing and pool in a fit and proper condition.
- The fair rental value of a property is a factual determination. *See [CSA 13-101 Loop, LLC v. Loop 101, LLC](#), 233 Ariz. 355, ¶ 25, 312 P.3d 1121, 1128-29 (App. 2013); see also [L & M Inv. Co. v. Morrison](#), 605 P.2d 1347, 1349-50 (Or. App. 1980)* (diminution in fair rental value a factual determination based on evidence presented).

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. Plaintiff moved out of the property in the spring before the final hearing on this matter thus a writ of restitution is no longer needed.

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IT IS FURTHER ORDERED that Defendants owe Plaintiff unpaid rent from October 2016 through the month that they vacated the premise.

IT IS FURTHER ORDERED that Plaintiff owes Defendants \$14,205.00 to reimburse Defendants for the costs of maintaining the pool and landscaping without a written agreement between the parties that Defendants would do so and for repairs made by Defendants that Plaintiff was aware were necessary.

IT IS FURTHER ORDERED that Defendants rent should have been reduced during those months when Plaintiff failed to repair the roof, plumbing and pool by an amount that would correspond to the true fair market value of the property given the poor condition.

IT IS FURTHER ORDERED that as both parties have breached the rental agreement, neither side is a prevailing party for purposes of awarding attorney fees and costs.

By agreement of counsel,

IT IS ORDERED setting a Telephonic Status Conference on **January 4, 2018, at 10:00 a.m. (time allotted: 15 minutes)** for the parties to discuss whether any further issues exist that need to be resolved by this court and to discuss the issuance of a formal order in accordance with this decision. Counsel for Plaintiff shall initiate the telephonic conference by first arranging the presence of all other counsel on the conference call and by calling this division at: **(602) 506-8245** promptly at the scheduled time. **The parties and counsel shall not be permitted to participate in conferences via cell phones or speakerphone.**

NOTE: All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.