

Land sale contract
Mutual rescission

Rios v. Hiday, Adversary No. 11-6247-fra
Salvador Rios and Mariareli Rios-Areanas, Case No. 11-63883-fra12

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Unpublished

Plaintiffs purchased farm property from the Defendants on a land sale contract to grow chickens under contract to a third-party producer. After Plaintiffs paid off an underlying debt secured by a lien owing to Bank of America, the land sale contract was modified to provide for monthly payments of \$1,425.64 with a balloon payment for the remaining balance due on 7/1/12. When Plaintiffs defaulted on the contract, Defendants demanded that Plaintiffs vacate the subject property and Plaintiffs left, they allege, under protest. They filed bankruptcy and this adversary proceeding, seeking equitable and monetary claims.

Plaintiff's allege in their complaint that Defendants did not commence a judicial foreclosure, a non-judicial foreclosure, or provide a notice of forfeiture, the allowable procedures required under applicable law. They seek 1) a declaration that Plaintiffs are the owners of the property subject to Defendants' security interest, 2) damages and attorney fees for violation of the automatic stay, 3) contempt for violation of the automatic stay, 4) damages for tortious interference, 5) civil penalties related to past wages due, and 6) should the court not return the property to Plaintiffs, rescission of the modified land sale contract and return of all money paid pursuant to that contract.

Defendants filed a motion for summary judgment, introducing as evidence a letter that Plaintiffs wrote to Defendants in which they indicated they wanted to rescind the land sale contract and get all their money back. They thereafter voluntarily relinquished possession of the real property to the Defendants. Because Defendants filed a counterclaim for rescission, Defendants argue all the elements for mutual rescission exist and the court should rule as a matter of law that the contract has been mutually rescinded.

The bankruptcy court denied Defendants' motion for summary judgment. The request to rescind the contract allegedly made by Plaintiffs was not "unambiguous," nor was the voluntariness of the Debtors' relinquishment of possession.

1 Defendants fell behind on their financial obligations under the land sale contract and failed to pay property
2 taxes for a number of years. Defendants were also having difficulty finding financing to make the balloon
3 payment under the contract, which had originally been due in 2011. In 2011, Defendants demanded that
4 Plaintiffs vacate the subject property and Plaintiffs left, they say under protest. Since their ouster from the
5 property, Defendants have been unable to raise chickens for Foster Farms pursuant to a contract they had
6 with that company.

7 Plaintiffs also contend that Defendant Randy Hiday failed to pay Mr. Rios the wages due him under
8 Oregon law during the period he was employed by Mr. Hiday.

9 The Defendants filed bankruptcy under Chapter 12 and filed a complaint against Defendants,
10 containing the following claims:

- 11 1) Declaration that Plaintiffs are the owners of the property subject to Defendants' security interest.
- 12 2) Automatic Stay: Defendants' failure to return property to Plaintiff constitutes a violation of the
13 automatic stay. Seeks damages and attorney fees.
- 14 3) Contempt for violation of the automatic stay.
- 15 4) Tortious Interference: Interference with Plaintiffs' agreement with Foster Farms. Seeks damages
16 in the form of lost income.
- 17 5) Civil penalties under Oregon law for failure to pay wages in accordance with Oregon law.
- 18 6) Rescission: If property not returned to Plaintiffs, Plaintiffs seek rescission of the modified land
19 sale contract and return of all money paid pursuant to that contract.

20 SUMMARY JUDGMENT

21 Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories,
22 admissions, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is
23 entitled to judgment as a matter of law. Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The
24 movant has the burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*,
25 477 U.S. 317, 323 (1986). The court must view the facts and draw all inferences in the light most favorable
26 to the nonmoving party. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir.

1 1987). The primary inquiry is whether the evidence presents a sufficient disagreement to require a trial, or
2 whether it is so one-sided that one party must prevail as a matter of law. *Anderson v. Liberty Lobby, Inc.*,
3 477 U.S. 242, 247 (1986).

4 A party opposing a properly supported motion for summary judgment must present affirmative
5 evidence of a disputed material fact from which a factfinder might return a verdict in its favor. *Anderson v.*
6 *Liberty Lobby, Inc.*, 477 U.S. at 257. Fed.R.Bankr.P. 7056, which incorporates Fed.R.Civ.P. 56(e), provides
7 that the nonmoving party may not rest upon mere allegations or denials in the pleadings, but must respond
8 with specific facts showing there is a genuine issue of material fact for trial. Absent such response, summary
9 judgment shall be granted if appropriate. *See Celotex Corp.*, 477 U.S. at 326-27.

10 DISCUSSION

11 Defendants cite to Oregon case law which indicates that in lieu of a vendor under a land sale contract
12 being forced to file for forfeiture or foreclosure upon the default by a vendee, the vendor and vendee may
13 agree upon other remedies, such as a deed in lieu of foreclosure or on mutual rescission. Defendants argue
14 that this is exactly what happened here: Plaintiffs voluntarily abandoned the property and made an
15 “unambiguous” request to the Defendants for the return of their down payment, thus evidencing a request for
16 rescission of the contract. Since Defendants counterclaimed for rescission in this litigation, a mutual
17 rescission of the contract has occurred by operation of law. The only thing left, according to Defendants, is
18 to determine who owes whom and how much.

19 The “unambiguous” request to rescind to which Defendants refer is evidenced by a letter written by
20 one or both of the Plaintiffs in which they appear primarily to seek information or help from the Defendants
21 to enable them to obtain a loan from Citizens Bank to make the balloon payment due under the land sale
22 contract. They finish the letter by asking Mr. Hiday to “help us keep our home and business [because it] is
23 our future, is how we live from, we have bills to pay and don’t want to go to bankruptcy. Or if we can have
24 back the down payment we give to you and still are a possibility for us to go to bankruptcy because we have
25 bills to pay.”

26 In order to be eligible for equitable rescission, a party to a contract must promptly disaffirm the

1 contract upon discovering the facts giving rise to rescission. The disaffirmance must be by clear and
2 unambiguous notice of the intent to rescind to the other party, *Stovall v. Publishers Paper Co.*, 284 Or. 53,
3 57 (1978), coupled with a tender of whatever performance is needed to return the parties to their pre-contract
4 positions, *Bolenback v. Continental Cas. Co.*, 243 Or. 498, 503 (1966).

5 Making inferences in favor of the nonmoving parties, the Plaintiffs, the court finds that the letter
6 pointed to by Defendants is not an unambiguous request for mutual rescission. It is a request for assistance to
7 enable the Plaintiffs to remain in possession and ownership of the farm property so that they would be able to
8 pay their bills and continue in the life they had chosen. Only if this failed did the Plaintiffs seek a return of
9 their \$20,000 down payment. Neither party to the contract disaffirmed the contract and the Plaintiffs argue
10 that they left the property under protest. There is certainly enough ambiguity that the issue cannot be
11 determined in the context of a motion for summary judgment.

12 CONCLUSION

13 For the reasons given, Defendants motion for partial summary judgment will be denied. Counsel for
14 Plaintiffs should submit a form of order consistent with this ruling.



17 FRANK R. ALLEY, III
18 Chief Bankruptcy Judge