MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cyrille J. Catellier,
Appellant-Plaintiff,

v.

Tim K. Catellier, Eli Catellier, Allie Grigsby, and Bobbie Baldwin,[1]
Appellee-Defendants.

March 25, 2022

Court of Appeals Case No. 21A-CP-1243

Appeal from the Hendricks Circuit Court

The Honorable Daniel Zielinski, Judge

Trial Court Cause No. 32C01-1909-PL-116

[1] Allie Grigsby ("Grigsby"), Bobbie Baldwin ("Bobbie"), and Eli Catellier ("Eli") do not participate in this appeal. Based on the record, Bobbie was a party to the Settlement Agreement, but did not participate in the proceedings after that point, though she remained a party. Grigsby and Eli were named as part of Cyrille's original complaint, but were not parties to the Settlement Agreement, though it is unclear why. Nevertheless, as Bobbie, Grigsby, and Eli are parties of record before the trial court, so shall they be before this court. *See* Indiana Appellate Rule 17(A) ("A party of record in the trial court . . . shall be a party on appeal.").

May, Judge.

[1] Cyrille J. Catellier ("Cyrille") appeals the denial of his motion to correct error. He presents two issues for our review, one of which we find dispositive: whether the trial court abused its discretion when it denied the motion to correct error Cyrille filed following the trial court's denial of Cyrille's motion for relief from judgment, which challenged the trial court's order enforcing the Mutual Release, Covenant Not to Sue, and Settlement Agreement ("Settlement Agreement") between Cyrille; his son Tim Catellier ("Tim"); and Tim's wife, Bobbie Baldwin ("Bobbie"). We affirm.

Facts and Procedural History

[2] Prior to January 2019, Tim owned the property at issue, which is located in Plainfield, Indiana ("Disputed Property"). On January 18, 2019, Tim executed a quitclaim deed transferring the Disputed Property to Cyrille. Cyrille then obtained a VA loan on the Disputed Property. Tim and Bobbie, with other various people, lived at the Disputed Property at all times.

[3] On August 20, 2019, Cyrille filed an eviction action in small claims court against Tim, Eli, and Grigsby.[2] At the initial hearing on that matter, Tim, Eli, and Grigsby requested a jury trial, which required the claim to be transferred to

[2] The relationship between Eli, Grigsby, and the other parties is unclear, though it would seem they lived in the Disputed Property at some time.

plenary court. On September 30, 2019, Cyrille filed a "Verified Amended Complaint to Quiet Title to Real Estate, for Eviction and Possession of the Premises, Breach of Fiduciary Duty and Fraud" against Tim, Eli, Grigsby, Bobbie, and "all unknown occupants" (collectively, "Defendants") of the Disputed Property. (*Id*. at 17) (original formatting omitted). Cyrille's complaint alleged Defendants had not paid him rent since January 2019 and Tim had breached his fiduciary duty as Cyrille's Power of Attorney and committed fraud with Bobbie by misusing Cyrille's funds. Cyrille asked the trial court to declare him owner of the Disputed Property and to evict the Defendants.

[4] On July 25, 2020, Cyrille; Amy Lamb, individually as Cyrille's daughter and as Cyrille's attorney in fact; Tim; and Bobbie entered into the Settlement Agreement at issue before us. The relevant terms of the Settlement Agreement stated:

> **Section 2. Real Estate Purchase Agreement and Title Search.** [Cyrille], either personally, or by his POA, Amy, will execute a Purchase Agreement necessary for Tim and/or Bobbie to purchase the [Disputed Property] under the terms set forth in this Agreement. Said purchase shall be "as is", with no inspection right and no obligation on [Cyrille's] part to remedy any alleged defects in the property. The only contingencies under the Agreement will be (1) Tim and/or Bobbie's ability to obtain financing under this Agreement; (2) all parties' compliance with the terms of this Agreement; and (3) [Cyrille's] ability to convey title free and clear of all liens, except the Mortgage described herein, as well as taxes and assessment which were due prior to January 1, 2020. . . .

* * * * *

> **Section 6. Equity in Real Estate.** To the extent that any equity exists in the [Disputed Property] at the time that the Mortgage is refinanced, the same shall belong exclusively to Tim and [Cyrille] shall have no right or interest to the same. However, in the event that Tim fails or refuses to refinance the Mortgage as set out in this Agreement, then any interest existing in the [Disputed Property] shall belong exclusive [sic] to [Cyrille] and Tim shall have no right, title or interest in the same.

(*Id*. at 36-7.) On July 27, 2020, Tim filed an unopposed motion to vacate the hearing scheduled on the matter because the parties came to an agreement, which the trial court granted the next day. Despite the Settlement Agreement, the parties did not dismiss the action and the trial court did not issue an order accepting the Settlement Agreement as a final decision in the case.

[5] After the parties entered into the Settlement Agreement, Tim and Cyrille entered into a Purchase Agreement for the Disputed Property. Tim worked with Angela Turley, a mortgage officer for Fairway Independent Mortgage Corporation. Tim lacked sufficient funds to make the required down payment. However, Turley testified "FHA allows for a gift of equity from the seller. And we had already the paperwork stating that [Tim's] father had no rights [to] the equity. So, we wrote up a contract for the gift of equity for the down payment, as well as for the closing costs." (Tr. Vol. II at 11.) Turley indicated the gift of equity would be sufficient to cover the down payment requirements for Tim's loan. Turley drafted an amendment to the Purchase Agreement indicating Cyrille would make a $15,000 gift of equity to Tim to be applied toward the

purchase of the Disputed Property ("Gift Affidavit"). Pursuant to the Gift Affidavit, the gift of equity would be transferred "at closing[.]" (Appellant's App. Vol. II at 50) (original formatting omitted). Cyrille refused to sign the Gift Affidavit.

[6] On November 16, 2020, Tim filed a Motion to Enforce Settlement Agreement, asking the trial court to require Cyrille to "execute any gift letter required by [Tim's] lender to facilitate the refinance of the Mortgage[.]" (*Id*. at 31.) The trial court granted Tim's motion the same day, ordering Cyrille to "execute any gift letter required by [Tim's] lender to facilitate refinance of the Mortgage." (*Id*. at 40.) However, Cyrille continued to refuse to sign the Gift Affidavit. On December 2, 2020, Tim filed a Verified Motion for Rule to Show Cause, asking the trial court to hold a hearing during which Cyrille would appear and show cause why he should not be found in indirect contempt for failing to comply with the trial court's order granting Tim's Motion to Enforce Settlement Agreement and, after that hearing, to enter an order requiring Cyrille to execute the Gift Affidavit in open court. The trial court granted Tim's motion the same day and ordered Cyrille to appear at a show cause hearing on January 12, 2021.

[7] On January 8, 2021, Cyrille, acting pro se, filed a Motion for Continuance of the show cause hearing. The trial court granted Cyrille's motion and rescheduled the show cause hearing for March 23, 2021. On February 8, 2021, Cyrille, by counsel, filed a Motion to Set Aside Judgment, asserting that the trial court's November 16, 2020, order granting Tim's Motion to Enforce Settlement Agreement "materially alters, modifies the terms of the Settlement

Agreement and adversely affects [Cyrille]." (*Id*. at 61.) Cyrille argued he was entitled to relief pursuant to Indiana Trial Rules 60(B)(1), (3), and (8). Finally, Cyrille asked the trial court to dismiss the show cause matter. The same day, Cyrille filed a Motion for Eviction, Immediate Possession of Real Estate and Damages, asking the trial court to evict Tim and all other occupants of the Disputed Property, give Cyrille immediate possession of the Disputed Property, and award damages in the amount of "monthly mortgage payments from April 2020 until the date [Tim] vacates the property, plus all late fees and foreclosure fees assessed by the mortgage company after April 1, 2020." (*Id*. at 71.)

[8] The trial court held a hearing on all pending matters on March 23, 2021. After hearing testimony and receiving evidence, the trial court took the matter under advisement. On April 12, 2021, the trial court issued its order, finding, in relevant part:

> 3. In January of 2019, Tim executed a quick [sic] claim deed transferring title the [Disputed Property] to Cyrille.
>
> 4. It was the understanding of the parties that Cyrille would refinance the mortgage and obtain a VA loan.
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> 5. It was the understanding of the parties that thereafter, Tim would obtain a mortgage on the [Disputed Property] and the [Disputed Property] would be deeded back to Tim.
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> 6. In July of 2020, the parties entered into a "Mutual Release, Covenant Not to Sue and Settlement Agreement". The Agreement contemplated that Tim would endeavor to obtain

financing and Cyrille would execute a purchase agreement necessary for Tim to purchase the real estate.

7. Tim met with Mortgage Loan Officer, Angie Turley to inquire about obtaining financing. Tim was at all times cooperative with Angie Turley. Angie Turley advised Tim that, in order to obtain a mortgage, Cyrille would be required to execute a "Gift Affidavit" in the amount of the equity in the residence.

8. Cyrille has refused to sign the Gift Affidavit.

9. Cyrille's actions are the sole cause of Tim's inability to obtain a mortgage on the [Disputed Property].

10. The intent of the Settlement Agreement was for Cyrille to execute any documents necessary to effectuate Tim refinancing the mortgage.

11. Basically, Cyrille's only objection to executing the Gift Affidavit is that he "doesn't want to do it". Cyrille, through his power of attorney, makes no claim to the equity in the residence.

12. Cyrille's actions has [sic] impeded the ability for Tim to perform pursuant to the Settlement Agreement.

(*Id.* at 80-1.) Based thereon, the trial court ordered:

a. [Cyrille's] Moton for Eviction, Immediate Possession of Real Estate and Damages is DENIED.

b. [Cyrille's] Verified Motion to Set Aside is DENIED.

> c. Cyrille is found to be in contempt of court for failing to abide by the Court's previous order enforcing [the] agreement. Cyrille is to execute any and all documents necessary to effectuate Tim's refinancing of the real estate including Gift Affidavit, within thirty days.
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> d. Sanctions are taken under advisement and the Court will set this matter for Review Hearing at the request of either party.

(*Id*. at 81) (emphases in original). On May 12, 2021, Cyrille filed a motion to correct error, arguing the trial court erred in its decision. On May 27, 2021, the trial court issued its order denying Cyrille's motion to correct error.

Discussion and Decision

[9] We generally review a trial court's ruling on a motion to correct error for an abuse of discretion. *Ind. Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). An abuse of discretion occurs if the trial court misinterpreted the law or if the court's ruling is against the logic and effect of the facts and circumstances before it. *Id*. As Cyrille does not specifically challenge any specific part of the court's order denying his motion to correct error, we review the underlying order. *See In re Paternity of H.H.*, 879 N.E.2d 1175, 1177 (Ind. Ct. App. 2008) (review of motion to correct error includes review of underlying order).

[10] Cyrille argues the trial court erred in denying his motion for relief from judgment, filed pursuant to Trial Rules 60(B)(1), 60(B)(3), and 60(B)(8), to set

aside its order dismissing his complaint and entering default judgment against him. Indiana Trial Rule 60(B) provides, in relevant part:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:
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> (1) mistake, surprise, or excusable neglect;
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> * * * * *
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
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> * * * * *
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).
>
> * * * * *
>
> The motion shall be filed within a reasonable time for reasons (1) . . .(3) [and]. . . (8) . . . [and] must allege a meritorious claim or defense.

[11] We review the denial of a Trial Rule 60(B) motion for an abuse of discretion. *Allstate Ins. Co. v. Love*, 944 N.E.2d 47, 50 (Ind. Ct. App. 2011). An abuse of discretion occurs when "the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or is contrary to law." *Munster Cmty. Hosp. v. Bernacke*, 874 N.E.2d 611, 613 (Ind. Ct. App. 2007). "Because

T.R. 60(B) relief is equitable in nature, the trial court must balance the alleged injustice suffered by the party moving for relief against the interests of the winning party and society in general in the finality of litigation." *Gifford v. Hartford Steam Boiler Inspection & Ins. Co.*, 811 N.E.2d 853, 856 (Ind. Ct. App. 2004), *trans. denied*.

[12] Cyrille does not argue on appeal that he was entitled to relief under Indiana Trial Rule 60(B)(1) or (3), and we therefore review only whether the trial court abused its discretion when it did not grant him relief from the Order to Enforce Settlement based on Indiana Trial Rule 60(B)(8). It is undisputed that Cyrille filed his motion for relief from judgment within a reasonable time. Thus, the issue before us is whether Cyrille presented a meritorious defense.

[13] "A meritorious defense is defined as enough admissible evidence to indicate that if the case were retried on the merits, a different result would be reached and that an injustice would be foisted upon the defaulted party if the judgment were allowed to stand." *Gallant Ins. Co. v. Toliver*, 695 N.E.2d 592, 593-94 (Ind. Ct. App. 1998), *trans. denied*. To that point, Cyrille asserts:

> [T]he trial court abused its discretion when it improperly interpreted the plain and ordinary meaning of the unambiguous Settlement Agreement, impermissibly altered the Settlement Agreement to order Cyrille to sign a gift letter without notice and found Cyrille in contempt for not abiding by the trial court's Order to Enforce.

(Br. of Appellant at 12.)

[14] Cyrille thus argues the trial court misinterpreted the Settlement Agreement, which resulted in it erroneously entering the order to enforce the settlement agreement. Our standard of review for settlement agreements is well-established:

> Settlement agreements are governed by the same general principles of contract law as any other agreement. The interpretation and construction of a contract is a function for the courts. If the contract language is unambiguous and the intent of the parties is discernible from the written contract, the court is to give effect to the terms of the contract. A contract is ambiguous if a reasonable person would find the contract subject to more than one interpretation; however, the terms of a contract are not ambiguous merely because the parties disagree as to their interpretation. When the contract terms are clear and unambiguous, the terms are conclusive and we do not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions.

Fackler v. Powell, 891 N.E.2d 1091, 1095-6 (Ind. Ct. App. 2008) (internal citations omitted), *trans. denied*. A contract should be interpreted to "harmonize its provisions, rather than place them in conflict[,]" and we should "make all attempts to construe the language of a contract so as to not render any words, phrases, or terms ineffective or meaningless." *Jernas v. Gumz*, 53 N.E.3d 434, 444 (Ind. Ct. App. 2016), *trans. denied*.

[15] Cyrille contends the language of the Settlement Agreement does not require him to execute the Gift Affidavit because "[n]owhere in the Section 2 or anywhere else in the Settlement Agreement is there a provision or specific term requiring Cyrille to sign a gift letter for equity, signing more than one purchase

agreement or that he must assist Tim in his obtaining financing." (Br. of Appellant at 15.) However, his argument ignores not only the intent of the Settlement Agreement, but the plain language therein.

[16] As indicated in the language of the Settlement Agreement,

> Certain disputes have arisen between the parties concerning possession, ownership and/or maintenance of [Disputed Property] . . . these disputes have led to litigation between [Cyrille], Tim and Bobbie, . . . all parties desire to compromise and settle any and all disputes that they may have with regard to these disputes . . . [and] this Agreement is intended to effect the extinguishment of all claims asserted by all parties against the other with regard to the [Disputed Property] and related issues.

(Appellant's App. Vol II at 35.) To achieve that goal, Cyrille agreed to "execute a Purchase Agreement necessary for Tim and/or Bobbie to purchase the [Disputed Property]" and Tim agreed to "continuing [sic] working toward an immediate and timely refinancing of the Mortgage in his own name, and to obtain a full release of [Cyrille's] liability for the same." (*Id.* at 36.) Regarding equity in the Disputed Property, the Settlement Agreement provides "[t]o the extent that any equity exists in the [Disputed Property] at the time that the Mortgage is refinanced, the same shall belong exclusively to Tim and [Cyrille] shall have no right or interest in the same." (*Id.* at 37.)

[17] Under Section 2 of the Settlement Agreement, Cyrille was required to execute a Purchase Agreement necessary for Tim to purchase the Disputed Property. Cyrille's executed Purchase Agreement was not sufficient for Tim to purchase

the disputed property, as it did not contain the gift of equity required to cover Tim's down payment. Section 6 of the Settlement Agreement grants Tim the equity in the Disputed Property, such that requiring Cyrille to sign a Gift Affidavit for Tim to use the equity to which he has a right does not violate the plain language of the Settlement Agreement. Thus, the trial court did not impermissibly alter the terms of the Settlement Agreement when it granted Tim's motion to enforce the agreement. The trial court did not abuse its discretion when it denied Cyrille's motion to set aside judgment pursuant to Indiana Trial Rule 60(B)(8) because he did not present a meritorious defense. *See Cross-Road Farms, LLC v. Whitlock*, 157 N.E.3d 555, 561 (Ind. Ct. App. 2020) (trial court did not abuse its discretion when it denied Cross-Road's motion for relief from judgment when Cross-Road did not allege a meritorious defense).[3] Because the trial court did not abuse its discretion when it denied Cyrille's motion for relief from judgment, it likewise did not abuse its discretion when it denied his motion to correct error.

Conclusion

[18] The trial court did not abuse its discretion when it denied Cyrille's motion for relief from judgment because he did not raise a meritorious claim or defense

[3] Cyrille also argues he "was unrepresented by counsel and had no notice or opportunity at the time that [the] trial court issued its Order to Enforce Settlement." (Br. of Appellant at 12.) However, Cyrille did not advance this argument before the trial court and thus it is waived. *See Breneman v. Slusher*, 768 N.E.2d 451, 463 (Ind. Ct. App. 2002) (issues raised for the first time on appeal are waived).

and thus the trial court did not abuse its discretion when it denied Cyrille's motion to correct error. Accordingly, we affirm the trial court's decision.

[19] Affirmed.

Pyle, J., concurs.

Brown, J., dissents with opinion.

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COURT OF APPEALS OF INDIANA

Cyrille J. Catellier,
Appellant,

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Tim K. Catellier, Eli Catellier, Allie Grigsby, and Bobbie Baldwin,
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Court of Appeals Case No. 21A-CP-1243

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The Honorable Daniel Zielinski, Judge

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Brown, Judge.

[20] I respectfully dissent and would conclude that the trial court erred in ordering Cyrille to sign a gift letter or gift affidavit. Before discussing the terms of the settlement agreement, I note that the court granted Tim's motion to enforce the settlement agreement on the same day that Tim filed the motion and without holding a hearing. Further, it was improper for Tim's counsel, William Harrington ("Attorney Harrington"), to testify on behalf of Tim at the March 23, 2021 hearing. At the hearing, Attorney Harrington argued the settlement agreement required Cyrille "to sign whatever purchase agreement was necessary to accomplish the deal," "[t]he deal was that my client was going to acquire his father's mortgage [] and in exchange my client was going to receive

the real estate," that Cyrille "gave up any equity that might exist in the real estate," and "[o]ne of the requirements of the financing was that [Cyrille] was going to have to sign off on the amendment to the purchase agreement that provided he was going to be gifting the equity in the real estate [] to his son." Transcript Volume II at 4-5. Because these arguments were not supported by the plain language of the settlement agreement, as discussed below, Attorney Harrington indicated that he wished to introduce emails between him and Cyrille's former counsel, and he called himself as a witness for the purpose of laying a foundation for the introduction of the emails. Ind. Professional Rule 3.7(a) provides:

> A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
>
> > (1) the testimony relates to an uncontested issue;
> >
> > (2) the testimony relates to the nature and value of legal services rendered in the case; or
> >
> > (3) disqualification of the lawyer would work substantial hardship on the client.

Attorney Harrington's testimony, which related ultimately to whether Cyrille had agreed to sign a gift affidavit, was not related to an uncontested issue, and it was improper for him to testify to introduce evidence bearing on the issue to be decided by the court. *Cf. Midland-Guardian Co. v. United Consumers Club, Inc.*, 499 N.E.2d 792, 799 (Ind. Ct. App. 1986) (finding no violation of the professional responsibility rules where the attorney's testimony was limited to

the nature and value of his legal services and the party's entitlement to attorney fees was not a contested issue), *reh'g denied*, *trans. denied*.

[21] Turning to whether Cyrille agreed to execute a gift letter or gift affidavit, Section 2 of the settlement agreement provided that Cyrille would execute a purchase agreement "necessary for Tim and/or Bobbie [Baldwin] to purchase the Real Estate under the terms set forth in this Agreement" and that "[t]he only contingencies under the Agreement will be: (1) Tim and/or [Baldwin's] ability to obtain financing under this Agreement." Appellant's Appendix Volume II at 76. Section 3 of the settlement agreement provided: "Tim agrees to continuing working toward an immediate and timely refinancing of the Mortgage[4] in his own name, and to obtain a full release of [Cyrille's] liability for the same." *Id*. Section 3 further provided that Tim "shall have 60 days from the date of this agreement in which to refinance the Mortgage, and obtain the release of [Cyrille's] liability for the same." *Id*. The parties do not dispute that Cyrille executed a purchase agreement and that Tim did not refinance the Money Source mortgage for which Cyrille was liable.

[22] Section 6 of the settlement agreement, which is titled "Equity in Real Estate," provides that, "in the event that Tim fails or refuses to refinance the Mortgage as set out in this Agreement, then any interest existing in the Real Estate shall

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[4] The settlement agreement states the mortgage "is held by The Money Source and was recorded as a lien on the Real Estate on or about 3-29-2019 ('Mortgage')." Appellant's Appendix Volume II at 75.

belong exclusive[ly] to [Cyrille] and Tim shall have no right, title or interest in the same."[5] *Id*. at 77.

[23] The agreement's unambiguous terms provided that Tim was not entitled to any equity which may exist if he did not secure funds to obtain a full release of the mortgage for which Cyrille was liable within the prescribed time period. The terms of the settlement agreement were clear that Tim's purchase of the property was contingent on securing funds sufficient to obtain a full release of the mortgage for which Cyrille was liable. *See id*. at 76-77 ("Tim agrees . . . to obtain a full release of [Cyrille's] liability" and was "responsible for payment of the mortgage balance in full").

[24] Tim's ability to obtain financing to secure the amounts needed on loan terms acceptable to a prospective lender and to Tim as the borrower presumably turned on the appraised value of the property, Tim's personal finances and creditworthiness, and Tim's ability to make a down payment. The agreement did not provide that, in the event Tim was unable to make a down payment in the amount required by a prospective lender, then Cyrille would be required to make the down payment on behalf of Tim by signing a gift of equity.

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[5] Section 6 also states, "[t]o the extent that any equity exists in the Real Estate at the time that the Mortgage is refinanced, the same shall belong exclusively to Tim . . . ." Appellant's Appendix Volume II at 77. However, the record establishes that the Money Source mortgage for which Cyrille was liable was not released or refinanced.

[25] I would conclude, based on the unambiguous language of the settlement agreement, that the trial court erred in ordering Cyrille to sign a gift affidavit, reverse the trial court's order, and remand with instructions to vacate the finding of contempt, to enter an order requiring that Tim and any persons residing at the property vacate the property and granting immediate possession of the property to Cyrille, and to set a hearing on Cyrille's damages.