VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 23-CV-01357

Jennifer Schaefer and Mark Schaefer
Plaintiffs

v.

David Holton and Kathleen Holton
Defendants

Findings of Fact and Conclusions of Law

In their complaint, plaintiffs Jennifer Schaefer and Mark Schaefer seek the ejectment of defendants Kathleen Holton and David Holton from the property where both parties are currently residing. In their counterclaim, defendants seek (1) a declaration that they have a valid rent-to-own contract with respect to the property, and (2) injunctive relief enforcing aspects of the alleged contract. A bench trial was held over the course of three days, with hearings held on July 6, 2023, August 14, 2023, and September 27, 2023. Assistant Judge Johannensen attended the first two days of hearings but was not able to attend the third, and so did not participate in this decision. Based upon the credible evidence, the court makes the following factual findings by a preponderance of the evidence.

Plaintiffs have lived on Siliski Road in the town of Springfield for more than thirty years, on land that has been in Mr. Schaefer's family for several generations. Parts of the homestead have been sold off over time, and now consist of two parcels totaling about eight acres. The farmhouse is no longer habitable, and a number of other structures are clustered on the property. Multiple 911 addresses have been issued for the compound, corresponding to some of the structures.

Plaintiffs are retired and have experienced recent medical setbacks. In 2022, they decided that they were no longer able to care for the property, and they made a plan to sell the land and use the proceeds to buy a camper and move to Kansas. After this plan did not work out, they tried a different approach and took out a home-equity loan and bought two used campers and brought them to the property. Ms. Schaefer then advertised the property for sale on a social-media platform.

Defendants responded to the social-media posting on August 9th. They visited the property later that afternoon and engaged in a rapid series of negotiations with plaintiffs over the next couple days. The tenor of the conversation ranged as the parties encountered and attempted to solve multiple financial and logistical complications. Both sides radically altered their conceptions of the transaction in a short period of time. Neither party used a bank. By late August, within several weeks of the first social-media interaction, defendants had moved into one of the structures on the property. Both parties agree that they were still discussing the deal when this happened.

Ms. Schaefer prepared a handwritten draft proposal. Her version contemplated that both parties would continue to live on the property. Defendants would be the "buyer/property manager/care taker" and live in one of the structures and plaintiffs would remain in another structure with a "life lease." Exactly how this would work was not defined, nor were the duties of the "property manager/care taker." Defendants would pay off the home-equity loan over the fifteen-year term of the loan and would pay for insurance, expenses, and repairs. Exactly what these expenses and repairs would entail was not defined. A notation at the end of plaintiff's draft appeared to contemplate naming one of the defendants as the executor of her estate. Someone later recorded this document in the land records, although it is not signed, and neither party describes it as an enforceable instrument.

Mr. Holton prepared his own handwritten draft proposal. His version contemplated that he would be a buyer, and would pay off the home-equity loan and insurance for fifteen years in exchange for the "deed to the land." Plaintiffs would remain on the property with a "life lease," which to him meant that they would have "complete freedom to live peaceful on their parcel and live how they see fit," so long as they kept their parcel "clean + neat at all times." The extent of their parcel was not defined, and he did not include any reference to property management or caretaking in his proposal. He imagined that they would "live together in harmony" and wrote that he would inherit the property and all of plaintiffs' "earthly possessions." He wrote that, during the fifteen-year period of the loan payments, he would have the "same legal rights to this 8 acre parcel as he would if it was morgad [sic] from a bank." Someone later recorded this document in the land records, although it is not signed, and neither party describes it as an enforceable instrument.

It was not until several weeks after defendants moved onto the property that a document was signed. By the time the signing occurred, conflicts had already arisen between the parties, and plaintiffs felt that the signing of the document was coerced. In the document, plaintiffs agreed to a "rent to own with David Holton for 15 years—the length of the loan." The words "as property manager" are written between those two lines of text. It is not clear where those words were meant to be inserted, and there is no definition of what the responsibilities of the property manager would be. Plaintiffs are described as retaining "a life lease on the property," but there is no elaboration as to what this meant, nor any description of what portion of the property plaintiffs would be retaining or occupying. A few 911 addresses are written on the second page of the agreement, but it is unclear what these mean or how they relate to the purported rent-to-own contract or the life lease, as they correspond to structures but not actual areas of land. No price was expressly mentioned, other than references to the home-equity loan and a vague reference to insurance; there is no explanation of what insurance policies they were talking about. Someone later recorded this document in the land records.

Almost immediately, there were problems, most of which centered around a fundamental lack of understanding as to how the property should be shared, and what it meant to be the property manager. A disagreement arose as to which of the structures the plaintiffs were supposed to be occupying. This disagreement became acute because the utility services at the compound are essentially improvised and interdependent between the various structures. A single spring provides water to the compound; the spring is fragile and all the structures share the same pump and shutoff, which is located inside one of the structures. Electricity for the compound is long-since outdated and runs through a circuit breaker located in one of the structures. Disagreements arose about water usage and controlling access to each other's electricity. No caretaking of the property occurred, and disputes about roles were bitter. An extreme hostility developed between the parties, and they both engaged in

acts of vindictiveness towards each other. By late winter and spring, the tensions at the compound were obvious to outsiders. A neighbor observed that plaintiffs seemed to be isolating themselves inside a camper and that defendants were acting in a controlling manner with respect to visitors. Local police who were called to the property observed that plaintiffs were stuck inside their camper and had not been shoveled out. Plaintiffs sent a variety of termination notices to defendants, insisting that they were without a legal right to remain on the property, and demanding that they leave. Fierce disputes have occurred regarding utility usage and modes of living. A preliminary injunction issued during the case regarding the parties' behavior towards each other. The situation at the property was and is untenable.

Generally, parties may enter into "rent to own" agreements in which the prospective purchaser occupies the premises and makes payments until the point of delivery of the deed and execution of the mortgage. *Kellogg v. Shushereba*, 2013 VT 76, ¶ 15, 194 Vt. 446; *Prue v. Royer*, 2013 VT 12, ¶¶ 21–24, 193 Vt. 267; *Tromblay v. Dacres*, 135 Vt. 335, 339–40 (1977). As with any contract, however, an enforceable "contract for a deed" requires the parties to reach agreement upon "all of the material and essential terms." *Quenneville v. Buttolph*, 2003 VT 82, ¶¶ 13–16, 175 Vt. 444; accord *J&K Tile Co. v. Wright & Morrissey*, 2019 VT 78, ¶ 12, 211 Vt. 179; *Sweet v. St. Pierre*, 2018 VT 122, ¶ 13, 209 Vt. 1. "[I]f an instrument that purports to be a complete contract does not contain, or erroneously contains, the substantial terms of a complete contract, it is ineffective as a legal document." *Evarts v. Forte*, 135 Vt. 306, 309 (1977).

Here, the parties attempted to create a "rent to own" agreement in which they would both live at the property for fifteen years, with defendants paying the note and insurance, and defendants responsible for acting as the property manager. No "meeting of the minds" was ever reached, however, as to what any of these terms meant. *Sweet*, 2018 VT 122, ¶ 15; *Evarts*, 135 Vt. at 309.

First, there was no agreement as to how the property would be shared. There are multiple structures on the property and the agreement does not define who was supposed to live where, or what the boundaries of those respective encampments would be. No agreement existed either as to responsibility for the acreage beyond the encampments, nor as to the sharing of resources and utilities. Disagreements on these points arose immediately and have persisted ever since. Nor did the parties agree on what it meant to be the "buyer" in this rent-to-own contract, or to have a "life lease" on the property, and how those conceptions related to property rights in the meantime. Put another way, the parties never figured out what it would mean to share this property for the next fifteen years or more.

Second, there was no agreement as to what it meant for defendants to be the property managers. The conception of this role seemed to be somewhere between nothing at all to the defendants taking care of plaintiffs in such an intimate way as to become the inheritors of all of their "earthly belongings." Plaintiffs thought that defendants would be taking care of them in their elder years. Defendants made no reference to the role whatsoever in their draft, and acted as though plaintiffs were responsible for fending for themselves in all respects. There is no standard by which the court could even begin to determine whether this condition was breached in any given situation. The lack of a meeting of the minds on this point was the single-most important factor driving the parties' disputes.

Finally, there was inadequate allocation of the financial responsibilities between the parties. The court understands what bank loan the parties are talking about,[1] but the parties made no provisions for how the loan would be paid or what would happen if the loan was not paid. The bank declined to allow defendants to assume responsibility for the loan, and did not agree to the parties' terms. Exactly what was covered by the insurance was not made clear, especially where the number of structures on the property is variable. And the parties appear to have not contemplated how expenses would be allocated if a significant capital improvement was needed—for example, if the spring failed and a well needed to be dug. It is an unworkable situation in numerous respects, precisely because the parties have not reached a meeting of the minds about basic, fundamental aspects of their relationship. *Sweet*, 2018 VT 122, ¶ 15; *Evarts*, 135 Vt. at 309.

A considerable amount of evidence was presented to the effect that the parties believed that they had made a contract. Several neighbors and townspeople testified credibly that they had been told as much by the plaintiff, and the defendants unquestionably relied upon their expectations to their detriment. But "[i]t is never enough that the parties think they have a contract; they must express their subjective intent in a manner that is capable of understanding." *Evarts*, 135 Vt. at 310. Here, for the foregoing reasons, the parties failed to create an enforceable agreement regarding their vision of sharing the property: the parties never agreed on who would live where, at what eventual price, or what their responsibilities towards each other would be. Their efforts did not provide them with enough guidance to last a few weeks, let alone the next fifteen years.

Plaintiffs' complaint sought ejectment on the grounds that defendants had moved onto their property "without leagel [sic] papers." Because of certain other references in their materials, the court previously thought that they meant they were seeking ejectment under the rules that typically govern landlord-tenant relationships, and the court had dismissed that theory for a number of reasons, including that plaintiffs had not followed some of the procedural rules that apply to those evictions. But the court now understands the evidence better, and understands the complaint to be that plaintiffs are seeking ejectment of the defendants under a different theory: that defendants have "wrongfully and without force" continued "in possession of lands or tenements" and did not "quit such possession after demand made in writing for the delivery of the possession thereof." 12 V.S.A. § 4921. Based upon the foregoing findings, including that there is no enforceable agreement between the parties and that plaintiffs sent the required written termination notices on multiple occasions throughout the fall of 2022 and winter and spring of 2023, the court concludes that plaintiffs have proven their claim for ejectment under § 4921, and that plaintiffs are entitled to a writ of possession restoring them to sole possession of the property.[2]

Defendants' counterclaims all arise from various alleged breaches of the "rent to own" agreement. These claims are resolved by the court's finding that the parties did not create an enforceable agreement. *Buttolph*, 2003 VT 82, ¶¶ 13–16.

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[1] The parties referred to the loan as a "line of credit," but it appears to have been a closed-end loan.

[2] To the extent that the case could also be analyzed as seeking ejectment under 12 V.S.A. § 4761, there is no difference in the end result of ejectment, and plaintiffs did not seek nor attempt to prove any claim for mesne profits or other monetary damages, e.g., *Kellogg*, 2013 VT 76, ¶ 24.

In terms of fashioning the remedy, the procedure for issuance of the writ of restitution is not defined, but the court thinks that it must have some degree of equitable discretion. 12 V.S.A. § 4913; cf. 12 V.S.A. § 4765; 12 V.S.A. § 4854; *Mongeon Bay Properties, LLC v. Malletts Bay Homeowner's Ass'n, Inc.*, 2017 VT 27, ¶ 12, 204 Vt. 351. Having in mind the circumstances, the writ will provide that: (1) plaintiff must arrange for the writ to be served upon the defendants by the sheriff, and (2) the sheriff may restore the plaintiffs to possession of the property no sooner than 21 days after the writ is served. This amount of time attempts to match the usual amount of time for ejectment in other contexts together with a pre-approved "modest" amount of time for defendant to figure out their next steps and remove themselves and their belongings from the property. Plaintiffs shall not attempt to force defendants to leave the property other than by this procedure. The terms of the preliminary injunction shall remain in effect until possession is restored by the sheriff. Defendants may remove their personal belongings, but shall not remove any fixtures, even if they are the ones who renovated or repaired or installed the fixture.

As to the financial consequences of the transaction, there was a contract deposit paid to plaintiffs by defendants, along with perhaps a few payments. Later payments have been made into an escrow account that is controlled by defendants. The court's understanding is that the contract deposit and any payments have been returned by plaintiffs to defendants. If there is any additional money that has been received by plaintiffs from defendants, it must be returned to defendants. Defendants may keep whatever money they paid into the escrow account.

A final judgment order and writ of possession shall issue separately.

Electronically signed on Tuesday, October 10, 2023 pursuant to V.R.E.F. 9(d).

H. Dickson Corbett
Superior Court Judge

Vermont Superior Court
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