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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1099

Filed 21 May 2025

Guilford County, No. 22CVS006664-400

STEVE R. SCHAEFER, Plaintiff/Counterclaim Defendant,

v.

FREDNA M. CLARKE, Defendant/Counterclaim Plaintiff.

Appeal by plaintiff from order entered 15 September 2023 by Judge Robert S. Albright in Guilford County Superior Court. Heard in the Court of Appeals 24 April 2025.

James C. Adams, II, for plaintiff-appellant.

Jonah Garson, for defendant-appellee.

FLOOD, Judge.

Plaintiff Steve R. Schaefer appeals from the trial court's order granting Defendant Fredna M. Clarke's motion for summary judgment and dismissing Plaintiff's breach of contract claim. On appeal, Plaintiff contends the trial court erred in dismissing his breach of contract claim, as the contract contained all essential terms and satisfied the statute of frauds. Upon review, we conclude the trial court

did not err in granting Defendant's motion for summary judgment and dismissing Plaintiff's breach of contract claim, as there was no valid contract because the essential term of price was not mutually assented to, and thus, we do not reach Plaintiff's statute of frauds argument. We therefore affirm the trial court's order.

I. Factual and Procedural Background

Defendant is the owner of property located at 2727 Kivett Drive, Greensboro, North Carolina (the "Property"). Defendant and her husband, Taylor Haywood Clarke, had owned the Property as tenants by the entirety, until Mr. Clarke passed away in 2013, leaving Defendant as the sole owner.

Prior to his passing, Mr. Clarke began leasing the Property to Plaintiff in 2011, pursuant to a written lease agreement. According to Plaintiff, sometime in 2012, and shortly after Plaintiff took possession of the Property, Mr. Clarke and Plaintiff agreed that Mr. Clarke "would sell the Property to [Plaintiff] for the amount of \$200,000 at a time of [Plaintiff's] choosing," but if Plaintiff did not purchase the Property, Plaintiff would be reimbursed for the value of any improvements and repairs made to the Property by Plaintiff. Plaintiff later conceded that "the agreement was not reduced to any writing or otherwise memorialized in writing."

Plaintiff has claimed that on 23 May 2014, after Mr. Clarke's death, Defendant informed Plaintiff that "nothing changed," and Plaintiff's option to purchase the Property was "still good." Defendant, however, has claimed that the communication in 2014 was regarding late payment of rent for March and May of that year, and that

while the two did discuss the potential future purchase of the Property, there was no final agreement.

On 16 July 2019, Plaintiff received a letter from Defendant (the “2019 letter”), in which she wrote: “I cannot send you a contract to purchase [the Property] until you are current with the rent. The amount of rent due is \$10,015.00.” She did, however, give Plaintiff the option to “add the rental due to the purchase price of the house,” which would make the purchase price \$210,015.00. Several months later, on 5 November 2019, Plaintiff responded to Defendant, stating, “[i]t is my intent to purchase the [P]roperty before the end of the first quarter of 2020[.]” and, “I do agree we need to get our accounting to match on the [P]roperty.” Plaintiff further wrote, “you[, Defendant,] had [] suggested that the amount of the deficit could just be added to the purchase price. I am happy to work out everything on whatever you would consider fair. It is my belief that your rental payments should come first before any escrow.” No further communication occurred between the parties until April 2021 in the Record.

On 21 April 2021, Defendant sent Plaintiff another letter (the “2021 letter”), in which Defendant provided:

I have enclosed your payment history; it shows how much is owed in order to get up to date. You may choose to pay the amount owed or have me add it to the purchase price. The amount in arrears is \$3,319.03 if you select to add to purchase price; total purchase amount would be \$203,319.03.

Let me have your decision and I will send a for sale contract in order that you may purchase my property.

Waiting for your decision.

No response from Plaintiff is contained in the Record, nor does Plaintiff contend he responded to this letter.

The following year, in March 2022, “after a few months of [Plaintiff] failing again to pay rent,” Defendant “decided that [she] needed to sell the Property on the market to support [her]self in [her] remaining years.” On 17 March 2022, Defendant informed Plaintiff in a text message that she planned on selling the Property on the market and asked for Plaintiff’s unpaid rent, which at the time amounted to \$8,114.03. Plaintiff expressed a desire to purchase the Property, and Defendant referred him to her realtor. Defendant claims Plaintiff “acknowledged that entering into a contract would be the next step in the purchase and sale of the Property.”

On 4 May 2022, Defendant’s realtor relayed to Defendant that: the realtor had been in contact with Plaintiff; Plaintiff was still interested in buying the Property; the realtor had told Plaintiff that Plaintiff “needed to obtain lender pre-approval and verification as a condition for moving forward with a contract”; and that Plaintiff had until the following week to obtain such pre-approval. Plaintiff never followed up with Defendant’s realtor. Plaintiff claimed in his affidavit that Defendant’s realtor contacted Plaintiff and informed him that Defendant “was willing to sell [Plaintiff] the Property for \$340,000[,]” but Plaintiff “rejected that as contrary to the existing

agreement.”

On 30 July 2022, Plaintiff emailed Defendant, stating:

You, your husband, and I had an agreement for almost 12 years that I could buy my house for \$200,000. You affirmed this many times over the years through various communications.

I am ready, willing, and able to purchase the [Property]. If you honor our agreement, I believe you will find the closing costs can be very minimal and certainly a fraction of the amount you would be charged by including a realtor. However, should you decide to ignore our agreement, I will be forced to retain an attorney to enforce our agreement and prevent the house from being sold to someone else.

On 22 August 2022, Plaintiff filed a complaint against Defendant, alleging breach of contract and unjust enrichment. Defendant filed her answer and asserted that Plaintiff’s breach of contract claim should be dismissed for failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6), and that it was precluded by the statute of frauds. Plaintiff then filed an amended complaint; Defendant answered and asserted counterclaims, including a counterclaim of conversion. On 22 August 2023, Plaintiff filed a motion for partial summary judgment on his breach of contract claim. On 30 August 2023, Defendant filed a motion for summary judgment on both of Plaintiff’s claims.

The trial court heard the cross motions for summary judgment on 13 September 2023, and entered an order on 15 September 2023, granting Defendant’s motion for summary judgment, and dismissing Plaintiff’s breach of contract claim.

The same day the order was entered, the parties voluntarily dismissed all other pending claims but one, Defendant's counterclaim for conversion, and Plaintiff appealed to this Court. By order, this Court dismissed that appeal on the grounds that the trial court's judgment was not a final judgment, and on 9 October 2024, the parties subsequently stipulated to the dismissal of the sole remaining claim. Plaintiff timely filed this appeal on 4 November 2024.

II. Jurisdiction

This Court has jurisdiction over a final judgment from a superior court, pursuant to N.C.G.S. § 7A-27(b) (2023).

III. Standard of Review

The “standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *Orsbon for Bosworth-Jones v. Milazzo*, 910 S.E.2d 706, 713 (N.C. Ct. App. 2024) (citation omitted). “When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *Id.* at 713 (citation omitted).

“The party moving for summary judgment must establish . . . that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.” *Connor v. Harless*, 176 N.C. App. 402, 405 (2006) (citation omitted). “The movant can carry this burden by proving that an essential element of the

opposing party's claim is nonexistent or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim.” *Id.* at 405 (citation and internal quotation marks omitted).

IV. Analysis

On appeal, Plaintiff argues the trial court erred in granting Defendant's motion for summary judgment, and dismissing Plaintiff's claim for breach of contract. Specifically, Plaintiff contends the contract contained all essential terms, including the price, the contract satisfied the statute of frauds, and thus Defendant breached the valid contract by failing to sell the Property to Plaintiff for \$200,000. We disagree, and do not reach Plaintiff's second argument regarding the statute of frauds, as there was no valid contract with all essential terms.

“The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract. The elements of a valid contract are offer, acceptance, consideration, and mutuality of assent to the contract's essential terms.” *Davis v. Woods*, 286 N.C. App. 547, 561 (2022) (citation omitted). Our case law is clear that a “meeting of the minds requires an offer and acceptance of the same terms; and if, in his acceptance, the offeree attempts to change the terms of the offer, such constitutes a counter-proposal and thereby a rejection of the initial offer.” *Fulk v. Piedmont Music Ctr.*, 138 N.C. App. 425, 430 (2000) (citation omitted) (cleaned up).

The essential elements of a contract for the sale of real property are “[p]rice . .

. [and the] identification of the parties and the property to be sold.” *Connor*, 176 N.C. App. at 405 (citation omitted). “A contract is nugatory and void for indefiniteness if it leaves any material portions open for future agreement.” *Id.* at 405 (citation omitted) (cleaned up). Further, “the acceptance of a proposition to make a contract, the terms of which are to be subsequently fixed, does not constitute a binding obligation.” *Gregory v. Perdue, Inc.*, 47 N.C. App. 655, 657 (1980). Our Supreme Court has explained,

[i]f the minds of the parties meet upon a proposition, which is sufficiently definite to be enforced, the contract is complete, although it is in the contemplation of the parties that it shall be reduced to writing as a memorial or evidence of the contract; but if it appears that the parties are merely negotiating to see if they can agree upon terms, and that the writing is to be the contract, then there is no contract until the writing is executed.

Horton v. Humble Oil & Ref. Co., 255 N.C. 675, 680 (1961) (citation omitted); *see also Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 192 N.C. App. 114, 126 (2008) (“[T]he parties must assent to the same thing in the same sense, and their minds must meet as to all the terms. If any portion of the proposed terms is not settled, there is no agreement.”) (citation omitted).

Here, Plaintiff argues the identification of the parties and the property is clear, and that “the price is undisputed: \$200,000.” Plaintiff contends “[t]he [R]ecord is clear, and has been clear, that Plaintiff had an option to purchase the Property for

the sum of \$200,000 since 2012.”¹ Plaintiff contends, in short, that “Defendant’s own letters confirm, in both 2019 and 2021, that the purchase price of the agreement for Plaintiff to purchase the property was \$200,000.”

The Record includes no written communication regarding the sale of the Property between the parties until July 2019. The 2019 letter, however, did not establish a definite purchase price, as the price would either be \$200,000 or \$210,015.00. The 2019 letter was a negotiation as to terms to decide before finalizing a future contract—whether Plaintiff wanted the purchase price to include his late rent. Plaintiff’s response to the 2019 letter was that he: intended “to purchase the [P]roperty before the end of the first quarter of 2020”; agreed the parties needed to get their “accounting to match on the [P]roperty”; acknowledged Defendant’s proposal to have the purchase price include his late rent amount; and would be “*happy to work out everything on whatever [Defendant] would consider fair.*” Based on the 2019 letter and Plaintiff’s response, mutual assent was lacking as to a definite purchase price because “it appears that the parties [were] merely negotiating to see if they [could] agree upon terms,” *see Horton*, 255 N.C. at 680, and any contract ostensibly formed based on this exchange would be void for indefiniteness. *See Connor*, 176 N.C. App. at 405. Further, the 2019 letter does not establish that Defendant and Plaintiff had

¹ Plaintiff, however, concedes on appeal that the oral agreement from 2012 with Mr. Clarke is not enforceable, as it violates that statute of frauds. Plaintiff, instead, contends he actually has had an option to purchase the Property based on an agreement made with Defendant in 2014.

ever assented “to the same thing in the same sense,” as the letter shows Defendant expected Plaintiff to be current with the rent—or factor it into the purchase price—before finalizing a contract. Plaintiff contends that Defendant’s expectation—that Plaintiff be current with rent or include it in the purchase price—was not part of the original agreement. His own argument would thus indicate there is no valid contract here, as this “portion of the proposed terms is not settled.”² *See Dogwood Dev. & Mgmt. Co., LLC*, 192 N.C. App. at 126.

In the 2021 letter, Defendant again inquired about the finalized purchase price, giving Plaintiff the choice “to pay the amount [of rent] owed or have [Defendant] add it to the purchase price.” Defendant asked Plaintiff to “[l]et [her] have [his] decision” and she would “send a for sale contract in order that [he] may purchase” the Property. Plaintiff did not respond to Defendant, nor did Plaintiff accept the terms or assent to a final purchase price. *See Davis*, 286 N.C. App. at 561 (requiring a valid contract to have acceptance as well as mutual assent as to the essential terms of the contract). Again, the 2021 letter contained no mutual assent as to a definite purchase price, *see Horton*, 255 N.C. at 680, and any contract formed from this exchange would

² Plaintiff claims: “The fact that there was rent past due is a term of a different contract . . . with its own terms. Plaintiff does not have to be the tenant in order to exercise his option to purchase the Property.” Plaintiff, however, conflates Defendant’s negotiation as to the purchase price including rent as affecting the lease contract. This is not the case. Regardless of whether Plaintiff chose to purchase the Property, he still owed Defendant the late rent amount. Defendant negotiated the purchase price with Plaintiff as whether that price would include those late rent payments, but Plaintiff failed to assent to either potential finalized purchase price, before Defendant rescinded her offer and listed the Property.

be void for indefiniteness. *See Connor*, 176 N.C. App. at 405. Even if the parties had each accepted the proposition to *make* a contract based on whether late rent dues were to be included, this term was to be “subsequently fixed,” and thus “d[id] not constitute a binding obligation.” *Gregory*, 47 N.C. App. at 657.

Accordingly, Defendant carried her burden for summary judgment “by proving that an essential element of [Plaintiff’s] claim”—in this case a valid, binding contract with all essential elements—“[wa]s nonexistent,” *see Connor*, 176 N.C. App. at 405; thus, there were no genuine issues of fact, and the trial court did not err in granting Defendant’s motion for summary judgment as to Plaintiff’s breach of contract claim. *See Milazzo*, 910 S.E.2d at 713. Because we hold there was no valid contract, we do not reach Plaintiff’s argument regarding the statute of frauds, and we therefore affirm the trial court’s order.

V. Conclusion

Upon review, we conclude the trial court did not err in granting Defendant’s motion for summary judgment and dismissing Plaintiff’s breach of contract claim, as there was no valid contract because the essential element of price lacked mutual assent. We therefore affirm the trial court’s order.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).