

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MUNNA L. AGARWAL)	CASE NO.
6610 Cummings Court)	
Solon, Ohio 44139)	JUDGE
)	
Plaintiff)	
v.)	
)	
DARREL SCOTT)	<u>COMPLAINT</u>
3130 Mayfield Rd.)	
Cleveland, OH 44118-1751)	
)	
BELINDA SCOTT)	
3130 Mayfield Rd.)	
Cleveland, OH 44118-1751)	
)	
NEW SPIRIT REVIVAL CENTER)	
MINISTRIES, INCORPORATED)	
3130 Mayfield Rd.)	
Cleveland, OH 44118-1751)	
)	
Defendants)	
)	

Now comes the Plaintiff, Munna L. Agarwal, by and through his counsel, Harold Pollock Co., L.P.A., and for his Complaint herein alleges and avers as follows.

BACKGROUND FACTS

1. Plaintiff Munna L. Agarwal ("Agarwal") is a natural person residing in Cuyahoga County, Ohio.
2. 6610 Cummings Ct., LLC ("6610") is an Ohio limited liability company, and the current owner of certain real property located at 6610 Cummings Court, Solon, Ohio ("the Property").
3. Defendant Darrel Scott ("Scott") is the pastor of Defendant New Spirit Revival Center Ministries, Incorporated ("New Spirit").
4. Defendant Belinda Scott is the spouse of Defendant Darrel Scott, and assists in the administration of New Spirit.
5. Defendant New Spirit Revival Center Ministries, Incorporated is an Ohio non-profit corporation which operates as a church.
6. Defendants Scott and New Spirit are collectively referred to herein as "Defendants."
7. On or about March 20, 2006 Agarwal acquired the Property by Warranty Deed recorded as Document No. 200603200671, Cuyahoga County Deed Records. (See Exhibit "A").
8. Agarwal thereafter constructed a home on the property.
9. On or about March, 2010, Defendants, through Darell Scott, approached Agarwal about purchasing the Property.
10. Scott stated that New Spirit was obligated to provide a residence for the Scotts and their family.

11. Scott further represented that he was acting on behalf of the Defendants, and that New Spirit would make all payments for the Property.

12. Agarwal considered himself to be dealing with New Spirit, and was relying on New Spirit and the income generated by New Spirit for payment.

13. On or about March 3, 2010 Defendants retained attorney Thomas Schmelzer (“Schmelzer”) to represent them with regard to the purchase of the Property.

14. Schmelzer then had discussions with Scott and Agarwal.

15. Scott instructed Schmelzer to prepare a formal contract for the purchase of the Property.

16. On or about March 4, 2010 Schmelzer determined that Agarwal should have his own counsel, and recommended attorney Keith Belkin.

17. Belkin then got involved in the transaction.

18. On or about March 4, 2010 Schmelzer prepared a draft Real Estate Purchase Agreement and forwarded it Scott, Agarwal, and Belkin. A true and correct copy of said Purchase Agreement is attached hereto and made a part hereof and marked as Exhibit “B.”

19. On or about March 6, 2010 Scott prepared, in his own handwriting, a memorandum of the transaction (“the Memorandum”) which he captioned as a “Lease Option.” A true and correct copy of said Memorandum is attached hereto and made a part hereof and marked as Exhibit “C.”

20. The Memorandum was executed by Agarwal and the Scotts and contained the salient terms of the transaction.

21. Although the Memorandum characterized the transaction as a "Lease Option," the explicit terms of the Memorandum made it clear that Agarwal and Defendants understood and intended that the transaction be a land installment contract.

22. This is not only because the Memorandum called for a down payment and continuing principal payments, but because the payments under the contract were required from inception and no notification of the exercise of an option was required to trigger the obligation to make such payments.

23. Defendants were obligated to purchase the Property from the moment the Memorandum was signed.

24. After the Memorandum was executed Agarwal requested that Schmelzer organize an Ohio limited liability company to take title to the Property and act as the seller.

25. On or about March 17, 2010 Schmelzer created a LLC called 6610 Cummings Court, LLC.

26. On or about March 23, 2010 Schmelzer prepared a new draft of the contract showing 6610 as the seller, and characterizing the transaction as a Land Contract. A true and correct copy of said Land Contract is attached hereto and made a part hereof and marked as Exhibit "C."

27. Schmelzer forwarded the Land Contract to Scott, Agarwal and Belkin.

28. Scott then decided that he did not want to sign a formal agreement, so neither of the documents prepared by Schmelzer were executed.

29. Defendants nevertheless took possession of the Property and began making payments.

30. Defendants failed to adhere to the payment schedule set forth in the Memorandum.
31. On or about September 16, 2010 Schmelzer prepared a Quit-Claim Deed conveying the Property to 6610.
32. Said deed was recorded as Cuyahoga County Document No. 20109160344. (See Exhibit "E")
33. 6610 then became the substituted seller under the contract.
34. Defendants remained in possession of the Property for over five years, and made the payments identified in Exhibit "F".
35. Defendants' default on the payment arrangement resulted in an arrearage of over \$600,000.00.
36. In August, 2016 Plaintiff informed Defendants that they could not remain in the Property without paying the arrearage.
37. Scott then stated that Defendants could no longer afford the house.
38. On or about August 22, 2016 Plaintiff served a Notice to Leave Premises on Defendants.
39. On or about October, 2016 Defendants vacated the Property.
40. Since that time Plaintiff/6610 has been unable to sell or lease the property.
41. Damages under the contract continue to accrue.
42. Defendants owe Plaintiff on the Land Contract a sum in excess of in excess of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00).

COUNT I

(Declaratory Relief)

Plaintiff incorporates herein each and every allegation contained in Paragraphs 1 through 42 herein as if fully rewritten herein.

43. Plaintiff alleges that the parties partially performed said contract over a period of years thereby removing the contract from the Statute of Frauds.

44. Alternatively, the Memorandum is a sufficient writing to constitute an enforceable contract and Land Contract under the Statute of Frauds.

45. Alternatively, the Memorandum, Real Estate Purchase Agreement, and Land Contract prepared by Schmelzer collectively constitute a single enforceable contract and Land Contract under the Statute of Frauds.

46. Defendants have falsely sought to characterize the contract as a lease option when it in fact is a land contract governed by the provisions of Ohio Revised Code Chapter 5313.

47. The fact that the contract in issue is a Land Contract is evident from the fact that the payments made by Defendants included down payment amounts and principal payments.

48. These payments were made from the inception of the contract and nothing further, in particular the exercise of the alleged option, was required to trigger the obligation to make such payments.

49. Plaintiff is entitled to a declaration that the transaction in issue is a land contract governed by the provisions of Ohio Revised Code Chapter 5313.

50. By reason of the Defendants' breach of the Land Contract, Plaintiff is entitled to have the title to the real property described herein quieted in the name of 6610, free and clear of any claim or interest of Defendants.

51. Plaintiff is entitled to a declaration determining the nature of the contract with Defendants; that Defendants breached the contract; that Defendants owe Plaintiff/6610 damages for breach of contract; and that Defendants, their unknown heirs, successors, legatees, devisees, executors, administrators, legal representatives, or assigns have no right, title, or interest in the real property described herein; and for a further order permanently enjoining and restraining Defendants, their unknown heirs, successors, legatees, devisees, executors, administrators, legal representatives, or assigns, from hereafter asserting or claiming any interest in or to said real property.

52. An actual controversy exists over the nature of the contract between Plaintiff and Defendants and the rights and obligations thereunder, and a declaration is necessary to terminate the controversy.

COUNT II

(Breach of Contract)

Plaintiff incorporates herein each and every allegation contained in Paragraphs 1 through 52 herein as if fully rewritten herein.

53. The conduct of the Defendants as described herein constitutes a breach of the terms of the contract.

54. The breach of the contract was material.

55. The breach of the contract was the cause of the damages sustained by Plaintiff.

56. As a direct and proximate result of said breach, Plaintiff has been damaged in an amount in excess of Twenty-five Thousand Dollars (\$25,000.00).

57. Because the breach by Defendants was in bad faith, Defendants are also liable to Plaintiff for all attorneys' fees incurred by Plaintiff in enforcing his rights under the contract.

COUNT III

(Promissory Estoppel)

Plaintiff incorporates herein each and every allegation contained in Paragraphs 1 through 57 herein as if fully rewritten herein.

60. Defendants represented to Plaintiff on numerous occasions that they were purchasing the Property in accordance with the terms and conditions of the Memorandum.

61. These statements were made to induce Plaintiff to proceed with the transaction, and with the knowledge that Plaintiff would rely on said statements.

62. Plaintiff justifiably relied upon and changed his position to his detriment in reliance on the representations of Defendants.

63. By reason thereof, Defendants are estopped to deny the existence of an enforceable contract to purchase the Property in accordance with the terms and conditions of the Memorandum or the Agreement.

COUNT IV

(Foreclosure)

Plaintiff incorporates herein each and every allegation contained in Paragraphs 1 through 63 herein as if fully rewritten herein.

33. By reason of the Land Contract, Defendants Scott and New Spirit may claim some right, title, or interest in the Property.

33. Plaintiff is entitled to have the equity of redemption of Defendants in the Property foreclosed.

34. By reason of their liens on the Property, Defendants Chemical Bank and Murray may claim some right, title, or interest in the Property.

34. Defendants, Chemical Bank, and Murray should be required to assert their interests in the premises or be forever barred from asserting same.

WHEREFORE, Plaintiff prays for Judgment as follows:

For a Judgment on Count I of this Complaint for declaratory relief against the Defendants, Darrel Scott, Belinda Scott, and New Spirit Revival Center Ministries Incorporated, declaring that the transaction between Plaintiff and Defendants is a land contract governed by the provisions of Ohio Revised Code Chapter 5313; that the Defendants have breached the Land Contract; that Plaintiff/6610 is the sole and lawful owner of the real property described herein; that the Defendants and their unknown heirs, successors, legatees, devisees, executors, administrators, legal representatives, or assigns have no right, title, or interest in the Property; and for a further order permanently enjoining and restraining Defendants, their unknown heirs, successors, legatees, devisees, executors, administrators, legal representatives, or assigns, from hereafter asserting or claiming any interest in or to said real property; and/or

For a Judgment on Count II of this Complaint for a judgment against the Defendants, Darrel Scott, Belinda Scott, and New Spirit Revival Center Ministries Incorporated, jointly and severally, for an amount in excess of Twenty-five Thousand Dollars (\$25,000.00) in compensatory damages; and

In the alternative, for a Judgment on Count III of this Complaint against the Defendants, Darrel Scott, Belinda Scott and New Spirit Revival Center Ministries Incorporated, jointly and severally, for an amount in excess of Twenty-five Thousand Dollars (\$25,000.00) in compensatory damages; and

For a Judgment of Foreclosure on Count IV of this Complaint against the Defendants by reason of their default under the Land Contract; that Defendants Darrel Scott, Belinda Scott, New Spirit, Chemical Bank and W. Christopher Murray II, Cuyahoga County Treasurer be required to answer and set forth any claims that they may have in said premises, or be forever barred therefrom; that the liens of all of the parties be marshaled and their priority determined according to law; that upon failure of Defendants Darrel Scott, Belinda Scott, New Spirit to pay said amounts within three (3) days thereafter, said premises be ordered appraised, advertised and sold according to law; that from proceeds of said sale, the Plaintiff be paid the amount so found due it; and,

For any other relief which Plaintiff is entitled to receive at law or in equity.

For the costs of the within action.

HAROLD POLLOCK CO., L.P.A.

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