

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1444

PATRICIA BICKHAM PETERS

VERSUS

JIMMIE DUNN, JR. AND VERNADEAN DUNN

Handwritten initials: JH, PMG

**On Appeal from the
City Court of Hammond, Seventh Ward
Parish of Tangipahoa, Louisiana
Docket No. 1-0603-0062
Honorable Grace Bennett Gasaway, Judge Presiding**

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Defendant-Appellant
Vernadean Dunn**

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered June 8, 2007

Guidry, J. concurs in the result.

PARRO, J.

Vernadean Dunn appeals a judgment of eviction from a residence she has been occupying since 1995. Finding no legal error, we affirm the judgment.

BACKGROUND

On March 30, 2006, Patricia Bickham Peters brought an eviction suit against Jimmie Dunn, Jr.¹ and Vernadean Dunn, alleging that she was a co-owner of certain property with a physical address of 44454 Hood Road, Hammond, Louisiana, located in the Seventh Ward of the Parish of Tangipahoa. Ms. Peters stated that she had inherited an interest in the property in December 1995, upon the death of her mother, Shirley May Mason. Her petition further stated that on March 3, 1995, her mother and stepfather, Calvin Mason, had leased the property to the Dunns in a 36-month lease, with an option to purchase beginning on March 1, 1998. The lease had an initial payment of \$2,000. The monthly payments were \$250, and upon receipt of \$9,000 during the three-year lease term, the Masons agreed to execute a deed transferring the property to the Dunns for an additional \$14,000, while retaining a vendor's lien and mortgage on the property until the outstanding balance of the purchase price was paid in full. The Dunns could exercise the purchase option between March 1, 1998, and March 31, 1998; if they chose to purchase the property, the \$14,000 balance was to be paid monthly in \$250 installments. The lease was in authentic form and was filed for registry in the parish conveyance records on March 8, 1995. A copy of the "Lease with Option to Purchase" was attached to the petition.

The petition stated that sometime after March 1, 1998,² the Dunns failed to make several monthly payments, and the Masons made preparations to evict them; however, both Mr. and Mrs. Mason died before commencing eviction proceedings and without executing a deed transferring the property to the Dunns. The petition further alleged that the Dunns continued to live on the property for many years without making

¹ According to a notation in the court minutes, Jimmie Dunn, Jr. is now deceased.

² The testimony of Ms. Peters indicated this actually occurred before her mother's death in 1995.

any payments. According to the petition, a demand to vacate was received by the Dunns on March 10, 2006, but despite the passage of fifteen days, they had not vacated the premises. The petition asked the court to order the lessees to show cause why they should not vacate the premises.

After the show cause hearing, a judgment of eviction was entered, ordering the Dunns to vacate the premises on or before April 30, 2006, and to deliver possession to Ms. Peters. The judgment was signed on April 25, 2006, and Vernadean Dunn filed this devolutive appeal.

APPLICABLE LAW

A lease is a bilateral contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay. See LSA-C.C. arts. 2669 and 2674.³ A lease does not terminate by the death of the lessor or the lessee. See LSA-C.C. art. 2731. If the parties agree that the lease will terminate at a designated date or upon the occurrence of a designated event, it has a fixed term. See LSA-C.C. arts. 2684 and 2686. If the parties have not agreed on the duration of the term, the duration of a lease of movable or immovable property to be used as a residence is month to month. See LSA-C.C. art. 2685. A residential lease with a fixed term is reconducted if, after the expiration of the term, and without notice to vacate or terminate by the lessor or lessee, the lessee remains in possession for one week. See LSA-C.C. art. 2689. The term of a reconducted residential lease is from month to month in the case of a lease in which the term is a month or longer. See LSA-C.C. art. 2685.

The lessee is bound to pay the rent in accordance with the agreed terms. See LSA-C.C. art. 2710. If the lessee fails to pay the rent when due, the lessor may dissolve the lease and regain possession in the manner provided by law. See LSA-C.C. arts. 2712(A) and 2713. When a lessee's right of occupancy has ceased because of the

³ This section of the Civil Code was revised, amended, and re-enacted by 2004 La. Acts, No. 821, § 1, effective January 1, 2005. We are citing the provisions in effect when the lease was executed.

termination of the lease by non-payment of rent, and the lessor wishes to obtain possession of the premises, the lessor shall deliver to the lessee written notice to vacate the premises in not less than five days from the date such notice is delivered. See LSA-C.C.P. art. 4701. If the lessee fails to comply with the notice to vacate and has lost his right of occupancy for any reason, the lessor or owner may cause the lessee to be cited summarily by a court of competent jurisdiction to show cause why he should not be ordered to deliver possession of the premises to the lessor or owner. See LSA-C.C.P. art. 4731(A). If the court finds the lessor or owner entitled to the relief sought, the court shall render immediately a judgment of eviction ordering the lessee to deliver possession of the premises to the lessor or owner. See LSA-C.C.P. art. 4732(B).

Interpretation of a contract is the determination of the common intent of the parties. LSA-C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2046. The proper interpretation of a contract is a question of law. When considering legal issues, the reviewing court accords no special weight to the trial court, but conducts a de novo review of questions of law and renders judgment on the record. Montz v. Theard, 01-0768 (La. App. 1st Cir. 2/27/02), 818 So.2d 181, 185.

DISCUSSION

Ms. Peters testified that her mother passed away in December 1995, and her stepfather passed away in March or April 1999. She identified the lease with option to purchase agreement between the Masons and the Dunns, and said her mother had tried to initiate eviction proceedings before her death, because the Dunns had not paid rent in three months. However, her mother died before completing those proceedings. Ms. Peters said she was appointed as administratrix of her mother's estate, but did not receive any payments from the Dunns after her mother's death or after Mr. Mason's death. She stated that despite the fact that several family members had gone to the property to talk with the Dunns, the Dunns would call the police to have them removed from the property.

Ms. Dunn testified that her understanding of the lease with option to purchase agreement was that she was leasing the property for three years, after which she was purchasing the property. She said she had made monthly payments to Mr. Mason for many years, with the understanding that upon completion of the payments, the deed would be transferred to her name before a notary. Ms. Dunn stated that this could not be accomplished, because by that time, both Mr. and Mrs. Mason were dead. However, before he died, Mr. Mason had told her to send the payments to his brother's wife, Alicia Pratt, in Marrero, Louisiana. Therefore, she had continued to make those payments until the purchase price was paid in full on March 1, 2003. By that time, Mr. Dunn was also deceased. She testified that she was never over a month late on a payment, and if she was late, she paid a \$15 late charge in addition to the monthly rent. Ms. Dunn said she could not read, and a friend of hers wrote a letter on her behalf concerning the property. Ms. Dunn said she had receipts showing that she made the payments, but a fire in the home had destroyed many of those records. No receipts were offered in evidence. In connection with her testimony, tax notices from the parish assessor's office for 2002 and 2003 were entered into evidence, showing the notices in the name of Alvin J. Mason, et al., c/o Jimmie Dunn, Jr. at the Hood Road address, and indicating the property was totally exempt from parish property taxes due to the homestead exemption.⁴

Ms. Dunn's friend, Joyce Marie Davis, testified that she was present when Calvin Mason told Ms. Dunn to send the payments to his brother and to make them payable to Alicia Pratt. Ms. Davis said she handles money matters for Ms. Dunn, and wrote out all the money orders for the property payments, as directed by Mr. Mason.

After hearing the testimony and reviewing the lease with option to purchase document, the court stated that it clearly set forth the conditions that must be met in order to exercise the purchase option. There was no evidence that the purchase option had been exercised or that any further documentation had changed the agreement to

⁴ In response to a query from the judge, Ms. Peters commented that Alvin Mason was Calvin Mason's brother.

anything other than a lease. Therefore, as long as the Dunns continued to make payments, they were entitled to continue living on the property. However, because the option to purchase had never been exercised, Ms. Peters had the right to evict.⁵

Ms. Dunn argues on appeal that the court erred in failing to recognize that the parties had intended to enter into a bond for deed contract and/or had verbally converted their agreement into a bond for deed. A bond for deed contract is a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller, after payment of a stipulated sum, agrees to deliver title to the buyer. LSA-R.S. 9:2941.

Examining the contract document, it is clear that the first thirty-six months constitute a simple lease for a fixed term. The Masons "declared that they do by these presents lease unto" the Dunns the described property "for a period of thirty-six (36) months, beginning on the 1st day of March, 1995" The document further recites an initial consideration of \$2,000 "and thirty-six (36) equal, consecutive, monthly rental payments of Two Hundred Fifty (\$250.00) Dollars each" The fixed term commences "on the 1st day of March, 1995," with the "last said rental payment being due and payable on the 1st day of February, 1998." Thus, the consent of the parties as to the thing being leased, the rent to be paid, and the term or duration of the lease is clear.

It is the next portion of the agreement that is at issue. It states, in pertinent part:

It is further understood and agreed that if all thirty-six monthly payments of Two Hundred Fifty (\$250.00) Dollars are timely paid, then in that event total rental payments amounting to Nine Thousand (\$9,000.00) Dollars will have been made, then in part consideration of said payments, the sellers grant to the buyers the option to purchase the above described property for an additional sum of Fourteen Thousand (\$14,000.00) Dollars, which Fourteen Thousand (\$14,000.00) Dollars shall be paid in regular, consecutive, monthly installments of Two Hundred Fifty (\$250.00) Dollars each beginning on the 1st day of March, 1998. This option to purchase shall remain open to the buyers for the period of March 1, 1998, through March 31, 1998.

⁵ Ms. Peters said she needed to have the property available as soon as possible, because she needed a place to put a FEMA trailer after being displaced from her home by Hurricane Katrina. She said Ms. Dunn had been hostile to the FEMA people who had contacted her concerning this.

If the option to purchase this property is exercised, the Lessors agree to appear before a Notary of the Lessee's choice at any reasonable time during the period of the option to exercise a Deed according to the terms and conditions set forth in this option and the Lessors will retain a vendor's lien and first mortgage on said property to secure the unpaid purchase price.

* * *

In the event that the Lessees default on the rent or do not exercise the option to purchase, then in that event, all sums paid for rent and the Two Thousand (\$2,000.00) Dollars initially paid shall not be refunded and shall solely be the property of the sellers.

While this portion of the agreement has some of the characteristics of a bond for deed contract, in that the payments for the real property are to be made in installments, it does not state that the sellers will deliver title to the buyers "after payment of a stipulated sum," as described in the definition of a bond for deed. Rather, it states that the title will be transferred immediately upon exercise of the option, and the sellers will retain a vendor's lien and mortgage on the property. In other words, the Masons agreed to "owner finance" the purchase of this property by the Dunns if they met the other conditions and exercised the purchase option.

Although Ms. Dunn clearly thought that, after the death of both Mr. and Mrs. Mason, her continued payments would suffice to purchase the property, the purchase portion of the agreement could only come into being if all of the lease payments had been timely paid and if, during the period of March 1, 1998, through March 31, 1998, the Dunns had advised the Masons of their intent to exercise the option to purchase. There was no evidence in this case that such communications occurred, either orally or in writing. Certainly there was no transfer of title to the Dunns or execution of mortgage papers in favor of the Masons.⁶ Therefore, as of March 1, 1998, the fixed period of the lease terminated. The option to purchase terminated as of March 31, 1998, without having been exercised.

The lease was reconducted when the Dunns remained in possession of the property for over one week, at which point it became a month to month lease. As

⁶ Considering the fact that Mrs. Mason had died in December 1995, her heirs would have been necessary parties to any transfer of title in 1998.

such, when the monthly payments ceased, the lessor or owner of the property had the right to obtain possession of the property. The eviction procedure was followed correctly and was an appropriate means of accomplishing the return of the property to the lessors or owners. See Montz, 818 So.2d at 191. Since the agreement did not terminate with the death of the lessors, Ms. Peters, as one of Mrs. Mason's heirs and a co-owner of the property, had the right to obtain possession.⁷

Ms. Dunn contends the agreement was verbally converted into a purchase of the property by Mr. Mason's directive to her to continue making payments to his brother's wife. However, those payments could have been considered continuing rental payments on the month to month lease. Therefore, Mr. Mason's instructions do not constitute evidence of the exercise and acceptance of the option to purchase. Moreover, Mr. Mason could not appear in court and testify under oath that he recognized the transfer of the property to Ms. Dunn, which, according to LSA-C.C. art. 1839, is the only way an oral transfer of immovable property may be validated. Furthermore, Mr. Mason could only have transferred an undivided one-half interest in the property, following his wife's death.

This is an unfortunate situation for Ms. Dunn, who obviously believed she had upheld her side of the agreement by scrupulously continuing to make monthly payments as directed by Mr. Mason until the agreed-upon purchase price had been paid in full. But the agreement called for certain other steps to be taken in order to exercise the option to purchase. Since those steps were not done, this lease never became a sale, but remained a month to month lease.

CONCLUSION

For the foregoing reasons, we affirm the judgment of eviction rendered by the City Court of Hammond. All costs of this appeal are assessed to Ms. Dunn.

AFFIRMED.

⁷ Although there was no documentation of Ms. Peters' status as an heir and co-owner of the property, her testimony concerning these facts was not contested.