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2012 IL App (3d) 120022-U

Order filed December 18, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

FARMERS AND MERCHANTS STATE)	Appeal from the Circuit Court
BANK OF BUSHNELL, as Trustee of the)	of the 9th Judicial Circuit,
Hulett Land Trust,)	McDonough County, Illinois,
)	
Plaintiff-Appellee,)	Appeal No. 3-12-0022
)	Circuit No. 10-LM-107
v.)	
)	Honorable
HENRY A. HULETT and ZELMA HULETT,)	Richard H. Gambrell,
)	Judge, Presiding.
Defendants-Appellants.)	
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Summary judgment in favor of a trustee in a forcible entry and detainer action, brought against a trust beneficiary who had an oral agreement with a prior trustee for the lease of trust property, was affirmed on appeal because the lease was at most a year-to-year tenancy, and the undisputed facts established that the beneficiary was served with the appropriate statutory notice of termination.
- ¶ 2 The plaintiff, Farmers and Merchants State Bank of Bushnell (the Bank), as trustee of the Hulett Land Trust, brought a forcible entry and detainer action against the trust's income

beneficiary, the defendant, Henry A. Hulett, and his spouse, the defendant, Zelma Hulett, seeking to remove them from trust property. The trial court granted summary judgment in favor of the Bank, and the Hulett's appealed.

¶ 3

FACTS

¶ 4 The Bank, as the trustee of the Hulett Land Trust (the trust), brought an action in forcible entry and detainer, seeking to remove the Hulett's from their residence (the house). The complaint alleged that the Bank was entitled to the premises, which included the house, and it had served a 30-day notice of termination upon the Hulett's in accordance with section 9-207 of the Code of Civil Procedure (the Code) (735 ILCS 5/9-207 (West 2010)), but the Hulett's failed to vacate the premises. The Hulett's answered, raising the affirmative defense that they had an agreement with the prior trustee, Dan Cortelyou, that Henry could live in the house for the remainder of Henry's life. In response, the Bank served the Hulett's with a 60-day amended notice of termination pursuant to section 9-205 of the Code (735 ILCS 5/9-205 (West 2010)), which is the provision for notice of termination of a year-to-year tenancy. The Hulett's again refused to vacate the premises. The Bank filed an amended complaint in forcible entry and detainer, and then it moved for summary judgment.

¶ 5 The record before the trial court established that the subject property was transferred to the trust on October 4, 2004, by an independent executor's deed, pursuant to the will of Ruth M. Havens, who passed away in 2002. Ruth's will named Dale Havens and Dan Cortelyou as co-trustees of the trust. However, on November 21, 2002, Dale resigned as co-trustee, and Cortelyou resigned as the remaining trustee on September 14, 2007. The will named the Bank as the successor trustee.

¶ 6 During his lifetime, Henry was the sole beneficiary of the trust. Upon Henry's death, Henry's children continued as the beneficiaries, and the trust was to be distributed to the beneficiaries at the end of the longest period allowed by law. The purpose of the trust was to distribute the annual income to the beneficiary, less the amount necessary for effective management of the trust.

¶ 7 Both Hulett's stated in their discovery depositions that Cortelyou told them that they could live in the house on the subject property as long as Henry was alive. There was no written agreement concerning the Hulett's residing in the house.

¶ 8 The Bank's motion for summary judgment was granted by the trial court. The Hulett's' posttrial motion was denied, and the Hulett's appealed.

¶ 9 ANALYSIS

¶ 10 The Hulett's argue that the Bank was not entitled to judgment as a matter of law because the Bank, as the trustee, had a duty to deal fairly with Henry, the sole beneficiary, including a duty to not file suit against him in breach of an understanding reached between Henry and the predecessor trustee. The Hulett's contend that filing suit in contravention of a promise with respect to the trust administration violated the Bank's duty of loyalty and fair dealing. We review the grant of summary judgment *de novo*. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32 (2004).

¶ 11 A trustee owes a fiduciary duty to a trust's beneficiaries and has an obligation to carry out the trust according to its terms and to act with the highest degrees of fidelity and good faith. *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605 (2007); see also Restatement (Third) of Trusts § 78 (2003). However, while Henry was the sole beneficiary

during his lifetime, there were other beneficiaries to which the Bank owed a fiduciary duty, and it owed a duty to administer the trust in the interest of all the beneficiaries. See *Carter v. Carter*, 2012 Ill. App. LEXIS 84 (2012) (A trustee has a duty to deal impartially with all beneficiaries and to protect their interests).

¶ 12 It is undisputed that Henry was not granted possession of the premises under the terms of the will or the trust. The basis for the Hulett's right of possession is the oral agreement with the prior trustee. The Bank argues that, accepting that there was an oral agreement between the prior trustee and Henry that Henry could live on the premises for the rest of his life, the Bank was still entitled to summary judgment. The Bank contends that, absent a written agreement, the Hulett's tenancy on the premises was limited by the statute of frauds and was at most a tenancy from year-to-year, and the Bank gave the proper statutory notice of termination.

¶ 13 In order to satisfy the statute of frauds, a lease for a term of more than one year must be in writing, must be signed, and must contain the names of the parties, a description of the property, the amount of rent, and the term of the lease. 740 ILCS 80/1 (West 2008); *Daehler v. Oggoian*, 72 Ill. App. 3d 360 (1979). If an oral lease is for more than one year, and there is no applicable exception from the statute of frauds, the lease is unenforceable and is, at most, limited to a tenancy from year-to-year. *Rhodes v. Sigler*, 27 Ill. App. 3d 1 (1975). Since the Hulett's argue that they are entitled to possession based upon a promise made by the prior trustee, the Bank contends that the Hulett's are arguing promissory estoppel.

¶ 14 The elements necessary to give rise to promissory estoppel are: (1) a promise; (2) reasonable and justifiable reliance on the promise; (3) the promise was such that it was reasonable to rely on it; and, (4) the promise was relied upon to the promisee's detriment or

injury. *Dickens v. Quincy College Corp.*, 245 Ill. App. 3d 1055, 1062 (1993). Promissory estoppel, however, is not an exception to the statute of frauds, except in limited circumstances that are not applicable here. *First National Bank v. McBride Chevrolet*, 267 Ill. App. 3d 367, 373 (1994); see also *Mariani v. School Directors of Dist. 40*, 154 Ill. App. 3d 404 (1987).

¶ 15 A related doctrine, equitable estoppel, can operate as a defense to the statute of frauds. *Dickens*, 245 Ill. App. 3d at 1062. Equitable estoppel requires a misrepresentation or concealment of material facts. *Id.* The Huletts argue that Cortelyou should have known, or did know, that the oral lease was void under the statute of frauds. Whether Cortelyou knew or should have known the legal effect of the oral agreement is not evidence that he misrepresented or concealed a material fact. A mistake of law is not a basis for the application of equitable estoppel. *Denton Enterprises, Inc. v. Illinois State Toll Highway Authority*, 77 Ill. App. 3d 495 (1979). Since there was no applicable exception to the statute of frauds, the lease for Henry's lifetime was unenforceable and limited to, at most, a year-to-year tenancy.

¶ 16 Next, the Huletts contend that the oral agreement was not, in fact, a lease, so the forcible entry and detainer statute was not applicable. Forcible entry proceedings are statutory proceedings to determine right of possession. *People ex rel. Department of Transportation v. Walliser*, 258 Ill. App. 3d 782 (1994). The Code of Civil Procedure governs forcible entry and detainer proceedings, and provides that matters "not germane" to the proceeding shall not be introduced. 735 ILCS 5/9-106 (West 2010). Claims challenging the enforceability of an agreement upon which a party bases his right of possession are generally germane to the issue of possession. *Walliser*, 258 Ill. App. 3d at 788.

¶ 17 An agreement to take possession of a house by a trust income beneficiary for his lifetime,

in lieu of collecting the rental income, is an oral lease of land. See *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281 (2010) (the essential elements of a lease are: a description of the property, the term of the lease, the amount of rent, and the time and manner of payment). As stated above, an oral lease for more than one year is unenforceable under the statute of frauds, so the Hulettts had, at most, a tenancy from year-to-year.

¶ 18 Finally, the Hulettts argue that, even if the forcible detainer statute and the statute of frauds were properly applied, there was a genuine issue of material fact precluding summary judgment because the date of the Hulettts' occupancy was not established. Specifically, the Hulettts argue that the start date of Henry's possession had not been established, so it cannot be determined if the 60-days' notice was given at the correct time.

¶ 19 Section 205 of the forcible entry and detainer statute provides that 60-days' notice is sufficient to terminate a tenancy from year-to-year, and that notice may be given at any time within four months preceding the last 60 days of the year. 735 ILCS 5/9-205 (West 2010). The amended notice of termination providing the 60-days' notice was dated March 14, 2011.

Cortelyou testified in his deposition that the Hulettts moved onto the premises in May or June , 2004. Zelma's testimony was consistent in that she recalled that they moved onto the premises in the springtime. It appears that there is no question of fact that the Hulettts were properly given 60-days' notice under the statute. Since there are no disputed questions of material fact, we affirm the grant of summary judgement in favor of the Bank.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of McDonough County is affirmed.

¶ 22 Affirmed.