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DEC 29 2015
JULIE BALL
CLERK CIRCUIT COURT
MERCER COUNTY

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

LESLIE MEADOWS,

PLAINTIFF,

v.

CIVIL ACTION NO. 13-C-442-WS

WILLIAM G. ERPS,

DEFENDANT.

AMENDED JUDGMENT ORDER

(To Correct Typographical Error in Previous Order)

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

On October 27, 2015, came the plaintiff in person and by counsel, William S. Winfrey II, and came the defendant in person and by counsel, Anthony R. Veneri, to conduct a bench trial in the above-styled action. Only the plaintiff and defendant testified, and the plaintiff presented twenty-one Exhibits and the defendant presented fifteen Exhibits. Upon consideration of the evidence presented, the Court by a preponderance of the evidence finds as follows:

JURISDICTION AND VENUE

1. The complaint in the above-styled action was filed on November 1, 2013, and after service of process, an answer with affirmative defenses was timely filed.
2. The Court has subject matter jurisdiction over all issues in the complaint.

3. The Court has personal jurisdiction over the parties given that both parties reside in Mercer County, West Virginia, and the transactions occurred in Mercer County, West Virginia.

PLAINTIFF'S CLAIMS

4. The plaintiff alleges that she provided financing to the defendant for apartments he purchased on Lovell Avenue and Guard Drive in Mercer County, West Virginia. She alleges that she provided \$200,000.00 for those buildings and the defendant has given her nothing by way of a lien or ownership therein. Plaintiff claims to have submitted endorsed checks by the defendant for those properties in the amount of \$67,000.00, \$90,000.00, \$6,000.00, \$10,000.00, and \$30,000.00.

The plaintiff also alleged in her complaint that she entered into a written agreement with the defendant to purchase property located in Lerona, Mercer County, West Virginia, (otherwise known as the "Hatcher" property) and that the defendant failed to make the necessary improvements as contemplated by the agreement. The plaintiff claims to have spent about \$35,000.00 on the Hatcher property and that the defendant rented the house in his name alone and collected the rent.

The plaintiff also alleged in her complaint that she also had to take a loss on the "Sutphin" house because she provided financing to the defendant in the amount of \$35,000.00, and was not fully repaid.

Finally, the plaintiff claims that she lost the opportunity to invest her money and alleges a "contract to loan" the defendant money. The plaintiff claims that the actions of the defendant in acquiring the funds were willful, deliberate and fraudulent.

DEFENDANT'S ANSWER AND DEFENSES

5. The defendant claims that there are three (3) key defenses regarding the claims: (1) all claims, except a contract claim, are barred by the statute of limitations given that the contract claim is permitted for up to five years for oral contracts and ten years for written contracts after accrual, and all other claims would be subject to, and barred by, the two year statute of limitations; (2) that all claims for an interest in real estate (specifically the Lovell Avenue and Guard Drive apartments) are barred by the statute of frauds since there is no written contract; and (3) the plaintiff's claims are barred in part by the doctrines of estoppel, waiver, and/or laches given that when the housing market collapsed nationally in September of 2008, the "Hatcher" property was not as valuable as its original purchase price, and the plaintiff then determined to merely rent the property, instead of selling it.

PLAINTIFF WITHDREW THE "HATCHER" PROPERTY CLAIMS

6. During the trial, the plaintiff withdrew her claims regarding the Hatcher property located in Lerona, Mercer County, West Virginia. Consequently, this limited the plaintiff's claims to the alleged loss on the Sutphin property and claims for either an ownership interest in the apartment buildings or enforcement of a contract to loan the defendant monies regarding the same.¹

¹ The Court would note that the Hatcher property is still titled in Meadows' name and she is receiving the rental income from same.

SUTPHIN PROPERTY

7. Defendant Erps (hereinafter "Erps") approached Plaintiff Meadows (hereinafter "Meadows") about buying this house for an investment for resale.

8. On April 22, 2009, Meadows testified that she cashed a CD for \$21,375.00, signed a contract to purchase the property for \$50,000.00, and gave Erps \$25,000.00 for the one-half payment.

9. Meadows continued to pay for repairs to the Sutphin house by paying Erps a total of \$32,300.00 for the repairs to the property, as itemized in his March 15, 2011, statement to her.

10. Pursuant to the Sales Contract with Sutphin, on April 27, 2010, a Deed from Sutphin to Erps and Meadows was recorded for a consideration of \$50,000.00. At the closing, Erps provided a check for \$25,000.00 and stated that the funds for the payment came from his company.² Meadows claimed the funds came from her in the form of cash (\$21,375.00 of which came from the aforementioned C.D.). The Court finds credible Meadows claim that this money was given to Erps to close the Sutphin house.

11. On August 10, 2010, a Deed was prepared from Meadows to Erps and his wife for Meadows' undivided interest in the Sutphin Property for \$35,000.00.

12. Mr. Erps had prearranged financing on the Sutphin property with First Community Bank.

13. On August 13, 2010, First Community Bank loaned Mr. and Mrs. Erps \$90,000.00 as evidenced by a Trust Deed on the Sutphin property for \$90,000.00. Accordingly, Mr. and Mrs. Erps received \$90,000.00 proceeds, paying to Meadows \$35,000.00 of those proceeds.

² However, no such check was produced by Erps.

14. The Court finds from a preponderance of the evidence that Meadows' investment interest in the Sutphin property was \$21,375.00 from the cashed C.D. and the \$32,300.00, for a total of \$53,675.00. The Court finds that she should have recovered from the sale of said property at least the amount of her investment, but has only recovered \$35,000.00, leaving a balance owed to Meadows in the amount of \$18,675.00.³

HOME IMPROVEMENTS

15. Mr. Erps' construction company, Improvements Unlimited, LLC, did substantial work on Mrs. Meadows' residence.

16. Both parties were unclear about work done on the house and exactly when it began.

17. An invoice dated April 1, 2008 and signed by Mr. Erps on April 30, 2008, shows that Meadows paid Improvements Unlimited, LLC, the sum of \$12,090.49 for "labor and materials for remodeling and painting 3 rooms" and for "plumbing house and new comb".

18. The evidence further shows that on January 30, 2009, Mrs. Meadows gave a check to Improvements Unlimited, LLC, for house work for \$6,000.00, which appears to have been for painting.

19. On June 29, 2009, Improvements Unlimited, LLC, gave Mrs. Meadows a bill for "material and labor for remodel" for \$32,080.00.

20. Based on these three exhibits, Mrs. Meadows paid at least \$50,000.00 to Improvements Unlimited, LLC, for home remodeling.

³ It's hard for the Court to determine the exact "profit", if any, realized by the parties on the sale of the Sutphin property due to the bizarre financing arrangement with Shorter, the buyer, between him and the Erps. This is why the Court is limiting Meadows' recovery to the amount of her investment.

21. Mr. Erps testified that he thought the repairs were at least \$70,000.00 but had no invoices or other records to substantiate that amount.

22. It's hard for the Court to determine which of the checks submitted by Plaintiff to the Defendant in this case were for payment of repairs to her house or for investment purposes; nevertheless, the plaintiff has the burden of proving that she is entitled to reimbursement for investment sums. The matter is further complicated by the almost complete lack of record keeping from each of the parties in this case.⁴

LOVELL AVENUE/GUARD DRIVE APARTMENTS

23. There is no written contract between the plaintiff and defendant for both parties to purchase the apartment buildings.

24. Even the plaintiff's complaint alleges that "the defendant approached the plaintiff about her providing him *financing for apartments on Lovell Avenue and Guard Drive...*"

25. There is no evidence to establish any contract between the plaintiff and defendant whereby the plaintiff would contribute funds for the apartments, and jointly own the property with the defendant.

26. The Court further finds that even if there had been evidence of an oral contract for the joint purchase and ownership of the apartment buildings, the same would be unenforceable because it would conflict with, and contravene, the statute of frauds.

27. The plaintiff alleges that she provided the defendant with five checks totaling \$203,000.00 to finance the apartment buildings. Specifically, the plaintiff alleges that she

⁴ This lack of record keeping has worked to the detriment of both parties in this action, since it makes it difficult for the Court to determine the exact obligations between the parties during the course of their involvement together.

provided the defendant with a \$67,000.00 check, a \$90,000.00 check, a \$6,000.00 check, a \$10,000.00 check, and a \$30,000.00 check, all for the financing of the apartment buildings. (See paragraphs 4 and 5 of the plaintiff's complaint).

28. In the defendant's request for production of documents tendered to the plaintiff (specifically requests 1 and 2) the defendant requested all checks to substantiate the allegations regarding the apartment buildings, and the only checks tendered were a \$90,000.00 check dated June 15, 2009 [which in the plaintiff's discovery responses had a note in the memo that stated "apt property"] and a \$67,000.00 check dated July 29, 2007 (actually processed in 2009) that had a note in the memo "apt."). *No other check tendered by the plaintiff was attributed to the purchase of the apartment buildings.*

29. During the presentation of the testimony, the only checks produced according to the testimony of the plaintiff that relate to the apartment buildings were the \$90,000.00 check and the \$67,000.00 check. The plaintiff's testimony that there may be other checks that she did not have does not provide affirmative proof to this Court that such checks exist, and it was the burden of the plaintiff to produce any and all checks that she claims she had issued or written to the defendant to support her claims in this case.

30. Contrary to the allegations in the plaintiff's complaint and the written summary in her answers to the defendant's request for production of documents, there is no \$10,000.00 check and there is no \$30,000.00 check in the evidence before the Court to substantiate the allegations in the plaintiff's complaint, and her statement in the discovery responses, that such checks exist. The plaintiff has not produced a \$10,000.00 check and the plaintiff has not produced a \$30,000.00 check.

31. The \$67,000.00 check was tendered on July 29, 2009, and contains in its memo "Apt." which represents apartments. Said notation in the memo was present when the check was presented by the defendant for payment.

32. The \$90,000.00 check introduced as plaintiff's Exhibit 17 has no memo written therein, but in response to the defendant's request for production of documents and during her deposition, the plaintiff tendered a duplicate of the \$90,000.00 which contained in its memo "Apt. property." (See defense Exhibit 2.) Although the plaintiff conceded during her testimony at trial that when the \$90,000.00 check was tendered to the defendant it did not contain anything in the memo, she attempted to explain such an obvious inconsistency between the two exhibits (one with "Apt property" in the memo and one without). The plaintiff testified that when the check was processed through the bank and returned to her, she then wrote "Apt. property" on the check for her records. In spite of her explanation at trial, the Court cannot find that said sums were a loan to the defendant for the repairs to the apartments or, whether alternatively, payment for prior work done by the defendant or his company on her house and the other properties that the parties had invested in.

33. The Court finds that the plaintiff attempted to present evidence that the \$90,000.00 check had to be for the apartment property because "Apt. property" was written in the memo when the check was tendered to the defendant and cashed by him. However, the Court finds that the defendant clearly impeached this evidence because there was nothing in the memo when the check was tendered to the defendant.

34. The Court finds that when: the plaintiff has not proved by a preponderance of the evidence that the \$90,000.00 was a loan to the defendant; however, the Court finds by a

preponderance of the evidence that the \$67,000.00 check was, indeed, a loan to the defendant for his use on the apartment repairs.

35. Mrs. Meadows was not a joint venturer with Mr. Erps for the Twiford Apartments but rather was a lender of \$67,000.00, at no interest.

JUDGMENT

It is ADJUDGED and ORDERED that the plaintiff is hereby granted judgment against the defendant for the total sum of \$85,675.00 (\$18,675.00+ \$67,000.00) together with post-judgment interest thereon at the judgment rate of interest. The Court further grants pre-judgment interest from the years 2010 through the entry date of this Order at the judgment rate of interest.

It is further ORDERED that any other claims of the plaintiff are hereby dismissed with prejudice.

The clerk shall submit a duplicate of this ORDER to the parties in care of their counsel, and then dismiss this case from the docket of the Court.

ENTER THIS 29th DAY OF DECEMBER, 2015.



WILLIAM J. SADLER, JUDGE
9TH JUDICIAL CIRCUIT