Rel: August 26, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210065

Tony L. Hiett, Sr., and Kelly Hiett

v.

Beverlye Brady

1210081

Beverlye Brady

v.

Tony L. Hiett, Sr., and Kelly Hiett

Appeals from Lee Circuit Court
(CV-17-900419)

SELLERS, Justice.

This appeal and cross-appeal involve a residential lease agreement with an option to purchase executed by Tony L. Hiett, Sr., and his wife Kelly Hiett ("the tenants") and Beverlye Brady ("the landlord"). We affirm as to the appeal; we affirm in part, reverse in part, and remand as to the cross-appeal.

I. Facts

The landlord leased to the tenants a house ("the property") located in Auburn for a term of five years, beginning September 1, 2011, and ending August 31, 2016, for $2,000 per month. The lease agreement contained the following option to purchase:

> "Landlord grants [the tenants] the exclusive right to an option to purchase ('Option') the [property] herein for a gross sales price of $250,000.00 beginning with the term of this lease and expiring on August 31, 2016, or, if the lease is earlier terminated, at that time. [The tenants] shall notify Landlord in writing, prior to the termination date of the option, of [the tenants'] intent to exercise the option to purchase. If option is exercised [the tenants] will receive credit of $1,000.00 per month for each month rent in the amount of $2,000.00 was timely paid towards the total purchase price of $250,000.00.

> Upon exercise of this option by [the tenants], a closing shall take place within 60 days. Before the closing date, [the tenants] shall make all reasonable efforts to obtain financing to purchase the [property]. In the event [the tenants'] reasonable efforts were unable to procure financing, the deposit shall be returned. All expenses relating to the sale and to the closing shall be borne by [the tenants]. The Landlord shall convey the [property] to the [tenants] by warranty deed with a merchantable title. Until the written exercise of the option, the relationship between the parties shall be solely that of landlord and tenant."

The lease agreement also contained a holdover clause, providing:

> "In the event [the tenants remain] in possession of the [property] for any period after the expiration of the Lease Term ('Holdover Period'), a new month-to-month tenancy shall be created subject to the same terms and conditions of this Lease at a monthly rental rate of $2,500.00 per month, unless otherwise agreed by the parties in writing. Such month-to-month tenancy shall be terminable on (30) days notice by either party or on longer notice if required by law."

By letter dated August 29, 2016, the tenants informed the landlord that they were exercising their option to purchase the property and that the closing would take place on or before October 30, 2016. The following month, the tenants informed the landlord that they needed additional time in which to obtain financing. On October 4, 2016, the landlord sent an email to the tenants informing them that

> "[u]nder the terms of the current contract your option to purchase requires you to close within 60 days that will end on or about October 30, 2016. I am willing to extend the contract

> provisions giving you credit for payments timely made between September 1, 2011[,] through August 31, 2016, with the payoff balance being $205,155.00 extending the option to purchase with closing date until April 30, 2017. As provided in the original contract the monthly rental rate during the holdover period is $2,500.00 per month.
>
> "Otherwise, I am happy to do a two-year lease with monthly rent in the amount of $1,500.00. If you wish to make an offer to purchase the house you may do so no later than April 30, 2017."

According to the tenants, they accepted the first option to purchase the property presented in the landlord's email and began making monthly holdover rental payments of $2,500. And, in April 2017, they informed the landlord that they had obtained financing and were ready to close on the property by April 30, 2017. The landlord, however, refused to convey title to the property because, she claimed, the tenants had never responded to her email; thus, according to the landlord, the option to purchase had expired. The tenants thereafter stopped paying rent under the lease agreement, but continued to occupy the property, and sued the landlord, seeking specific performance of the option to purchase. The landlord counterclaimed, asserting a claim for ejectment and a claim of breach of contract, based on unpaid rent and late fees owed under the lease agreement.

The case proceeded to a jury trial. Pursuant to Rule 49(c), Ala. R. Civ. P.,[1] the trial court directed the jury to return a general verdict accompanied by answers to interrogatories regarding the tenants' claim for specific performance and the landlord's claim for ejectment. The trial court also instructed the jury on the landlord's breach-of-contract claim and damages. After hearing the evidence, the jury returned the following verdict in favor of the tenants on their specific-performance claim and against the landlord on her ejectment claim:

> "[T]he [tenants] and the [landlord] agreed to a contract for [the] purchase of the [property] and under the terms of the agreement to purchase the [landlord] agreed to convey the [property] by warranty deed; … the [tenants] agreed to pay $205,155 to the [landlord]. And … the [tenants] were at all relevant times ready, willing, and able to pay the sum that they agreed to pay."

The jury also returned a verdict in favor of the landlord and against the tenants on the landlord's breach-of-contract claim and assessed damages in the amount of $34,535. The trial court entered a judgment based on those verdicts and ordered the parties to "perform the contract

[1]Rule 49(c), Ala. R. Civ. P., provides, in relevant part, that "[t]he court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one more issues of fact the decision of which is necessary to a verdict."

for the sale of the [property]." The closing never occurred, and it appears that the tenants continue to occupy the property. Both sides filed postjudgment motions, which were denied by operation of law, pursuant to Rule 59.1, Ala. R. Civ. P. In conjunction with their postjudgment motion, the tenants also filed a motion for an award of attorney fees under § 35-9A-163, Ala. Code 1975, a part of the Alabama Uniform Residential Landlord Tenant Act ("the AURLTA"), § 35-9A-101 et seq., Ala. Code 1975. These appeals followed.

II. Standard of Review

> "No ground for reversal of a judgment is more carefully scrutinized or rigidly limited than the ground that the verdict of the jury was against the great weight of the evidence. See Kilcrease v. Harris, 288 Ala. 245, 259 So. 2d 797 (1972). Rather, there is a strong presumption of correctness of a jury verdict in Alabama, Wagner v. Winn-Dixie, 399 So. 2d 295 (Ala. 1981), and that presumption is strengthened by the trial court's denial of a motion for a new trial. Chapman v. Canoles, 360 So. 2d 319 (Ala. 1978). An appellate court must review the tendencies of the evidence most favorably to the prevailing party and indulge such inferences as the jury was free to draw. Ashbee v. Brock, 510 So. 2d 214 (Ala. 1987). The reviewing court will not reverse a judgment based on a jury verdict unless the evidence is so preponderant against the verdict as to clearly indicate that it was plainly and palpably wrong and unjust. Mahoney v. Forsman, 437 So. 2d 1030 (Ala. 1983)."

Christiansen v. Hall, 567 So. 2d 1338, 1341 (Ala. 1990).

III. Discussion

A. Specific-Performance and Ejectment Claims

In her cross-appeal, the landlord argues that the judgment based on the jury's verdict in favor of the tenants on their specific-performance claim and against her on her ejectment claim is due to be reversed because, she says, the evidence presented at trial overwhelmingly indicated that the parties did not agree to extend the option to purchase until April 30, 2017. She further states that, even if the tenants had accepted the offer to extend the option to purchase until April 30, 2017, they produced no evidence indicating that they were able to obtain financing before that date. Finally, the landlord claims that there could not have been any agreement between the parties to extend the option to purchase because, she says, the tenants never informed her that they had agreed to the purchase price of $205,155. "An option to purchase real estate is, by its nature, unilateral when entered into. However, when the option is exercised in accordance with its terms mutuality of obligation is created and the option becomes a binding contract of purchase and sale enforceable in equity by specific performance." Kennedy v. Herring, 270 Ala. 73, 75, 116 So. 2d 596, 598 (1959).

In this case, it is undisputed that the tenants timely notified the landlord that they were exercising their right to purchase the property and that the closing would take place on or before October 30, 2016. It is further undisputed that, after the tenants explained that they were having trouble obtaining financing, the landlord offered them two options regarding the property. Under the first option, the tenants could purchase the property on or before April 30, 2017, for $205,155. That option allowed the tenants to retain partial credit for rent timely paid during the 60-month lease term but required them to pay holdover rent in the amount of $2,500 per month. Under the second option, the tenants could elect to lease the property for a two-year term for $1,500 per month, after which time they could make an offer to purchase the property -- but not for the same price extended under the first option. Mr. Hiett responded to the landlord by email, informing her that he would be making the October 2016 rent payment at the end of that week and requesting that the landlord give him until the end of the following week to let her know "the plans." At trial, Mr. Hiett testified that, a couple of days after receiving the landlord's October 2016 email, he went to the landlord's office and gave the landlord's assistant a check in the amount

of $2,500 and informed her that he was accepting the landlord's offer to extend the option to purchase until April 30, 2017. The landlord, however, testified that she never heard anything from the tenants until January 2017, when she called Mr. Hiett, inquiring about his decision to purchase of the property. The landlord stated that she told Mr. Hiett: "I never heard from you. You know, you didn't pick anything." According to the landlord, Mr. Hiett responded: "I know. I was busy." The landlord further testified that, on April 3, 2017, she sent an email to Mr. Hiett asking him what he wanted to propose about the property and that Mr. Hiett told her that he had been approved for financing and was ready to close on the property. The landlord further stated, however, that on April 7, 2017, Mr. Hiett informed her, among other things, that, although he had been approved for financing, he was unable to close on the property in April 2017. The tenants' closing attorney, Brandon Rice, also testified, stating that, on April 19, 2017, he sent an email to the landlord's attorney, stating that the tenants were "ready, willing and able to tender funds in the amount of $205,155.00" on or before April 30, 2017. The landlord's attorney responded by email, stating: "I must respectfully

disagree with your client's position. There is no agreement at this time between [the landlord and the tenants]."

Based on the evidence presented, the jury could have reasonably believed that the landlord's October 4, 2016, email was a valid offer to extend the option to purchase until April 30, 2017, and that the tenants accepted that offer when Mr. Hiett gave the landlord's assistant a check in the amount of $2,500, informing her that he was accepting the offer to extend the option to purchase until April 30, 2017. And, based on the tenants' action of continuing to remit to the landlord monthly rental payments in the amount of $2,500, the jury could have reasonably believed that, when the landlord accepted those payments, she consented to extend the closing on the option to purchase until April 30, 2017. Based on the landlord's October 2016 email and Rice's testimony, the jury could have also reasonably believed that the tenants had agreed to a purchase price of $205,155, and that the tenants were ready, willing, and able to close on the property on or before April 30, 2017. Finally, contrary to the landlord's argument, the option to purchase does not condition the closing upon proof of financing. Rather, the option to purchase states that, "[b]efore the closing date, [the tenants] shall make all reasonable

efforts to obtain financing to purchase the [property]. In the event [the tenants'] reasonable efforts were unable to procure financing, the deposit shall be returned." It is well-settled law that it is not this Court's role to reweigh the evidence. Mitchell's Contracting Service, LLC v. Gleason, 261 So. 3d 1153, 1160 (Ala. 2017). Based on the foregoing, we conclude that the jury's verdict in favor of the tenants on their specific-performance claim and against the landlord on her ejectment claim was supported by the evidence; therefore, the judgment entered on that verdict is due to be affirmed.

B. Breach of Contract and Attorney-Fee Claims

In their appeal, the tenants argue that the judgment based on the jury's verdict in favor of the landlord on her breach-of-contact claim is due to be vacated because, they say, that verdict is inconsistent with the verdict in favor of the tenants on their specific-performance claim and against the landlord on her ejectment claim. Relying on McAnear v. Massey, 273 Ala. 541, 143 So. 2d 299 (1962), the tenants claim that, once they timely exercised their option to purchase the property and indicated that they were ready, willing, and able to close on or before April 30, 2017, they were vested with "equitable title" to the property and, therefore,

relieved of any further obligation to pay rent under the lease agreement. Massey, however, does not stand for such a proposition. In Massey, the landlord and tenant in that case entered into a lease agreement for a term of five years, beginning October 25, 1956, requiring the tenant to pay rent on a yearly basis; the lease contained an option to purchase. Before the rent became due for 1959, the tenant, on November 1, 1958, exercised his option to purchase the property, advising the landlord that he was "'then and continuously ready, willing and able'" to pay the purchase price for the land. 273 Ala. at 542, 143 So. 2d at 300. The landlord refused to convey title to the land, and the tenant withheld his rent payment for 1959 and filed a complaint for specific performance. The landlord moved to dismiss the complaint, arguing that, by withholding the rent for 1959, the tenant had only partially performed under the lease and, therefore, could not maintain a suit for specific performance. The Massey Court disagreed, noting that the tenant had shown "good and sufficient reason for not having paid the 1959 rent" and was therefore entitled to specific performance. 273 Ala. at 543, 143 So. 2d at 301. The Massey Court went on to explain that the lease term was for five years and that, "if purchased prior to expiration of the term there would be no

obligation on [the tenant] to pay rent for any year of the term remaining after the purchase" and, "there being no obligation on [the tenant] to pay such rent at that time, the failure to pay it does not constitute a nonperformance of the agreement on the part of [the tenant]." Id. In other words, the Massey Court addressed whether the tenant could seek specific performance of an option to purchase when the tenant was not in breach of the lease when he exercised that option. In this case too, the tenants were not in breach of the lease agreement when they exercised their option to purchase the property; thus, under Massey, they were entitled to seek specific performance. In fact, we point out that, after exercising their right to purchase the property, the tenants continued to pay rent for approximately eight months, until the landlord's attorney indicated that the landlord was not willing to convey title to the property based on her opinion that the option to purchase had expired. Simply put, Massey does not stand for the proposition that, once an option to purchase is exercised by a tenant in possession of the property, the tenant is no longer obligated to pay rent to the landlord for the use of the property. To the contrary, while the relationship between a landlord and a tenant may be altered when an option to purchase is exercised, the

obligation to remit payment for the use of the property continues until title to the property is vested and the tenant becomes the owner thereof. Although a court may apportion damages against a landlord for failure to convey title by offsetting any loss of rental payments, the landlord cannot be stripped of his or her right to earn rental income as a self-help remedy when the tenant feels that the landlord has failed to perform under the lease or has otherwise allegedly breached the lease. Accordingly, the jury's verdict in favor of landlord on her breach-of-contract claim is not due to be vacated, and the judgment based on that verdict is not due to be reversed, on the basis that the verdict is inconsistent with the verdict in favor of the tenants on their claim for specific performance and against the landlord on her ejectment claim.

The tenants also assert in their appeal that the trial court erred in failing to conduct a hearing or to rule on their posttrial motion seeking attorney fees under the AURLTA. Specifically, the lease agreement contained a provision regarding the landlord's entitlement to attorney fees. Section 35-9A-163(a)(3), Ala. Code 1975, prohibits rental agreements from providing that a tenant agrees to pay the landlord's attorney fees. Section 35-9A-163(b) provides that, "[i]f a landlord seeks

to enforce a provision in a rental agreement … known by the landlord to be prohibited, the tenant may recover … reasonable attorney's fees." In this case, the landlord sought attorney fees for enforcement of the lease agreement; however, the trial court entered a judgment as a matter of law as to that claim. After the trial court entered a judgment based on the jury's verdicts, the tenants then filed a posttrial motion for an award of attorney fees. We decline to address the tenants' attorney-fee argument, however, because they have not established that their claim for attorney fees under the AURLTA was properly made after the entry of the judgment; nor have they provided any discussion of the interplay of the motion with Rule 59.1, Ala. R. Civ. P. See Russell v. State, 51 So. 3d 1026 n.4 (Ala. 2010) (noting that party's motion for attorney fees was not a motion to alter, amend, or vacate a judgment within the ambit of Rule 59(e), Ala. R. Civ. P.). Even assuming that the tenants had established that their claim for attorney fees under the AURLTA was properly made in a posttrial motion, they have not established that the motion has been ruled upon; thus, there is nothing for us to review. Accordingly, the tenants are not entitled to any relief on their attorney-fee claim.

C. Breach-of-Contract Claim -- Inadequate Damages

Because we conclude that the jury's verdicts in this case are not inconsistent, we address the landlord's argument in her cross-appeal that the damages awarded on her breach-of-contract claim for unpaid rent and late fees are inadequate and, thus, that she is entitled to either an additur or a new trial. "Damages are considered inadequate when they are not sufficient to compensate for proven losses." 412 S. Ct. St., LLC v. Alabama Psychiatric Servs., P.C., 163 So. 3d 1020, 1030 (Ala. Civ. App. 2014). "Where damages are determined to be inadequate, the court may, in lieu of a new trial and with the consent of the defendant, increase the damages, where the amount to be added is certain and based on a fixed standard of admeasurement." Norman v. Baldwin Cnty., 652 So. 2d 1145, 1147 (Ala. 1994); see also Smith v. Darring, 659 So. 2d 678, 680 (Ala. Civ. App. 1995) ("If a judgment is challenged on the ground of inadequate damages, this court must attempt to ascertain from the record whether the verdict gives substantial compensation for substantial injury."). At trial, the landlord claimed that the tenants owed $76,050 in unpaid rent and late fees. The evidence was undisputed that, after the lease term expired in August 2016, the tenants paid

monthly holdover rent in the amount of $2,500 until April 2017. Therefore, from May 2017 until October 2019, the time of the trial, the tenants owed 30 months of rent at $2,500 a month plus 30 months of late fees at $35 a month, for a total of $76,050. Although the jury determined that the tenants had breached the lease agreement by failing to pay rent, they awarded the landlord only $34,535 in damages with no explanation of either how those damages were computed or the facts taken into consideration in calculating those damages. With nothing to support the amount of damages awarded by the jury, we hold that the damages are inadequate; accordingly, the trial court exceeded its discretion when it denied the landlord's postjudgment motion for a new trial or an additur of the damages. Id.

IV. Conclusion

We affirm the judgment entered on the jury's verdict in favor of the tenants on their specific-performance claim and against the landlord on her ejectment claim. We reverse the judgment entered on the jury's verdict in favor of the landlord on her breach-of-contract claim based on the inadequacy of damages awarded, and we remand the cause with

directions to the trial court to grant a new trial as to only that claim, unless the tenants consent to an additur.[2]

1210065 -- AFFIRMED.

1210081 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.

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[2]Rule 59(a)(1), Ala. R. Civ. P., provides, in relevant part, that a new trial may be granted "on all of the issues in an action in which there has been a trial by jury." Because the jury's verdict in favor of the tenants on their specific-performance claim and against the landlord on her ejectment claim is supported by the evidence, it would be a waste of time and judicial resources to retry those claims. See Beneficial Mgmt. Corp. of America v. Evans, 421 So. 2d 92, 97 (Ala. 1982) (noting that, "when a trial court grants a motion for new trial, it must, under the mandate of Rule 59, grant a new trial on the entire cause," but that "[t]his Court is not bound by such limits").