NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1049

SARAH REBECCA SMITH

VS.

ANTHONY P. MILLER

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JUDGMENT RENDERED: MARCH 23, 2007

jmm

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ON APPEAL FROM THE
TWENTY-FIRST JUDICIAL DISTRICT COURT
DOCKET NUMBER 106514, DIVISION F
PARISH OF LIVINGSTON, STATE OF LOUISIANA

HONORABLE ELIZABETH P. WOLFE, JUDGE

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ANTHONY P. MILLER

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Carter J. Concurs
Whipple, J. concurs

McDONALD, J.

The defendant in this matter appeals a trial court judgment ordering him to pay the plaintiff the sum of $25,508.51, along with court costs and legal interest from the date of judicial demand. For the reasons that follow, we vacate the judgment and remand the matter to the trial court for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On July 1, 2000, Sarah Rebecca Smith[1] entered into an agreement with Anthony P. Miller (Mr. DiMattia)[2] entitled, "LEASE WITH PURCHASE OPTION." The agreement purported to lease certain property in Livingston Parish owned by Mr. DiMattia to Ms. Smith for a term of six years, at a monthly payment of $796.51. The agreement provided Ms. Smith with an option to purchase the property "for the purchase price of [$]57,348.72 – ALL PAYMENTS OF LEASE...." Attached to this agreement was a purchase agreement between the parties concerning the same property.[3]

At the time Mr. DiMattia entered into this agreement, he was the sole record owner of the subject property. Subsequently, however, Mr. DiMattia sold the property to his brother and sister-in-law, Joseph A. Miller, Jr. and Lourdes Knapp Miller, on January 25, 2001. Despite having sold the property, Mr. DiMattia entered into a new agreement with Ms. Smith concerning the subject property on June 8, 2001. This agreement, which also was titled as a lease with purchase option, purported to lease the property to Ms. Smith for a period of twenty years, at a monthly payment of $429.00. The parties testified that this new agreement was

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[1] The original agreement also included Randall C. Rester as a named "lessee." However, Mr. Rester subsequently assigned his interest in the agreement to Ms. Smith, and the agreement between Mr. DiMattia and Ms. Smith was amended to reflect this change. Because Mr. Rester is not a party to the proceedings, we will not further address his involvement in the matter.

[2] Mr. DiMattia originally entered into the agreement when his name was Anthony P. Miller. However, he subsequently legally changed his name to Anthony P. DiMattia. Although this name change is not reflected in any of the documents relevant to this matter, we will refer to him by his current legal name throughout this opinion.

[3] The purchase agreement set the price of the property at $46,000.00. This is consistent with the lease agreement that had a notation indicating that the purchase price was $46,000.00, with a $3,000.00 down payment, and was to be paid over six years at 10% simple interest.

confected to make the monthly payments easier on Ms. Smith. As in the first agreement, the new agreement provided for a purchase option allowing Ms. Smith to purchase the property for $40,318.00. The agreement further specified that simple interest was to be assessed in the amount of 11.50%.

In 2004, Ms. Smith undertook a title search of the property in preparation for the purchase. As a result of this title search, Ms. Smith discovered that Mr. DiMattia was no longer the record owner of the property. Through further investigation, Ms. Smith discovered what she alleged was a significant wetlands problem on the property that would require a sizable mitigation fee to render the property usable. Accordingly, on November 19, 2004, Ms. Smith made formal written demand upon Mr. DiMattia to terminate the lease. She further requested that he return all payments she had made pursuant to the agreement. When Mr. DiMattia failed to return the funds, Ms. Smith filed suit against him, seeking the return of her payments, as well as a declaration that the agreement between them was null and void.

After a trial, the trial court issued written reasons in favor of Ms. Smith. Specifically, the court found that Mr. DiMattia did not have the capacity to enter into the agreement with Ms. Smith because he was not the properly authorized agent for Mr. Miller, the true owner of the property. The court further found that Mr. DiMattia could not transfer ownership of the property because he was neither the owner of the property nor a properly authorized agent of the owner. The trial court then awarded damages to Ms. Smith in the amount of $25,508.51, which was the total amount of the payments she had made pursuant to the agreement. Mr. DiMattia was further ordered to pay judicial interest and court costs. On February 1, 2006, the trial court signed a judgment in accordance with these reasons. This suspensive appeal, filed by Mr. DiMattia, followed.

DISCUSSION

On appeal, Mr. DiMattia has raised various assignments of error generally asserting that the trial court failed to properly interpret the agreement between the parties. Although the trial court referred to the agreement between the parties as a lease agreement or a lease with purchase option, the court did not specifically address the nature of the contract existing between the parties in its written reasons for judgment. On appeal, Mr. DiMattia asserts that the agreement is a lease with purchase option, as it was titled, while Ms. Smith contends that the agreement is properly classified as a bond for deed contract.

In order to resolve the issues raised on appeal, we must determine the nature and effect of the agreement between the parties. The proper interpretation of a contract is a question of law subject to *de novo* review on appeal. **Montz v. Theard**, 2001-0768, p. 5 (La. App. 1 Cir. 2/27/02), 818 So.2d 181, 185. 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. **Id.**

A bond for deed 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. La. R.S. 9:2941. Louisiana courts have recognized the differences between a lease with an option to purchase and a conditional sale disguised as a lease, such as a bond for deed contract. In the former, there is an option to give additional consideration in order to purchase the leased item at the end of the contract term, while in the latter, there is an obligation to pay the full price regardless of whether the option is exercised or not. See **Byrd v. Cooper**, 166 La. 402, 404-405, 117 So. 441, 442 (1928); **Hewitt v. Safeway Insurance Company of Louisiana**, 2001-0115, pp. 5-6 (La. App. 3 Cir. 6/6/01), 787 So.2d 1182, 1186.

Although the agreement in the case before this court is titled as a lease with purchase option, its terms are reflective of a conditional sale. Ms. Smith was bound to pay the full price of the property, along with substantial interest, pursuant to the express language of the contract. Nevertheless, Mr. DiMattia contends that Ms. Smith was required to formally exercise the option in the agreement in order to receive title to the property. This appears to be an empty formality, however, as according to the terms of the purchase option and the amortization schedule provided to her by Mr. DiMattia in response to her request for a "pay off" amount, Ms. Smith was not required to pay any additional consideration in order to take title to the property once all payments had been made pursuant to the agreement.[4]

The facts indicate that the parties always intended a sale, and that the contract used was intended to reserve title in the seller until payment of the purchase price. Such an agreement is a disguised conditional sale and will be regarded as a sale from its inception. **Carrier Leasing Corporation v. Ready-Mix Companies, Inc.**, 372 So.2d 601, 605 (La. App. 4 Cir.), writ denied, 375 So.2d 943 (La. 1979); see **Tabor v. Wolinski**, 99-1732, pp. 3-4 (La. App. 1 Cir. 9/22/00), 767 So.2d 972, 974. Accordingly, we determine that the agreement between the parties herein is properly classified as a bond for deed contract.

Having determined the classification of the contract, we must now address its effects. Although Mr. DiMattia is correct in his assertion that a lease may be valid between the parties even where the lessor does not own the leased property, the same is clearly not the case with a contract of sale. Because a bond for deed contract anticipates the delivery of title to immovable property, the seller must own the property for the contract to be valid. See La. C.C. art. 2452. As Mr. DiMattia was no longer the owner of the property when he entered into the agreement with Ms. Smith on June 8, 2001, he no longer had the ability to sell the property.

[4] We also note that the agreement does not establish a deadline by which the option had to be exercised.

Furthermore, despite Mr. DiMattia's assertions that he considered himself either a co-owner of the property with Mr. Miller or Mr. Miller's agent with regard to the property, there is nothing in the record to establish any such relationship. Mr. DiMattia is clearly not a co-owner according to the public records, and there is no written agency agreement allowing Mr. DiMattia to act concerning the property. Accordingly, we find no error with the trial court's finding that Mr. DiMattia lacked the "capacity" to enter into the agreement with Ms. Smith.[5]

We do, however, find error in the trial court's decision to refund all of the payments Ms. Smith made pursuant to the agreement. The jurisprudence has determined that regardless of penalty or forfeiture clauses in the contract, the vendor in a bond for deed contract is not entitled to retain all monies paid by the purchaser. The law is clear that such forfeiture clauses should be regarded as null and void since they are inequitable, unreasonable, and represent an illegal attempt to recover punitive rather than compensatory damages. However, the seller is entitled to an allowance for the fair rental value of the property during the period of the purchaser's occupancy. **Montz**, 2001-0768 at p. 9, 818 So.2d at 187. Because we are unable to determine a rental value from the record, we must reverse the judgment and remand this matter to the trial court for a hearing with instructions to the trial court to award damages to Ms. Smith in the amount of $25,508.51, less the fair rental value of the property.

In his final assignment of error, Mr. DiMattia contends that the trial court erred in not finding Ms. Smith in default of the agreement because she allegedly caused damage to the property. He further suggests that he should be entitled to damages from Ms. Smith for the alleged damage to the property. Mr. DiMattia

[5] We acknowledge that the trial court may have incorrectly used the term "capacity" rather than "authority" to refer to Mr. DiMattia's right to act in regard to the property. However, our analysis remains the same. Mr. DiMattia could not lawfully transfer title of the property to anyone, as he was neither a co-owner nor the lawful agent for the owner.

raised this issue at trial as a defense to Ms. Smith's claims, but he did not file a reconventional demand seeking damages. The trial court apparently did not find that Mr. DiMattia had provided sufficient proof of default, and it made no mention of the allegations in its written reasons or in the judgment. As the validity of Mr. DiMattia's assertions of default rests upon factual determinations, we must defer to the trial court's findings absent manifest error. See **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). We find no clear error on the part of the trial court on this issue.

CONCLUSION

For the foregoing reasons, we reverse the judgment and remand this matter to the trial court for a hearing with instructions to the trial court to order Anthony DiMattia to pay damages to Sarah Rebecca Smith in the amount of $25,508.51, less the fair rental value of the property during the period of her possession. Costs of this appeal are assessed equally between the parties.

REVERSED AND REMANDED.