

McCARTY v. PINKSTON.

5-1510

311 S. W. 2d 773

Opinion delivered March 24, 1958.

[Rehearing denied April 28, 1958]

1. FRAUDS, STATUTE OF—PAROL TERMINATION OF WRITTEN LEASE.—A written lease may be terminated by an executed parol agreement.
2. LANDLORD & TENANT — TERMINATION OF LEASE — WEIGHT & SUFFICIENCY OF EVIDENCE. — Evidence held sufficient to support jury's finding that the parties had terminated written lease by an executed parol agreement.

Appeal from Poinsett Circuit Court; *Charles W. Light*, Judge; affirmed.

Douglas Bradley, for appellant.

Barrett, Wheatley, Smith & Deacon, for appellee.

SAM ROBINSON, Associate Justice. The issue is whether a written lease was terminated by an oral agreement coupled with delivery of possession of the premises. On July 1, 1953, the parties entered into a written contract whereby Walton McCarty leased to L. D. and James S. Pinkston a building in Trumann for the consideration of \$250 per month. The lease was for a term of five years. In May, 1954, Walton McCarty sold the property to his brother, E. L. McCarty, the sale being subject to the lease. Thereafter Walton McCarty acted as agent for his brother in dealing with the Pinkstons in regard to the lease. The Pinkstons paid the rent through the month of June, 1956, and vacated the building during that month.

In September, 1956, the McCartys filed this suit for rent alleged to have accrued subsequent to June, 1956. An answer was filed, alleging that the lease had been canceled by mutual agreement and possession of the property had been delivered to the McCartys. The cause was tried to a jury and the issues were whether the parties had orally agreed to a cancellation of the lease and whether the Pinkstons had delivered posses-

sion to the McCartys. There was a verdict in favor of the Pinkstons, and the McCartys have appealed.

On appeal there is only the question of whether there is any substantial evidence to sustain the verdict. A written lease may be terminated by an executed parol agreement. *Ford v. Miller*, 149 Ark. 443, 232 S. W. 604.

Appellants deny they made an agreement to terminate the lease and deny that they were given possession of the premises, but appellee, L. D. Pinkston, says there was such an agreement and that he vacated the building and left the keys at Walton McCarty's home for him. McCarty admits that he received the keys and did not return them to Pinkston. In these circumstances we cannot say there was no substantial evidence to support the verdict.

Affirmed.
