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Melkonian v. Mahoney

Court of Appeals No. 36850-1-II

RESPONDANTS' BRIEF (CORRECTED 14 APRIL 2008)

RESPONSE TO INTRODUCTORY STATEMENT

As an introductory paragraph was included, we do want to state Mr. Melkonian is incorrect in his representation of the case at hand. We dispute the following facts as addressed:

1. We never prevailed upon him to install a security system. He was the one insistent that the rental property have a working security system. Theodore Mahoney testified (RP20) as to the agreements requirements of the tenant as being responsible for maintaining a security system and the status of the security system not being operational. He further testifies (RP21) where "And I am not against... you know ... taking care of the monthly payment fees but the system was not mine."

2. Our decision to purchase a home came at least a month after he informed us he was going to sell the rental property. Debi Mahoney testified (RP24) where Mr. Melkonian and his girlfriend came to the house and told us they wanted to sell the house and travel and February and notice to Mr Melkonian in March. Mr Melkonian testified he did speak to us on the sale of the house in testimony provided (RP26).

The remaining facts are undisputed and responses to his brief are set forth below.

A. RESPONSE TO ASSIGNMENTS OF ERROR

RESPONSE TO ASSIGNMENTS OF ERRORS

1. Response to First assignment of Error: The court did not error in ruling the landlord's right to a termination fee was not enforceable by the agreements lack of acknowledgement.

2. Response to Second Assignment of Error: The court did not error in ruling the agreement and amendment was no more than a month-to-month tenancy.

ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

No issues pertaining to the assignments of error were provided by Mr. Melkonian for response.

B. RESPONSE TO STATEMENT OF THE CASE

Response to Procedural History:

We offer no response on the submission for the procedural history provided.

Response to Substantive Facts:

Mr Melkonian testified he was aware of our interest in purchasing (RP27) at a future time. Mr Melkonian also testified he drew up the contract and we signed the agreement (RP8).

Additional principal provisions of the agreement that were omitted are as follows:

1. The written agreement and subsequent amendment was prepared by Mr. Melkonian.
2. Item c, Refundable security deposit. The express language in the agreement does not exclude the use of a termination fee as an application to rent.
3. Under item d. Utility payments, the item of security system service was also identified to be included to be paid for by tenants.
4. Additional termination right was identified under Other Terms in the agreement where:

“Landlord’s agent Vicki Elton may cancel lease on three month’s written notice in the event of Landlord’s death.”

The (Ex.2) Amendment to House Lease was entered into as a result of a written notification to Mr. Melkonian in October 2005 and presented during the small claims action, where we identified the security system could not be made operational as it was currently provided. We understood we would be responsible for the monthly maintenance services, provided the system as installed was functional. When we attempted to contact the company who provided services in the past, the company was no longer in business and after consulting with other local security firms, the current system would require a new installation to make the existing system functional. We inquired to Mr. Melkonian as to what he would like us to do. It was at his insistence that an amendment would be necessary. We signed the Amendment and began payment of the service as requested with the January 2006 rental payment.

Mr. Melkonian’s facts generally do not follow in the time sequence to offer appropriate comments to each paragraph. The period of time between the Amendment of December 13, 2005 and the March 30, 2006 letter was not addressed by Mr. Melkoian, and we provide the following as a response for explanation:

As Debi Mahoney testified (RP24), Mr. Melkonian and Vicki Elton visited us on a weekend in early February 2006 and told us of their intention to place the property up for sell as they were looking to sell the property and travel. At that time Mr. Melkonian offered to provide us an opportunity to purchase the property. As terms were not yet set, Mr. Melkonian later indicated his price, other terms, and an additional offer to provide a short term 2nd mortgage contract if we could obtain financing to purchase the property. During the period between mid February 2006 and early March 2006, we worked with a

mortgage company on the possibility to obtain qualification for a pre approval. When we received our initial response from the mortgage company, we telephoned Mr. Melkonian and indicated we could not buy the property, and had not received a pre approval, but if we did it would be for much less than his price. At that time meaningful oral discussions with Mr Melkonian broke down as verbal litigation threats to us and the mortgage company came from him. We turned to the written agreement and began researching possible solutions. After reviewing the Washington Landlord - Tenant Act guide from the Washington Attorney General and Washington State Bar Association web sites, we discovered the failures of Mr. Melkonian to exercise his duties. As described in the letter to Mr. Melkonian (Ex.3) the property was beyond our ability to finance, and as we understood his intentions, we would begin looking for a new rental property or if approved purchase a home within our budget. Mr Melkonian testified he did not remember receiving the letter of 30 March 2006 (RP27), as Theodore Mahoney testified it was sent what was shown in the record to be sent certified and then again attached to the rent check (RP23).

His letter to us on 5 June 2006 threatens various remedies for purportedly breaking the agreement. Mr. Melkonian's listing of damages far exceeds the limitations of the small claims proceedings and is founded in his promise to seek the full tenancy in litigation. Needless to say, we were shocked when the papers were served at 9 pm at our new home address as contained in the letter to Mr. Melkonian of 30 March 2006.

C. RESPONSE TO SUMMARY OF ARGUMENT:

No Summary of Argument was provided.

D. RESPONSE TO ARGUMENTS:

1. Response to Argument on Part Performance:

We have no response to Mr. Melkonian's inference from RCW 59.04.010 and RCW 59.18.210 as being inappropriate or not. We will state that RCW 59.18.911 does apply in our relationship as landlord-tenant in this case and his failure to acknowledge the agreement and modification are material in the application of RCW 19.36.010 and RCW 64.04.010. In *Saunders v. Callaway*, 42 Wn. App. 29, (1985) the court affirmed that a lease for a term of over one year must be acknowledged. Other cases support this rule. See *Omak Realty Inv. Co. v. Dewey*, 129 Wn, 385, (1924); *Wood v. Sill*, 124 Wn. 377, (1923); *Family Med. Bldg. Inc. v. Department of Social & Health Servs.*, 104 Wn.2d 105; *Friedl v. Benson*, 25 Wn. App. 381, 386 (1980). Neither Mr. Melkonian nor we made any substantial improvements that could be construed as made as a result of or in reliance to the agreement to defeat the applicability of the statutes of fraud. In *Stevenson v. Parker*, 25 Wn. App. 639, (1980), "In general an unacknowledged lease for a term exceeding 1 year, with monthly rental reserved is effective only as an oral lease, and results in a tenancy from month to month."

2. Response to Argument on Promissory Estoppel.

It is unreasonable for Mr. Melkonian to assume we induced the requirement of providing a security system. It was his duty under RCW 59.18.060 (5) to provide a functional security system at the beginning of the tenancy in order for us to maintain the any such services under the agreement. Again we were led to believe a phone call to the company identified on the system would be all that was needed to activate the service, which was not the case. Should it be appropriate for the tenant to bear the capital cost for repair or installation of a system he does not own?

Even this agreement modification as an unexecuted oral agreement (or a written but unacknowledged agreement) to modify a written and acknowledged multiyear lease for the remainder of the lease's term is unenforceable. *See Corson Corp. v. Frontier, Inc.*, 1960, 55 Wash.2d 652, 654-655, 349 P.2d 424, 425-426; *Vance Lumber Co. v. Tall's Travel Shops, Inc.*, 1943, 19 Wash.2d 414, 417-418, 142 P.2d 904, 906; *Hansen v. Central Investment Co.*, 1941, 10 Wash.2d 393, 116 P.2d 839; *City Mortgage Co. v. Diller*, 1935, 180 Wash. 499, 502-503, 40 P.2d 164, 165-166.

The cases cited for exception do not relate to the case at hand where Mr. Melkonian's action triggered the events for cause of termination actions. The agreement certainly did not contemplate an option to buy. It was a rental for tenancy for a period up to the stated time. We assert, as the District and Superior Courts judgment identified, on the face of our agreement as being enforceable only as a month to month tenancy, which places the statute of frauds rule over Mr. Melkonian's promissory estoppel. See *Fox Development, Inc. v. England*, 2005 Ind. App. LEXIS 2131 (2d Dist. Nov. 14, 2005) where:

"Oral contracts for the sale of real property are excepted from the statute of frauds where there is part performance, . . . or promissory estoppel . . .".

3. Response to Argument on Faulty Analysis by the Trial Court.

We provide no response for Mr. Melkonian's analysis.

E. RESPONSE TO CONCLUSION

As cited above, we did not prevail upon Mr. Melkonian to write the agreement for any period. Mr. Melkonian's failures to properly exercise his duties as a Washington State landlord were at fault. We performed our duties as good tenants and did enjoy the

property and never sought to avoid our obligation as we had been led to understand. We respectfully request this Court to affirm the District and Superior Courts judgments.

Submitted on 29 March 2008 and corrected as requested by 11 April 2008 ruling of Commissioner Skerlec on 14 April 2008.

Correction respectfully submitted,

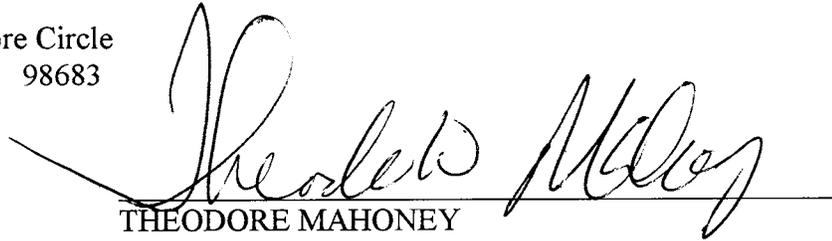


THEODORE MAHONEY & DEBI KAY MAHONEY
Respondents in pro se

PROOF OF SERVICE AND CERTIFICATION OF TRUE COPY

I, Theodore Mahoney, defendant respondent in this case, hereby certify that on this 14th day of April, 2008, a certified true copy of the above Respondent's Brief was placed in the United States Mail, postage prepaid, and addressed to:

Bruce L. Melkonian
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THEODORE MAHONEY
Defendant - Respondent

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