

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 07-CV-1081

STEPHEN W. COLEMAN,
APPELLANT,
LTB9660-07

v.

DUANE VAN ANTWERP,
APPELLEE.

Appeal from the Superior Court
of the District of Columbia
Civil Division

(Hon. Judith E. Retchin, Trial Judge)

(Submitted June 12, 2008)

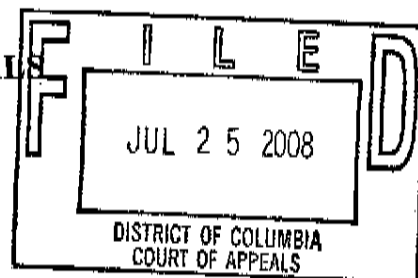
Decided July 25, 2008)

Before GLICKMAN, KRAMER, and FISHER, *Associate Judges*.**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Appellant Steven Coleman challenges the trial court's judgment granting possession of a condominium to appellee Duane Van Antwerp. Specifically, he argues that the trial court's grant of summary judgment should be reversed because the court improperly weighed disputed material facts related to his status as an occupant of the premises. Appellant also claims that the trial court erred in declining to consolidate his case with a related civil action under Super. Ct. Civ. R. 42 (a). We affirm.

I.

Bruce Davis purchased a condominium at 1325 13th Street, N.W., but permitted appellant to live there. Appellant Coleman asserts that he and Davis had an understanding that appellant would eventually purchase the apartment from Davis. However, appellee Van Antwerp purchased the condominium from Davis in January 2006 and commenced the underlying landlord-tenant action in March 2007 when appellant refused to vacate. Appellee moved for and was granted summary judgment awarding him possession of the premises. Appellant argues that summary judgment should be reversed because there are disputed material facts which would allow a jury to determine that he was a tenant within the meaning of D.C. Code § 42-3401.03 (2001) and therefore entitled to a right of first refusal under D.C.



Code § 42-3404.02, the Tenant Opportunity to Purchase Act (TOPA).

“This court reviews a grant of summary judgment *de novo*, applying the same standard as that utilized by the trial court.” *Griffin v. Acacia Life Ins. Co.*, 925 A.2d 564, 572 (D.C. 2007) (citation omitted). The role of the trial court is “not to act as factfinder and to resolve factual issues,” but rather to determine if the record demonstrates that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Holland v. Hannan*, 456 A.2d 807, 814-15 (D.C. 1983); Super. Ct. Civ. R. 56 (c). “Mere conclusory allegations on the part of the non-moving party are insufficient to stave off the entry of summary judgment.” *Musa v. Continental Ins. Co.*, 644 A.2d 999, 1002 (D.C. 1994) (citation omitted). “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Brown v. George Washington Univ.*, 802 A.2d 382, 385 (D.C. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The trial court correctly concluded that there was no genuine issue of material fact in the record requiring consideration by a jury. Davis testified in deposition that he did not consider Coleman to be his tenant; he allowed Coleman to live there because he “cared very deeply” for him. The two had discussed Coleman’s interest in purchasing the premises, but they never agreed upon a price. The record likewise contains Coleman’s repeated assertion that he was a co-owner rather than a tenant. In particular, he stressed that there “was never the intention for me to be on a lease” because “[o]wners don’t have to have leases to live in their own property.” Coleman testified that the condominium association recognized him as an owner; he had never submitted a lease to the association so that it could approve him as a tenant.

Coleman’s claim therefore rests on the assertion that his intermittent payments to Davis, the condominium association, and utility companies necessarily rendered him a tenant entitled to a right of first refusal under TOPA. Under D.C. Code § 42-3401.03 (17), a “tenant” includes “a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or benefits of a rental unit” In the absence of a written lease agreement, as here, an occupant may still be a “tenant at sufferance” when there is an oral or implied agreement under which the occupant makes regular payments to the owner for rent. *See* D.C. Code § 42-520 (2001) (recognizing estates by sufferance); *Young v. District of Columbia*, 752 A.2d 138, 142 (D.C. 2000) (a tenancy at sufferance requires payment of rent). “A landlord-tenant relationship does not arise by mere occupancy of the premises” *Young*, 752 A.2d at 143 (citation omitted).

Coleman provided the trial court with no evidence to support his conclusory allegation that he was Davis’s tenant. Davis did not make a written or oral lease agreement with Coleman, did not register the premises as a rental property with the condominium association, and did not

consider Coleman to be a tenant. Furthermore, Coleman stated that his intermittent payments to Davis in widely varying amounts were meant to “carry out the purchase of the premises;” he did not assert that they were intended to be regular rental payments consistent with a tenancy at sufferance. *See Young*, 752 A.2d at 142. Likewise, paying utilities and the condominium association fees did not make Coleman a tenant; those payments were equally consistent with his claim to be an owner and there was no testimony that Davis had agreed to accept those payments in lieu of rent. *See Jackson v. United States*, 357 A.2d 409, 410 (D.C. 1976) (“[T]here is no testimony in the record which indicates that such an arrangement [a tenancy by sufferance] was within the contemplation of either party.”). As the court properly held, “the record shows that [appellant] Coleman was a guest of Mr. Davis and a potential purchaser of the property, not a tenant.”

II.

Appellant also argues that the trial court committed reversible error by denying his motion to consolidate the instant case with a civil action in which Davis sought to set aside the deed he transferred to appellee;¹ appellant asserts that denial of consolidation precluded him from fully developing the facts in this case.

The trial court has great latitude in considering requests for consolidation, and its ruling will not be disturbed on appeal unless it has abused its discretion. *Alfred A. Altmont, Inc. v. Chatelain, Samperton & Nolan*, 374 A.2d 284, 287-88 (D.C. 1977). Under Super. Ct. Civ. R. 42 (a), when “actions involving a common question of law or fact are pending before the Court, it may . . . order all the actions consolidated” and “make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” On the other hand, when facts overlap to an extent but the legal issues are distinct, or when consolidation would cause further delay, refusal to consolidate is justified. *See Carter-Obayuwana v. Howard Univ.*, 764 A.2d 779, 794 (D.C. 2001) (court “not prepared to second-guess” denial of consolidation when delay of one case or premature trial of another would result); *Duggan v. Keto*, 554 A.2d 1126, 1145 n.24 (D.C. 1989) (consolidation denied for cases with distinct legal issues).

Denial of consolidation in no way limited what facts appellant could assert in his deposition or in an affidavit opposing summary judgment. In addition, the case below had been certified for a jury trial on an expedited basis, and would likely have gone to trial in Fall 2007. The non-jury civil proceeding focused on Davis’s mental competency to convey title of the

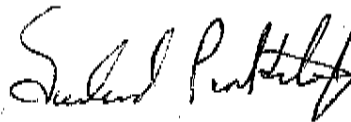
¹ We do not consider appellant’s companion argument that the court erred by not permitting him to intervene in the civil case, styled *Davis v. Van Antwerp*. That separate case is not before us.

condominium to appellee, and would not have proceeded to trial until nearly a year later. Therefore, consolidation likely would have caused significant delay to the instant action and would have combined distinct, rather than common, legal issues. The trial court did not abuse its discretion by denying consolidation.

For the reasons stated above, the judgment of the Superior Court is hereby

Affirmed.

ENTERED BY DIRECTION OF THE COURT:



Garland Pinkston, Jr.
Clerk of the Court

Copies to:

Hon. Judith E. Retchin
Clerk, Superior Court
Samuel M. Shapiro, Esq.
Calvin Steinmetz, Esq.