

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 12/20/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

GREGORY BEST, a single man, ) 1 CA-CV 10-0848  
)  
Plaintiff/Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ROBERT D. CASTILLO, a single man, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
Defendant/Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2007-091867

The Honorable M. John R. Ditsworth, Judge

**AFFIRMED**

---

Gregory Best, Plaintiff/Appellant Phoenix  
*In Propria Persona*

Alfred R. Sorenson, Attorney at Law Phoenix  
by Alfred R. Sorenson  
Attorney for Defendant/Appellee

---

P O R T L E Y, Judge

¶1 In this option contract case, appellant Gregory Best ("Best") asks us to reverse the summary judgment granted to Robert Castillo ("Castillo"). Because we agree with the trial

court that there are no genuine issues of material fact in dispute, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 The parties signed an agreement in February 2004 that gave Best the exclusive option to buy Castillo's South Phoenix real property for \$150,000.00, to be paid in full on or before March 23, 2009. Almost three years later, Best sent Castillo a letter and told him that he intended to exercise the option. In the October 2006 letter, Best asked Castillo to open escrow, and to "[h]ave the title company call when closed as scheduled so I can bring the \$150,000.00 closing funds." When Castillo did not act, Best opened escrow in early November 2006 with a \$100.00 deposit. Castillo told the title company to cancel escrow on November 27, 2006.

¶3 Best filed suit in 2007 for specific performance of the option contract. Castillo successfully requested a stay pending resolution of a separate action that the Arizona Attorney General had filed against Best.<sup>1</sup> The stay was lifted in

---

<sup>1</sup> In *State v. Best*, Maricopa County Superior Court Cause No. CV2006-016293, the Attorney General alleged that Best violated both the Arizona Consumer Fraud Act and the Racketeering Act by his "Purchase Option Scheme" involving at least thirty-seven option contracts. In June 2010, Best and the Attorney General entered into a stipulated judgment in which Best neither admitted nor denied the allegations against him, but which terminated some of the option contracts signed by Best and South Phoenix residents. The judgment did not, however, terminate all of Best's option contracts, including the one in this case.

June 2010, and Best moved for partial summary judgment on the issue of specific performance while Castillo filed a cross-motion for summary judgment. The trial court denied Best's motion, granted Castillo summary judgment, and awarded him attorneys' fees and costs. Best filed a notice of appeal.<sup>2</sup> We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (West 2011).

## DISCUSSION

### I.

¶4 Summary judgment is appropriate "if the pleadings, deposition[s], answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). We review a grant of summary judgment de novo, "viewing the evidence and reasonable inferences in the light most favorable to the party opposing the motion." *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003) (citation omitted). We determine de novo whether the trial

---

<sup>2</sup> Best included a host of new documents in his brief that were not filed below before he filed his appeal. We will not consider new documents and we limit our review to the pleadings and exhibits the trial court had when it granted summary judgment. *Brookover v. Roberts Enters., Inc.*, 217 Ariz. 52, ¶ 18, 156 P.3d 1157, 1160 (App. 2007) (citations omitted); *Crook v. Anderson*, 115 Ariz. 402, 403, 565 P.2d 908, 910 (App. 1977) ("[T]his Court can consider only those papers that were before the trial court.").

court correctly applied the law. *Unique Equip. Co. v. TRW Vehicle Safety Sys., Inc.*, 197 Ariz. 50, 52, ¶ 5, 3 P.3d 970, 972 (App. 1999) (citation omitted).

¶5 Option agreements are narrowly construed in Arizona: "[A]n option must be exercised strictly according to the terms and conditions in the option." *Andrews*, 205 Ariz. at 246, ¶ 34, 69 P.3d at 17 (citation omitted); accord *Oberan v. W. Mach. Co.*, 65 Ariz. 103, 109, 174 P.2d 745, 749 (1946); *Rogers v. Jones*, 126 Ariz. 180, 182, 613 P.2d 844, 846 (App. 1980) ("[T]he law is crystal clear that an option agreement must be strictly construed, in that it must be exercised in exact accord with its terms and conditions.") (citation omitted). In *Rogers*, we noted the rationale for the rule: "Since the optionor is bound while the optionee is free to accept or not as he chooses, courts are strict in holding an optionee to exact compliance with the terms of the option." 126 Ariz. at 182, 613 P.2d at 846 (quoting *Hayward Lumber & Inv. Co. v. Constr. Prods. Corp.*, 117 Cal. App. 2d 221, 229, 255 P.2d 473, 478 (1953)). Accordingly, to resolve this case, we must first decipher the terms in the agreement that pertain to the proper exercise of the option, and then we must determine whether Best strictly complied with those terms. See, e.g., *Andrews*, 205 Ariz. at 246, ¶ 34, 69 P.3d at 17.

## II.

¶16 The February 2004 option contract signed by Best and Castillo provides, in part:

The total purchase price is \$150,000.00[.]  
That amount must be paid in full on or  
before the 23rd hour (11 p.m[.]) on the day  
listed in March of the year 2009. (03/23/09)  
The above said date is the Expiration Date  
for said contract, unless both parties agree  
to renew prior to expiration within the laws  
of Arizona.

Upon payment to Castillo, Robert D[.]  
(Optionor) of above said amount, the below  
signed property owner promises to relinquish  
his Castillo, Robert D[.](Optionor) complete  
ownership rights to above said parcel of  
Real Property[.]

¶17 The terms supply the method for exercising the option:  
payment "in full on or before" the expiration date of the  
agreement. The agreement further provides that, "upon payment  
to Castillo," he is to relinquish his ownership rights to Best.  
The option contract does not contain a notice requirement;  
instead, the terms plainly outline that the option is to be  
exercised by payment of the full purchase price of \$150,000.00.

¶18 Best maintains that he "exercised the option" by  
delivering a letter to Castillo describing his intent to  
exercise his option rights in October 2006, and by opening  
escrow for the property in November 2006. The option contract,  
however, does not state that notification triggers the option,  
nor does it state that opening escrow constitutes a valid

exercise of the option to purchase. Rather, the terms require full payment of the purchase price. Consequently, the language of the option contract does not support the argument that Castillo breached the contract. Instead, the unambiguous terms of the agreement required Best to tender the full \$150,000.00 to execute the option.

¶9 In *Rogers v. Jones*, we construed the terms of an option contained in a lease agreement that was similar to the option here. 126 Ariz. at 181, 613 P.2d at 845. The option granted the lessees "an option to purchase the leased premises on or before termination of this lease, for the sum of [\$950] per irrigable acre based on 165.2 acres." *Id.* On the last day of the lease, the lessee, Jones, contacted the lessor and told him he was exercising the option, and that he would pay the balance over a three-year period. *Id.* The lessor, Rogers, without consulting his wife, who had a community interest in the property, made a counteroffer. *Id.* The agreement was confirmed by telegram, Jones deposited the down payment into escrow, and instructions and conveyance documents were sent to the Rogers. *Id.* Mrs. Rogers, however, refused to sign the documents, and Jones sued for specific performance. *Id.*

¶10 On appeal, we held that the option was not properly exercised because the option clause required "full payment in cash" before the option expired. *Id.* at 182, 613 P.2d at 846.

The option clause did not permit a deferred payment schedule, as attempted. *Id.* Because the lessee did not tender full payment before the expiration of the lease, the option expired. *Id.*

¶11 Similarly, we hold that valid exercise of the option in the Best/Castillo agreement required full payment of the purchase price. Best never tendered the full purchase price of \$150,000.00 to Castillo. As a matter of law, Best failed to properly exercise the option. Best opened escrow with \$100.00, and approximately twenty-four days later, when Castillo notified the title company of his desire to cancel escrow, the escrow account contained only the initial \$100.00 deposited by Best.<sup>3</sup> Because the option agreement did not provide any alternative method for exercising the option, such as a notice of intent to exercise the option, Best's actions did not comply with the terms of the contract, and he failed to validly exercise his option rights. Accordingly, the trial court properly rejected Best's claim for specific performance, and summary judgment was appropriate in favor of Castillo. The fact that Castillo canceled escrow is inconsequential, given Best's failure to pay the full amount contained in the option agreement. There being no dispute between the parties as to this material fact, we

---

<sup>3</sup> Best commenced a suit for specific performance against Castillo in 2007, when roughly two years remained in the option agreement.

affirm the trial court's grant of summary judgment in favor of Castillo.

¶12 Best also requests fees and costs on appeal. Because he did not prevail, we deny his request.

**CONCLUSION**

¶13 We affirm the grant of summary judgment to Castillo.

/s/

---

MAURICE PORTLEY, Judge

CONCURRING:

/s/

---

JON W. THOMPSON, Presiding Judge

/s/

---

JOHN C. GEMMILL, Judge