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IN THE
COURT OF APPEALS OF INDIANA

Nathan L. Reitenour and Jamie M. Reitenour,

Appellants-Plaintiffs

v.

M/I Homes of Indiana, L.P., the Utilities Service Board of the City of Lawrence, Indiana, and the City of Lawrence,

Appellees-Defendants

August 20, 2021

Court of Appeals Case No. 21A-CT-103

Appeal from the Marion Superior Court

The Honorable James A. Joven, Judge

Trial Court Cause No. 49D13-2009-CT-032454

May, Judge.

[1] Nathan L. Reitenour and Jamie M. Reitenour (collectively, "the Reitenours") appeal the trial court's order staying proceedings and compelling arbitration in

their suit against M/I Homes of Indiana, L.P. ("M/I Homes").[1] The Reitenours argue the trial court erred in granting M/I Homes' motion to compel arbitration. Because it is unclear from the Reitenours' 37-page (excluding attachments) pro se complaint whether they seek recission of the entirety of their contract with M/I Homes or of only the arbitration agreement, and because that decision determines whether the Reitenours' fraud in the inducement claim is determined by the trial court or in arbitration, respectively, we reverse the trial court's order compelling arbitration and remand for further proceedings.

Facts and Procedural History

[2] M/I Homes constructed a new house ("the Residence") in Lawrence, Indiana, and the Reitenours decided to purchase the Residence. On April 13, 2017, Nathan Reitenour and Alan White, the M/I Homes Project Manager, executed a purchase agreement in which the Reitenours agreed to buy the Residence for $426,000.00. The purchase agreement included an arbitration clause, which stated:

> **Arbitration**. Purchaser and M/I specifically agree that this transaction involves interstate commerce and that any Dispute shall be submitted to binding arbitration as provided by the Federal Arbitration Act and not by or in a court of law or equity. Such arbitration shall be in accordance with the provisions of the

[1] The City of Lawrence and the Utility Services Board of Lawrence do not participate in this appeal, but they remain a party of record and we therefore include them in the case caption.

> Arbitration Agreement contained in the Home Builder's Limited Warranty (PWC Form No. 117), which arbitration agreement is incorporated into the Agreement by reference. If it is determined that the provisions of the Arbitration Agreement contained in the Home Builder's Limited Warranty (PWC Form No. 117) do not apply to the Dispute, then the Dispute shall be submitted to binding arbitration and administered by the American Arbitration Association ("AAA") in accordance with the AAA's arbitration rules in effect on the date of the request. The term "Dispute" (whether contract, warranty, tort, statutory, or otherwise) shall include, but is not limited to, any and all controversies, disputes or claims: (i) arising under, or related to the Agreement, the Property, the Community, the Warranty or any dealings between Purchaser and M/I; and (ii) relating to personal injury or property damage alleged to have been sustained by Purchaser, Purchaser's minor children or other occupants of the Home, or in the Community. Notwithstanding the parties' obligation to submit any Dispute to arbitration, in the event that a Dispute is determined to not be subject to binding arbitration, then the parties agree that any such Dispute shall be heard by a judge in a court proceeding and not a jury and Purchaser and M/I each hereby waive their respective right to a jury trial. The term "Dispute" shall not include claims brought under §14(h) of this Purchase Agreement (Interstate Land Sales Act).

(App. Vol. II at 58 (emphasis in original).) The home builder's limited warranty ("Warranty"), which was incorporated into the purchase agreement by reference, expanded upon the arbitration clause in the Purchase Agreement by stating, in part:

> Following commencement of the **WARRANTY PERIOD**, any claim, controversy or dispute (hereafter collectively referred to as "dispute") between **YOU** and **US**, or parties acting on **YOUR** or

> **OUR** behalf, including **PWC**,[2] and any successor, or assign of either **YOU** or **US** which relates to or arises from this **LIMITED WARRANTY**, or the design or construction of the **HOME** or the **COMMON ELEMENTS**, or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS**, will be resolved solely by binding arbitration and not through litigation in court before judge or jury. This agreement to arbitrate is intended to inure to the benefit of, and be enforceable by, **OUR** contractor, subcontractors, agents, vendors, suppliers, design professionals, materialmen, and any of **OUR** direct or indirect subsidiaries or related entities alleged to be responsible for any **CONSTRUCTION DEFECT**.

(*Id.* at 136 (emphases in original).) The Warranty then listed several categories of disputes subject to binding arbitration and designated an alternative dispute resolution firm to conduct the arbitration.

[3] On June 12, 2017, the Reitenours "began noticing strange sounds when the toilets were flushed." (*Id.* at 18.) The next day sewage began backing up through the shower drain and toilets on the Residence's first floor. The Reitenours reported the issue to M/I Homes. Two plumbing companies visited the Residence on June 13, 2017, to evaluate the problem, but neither company could resolve the issue. The Reitenours also hired a cleanup and restoration service to remove the backed-up sewage. After experiencing these plumbing problems, the Reitenours requested and received a copy of the Warranty from

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[2] "PWC" is an acronym for Professional Warranty Service Corporation, a corporation M/I Homes contracted with to provide administrative services in connection with the Warranty.

M/I Homes. The Reitenours allege that this was the first time a copy of the Warranty was given to them.

[4] Through documents the Reitenours received in response to a public records request they made to the City of Lawrence, the Reitenours learned that the Residence's lowest elevation was too low relative to the elevations of the nearby manholes for the City of Lawrence to grant a sanitary sewer connection permit, absent execution by the property owner of a covenant to run with the land releasing the City of Lawrence from liability for sewer backup into the building.[3] The Reitenours also learned that M/I Homes and the City of Lawrence entered into a covenant in September 2016 whereby, "in consideration of a release of liability, the City will permit the connection of a sanitary sewer lateral on the above-described property to the City sanitary sewer system notwithstanding that such connection is not in compliance with prevailing requirements[.]" (*Id*. at 85.) However, this covenant was not recorded by the Lawrence Utility Superintendent until March 1, 2018.

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[3] Lawrence Municipal Code section 5-1-2-1(B) states:

> *Minimum elevations for gravity connection*. A sanitary sewer connection permit will not be granted to homes or buildings where the lowest elevation to have gravity sanitary service is less than one foot above the top of manhole casting elevation of either the first upstream or downstream manhole on the public sewer to which the connection is to be made. If the first upstream or downstream manhole is at a higher elevation due to the natural topography of the area, an alternate manhole will be selected for the purpose of determining this measurement or a covenant will be required to be executed and recorded to run with the property relieving the City of responsibility for sewer backup into the building.

[5] The Reitenours, proceeding pro se, filed a complaint against M/I Homes, the Utilities Service Board of Lawrence, and the City of Lawrence on September 18, 2020, and they amended their complaint on October 15, 2020. The amended complaint alleges:

> 21) As a direct result of failure of M/I and Lawrence to disclose and record the Covenant, neither Reitenour, nor the Title Company, had knowledge that the Covenant ran with the property at the time Reitenour closed on the purchase of the Reitenour Residence, and that the Reitenour Residence was in violation of LMC 5-1-2-1(B) making the Residence susceptible to sewer back up.
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> * * * * *
>
> **COUNT I**
>
> **FRAUD/CONSTRUCTIVE FRAUD**
>
> * * * * *
>
> 91) M/I induced Reitenour to enter into the Contract by failing to disclose that M/I did not intend to build in accordance with local building code requirements, and making false representations that M/I would build above and beyond standard building codes.
>
> 92) Reitenour relied upon M/I's misrepresentation and concealments by entering in to the contract and purchasing the home, and Reitenour would not have purchased the Reitenour Residence had the "elevation violation" and all of the other code violations not been concealed by M/I, at the time.

* * * * *

COUNT II

BREACH OF CONTRACT

* * * * *

122) Had the Plaintiff known of the prior Covenant Agreement M/I had with Lawrence to build the Reitenour Residence with an "elevation violation" making the Residence susceptible to sewer back flow; Reitenour would not have purchased the Reitenour Residence.

123) The Prior Agreement and the continuous concealment of the agreement by M/I, (and Lawrence,), renders the current agreement irreparably broken, and unconscionable under the circumstances, the law, and the wording in the Purchase Contract between M/I and Reitenour.

124) M/I breached its contract with Reitenour, as established by the Purchase Contract, Permits, and the law, and as a direct and proximate result of M/I's Breach of Contract, Reitenour has a home with an "elevation violation" of sewer code, in a City with sewer problems. Reitenour has no idea what other items are lurking behind the deceit. Reitenour has sustained economic losses, valuable time with family, and other damages for which they are entitled to compensatory damages in an amount to be proven at trial.

COUNT III

FRAUD IN THE INDUCEMENT OF THE ARBITRATION CLAUSE

* * * * *

168) Reitenour was fraudulently induced by M/I withholding information that benefited M/I to the detriment of Reitenour, given the fact that the terms in [the Warranty] are extremely biased and favoring towards M/I.

169) M/I's blatant and reckless disregard in failing to disclose and in concealing such material adverse information, resulted in an unfair and unconscionable advantage over Reitenour for which Reitenour is entitled to have the entire arbitration clause and limitations thereof, rendered ineffective, the agreement irreparably broken, and unconscionable under the circumstances, and the Law, and should result in the recission of the arbitration clause, (this said contract.)

COUNT IV

FRAUD IN THE EXECUTION OF THE ARBITRATION CLAUSE

* * * * *

175) Reitenour did not assent to the entirety of the proposed contract, (arbitration clause,) due to the fact that Reitenour was never given the entirety of the proposed contract.

176) This misrepresentation of the arbitration clause being given in its entirety, when it was not the entire arbitration agreement, renders Reitenour's conduct not effective as a manifestation of assent, and constitutes fraud in the execution.

177) Fraud in the execution occurred for Reitenour, when Reitenour assented to the contract, and was deceived as to the

> basic character of the contract and had no reasonable opportunity to learn the truth.
>
> 178) Reitenour is entitled to have the entire arbitration clause and limitations thereof, rendered ineffective, and a judicial determination made that Reitenour never assented to the contract, (arbitration clause).

(*Id*. at 17, 31-32, 36, 38-39, 45-46) (errors in original).

[6] On November 6, 2020, M/I Homes filed a motion to stay amended complaint and compel arbitration on the basis that the purchase agreement and the Warranty required the Reitenours' claims against the company to be submitted to arbitration. On November 16, 2020, the trial court granted M/I Homes' motion. The Reitenours did not file a response to M/I Homes' motion before the court ruled on the motion, and the trial court did not hold a hearing on the motion. The Reitenours filed both a motion to reconsider and a motion to certify the trial court's order for interlocutory appeal. The trial court denied the motion to reconsider, but the court certified the order for interlocutory appeal. The Reitenours retained counsel to pursue the appeal, and we accepted jurisdiction over the interlocutory appeal on February 21, 2021.

Discussion and Decision

[7] We review a trial court's ruling on a motion to compel arbitration de novo. *Anonymous, M.D. v. Hendricks*, 994 N.E.2d 324, 328 (Ind. Ct. App. 2013). Both Indiana law and federal law recognize a strong public policy interest in favor of

enforcing arbitration agreements. *Maynard v. Golden Living*, 56 N.E.3d 1232, 1237 (Ind. Ct. App. 2016). Arbitration "can keep legal costs down, ensure parties' confidentiality, and provide a flexible alternative to the traditional court system." *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 520 (Ind. 2021). Therefore, if we are satisfied that the parties contracted to arbitrate their dispute, we will affirm the order compelling arbitration. *Norwood Promotional Prod., Inc. v. Roller*, 867 N.E.2d 619, 623 (Ind. Ct. App. 2007), *trans. denied*.

[8] "Nevertheless, arbitration is a matter of contract, and a party cannot be required to submit to arbitration unless the party has agreed to do so." *Homes by Pate, Inc. v. DeHann*, 713 N.E.2d 303, 306 (Ind. Ct. App. 1999). A contract requires "offer, acceptance of the offer and consideration." *Straub v. B.M.T. by Todd*, 645 N.E.2d 597, 598 (Ind. 1994), *reh'g denied*. If these elements are present, the parties are generally bound by the terms of the agreement. *Id*. However, this rule is subject to certain exceptions. For instance, if a contract is determined to violate public policy, then it is void and unenforceable. *Id*. at 601 (holding contract involving sexual intercourse as consideration and absolving father of duty to pay child support was void as against public policy).

[9] Similarly, "contracts induced by fraud or duress are voidable." *Wagler v. West Boggs Sewer Dist., Inc.*, 980 N.E.2d 363, 378 (Ind. Ct. App. 2012), *reh'g denied*, *trans. denied*, *cert. denied*, 571 U.S. 1131 (2014). "Fraudulent inducement occurs when a party is induced through fraudulent misrepresentations to enter into a contract." *Brumley v. Commonwealth Bus. Coll., Educ. Corp.*, 945 N.E.2d 770, 776 (Ind. Ct. App. 2011). So, if a party agrees to enter a contract after justifiably

relying upon a fraudulent or material misrepresentation by the other party, the aggrieved party may void the contract. *Id*. This means that the aggrieved party may elect "to avoid the legal relations created by the contract[.]" 1 Williston on Contracts § 1:20 (4th ed.). This remedy—frequently referred to as avoidance or rescission—unwinds the transaction, "attempting to put the parties in the *status quo ante*," *i.e.*, "the situation they were in before the fraudulent transaction[.]" 48 Am. Jur. 3d 329 *Proof of Facts* § 17 (1998). While the aggrieved party may seek recission, he is not obligated to do so. *See* 1 Williston on Contracts § 1:20 (4th ed.). He may instead "extinguish the power of avoidance" by "ratification of the contract." *Id.* By ratifying or affirming the contract, the party is generally limited to seeking damages. *See* 48 Am. Jur. 3d 329 *Proof of Facts* § 17 (1998).

[10] Thus, a "conundrum" presents itself when a contract includes an agreement to arbitrate disputes and a dispute arises regarding whether the contract itself is legal. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449, 126 S. Ct. 1204, 1210 (2006). This leaves the court in the position of either enforcing the arbitration provision of a contract that an arbitrator may later find void or denying effect to an arbitration clause that the court may later find perfectly enforceable. *Id*. at 448-49. In *Buckeye Check Cashing*, the Supreme Court of the United States held that the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, requires "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." *Id*. at 449. This contrasts with "challenges [to] the validity of the precise agreement to arbitrate"

under the FAA, which a court must address before ordering the parties to arbitration. *Brumley*, 945 N.E.2d at 777 (citing *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63, 70-71, 130 S. Ct. 2772, 2778 (2010)).

[11] Indiana law, on the other hand, resolves this "conundrum" in favor of the potentially defrauded party. Our Indiana Supreme Court explained in *PSI Energy, Inc. v. AMAX, Inc.*, that under the Indiana Uniform Arbitration Act[4] ("Indiana Act"), "[b]efore a court compels arbitration, it must resolve any claims the parties had concerning the validity of the contract containing the arbitration clause." 644 N.E.2d 96, 99 (Ind. 1994). Although *PSI Energy* did not involve a challenge to the validity of the contract at issue, our Supreme Court nevertheless cited the Indiana Act and twice stated that a trial court must resolve claims concerning "the validity **of the contract containing the arbitration clause**." *Id*. (emphasis added). We have since adopted the guidance set forth in *PSI Energy* and ruled on challenges to the validity of a contract containing an arbitration clause before committing the matter to arbitration. *See Sanford v. Castleton Health Care Ctr., LLC*, 813 N.E.2d 411, 418 (Ind. Ct. App. 2004) (holding nursing home admission agreement that included arbitration clause was not an unconscionable adhesion contract), *reh'g denied*,

[4] Ind. Code § 34-57-2-1.

trans. dismissed. Therefore, the Indiana Act requires a court to assess the validity of a contract as a whole before submitting disputes to arbitration.[5]

[12] Consequently, it is important for us to first determine whether the instant case requires us to apply federal or state law. M/I Homes filed its motion to compel arbitration in reliance upon substantive provisions of the Indiana Act, declining to cite the FAA or assert that the contract falls under the FAA. *See* 9 U.S.C. §§ 2 (providing that the FAA applies to "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction"), 1 (defining "commerce" along the lines drawn by the Commerce Clause of the U.S. Constitution); *MPACT Constr. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 904 (Ind. 2004) (noting that the FAA "applies to written arbitration provisions contained in contracts involving interstate commerce"). Indeed, in pursuing the motion to compel arbitration, M/I Homes cited Indiana Code section 34-57-2-1 and urged that arbitration is proper as a matter of

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[5] Indiana law is not alone in its approach. *See George Engine Co., Inc. v. S. Shipbuilding Corp.*, 350 So. 2d 881, 884-86 (La. 1997) (applying Louisiana arbitration law where "no federal question . . . [was] involved" and deciding that, because Louisiana law "presupposes the existence of a valid contract as a basis for invoking arbitration," a trial court must resolve a claim of fraud in the inducement). All in all, it appears that Indiana law reflects a heightened interest in procuring valid consent to arbitrate. *Cf.* Ind. Const. art. 1, § 20 ("In all civil cases, the right of trial by jury shall remain inviolate."). In our view, it makes sense that Indiana law does not mirror federal law regarding arbitration. As the U.S. Supreme Court explained, "[t]he FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Yet, Indiana has not shown such hostility. To the contrary, as explained in *PSI Energy*, "Indiana was surely among the first jurisdictions to sanction arbitration as a means of dispute resolution," with arbitration available "[e]ven before Indiana became a State in 1816[.]" 644 N.E.2d at 98. Indeed, arbitration "has always been part of Indiana's statutory and common law." *Id.* at 98-99.

substantive Indiana law. *See* (App. Vol. 2 at 155 ("Indiana law requires that the Court enforce the Reitenours' agreement to arbitrate, stay the Amended Complaint, and compel arbitration."), 159 ("A written agreement to submit a controversy to arbitration is valid and enforceable in Indiana." (citing Ind. Code § 34-57-2-1)); 160 ("Indiana law requires the Court to compel arbitration in accordance with the Reitenours' agreement."). M/I Homes also focuses on Indiana law on appeal. (*See* Br. of Appellee at 15 ("[U]nder Indiana law, an arbitration agreement in a contract covers claims that the contract was fraudulently induced.").) Because M/I Homes has unmistakably availed itself of Indiana law, we follow its lead and apply Indiana law.

[13] To reiterate Indiana's law, as discussed supra, if a party challenges the validity of the contract as a whole, a court is to rule on the validity of the contract before sending the matter to arbitration. *PSI Energy*, 644 N.E.2d at 99. If, however, a dispute arises under a ratified contract containing an arbitration clause, then the dispute is to be decided at arbitration.

[14] Thus, to determine whether the dispute before us it to be decided by a court or by arbitration, we must look at the form of relief the Reitenours request. If the Reitenours seek to rescind the potentially voidable purchase agreement, the trial court erred in granting M/I Homes' motion to compel arbitration because the validity of the entire purchase agreement is at issue. *See Sanford*, 813 N.E.3d at 418 (ruling on validity of contract before enforcing arbitration agreement). However, if the Reitenours seek to affirm the contract and pursue damages,

then the contractual provisions—including the arbitration clause—are enforceable.

[15] Turning to the complaint, the Reitenours have not definitively elected a remedy. Indeed, at times the Reitenours appear to seek a remedy of damages. For instance, they allege that failing to disclose the covenant resulted in damages, including "substantial sums to attorneys, contractors, [and] for rented equipment," with the "full amount" to be "proven at trial." (App. Vol. II at 33.) The Reitenours also allege entitlement to damages "for diminution in the value of the Reitenour Residence and property, for additional compensatory damages, prejudgment interest, inconvenience, anguish, [and] loss of use[.]" (*Id.* at 34.)

[16] At other times, however, it appears the Reitenours are seeking recission of the entire purchase agreement. They allege that they "relied upon M/I's misrepresentations and concealments by entering [into] the contract and purchasing the home, and [the] Reitenour[s] would not have purchased the Reitenour Residence had the 'elevation violation' and all of the other code violations not been concealed by M/I at the time." (*Id*. at 32.) The Reitenours close the complaint with an open-ended prayer for relief, seeking "all damages set out above and . . . all other relief just and proper in the premises." (*Id.* at 47.) Even on appeal, the Reitenours assert that they "seek[] relief for alleged fraud and fraud in the inducement regarding the arbitration clause" and "should be allowed to continue in Court seeking their **remedies**[.]" (Br. of Appellant at 17, 18 (emphasis added).)

[17] Other prayers for relief are ambiguous. For example, the Reitenours allege that certain fraudulent conduct "should result in the recission of the arbitration clause, (this said contract.)." (App. Vol. II at 45.) They also state that "[t]he 'contract', [sic] here considered 'arbitration', [sic] should be rescinded." (*Id*. at 47.) It is not clear from these statements whether the Reitenours seek simply to avoid the arbitration clause or to rescind the entire purchase agreement.

[18] Indiana is a "notice pleading" state with liberal pleading standards. *KS&E Sports v. Runnels*, 72 N.E.3d 892, 901 (Ind. 2017). Indeed, the complaint need only "put the defendant on notice concerning why it is potentially liable and what it stands to lose." *Noblesville Redev. Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 564 (Ind. 1996). Moreover, Trial Rule 8(E)(2) provides that "[a] pleading may . . . state as many separate claims or defenses as the pleader has regardless of consistency and whether based on legal or equitable grounds." Applying this rule in *Cahoon v. Cummings*, the Indiana Supreme Court explained that a party is not obligated to elect a remedy at the outset of proceedings. 734 N.E.2d 535, 541-43 (Ind. 2000). Moreover, it is worth noting that a defendant has the option of filing a motion to compel the election of a remedy. *See, e.g.*, *Nysewander v. Lowman*, 24 N.E. 355, 356 (Ind. 1890) (noting, in a case involving a claim of fraud in the inducement, that there was "no election compelled by the action of the adverse party" and that the plaintiff could "so amend" the "complaint for rescission . . . as to make it a complaint for damages" because, at that early juncture, there was "no such election as concludes the plaintiff").

[19] In the instant case, M/I Homes did not file a motion to compel the election of a remedy. Rather, M/I Homes filed a motion to compel arbitration, effectively asking the trial court to limit the Reitenours to the remedy of damages. Yet, the defendant is not at liberty to choose a remedy for the plaintiff. *Cf.* Restatement (Second) of Contracts § 378 cmt. e (Am. Law Inst. 1981) (noting that the aggrieved party must "choose between inconsistent remedies at some stage of a judicial proceeding"). All in all, we hold that the order compelling arbitration was premature. That is, unless the Reitenours conclusively elect the remedy of damages, it is improper to enforce the arbitration clause and order arbitration. We therefore reverse and remand for further proceedings.[6] *See Lockett v. Planned Parenthood of Ind., Inc.*, 42 N.E.3d 119, 138 (Ind. Ct. App. 2015) (remanding case because trial court's order dismissing complaint was premature when entered before defendant was served), *reh'g denied*, *trans. denied*.

Conclusion

[6] As to further proceedings, we are compelled to note that this case arose because the City of Lawrence enacted Municipal Code Section 5-1-2-1(B), which sets forth slope requirements for a gravity sewer connection while allowing an exception where the property owner has executed a covenant "to run with the property" that "reliev[es] the City of responsibility for sewer backup into the building." We question the public policy objective of an ordinance that invites sewage backup for generations to come, contravening a basic tenet of government: to provide for the health and safety of its citizens. *See, e.g.*, *Hutchinson v. City of Valdosta*, 227 U.S. 303, 308 (1913) ("It is the commonest exercise of the police power of a state . . . to provide for a system of sewers, and to compel property owners to connect therewith."). We also find it curious that, as alleged, the covenant—of keen interest to the public—was not recorded upon execution but promptly was recorded (without notice to the Reitenours) after the Reitenours made a public records request and discovered its existence.

[20] While Trial Rule 8 allows a plaintiff to plead inconsistent remedies, the choice of remedy in the instant case determines whether the matter should be referred to arbitration. As it is the plaintiff's right to choose a remedy, the Reitenours must choose damages, as opposed to recission of the purchase agreement, before the trial court may compel arbitration. Because the Reitenours have not yet definitively chosen the remedy of damages, the trial court's order compelling arbitration was premature. Therefore, we reverse and remand for further proceedings.

[21] Reversed and remanded.

Bailey, J., and Robb, J., concur.