IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
Daniel D. Rutledge,	)	Case No. 24-11386
	)	
Debtor(s).	)	

ORDER GRANTING MOTION FOR RELIEF FROM STAY AS TO POSSESSION

This case is before the court on a motion for relief from stay (doc. 11) filed by Powers Investments, LLC seeking possession of real estate in Mobile County located at 9976 Greenbriar Drive South in Semmes, Alabama ("the property"). The debtor Daniel Rutledge has objected, contending that he is buying the property under an oral agreement with Powers Investments and that he proposes to pay the debt as a secured claim in his chapter 13 plan (doc. 2). The issue here is the nature of the debtor's interest in the property.

The court held a hearing on September 3, 2024 and heard testimony from Mr. Rutledge and from Paul Powers, the owner of Powers Investments. The court admitted the creditor movant's exhibits 1-10 without objection. The debtor filed an objection to exhibit 8 due to lack of completeness but did not object at the hearing because the movant supplemented the exhibit with all pages. The court admitted debtor's exhibits B, C, and D. The court did not admit debtor's exhibit A, an affidavit of the debtor, because the debtor was present and testified. Having carefully considered the evidence, as well as the parties' arguments, and for the reasons set out below, the court finds that the debtor Rutledge had a month-to-month lease with Powers Investments and grants the motion for relief from stay.

Powers Investments entered into a five year "Residential Land Rental Agreement" (movant's Exhibit 1) with Jerry Rester, who is not a party to this action. The lease provided for rent of $250 per month for a term beginning December 1, 2013 and ending on November 30,

2018. The lease prohibited any occupants other than Rester and prohibited any assignment or sublease without the written consent of the landlord.

Rester and Powers Investments simultaneously entered into another agreement (movant's exhibit 3) dated December 1, 2013 entitled "Real Estate Option to Purchase." In summary, that agreement gave Rester the option to purchase the property for $21,000, of which $1,000 had been paid down. The option provided that Rester could exercise the option at any time during the lease agreement as long as he was not in default and that, if exercised, the sale must be closed within fourteen days after the expiration of the five-year term on November 30, 2018. The option also provided that Rester could pay an additional $1,500 to purchase the property on a vendor's lien deed, the details of which were not specified. Paragraph 10 of the agreement provided that, if the option were exercised, 10% of each rental installment paid by Rester would be credited toward the purchase price. Any breach of the agreement would allow Powers Investments to terminate the agreement. The option agreement did not contain a provision regarding assignability.

Jerry Rester later executed a July 28, 2014 "assignment" (movant's exhibit 2 and debtor's exhibit B). It is unclear to the court whether the assignment of the purchase option is from Rester to Jennifer Delaune solely or whether it is from him to Delaune and himself jointly. Although the document is not signed by Powers Investments, it states that it was prepared by Powers Investments.

The property has a dilapidated mobile home on it which Powers Investments did not claim but was agreeable for Rester or other occupants to utilize. Jerry Rester apparently dropped out of the picture at some point under circumstances which were not explained in court. According to Rutledge, Jennifer Delaune was an acquaintance of his and was living on the

property. But she moved away and told him that if he made payments on it she would give him the deed to the property when it was paid off. Sometime in 2020, Rutledge thus started making monthly payments of $250. A 2021 receipt showing both his name and Jennifer Delaune's was admitted into evidence as debtor's exhibit D and Rutledge testified that he had multiple receipts like that. Rutledge testified that he had several conversations with employees in the Powers Investments office and that they had given him payoff figures in the range of $12,000 for the property. Rutledge further testified and exhibit D shows that he had paid Powers Investments the amount of $106.70 for property taxes on the property. Paul Powers and Rutledge both testified that Powers knew that Rutledge was making payments, although Powers said that he does not investigate or question when persons other than lessees make payments.

In 2024, Powers Investments was cited by Mobile County because the property had trash on it. The civil citation was admitted as movant's exhibit 5. Prior to the civil citation, Powers Investments sent notice of termination of the lease to Rester and Delaune (movant's exhibit 7) "for failure to make monthly payments." Powers Investments served Rester and Delaune at the property, not by personal service. Powers Investments then filed an unlawful detainer action and obtained a district court judgment for possession of the property. (Movant's exhibits 8, 9, and 10). After Powers Investments hired a crew to remove the mobile home, Rutledge filed bankruptcy, which stopped the process. In its filings in district court – which have been admitted into evidence in this proceeding – Powers Investments included a payment table which apparently shows an amortization of some amount, with one-third of the $250 per month payments ($82.50) being credited toward a reduction of the amount owed.

The primary question here is the nature of the Rutledge's interest, if any, in the property. As noted above, the 2013 lease and 2013 option to purchase both expired by their own terms in

2018. Neither of them had any right to extend. The court thus finds that both of those written agreements had expired by the time Rutledge started residing on the property or making payments in 2020. The court must now decide what the nature of the Rutledge's interest is absent any written documents.

Rutledge contends he is buying the property under an oral contract for sale. It is not clear whether he contends that the oral contract is between Powers Investments and Jennifer Delaune or between Powers Investments and himself. Under Alabama's Statute of Frauds, Alabama Code § 8-9-2, a contract for the sale of the lands must be in writing unless the purchase money or a portion thereof is paid and the purchaser is put in possession of the land by the seller.

Counsel for the debtor argued strenuously that the fact that Rutledge has been living on the property since 2020 and that Powers Investments has accepted payments from him constitutes an exception to the Statute of Frauds and creates an enforceable contract. The problem is that there was no evidence about the terms of an alleged sale contract between Powers Investments on one hand and either Delaune or Rutledge on the other. Rutledge did not testify to any agreement between him and Powers Investments as to the purchase price, how much of the monthly payments were credited toward that purchase price, whether the payments had to be current, or other details necessary to create an enforceable contract under Alabama law. Alabama law requires that, to be enforceable, the essential terms of a contract – whether written or oral – must be sufficiently definite and certain. *See, e.g.*, *White Sands Group, L.L.C. v. PRS II, LLC*, 998 So. 2d 1042, 1051 (Ala. 2008); *Ricks v. Riddle Equipment, Inc.*, 20 So. 3d 811, 814 (Ala. Civ. App. 2009). This includes things such as the time of performance and the price to be paid, neither of which was present here. *See id.*

If Rutledge is trying to enforce an alleged oral contract between Delaune and Powers Investments, there is no evidence of any details about what that contract was either. The only information about any terms comes from the so-called "amortization table" filed with district court. Powers testified that it was an old accounting form that his office had kept that did not reflect reality, and the court declines to find that the table somehow creates a sale contract with all the other terms unknown. The court is not reaching the issue of Rutledge's possession or acceptance of his payments because it finds there was no enforceable oral contract in the first place.

What Rutledge seems to be alleging, although without details, is really an option to purchase between Powers Investments and Delaune, not a purchase agreement that would have required Delaune or Rutledge to purchase the property or else be in breach of the agreement. The dispositive question is thus whether Powers Investments could have forced Delaune or Rutledge to purchase the property based on this alleged oral contract, of which there are no details? The answer is clearly no. This court has held in several cases that lease to purchase contracts can be disguised security interests and has enforced them as mortgages which can be paid through a bankruptcy case. But the elements to find a disguised security interest are not present here. *See generally In re Nolan*, Case No. 17-03706, 2018 WL 10345331 (Bankr. S.D. Ala. Apr. 2, 2018). Indeed, none of the agreements admitted into evidence – or the alleged oral agreement – are structured like a typical purchase-money note and mortgage; instead, they are the typical landlord-tenant lease with purchase option. There is no evidence that Rutledge, Delaune, or anyone else was obligated to pay the full amount of the purchase price; at most, they only ever had the option to do so.

So even if there had been sufficiently specific terms to create a contract, Rutledge's best case scenario is that he is an assignee of an oral option to purchase. But Rutledge is not seeking to exercise an option to purchase because he cannot pay the $10,700 or so that is allegedly owed; he wants to treat the option to purchase as a disguised security interest which he can pay over time in the bankruptcy through his chapter 13 plan. The court finds that even if there were an enforceable contract it was only an option to purchase, not a disguised security interest, and therefore cannot be paid through Rutledge's plan. *See, e.g.*, *In re Pittman*, 289 B.R. 448, 450-52 (Bankr. M.D. Fla. 2003); *In re Winston*, 181 B.R. 589, 594 (Bankr. N.D. Ala. 1995).

To the extent the court has not specifically addressed any of the arguments made by the debtor or his counsel at the hearing or in other filings with this court, it has considered them and determined that they would not alter this result. For the reasons stated, the court finds that the debtor only had a month-to-month lease with Powers Investments and does not otherwise have an ownership interest in the property. The court finds that the creditor's interest in the property is not adequately protected and that there is cause to lift the stay under Bankruptcy Code § 362(d)(1). Accordingly, the court grants the motion for relief from stay by Powers Investments to seek possession of the property located at 9976 Greenbriar Drive South in Semmes, Alabama. Any attempts to collect money damages must be pursued through this court while the debtor remains in bankruptcy. The court is not waiving the Rule 4001 14-day stay of execution.

Dated: September 16, 2024

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

Notice Recipients

District/Off: 1128−1	User: admin	Date Created: 9/16/2024
Case: 24−11386	Form ID: pdf1	Total: 3

Recipients of Notice of Electronic Filing:

aty	William C. Poole	debbie_presley@bellsouth.net

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Daniel D. Rutledge	10355 Brothers Lake Dr	Wilmer, AL 36587
3857912	Power Real Estate	3558 Oak tree Dr Ste D	Semmes, AL 36575

TOTAL: 2