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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RONNIE LEETH, ET AL
Plaintiff

Case No: CV-17-882863

Judge: SHANNON M GALLAGHER

PAMELA ASHBEE, ET AL
Defendant

JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

JUDGMENT ENTRY. O.S.J.

COURT COST ASSESSED AS DIRECTED.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

2018 SEP 18 A 11:31
CLERK OF COURTS
CUYAHOGA COUNTY

FILED

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RONNIE LEETH et. al.,

Plaintiff,

vs.

PAMELA ASHBEE et. al.,

Defendant.

) **Case No. CV-17-882863**

) **Judge: SHANNON M. GALLAGHER**

) **JUDGMENT ENTRY**

Shannon M. Gallagher, J.:

This matter came before the court for a bench trial on July 26, 2018. Plaintiffs appeared through counsel. No appearances on behalf of Defendants Pamela Ashbee, Mirjana Ashbee, J&C Homebuyers, LLC, Yovonne Graham, and Malicke Moore. Plaintiff Ronnie Leeth was sworn and offered testimony and evidence. The court enters judgment against Defendant Pamela Ashbee as to plaintiffs' claims for unjust enrichment, fraud, and malice. The court enters judgment against Defendant Mirjana Ashbee as to Plaintiffs' claim for unjust enrichment. Plaintiffs' claims for declaratory judgment, breach of contract, promissory estoppel, and conversion fail as a matter of law. Plaintiffs have failed to prove by a preponderance of evidence that Defendants J&C Homebuyers, LLC, KTC Properties, LLC, Yovonne Graham, and Malick Moore are liable for any claim asserted in Plaintiffs' complaint.

I. PROCEDURAL HISTORY

This matter was initially filed on 5/5/2015 as Case No. CV-5-845171. On 11/21/2016, Plaintiffs' complaint was dismissed without prejudice for failure to prosecute. Plaintiffs re-filed their complaint on 7/11/2017. On 9/18/2017, the court granted Defendant Competitive Title Agency, Inc.'s motion to dismiss.

Plaintiffs have perfected service on all remaining Defendants. Defendants have failed to answer or otherwise respond to Plaintiffs' complaint. On 10/11/2017, Plaintiffs filed a motion for default judgment and the case proceeded to a default hearing on 11/9/2017. Plaintiffs failed to provide sufficient documentation in support of default and the default hearing was continued until 12/13/2017. On 12/13/2017, Plaintiffs failed to appear and the court denied Plaintiffs' motion for default judgment. The case proceeded to a bench trial on 7/26/2018 on all claims asserted in Plaintiffs' complaint. Plaintiff Leeth was the only witness called to testify at trial.

II. FINDINGS OF FACTS

Plaintiff Othello House Housing Corporation, Inc. is a not-for-profit corporation located in Cuyahoga County, Ohio. Plaintiff Ronnie Leeth is the owner and operator of Plaintiff Othello House. Plaintiff Leeth is a military veteran and is legally blind.

Mr. Leeth testified that he was looking to purchase a property for a group home. He worked through a broker, Defendant Pamela Ashbee, and found a house located at 3317 West 32nd Street, Cleveland. Ms. Ashbee represented that Mr. Leeth could purchase the Property directly from her as the seller for \$13,000.

On or about February 20, 2014, Plaintiffs executed what was represented to him by Defendant Pamela Ashbee as a valid purchase agreement for the Property. In reality, the document is an Agreement to Lease with Option to Purchase for real property located at 3317 West 32nd Street, Cleveland, Ohio. (Exhibit A). Pamela Ashbee represented that she was the rightful owner of the Property and had authority to sell the Property. In reliance upon Pamela Ashbee's representation, Plaintiff Leeth transferred \$13,000 from his USAA account to Defendant Mirjana Ashbee, Pamela's mother.

Mr. Leeth testified that he later learned that Pamela Ashbee had no right to sell the Property and no ownership interest in the Property. The evidence presented at trial establishes the deed history of this Property.

On April 14, 2014, the Property was transferred by Defendant KTC Properties, LLC to Defendant J&C for \$24,000 pursuant to a quitclaim deed. (Exhibit B). Mr. Leeth testified that he later learned that the Property was originally owned by KTC Properties and transferred to J&C.

On or about April 21, 2014, the Property was transferred to Plaintiff Othello House by Defendant J&C for \$8,000 pursuant to a quitclaim deed. (Exhibit C). Mr. Leeth testified that he went to Competitive Title with Pamela Ashbee on April 18, 2014 to sign this deed.

Then, on May 20, 2014, the Property was transferred back to J&C from Othello House for \$49,000 pursuant to a quitclaim deed. (Exhibit F). Mr. Leeth testified that he did not sign the deed dated May 20, 2014.

Finally, on June 10, 2014, the Property was transferred from J&C to Yovonne Graham and Malick Moore for \$10,000 pursuant to a quitclaim deed. Defendants Graham and Moore are listed as the current owners of the Property.

Mr. Leeth took possession of the Property on February 20, 2014. He hired a contractor and conducted extensive renovations on the Property after he believed it had been transferred to him by Pamela Ashbee. While renovating the Property, Mr. Leeth made four purchases at Home Depot in the amount of \$1,993.34, \$317.56, \$530.16, and \$504.82. (Exhibits J1-J4). Mr. Leeth paid for an alarm system from Monitronics, and continued being billed for service through March 2015. Plaintiffs' total bill was \$344.67. (Exhibit K). Mr. Leeth hired TMT Contractors to rehab the Property and paid \$18,500 for that work. (Exhibit L). Mr. Leeth set up internet, phone, and cable services through Dish Network. (Exhibit O). However, he did not provide evidence that he had

made any payments to Dish Network after he lost possession of the Property. Mr. Leeth also purchased appliances, but testified that he was able to recover those appliances from the new owners of the Property. (Exhibit N).

Sometime in May 2014, Defendants Graham and Moore began residing at the Property and prevented Plaintiffs from entering the Property or completing further renovations. Defendants Graham and Moore did allow Mr. Leeth to remove his appliances from the Property. Mr. Leeth later learned of the deed dated June 10, 2014, transferring the Property to Graham and Moore.

Mr. Leeth testified that had he been able to establish the Property as a group home, he would have received \$974 per client per month. However, Mr. Leeth did not provide documentation in support of this claim for lost profits.

III. CONCLUSIONS OF LAW

A. DECLARATORY JUDGMENT

Plaintiffs' allege in their complaint that Defendant Pamela Ashbee coerced Plaintiff Leeth into signing a release agreement. Plaintiffs asserted a claim for declaratory judgment, seeking an order that the release agreement is not enforceable. Plaintiff Leeth did not provide any evidence or testimony at trial related to the release agreement. Therefore, the court finds that Plaintiffs' claim for declaratory judgment fails.

B. BREACH OF CONTRACT.

Plaintiff alleges a claim for breach of contract against Defendant Pamela Ashbee. Mr. Leeth's testimony at trial supports a finding that the agreement signed by Mr. Leeth is void ab initio due to fraud in the factum.

When a party to a contract is deceived as to the true character and effect of the instrument signed, it is termed "fraud in the factum." *Imperial Aluminum, Inc. v. Persuric*, 8th Dist. No.

42674, 1981 Ohio App. LEXIS 10511 (Aug. 6, 1981). Fraud in the factum voids a contract ab initio when “an intentional act or misrepresentation of one party precludes a meeting of the minds concerning the nature or character of the purported agreement.” *Haller v. Borrer Corp.* 50 Ohio St. 3d 10, 13, 552 N.E.2d 207, rehearing denied (1990), 51 Ohio St.3d 704, 555 N.E.2d 322 (1990).

Mr. Leeth testified that Pamela Ashbee misrepresented the terms of the written contract at issue. He thought he was agreeing to a purchase agreement with the seller, Pamela Ashbee. In reality, Pamela obtained Mr. Leeth’s signature on an Agreement to Lease with Option to Purchase. (Exhibit A). According to the deeds submitted into evidence, Pamela was not the title owner of the Property and did not have authority to act as the seller. There was no meeting of the minds and the Agreement to Lease with Option to Purchase is void ab initio.

Plaintiffs failed to provide evidence of a contract with any other defendant, and Plaintiffs’ breach of contract claim is dismissed as to Defendants Mirjana Ashbee, J&C Homebuyers, LLC, aka J&C.Homeowners, LLC, KTC Properties, LLC, Yovonne Graham, and Malicke Moore.

C. PROMISSORY ESTOPPEL AND UNJUST ENRICHMENT

To recover for Promissory Estoppel, Plaintiffs must demonstrate a clear and unambiguous promise, reliance on the promise, that the reliance is reasonable and foreseeable, and that Plaintiff was injured by his reliance. *Militiev v. McGee*, 8th Dist. Cuyahoga 94779, 2010-Ohio-6481.

To recover for Unjust Enrichment, Plaintiffs must demonstrate that it conferred a benefit upon the Defendant, that the Defendant knew of the benefit; and that, under the circumstances, it would be unjust to allow the Defendant to retain the benefit without payment. *Hummel v. Hummel*, 133 Ohio St. 520, 14 N.E.2d 923, (1938).

Promissory estoppel and unjust enrichment are alternative remedies to breach of contract. As Plaintiffs cannot recover on their breach of contract claim based upon the court's finding that the contract was void ab initio, Plaintiffs are entitled to recovery under a theory of unjust enrichment.

Plaintiffs conferred a benefit upon Defendants Pamela and Mirjana Ashbee by transferring \$13,000 to Mirjana's bank account on Pamela's behalf. The court finds that Pamela and Mirjana Ashbee have been unjustly enriched in the amount of \$13,000. Pamela and Mirjana Ashbee are jointly and severally liable to Plaintiffs in the amount of \$13,000.

Plaintiffs failed to prove a claim for promissory estoppel or unjust enrichment against any other defendants.

D. FRAUD AND MALICE

In order to prove a claim for fraud, Plaintiffs must establish: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance. *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St. 3d 54, 55, 514 N.E.2d 709 (1987).

Plaintiffs have demonstrated that Defendant Pamela Ashbee is liable for fraud. Mr. Leeth testified that Pamela Ashbee represented that she was the owner of the Property and had authority to sell the Property to Plaintiffs, even though she knew that she was not the title holder. Plaintiffs relied upon this representation and invested \$22,190.55 for repairs and renovations to the Property. Accordingly, Plaintiffs are entitled to judgment against Defendant Pamela Ashbee on their claim for fraud and are awarded \$22,190.55.

For Plaintiffs to recover punitive damages for Malice, Plaintiffs must prove that the acts of defendants demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate. R.C. 2315.21(C)(1). "Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty*, 512 N.E.2d 1174, 32 Ohio St. 3d 334 (1987).

Based upon the evidence presented, Defendant Pamela Ashbee's conduct in taking advantage of Plaintiff Leeth's blindness rises to the level of malice. Further, as of the time of trial herein, and based on the evidence and testimony of Plaintiff Leeth, he has continued to pay both principal and 12.5 % interest on the loan for the purchase and rehabilitation of the property financed through USAA. The fact that Plaintiff Leeth as of the time of trial has continued to pay the USAA loan, a loan which is only available to Veterans and their families, all as a result of being fraudulently deceived by Defendants shocks the conscience and the Court awards Plaintiffs \$10,000 in punitive damages against Defendant Pamela Ashbee.

Plaintiffs failed to provide evidence that they relied upon misrepresentations made by any other defendant, and plaintiffs' fraud and malice claims are dismissed as to Defendants Mirjana Ashbee, J&C Homebuyers, LLC; aka J&C Homeowners, LLC, KTC Properties, LLC, Yovonne Graham, and Malicke Moore.

E. CONVERSION

To recover for conversion, Plaintiff must demonstrate its ownership or right to possession of the property at the time of the conversion, Defendant's conversion by a wrongful act or disposition

of Plaintiffs property rights, and Plaintiff damages. *Kostyo v. Kaminski*, 9th Dist. Lorain 12CA010266, 2013-Ohio-3188. Plaintiffs have failed to prove by a preponderance of evidence that they are entitled to judgment on their conversion claim.

IV. JUDGMENT AND DAMAGES

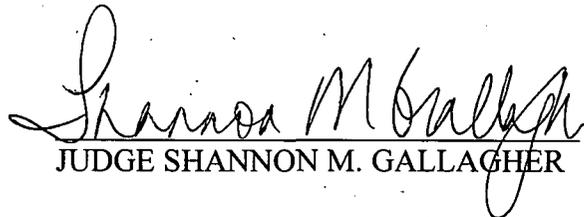
The court finds that upon its review of the testimony and evidence at trial, Plaintiffs are entitled to judgment against Defendant Pamela Ashbee as to Plaintiffs' claims for breach of contract, fraud, and malice and against Defendant Mirjana Ashbee for unjust enrichment.

Plaintiffs are awarded: \$13,000 in damages against Defendants Pamela and Mirjana Ashbee, jointly and severally, arising from unjust enrichment; \$22,190.55 in damages against Defendant Pamela Ashbee arising from fraud; \$10,000 in punitive damages against Defendant Pamela Ashbee; and statutory interest accruing from the date of judgment. Plaintiffs have failed to present evidence to support their claim for attorney's fees. Costs to the Defendants Pamela and Mirjana Ashbee.

Plaintiffs' claims for declaratory judgment, promissory estoppel, and conversion fail as a matter of law and are dismissed with prejudice. Plaintiffs' claims against Defendants J&C Homebuyers, LLC aka J&C Homeowners, LLC; KTC Properties, LLC; Yovonne Graham; and Malicke Moore fail as a matter of law and are dismissed with prejudice.

IT IS SO ORDERED.

Date: September 17, 2018


JUDGE SHANNON M. GALLAGHER