

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Kevin Koy,
Appellant-Plaintiff

v.

Armstrong Family Trust, LLC, Fletcher 333, LLC, and Justin
A. Stanley, Jr.,
Appellees-Defendants

August 15, 2024

Court of Appeals Case No.
23A-PL-2297

Appeal from the Lake Superior Court
The Honorable John M. Sedia, Special Judge
Trial Court Cause No.
45D01-2301-PL-1

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] Kevin Koy sued Armstrong Family Trust, LLC (“Armstrong”), Fletcher 333, LLC, and Justin A. Stanley, Jr. (collectively, “Defendants”) for alleged breach of contract stemming from his agreement to transfer his membership interest in Armstrong in exchange for four pieces of Indiana real estate. Defendants moved for summary judgment, which the trial court granted. Koy now appeals, claiming genuine issues of material fact preclude summary judgment. We affirm.

Facts and Procedural History

- [2] Koy and Fletcher 333 each owned a fifty-percent interest in Armstrong, an Indiana limited liability company. Armstrong owned various parcels of Indiana real estate. In fall 2020, Koy contracted with Fletcher 333 to transfer his membership interest in Armstrong. Under a “Settlement Agreement,” Fletcher 333 agreed to cause four parcels of real estate to be conveyed to Koy by special warranty deed: 7624 Kinsley, Munster, Indiana;¹ 725 Juniper, Valparaiso, Indiana; 2421-29 Waite, Gary, Indiana; and 5522 Alice, Hammond, Indiana (collectively, “Properties”). In exchange, Koy was to

¹ Section 1.A. of the Agreement detailed 7624 Kinsley was encumbered with a mortgage used as collateral for a loan relating to a property not involved in the Agreement. The Agreement stated Stanley was to “use best efforts” to sell and market the other property, then convey 7624 Kinsley to Koy. *Appellant’s App. Vol. 2* at 137.

convey his membership interest in Armstrong to Fletcher 333. The Agreement also included a provision purporting to broadly release the Parties, except for claims contending breach of the Agreement. Koy was not represented by counsel during the negotiation and execution of the Agreement.

[3] On September 18, 2020, Fletcher 333 conveyed the Properties to Koy by special warranty deeds. In part, the deeds provided:

Grantor shall warrant and defend title to the same unto the Grantee against every person lawfully claiming or to claim the whole or any part thereof by, through or under the Grantor, but not otherwise.

Grantor makes no representations or warranties, of any kind or nature whatsoever, other than those set out above, whether expressed, implied, implied by law, or otherwise, concerning the condition of the title of the property prior to the date the Grantor acquired title.

Appellant's App. Vol. 2 at 143, 146, 148. Around the same time, Koy assigned his interest in Armstrong to Fletcher 333. After executing the Agreement, Koy discovered the 5522 Alice property was subject to a contract for conditional sale of real estate, which had been recorded in Lake County in March 2016. Moreover, the properties at 7624 Kinsley and 2421-19 Waite were subject to unpaid back taxes.²

² Back taxes owed on 7624 Kinsley and 2421-19 Waite amounted to \$8,294.50 and \$2,284.74, respectively.

[4] In January 2023, Koy sued Defendants, alleging breach of contract for failing to convey to him the Properties.³ Koy sought specific performance and over \$400,000 in damages. Defendants moved for summary judgment and to enforce the Agreement's mutual release. Koy submitted his own affidavit in opposition to Defendants' motion for summary judgment. Defendants then moved to strike portions of Koy's affidavit, claiming it included legal conclusions and inadmissible parol evidence.

[5] About five months after Defendants moved for summary judgment, Koy sought leave to amend his complaint to include additional allegations of fraud and negligent misrepresentation. Following a hearing on all outstanding motions, the trial court granted Defendants' motion for summary judgment, cross-motion to enforce release, and motion to strike portions of Koy's affidavit.⁴ The trial court also denied Koy's motion for leave to file an amended complaint.⁵

³ Although Koy framed his argument as breach by failure to convey him the Properties, Koy's actual claim is Defendants breached the Agreement by not conveying him the Properties free of encumbrances.

⁴ In part, the trial court relied upon the Agreement's mutual release provision when granting summary judgment. We, however, are not bound by the trial court's reasoning and will affirm the trial court's ruling on any basis sustainable in the record. *See Kenworth of Indianapolis, Inc. v. Seventy-Seven Ltd.*, 134 N.E.3d 370, 385 (Ind. 2019).

⁵ On appeal, Koy does not challenge the trial court's decision to grant Defendants' motion to strike or the denial of his motion for leave to file an amended complaint. Instead, Koy limits his argument on appeal to whether the trial court erred in granting Defendants summary judgment on his breach of contract claim.

Summary Judgment Standard of Review

- [6] We review a trial court’s summary judgment decision *de novo*, applying the same standard as the trial court. *U.S. Automatic Sprinkler Corp. v. Erie Ins. Exch.*, 204 N.E.3d 215, 220 (Ind. 2023). In doing so, we consider only the evidence designated to the trial court and draw all reasonable inferences in the non-movant’s favor. *Ebert v. Ill. Cas. Co.*, 188 N.E.3d 858, 863 (Ind. 2022). A party seeking summary judgment must establish “the designated evidentiary matter shows . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Ind. Trial Rule 56(C). “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (quoting *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009)).
- [7] The non-moving party, however, cannot “rest upon the mere allegations or denials of his pleading.” T.R. 56(E). Instead, the party opposing summary judgment must, by affidavit or other evidence, “set forth specific facts showing that there is a genuine issue for trial.” *Id.* “And ‘[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court’s decision to ensure that he was not improperly denied his day in court.’” *Hughley*, 15 N.E.3d at 1003 (quoting *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909–10 (Ind. 2009)).

The trial court did not err in granting Defendants summary judgment.

[8] Koy claims the trial court erred in granting Defendants summary judgment because genuine issues of material fact exist regarding whether Defendants breached the Agreement. Contract interpretation is an exercise we undertake *de novo*. *Performance Servs., Inc. v. Randolph E. Sch. Corp.*, 211 N.E.3d 508, 511 (Ind. 2023). When interpreting a contract, our goal is “to determine the intent of the parties at the time that they made the agreement.” *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 752 (Ind. 2018) (quoting *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 813 (Ind. 2012)). We start with the contract’s language to determine whether it is ambiguous. *Id.* “If the language is unambiguous, we give it its plain and ordinary meaning in view of the whole contract, without substitution or addition.” *Id.* “A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless.” *Ryan v. TCI Architects/Engineers/Contractors, Inc.*, 72 N.E.3d 908, 914 (Ind. 2017). Legal questions, like contract interpretation, are “well-suited” for summary judgment. *Id.* at 913.

[9] Under the Agreement’s terms, Armstrong was required to convey the Properties to Koy “by Special Warranty Deed.” *Appellant’s App. Vol. 2* at 137. A “special warranty deed” is a deed that limits the usual covenants—seisin, right to convey, freedom from encumbrances, quiet enjoyment, and warranty. *House v. First Am. Title Co.*, 883 N.E.2d 197, 200 (Ind. Ct. App. 2008); *see also Windell v. Miller*, 687 N.E.2d 585, 588 (Ind. Ct. App. 1997) (explaining the covenants of

title “may be modified by additional terms contained within the text of the deed providing for exceptions, reservations, conditions or other covenants”). Koy and Defendants do not dispute the deeds at issue here are special warranty deeds. Nor could they. The deeds contained only the covenant of warranty: “Grantor shall warrant and defend title to the same unto the Grantee against every person lawfully claiming or to claim the whole or any part thereof by, through or under the Grantor, but not otherwise.” *Appellant’s App. Vol. 2* at 143, 146, 148.

[10] Instead, Koy claims Defendants breached the Agreement by transferring him encumbered properties, because if the parties intended for him to receive the Properties subject to a contract for conditional sale of real estate and owed back taxes, “details surrounding that intent would have been outlined” in the Agreement. *Appellant’s Br.* at 21. In essence, Koy asks us to insert terms and impart meaning into an otherwise unambiguous contract provision. Doing so, however, would violate basic contract interpretation principles. *See Sawyer*, 93 N.E.3d at 752 (explaining we give unambiguous contractual language its plain and ordinary meaning without substitution or addition). We therefore decline his invitation to do so.

[11] Ultimately, Koy received what he bargained for: special warranty deeds for the Properties in exchange for his membership interest in Armstrong. These deeds did not warrant against the defects Koy now claims amount to breach of the Agreement. Moreover, despite his “dismay” surrounding the state of the conveyed Properties, Koy accepted the special warranty deeds and later sold at

least one of the Properties. *Appellant's App. Vol. 2* at 196. We cannot say the trial court improperly granted Defendants summary judgment.⁶

Conclusion

[12] The trial court did not err in granting Defendants summary judgment.

[13] Affirmed.

May, J., and Vaidik, J., concur.

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⁶ Koy also argues genuine issues of material fact exist as to whether Defendants breached Section 3(B) of the Agreement, which states:

The Parties acknowledge that attorney's fees are owed to Michael Kvachkoff relating to the Tapper property (estimated at approximately \$8,000.00). The Parties agree that such amount shall be paid 80% by Stanley and 20% by Koy.

Id. at 138. Koy claims Stanley paid no funds and, as a result, Koy paid the entire balance. In June 2023, Attorney Kvachkoff deposited \$7,745.00 in escrowed funds with the clerk of the trial court. Because the source of the funds was in dispute, Defendants moved for the trial court to hold the funds pursuant to Indiana Trial Rule 67(A) so the trial court could direct payment of the funds to Attorney Kvachkoff and Koy, respectively. Koy did not respond to this motion and when discussed at a later hearing, Koy did not object to the motion. On appeal, Koy does not dispute such funds were deposited with the trial court. Rather, Koy's argument centers on the origin of the funds. From Koy's perspective, it is "unknown if any of said funds were paid to Attorney Kvachkoff by Armstrong, Fletcher, or Stanley." *Appellant's Br.* at 21. Because Section 3(B) requires Stanley to pay a portion of the funds, Koy claims any uncertainty concerning who paid Attorney Kvachkoff creates a genuine issue of material fact preventing the grant of summary judgment. At the outset, we hesitate to consider any such issue about the origin of the funds material, that is, outcome determinative. *See Hughley*, 15 N.E.3d at 1003. Moreover, the trial court does not appear to have taken any action concerning the funds that would be appropriate for appellate review. Although the funds were deposited with the clerk of court and were held pursuant to Trial Rule 67(A), the appealed order—or any other trial court order—did not direct any distribution of the funds to Koy or Attorney Kvachkoff. Thus, in our view, it would be improper for this Court to step-in and split the funds as we see fit. That is a matter rightfully left to the trial court.

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