

IN THE MARION MUNICIPAL COURT FOR MARION COUNTY, OHIO

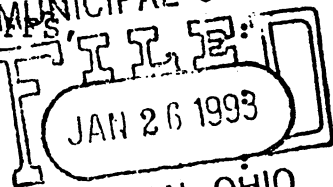
RICHARD HUDSON, et. al.,

PLAINTIFFS
MUNICIPAL COURT

CASE NO. 93 CVG 7406

vs

BILL C. BATES, et. al.,



MEMORANDUM OF OPINION

DEFENDANTS
MARION, OHIO

On January 22, 1993, this cause came on before the Court upon trial upon the merits. The Plaintiffs were represented by Attorney Frank Reber and the Defendants were represented by Attorney Marcia Hollins. Thereupon, testimony was heard and evidence taken.

This action was initiated by the Plaintiffs as a typical eviction case for non-payment of rent. However, the testimony at trial revealed this case to be more complex. This action provides another example of why individuals who are not trained in the law should not undertake important legal transactions, such as the sale of a house, without the assistance of legal counsel.

The evidence at trial revealed that on June 27, 1987, the Plaintiffs and the Defendants signed a document entitled "Land Contract", involving a property located at 1056 Drexel Ave., Marion, Ohio. The agreement provided that the property would be sold to the Defendants in this action at a price of \$25,000, with payments to be made in the amount of \$250 per month. The agreement, however, stated that the monthly payments were to be paid "as rent". The agreement further provided that upon payment of the amount of \$25,000, that the Plaintiffs would convey the property by deed free and clear. Furthermore, the agreement provided that the Defendants, as buyers of

the property, were to pay for all repairs, property insurance and taxes upon the property. Also noteworthy is a provision which provided that if the Defendants were to become delinquent with payments for a period of 90 days, the Defendants were to forfeit all preceding payments as to accumulated equity, and further providing that in order for the Defendants to retain the property in such event, the Defendants would have to pay all monies due and sign a new contract at the option of the Plaintiffs.

Upon consideration, the Court finds from the evidence adduced at trial that it is apparent that the Plaintiffs and the Defendants to this action intended their transaction on June 27, 1987, to be Land Contract. This is apparent from the title of the document, as well as the fact that the purchase price for the property is stated, and also how the purchase price is to be paid. In addition, the provision relating to the requirement that the Defendants pay the property insurance and taxes for the property, although not unheard of in a residential rental agreement, are certainly more consistent with those conditions contained in a Land Contract, as opposed to a residential rental agreement. Furthermore, the provisions stating that the Defendants were to be responsible for all repairs again reflects an intention more often found in land installment contracts as opposed to residential rental agreements, for such a provision is clearly not permitted under Ohio Revised Code Section 5321.04(A)(2) as to residential rental agreements.

Given the above provisions, the Court finds that while the document entitled "Land Contract" entered into between the parties to this action, does not contain a number of elements normally associated with Land Contracts under Ohio Revised Code Section 5313.02, the Court

further finds that the "Land Contract" does contain sufficient elements to fit within the definition of a land installment contract as defined in Ohio Revised Code Section 5313.01(A). The Court therefore finds that the Land Contract is to be construed as a land installment contract. Cuyahoga Metro. Housing Authority vs Watkins, 23 Ohio App. 3d 20 (Cuyahoga Co. 1984); Mumper vs Persinger, Unreported Marion Muni. Ct. Case No. 91 CVG 5083 (1991).

As the Court finds that the Land Contract between the parties is in fact a land installment contract, the Court finds that this Court lacks jurisdiction to hear this action. The Plaintiffs agree that the Defendants have paid approximately \$12,600 since entering into the premises in June, 1987. The terms of the Land Contract indicate that the purchase price was to be \$25,000, with installment payments to be made in the amount of \$250 per month until the full amount is paid. There was no provision for interest to be paid upon this amount. All the payments made under the Land Contract by the Defendants to the Plaintiffs, therefore, are applied as payments on principal. With this being the case, Ohio Revised Code Section 5313.07 requires that an action to terminate a land installment contract must be commenced only by the use of a proceeding in foreclosure and judicial sale as provided under Section 2323.07 of the Ohio Revised Code. The Court therefore finds that this Court lacks jurisdiction over the subject matter of this transaction, and that this action should be dismissed.

In any event, the Plaintiffs failed to follow the preliminary steps required under Sections 5313.05 and 5313.06 of the Ohio Revised Code prior to commencing a Land Contract forfeiture action.

It is the finding of the Court, therefore, that the Complaint of the Plaintiffs in this action should be dismissed.

William R. Finnegan

JUDGE WILLIAM R. FINNEGAN
MARION MUNICIPAL COURT

cc: Frank Reber, Attorney for Plaintiffs
✓ Marcia Hollins, Attorney for Defendants