

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1624

SOUTHEAST BUSINESS ASSOCIATES, LLC

VERSUS

REV. RUSSELL SMITH

Judgment Rendered: JUN 05 2015

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Appealed from the
City Court of Slidell
Parish of St. Tammany
Suit Number 2014E2929

Honorable James "Jim" Lamz, Presiding

* * * * *

P. David Carollo
Slidell, LA

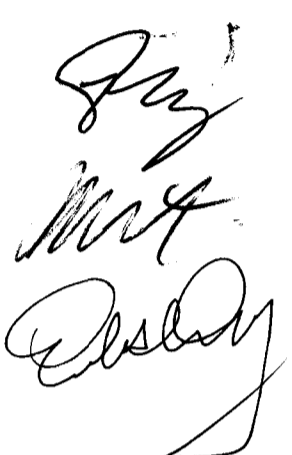
Counsel for Defendant/Appellant
Rev. Russell Smith

D. Rex English
Slidell, LA

Counsel for Plaintiff/Appellee
Southeast Business Associates, LLC

* * * * *

BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.



GUIDRY, J.

In this eviction proceeding, defendant, Rev. Russell Smith, appeals from a judgment of the City Court of Slidell ordering that he vacate the premises and deliver possession thereto to plaintiff, Southeast Business Associates, LLC (Southeast). For the reasons that follow, we reverse.

FACTS AND PROCEDURAL HISTORY

On June 15, 2010, Southeast (as seller/lessor) entered into an agreement to lease, purchase, sell, and owner finance property with Rev. Smith (as purchaser/lessee) regarding property located at 35476 Liberty Drive, Slidell, Louisiana. According to the terms of the agreement, Southeast agreed to sell and Rev. Smith agreed to buy the aforementioned property for a purchase price of \$169,000.00. The total price was to be paid by Rev. Smith as follows: (1) \$4,000.00 deposit to be applied toward the total purchase price of the property; (2) monthly payments of \$1,484.55 for five years; (3) payment in full of the remaining balance after expiration of five years. The agreement also required Rev. Smith to pay all property insurance and taxes due on the property. The agreement further provided that an act of sale was to be passed before the purchaser's/lessee's notary on or before the 30th day of July, 2015, and that it was the intent of the seller/lessor and the purchaser/lessee that the act of sale to transfer ownership of the aforementioned property take place no later than thirty (30) days after the terms and conditions of the agreement are satisfied. Finally, the agreement provided that as a condition of the sale, Southeast was to deliver to Rev. Smith a valid and merchantable title.

On July 30, 2014, Southeast filed a Rule for Eviction in the City Court of Slidell, asserting that it had a residential rental agreement with Rev. Smith and that Rev. Smith owed past due rent in the amount of \$8,600.00. Following a hearing, the trial court signed a judgment ordering Rev. Smith to vacate the premises and to

deliver possession thereto to Southeast within twenty-four hours of the rendition of the judgment. Thereafter, Rev. Smith filed a motion for new trial, which the trial court denied. Rev. Smith now appeals from the trial court's judgments.

DISCUSSION

Rev. Smith asserts that the lease/purchase agreement at issue in the instant case is actually a bond for deed, and that the trial court erred in issuing the order of eviction because Southeast did not provide the required notice for cancellation of the bond for deed contract. In order to resolve this issue, we must determine the nature and effect of the agreement between the parties. The proper interpretation of a contract is a question of law subject to *de novo* review on appeal. Montz v. Theard, 01-0768, p. 5 (La. App. 1st Cir. 2/27/02), 818 So. 2d 181, 185. When considering legal issues, the reviewing court accords no special weight to the trial court, but conducts a *de novo* review of questions of law and renders judgment on the record. Montz, 01-0768 at p. 5, 818 So. 2d at 185.

A bond for deed is a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller, after payment of a stipulated sum, agrees to deliver title to the buyer. La. R.S. 9:2941. Louisiana courts have recognized the differences between a lease with an option to purchase and a conditional sale disguised as a lease, such as a bond for deed contract. In the former, there is an option to give additional consideration in order to purchase the leased item at the end of the contract term, while in the latter, there is an obligation to pay the full price regardless of whether the option is exercised or not. See Byrd v. Cooper, 166 La. 402, 404-405, 117 So. 2d 441, 442 (1928); Hewitt v. Safeway Insurance Company of Louisiana, 01-0115, pp. 5-6 (La. App. 3rd Cir. 6/6/01), 787 So. 2d 1182, 1186.

From our review of the agreement at issue, we find that it provides a description of the real property, a purchase price of \$169,000.00 to be paid in

installments over a term of five years, and an agreement to execute an act of sale and transfer title after the payment of the stipulated sum. Further, the agreement consistently refers to the transaction as a “sale” throughout the document, and specifies that it is the parties’ intent to transfer ownership of the described property no later than thirty days following the satisfaction of the terms and conditions described therein. Accordingly, the agreement at issue is properly classified as a bond for deed contract.¹

Because the agreement is a bond for deed contract, Southeast was required to provide a notice of cancellation to Rev. Smith by registered or certified mail, return receipt requested, that unless payment is made as provided in the bond for deed within forty-five days from the mailing of the notice, the bond for deed shall be cancelled. See La. R.S. 9:2945. Southeast did not provide Rev. Smith with the mandatory notice, and therefore, the trial court erred in issuing a judgment of eviction. See Tabor v. Wolinski, 99-1732, p. 4 (La. App. 1st Cir. 9/22/00), 767 So. 2d 972, 974; see also Williams v. Dixie Land Company, 231 La. 834, 839, 93 So. 2d 185, 186 (1956).

CONCLUSION

For the foregoing reasons, we reverse the judgment of the trial court and vacate its orders. We remand this matter for further proceedings consistent with this opinion. All costs of this appeal are assessed to Southeast Business Associates, LLC.

REVERSED; ORDERS VACATED; REMANDED.

¹ Southeast asserts on appeal that the agreement at issue cannot be a bond for deed, because it was not recorded pursuant to La. R.S. 9:2941.1; because Southeast did not obtain a guarantee to release the property from the mortgage holder; and because the agreement did not provide for payments to be made to an escrow agent. However, these requirements are for the protection of the vendee and third parties and do not affect the validity of the contract. See H.J. Bergeron, Inc. v. Parker, 06-1855, p. 3 (La. App. 1st Cir. 6/8/07), 964 So. 2d 1075, 1076.