

IN THE MUNICIPAL COURT OF MANSFIELD, OHIO

Frederick Lawhorn, *et al.*,) Case No.: 2018 CVG 00114
)
Plaintiffs,) Judge: _____
)
vs.) ANSWER AND COUNTER CLAIM OF
) DEFENDANTS
Gary Fraley, *et al.*,)
)
Defendants.)

Now come Defendants Gregory and Tammy Fraley, by and through counsel for their answer to the second clause of Plaintiff's Complaint hereby provide the following:

1. Defendants deny the allegations set forth in paragraphs 4 and 5 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

2. Plaintiff's Complaint fails against Defendants on the grounds that Plaintiffs prior breach of the agreement relieves Defendants from any further obligation to perform the agreement.

3. Plaintiff's claims fail on the grounds of unclean hands.

4. Plaintiff's claims fail to state a claim upon which relief can be granted.

5. Plaintiffs' claim against the Defendants fail on the grounds that Plaintiffs' fraudulently misrepresented to Defendants that Defendants would be able to purchase the property owned by Plaintiffs pursuant to the terms of the land contract for a total purchase price

of \$152,000.00 free and clear of all encumbrances and that Defendants in reliance upon this contract paid to Plaintiffs approximately \$61,500.00 in payments pursuant to the contract and secured the financing to purchase the home for the remainder amount due under the contract. Upon securing financing Defendants learned that Plaintiffs intentionally and materially misrepresented to Defendants their ability to sell the property at the purchase price set forth in the agreement and then intentionally refused to perform under the contract selling the Defendants the house at the agreed upon price. The actions of the Plaintiffs constitute an intentional and material misrepresentation causing damage to the Defendants in all amounts paid pursuant to the contract plus further amounts expended in securing financing for the purchase of the home entitling the Defendants to punitive or exemplary damages for the intentional and reckless conduct of the Plaintiffs including reasonable attorney's fees the exact amount of which to be determined by the Court.

COUNTER CLAIMS

COUNT ONE

6. On or about August 11, 2014, Plaintiffs and Defendants entered into a Land Installment Contract purchased by Defendants of the property owned by Plaintiffs known generally as 4910 State Route 545, Ashland, Ohio 44805. A true and accurate copy of the Land Installment Contract is attached hereto as Exhibit A.

7. Pursuant to the terms of the contract Defendants paid to Plaintiffs the \$3,000.00 down payment plus additional monthly payments totaling \$58,500.00.

8. Pursuant to the Land Installment Contract Defendants sought and were approved for financing for the purchase of the property in the summer or early fall of 2017. The Defendants sought financing in an amount necessary to pay off the remaining balance of the land contract at the balance being approximately \$90,500.00. As part of their loan financing Defendants learned

from their lender that in order to pay off the mortgages on the property for debts incurred by the Plaintiffs the purchase price necessary to close on the property would have to be increased to approximately \$140,000.00. Upon learning this Plaintiffs refused to close on the sale of the property to Defendants at the purchase price agreed upon in the land contract minus the balance already paid because Plaintiffs would have to bring money to closing in order to transfer the property free and clear of the mortgages placed on the property by the Plaintiffs.

9. Defendants, were ready, willing and able to perform pursuant to the terms of the land contract and purchase the property for the purchase price set forth in the land contract minus the amounts already paid to Plaintiffs. Plaintiffs refusal to close on the sale of the property and deliver to Defendants the property free and clear of all liens and incumbrances constitutes a breach of agreement between the parties. Defendants have been damaged by Plaintiffs breach in the amount of \$61,500.00, plus all expenses incurred in attempting to finance the purchase of the property and pursue this claim including reasonable attorney's fees.

COUNT TWO

10. Paragraphs 1-9 are hereby reinstated as if being rewritten herein.

11. The actions of the Plaintiffs as set forth above constitute a knowing and fraudulent misrepresentation to Defendants regarding Plaintiffs ability to sell the property at the purchase price set forth in the land contract free and clear of all liens and incumbrances. Further, Plaintiffs acceptance of monthly payments from Defendants on the purchase of the property was a reckless, disregard of the truth of the fact that the Plaintiffs would not be able to perform under the contract at the purchase price set forth in the agreement and transfer the property to Defendants free and clear of the mortgages described in the land contract.

12. The actions of Plaintiffs constitute fraud and have damaged Defendants in the amount of \$61,500.00 plus all costs incurred in attempting to finance the sale of the purchase of

the property and this action including reasonable attorney's fees. Furthermore, Defendants are entitled to punitive or exemplary damages for the intentional and reckless misrepresentations of the Plaintiffs.

WHEREFORE, Defendants demand judgment against Plaintiffs in the amount of \$61,500.00 plus all costs incurred herein subject to finance the purchase of the property and costs and expenses in pursuing this action including reasonable attorney's fees as well as punitive or exemplary damages for the fraudulent misconduct of the Plaintiffs in an amount to be determined by the Court.



David N. Haring, #0063757
BROWN, BEMILLER, MURRAY,
& HARING, L.L.C.
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Mansfield, Ohio 44902
Telephone: (419) 525-1611
Facsimile: (419) 525-3810
Email: dharing@bbmmlaw.com
*Attorney for Defendants
Gregory & Tammy Fraley*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed by regular U.S. mail on this 1ST day of February 2018 to: Andrew J. Ruzicho, II, 118 Graceland Blvd. #307, Columbus, Ohio 43214.



David N. Haring, #0063757
BROWN, BEMILLER, MURRAY,
& HARING, L.L.C.
Attorney for Defendants Fraley

BK: 2330 PG: 784

20140009891
JOHN DOHALDSON
419-525-1984



LAND INSTALLMENT CONTRACT

THIS AGREEMENT, entered into at Mansfield, Ohio, by and between Frederick B. Lawhorn and Christa R. Lawhorn, husband and wife, called SELLER, whose address is: 7929 Silverton Avenue, Suite 602, San Diego, CA 92126 and Gary Fraley and Nicole Fraley, called BUYER, whose address is: 119 Sharon Avenue, Ashland, Ohio 44805.

That in consideration of the mutual promises of the parties herein contained, the Seller agrees to sell and convey, and the Buyer agrees to purchase and pay for, upon and under the provisions, terms and conditions herein expressed, the following described real property, on an "AS IS" basis, situated in the Weller Township, County of Richland, and State of Ohio, and further described as follows, to-wit:

Premises being known as 4910 State Route 545, Ashland, Ohio 44805.

Prior Deed Reference: Richland County Records. Recorded on November 9, 2000, Volume 853, Pages 0509 & 0510. Legal description attached hereto and incorporated herein "Exhibit A".

1. PURCHASE PRICE AND PAYMENTS

The Buyer agrees to pay the sum of \$152,000.00 for the above real estate. There are no charges or fees for services which are includible in this contract separate from the contract price.

The sum of ~~Three Thousand and 00/100 Dollars (\$3,000.00)~~ has been paid by the Buyer upon the signing of this contract, the receipt of which is hereby acknowledged, leaving a principal price of \$149,000.00.

The Buyer agrees to pay the sum of ~~One Thousand Five Hundred 00/100 Dollars (1,500.00)~~ per month commencing May 1, 2014. Said payments are to be made on the first of every month thereafter. If payments are more than ten (10) days late, a Fifty Dollar (\$50.00) late fee will be assessed. Buyer shall attempt to obtain financing on this property for the balance of the principal and interest by May 1, 2015. If the Buyer is unable to obtain financing, the Buyer shall continue to pay ~~One Thousand Five Hundred 00/100 Dollars (1,500.00)~~ per month until May 1, 2016. Buyer shall then attempt to obtain financing for the balance of the principal and interest. If Buyer is unable to obtain financing, Buyer has the option to give a thirty (30) days notice to leave premises or renew payments at ~~One Thousand Five Hundred 00/100 Dollars (1,500.00)~~ per month until May 1, 2017. If Buyer is unable to obtain financing for the balance of the principal and interest by May 1, 2017, Seller has the option to extend terms of financing or terminate agreement and make Buyer vacate premises. Said monthly payment includes homeowners insurance and property taxes. Said monthly payment should be deposited at Chase Bank located in Ashland, Ohio.

20140009891
Filed for Record in
RICHLAND
SARAH M DAVIS, RECORDER
08-26-2014 At 08:41 am.
LANDCONTRAC 80.00
OR Book 2330 Page 784 - 789



BK: 2330 PG: 785

2. CONDITION OF TITLE AND TAXES

In accordance with the prevailing custom if Buyer desires a title report of title insurance of said premises, Buyer will secure same at Buyer's expense. Said property shall be free and clear from all encumbrances except legal highways, building and zoning regulations, restrictions and easements of record.

3. INSURANCE

Seller shall provide and maintain fire and extended insurance coverage for the improvements on the property, in an amount not less than the purchase price balance, in companies satisfactory to the Seller, with loss payable to Seller, as their interests appear. A copy of said policy shall be delivered to Buyer. Buyer has the right to purchase additional insurance coverage.

4. ENCUMBRANCES

Said property is subject to the following encumbrance: Beneficial mortgage in the amount of \$35,423.11 and CITI mortgage in the amount of \$113,496.27.

Seller shall not mortgage said premises in excess of unpaid balance hereunder, and if Seller defaults on any mortgage on the property, or cause liens to attach against said property, Buyer may pay the same and receive credit on payments due under this contract.

5. PENDING ORDERS

Said property is subject to the following pending orders of public agencies:
None.

6. MAINTENANCE

Buyer agrees to maintain said premises in the same condition as when Buyer went into possession, except normal wear and tear, and except improvements.

7. ASSIGNMENT

Buyer agrees not to assign this contract, in whole or in part, without the written consent of the Seller.

8. TRANSFER OF TITLE

Upon fulfillment of Buyer's obligation under the terms of this contract, Seller agrees to convey said property to Buyer by deed of general warranty, with release of dower, if any, or by such other deed as is available should Seller be legally unable to deliver a deed of general warranty.

9. DEFAULT

If any installment payment to be made by the Buyer under the terms of this contract is not paid by Buyer when due or within thirty (30) days thereafter, or Buyer has failed to perform any of Buyer's other covenants, the Seller may initiate forfeiture of the interest of the Buyer in default, as provided by law, or invoke any other remedies provided by law.

10. RECORDING

Within twenty (20) days after this contract has been signed by both Seller and Buyer, Seller agrees to cause a copy thereof to be recorded as provided in Ohio Revised Code Section 5301.25.

11. POSSESSION

Possession shall be delivered to Buyer on April 14, 2014, at which time utilities shall be read and Seller shall pay for the same to said date.

12. UTILITIES

Buyer shall be responsible for any and all utilities while Buyer is in possession of the home.

IN WITNESS WHEREOF, the Seller and Buyer have executed this contract in this 11th day of AUG, 2014.

Signed and acknowledged
In the presence of:

SELLER:

[Signature]
Witness

[Signature]
Frederick B. Lawhorn

[Signature]
Witness

[Signature]
Christa R. Lawhorn

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS:

SWORN TO BEFORE ME, and in my presence subscribed by the said Frederick

B. Lawhorn and Christa R. Lawhorn, on this 11 day of AUGUST 2014.



[Signature], NOTARY PUBLIC
Notary Public

Southern Title
00-10-20A CLAIM DEED

O.R. 853 PAGE 0509

WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, FORMERLY KNOWN AS NORWEST BANK MINNESOTA, AS SUCCESSOR TRUSTEE TO BANKERS TRUST COMPANY OF CALIFORNIA, N.A., AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 30, 1999, DELTA FUNDING HOME EQUITY LOAN TRUST 1999-1, C/O DELTA FUNDING CORP., SERVICING AGENT AND ATTORNEY IN FACT, ("Grantor"), for valuable consideration paid, grants FREDERICK B. LAWHORN AND CHRISTA R. LAWHORN, whose tax mailing address is: 4910 State Route 545, Ashland, Ohio 44805, the real property described in Exhibit "A" attached hereto (the "Property").

Prior Instrument Reference: Sheriff's Deed recorded October 5, 2000, in the Richland County Records, Book 843, Page 387-390.

IN WITNESS WHEREOF, FRANKLIN E. PELLEGRIN, JR., Executive Vice President of Delta Funding Corporation, Attorney in Fact for WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, FORMERLY KNOWN AS NORWEST BANK MINNESOTA, AS SUCCESSOR TRUSTEE TO BANKERS TRUST COMPANY OF CALIFORNIA, N.A., AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 30, 1999, DELTA FUNDING HOME EQUITY LOAN TRUST 1999-1, C/O DELTA FUNDING CORP., SERVICING AGENT ATTORNEY IN FACT being duly authorized, has executed this deed, on behalf of Grantor, as of _____

WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, FORMERLY KNOWN AS NORWEST BANK MINNESOTA, AS SUCCESSOR TRUSTEE TO BANKERS TRUST COMPANY OF CALIFORNIA, N.A., AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 30, 1999, DELTA FUNDING HOME EQUITY LOAN TRUST 1999-1, C/O DELTA FUNDING CORP., SERVICING AGENT ATTORNEY IN FACT

[Signature]

BY DELTA FUNDING CORPORATION
BY: FRANKLIN E. PELLEGRIN JR., EXECUTIVE VICE PRESIDENT

Signed and acknowledged
The presence of:
[Signature]
Michael Kilbary
[Signature]
Alysa Wright

200000020904
Filed for Record in
RICHLAND COUNTY, OH
SARAH M. DAVIS
On 11-09-2000 At 03:35 pm.
FEE 14.00
OR Book 853 Page 509 - 510
200000020904
SOUTHERN TITLE FILE

STATE OF NEW YORK, COUNTY OF NASSAU, SS:

The foregoing instrument was acknowledged before me on November 14th, 2000 by Franklin E. Pellegrin, Jr., Executive Vice President of Delta Funding Corporation, Attorney in Fact for WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, FORMERLY KNOWN AS NORWEST BANK MINNESOTA, AS SUCCESSOR TRUSTEE TO BANKERS TRUST COMPANY OF CALIFORNIA, N.A., AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 30, 1999, DELTA FUNDING HOME EQUITY LOAN TRUST 1999-1, C/O DELTA FUNDING CORP., SERVICING AGENT ATTORNEY IN FACT.

[Signature]
Notary Public

LORRAINE ANGELL
Notary Public, State of New York
No. 4936691
Qualified in Nassau County
Commission Expires June 27, 199 2001

00-10-20A/SOUTHERN TITLE

O.R. 853 PAGE 0510

EXHIBIT "A"

00-10-20A

Situated in the Township of Weller, County of Richland, and State of Ohio: Being a part of the Southeast Quarter of Section 5, Township 24 North, Range 17 West, Described as follows: Commencing at a R.R. spike found marking the southeast corner of the Southeast Quarter of Section 5, Thence North 89 degrees 36 minutes 44 seconds West 837.68 feet along the centerline of S.R. 95 (Ashland-Shelby Road) to a R.R. spike found, Thence North 88 degrees 59 minutes 34 seconds West 600.00 feet along the centerline of S.R. 96 to a P.K. nail found, Thence North 88 degrees 42 minutes 32 seconds West 575.24 feet along the centerline of S.R. 96 to a P.K. nail found, Thence North 01 degrees 07 minutes 30 seconds East 180.50 feet along G. & N. Swineford's (Deed Vol. 430 Page 428) east line to an iron pin found the TRUE POINT OF BEGINNING.

Thence with the following FIVE (5) COURSES:

- 1) North 88 degrees 42 minutes 32 seconds West 230.42 feet along said Swineford (Deed Volume 430 Page 428 & Official Record Volume 394 Page 787), and J. & M. Koch's (Official Record Volume 394 Page 789) north line to an iron pin set;
- 2) North 02 degrees 45 minutes 10 seconds East 489.60 feet to a P.K. nail found in the center of S.R. 545 (Mansfield-Savannah Road), witnessed by an iron pin set South 02 degrees 45 minutes 10 seconds West 36.84 feet;
- 3) North 57 degrees 16 minutes 36 seconds East 262.40 feet along the centerline of S.R. 545 to an R.R. spike found, witnessed by an iron pin found South 01 degrees 13 minutes 26 seconds West 36.16 feet;
- 4) South 01 degrees 13 minutes 26 seconds West 201.21 feet along J. Mertens' (Official Record Volume 391 Page 187) west line to an iron pin found;
- 5) South 01 degrees 15 minutes 55 seconds West 435.02 feet to the TRUE POINT OF BEGINNING.

This parcel contains 2.884 acres, but subject to all highways and easements of record. The basis of bearings is from the south line of a 5.403 acre tract described in Official Record Volume 391 Page 187. The above described 2.884 acre tract is a part of (0.921 ac.) a 15 acre tract and part of (1.963 ac.) a 7.44 acre tract as described in Deed Volume 181 Page 234. This survey made and description prepared by Donald C. Baker, PS 6938 November 26, 1997.

It is hereby certified that this deed and the transfer tax thereon have been duly recorded and the transfer tax has been paid in full.

RECORDED

INDEXED

260

RECORDED

11-9-00

TRANSFERRED

JACK REINER

COUNTY AUDITOR

50

TRANSFER APPROVED

RICHLAND COUNTY

TAX MAP OFFICE

119.00

INITIAL DATE