[Cite as *Maybaum v. LaMarca*, 2010-Ohio-708.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

SCOTT D. MAYBAUM, et al.,	:	**O P I N I O N**
Plaintiffs-Appellants,	:	**CASE NO. 2009-G-2902**
- vs -	:	
THOMAS LaMARCA, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Chardon Municipal Court, Case No. 2007 CVF 00999.

Judgment: Affirmed.

Scott D. Maybaum and *Nancy Maybaum*, pro se, 2301 Battery Wagner Drive, Apex, NC 27523 (Plaintiffs-Appellants).

Thomas LaMarca and *Charise LaMarca*, pro se, 8340 Eaton Drive, Chagrin Falls, OH 44023 (Defendants-Appellees).

TIMOTHY P. CANNON, J.

{¶1} Appellants, Scott D. and Nancy Maybaum, appeal the judgment of the Chardon Municipal Court, adopting the decision of the magistrate, ordering appellants to pay the sum of $3,000 with interest thereon at the rate of 8% per annum to appellees, Thomas and Charise LaMarca. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} This case emanates from the execution of a lease, whereby appellants would occupy the real estate at 8472 Music Street. Appellees are the owners of the

Music Street property. The lease was for the term of 12 months, commencing July 1, 2006, and terminating on June 30, 2007. The lease gave appellants an option to purchase the property for $325,000 during the term of the lease or "any extensions thereof, to a maximum of three years."

{¶3} The parties attached an addendum to the lease titled "Construction Addendum A." The addendum outlined 13 items to be completed at the property, including, inter alia, the construction of a deck, installation of carpet, a wood floor, a gas line, and the painting of walls and trim.

{¶4} Appellants did not move into the property at the inception of the lease. In December 2006, appellants sent a certified letter to appellees indicating they were unable to move into the Music Street property, as the addendum items were not completed and a certificate of occupancy had not been issued. The letter requested the return of $3,300 paid to appellees, representing the first and last months' rent.

{¶5} Thereafter, appellants filed a complaint alleging two causes of action: one cause for failure to return or account for a security deposit under a rental agreement totaling $2,270, and a second cause for unjust enrichment based on the value of alleged improvements made to appellees' property in the amount of $2,361.

{¶6} Appellees filed an answer and asserted, as counterclaims, slander of title and fraud. A trial was held before the magistrate on October 30 and 31, 2008.

{¶7} The March 25, 2009 magistrate's decision ordered appellants to pay to appellees "the sum of $3,000, with interest thereon at the rate of 8% per annum from October 1, 2006, and the clerk's court costs." The magistrate also ordered that appellants "take nothing, and that their claims be dismissed on the merits."

{¶8} The trial court adopted the magistrate's decision in an April 13, 2009 judgment entry.

{¶9} Appellants filed a timely notice of appeal and assert the following assignments of error for our review:

{¶10} "[1.] The trial court erred by failing to find that the appellees breached the May 17, 2006 contract by failing to transfer possession of the premises to the appellants on July 1, 2006.

{¶11} "[2.] The trial court erred by failing to find that appellees breached the May 17, 2006 contract by non-performance of required conditions precedent.

{¶12} "[3.] The trial court erred in determining the termination of the contract in early October 2006 and not on July 1, 2006.

{¶13} "[4.] The trial court erred in failing to find that appellees were unjustly enriched by moneys paid by appellants and not returning [moneys] paid by appellants to [appellees].

{¶14} "[5.] The trial court erred by failing to assign court costs to both appellants and appellees."

{¶15} A review of the record on appeal reveals that appellants failed to file objections to the magistrate's March 25, 2009 ruling. Civ.R. 53(D)(3) states, in pertinent part:

{¶16} "(b) Objections to magistrate's decision.

{¶17} "(i) Time for filing. A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R.

53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

{¶18} "(ii) Specificity of objection. An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

{¶19} "(iii) Objection to magistrate's factual finding; transcript or affidavit. An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

{¶20} "(iv) Waiver of right to assign adoption by court as error on appeal. Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

{¶21} Pursuant to the foregoing rule, a party's failure to file objections to a magistrate's decision waives all but plain error. Civ.R. 53(D)(3)(b)(iv). This standard of review was averred by the Supreme Court of Ohio in *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, syllabus:

{¶22} "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself."

{¶23} Upon a review of the appellate record, we also observe appellants have failed to file a transcript of the trial court proceedings of October 30 and 31, 2008. See App.R. 9. According to appellants' notice of appeal, filed with this court on May 13, 2009, appellants ordered a complete transcript of the hearing in this underlying action from the court reporter. Appellants did not, however, provide an estimated completion date. According to App.R. 9, it is the duty of an appellant to provide a transcript for appellate review. *State v. Skaggs* (1978), 53 Ohio St.2d 162, 163. Moreover, to support their arguments on appeal, appellants rely primarily on testimony from the hearings of October 30 and 31, 2008, yet they have failed to cite to the record in their brief. See App.R. 16(A)(7).

{¶24} Without a transcript or other acceptable statement of the proceedings, however, a review of the trial court's judgment is confined to the pertinent portions of the record before us. In *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, the Supreme Court of Ohio held:

{¶25} "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. *** When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." (Citations omitted.)

{¶26} In the first three assignments of error, appellants assert that appellees breached the lease agreement, as the items listed on the construction addendum were not complete prior to July 1, 2006. The magistrate's decision, however, addressed appellants' argument and determined that the property was habitable on July 1, 2006. We find no plain error on the face of the magistrate's decision. Consequently, appellants' first, second, and third assignments of error are without merit.

{¶27} Next, we address appellants' unjust enrichment claim, under the fourth assignment of error. Appellants argue the trial court erred in finding that appellants were not entitled to "recover for materials or labor they purchased or supplied to improve the premises during their leasehold." Specifically, appellants sought the recovery of approximately $726, one-half the cost of wood floor coverings installed at the Music Street property.

{¶28} Our review of the contractual language relating to alterations and additions at the Music Street property reveals no ambiguity. Section 10, paragraph 2 of the lease agreement unequivocally states, in part, that "all alterations and additions shall remain for the benefit of, and become the property of the Landlord, unless otherwise provided

in said written contract." When a contract is clear and unambiguous by its terms, as in the instant contract, it requires no interpretation and the court should enforce it as written. *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth*. (1997), 78 Ohio St.3d 353, 361. Therefore, as indicated by the language of the lease, appellees were entitled to the benefit of the improvements made by appellants. *Hubbard v. Dillingham*, 12th Dist. No. CA2002-02-045, 2003-Ohio-1443, at ¶26. Appellants' fourth assignment of error is not well-taken.

{¶29} As the fifth assignment of error, appellants take issue with the trial court assessing court costs against them. Although appellants assign this error on appeal, they have not provided this court with any authority or support for their argument. App.R. 16. This argument is without merit.

{¶30} For the reasons stated in the opinion of this court, the assignments of error are without merit, and it is the judgment and order of this court that the judgment of the Chardon Municipal Court is affirmed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.