

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

ROBERT KRUPPA, et al.,	:	OPINION
Plaintiffs-Appellants,	:	
- vs -	:	CASE NO. 2012-T-0030
TRUMBULL METROPOLITAN HOUSING AUTHORITIES,	:	
Defendant-Appellee,	:	
PATRICIA A. LENIX, et al.,	:	
Intervening Defendants.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2011 CV 1991.

Judgment: Affirmed.

Thomas C. Nader, Nader & Nader, 5000 East Market Street, Suite 33, Warren, OH 44484 (For Plaintiffs-Appellants).

William L. Hawley and Matthew G. Vansuch, Harrington, Hoppe & Mitchell, Ltd., 108 Main Avenue, S.W., Suite 500, P.O. Box 1510, Warren, OH 44482-1510 (For Defendant-Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, Robert Kruppa, Victor Kruppa, and William Kruppa appeal the trial court’s March 13, 2012 grant of summary judgment in favor of appellee, Trumbull Metropolitan Housing Authority (“TMHA”). This matter arose when TMHA terminated

several of appellants' lease agreements after learning that appellants executed land installment contracts with some of their tenants who were receiving Section 8 funds to subsidize their rent payments under the Housing Choice Voucher Program ("HCVP") administered by TMHA. Based on the following, we affirm the trial court's judgment.

{¶2} Appellants are owners of residential, single-family homes located in Trumbull County, Ohio. Appellants rent to individuals who otherwise qualify for Section 8 funds. The Section 8 program was enacted as part of the United States Housing Act, 42 U.S.C. § 1437f, "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." This program is administered by local public housing authorities ("PHA"). After a tenant is approved for the Section 8 program, he or she will receive a voucher from the local PHA—here, TMHA. The tenant then locates a dwelling unit owned by a private landlord—here, appellants. The local PHA must approve the dwelling unit and the lease agreement and ensure that all regulatory requirements have been satisfied. 24 C.F.R. § 982.305. If such conditions are satisfied, the local PHA and the landlord enter into a Housing Assistance Payments ("HAP") Contract, whereby the landlord receives payment of a Section 8 subsidy for rental of the dwelling unit by the tenant.

{¶3} TMHA, as the local PHA, and appellants entered into HAP Contracts. The HAP Contracts state, in part:

The owner has leased the contract unit to the tenancy for occupancy by the family with assistance under the Section 8 Voucher Program.

The owner certifies that:

(1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum.

The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.

8. Owner Certification.

During the term of this contract, the owner certifies that:

(e) The family does not own or have any interest in the contract unit.

10. Owners' breach of HAP Contract:

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner.

If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract or any other available rights and remedies for such breach.

The PHA's rights and remedies for owner breach of the HAP contract include * * * termination of the HAP contract.

{¶4} Below, the parties stipulated that appellants created three documents entitled "Land Installment Contract Master Form." Appellants and various tenants, who were receiving federal funds to subsidize their rent under HCVP, executed land installment contracts, which incorporated by reference the "Land Installment Contract Master Form." After discovering the existence of these land contracts, TMHA initially suspended the rights of the tenants to receive rent vouchers. Eventually, TMHA terminated its HAP Contracts with appellants. Appellants were notified that "all subsidy will cease as of August 31, 2011." TMHA determined the execution of a land contract by a tenant under a HAP Contract violates the terms of such contract.

{¶5} Appellants filed a complaint alleging breach of contract, intentional interference in contract rights, and a right to an administrative appeal pursuant to R.C. 2506.01.

{¶6} The trial court granted TMHA's motion for summary judgment, and appellants appealed, asserting the following assignment of error for our review:

{¶7} "The trial court erred in its interpretation of the HAP Contract by failing to apply HUD laws and regulations."

{¶8} Our standard of review on a motion for summary judgment is *de novo*. *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711 (4th Dist.1993).

{¶9} In their sole assignment of error, appellants allege the trial court erred in granting TMHA's motion for summary judgment, as federal law allows certain agreements for sale of property to co-exist with the HAP Contract Section 8 Lease Agreements. Appellants contend the HAP Contract does not prohibit the equitable forms of ownership that are created when a titled owner enters into any form of purchase agreement with the HAP Contract tenant; rather, appellants argue, Section 8 of the HAP Contract only prohibits that tenant to be a titled owner.

{¶10} To support this argument, appellants cite to the following language of the HAP Contract and assert that federal law governs in the instant situation:

{¶11} "The HAP Contract shall be interpreted and implemented in accordance with all statutory requirements and with all HUD requirements including the HUD Program regulations at 24 Code of Federal Regulation Part 982."

{¶12} Appellants cite to 24 C.F.R. § 982.4 to support this argument, which states:

{¶13} (a) A family leasing a unit with assistance under the program *may* enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a down payment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family. (Emphasis added.)

{¶14} Appellants maintain that 24 C.F.R. § 982.4 allows a Section 8 tenant to enter into an agreement to purchase the home in which that tenant lives. Although 24 C.F.R. § 982.4 permits a family leasing a unit with assistance under the program to enter into an agreement with an owner to purchase the unit, the plain language is permissive, not mandatory. This type of arrangement was not an option for these Section 8 tenants because TMHA's administrative plan does not permit home ownership or an interest in the contract unit. Furthermore, 24 C.F.R. § 982.54 requires that each local PHA, here TMHA, must adopt a written "administrative plan" as a supporting document to the PHA plans, which "must be in accordance with HUD regulations and requirements." The administrative plan is to be formally adopted by the PHA Board of Commissioners, and state PHA "policy on matters for which the PHA has discretion to establish local policies." As averred by Rodger Dixon, the Deputy Director

of Operations and General Counsel for TMHA, the “TMHA administrative plan approved by the Department of Housing and Urban Authority (HUD) does not permit home ownership under the Housing Choice Voucher Program.” In fact, the HAP Contract states that appellants certify, inter alia, that “[t]he contract unit is leased to the tenant,” and the leasing “family does not own or have any interest in the contract unit.”

{¶15} Here, appellants and some of the tenants entered into a land contract, thus granting the tenants a present ownership interest in the realty, in direct contravention to the HAP Contract. Although appellants maintain that federal law allows for lease-purchase agreements, they have failed to cite any authority which requires the inclusion of such provision in TMHA’s administrative plan. The federal law is clear that a PHA has discretion in these matters. See 24 C.F.R. § 982.54. Additionally, as appellants entered into land installment contracts with some of their tenants, and through the execution of such document, the tenants “owned or had an interest in the contract unit,” appellants breached the terms of the HAP Contract. As such, TMHA was authorized to exercise its rights and remedies under the HAP Contract—i.e., termination of the HAP Contract.

{¶16} Appellants further argue that when the tenants entered into the land installment contracts, they acquired an interest in the property similar to lease purchase agreements, which are permitted by HUD. First, appellants did not enter into lease purchase agreements, but land installment contracts with some of their tenants. And, second, as recognized by TMHA in its brief, there is a distinction between the creation of a leasehold with an option to purchase and the creation of an ownership interest in realty. *Riverside Builders, Inc. v. Bowers*, 10th Dist. No. 89AP-834, 1990 Ohio App.

LEXIS 2315, *12 (June 7, 1990) (“the land contract conveys a present ownership interest in realty, while the lease conveys an interest less than ownership” (emphasis deleted)). Appellants admitted they entered into land installment contracts with some of their tenants. “A land installment contract is an executory agreement whereby the purchaser (vendee) agrees to pay the purchase price and is vested with equitable ownership, while the seller (vendor) retains bare legal title in the property to secure payment of the purchase price.” *Baraby v. Swords*, 166 Ohio App.3d 527, 2006-Ohio-1993, ¶14 (3d Dist.).

{¶17} Appellants’ assigned error is without merit.

{¶18} Based on the opinion of this court, the judgment of the Trumbull County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.