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CAUSE NO. 2021-21454

HEIGHTS PROPERTY
MANAGEMENT, LLC,

Plaintiff

VS.

JOYCE MARIE SCALES,

Defendant.

FILED
Marilyn Burgess
District Clerk

AUG 19 2022

Time: _____
Harris County, Texas
Deputy

IN THE DISTRICT COURT

80TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, Joyce Marie Scales ("Defendant" or "Scales") who hereby submits the following Proposed Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper in Harris County, Texas.
2. Plaintiff Heights Property Management, LLC ("Plaintiff" or "HPM") is a Texas limited liability company.
3. Scot F. Carter ("Carter") is the owner of Heights Property Management, LLC and has been the Manager of HPM since August 29, 2011 until present.
4. Carter has purchased numerous homes and established a business by buying and flipping older homes for sale.
5. Scales is the owner of the residential property at 7110 Camway Street, Houston, Texas, 77028 ("Property").
6. Scales is retired from the Houston Independent School District ("HISD"), where she was the Manager of the Homebound Program, after earning her Doctorate of Education.

RECORDER'S MEMORANDUM
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7. Scales retired some 20 years ago after suffering four (4) brain aneurysms, which left her with memory and comprehension issues that have only progressed over the years.
8. Prior to her son's untimely passing four years ago, Scales' son would assist Scales in her matters of business.
9. Scales lives at her Property with her daughter who suffers from bipolar disorder and grandchildren, of whom she helps support financially.
10. Scales has no memory of her encounters with Carter, nor does Scales remember who Carter is.
11. On March 27, 2021, Carter, without invitation or prior consent of Scales, approached the Property to solicit Scales on the sale of her home.
12. Carter proceeded to notify Scales that her Property was in foreclosure and would like to purchase her home. At no point in time did Carter mention to Scales that there was a foreclosure moratorium in place due to the COVID-19 pandemic.
13. Scales indicated to Carter that before making any decision, she first wanted to speak to her sister, Betty Snyder ("Snyder"), as Scales suffered memory and comprehension issues from her medical condition.
14. Carter entered Scales's home and Scales called Betty Snyder, Scales's sister, who lived in California at the time.
15. Carter got on the phone and offered to Snyder that he would purchase Scales's home for the total amount of the foreclosure lien, estimated to be around \$75,000.00, plus \$25,000.00 net profit. Snyder countered that Carter should purchase the Property for the total amount of the foreclosure lien and a \$50,000.00 net profit to Scales, to which Carter agreed. Betty Snyder further instructed that Carter forward to her a listing of all comps in the area so that

Scales could review and decide on a fair selling price of the Property. Snyder instructed that she would be traveling to Houston soon and would review the comps within a few days and further make a decision about entering into a contract for sale with Carter. Carter never forwarded those comps to Snyder despite agreeing to do so.

16. Carter approached Scales home with a predrafted offer of \$25,000 plus the impending lien.

After the telephonic discussion amongst Scales, Snyder, and Carter, Carter increased the offer to \$50,000 plus the estimated \$75,000 of debt. The contract itself was unclear to which party would pay for closing cost as conflicting information was written on contract.

For example, The original sales price of the home was \$102,000.00 and then increased to what could be interpreted as either \$138,000.00 or \$130,000.00. Carter says that he increased the “net” offer from \$25,000.00 to \$50,000.00, but the difference from the initial sales price of \$102,000.00 would be \$127,000.00, not \$130,000.00, or even \$138,000.00.

A copy of the Contract is attached as **Exhibit 1**.

17. The initial closing date was to be May 30, 2021 per the contract.

18. The Contract is a one (1) page document with blanks for handwriting names, dates, and amounts. Carter filled out portions of the Contract prior to arriving at Scales’s home and also while he was at Scales’s home. The Contract contains many scratch outs and blanks left empty; however, it does contain signatures by both Scales and Carter dated for March 27, 2021. The Contract does not contain the legal description of the property nor does it furnish within itself, or by reference to some other existing writing, the means or data by which the property to be conveyed may be identified with reasonable certainty as set out in Morrow v. Shotwell 477 S.W. 2d 535, 539, 15 Tex. Sup. Ct. J. 196 (Tex. 1972)

19. The Contract's attempt to identify the property identifies a partial utility address and a vague reference to "records as they are recorded in the Harris County Court House". There is no identification of where or how the documents can be located or identified failing to meet the standard set out in General Metal Fabricating Corp. V. Stergiou, 438 S.W.3d 737, 753 (Tex.App.- Houston [1st Dist.] 2014).- Texas' reasonable certainty standard, in effect since at least 1945.
20. The Contract's sales price and net to seller indicates that Scales would not net the amount listed, because Scales would have to pay for the survey of the Property and closing costs.
21. Neither an inspection, nor a survey, were conducted upon the Property.
22. The Contract calls for \$1,000.00 Escrow deposit to be delivered to Alamo Title. Carter did not deposit the \$1,000.00, instead Carter brought with him to a unilateral "closing" on April 6, 2021.
23. If Scales had the mental capacity to comprehend the Contract, she would have been able to discern these issues, including the numerical values not adding up, and the offer of termination clause not being completed.
24. Scales testified that she believed the cost of an apartment would be roughly \$1,000.00 a month. At that rate, her net profit on her home, had she gone through with the sale of her Property, would last her less than 4.3 years if applied solely to a monthly apartment lease.
25. Carter sent text offering an additional \$10,000.00 at said unilateral "closing" on April 6, 2021 to Snyder This seems to indicate possible ongoing negotiations with Snyder by Carter.
26. Scales sought counsel to terminate the Contract and provided Carter with a "Termination of Contract Sale" dated April 9, 2021. Attached as **Exhibit 3**.

27. Carter rescheduled the closing for April 9, 2021 without consent from Scales.
28. Carter should not be awarded any attorneys' fees because the Plaintiff is an limited liability company.
29. Khan Vo's ("Vo") of Alamo Title provided testimony that the title company did not have funding approval.in writing.
30. Carter presented no evidence that any of the Lender's funds were wired to the Title Company for closing.
31. Carter presented no proof that his Lender approved the Property itself for security of closing.
32. Carter never presented any proof that he wanted to remedy the contract.
33. Specific performance is an extreme remedy for this alleged breach of contract, and several other remedies could have been suggested.

CONCLUSIONS OF LAW

1. The elements of a valid contract include: (1) an offer, (2) an acceptance, (3) meeting of the minds, (4) each party's consent to the terms; and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Prime Prods. v. S.S.I. Plastics*, 97 S.W.3d 631, 636 (Tex. App.—Hous. [1st Dist.] 2002).
2. A contract is invalid if mistake is made on both parties. *Walden v. Affiliated Computer Servcs., Inc.*, 97 S.W.3d 303, 326 (Tex.App.—Hous. [14th Dist.] 2003, pet. denied). The Contract had a termination date and was left blank by both parties, constituting a mistake on both parties. Further, both parties signed the Contract with incorrect amounts of the sales/purchase price. In this instance, both parties signed the Contract without correcting the numerical errors of the sales/purchase price. Under the doctrine of mutual mistake, the

agreement shall be voided if both parties to an agreement have contracted under a misconception of material fact.

3. A Meeting of the minds is generally a required element of an enforceable contract. *Angelou v. African Overseas Union*, 33 S.W.3d 269, 278 (Tex.App-Houston [14th Dist.] 2000, no pet.). Neither parties were of same mind or understanding of the contract which therefore makes the contract unenforceable.
4. A party who seeks specific performance must plead and prove (1) compliance with the contract, including tender of performance, unless excused by the defendant's breach or repudiation and (2) **the readiness, willingness, and ability to perform at relevant times**. *Digiuseppe v. Lawyer*, 269 S.W.3d 588 (Tex. 2008), *Hogan v. Goldsmith*, 533 S.W.3d 921, 923-24 (Tex.App.—Eastland [11th Dist.] 2017). A trial court may award the equitable remedy of specific performance upon a showing of breach of contract. *Id.* at 923. When a party seeks to prove it is ready, willing, and able to perform under the terms of a contract, but is unable to prove it has a firm commitment of financing, that party is not entitled to specific performance of the contract. *Hendershot*, 476 S.W.2d at 921. HPM is not entitled to specific performance, because it was not ready, willing, and able to perform at relevant times.
5. Courts also consider if the undue hardship on the seller outweighs any hardship that might be suffered by the plaintiff. *Kress v. Soules*, 152 Tex. 595 (1953). HPM is not entitled to specific performance because it would cause undue hardship on Scales that far outweighs the hardship to HPM. HPM had the availability of money damages. HPM was purchasing Scales' home for investment purposes for financial gain. Money damages would remedy any financial loss. HPM instead only opted for the remedy of specific performance which

when weighed with the hardship of forcing Scales to sell her 50 year homestead and move to an apartment is far out-weighed.

6. There are several remedies for breach of contract, such as award of damages, rescission, restitution, and specific performance. The main recovery is an award of damages. However, specific performance is not the correct remedy here. In order for specific performance to be correct, a breach must be proven and Plaintiff must have been in compliance at all times, and Plaintiff has failed to prove either of those elements. *Glass v. Anderson*, 596 S.W.2d 507, 513 (Tex. 1980)
7. HPM is not entitled to attorney's fees because it is a limited liability company and this case was filed prior to September 1, 2021. Tex. Civ. Prac. & Rem. Code § 38.001.¹

To the extent that findings of fact are considered conclusions of law, they are. To the extent that the conclusions of law are considered findings of fact, they are.

SIGNED this 19 day of August, 2022.



JUDGE PRESIDING

¹ HPM withdrew its claim for attorney's fees in open court on August 10, 2022.