NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 0858

S. MARK JAMES AND PAULA WINDERS JAMES

VERSUS

DENHAM SPRINGS RENT ALL, INC.

Judgment Rendered: December 21, 2007

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court Number 81,291

Honorable Robert H. Morrison, III, Judge

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Plaintiffs – Appellees
S. Mark James, Paula Winders
James, and Anthony Dentro

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Defendants – Appellants
Denham Springs Rent
All, Inc. and Robert Jeansonne

* * * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

WELCH, J.

In this appeal, Denham Springs Rent All, Inc. and Robert Jeansonne (referred to collectively as "Mr. Jeansonne"), challenge a trial court's determination that plaintiffs, S. Mark James and Paula James, are co-owners of a parcel of property. Mr. Jeansonne also challenges the trial court's refusal to find Anthony Dentro in breach of contract on his third party demand. We affirm.

BACKGROUND

This lawsuit contests the ownership of a tract of land and improvements located at 4-H Club Road and U.S. Highway 190 in Denham Springs, Louisiana. The property, more particularly described as "Tract B" of Denham West Subdivision, comprises 0.08 acres, on which a 1500 square foot wooden frame building, along with two covered storage areas, is located.

In 1989, a rental business was operated on the subject property. Mr. Jeansonne wished to purchase the existing business, but was unable to obtain a bank loan. He sought financial assistance in acquiring the business from his friend, Deryl Broussard. Mr. Broussard in turn approached his business partner, Mr. James, and the two decided to purchase the property and existing rental business and lease it Mr. Jeansonne pursuant to a lease purchase agreement.

On September 14, 1989, Mr. James, Mr. Broussard, and their wives purchased the property and business for the sum of $61,600.00. They financed the sale through First National Bank of Denham Springs, executing a promissory note in the amount of $65,037.00. The note was secured by the pledge of a collateral mortgage note in the amount of $100,000.00, the pledge of a collateral mortgage note in the amount of $65,000.00 and a chattel mortgage. The promissory note required 120 monthly payments with 119 in the amount of $1,101.33 and a final payment due September 15, 1999, in the amount of $1,011.51.

On September 14, 1989, Mr. James, Mr. Broussard, and Mr. Jeansonne

executed a document entitled "Lease With Option to Purchase." The lease extended to that portion of Tract B on which the improvements were located, including a gravel parking area and property north of the existing fence line. In the document, Mr. Broussard and Mr. James acknowledged receiving a prior payment of $20,000.00 from Mr. Jeansonne, which was classified as "rent." Mr. Jeansonne agreed to pay the sum of $1,200.00 per month as monthly rental for a period of 120 months, commencing on October 1, 1989, and ending October 31, 1999.

Section 24 of the lease-purchase agreement entitled "Option to Purchase," provided as follows:

> As additional consideration of the lump sum rental paid at the inception of this lease, lessor grants to lessee, subject to conditions set forth below the right and option to purchase the leased premises at any time prior to termination of this lease, subject to the following conditions:
>
> (a) The purchase price of the property shall be $85,000.00. Lessee will be given a credit against said purchase price for the $20,000.00 lump sum rental payment and a credit against the purchase price for a portion of the rental payments made pursuant to this lease prior to the time the option is exercised, which said credit will be equal to the amount of each rental payment which would be attributable to a reduction in principle of the $65,000.00 loan at First National Bank of Denham Springs which loan is secured by a collateral mortgage on the leased property.
>
> (b) This option to purchase shall cease in the event lessee fails to pay any rentals due under this lease, within ten (10) days of the due date (by the tenth day of each month) and the current rental due at the time lessee exercises this option must not be delinquent.
>
> (c) Lessee may exercise this option by giving written notice of lessee's intent to exercise the option to lessor, which notice may be given at any time during the term of this lease prior to 45 days before the expiration of the lease term. The notice shall be addressed to lessor according the provisions of Section 12 hereinabove, with a copy to lessor's attorney at law.

To facilitate payment of the mortgage note, automatic payments were withdrawn from a savings account maintained at the bank by Mr. Broussard and Mr. James. The record reflects that initially, Mr. Jeansonne would deliver a $1,200.00 check to Mr. Broussard, who would deposit the money into the savings

account. However, at some later point, Mr. Jeansonne began depositing the monthly rental payments directly into the savings account. Bank records reveal that from the inception of the mortgage payments, $1,200.23 was drafted from the savings account every month until the last payment on October 10, 1999.

In 1997, Mr. Jeansonne missed his monthly lease payments on two occasions. Apparently, enough money had accumulated in the savings account to cover the monthly mortgage payments. On May 1, 1997, Mr. James sent Mr. Jeansonne a letter demanding payment of the two past due installments. On June 25, 1997, plaintiffs filed an eviction proceeding against Mr. Jeansonne and his company. On July 8, 1997, to prevent Mr. Jeansonne's eviction from the property, Mr. Broussard and his wife transferred their undivided one-half interest in Tract B to Mr. Jeansonne. Although there still existed a balance of roughly $25,000.00 on the mortgage note, and the sale document sets forth a sale price, in reality, Mr. Jeansonne paid Mr. Broussard $1.00 for the transfer.

Unable to evict Mr. Jeansonne because of his ownership interest in the property, on January 7, 1998, plaintiffs filed a petition to judicially partition the property. On April 14, 1998, the trial court entered a default judgment ordering that the subject property be seized and sold at a Sheriff's sale. During the course of this litigation, it was revealed that tax liens against Mr. Jeansonne's business had been levied on the property, and plaintiffs abandoned their effort to have the property sold.

On July 19, 1999, Mr. Jeansonne issued a check to Mr. Broussard in the amount of $414.78, noting thereon that full payment of the amount owed to Mr. James and Mr. Broussard had been made. Bank records of the mortgage note reflect that payments of $1,200.23 were made for the months of August, September, and October of 1999, resulting in a zero balance on the loan.

On November 1, 2000, Mr. Jeansonne executed a document styled

"Agreement to Purchase," also referred to as a "Lease Purchase" in favor of Mr. Dentro. Therein, Mr. Dentro agreed to purchase the subject property for the sum of $55,000.00 and to pay $500.00 per month for 12 years or until payoff of the loan balance.

On March 11, 2003, Mr. Jeansonne filed a petition to nullify the default judgment on the grounds that service of process was deficient. In that lawsuit, Mr. James and his wife filed an answer and a reconventional demand, claiming a 50% ownership interest in the subject property and seeking a share of the rental revenues derived from the property by Mr. Jeansonne.

On July 1, 2003, the trial court rendered judgment nullifying the April 14, 1998, default judgment in the partition litigation. That ruling was affirmed by this court on appeal, and writs were denied by the Supreme Court. **James v. Denham Springs Rent All, Inc.**, 2003-2723 (La. App. 1st Cir. 10/29/04) (unpublished opinion), writ denied, 2005-0146 (La. 3/24/05), 896 So.2d 1039.

Although a final judgment had been rendered on the nullity claim, the reconventional demand remained pending in the trial court. On May 24, 2005, Mr. Jeansonne filed a reconventional demand against Mr. James and his wife, asserting that he acquired full ownership of the subject property by virtue of the lease with option to purchase agreement. He averred that he performed all of the obligations required of him under that document to acquire ownership and asked that the court order plaintiffs to transfer the property to him.

At trial, Mr. James acknowledged that the purchase agreement was confected so that Mr. Broussard could help Mr. Jeansonne obtain the business. Mr. James insisted that only a portion of Tract B had been leased to Mr. Jeansonne, noting that the lease purchase agreement encompassed only property north of a fence line. Mr. James testified that Tract B contained additional property south of the fence line, on which he intended to build an office.

Mr. James testified that Mr. Jeansonne did not make all 120 payments as required by the lease purchase agreement, stressing that Mr. Jeansonne missed two payments and that no payments were made between July 19, 1999 and October 31, 1999, the date the last payment was due. On cross-examination, however, Mr. James claimed he did not know Mr. Jeansonne had paid off the mortgage note on the property in July of 1999. He also admitted that it appeared that while Mr. Jeansonne had been late on a few payments, Mr. Jeansonne had later made the payments and paid $240.00 in late fees to Mr. Broussard. Mr. James stated that he was forced to obtain insurance on the property on one occasion after Mr. Jeansonne failed to do so in violation of the lease agreement and introduced into evidence an insurance policy he purchased.

Mr. Broussard testified that it was everyone's understanding that once Mr. Jeansonne paid off the mortgage on the property, Mr. Jeansonne would own the land and the business. He acknowledged that Mr. Jeansonne had been late for a payment or two, but had paid late fees, believing that Mr. Jeansonne acquired ownership to the property under the terms of the lease purchase agreement.

Mr. Jeansonne attested that he did make 120 payments on the property and believed that upon making the last payment and paying off the mortgage note, he fulfilled the terms of the lease purchase agreement and was the owner of the property. Mr. Jeansonne admitted that he did not provide written notice to Mr. James evidencing his intent to purchase the property.

With respect to his claim against Mr. Dentro, Mr. Jeansonne stated that Mr. Dentro failed to provide insurance on the property at one time and had been late for a few payments, but acknowledged that he never sent Mr. Dentro a letter complaining of the late payments or the absence of insurance. Mr. Dentro admitted that at one point in the lease, one of his insurance policies lapsed for a short period of time.

Following the conclusion of the evidence, the trial court observed that the lease purchase transaction executed by Mr. James, Mr. Broussard, and Mr. Jeansonne had been put together largely for Mr. Jeansonne's benefit. The court believed, however, that the lease agreement ended by the latest on October 31, 1999, and as of that date, Mr. Jeansonne had not complied with the provisions of Section 24 of the lease regarding the option to purchase. The court entered judgment declaring that the lease and option to purchase expired under their own terms and that Mr. Jeansonne had no further rights under the option to purchase.

Additionally, the trial court dismissed Mr. Jeansonne's third party demand against Mr. Dentro. In so doing, the court observed that there was simply no evidence from which he could determine whether, if there had been late payments, such had not been cured. The court also found insufficient evidence to find Mr. Dentro in default of the agreement on the claim that he breached the insurance portion thereof.

This appeal, taken by Mr. Jeansonne, followed.

DISCUSSION

In his first assignment of error, Mr. Jeansonne insists that by paying off the loan balance on the property, he satisfied all of the requirements of the purchase agreement, and therefore, the trial court should have found that he is the sole owner of the subject property. He submits that because he satisfied his obligations under the agreement, the option to purchase could not, as a matter of law, have expired. In support of his argument, Mr. Jeansonne relies on testimony of Mr. James and Mr. Broussard indicating that the purpose of the agreement was to assist him in acquiring the property because he could not obtain the financing on his own. Mr. Jeansonne also relies on Mr. Broussard's testimony to the effect that the parties understood once the mortgage was paid off, Mr. Jeansonne would be the owner of the land and business.

Although the lease purchase agreement contains a purchase price, there is no provision therein for the transfer of title upon the payment of the stipulated sum. Had the agreement provided that after all of the installments had been received, an act of sale conveying title to Mr. Jeansonne would be passed, the agreement could be characterized as a bond for deed contract. See La. R.S. 9:2941; **H.J. Bergeron, Inc. v. Parker**, 2006-1855 (La. App. 1st Cir. 6/8/07), 964 So.2d 1075, 1076; **Gray v. James**, 503 So.2d 598, 600 (La. App. 4th Cir. 1987). Pursuant to a bond for deed contract, upon payment of the stipulated sum, Mr. Jeansonne would have become the owner of the property.

Instead, the agreement sets forth a lease term and gives Mr. Jeansonne the option to purchase the property 45 days prior to the expiration of that term. The agreement is properly characterized as an option to purchase. An option is a contract whereby one party gives to the other a right to accept an offer to sell within a stipulated time. La. C.C. art. 2620. An option must satisfy the requirements for perfection of the contract of sale as set forth in La. C.C. art. 2439, as well as the formal requirements as provided in La. C.C. art. 1839. The acceptance of an offer contained in an option is effective when received by the grantor. Upon such acceptance, the parties are bound by a contract to sell. La. C.C. art. 2621; **Casey v. National Information Services, Inc.**, 2004-0207 (La. App. 1st Cir. 6/10/05), 906 So.2d 710, 719, writ denied, 2005-2210 (La. 3/24/06), 925 So.2d 1235.

It is well settled that an option to buy immovable property must be evidenced by a written agreement, the unqualified acceptance thereof must be evidenced in writing, and it must be tendered to the proposer prior to the termination of the option period. **Louisiana State Board of Education v. Lindsay**, 227 La. 553, 79 So.2d 879, 885 (1954); **Torco Oil Co. v. Grif-Dun Group, Inc.**, 94-1098 (La. App. 4th Cir. 11/17/94), 647 So.2d 1159, 1162-1163. It

is undisputed that Mr. Jeansonne did not give written notice of his intent to exercise the option to purchase the property within the time limit specified in the option. Therefore, we conclude that the trial court correctly found that by failing to exercise his option to purchase the property 45 days before the expiration of the lease term, the lease and option to purchase contained therein expired under its own terms, and Mr. Jeansonne had no further rights under the option to purchase. Accordingly, the court correctly determined that plaintiffs have a 50% ownership in the property.

In the second assignment of error, Mr. Jeansonne contends that the court erred in not terminating the lease purchase agreement he entered into with Mr. Dentro. We agree with the trial court's conclusion that the evidence simply is insufficient to find Mr. Dentro in default of the agreement. Therefore, we find no merit in this assignment of error.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to appellants, Denham Springs Rent All, Inc. and Robert Jeansonne.

AFFIRMED.