2016 IL App (1st) 151074-U

FIFTH DIVISION
September 30, 2016

No. 1-15-1074

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

GEORGE KEPOROS, as the 100% beneficial owner and holder of direction of Standard Bank and Trust Company, as trustee u/t/a dated September 14, 2000 a/k/a Trust Number 16704, Standard Bank and Trust Company, as trustee u/t/a dated September 14, 2000, a/k/a Trust Number 16705, Standard Bank and Trust Company, as trustee u/t/a dated December 15, 2000 a/k/a Trust Number 16795, and Standard Bank and Trust Company, as trustee u/t/a dated March 20, 1980 a/k/a Trust Number 2262,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	Nos. 2014 CH 12893 2014 CH 14847 (cons.)
v.	)	
LOQUERCIO AUTOMOTIVE SOUTH, INC., d/b/a HONDA CITY, an Illinois corporation,	)	Honorable Mary L. Mikva,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County in favor of former lessee whereupon lessee complied with requirements of purchase option in lease and timely elected to exercise option for price determined in accordance with process set forth in lease.

¶ 2 George Keporos (Keporos),[1] appeals from rulings rendered by the circuit court of Cook County in favor of appellee Loquercio Automotive South, Inc. d/b/a Honda City (Honda City). The challenged orders address the parties' respective complaints arising out of Honda City's exercise of a purchase option in its lease with Keporos. The core contention raised by Keporos is that the purchase price was improperly calculated – and the purchase option was thus not properly exercised – because "two of the three appraisers did not consider the Lease or the Income Approach," as described herein.

¶ 3 For the following reasons, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 On August 7, 2014, Honda City filed a complaint for specific performance and other relief – assigned case number 2014 CH 12893 – against Standard Bank and Trust Company as trustee of land trust numbers 16704, 16705, 16795 and 2262 (the land trusts) and Keporos as the beneficial owner and holder of direction of the land trusts. According to the complaint, Honda City is an automobile dealership authorized by American Honda Motor Company to sell new and used Honda motor vehicles. The land trusts owned certain parcels of real estate on the 4800-4900 blocks of South Pulaski Road in Chicago. On November 8, 2006, the land trusts entered into a lease with Honda City, as tenant (lease or Honda City lease) with respect to the property. Paragraph 23 of the lease states, in part:

> "23. Tenant[']s Purchase Option: Tenant shall have the sole and exclusive option to purchase ("Purchase Option") the Premises as provided in this section:

[1] Keporos is the 100% beneficial owner and holder of direction Standard Bank and Trust Company, as trustee u/t/a dated September 14, 2000 a/k/a Trust Number 16704, Standard Bank and Trust Company, as trustee u/t/a dated September 14, 2000 a/k/a Trust Number 16705, Standard Bank and Trust Company, as trustee u/t/a December 15, 2000 a/k/a Trust Number 16795, and Standard Bank and Trust Company, as trustee u/t/a dated March 20, 1980 a/k/a Trust Number 2262.

* * *

C. Purchase Price: The purchase price to be paid by Tenant for the Premises shall be the fair market value of the Premises as agreed upon by Landlord and Tenant. In the event that the parties are unable to agree upon a value, then the value shall be determined by MAI[2] appraisals of the Premises performed as provided herein:

(1) Landlord and Tenant shall each, at their own cost, within forty-five (45) days of the Election Notice, obtain a MAI appraisal of the Premises as of the Election Notice. If the determinations of the two appraisers are within five (5%) of each other, then the purchase price shall be the average of such two appraisals.

(2) If the two appraisers are not able to reach an agreement on the appraised value within thirty (30) calendar days after they have completed their respective appraisals, or if the determination of fair market value of such two appraisers differs by more than five percent (5%), then the two appraisers selected by Landlord and Tenant, shall mutually select a third MAI appraiser who shall perform a separate third appraisal of the Premises, the cost of such appraisal to be split and paid equally one half by Landlord and one half by Tenant. Thereafter, the purchase price shall be the average of the three (3) appraisals.

(3) Once the appraisal process has been completed by the parties, Tenant shall have thirty (30) days to elect whether to purchase the Premises at the purchase price determined hereby. ***

* * *

[2] According to the Appraisal Institute, the "MAI designation is held by individuals who are experienced in the valuation and evaluation of commercial, industrial, residential and other types of properties, and who advise clients on real estate investment decisions." See http://www.appraisalinstitute.org/designation-requirements/ (last reviewed Sept. 27, 2016).

(5) Notwithstanding anything herein contained to the contrary, the purchase price as otherwise determined herein shall be reduced and at closing Tenant shall receive a closing statement credit for the added appraisal value attributable to capital improvements, additions and betterments required by American Honda Company made to the Premises by Tenant after the Commencement Date. Capital improvements shall be deemed all Improvements beyond routine maintenance and repairs. The appraisers shall be directed to include in their appraisals the component of the appraised value attributable to the America Honda Company required improvements as described above using the same appraisal approach described above."

Honda City's used automobile lot, storage lots, service and parts department, and new automobile showroom occupied the leased property (premises).

¶ 6 According to the complaint, Honda City sent an election notice to Keporos[3] informing him that Honda City was exercising its option to purchase the premises. Honda City sent a check for $100,000, representing the earnest money for the purchase. The parties attempted but failed to reach an agreement regarding the purchase price. After waiving the 45-day requirement in the lease, Keporos and Honda City, through counsel, exchanged MAI appraisals for the property. Honda City's appraiser valued the premises at $2,000,000, and Keporos' appraiser valued the premises at $5,520,000. Honda City's appraiser and Keporos' appraiser agreed upon a third MAI appraiser. The third appraiser provided an appraisal of the premises, at a value of $2,960,000. Honda City sent a notice to Keporos and his counsel electing to purchase the premises for the

[3] For clarity purposes, we refer solely to Keporos – and not the land trusts or any other entity – in the remainder of this order.

purchase price of $3,493,333.33 – the average of the three appraisals – and stating that Honda City was ready, willing and able to close. The complaint alleged that, despite numerous attempts, Keporos "has not responded to Honda City's request to schedule a closing."

¶ 7 In Count I (specific performance), Honda City sought an order directing Keporos to specifically perform his obligations under paragraph 23 of the lease, directing Keporos to close on Honda City's purchase by a date certain, and awarding Honda City any incidental and consequential damages incurred by Honda City due to Keporos' failure to close. In Count II (declaratory judgment), Honda City sought an order declaring that on July 31, 2014: the lease terminated; Honda City became the equitable owner of the premises; and Honda City's obligations under the lease – with the exception of the obligations under paragraph 23 of the lease – ceased to exist, including its obligation to pay rent.

¶ 8 Keporos filed a complaint for declaratory judgment and other relief, which was assigned case number 2014 CH 14847. The complaint alleged that the appraisal from Renzi & Associates, Inc. valuing the premises at $2,000,000 (Renzi appraisal) and the appraisal from Realty Consultants, USA, Inc. valuing the premises at $2,960,000 (RCUSA appraisal) were "defective" because they did not apply the "Income Capitalization Approach to Value," also known as the "income approach." According to the complaint, the income approach "estimates the net operating income realized from real property by capitalizing its rental income under a lease at a market rate of return to assist in determining the fair market value of the real property." Keporos asserted that the appraisal that valued the premises at $5,520,000 by Argianas & Associates, Inc. "took the Income Approach into consideration in determining the fair market value of the Premises." As the Renzi appraisal and the RCUSA appraisal "excluded the Lease and did not apply the Income Approach" – and based on other alleged defects in the two

appraisals – Keporos argued that a "true and accurate determination of the purchase price is distorted and cannot be reached from the appraisals as required by the Lease."

¶ 9 In Count I (declaratory judgment), Keporos sought an order declaring, among other things, that the Renzi and RCUSA appraisals "are invalid and set aside." Count II (breach of lease) alleged that Honda City was obligated to continue paying rent and had breached the lease by failing to do so. In Count III (unjust enrichment), Keporos asserted that Honda City "has unjustly retained all Rent due and owing as of August 1, 2014[,] to Keporos under the Lease to Keporos' detriment."

¶ 10 Upon the parties' agreed motion, the circuit court consolidated the two cases. Honda City filed a section 2-619.1 (735 ILCS 5/2-619.1 (West 2014)) motion for judgment on the pleadings as to Count I (declaratory judgment) of Keporos' complaint and to dismiss Count II (breach of lease) and Count III (unjust enrichment) of his complaint. Honda City asserted that the purchase option provision in the lease did not require any particular valuation methodology "and, as a matter of law, appraisers are given wide latitude to perform their valuations." According to Honda City, "[a]bsent fraud or bad faith, which is not alleged here, and because there are no provisions of the operative contract between Honda City and Keporos that were violated in the appraisal process, Honda City is entitled to judgment on Count I as a matter of law." As to Count II, Honda City argued Keporos "is not entitled to rent from the date the option was exercised." As to Count III, Honda City claimed it "is not being unjustly enriched as it has tendered interest on the purchase price of the property to Keporos, which he has refused to accept."

¶ 11 Keporos answered Honda City's complaint and subsequently moved for partial summary judgment on Count II of his complaint. He argued that the purchase option had not been fully

exercised because the purchase price had not been properly determined. Keporos further contended that Honda City was obligated to continue paying rent. After a hearing, the circuit court entered an order on February 19, 2015, granting Honda City's section 2-619.1 motion; judgment was entered in its favor on Count I of Keporos' complaint, and Counts II and III were dismissed with prejudice. Keporos' motion for partial summary judgment was denied.

¶ 12 On February 24, 2015, Honda City filed a motion for summary judgment on Count I (specific performance) of its complaint. Honda City argued (a) that by obtaining judgment on Count I of Keporos' declaratory judgment complaint, "that it has a binding and enforceable contract to purchase the Property under the purchase option," and (b) Honda City had complied with the terms of the option and was ready, willing and able to perform its part in the contract, and that Keporos had refused to sell the property. In an order entered on March 9, 2015, the circuit court granted Honda City's motion. The parties were ordered to close the sale within thirty days of the order, and Count II (declaratory judgment) of the Honda City complaint was dismissed as moot. Keporos filed a motion to stay enforcement of the judgment pending appeal and for waiver of bond or approval of other form of security, which Honda City opposed and the circuit court denied. On April 2, 2015, the circuit court entered an amended final order memorializing the foregoing relief, ordering the parties to close the sale of the property by May 15, 2015, and indicating that the order was final and immediately appealable. Keporos timely appealed from the February 19, 2015 and April 2, 2015 orders.[4]

[4] Subsequent to the entry of the orders that are the subject of this appeal, certain litigation continued in the circuit court and this court. On April 22, 2015, John G. Keporos – George Keporos' father, according to Honda City – filed a mortgage foreclosure complaint in the circuit court relating to a portion of the premises, alleging an outstanding indebtedness of approximately $922,000. On April 28, 2015, Keporos filed a motion with this court to stay enforcement of the circuit court's amended final order dated April 2, 2015, pending appeal and for waiver of bond or approval of another form of security. Honda City opposed the motion, arguing that "Keporos'

¶ 13 ANALYSIS

¶ 14 Honda City's motion was filed pursuant to section 2-619.1 of the Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2014). Section 2-619.1 allows a party to file a motion combining a section 2-619 motion with a section 2-615 motion. *Id*. Honda City moved (a) pursuant to section 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2014)) for judgment on the pleadings in its favor on Count I (declaratory judgment) of Keporos' complaint, and (b) pursuant to section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2014)) to dismiss Counts II (breach of lease) and III (unjust enrichment) of his complaint.

¶ 15 Under section 2-615(e), a "party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2014). A motion for judgment on the pleadings brought under section 2-615(e) "is proper where the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Bennett v. Chicago Title and Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2008). "When a party moves for judgment on the pleadings pursuant to section 2-615(e), it concedes the truth of the well-pled facts in the respondent's pleadings." *Parkway Bank and Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 442 (2010). "The court deciding the motion must take all reasonable inference from those facts as true, disregard all conclusory allegations and surplusage and construe the evidence strictly against the movant." *Id.*

¶ 16 Under section 2-619(a)(9), a defendant may file a motion for dismissal on the grounds that "the claim asserted against defendant is barred by other affirmative matter avoiding the legal

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father's mortgage lien would be quickly satisfied" by the closing of the sale and characterizing the foreclosure action as an "attempt to delay enforcement of the Judgment." We denied Keporos' motion on May 7, 2015. After Honda City filed an emergency motion with the circuit court to extend the closing date and to compel performance of the amended final order, the parties apparently completed the sale of the premises on June 30, 2015.

effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2014). When ruling on a section 2-619(a) motion, "the court should construe the pleadings and supporting documents in the light most favorable to the nonmoving party." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. "The court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that may be reasonably drawn in plaintiff's favor." *Id.* We review *de novo* an order granting a section 2-615(e) motion for judgment on the pleadings and a section 2-619(a)(9) motion to dismiss. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31; *Bennett*, 404 Ill. App. 3d at 1094.

¶ 17 Keporos contends that the trial court erred in granting Honda City's motion for judgment on the pleadings because his action "raised a genuine issue of fact as to whether the appraisers used an improper method of valuation." According to Keporos, the allegations in his complaint "required the trial court to intervene and ensure that the appraisals used to value the Premises complied with the provisions of the Lease and Illinois law." As discussed below, we reject his argument.

¶ 18 Citing *Chrysler Corp. v. State Property Tax Appeal Board*, 69 Ill. App. 3d 207 (1979), and *Board of Education of Meridian Community Unit School Dist. No. 223 v. Illinois Property Tax Appeal Board*, 2011 IL App (2d) 100068, Keporos initially asserts that "Illinois courts will intervene when confronted with the use of an improper method of valuation in an appraisal to establish fair market value." His reliance on *Chrysler* and *Meridian* – cases involving appraisals in property tax appeals – is misplaced. The property tax appeal process is governed by legislative and administrative enactments, not by private contract. The valuation methodologies employed by the appraisers in the instant case are not inconsistent with the agreement negotiated by the parties and memorialized in their lease. Furthermore, the procedures utilized in a property

tax appeal expressly provide for the submission of appraisals and the evaluation of such appraisals by governmental bodies. See, *e.g.*, 86 Ill. Admin. Code 1910.65 (1997). Conversely, the lease between Keporos and Honda City does not expressly contemplate any third-party substantive review of the valuation methodologies employed by the three appraisers; rather, the purchase price is calculated by averaging the three valuations. Finally, the valuation of property for tax assessment purposes raises legal and policy concerns that are not at issue in this private dispute, *e.g.*, "the strong public interest in treating taxpayers in a uniform manner." *Chrysler*, 69 Ill. App. 3d at 214.

¶ 19 Keporos further contends that the failure to consider the lease or the income approach in preparing an appraisal "is a valid basis to contest and seek to invalidate the same." However, the cases he cited for this proposition neither mandate use of the income approach nor condemn the use of other valuation methodologies. See, *e.g.*, *Department of Transportation v. Drury Displays, Inc.*, 327 Ill. App. 3d 881, 885 (2002).

¶ 20 Although Keporos asserts that the Renzi and RCUSA Appraisals "fail to consider the added value of the Lease and use the Income Approach to determine the fair market value of the Premises" we note that both appraisals expressly reference the income approach. The Renzi Appraisal stated, in part:

> "The Cost, Sales Comparison, and Income Capitalization Approaches to Value were examined for their appropriateness. Although considered, the Income Capitalization Approaches to Value was not presented herein it [*sic*] does not typically reflect the actions of buyers and sellers in the marketplace. In this instance, only the Cost and Sales Comparison Approach to Value were considered relevant."

The RCUSA Appraisal stated that "[a]n income approach was not applied as while the subject could generate an income stream, the most probable buyer is an owner-occupant." In a discussion of "Hypothetical Conditions," the appraisal further provided, in part:

> "[A]s the subject will become an owner-occupied property, we have valued the subject on a fee simple basis and have not performed the income approach, as auto dealerships facilities [*sic*] are typically owner-occupied. After a thorough search of the market, very few non-similar lease comparables were discovered, further validating the primary owner user set-up of automobile dealerships in the local marketplace. As a result, we have not analyzed the in-place lease for the subject in the valuation of the property. The valuation of auto dealerships is primarily based on the market and cost approaches."

Keporos contends that the lease "does not direct or permit the appraisers to hypothetically consider circumstances contrary to the property type or current ownership or to exclude the Lease or Income Approach in determining the fair market value of the Premises." The lease, however, is silent as to the specific methodologies to be employed by the appraisers. As the lease did not impose any requirements or parameters on the appraisers, we reject Keporos' contention that his "well-pleaded facts alleged an actual controversy between the parties that raised a genuine material factual dispute."

¶ 21 Keporos also contends that "[t]he trial court erred by ruling that Illinois law does not require the appraisers to consider the lease, option to renew and the Income Approach to determine the fair market value of the Premises." We observe that the Honda City lease set forth a clear and relatively simple process for determining the fair market value of the premises, and the parties complied with the process. In fact, the lease contained a built-in mechanism for

addressing inconsistencies between the valuations by the parties' respective appraisers: the selection of the third appraiser and the averaging of the three appraisals.

¶ 22 As to the particular valuation methodologies employed by the three appraisers, Illinois courts have consistently held that "appraisers have wide discretion as to the methods and procedures they may follow in determining values." *Board of Education of the City of Chicago v. Gorenstein*, 179 Ill. App. 3d 388, 394 (1989). See also *Chicago Title and Trust Co. v. Northwestern University*, 36 Ill. App. 3d 165, 168 (1976) (providing that "where appraisers have been properly appointed and where their methods have not been limited by the governing leases, appraisers have wide discretion as to their methods of procedure"). "As long as the appraisers act honestly and in good faith, they have wide discretion with respect to their methods of procedure and the sources of information they use to arrive at the value they assign." *In re Estate of Lambrecht*, 375 Ill. App. 3d 865, 873 (2007). "Their conclusions, in the absence of fraud or mistake, will be binding upon the parties." *Sebree v. Board of Education*, 254 Ill. 438, 446 (1912). " 'The mere fact that one or more parties to an appraisal disavows or bewails its results does not invalidate or nullify the good-faith conclusions of the appraiser.' " *Lambrecht*, 375 Ill. App. 3d at 873, citing *Superior Investment & Development Corp. v. Devine*, 244 Ill. App. 3d 759, 771 (1993).

¶ 23 Keporos contends that the facts of *Napleton v. Ray Buick, Inc.*, 302 Ill. App. 3d 191 (1998) are "almost identical" to the facts herein. The parties in *Napleton* disagreed regarding the value of the property that was the subject of the purchase option in their lease agreement. *Id.* at 195. The appellate court affirmed an order declaring that the purchase price "must take into account the ground lease and all other encumbrances on the property." *Id.* Although *Napleton* initially appears similar to this matter, the lease provisions at issue in the two cases differ

significantly. For example, the *Napleton* lease defined the "Demised Premises" – the subject of the purchase option – as "[t]he Land together with the rights, privileges and easements thereunto belonging or in anywise thereunto appertaining." (Internal quotation marks omitted). *Id.* at 193. The *Napleton* court opined that "[t]his language suggests that any encumbrance to the property would be considered part of the 'Demised Premises.' " *Id.* at 202. Conversely, the "Premises" in the Honda City lease is defined as the land and "[a]ll buildings, structures and improvements now or hereafter erected on such land prior to the commencement of or during the Lease, and all fixtures, equipment and other property (excepting Tenant Equipment) now or hereinafter installed therein, either prior to the commencement of or during the Lease ***." This definition does not state or suggest that encumbrances are part of the premises.

¶ 24 The *Napleton* lease also included the following provision:

> "*Section 4.* If the Lessee shall acquire and become the owner of the fee simple title and estate in and to the Land and the premises leased and let to Lessee pursuant to the provisions of this Lease, there shall be no merger of the leasehold estate in and with the fee simple title and this Lease and the leasehold created hereby shall continue in full force and effect until Lessee shall have filed for record in the Office of the Recorder of Deeds a written instrument duly executed by Lessee, reciting that Lessee has acquired the fee simple title in and to the Land and the premises leased and let pursuant to this Lease, and declaring that Lessee has elected that the leasehold estate created by this Lease be and the same is, effective upon the filing of such written instrument, merged in the fee simple title to the Land and that this Lease is thereupon null and void and of no further force or effect." (Internal quotation marks omitted.) *Id.* at 194-95.

Based on the foregoing language, the *Napleton* court observed that "the contract specifically states that the lease shall continue after the purchase." *Id.* at 198. Noting that the contract "specifically stated that merger would not apply," the court "reject[ed] defendant's assertion that the doctrine must apply whenever a tenant exercises an option to purchase." *Id.* at 200. Unlike in *Napleton*, the Honda City lease does not include any provision specifically stating that merger would not apply. Furthermore, based on our review of the lease, we reject Keporos' contention that the "trial court improperly relied solely on the absence of a clause precluding merger and ignored the parties' actual intent to include the Lease ***." See, *e.g.*, *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007) (noting that the language of a contract is the best indication of the parties' intent). Finally, we decline to rely on *TCC Enterprises v. Estate of Erny*, 149 Ariz. 257 (Ariz. Ct. App. 1986), and *Kyle v. J.A. Fulmer Trust*, 2008 WL 5156306 (Tenn. Ct. App. Dec. 9, 2008), as we are urged by Keporos. *TCC* and *Kyle* are factually distinguishable and, as cases from foreign jurisdictions, "are not precedential or binding on this court." *In re A.C.*, 2016 IL App (1st) 153047, ¶ 47.

¶ 25 Keporos further asserts that the "[t]he trial court erred by ruling that Honda City properly exercised the Purchase Option." He contends that the purchase option in the Honda City lease "is not fully exercised until a final purchase price has been properly established by appraisal of the fair market value of the Premises in accordance with the conditions of the Purchase Option." According to Keporos, "[i]f the Renzi and RCUSA Appraisals do not take the Lease into consideration consistent with Illinois law, then a final purchase price cannot be established and Honda City could not have fully exercised the Purchase Option." For the reasons set forth above, we reject Keporos' contention that the Renzi and RCUSA Appraisals failed to adhere to Illinois law and thus reject his challenge to Honda City's exercise of the purchase option.

¶ 26 Furthermore, the cases cited by Keporos are distinguishable. For example, in *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 218 (2001), the appellate court held, in part, that it was unable to determine as a matter of law whether a lessee properly exercised its purchase option. Per the parties' agreement, the lessee, upon exercising its option, was required to deposit $250,000 into an escrow account; the lessee only deposited $50,000. *Id.* at 217. Because certain correspondence suggested that the escrow documents may have been modified to permit the lessee to deposit a different amount than that specified in the original instrument, the appellate court concluded that it was unclear whether the option was properly exercised and remanded the matter for further proceedings. *Id.* at 226. We share the *Wolfram* court's view that "[t]he lessee must exercise the option in strict conformity with all conditions prescribed and not waived by the lessor." *Id.* at 217. However, Keporos' dissatisfaction with two of the three appraisals is not analogous to the potential deficiency in *Wolfram*, *i.e.*, paying $50,000 into an escrow when a payment of $250,000 was required to exercise the option. Although we recognize that "[t]he failure of the lessee to exercise the option as prescribed is ineffective to create a binding sale contract," (*id.*) the record on appeal indicates that Honda City exercised its purchase option in strict conformity with the lease provisions. While our review is *de novo*, we reach the same conclusion as the circuit court: the "parties entered into a binding and enforceable agreement requiring Defendants to sell Honda City the Property for a purchase price of $3,493,333.33."

¶ 27 Finally, Keporos argues that "[t]he trial court erred by finding that Honda City was not obligated to pay Keporos Rent even though it had not properly exercised the Purchase Option." As discussed above, we hold that the trial court did not err by ruling that Honda City properly exercised the purchase option. When Honda City exercised the option, its relationship with

Keporos shifted from lessee-lessor to vendee-vendor. The Illinois Supreme Court in *Cities Service Oil Co. v. Viering*, 404 Ill. 538 (1950), explained:

> "Where the relation of landlord and tenant exists under the terms of a written lease, containing an option to purchase which the lessee exercises, he is no longer in possession as a tenant, but his possession is that of a vendee. [Citations.] The lessor is not entitled to rent after the option to purchase is exercised unless there is in the lease an express stipulation therefor. [Citation.] The exercise of the option extinguishes the lease and terminates the relation of landlord and tenant. The lease and all its incidents, express and implied, are blotted out of existence, and the relation of vendor and vendee created." *Id*. at 554.

See also *Artful Dodger Pub, Inc. v. Koch*, 230 Ill. App. 3d 806, 811 (1992) (noting that "[a]n option, when accepted and exercised according to its terms, becomes a present contract for the sale of the premises" and "[u]pon exercise of the option, the former relationship of lessor and lessee terminates and the parties occupy the relationship of vendor and vendee").

¶ 28 Honda City complied with the requirements of the purchase option, Keporos "was afforded a fair determination of the price according to the process set forth in the parties' agreement," (*Ruffolo*, 2015 IL App (1st) 140969, ¶ 13) and the lease terminated upon Honda City's timely exercise of the option at that price. See, *e.g.*, *Wendy and William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 28 (noting that "if the lessee properly exercises the option, the lessor loses any rights that it may have had under the lease"). At such time, Honda City was no longer obligated to pay rent to Keporos.

¶ 29 Keporos relies on *Industrial Steel Construction, Inc. v. Mooncotch*, 264 Ill. App. 3d 507, 512 (1994), as support for his contention that he was "deprived of Rent and was damaged by

Honda City's refusal to pay the Rent owed prior to June 30, 2015," the date on which "the parties completed the sale of the Premises." In *Mooncotch*, the purchase option in the parties' lease provided for three appraisals. *Id.* at 509. One of the parties failed to timely comply with the requirement of nominating an appraiser, and the court subsequently appointed an appraiser. *Id.* at 511. The appellate court held that the "option contract was not complete until a sales price was determined. That price was not determined until April 1991 after the court-appointed appraiser completed his appraisal." *Id.* at 513. The appellate court thus concluded that the trial court's decision to grant an abatement for the rent paid after April 1991 was not against the manifest weight of the evidence. *Id.* at 514.

¶ 30 Keporos contends that "[t]he import of the *Mooncotch* decision is that until the appraisals are properly prepared and a purchase price is determined, and in this case prepared consistent with *Napleton*, there is not full compliance with the conditions of the Purchase Option and Honda City's obligation to pay Rent remained." As discussed above, the facts of *Napleton* are distinguishable from those herein. Furthermore, in the instant case, the parties jointly selected a third appraiser in accordance with the purchase option in their lease. The purchase price was determined by the formula in the purchase option, and Honda City exercised its option at such price. As in *Mooncotch*, the lease was terminated and Honda City ceased to owe rent. *Id*. at 512.

¶ 31 We are also not persuaded by Keporos' argument that "Honda City's refusal to pay Rent is a material breach of the lease which prevents it from enforcing the Purchase Option." Although "[a] party who materially breaches a contract cannot take advantage of the terms of the contract which benefit him, nor can he recover damages from the other party to the contract" (*Goldstein v. Lustig*, 154 Ill. App. 3d 595, 599 (1987)), there is no indication that Honda City breached the lease. As Honda City observes, "requiring Honda City to pay Keporos rent during

the period he delayed closing would also have been inequitable because Keporos would have received a windfall for each month he kept the case in litigation." Furthermore, the amended final order entered by the circuit court on April 2, 2015, directed Honda City to pay Keporos the legal rate of interest on the purchase price from August 1, 2014, through the closing date. See, *e.g.*, *Meeker v. Gray*, 142 Ill. App. 3d 717, 726-27 (1986) (noting that a "vendor is entitled to interest at the legal rate on the unpaid purchase balance from the vendee in possession even though the vendor has failed to deliver the deed as required" because a "vendee should not enjoy beneficial use of the premises and the purchase money without compensating the vendor for either").

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.