

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CARLOS CABRERA, JR.,

CASE NO.: 2022-020688-CA-01

Plaintiff/Counter-Defendant,

v.

LAURI BLOOM,

Defendant/Counter-Plaintiff.

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on January 30, 2024, upon the following two motions: (i) the Motion for Summary Judgment (**DE #87**), filed by Defendant/Counter-Plaintiff, Lauri Bloom (“Bloom” or “Seller”) [hereafter the “Seller’s Motion”]; and (ii) the Motion for Summary Judgment (**DE #89**), filed by Plaintiff/Counter-Defendant, Carlos Cabrera Jr. (“Cabrera” or “Buyer”) [hereinafter the “Buyer’s Motion”]. The Court, having reviewed the Seller’s Motion, the Buyer’s Motion, the responses of the parties, the summary judgment record and the Court’s file, having heard argument of counsel, and otherwise being duly advised of the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Purchase Contract. Effective January 14, 2020, Buyer and Seller entered into a standard FARBAR contract (the “Purchase Contract”) for the purchase and sale of certain real property located at 149XX Southwest 224 Street, Miami, Florida 33179, also known as 16 56 39 5 AC Redland Citrus Orchards PB 5-31, Lot 24 (the “Property”). The Property is a five-acre parcel of agricultural land. The purchase price was \$419,000. The Purchase Contract provided that closing would occur no later than January 31, 2023. The Purchase Contract provided that it was

Buyer's responsibility to perform all required title searches and pay for title insurance. The Purchase Contract further provided in section 8(b) that title defects would be handled as follows:

Title Examination: After receipt of title evidence, Buyer will, within 10 days (10 if left blank) but no later than Closing Date, deliver written notice to Seller of title defects. Title will be deemed acceptable to Buyer if (i) Buyer fails to deliver proper notice of defects or (ii) Buyer delivers proper written notice and Seller cures the defect within 30 days (30 days if left blank) ("Cure Period") after receipt of the notice. If the defects are cured within the Cure Period, closing will occur within 10 days after receipt by Buyer of notice of such cure. **Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within the Cure Period. If the defects are not cured within the Cure Period, Buyer will have 10 days after receipt of notice of Seller's inability to cure the defects to elect whether to terminate this contract or accept title subject to existing defects and close the transaction without reduction in purchase price.** (emphasis added)

2. Pursuant to the above-quoted portion of the Purchase Contract, Seller had the right to elect not to cure title defects that she reasonably believed could not be cured within 30 days and, in such event, give notice of same to Buyer. Buyer then had the right (after receipt of notice) to elect either to close on the Property "as is" without the title defect being cured or terminate the Purchase Contract and receive a return of his deposit.

3. **Lease.** Contemporaneously with their entry into the Purchase Contract, Buyer and Seller also entered into a three-year lease (the "Lease") for the Property pursuant to which Buyer leased the Property from Seller. The Lease was set to expire on January 31, 2023 - - the same date as the deadline for closing in the Purchase Contract. In paragraph 4, the Lease contained an option to obtain a one-year extension of the Lease term as follows:

Option to Extend Lease if financing is not available: Should tenant be unable to obtain financing for purchase, after a good faith

effort, on or before the end of the three year lease period, Tenant shall have the option with the Landlord's approval, at the end of this three year lease term to extend the Lease for up to an additional twelve (12) month period. Tenant must notify Landlord in writing at least 30 days before the end of the three year lease term and prepay a nonrefundable payment of twenty thousand dollars (\$20,000) to extend the Lease. During this extension period Tenant shall make all reasonable efforts to obtain financing for the purchase of the Property in accordance with the attached Contract for Sale.

4. It is clear to the Court that the Lease and the Purchase Contract properly should be read together because they were entered into contemporaneously and concern the same Property. In fact, the Lease is referenced in the Purchase Contract and the Purchase Contract is referenced in the Lease.

5. **Neighboring Property.** It is undisputed that, in the summer of 2022, Buyer purchased a neighboring property (a five-acre parcel of agricultural land directly adjacent to the Property) for \$425,000. The summary judgment evidence indicated that Seller assisted Buyer in obtaining the neighboring property by putting Buyer in contact with the owners of the neighboring property. It is also undisputed that Buyer obtained financing to purchase the neighboring property. At the time that Buyer purchased the neighboring property, the fraudulent quit claim deed at issue in this case (as more fully described *infra*) had not yet been recorded against the Property. This purchase of the neighboring property demonstrated that Buyer had the ability to obtain financing.

6. **The Fraudulent Quit Claim Deed.** It is undisputed that Buyer decided to close on the purchase of the Property in September of 2022. At that time, Buyer began his due diligence to close and, during the due diligence process, Buyer's representative, Raymar Rodriguez (who handles Buyer's real estate deals), discovered that, on June 29, 2022, a fraudulent quit claim deed had been filed with respect to the Property. It is undisputed that this June 29, 2022 deed was

fraudulent. The fraudulent quit claim deed purported to transfer the Property from Seller to an unknown third party named Luis Garcia. It is undisputed that on September 14, 2022, Buyer's representative, Mr. Rodriguez, put Seller on notice of the fraudulent quit claim deed.

7. There is no dispute that on September 19, 2022, Seller gave written notice to Buyer pursuant to section 8(b) of the Purchase Contract that it was her good faith belief that the title defect caused by the fraudulent quit claim deed could not be cured within 30 days and gave Buyer 10 days within which to select one of his two options, either close on the Property "as is" or terminate the Purchase Contract. There is also no dispute that Buyer did not timely make either of these elections. On October 11, 2022, Seller provided a second notice to Buyer requesting that Buyer advise by October 14, 2022, as to whether he intended to close "as is" or cancel the Purchase Contract. On October 14, 2022, Buyer responded to the second notice, but his response again did not make either of the elections available to Buyer under section 8(b) of the Purchase Contract. Instead, Buyer requested that Seller extend the Lease and clear title for him. Seller rejected Buyer's request for an extension of the Lease because it was not based on the Buyer's inability to obtain financing and, thus, did not meet a condition for such an extension. The extension allowed by the Lease was solely for the purpose of Buyer obtaining financing. However, the Purchase Contract had been cancelled due to Buyer's failure to elect to close "as is" pursuant to section 8(b), thereby leaving no purpose for the extension.

8. Buyer has taken the position that Seller has a duty to clear title and to extend the Lease until Seller completes clearing title. In this regard, Buyer testified in deposition that he is asking this Court to require Seller to extend the Lease "however many years it takes for her to fix title" so that Buyer can close. The Court finds that Buyer's position in this action is at odds with

the undisputed facts, the Purchase Contract, the Lease and the case law. The Court finds that Buyer failed to timely elect to close on the Property “as is” and, as a result, the Purchase Contract was cancelled. The fraudulent deed was a title defect pursuant to section 8(d) of the Purchase Contract. The Purchase Contract clearly indicates that Seller had the right to elect not to cure a title defect that she reasonably believed could not be cured within 30 days. The Court finds that Seller properly and timely invoked that right under section 8(b) of the Purchase Contract. In such an event, the Purchase Contract also clearly gave the Buyer two options (and only two options): either close on the Property in an “as is” condition, without the title defect being cured, or terminate the Purchase Contract.

9. The Court finds that it is undisputed that Buyer did not timely make an election under section 8(b) of the Purchase Contract and, therefore breached the Purchase Contract. *See Mori v. Fortune Capital Partners, Inc.*, 316 So. 3d 744, 745–46 (Fla. 3d DCA 2021), *reh’g denied* (May 5, 2021), *review denied sub nom. Fortune Capital Partners, Inc. v. Emori Holdings I, LLC*, SC21-850, 2022 WL 43200 (Fla. Jan. 5, 2022); *Taines v. Berenson*, 659 So. 2d 1276, 1277 (Fla. 4th DCA 1995); *Levin v. Lang*, 933 So. 2d 107, 111 (Fla. 3d DCA 2006).

10. The Court further finds that Buyer’s failure to timely elect to close on an “as is” basis left cancellation as the only remaining option available to Buyer under the Purchase Contract. The Court cannot rewrite the Purchase Contract or the Lease to provide additional or different rights and obligations than were agreed to between the parties. *See Pinero v. Zapata*, 306 So. 3d 1117, 1119 (Fla. 3d DCA 2020) (The trial court exceeded its jurisdiction and effectively rewrote the terms and conditions voluntarily agreed to by the parties under the Agreement) (citing *Beach Resort Hotel Corp. v. Wieder*, 79 So. 2d 659, 663 (Fla. 1955) (“It is well settled that courts may

not rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the parties from the apparent hardship of an improvident bargain”)); *Allegro at Boynton Beach, L.L.C. v. Pearson*, 287 So. 3d 592, 597 (Fla. 4th DCA 2019).

11. Buyer did not have a contractual right to insist that Seller cure the title defect for him. *See Jones v. Warmack*, 967 So. 2d 400 (Fla. 1st DCA 2007) (affirming summary judgment for a seller, explaining that seller’s alleged failure to cure the title defects was not a breach because seller gave notice that the title defect could not timely be cured and was, therefore, not required to do so); *Cafaro v. Zois*, 693 Fed.Appx. 810 (11th Cir. 2017) (“[n]othing in the contract guaranteed delivery of marketable title”); *Fabel v. Masterson*, 951 So.2d 934, 936 (Fla. 4th DCA 2007).

12. Buyer argues that the title defect provisions of section 8(b) of the Purchase Contract were never “triggered because no Title Evidence had been delivered by any closing agent in connection with a title search.” The Court finds this argument to be without any merit. Buyer knew of the defect because Buyer, through his agent Mr. Rodriguez, discovered it while in the process of preparing to close on the Property, and Buyer, through his agent Mr. Rodriguez, put Seller on notice of the title defect. By putting Seller on notice of the title defect and requesting that it be cured so that he could close, Buyer triggered section 8(b) of the Purchase Contract.

13. It is undisputed that that Buyer did not timely make an election under section 8(b) of the Purchase Contract. There was no response from Buyer mentioning that the election under section 8(b) of the Purchase Contract had not been triggered. There was also no response from Buyer indicating that he could not get financing because of the fraudulent deed.

14. The Court finds that Buyer admitted that he could have closed on the Property but refused to do so, stating in deposition: “I’m not going to punt \$400,000 away and not have a paper where it’s under my name and then I have to go through the mud work of trying, hoping and praying that I could clear title.” Buyer also represented to Seller that Buyer had over \$600,000 in equity in his home and the ability to mortgage his home to get the funds to close on the Property.

15. The Court finds that the position being advanced by Buyer, if accepted by the Court, would amount to an improper rewriting of the contract to impose on Seller obligations that the Seller does not have under the Purchase Contract (i.e., the obligation to cure title defects). The Buyer simply cannot impose an obligation on the Seller that the Seller did not have under the Purchase Contract. As set forth above, the Court cannot rewrite the Purchase Contract or the Lease for the parties.

16. The Court finds that the fraudulent quit claim deed was a title defect as a matter of law. *See Parker v. Title & Trust Co. of Fla.*, 429 So.2d 1267 (Fla. 1st DCA 1983) (“we find that, as a matter of law, the forged deed which purportedly conveyed the secured property from Southeastern to EAC constitutes a defect in title”). Further, based on the undisputed evidence in the record, the Court finds that Seller’s belief, that the title defect created by the fraudulent quit claim deed was one that could not be cured within 30 days, was reasonable as a matter of law. For example, it takes days to prepare and file a complaint, and days, if not weeks, to effectuate service on a defendant - - especially a defendant whose identity is unknown, potentially requiring a good faith search followed by service through publication. The Rules also provide such a defendant at least 20 days to file a response to the suit. The Court finds that there was no way for Seller to cure the title defect at issue in this case within the 30 day window set forth in section 8(b). Further,

there was no summary judgment evidence that Seller's belief was unreasonable. The summary judgment evidence included a letter from counsel for Buyer to Seller suggesting that his firm could clear title in 3 to 6 months. In fact, Seller has filed suit to clear the title defect from her Property, which suit is still pending before a different section of this Court with the Honorable Judge William Thomas presiding thereover.

17. The Court further finds that the portion of Section 8(b) of the Purchase Contract that provides "Seller may elect not to cure defects if Seller reasonably believes any defect cannot be cured within the Cure Period" is for the benefit of the Seller. *See Kubicek v. Way*, 102 So.2d 173 (Fla. 2nd DCA 1958).

18. The Court finds that, under the undisputed facts in the record, the Lease was not subject to being extended for one year. The option to extend the Lease for a year was inextricably intertwined with Buyer's inability to obtain financing. However, as set forth above, there is no summary judgment evidence that Buyer was unable to obtain financing. Instead, the undisputed evidence is that Buyer was able to and did obtain financing for the neighboring parcel in the summer of 2022. Buyer used that financing to purchase the neighboring parcel (a deal that arose after the parties entered into the Purchase Contract) instead of closing on the Property. Further, Buyer admitted in deposition that he could have used this financing to close on the Property had he wished to do so. Why Buyer chose to close on the neighboring parcel instead of the Property is unknown to the Court.

19. Moreover, the Lease's one-year extension provision was expressly for the purpose of Buyer obtaining financing. The Lease does not provide for an extension for the purpose of Seller curing title defects. Instead, the Lease expressly provides that, during the one-year extension,

“Tenant shall make all reasonable efforts to obtain financing for the purchase of the Property.”

The Lease does not provide that, during the one-year extension, Seller shall cure title defects. As noted, the Court cannot rewrite the Lease or the Purchase Contract. *Pinero*, 306 So. 3d at 1119; *Beach Resort*, 79 So. 2d at 663; *Allegro*, 287 So. 3d at 597.

20. Buyer relies on Seller’s opinion set forth at her deposition that Buyer likely would be unable to obtain title insurance without the title defect being cured. The Court finds that this opinion is not relevant. The key when it came to the lease extension was Buyer’s ability to get financing. While the Seller is an experienced attorney in real estate matters, she is neither a bank, a lender or a financing company. There is no summary judgment evidence of any attempts by Buyer to obtain financing or of any written rejections of financing for Buyer by banks or any other lenders. This is the entire point of section 8(b) of the Purchase Contract. In the event that there is a title defect, the parties have expressly enumerated options. Seller properly and timely exercised her option not to cure a title defect that would have taken longer than 30 days to cure and provided Buyer the opportunity to close “as is,” but he refused to do so.

21. Under the undisputed facts in the summary judgment record, the Court finds that the Lease could not be extended because the purpose of the requested Lease extension was no longer applicable. The Purchase Contract had been terminated. Thus, the extension could no longer serve its intended purpose - - for Buyer to obtain financing - - because Buyer no longer had a right to close on the Purchase Contract.

22. Buyer relies on an e-mail sent by Seller’s former counsel of record¹ to Buyer’s counsel of record for the proposition that Seller unreasonably refused to consent to the one-year extension of the Lease. The Court cannot consider this evidence on summary judgment because it is an inadmissible settlement communication. Fla. Stat. § 90.408 (“[e]vidence of an offer to compromise a claim . . . as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible”); *Moultrop v. GEICO Gen. Ins. Co.*, 304 So. 3d 1, 7 (Fla. 4th DCA 2020)(“The purpose of the statute is to allow counsel to communicate freely in an effort to settle litigation without the risk that any statement made will be used against his clients.”), quoting *Rubrecht v. Cone Distributing, Inc.*, 95 So. 3d 950, 956 (Fla. 5th DCA 2012).

23. Buyer’s position in this action flies in the face of the clear contract language. Buyer had two options: either elect to close “as is” or terminate the Purchase Contract. Buyer refused those options. In effect, Buyer chose not to choose. Instead, Buyer has attempted to create for himself a third option, namely to extend the cure period and the Lease until such time as Seller cures the title defect and then close. Buyer’s theory of the case, if accepted, would read out of the contract the Seller’s right not to cure certain title defects as set forth in section 8(b). Under Buyer’s theory of the case, Seller would never be able to exercise her option not to cure defects. The Court cannot read the contract in a manner that eliminates the Seller’s rights. *Woodward v. Morell*, 319 So. 3d 47, 54 (Fla. 4th DCA 2021) (“‘When contractual language is clear and unambiguous, courts cannot indulge in construction or interpretation of its plain meaning’ and impose on the contractual parties ‘rights and duties’ that the parties elected to omit”) (quoting *BMW of N. Am., Inc. v.*

¹ Subsequent to the settlement communication at issue, Seller terminated her relationship with her former counsel and, on March 13, 2023, Seller’s present counsel was substituted into this action. (DE# 25)

Krathen, 471 So. 2d 585, 587 (Fla. 4th DCA 1985)). Instead, the Court must give effect and meaning to all of the provisions of the contract. *Cafe Int'l Holding Co. LLC v. Westchester Surplus Lines Ins. Co.*, 536 F. Supp. 3d 1291, 1299 (S.D. Fla. 2021), *aff'd sub nom. Cafe Int'l Holding Co. LLC v. Chubb Ltd.*, 21-11930, 2022 WL 1510441 (11th Cir. May 13, 2022) (“[i]n construing a contract, the legal effect of its provisions should be determined from the words of the *entire contract*,’ and that construction must give ‘effect to *all* of the provisions of the contract.’”) (italics in original) (quoting *Summitbridge Credit Invs. III, LLC v. Carlyle Beach, LLC*, 218 So. 3d 486, 489 (Fla. 4th DCA 2017) (alteration in original) (quoting *Sugar Cane Growers Co-op. of Fla., Inc. v. Pinnock*, 735 So.2d 530, 535 (Fla. 4th DCA 1999)); *People’s Tr. Ins. Co. v. Progressive Express Ins. Co.*, 336 So. 3d 1207, 1211 (Fla. 3d DCA 2021) (“courts should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect”) (citing *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007))). The one-year extension option in the Lease was not a free-for-all. It was tied to Buyer’s inability to get financing. The summary judgment record before the Court reveals that Buyer was not unable to obtain financing.

24. Buyer has characterized Seller’s notice of inability to cure as an ultimatum to Buyer. The Court finds that Seller issued no such ultimatum. To the contrary, Seller was, in fact, simply exercising her contractual right under section 8(b) of the Purchase Contract not to cure a title defect that she reasonably believed would take longer than 30 days to cure.

25. As noted above, there is no evidence that Buyer was unable to obtain financing. Moreover, even if such evidence had been presented, the Lease extension would be inapplicable due to the termination of the Purchase Contract following Buyer’s failure to timely elect to close “as is” pursuant to section 8(b).

26. This is not a case where Seller lied or offered something she did not have. There was no wrong created by the Seller. Seller fell victim to a scam by someone who created and filed a fraudulent deed on her property. Unfortunately, this is a common occurrence in Miami-Dade County, Florida. It is undisputed that the fraudulent quit claim deed creating a title defect was something that was unbeknownst to Seller and Buyer at the time the Purchase Contract was entered into. As noted above, it was not discovered until September of 2022 by Buyer's representative.

CLAIMS, COUNTERCLAIMS AND AFFIRMATIVE DEFENSES.

27. **Buyers Claims.** In Count I, Buyer seeks specific performance. "A decree of specific performance . . . can be granted only when '1) the plaintiff is clearly entitled to it, 2) there is no adequate remedy at law, and 3) the judge believes that justice requires it.'" *Invego Auto Parts, Inc. v. Rodriguez*, 34 So.3d 103, 104 (Fla. 3d DCA 2010) (quoting *Castigliano v. O'Connor*, 911 So.2d 145, 148 (Fla. 3d DCA 2005)). The Court finds that Buyer is clearly not entitled to specific performance for the reasons stated above. To the contrary, the Purchase Contract allows for Seller to make the election not to cure and to notify Buyer of same. *See Mori v. Fortune Capital Partners, Inc.*, 316 So. 3d 744, 745–46 (Fla. 3d DCA 2021), *reh'g denied* (May 5, 2021), *review denied sub nom. Fortune Capital Partners, Inc. v. Emori Holdings I, LLC*, SC21-850, 2022 WL 43200 (Fla. Jan. 5, 2022); *Taines v. Berenson*, 659 So. 2d 1276, 1277 (Fla. 4th DCA 1995); *Levin v. Lang*, 933 So. 2d 107, 111 (Fla. 3d DCA 2006). Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Buyer's claim for specific performance.

28. In Count II, Buyer seeks an injunction "both preliminarily and permanently" to prevent Seller "from taking any action adverse to [Buyer]'s improvements to the [Property]." "To

obtain an injunction, the moving party must show (1) a substantial likelihood of success on the merits, (2) the likelihood of irreparable harm absent the entry of an injunction, (3) a lack of an adequate remedy at law, and (4) that injunctive relief will serve the public interest.” *DeSantis v. Fla. Educ. Ass’n*, No. 1D20-2470, 2020 WL 5988207, at *4 (Fla. 1st DCA Oct. 9, 2020) (quoting *State, Dep’t of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018)); *City of Miami v. AIRBNB, Inc.*, 260 So. 3d 478, 481 (Fla. 3d DCA 2018). As set forth in detail above, there is simply no record evidence that would in any way support any injunction against Seller in this case. Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Buyer’s claim for injunction.

29. In Count III, Buyer seeks recovery for breach of contract as to an alleged “implied covenant of good faith and fair dealing in connection with [Seller]’s refusal to extend the Lease and Purchase Contract for twelve (12) months” and as to Seller’s alleged “wrongful termination or repudiation of the Lease and Purchase Contract on October 18, 2022.” This claim fails for the same reasons as Count I. A party “cannot be held liable for breach of contract by exercising its rights under the alleged contract.” *In re Univ. of Miami COVID-19 Tuition & Fee Refund Litig.*, No. 20-22207-CIV, 2022 WL 18034457, at *6 (S.D. Fla. Dec. 30, 2022). *See also Harris Corp. v. Giesting & Assocs., Inc.*, 297 F.3d 1270, 1273 (11th Cir. 2002) (“[C]onduct which is expressly authorized by a contract cannot be said to breach the implied covenant of good faith and fair dealing.”) (citing *Trionic Assocs., Inc. v. Harris Corp.*, 27 F. Supp. 2d 175, 180–85 (E.D.N.Y. 1998)). On the summary judgment record, Seller did not breach the Purchase Contract or the Lease as a matter of law. Accordingly, there is no genuine issue of material fact in dispute and Seller is

entitled to judgment as a matter of law on Buyer's claim for breach of contract/breach of implied covenant of good faith and fair dealing.

30. Seller's Defenses to Buyer's Claims. Even if Buyer had presented evidence sufficient to survive summary judgment as to any of his claims - - which Buyer has not - - the Court finds that Seller is entitled to summary judgment on her affirmative defenses of: **(i)** prior material breach of contract by the Buyer as a result of his refusal/failure, after receiving notice of Seller's inability to cure the title defect, to timely to make an election pursuant to section 8(b) of the Purchase Contract to close with the title defect or terminate the Purchase Contract; and: **(ii)** failure of conditions precedent to any extension of the Lease due to the fact that Buyer was not unable to obtain financing as explained above and the termination of the Purchase Contract as explained above. Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on her defenses of prior material breach of contract and failure of conditions precedent as to Buyer's claims.

31. Seller's Counterclaims. Seller's first counterclaim is for ejectment. Ejectment is an action at law for a person to recover possession of property from a second person possessing it in hostility to the first person's right. *Royal Palm Corporate Center Ass'n, Ltd. v. PNC Bank, NA*, 89 So. 3d 923 (Fla. 4th DCA 2012). To be entitled to recover property in ejectment, the plaintiff must have a present right of possession to the property that is the subject of the suit. *Davis v. Hinson*, 67 So. 3d 1107 (Fla. 1st DCA 2011). Moreover, the Plaintiff must show that he or she has been ousted or deprived of possession by the defendant. *Kahn v. Delaware Securities Corporation*, 114 Fla. 32, 153 So. 308 (1934); *Winn v. Coggins*, 53 Fla. 327, 42 So. 897 (1907). A present right to possession, as necessary to maintain a suit for ejectment, may be established in two ways: (1)

by demonstrating an enforceable legal title or (2) by showing prior possession, actual or constructive, of the land. *Davis v. Hinson*, 67 So. 3d 1107 (Fla. 1st DCA 2011). Here, where the Buyer only obtained possession due to the Purchase Contract and Lease with Seller, and that Purchase Contract has been terminated and the Lease has expired, the Seller clearly is entitled to summary judgment on her claim for ejectment against Buyer. Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Seller's counterclaim for ejectment.

32. Seller's second counterclaim is for unlawful detainer. Unlawful detainer is provided for by section 82.04, Florida Statutes, which provides that the court shall determine only the right of possession and any damages. The proper person to bring an action of forcible entry or unlawful detainer is the party turned out of or deprived of possession. *Scott v. Lloyd*, 16 Fla. 151, 1877 WL 2608 (1877). Again, where Buyer only obtained possession due to a Lease with Seller and that Lease has expired, Seller clearly is entitled to present possession of the Property. Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Seller's counterclaim for unlawful detainer.

33. Seller's third counterclaim is for eviction. Section 83.02, Florida Statutes, provides for the removal of any nonresidential tenant, or the tenant's assigns, sublessees, or legal representatives where such person holds over and continues in possession of demised premises, or any part of the premises after expiration of the term without the landlord's permission. On this record, Seller has proven that Buyer continues to wrongfully holdover and remain in possession of the Property after the expiration of the Lease and without Seller's permission. Accordingly,

there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Seller's counterclaim for eviction.

34. Buyer's Defenses to Seller's Counterclaims. Buyer has asserted defenses of failure to state a claim, prior material breach, failure of conditions precedent, unclean hands, latches, avoidable consequences, "no damages" and set off. Buyer's defenses are legally insufficient because they do not allege sufficient ultimate facts. *See Leal v. Deutsche Bank Nat. Tr. Co.*, 21 So. 3d 907, 909 (Fla. 3d DCA 2009) ("Where there are no facts pled to support general allegations of affirmative defenses, the defenses are legally insufficient") (citing *Southern Waste Sys., LLC v. J & A Transfer, Inc.*, 879 So.2d 86, 87 (Fla. 4th DCA 2004)). Moreover, even if considered, Buyer's defenses are contradicted by the contractual language agreed to by the parties in the Purchase Contract and Lease, and by the undisputed evidence in the record before the Court as more fully detailed above. Accordingly, there is no genuine issue of material fact in dispute and Seller is entitled to judgment as a matter of law on Buyer's affirmative defenses to Seller's counterclaims.

35. The Court finds that this Action is ripe for the entry of summary judgment and hereby ORDERS AND ADJUDGES that the Seller's Motion is GRANTED and the Buyer's Motion is DENIED. Seller is entitled to elect the counterclaim(s) on which she wishes to take judgment in this action and, depending on such election this Court must address damages. *See Barbe v. Villeneuve*, 505 So. 2d 1331, 1333-34 (Fla. 1987) ("An election between legally inconsistent remedies can be made at any time prior to the entry of judgment."); *Monco of Orlando, Inc. v. ITT Indus. Credit Corp.*, 458 So. 2d 332, 334 (Fla. 5th DCA 1984) ("election between inconsistent remedies need only occur before judgment is entered"); *Cordell v. World Ins. Co.*,

358 So. 2d 223, 224 (Fla. 1st DCA 1978) (“a plaintiff may not recover on two or more judgments entered for the same wrong”); *Toledo v. Escamilla*, 962 So. 2d 1028, 1030 (Fla. 3d DCA 2007) (differentiating between eviction claims for a challenged tenancy and ejectment claims for equitable interests in property); *Babcock v. Golden Acres S., LLC*, 361 So. 3d 406, 407–08 (Fla. 5th DCA 2023) (same).

36. Accordingly, Seller shall have twenty (20) days from the date of this Order within which to present a motion to this Court for entry of FINAL JUDGMENT, consistent with this Order, that shall identify on which of the three (3) Counterclaims Seller elects to have FINAL JUDGMENT entered by this Court. The Court retains jurisdiction to issue such FINAL JUDGMENT as well as to determine the matter of damages and the disposition of the funds currently being held in the Registry of the Court in the amount of \$20,000, to consider any timely-filed motions for attorneys’ fees and/or court costs, and/or to issue any necessary Writs, including Writs of Possession.

DONE AND ORDERED in Miami Dade County, Florida this 5th day of March, 2024.



HONORABLE ANTONIO ARZOLA
CIRCUIT JUDGE

Conformed copies to:
Alejandro Miyar, Esq.
Matthew L. Lines, Esq.