

Town of Hyde Park Justice Court

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John M. Kennedy
Town Justice

David L. Steinberg
Town Justice

October 21, 2008

Kevin R. Greco, Esq.
Attorney at Law
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Poughkeepsie, New York 12601

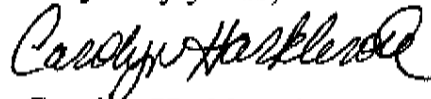
Law Office of Jeff Feigelson
303 North Tower Hill Road
Wassaic, New York 12592

Re: Chauncey Maggiacomo vs. Jon T. Fells
Index #08-06-0205

Gentlemen:

Please find attached the Decision and Order regarding the above matter signed by Judge David L. Steinberg.

Very truly yours,



Carolyn Harklerode
Justice Clerk

/ch
Encls.

STATE OF NEW YORK : COUNTY OF DUTCHESS
JUSTICE COURT : TOWN OF HYDE PARK

-----X
CHAUNCEY MAGGIACOMO

Petitioner

DECISION &
ORDER

-against-

08-06-0205

JON T. FELLS

Respondent

-----X
This is a summary proceeding brought by petitioner Chauncey Maggiacomo ("Maggiacomo") against respondent Jon T. Fells ("Fells") to recover possession of real property and for non-payment of rent. Petitioner seeks a judgment and warrant awarding possession of the premises described as 61 East Dorsey Lane located in the Town of Hyde Park, New York. A hearing was held on July 31, 2008 at which both parties testified and called other witnesses. Documents and photographs were also received in evidence. The Court has reviewed the testimony and evidence, as well as the parties' post-hearing memoranda, and finds and determines as follows:

Facts

It is not in dispute that the parties were longtime friends for at least 20 years. Fells described Maggiacomo as a close friend and "father figure" who always went out of his way to help people. He had met petitioner when he worked at Maggiacomo's shop in Poughkeepsie. They would talk once or twice weekly and sometime had dinner together at Maggiacomo's house. Fells attended Maggiacomo's wedding.

Prior to February, 2008, Fells owned the 27 acre property at 61 East Dorsey Lane

since about 1998, or for approximately ten years, and resided there as his principal residence. The property consisted of a house with two residential units and a small cottage with one residential unit, as well as the acreage. Fells resided in the cottage which was also his office. The two units in the house were rented to tenants. Sometime in late 2007, Fells approached Maggiacomo about his financial troubles and impending foreclosure proceeding. The property was scheduled to be sold in a foreclosure sale on January 2, 2008. Fells, through his former attorney, suggested that Maggiacomo purchase the property at a short sale by which the mortgagee would accept less than the principal balance due on the mortgage. The terms between Maggiacomo, Fells, and the mortgagee were negotiated, but never agreed to or finalized in writing. Fells' former attorney made a written offer for the short sale which was presented in December, 2007 to the mortgagee. The written offer was signed by Maggiacomo and Fells.

Prior to the foreclosure sale on January 2nd, Fells contends that Maggiacomo and he entered into an agreement whereby, among other things, 1) Fells would continue to collect rent from the existing tenants, 2) Fells would continue to maintain the property; 3) Fells would pay Maggiacomo an amount each month equal to the carrying costs relating to the property, including the real estate taxes, insurance, estimated maintenance costs and debt service payment that Maggiacomo would incur on the mortgage he would obtain to purchase the property; 4) Maggiacomo would hold legal title to the property, but that Fells would hold an equitable interest in the property; 5) Maggiacomo would hold legal title to the property for up to two years at which time Maggiacomo would sell the property to either Fells or a third party, and Maggiacomo would receive an amount equal to all of his out of pocket costs plus an additional \$100,000 profit.

The purported agreement between Fells and Maggiacomo was never reduced to writing.

On or about January 2, 2008, Maggiacomo was the winning bidder at the foreclosure auction, and received a referee's deed on or about February 2, 2008. It is undisputed that Fells remained on the property after the foreclosure sale. Maggiacomo testified that after purchasing the property, he did not notify the tenants that he was the new property owner, and that Fells continued to collect rent from the tenants. Both parties testified that Fells was the person who dealt with the tenants and collected the rents.

It is also undisputed that Fells gave Maggiacomo \$2400.00 cash in January, 2008, a month before Maggiacomo had obtained legal title. However, the reasons are disputed between the parties. Maggiacomo said it was rent from Fells consisting of \$1000.00 from the upstairs tenant and \$1400.00 from the downstairs tenant. Fells insisted it was to help pay Maggiacomo's closing costs.

In the next three months, Fells delivered one or more checks to Maggiacomo for \$6000.00 each month. There is no dispute that he paid \$6000.00 in February, 2008, \$6000.00 in March, 2008 (two \$3000.00 checks - Checks #113 and #118 admitted as **Exhibits 9 and Exhibit 8**, respectively) and \$6000.00 in April, 2008 (Check #137 admitted as **Exhibit 10**).

It is undisputed by the parties that the two separate \$3000.00 checks for March, 2008 and the one \$6000.00 check for April, 2008 all contained the following language written by Fells in the memo portion of checks, "for the repurchase of 61 E. Dorsey property as agreed." Maggiacomo testified that he crossed out this "repurchase" language and that Fells authorized him to do so. On the April, 2008 check (**Exhibit 10**),

Maggiacomo wrote next to the crossed-out memo section, "for rent." In addition, on the March and April checks, three in number, Maggiacomo added the words "Under Protest" on the back of each check prior to endorsing the check.

Fells testified that he never authorized Maggiacomo to delete the repurchase language or insert the "for rent" language and that he did not know any language was crossed out until late April, 2008. The April, 2008 check for \$6000.00 did not clear because Fells stopped payment with his bank. He testified he did so after Maggiacomo's attorneys threatened him with eviction.

It appears undisputed that two of the three units were rented to third-party tenants for \$1000 rent for each of the residential units in the house for a combined rent of \$2000.00. Fells was to collect the rent for Maggiacomo. Fells resided in the cottage and had equipment for his landscape business on the property. However, Fells moved out in late February, 2008, and found a replacement tenant for the cottage. Notwithstanding, he continued to make the \$6000.00 payments to Maggiacomo in March, 2008 and April, 2008, albeit he subsequently stopped payment on the April, 2008 check. It is conceded that Fells left a good deal of refuse and debris on the property, as well as a truck.

(Photographic Exhibits A, B, C, and D). While his petition, at ¶10, states that "Upon information and belief, the respondent has already vacated the premises," Maggiacomo now contends that Fells never vacated the property. This is conceded by Fells' Answer to the instant summary proceeding which admitted he still occupied the premises. Answer, ¶2

In May, 2008 and June, 2008, Maggiacomo collected \$1000.00 from each of the house tenants for a total of \$2000.00 in monthly rents. He received no money from Fells

in May, 2008, June, 2008, and July, 2008.

It is further undisputed that Fells made certain repairs to the property. On March 3, 2008, he paid a furnace repair bill for \$130.00 to Canfield's Plumbing & Heating to repair the furnace for heat to Apt. 2. in the house (Check #112 – **Exhibit 4**). On February 18 or 19, 2008, he paid \$205.44 to Jones Septic Services to pump out a backed-up septic tank. (Check #106 – **Exhibit 5**). Fells also had significant work done to the property constructing a stone entranceway with two pillars which Maggiacomo never authorized (**Photographic Exhibit 7**). When Maggiacomo discovered this construction project was underway, he insisted that Fells cease work on the stone entranceway.

Fells testified that he was not reimbursed for the above repairs and construction costs because under the Ownership Agreement, he was responsible for paying the costs and expenses. Maggaicomo contends in this proceeding that Fells was to act as a Superintendent of the property and was responsible to plow the driveways, shovel snow from the walkways, make any and all necessary repairs, maintain the grounds, and collect the rents. Maggiacomo did not reimburse the costs and expenses incurred by Fells in what Maggiacomo described was his Superintendent's role on the property.

Roger Vaccai, a real estate broker, testified as a witness called by the petitioner Maggiacomo. He said that he had spoken with Fells in person and by telephone on a number of occasions since January, 2008 about selling the property and that Fells held himself out as the owner of the property. He felt misled by Fells after he found out that someone else owned the property.

On or about June 19, 2008, Maggiacomo commenced the instant summary proceeding against Fells by filing a Notice of Petition and Verified Petition for the Non-

Payment of Rent. In his verified petition, sworn to on June 2, 2008, Maggiacomo states that he entered into a month to month agreement with Fells on or about January 1, 2008 by which Fells hired from Maggiacomo, for dwelling purposes, the subject premises at 61 East Dorsey Lane, Hyde Park, New York 12538 (sic) Petition, ¶2. The petition alleges that Fells agreed to pay Maggiacomo the sum of “seventy-two thousand (\$60,000) Dollars” (sic) per annum in equal monthly installments of six thousand (\$6,000) Dollars in advance on the 1st day of each month for the use and occupation of said premises. Petition, ¶4 The petition further alleges that on June 2, 2008 there was due to Maggiacomo the sum of twenty-four thousand (\$24,000) as rent and late fees for the period from March 1, 2008 to present. Petition, ¶6

At the hearing, Maggiacomo testified that Fells was to pay approximately \$3600.00 per month as rent for a cottage, office and use of the 27 acres of land for his landscape business, and collect \$2400.00 in other rents due Maggaicomo as owner of the property.

In his post-hearing memorandum of law, Maggiacomo requests a warrant of eviction and judgment in the amount of \$18,000 as follows: April rent: \$6,000.00; May rent: \$4,000.00; June rent: \$4,000.00; July rent: \$4,000.00, or in the alternative, Maggiacomo requests if the Court determines that Fells is not responsible for rent collected in April from other tenants, the judgment should be reduced by \$2000.00 for April, and that back rent due by Fells be granted at the rate of \$4,000.00 for the four months of April, 2008 through July, 2008 for a total of \$16,000.00.

Law

It is axiomatic that a residential landlord-tenant relationship is a contractual agreement between a landlord-lessor, who owns property, and a tenant-lessee, who is given the right to exclusively possess the property, or a portion of the property, for a period of time. This contractual agreement, known as a lease, establishing a landlord-tenant relationship can be oral or in writing. It is the landlord's burden in a non-payment proceeding to establish the existence of an agreement to pay the rent demanded, and of proving the landlord-tenant relationship. *402 Nostrand Avenue Corp. v. Smith*, 19 Misc. 3d 44 (App. Term, 2nd Dept. 2008); *615 Nostrand Ave. Corp. v. Roach*, 15 Misc. 3d 832 (App. Term, 2nd Dept., 2006); *G.G.A., Inc. v. Amsterdam Avenue Investor, LLC*, 19 Misc. 3d 1124(A) (Civil Ct., N.Y. Co. 2008)

In order for an oral or written lease to be enforceable, all the essential terms must be agreed upon. *Mur-Mil Caterers, Inc. v. Werner*, 166 A.D.2d 565 (2nd Dept., 1990). These essential terms include the area to be leased, the duration of the lease and the rent to be paid. *Dodgertown Homeowners Assn., Inc. v. City of New York*, 235 A.D.2d 538 (2nd Dept., 1997); *Bernstein v. 1995 Associates*, 185 A.D.2d 160 (1st Dept., 1992). If any of these necessary terms are not agreed upon and are not otherwise objectively apparent, no valid lease exists. *Miller v. City of New York*, 15 N.Y.2d 34 (1964); *Davis v. Dinkins*, 206 A.D.2d 365, 366-67 (2nd Dept., 1994); *Ross v. Mail Order Merchandising, Inc.*, 128 A.D.2d 514 (2nd Dept., 1987); *Nadel v. Mehmood*, 2002 WL 1837877, 2002 N.Y. Slip. Op. 40344 (U) (App. Term, 2nd Dept., 2002). An agreement between two parties that has these attributes is a lease, regardless of what the parties call it. *See, generally*, Scherer, *Residential Landlord-Tenant Law in New York* §2.1-2.2 (2007).

Applying the above legal principles, the Court finds that Maggiacomo has not established that an oral lease existed with Fells. There are simply too many unresolved inconsistencies regarding the amount of rent that he claimed Fells agreed to pay. Maggiacomo has made different claims throughout this proceeding regarding the amount of the monthly rent agreed to with Fells. In his petition, verified on June 2, 2008, he claims that the rent was \$6000.00 per month. He also claimed that as of June 2, 2008, Fells owed him \$24,000.00 as rent and late fees for the period of March 1, 2008 to the present, i.e. June 2, 2008. Petition, ¶6.

During the hearing, he testified that it was \$3600.00 per month for Fell's tenancy with the balance of \$2400.00 due from other tenants. At the same time, he also testified that he only collected \$2000.00 in rents from the other tenants in May and June, 2008. In his post-hearing submission, he contends that, in fact, Fells owes \$4000.00 per month, or \$16,000.00 in non-payment of rent in April, May, June, and July, 2008. Thus, Maggiacomo has not been consistent himself in the amount of monthly rent due pursuant to the lease agreement, and he has failed to carry his burden of proof in establishing this essential term of any lease regarding the amount of rent to be paid.

Further, the duration of the oral lease was never clearly established. The petition alleged an oral agreement whereby Fells promised to pay \$72,000 per annum in monthly installments of \$6000.00. But at the hearing and in subsequent post-hearing filing, Maggiacomo contended that the oral lease agreement was for a month to month tenancy.

Along with these inconsistencies, the Court finds that the totality of circumstances weigh against finding a landlord-tenant relationship existed between the

parties with an agreement as to the amount of rent to be paid. These circumstances include a long friendship between the parties that led Maggiacomo to assist Fells to save the property from foreclosure, the large amount of monthly payments Fells was making to Maggiacomo which appear on their face to be considerably more than fair market value, and the fact that Fells continued to pay for repairs and initiated a construction project on the property out of his own pocket. The totality of these circumstances raise significant questions regarding whether there existed a landlord-tenant relationship between the parties. Clearly, Maggiacomo has not met his burden in this regard.

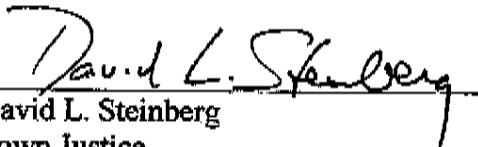
The Court makes no determination as to Fell's claim of equitable ownership or constructive trust in the property. As Fells has repeatedly argued in pre-hearing motions and proceedings, questions of title are not to be decided by a lower court in a summary proceeding to determine the right of possession of the premises and render judgment for rent due. UCJA Section 204 and Practice Commentary by David D. Siegel.

In conclusion, the Court finds that Maggiacomo has failed to prove the existence of an oral lease agreement that established a landlord-tenant relationship with Fells. Accordingly, the petition must be and is hereby dismissed.

The Court commends both counsel for their excellent advocacy in this proceeding, including the submission of post-hearing memoranda of law which were well-researched and highly analytical on behalf of their respective client's positions.

This foregoing shall constitute the Court's Decision and Order.

ENTER,



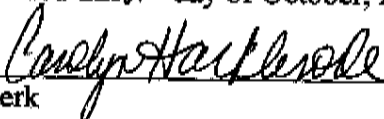
David L. Steinberg
Town Justice

Dated Hyde Park, New York
October 21, 2008

To: Kevin R. Greco, Esq.
Attorney for Petitioner, Chauncey Maggiacomo

Jeff Feigelson, Esq.
Attorney for Respondent, Jon T. Fells

Entered this ^{21st} day of October, 2008



Clerk