

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JOY ARNOLD, Personal Representative of)
the ESTATE OF BEVERLY FREIDEN,)
Deceased,)

Plaintiff,)

v.)

MICHAEL J. WALZ, an individual; and)
JOHN DOES 1 and 2, respectively,)

Defendants.)

CASE NO. CI 17-_____

COMPLAINT

COMES NOW Plaintiff Joy Arnold, in her capacity as Personal Representative of the Estate of Beverly Freiden, and for her Complaint states, as follows:

1. Pursuant to an order entered on January 24, 2017, at PR 12-1677 in the County Court of Douglas County, Nebraska, Plaintiff Joy Arnold ("Plaintiff") is the duly appointed and acting Personal Representative of the Estate of Beverly Freiden, Deceased (the Estate"). Beverly Freiden ("Freiden") died on December 8, 2012.

2. Defendant Michael J. Walz ("Walz") is an individual residing in Douglas County, Nebraska.

3. Defendants John Doe 1 and/or 2 may claim some interest in the Real Property described below.

4. Venue and jurisdiction are properly before this court as the Real Property is, and all relevant actions mentioned hereinafter were taken, in Douglas County, Nebraska.

First Claim for Relief

Uniform Declaratory Judgments Act

5. Plaintiff re-alleges paragraphs 1 through 4, above, and further alleges:

6. During her lifetime, Freiden owned real property at 604 South 18th Street, in Omaha, which is legally described as the East Half of Lot 1, Block 4, Kountze and Ruth's Addition, in Douglas County, Nebraska (the "Real Property").

7. On or about the 1st day of February, 2012, Freiden entered into a Lease/Option agreement with Walz pertaining to the Real Property. A true copy of the Lease/Option agreement is attached as exhibit "A" and made a part hereof by reference.

8. The Lease/Option agreement purports to grant Walz an option to purchase the Real Property (the "Option").

9. Upon information and belief, Walz (i) did not exercise the Option on or before July 31, 2014, and (ii) did not purchase the Real Property on or before August 15, 2014.

10. Notwithstanding the foregoing, Walz is, by reason of a Modification to Lease/Purchase Agreement dated August 28, 2015, a true copy of which is attached as exhibit "B" and made a part hereof by reference, attempting to assert ownership of, or a right to exercise dominion and control over, the Real Property, to the exclusion of the Estate's interests therein.

11. John Doe 1 may claim some interest in the Real Property by virtue of purported agreements that were made with Walz.

12. Plaintiff seek a declaration of the rights, status, and other legal relations of the parties under Neb. Rev. Stat. §§ 25-21,149 to 25-21,164, R.R.S., as follows: that (a) the Option due to its terms and the passage of time, was extinguished, and now is void and unenforceable, either because (i) Walz failed to exercise the Option to purchase the Real Property on or before July 31, 2014, (ii) Walz failed to close the purchase of the Real Property on or before August 15, 2014, and/or (iii) Walz otherwise failed to comply with the terms and conditions of the Lease/Option agreement, (b) the Modification to Lease/Purchase Agreement dated August 28, 2015, is invalid, void and/or unenforceable; and (c) the Estate was and still is the owner of the Real Property, subject only to the terms of the Last Will and Testament of Beverly Freiden, as mentioned below.

WHEREFORE, Plaintiff seeks as relief under the First Claim for Relief a declaration and judgment pursuant to Neb. Rev. Stat. §§ 25-21,149 to 25-21,164, R.R.S. pertaining to the rights, status, and other legal relations the parties in the Real Property, specifically: to resolve questions of construction of the Option and to the validity of certain acts or failures to act arising thereunder, as aforementioned, and that the Option was extinguished, and is void and unenforceable as against the Estate; that the Modification to Lease/Purchase Agreement dated August 28, 2015, is invalid, void and/or unenforceable as against the Estate; and that the Estate was and still is the owner of the Real Property, subject to the terms of the Last Will and Testament of Beverly Freiden, as mentioned below; and, additionally, awarding Plaintiff her costs of suit, and granting Plaintiff such other and further relief as the Court deems just and equitable.

Second Claim for Relief

Quiet Title

13. Plaintiff re-alleges paragraphs 1 through 12, above, and further alleges:

14. On or about the 19th day of December, 2012, in proceedings at PR 12-1677 in the County Court of Douglas County, Nebraska, the Estate of Beverly Freiden, Deceased was opened and the Last Will and Testament of Beverly Freiden, dated March 28, 2006, was admitted to probate.

15. The Real Property, by reason of the terms of the Last Will and Testament of Beverly Freiden:

. . . may either be sold or retained by my personal representatives as they shall determine, and upon sale, whenever it occurs, my son, Jon Freiden, shall receive the first \$25,000 from the sale and the remainder of the net sale proceeds shall be paid over to my grandson, Bart Arnold, for his care; provided however, if I am not the owner of said real estate at the time of my death, then I give, devise and bequeath from my estate to my son, Jon Freiden, the sum of \$25,000.00 and I give, devise and bequeath the remainder of the net sale proceeds received when the property was sold to my grandson, Bart Arnold for his care.

16. When Freiden died, the Estate of Beverly Freiden owned the Real Property.

17. That neither Walz by virtue of purported agreements aforementioned, nor John Doe 1 or other party claiming some interest in the Real Property through agreements made with Walz, are owners of the Real Property, and any interests in the Real Property as may be claimed are void and unenforceable as against the Estate.

18. John Doe 2 may claim some interest in the Real Property by other means or conveyances but that any interest in the Real Property as may be claimed are void and unenforceable as against the Estate.

19. Plaintiff seeks a judgment under Neb. Rev. Stat. §§ 25-21,112 to 25-21,120, R.R.S., quieting title to the Real Property in the Estate, subject only to the terms of the Last Will and Testament, with a title in the Real Property paramount over Walz and John Does One and/or John Doe Two and cancelling all claims of said Defendants in the Real Property.

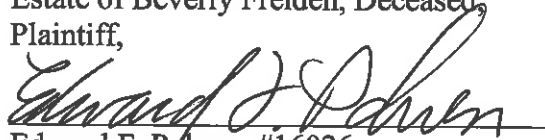
20. Permanent injunctive relief, putting the Estate in possession of the Real Property forthwith, should be awarded.

21. Plaintiff is without an adequate remedy at law.

WHEREFORE, Plaintiff seeks as relief under the Second Claim for Relief a judgment pursuant to Neb. Rev. Stat. §§ 25-21,112 to 25-21,120, R.R.S. quieting title to the Real Property in the Estate, subject only to the terms of the Last Will and Testament, with title in the Real Property paramount over Walz and John Does One and/or John Doe Two and cancelling all claims of said Defendants in the Real Property, and granting Plaintiff a permanent injunction putting the Estate in possession of the Real Property forthwith, and granting Plaintiff for her costs of suit, and granting Plaintiff such other and further relief as the Court deems just and equitable.

Joy Arnold, Personal Representative of the
Estate of Beverly Freiden, Deceased,
Plaintiff,

By:



Edward F. Pohren, #16026

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Attorney for Plaintiff

LEASE/OPTION AGREEMENT

AGREEMENT OF LEASE, executed this 1st day of February, 2012, between BEVERLY FREIDEN, ("Landlord"), and MICHAEL J. WALZ ("Tenant") whether one or more:

1. **PREMISES:** The premises are described as 604 South 18th Street in Omaha, Nebraska, legally described as The East Half of Lot 1, Block 4, Kountze and Ruth's Addition, Douglas County, Nebraska. The Landlord hereby leases said premises to the Tenant in consideration of the following rent to be paid by the Tenant to the Landlord. The Tenant agrees to use and occupy said premises for parking and related purposes.

2. **RENT:** The Tenant shall pay rent for said premises as follows: For a term to commence on or about the 1st of February, 2012, and terminate on the 31st day of July, 2014, unless sooner terminated as hereinafter provided, the Tenant paying rent to the Landlord at his office the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), payable in equal monthly installments of Two Hundred Fifty Dollars (\$250.00) with the first such monthly installment due and payable to the Landlord on the 1st day of February, 2012, with a like payment of \$250.00 on the 1st day of each and every month thereafter for the entire term of this lease.

3. **LATE CHARGE:** If the rent is not **received** by the Landlord within fifteen (15) days from the date it is due, the Tenant shall pay, in addition to the rental as hereinabove described, a late charge of \$25.00. Landlord and Tenant agree that the Landlord may accept and deposit a rental payment from the Tenant without said late charge, and that the same will not constitute a waiver of the Landlord's right to collect said late charge for the current month or serve to waive the Landlord's right to collect any future late charge in any future month.

4. **NOTICES:** All notices shall be given to the parties as follows:

Landlord: Beverly Freiden
12606 West Dodge Road
Omaha, Nebraska 68154

Tenant: Michael J. Walz
1007 Park Avenue
Omaha, Nebraska 68105

5. **TENANT/LANDLORD RESPONSIBILITIES:** The Tenant shall maintain all responsibility for insurance, maintenance, snow removal, and the general appearance of the leased premises. The Landlord shall pay all real estate taxes on the

EXHIBIT A

leased premises.

6. **OPTION TO PURCHASE:** The Tenant shall, simultaneously with the execution hereof, have an option to purchase the leased premises under the following terms and conditions:

- a. The option price at the end of the lease term to be \$20,000.00, which option price shall be available to the Tenant only if all of the lease payments as set forth herein have been paid. The Tenant may exercise his option at any time before July 31, 2014, however, the option price shall then be \$20,000.00, and in addition, an amount equal to the number of unpaid rental installments (as set forth above) multiplied by \$250.00.
- b. Tenant must exercise this option in writing at the address of the Landlord or her agent or representative at any time during the term of the lease as set forth herein.
- c. Upon the exercise of this option, the Tenant shall close on the purchase not later than August 15, 2014.

IN WITNESS WHEREOF, the Landlord and the Tenant have executed this rental agreement on the date first above written.

LANDLORD(S)

TENANT:


Beverly Freiden


Michael J. Walz

MODIFICATION TO LEASE/PURCHASE AGREEMENT

This agreement made this 28 day of August, 2015, by and between Jon Freiden (representative for Beverly Freiden) (owner) and Michael Walz (lessee/purchaser).

Whereas, both parties had entered into a prior agreement regarding the parking lot at 604 S. 18th St., Omaha, NE. 68102. The legal description for this property is:

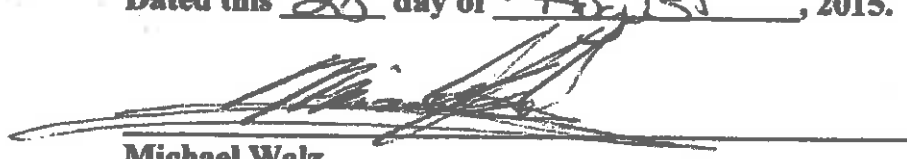
Kountze & Ruths Addition, Lot 1, Block 4 E ½ 50 x 80

Both parties wish to make the following modifications to the original agreement.

1. Michael Walz is to be responsible for the payment of the real estate taxes for this property.
2. The balance owed as of August 1, 2015 for the purchase of this property is \$11,750.
3. Michael Walz will continue to make monthly payments in the amount of \$250 each month due on the first of the month and late after the 15th of each month. If the payment is received late, a \$25 late fee will be due and payable.
4. This agreement is for one year, ending on July 31, 2016. At the end of this agreement the balance will be paid off or this agreement will automatically renew at the same terms and conditions as the previous year.
5. Jon Freiden will provide to Michael Walz, legal documents showing that as son for Beverly Freiden, he has authority to sell this property on behalf of Beverly Freiden.

EXHIBIT B

Dated this 28 day of August, 2015.



A handwritten signature in black ink, appearing to read "Michael Walz", is written over a horizontal line.

Michael Walz



A handwritten signature in black ink, appearing to read "Jon Freiden", is written over a horizontal line.

Jon Freiden (Representative for Beverly Freiden)