

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-002597-MR

MILFORD LOWE

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NO. 98-CI-396

SANDY RAKES

APPELLEE

OPINION  
REVERSING AND REMANDING  
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BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE: Milford Lowe, *pro se*, appeals the summary judgment of the Taylor Circuit Court which interpreted the parties' written contract as a lease and dismissed his counterclaim for breach of contract for the sale of real property. We reverse and remand.

On August 2, 1990, Lowe and the appellee, Sandy Rakes, executed a rather roughly drawn hand-written agreement entitled "Renter's Contract," which reads as follows:

I, Sandy Rakes, will not be responsible in case of any accident. I, Milford Lowe, agree to pa[y] [\$]100.00 a month start[ing] Aug. 1[, ] 1990 for rent on the property at Merrimac and I will take the [\$]100.00 that I pay Sandy Rakes off of the amount that I pay

to Sandy Rakes off the [\$]15,000[ ] for the property and I will pay by the 10<sup>th</sup> of the month[;] not to do any thing that would [illegible] cost Sandy Rakes any money[;] the electric bill will be in Milford Lowe['s] name and Milford Lowe has the right to do any thing that he want[s] to improve it at his own expense. Date Aug 2 1990.

In addition to the signature of both Lowe and Rakes, the contract was witnessed by Evelyn Graham.

For nearly eight years, the parties abided by this agreement without incident. Lowe had possession of the property and paid Rakes \$100 each month; he made improvements to the property, including: connecting the property to city water, painting the house inside and out, and replacing the flooring in four of the rooms.

In March 1998, Rakes gave Lowe notice to vacate the premises. When Lowe refused to leave, Rakes filed an action for forcible detainer in the Taylor District Court. Lowe filed a counterclaim alleging that Rakes had breached the agreement, which Lowe characterized as a contract for deed. Lowe moved to have the controversy transferred to the Taylor Circuit Court. That motion was granted on September 23, 1998.

A trial was scheduled to commence in the circuit court on May 27, 2000. Prior to trial, Rakes moved the court to interpret the contract, seeking a ruling that the writing constituted a renter's contract and not a contract for the purchase of real estate. The trial court treated the motion as one for summary judgment. In its judgment of May 12, 2000, the

trial court concluded that the agreement was a "renter's contract" -- not a contract or option to purchase the realty. The judgment contained no analysis of the terms of the agreement. Judgment was awarded in favor of Rakes solely on the basis that the agreement failed to comply with the Statute of Frauds, Kentucky Revised Statutes (KRS) 371.010(6). Specifically, the trial court found that the writing failed to describe the property "with sufficient accuracy." On October 5, 2000, the trial court entered an amended judgment, awarding Rakes the sum of \$2,300 -- the amount allegedly owed during the pendency of the action -- and denying Lowe an equitable lien for his improvements to the property. This appeal followed.

Lowe challenges the trial court's interpretation of the contract and its summary dismissal of his counterclaim. He contends that there are factual issues that render summary judgment inappropriate. However, he concurs that the issue of the proper interpretation of the contract involves a question of law for the court to resolve. Morganfield National Bank v. Damien Elder & Sons, Ky., 836 S.W.3d 893, 895 (1992); Hibbitts v. Cumberland Valley National Bank & Trust Company, Ky.App., 977 S.W.2d 252, 254 (1998). We review the trial court's legal conclusions *de novo*.

The cardinal rule in interpreting a written document is to give the words employed their plain and ordinary meaning. O'Bryan v. Massey-Ferguson, Inc., Ky., 413 S.W.2d 891 (1966). If the language used renders it susceptible of two constructions,

the court must adopt the interpretation that will result in a fair and reasonable contract rather than construing it in such a manner that would render it inequitable or oppressive. Ward v. Harding, Ky., 860 S.W.2d 280, 287 (1993). Furthermore, regardless of the title or heading employed by the parties, it is the "purpose, rather than the name given a contract" which controls. Greater Louisville First Federal Savings and Loan Association v. Etzler, Ky.App., 659 S.W.2d 209, 212 (1983), quoting Trinity Temple Charities v. City of Louisville, 300 Ky. 172, 188 S.W.2d 91 (1945).

These principles apply with equal force to contracts which fall within the Statute of Frauds. The court must divine the parties' intent from the writing itself rather than by reference to the formal requisites set forth in KRS 371.010. Bennett v. Horton, Ky., 592 S.W.2d 460 (1979). Consequently, Rakes was not instantly entitled to summary judgment merely because the contract was not wholly congruent to the Statute of Frauds.

Guided by the settled principles of contract interpretation, we believe that despite the "title" given to the contract, a sale of the property was the result intended by the parties as opposed to a lease. Although a small portion of the contract is illegible and the contract contains many grammatical and linguistic pitfalls, it is apparent from its provisions that Rakes agreed to sell her property on Merrimac to Lowe for the sum of \$15,000 and that the consideration was to be paid at the rate

of \$100 per month. Consistent with the conduct involved in a contract for deed, Lowe was given possession of the property; he was responsible for providing liability insurance, paying for the utilities, and maintaining the property.

Other than the contract's alleged failure to comply perfectly with the Statute of Frauds, Rakes offers no justification in support of the trial court's interpretation of the contract as a lease. In addition to the argument that it fails to describe the property in sufficient detail, Rakes contends that the amount of consideration is also unclear because of an extra "0"; however, any interpretation of the consideration intended as other than \$15,000 would be baseless when reviewed in context. Nonetheless, regardless of the alleged lack of clarity, the arguable purchase price evinces an intent to sell rather than to lease. Rakes offers no explanation as to why she and Lowe agreed to reduce the stated purchase price of \$15,000 "for the property" by the monthly payment of \$100 if their intent was merely to contract for the rental of the property. We believe that the trial court erred in concluding that the agreement constituted a lease.

We also believe that the trial court erred as a matter of law in holding that the contract is not enforceable. The trial court did not cite any authority in concluding that the agreement failed to satisfy the Statute of Frauds. This contract fulfills the most basic of that statute's requirements: that it be in writing. With respect to the description which the trial

court found insufficient, all that is minimally necessary is "that the writing identify the land or afford means of identification." Mahaffey v. Wilson, Ky., 317 S.W.2d 888 (1958) (emphasis added), citing Campbell v. Preece, 133 Ky. 572, 118 S.W. 373 (1909); see also, McNamara v. Marcum, 290 Ky. 625, 162 S.W.2d 205, 208 (1942), which holds as follows:

But where the description in the writing is sufficient to determine what *tract of land* was meant by the parties to the contract, specific performance will be enforced although it may be necessary to resort to parol or documentary evidence to determine the metes and bounds of the tract. (Emphasis in text.)

The agreement at issue identified the property only as Rakes's "property at Merrimac." Rakes does not allege to have any other property on Merrimac in addition to that which she has allowed Lowe to possess for eight years. By their course of dealing and conduct, the parties identified the property adequately enough to satisfy the Statute of Frauds. The essence of this agreement reveals the true intention of these parties, and any other determination would result in unjust enrichment to Rakes as well as a gross injustice to Lowe.

The judgment of the Taylor Circuit Court is reversed, and this matter is remanded for further proceedings on Lowe's counterclaim for breach of contract.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

Milford Lowe  
Bradfordsville, KY

BRIEF FOR APPELLEE:

Philip S. George, Jr.  
Lebanon, KY