

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

In the Matter of: : Chapter 13
: :
ANGELA DENISE LOTT, :
: :
Debtor : Case No. 04-30823 RFH
: :
LAND HEADQUARTERS, INC. :
(ATLANTA), :
: :
Movant :
: :
vs. :
: :
ANGELA DENISE LOTT, :
: :
Respondent :

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movant: Mr. Kerry S. Doolittle
Post Office Box 949
Watkinsville, Georgia 30677-0949

For Respondent: Mr. Lee P. Morgan
Post Office Box 48359
Athens, Georgia 30604

MEMORANDUM OPINION

Land Headquarters, Inc. (Atlanta), Movant, filed on June 7, 2004, a motion for relief from the automatic stay of the Bankruptcy Code. Movant's motion came on for a hearing on August 25, 2004. The Court, having considered the record and the arguments of counsel, now publishes this memorandum opinion.

Angela Denise Lott, Respondent, wanted to purchase a parcel of real property owned by Movant. Movant, as Seller, and Respondent, as Buyer, entered into a Contract For Deed dated June 3, 2001. The purchase price was \$24,400. Respondent made a down payment of \$700. Respondent was to pay the balance plus interest by making 240 monthly payments of \$260.96.

The Contract For Deed provides that Movant would convey title to the property upon Respondent's payment in full of the purchase price. If Respondent fails to perform, Movant can terminate the contract and retain Respondent's payments as reasonable rent. Respondent would forfeit all rights to the property.

Respondent failed to make her payments. Movant sent a Notice of Default dated January 19, 2004. The notice was sent via certified mail addressed to Respondent at PO Box 451, Nicholson, GA 30565-0451. The notice stated, in part, that the Contract For Deed could be terminated if Respondent did not promptly cure her default within ten days.

Respondent did not cure the default. Movant sent a Notice of Termination, Demand for Possession dated March 24, 2004. The notice stated that Movant had

elected to cancel and terminate the Contract For Deed. The notice demanded that Respondent immediately surrender possession of the property. The notice was sent via certified mail addressed to Respondent at PO Box 451, Nicholson, GA 30565-0451.

Respondent filed a petition under Chapter 13 of the Bankruptcy Code on May 10, 2004. Respondent wants to pay her obligations and her arrearage under the Contract For Deed through her Chapter 13 plan. Respondent remains in possession of and resides on the property. Movant contends that the Contract For Deed was terminated pre-petition and that Respondent has no rights in the property. Movant wants to dispossess Respondent as a tenant at sufferance.

The Contract For Deed provides in part:

11. Default. If Buyer fails to pay any one or more payments due under the Deferred Payment Note, or if Buyer fails to comply with any of the terms and conditions set forth herein, and such nonpayment or failure to comply continues for a period of ten (10) days after written notice thereof to Buyer, Seller shall [have] the right to declare Buyer in default hereunder, in which event the Deferred Payment Note shall, without further notice or demand, be immediately due and payable. Upon Buyer's failure to immediately pay Deferred Payment Note in full, Seller shall have all rights and remedies available at law or equity as the result of such default, including but not limited to the right to cancel Buyer's rights herein in which event;
 - a) Seller shall be released from obligations in law and equity to convey the Property to Buyer;
 - b) Buyer shall forfeit all rights to the property and any improvements located thereon (including but not limited to utilities), and to the possession thereof;
 - c) Seller shall have an immediate right to retake possession of the property; and
 - d) All payments which have been made by [B]uyer shall be credited by Seller to the reasonable rental value of the property during the period Buyer has had the right to use and occupy the same, and any excess of such payments shall

be deemed liquidated damages, Seller and Buyer hereby agreeing and acknowledging that the actual measure of Seller's damages would be impossible to ascertain.

...

15. Notice. Any notice required to be given hereunder shall be in writing and either personally delivered or sent by certified or registered United States Mail, postage prepaid, addressed to the address set forth herein below, or to such other address as either party hereto may designate to the other in writing. Such notice shall be deemed given when actually delivered by hand, or three (3) days after depositing in the mail.

The last page of the Contract For Deed provides the following addresses for Respondent:

Address (Old):

705 Spring Valley Rd.
Lot #181
Athens, GA 30606

Address (New)

191 Hawks Ct.
Nicholson, GA 30565

“The general rule in determining contract compliance is substantial compliance, not strict compliance, and this rule applies to a contract's termination clause as well.”

Rome Healthcare, LLC v. Peach Healthcare Systems, Inc., 264 Ga. App. 265, 590 S.E. 2d 235, 241 (2003), cert. denied.

However, strict compliance with termination notice clauses has been required in cases concerning forfeiture of real property rights. Id.

In Thornton v. Kumar,¹ the Thorntons entered into a contract to purchase real property from Kumar and Gibbs. The contract provided that the Thorntons could terminate the contract and demand return of their earnest money if Kumar and Gibbs could not convey clear title. The contract required that notice be sent via Federal Express overnight delivery addressed to: Gibbs and Kumar, P.O. Box 2035, Douglasville, GA 30133. The Thorntons sent their notice of termination via certified mail to Gibbs and Denson (the real estate agent) at 6770 Fairways Drive, Douglasville, Georgia 30134. The Thorntons sent Gibbs' notice to the wrong address. The Thorntons did not send notice of the termination to Kumar.

The Georgia Court of Appeals held that the Thorntons had not properly terminated the contract and were not entitled to demand return of their earnest money.

The court said in part:

[W]e focus on whether the contract required that the Thorntons provide Gibbs and Kumar a specific form of notice of termination.

...

Therefore, read as a whole, the contract requires that the purchasers provide a specified notice of termination to the sellers pursuant to the requirements of section 22 of the agreement.

[The Thorntons] did not send Kumar notice of the termination, and they sent Gibbs' notice to the wrong address. No evidence reflects that the parties agreed, in writing, for the use of another address or to allow Denson [the real estate agent] to receive notice for Kumar and Gibbs.

"It is the duty of [the] courts to construe and enforce contracts as made, and not to make them for the parties." The Thorntons, who are seeking to strictly enforce the contract, must stand on the

¹ 240 Ga. App. 897, 525 S.E. 2d 735 (1999).

contract as made by the parties, and they failed to provide proper notice to Kumar and Gibbs as required by the specific terms of the contract. . . .

The evidence showed that the Thorntons improperly terminated the agreement by failing to provide Kumar and Gibbs notice of the termination as required by the contract.

525 S.E. 2d at 737.

Turning to the case at bar, the Contract For Deed required that Movant send the notice of default and notice of termination to a specific address. Movant failed to send the notices to the specific address. There is no evidence that Respondent designated in writing another address. The Court is not persuaded that Plaintiff has complied with the notice requirements of the Contract For Deed. The Court is persuaded that Movant's motion for relief must be denied.

An order in accordance with this memorandum opinion shall be entered this date.

DATED this 29th day of September, 2004.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court