IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JOHN P. DENISON and DONNA L. DENISON,	)	C.A. No. 03C-01-002 (JTV)
Plaintiffs,	)	
v.	)	
JOHN E. REDEFER, JR., DOLORES R. REDEFER, JOHN E. REDEFER, III, ELIZABETH M. REDEFER, CHRISTOPHER R. REDEFER, JULIANNE REDEFER, and P. JUSTIN REDEFER,	)	
Defendants.	)	

Submitted: June 14, 2005
Decided: November 30, 2005

Steven Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware. Attorney for Plaintiffs.

John A. Sergovic, Jr., Esq., Sergovic & Ellis, Georgetown, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff's
Motion for Partial Summary Judgment
DENIED

Upon Consideration of Defendant's
Motion for Partial Summary Judgment
GRANTED

VAUGHN, President Judge

Denison, et al. v. Redefer, et al.
C.A. No. 03C-01-002 (JTV)
November 30, 2005

OPINION

This is an ejectment action in which the parties have filed cross-motions for partial summary judgment on the issue of whether the defendants should be ejected from a garage they currently occupy. The garage is part of a condominium unit owned by the plaintiffs but leased, or allegedly leased, to the defendants. The motions are for partial summary judgment because the pleadings raise other issues not addressed by the motions.

FACTS

I adopt verbatim the following facts as set forth in the plaintiff's Statement of the Case:

Green By Way Condominium is a condominium community of residence homes in Sussex County, Delaware, formed under the Delaware Unit Property Act, 25 *Del. C.* Chapter 22. The Declaration of Condominium is recorded in the Sussex County Recorder of Deeds Office in Deed Book 1406, Page 140. Unit 13 of Green By Way Condominium ("Unit 13") contains a residence house and a non-adjoining garage.

Prior to September, 1987, Unit 13 was owned by Defendants, John E. Redefer, Jr. and Dolores R. Redefer ("the Redefer parents"). By Contract of Purchase and Sale dated June 22, 1987, the Redefer parents agreed to sell Unit 13 to Plaintiffs, John P. Denison and Donna L. Denison, ("the Denisons") who are the current owners; and that contract excluded the garage. The sellers intended to keep the garage.

At final settlement, the Denisons were told that they could not separate the house and the garage so the garage had to be leased back. Prior to final settlement the

sellers had learned from their attorney that in order to keep the garage while selling the house, they would have to either redo the condominium documents or do a long term lease by which they would retain possession of the garage as tenants. Redoing the condominium documents would have cost thousands of dollars so the Redefer parents picked the least expensive choice, a lease of the garage.

Accordingly, a written instrument captioned "Lease" was prepared by the sellers' attorney. It was dated September 1, 1987 and was signed on that date, several weeks prior to final settlement on the sale. One day prior to final settlement the Lease[1] was recorded in the Office of the Recorder of Deeds in Georgetown in Deed Record Volume 1520 at Page 114.

The lease was for 99 years at one dollar per year, renewable for another 99 years. The Lease named the Redefer parents as lessors and it named them also as lessees to the extent of a 25 percent interest in each of them. The remaining 50 percent interest went in 10 percent shares to each of the five Redefer children. The Lease was silent regarding any interest in the common elements attached to Unit 13.

Final settlement on the sale of Unit 13 took place on September 26, 1987. At settlement the Redefer parents delivered to the Denisons their Deed for Unit 13, including all the undivided interest in the common elements attached to Unit 13. The Deed contained a recital that it is subject to the Lease and the Deed was recorded in the Office of the Recorder of Deeds in Deed Record Volume 1520 at Page 274. The

[1] Because of its title, that document will be referred to as "the Lease" in [plaintiffs'] Brief although Plaintiffs maintain that it does not constitute a true lease.

intent was to convey the entire Unit 13, including the garage, but subject to the Lease. The Contract of Sale had been silent regarding a lease and the Denisons only first learned that a lease would be part of the transaction at the end of final settlement, after the settlement sheets were dealt with.

At final settlement an Assignment of Lease dated September 26, 1987 was delivered by the Redefer parents to the Denisons. For unknown reasons, that instrument was not recorded immediately following final settlement; and it went unrecorded until very recently when the original document was recorded on May 6, 2004 with the Recorder of Deeds in Book 2975 Page 44. That Assignment recited that the Redefer parents thereby assigned the Lease to the Denisons.

The Redefers' use of the garage has been accompanied by considerable controversy from the outset. Much of the controversy did not erupt in litigation, but in 1994 the Council of the Unit Owners for the Condominium filed suit against the Redefers in Sussex County Chancery Court, C.A. No. 1676. In that suit the Council alleged that the Redefers had installed a bathroom and other improvements in the garage, had made other alterations and improvements and had unlawfully used the garage for residential purposes; and seeking injunctive relief.

The garage does actually contain a hot water heater, a shower, a bathroom, a kitchen counter, and a sink in that kitchen counter and possibly a refrigerator. The Redefers had the bathroom built in the spring of 1993. In their Chancery action, the Council sought injunctive relief against the Redefers, and the Redefers answered the Complaint and contested the Plaintiff's claim. Eventually, the Plaintiff's attorney, Mr Bradley, was appointed to the Superior Court bench, Plaintiff failed to timely obtain

a successor attorney, and the matter was dismissed for want of prosecution.

Since that time other animosities, not of record in this case, have led to the Denisons' desire to terminate the Lease and to be free of the Redefers.

The Denisons do not claim that there is any particular relevance to the present case of the Chancery litigation or of the history of controversy surrounding the Redefers' use of the property. It is mentioned in an even-handed way only to place the current controversy in a proper historical context.

Turning once more to the present controversy, the Redefer children and the Redefer parents are all of the persons now in actual possession of and occupying the Unit 13 garage. The garage is normally locked, the Denisons have never had a key to the garage, and they have not had access to the garage.

By certified letters dated July 1, 2002 and received by all Defendants on July 3, 2002, the Denisons requested of the Redefers a key to the garage so that they could gain access; and with each certified letter they enclosed a payment of $3.00 to cover the reasonable costs of making a key. The Redefers thereafter supplied no key, and instead by letter dated September 23, 2002 their attorney returned the $3.00 checks and refused the Denisons access to the garage.

By certified letters dated September 10, 2002 and received on September 11 and 12, 2002, the Denisons notified the Redefers that they had terminated their rights in the garage effective sixty days thereafter and further notified them to vacate immediately after those sixty days. The Redefers have failed and refused to vacate the Unit 13 Garage.

The Denisons filed their Complaint in ejectment to institute this civil action

and they have prayed that the court determine that the Redefers have ousted and have wrongfully excluded them from the Unit 13 garage and that Redefers currently have no leasehold or other possessory rights in that garage. The Denisons have also prayed for a Writ of Possession and judgment in their favor and for their reasonable counsel fees and costs.

STANDARD OF REVIEW

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[2] The facts must be viewed in the light most favorable to the non-moving party.[3] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[4] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[5]

PARTIES' CONTENTIONS

The plaintiffs contend that Redefers' form of lease is unenforceable as an attempt, contrary to 25 *Del. C.* § 2205, to partition common elements associated with

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[2] Superior Court Civil Rule 56 (c).

[3] *Guy v. Judicial Nominating Comm'n,* 659 A.2d 777, 780 (Del. Super.Ct. 1995); *Figgs v. Bellevue Holding Co.,* 652 A.2d 1084, 1087 (Del. Super. Ct. 1994).

[4] *Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del. 1962).

[5] *Wooten v. Kiger,* 226 A.2d 238 (Del. 1967).

a single condominium unit; that the form of lease is not a true lease because it does not give exclusive possession to the tenants, and instead creates a license terminable at the will of the owner (a license which the plaintiffs contend has now been terminated); and that the 99 year lease was not recorded with the Recorder of Deeds within 15 days following signature and it is therefore made unenforceable by 25 *Del. C.* § 158.

The defendants contend that they are lawfully in possession of the garage pursuant to their lease. Among other arguments, they contend that the plaintiffs are estopped from disputing the validity of the lease.

DISCUSSION

The original agreement of the parties was that the Denisons would buy the dwelling part of Unit 13 and the Redefer's would keep the garage. Their original intent was that the Denisons would have fee simple to the dwelling part of the unit and the Redefers would have fee simple to the garage. It was only when the parties learned that their original agreement would violate the condominium regime that they restructured their deal as a sale of the entire unit with a long-term leaseback of the garage. While the facts indicate that the Redefers were the first ones to become aware that the agreement would need to be restructured in order to be accomplished, it is undeniable that the Denisons agreed to the form of the transaction at settlement. The Denisons now, years later, wish to rid themselves of the part of the transaction which they find undesirable, but keep the part which benefits them.

Under these circumstances, I conclude that the Denisons are equitably estopped from denying the validity of the lease. The doctrine of equitable estoppel "may be

invoked 'when a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment.'"[6] The following are the requirements of establishing estoppel: "the party claiming estoppel lacked knowledge or the means of obtaining knowledge of the truth of the facts in question; relied on the conduct of the party against whom estoppel is claimed; and suffered a prejudicial change of position as a result of his reliance."[7]

Here, the Redefers were advised by their attorney that the agreement would have to be restructured in the manner in which it was to accomplish the transaction. The inference to be drawn is that they believed the transaction as restructured was valid. By virtue of their reliance upon the attorney's legal representation, they lacked the means of knowing or obtaining knowledge that the validity of the transaction might somehow later be questioned. They reasonably relied upon the Denisons agreement to the transaction, and in reliance upon that agreement they detrimentally changed their position by letting go of the fee simple title to the condominium unit.

I have considered all of the arguments submitted by the Denisons regarding the validity of the lease, and I conclude that none of them overcome the above-described equitable estoppel.

The plaintiffs contend that the refusal of the defendants to give them a key so they could have access to the garage is a breach of the lease which entitles them to

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[6] Waggoner v. Laster, 581 A.2d 1127, 1136 (Del. 1990) quoting Wilson v. American Ins. Co., 209 A.2d 902, 903-04 (Del. 1965).

[7] *Id.*

terminate it. On the facts of the case, I disagree. The statutory provision relied upon, 25 *Del. C.* § 5509(a) was added to the landlord/tenant code in 1996 and does not apply to the lease in this case.[8] The plaintiffs also rely upon section 14 of the lease which gives the landlord the right to "enter into and upon the demised premises . . . at all reasonable times for the purpose of examining the same and making such repairs thereto as may be necessary . . . ". However, nothing in this provision requires the Redefers to give the Denisons a key. I find that the Redefers refusal to cooperate with the request for a key is not a breach of section 14 and does not form a basis for ejectment.

Accordingly, the plaintiffs' motion for partial summary judgment is ***denied*** and the defendants' motion for partial summary judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

[8] 70 *Del. Laws*, c. 513, § 20.