

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

ESTATE OF ANTHONY V. RYAN, SR.,)
BY AND THROUGH FRAN TUTTLE)
AS ADMINISTRATOR CTA,)

Plaintiff,)

v.)

CIVIL ACTION NO. CV03-1464-BR

BRAD SHUMAN,)

Defendant.)

STATEMENT OF UNDISPUTED MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUES TO BE TRIED
AND THEORIES OF RECOVERY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, ESTATE OF ANTHONY V. RYAN, SR, BY AND THROUGH FRAN TUTTLE AS ADMINSTATOR CTA, in the above-styled matter, and files this Statement of Undisputed Material Facts as to Which There is No Genuine Issue to be Tried and Theory of Recovery in Support of Motion for Summary Judgment, as follows:

STATEMENT OF FACTS

1. This is an action by the Administrator CTA of the Estate of ANTHONY V. RYAN, SR., seeking to dispossess an alleged tenant from residential property located on Whitfield Avenue in Savannah, Chatham County, Georgia.

2. The action further seeks a declaratory judgment as to the validity of any alleged lease or other agreements relied upon by the tenant, Defendant, BRAD SHUMAN

("SHUMAN"), as well as the rescission of any agreements allegedly in existence, damages for tortious interference with fiduciary obligations and removal from the property.

3. SHUMAN has counterclaimed seeking specific performance of an alleged contract with the former Executor of the Estate of Anthony V. Ryan, Sr.

4. Anthony V. Ryan, Jr. ("Ryan Jr."), was the executor of the Estate off Anthony V. Ryan, Sr. ("Ryan Sr.") at times material hereto.

5. Ryan Jr. died on March 20, 2003.

6. Prior to his death, Ryan Jr., as executor of his father's estate used legal services of Hunter, Maclean, Exley & Dunn, primarily through Brooks Stillwell ("Stillwell") to assist on estate matters.

7. Stillwell provided assistance to Ryan Jr. and, in particular, advised him with respect to estate property.

8. In addition to Ryan Jr., beneficiaries of Ryan Sr.'s estate included, his widow, Porter Ryan, and his daughter, FRAN TUTTLE ("TUTTLE").

9. Under the estate plan of Ryan Sr., Porter Ryan was to receive all income from assets in his estate in her life.

10. Under the estate plan of Ryan Sr., TUTTLE was to ultimately receive the Whitfield Avenue property.

11. SHUMAN was a friend of Ryan Jr. and had engaged in business transactions with him in the past.

12. The Whitfield Avenue property, according to an appraisal of January 2003 secured by SHUMAN, had an appraised value of \$300,000.00 without considering the residence as contributing to the value.

13. The Ryan property and residence had been appraised by Johnnie Ganem Appraisers as of June 10, 2000, to have a value of \$425,000.00.

14. In April of 2002, Chatham County acquired .625 acres of the original 4.21 acre tract for the sum of \$50,000.00.

15. That on February 19, 2003, Ryan Jr., through his estate attorney, Stillwell, offered to sell the Whitfield Avenue property to TUTTLE for \$300,000.00.

16. On February 21, 2003, TUTTLE rejected that offer and indicated that the price was too low and that the property was worth more.

17. SHUMAN moved in to the Whitfield Avenue property at an unspecified time in 2003, however paid no rent to anyone until he made efforts to do so following the death of Ryan Jr.

18. The document of February 15, 2003, does not specify an amount of insurance to be maintained on the property.

19. The document of February 15, 2003, does not expressly state an amount of rent.

20. The document of February 15, 2003, does not state a defined amount of taxes, nor identify what year's taxes are to be applied.

21. SHUMAN never paid any taxes on the property at Whitfield Avenue.

22. SHUMAN never secured or maintained any insurance on the property at Whitfield Avenue.

23. The document of February 15, 2003, does not specify any time period within which an "option" is to be exercised.

THEORY OF RECOVERY

Defendant SHUMAN initially alleged a right to occupy the premises under an unexecuted lease agreement prepared by Brooks Stillwell. SHUMAN's reliance has now changed, however, to an alleged agreement of February 15, 2003, attached hereto for ready reference as Exhibit "A."

Plaintiff submits that the agreement attached as Exhibit "A" is unenforceable as a matter of law on the following grounds:

a. The agreement lacks necessary specificity of terms as required by the statute of frauds to be enforceable. Further, under SHUMAN's own testimony, Exhibit "A" was nothing more than agreement to agree.

b. If the agreement is in fact the agreement by the Estate of Ryan Sr. and is adequate in terms of specificity and inclusion of sufficient terms to satisfy the statute of frauds, there was a breach of fiduciary obligations by the Executor, Ryan Jr., known to Defendant SHUMAN and, therefore, the agreement is invalid. The consideration is inadequate as a matter of law and SHUMAN cannot establish that the agreement was fair, equitable and not against good conscience.

It is respectfully submitted that under the applicable laws pertaining to the statute of frauds, specific performance, the parole evidence rule, and the obligations of fiduciaries, the Plaintiff is entitled to a summary judgment as against any claims for specific performance of the alleged document of February 15, 2003. This is assuming the document was in fact signed by Ryan Jr., which assumption is made solely for the purposes of this motion and is otherwise disputed.

This _____ day of August, 2006.

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