

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Stanley Balcerak,  
*Appellant,*

v.

The Estate of Roger Craft,  
*Appellee.*

February 28, 2022

Court of Appeals Case No.  
21A-ES-1731

Appeal from the Brown Circuit  
Court

The Honorable Mary Wertz, Judge

Trial Court Cause No.  
07C01-2012-ES-38

**Brown, Judge.**

- [1] Stanley Balcerak appeals the trial court’s order denying his Motion to Transfer Property. We affirm and remand.

### ***Facts and Procedural History***

- [2] On January 5, 2017, Roger D. Craft as the seller and Mark A. Alldredge as the buyer entered into a Contract for the Conditional Sale of Real Estate (the “Alldredge Contract”). The Alldredge Contract stated that Alldredge agreed to purchase the real estate at 5646 State Road 46, Nashville, Indiana<sup>1</sup> for the purchase price of \$190,000 with \$5,000 due at the time of execution of the agreement, and Alldredge agreed to pay \$1,200 monthly on the first of every month with the first payment due on February 1, 2017, and annual balloon payments of \$5,000 by July 1st for the years 2017 through 2021. It also stated that Alldredge agreed to pay Craft in full on or before February 1, 2022.
- [3] On January 26, 2017, Craft and Balcerak entered into a Contract for the Conditional Sale of Real Estate (the “Balcerak Contract”) which stated that Craft agreed to sell Balcerak real estate located at 5685 Bittersweet Road, Morgantown, Indiana, (the “Bittersweet Property”), for \$125,000 and provided:

The purchase price shall be paid in the following manner:

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<sup>1</sup> The trial court’s order referred to 5646 State Road 46 as the Belmont Property. See Appellant’s Appendix Volume II at 11.

(a) Down payment credit of \$5000.00 is given from the Alldredge down payment on Craft/Alldredge contract of Belmont[.] Thus, remaining balance of this contract shall be for \$120,000.00[.]

(b) The amount of \$1200.00 shall be credited [sic] monthly on the 1st day of every month, hereinafter, with the first being February 1, 2017. This credit of payment is from the Alldredge payment (\$1200) on Belmont each month coinciding with same dates. Any balloon payments from Alldredge to Craft on Belmont shall also be credited [sic] to payments on Craft/Balcerak.

(c) The unpaid balance of the purchase price shall be calculated and be paid upon Alldredge payoff on Belmont contract.

If said contract Craft/Alldredge is breached, Craft/Balcerak shall come to terms agreeable by both parties to continue this sale of 5685 N Bittersweet Rd. All previous payments/credits shall remain in effect.

Upon Alldredge payoff of Belmont to Craft: the remaining Belmont balance payoff amount: shall be calculated and distributed as follows:

Payoff Amount Belmont	\$\$\$
minus balance Bittersweet	-\$\$\$ to Craft
minus Belmont/Craft/Balcerak	-\$\$\$ to Craft(approx \$85000 balance + \$15000 legal costs)
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remaining funds	\$\$\$ to Balcerak

Exhibits Volume at 3.<sup>2</sup> It also provided:

XVI. General Agreements of Parties

Upon one party's death: if this contract is still open and in effect:

(a) upon the Seller's death: the contract shall be considered paid in full by the Buyer to the Seller (deceased).

(b) Upon the Buyer[']s death: the contract may be transferred to an heir, if so desired by an heir.

If not, then the Buyer takes back possession.

*Id.* at 5. It further provided that "Buyer agrees to assume and pay all of the taxes on the Real Estate beginning with November 2017 statement" and "Buyer agrees to hold Seller harmless and indemnify Seller from any and all risks, accidents, injury or damage to persons or property by way of Buyer's occupancy of said property." *Id.*

[4] On September 29, 2020, Craft died. In an October 9, 2020 Order Probating Last Will and Testament, Appointing Personal Representative, and Ordering Unsupervised Administration, the Brown Circuit Court appointed Balcerak as

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<sup>2</sup> When asked to explain the calculation at the hearing, Balcerak answered:

[T]here was approximately eighty five thousand dollars due [] from me on the sale of the balance at Belmont. And I just included an extra fifteen thousand dollars if there was any legal costs. And so, when all the payments were going to be made and when the payoff was to be done in five years from Alldredge [] that monies would make sure that [Craft] got the eighty five plus the fifteen thousand dollars [] and that is all he wanted. And that's, he signed it as such and that he wanted the extra to go to me cause that was equity I had in the house that I had forgone to save his assets.

Transcript Volume II at 15.

the personal representative of Craft's estate under cause number 07C01-2010-EU-23.<sup>3</sup> On January 15, 2021,<sup>4</sup> the Brown Circuit Court entered an order finding that Balcerak had resigned as personal representative and appointed Rhonda Bates and Donald Bates as co-personal representatives of the estate under cause number 07C01-2012-ES-38.

[5] On April 26, 2021, Balcerak filed a Motion to Transfer Property in the Brown Circuit Court under cause number 07C01-2012-ES-38.<sup>5</sup> Balcerak alleged that: he was a good friend of Craft; the Balcerak Contract provided that the contract would be considered paid in full by the buyer upon the seller's death; Craft's heirs questioned the validity of the contract; the heirs never filed any action to either set aside the Balcerak Contract or act upon it and transfer the property to him; and efforts by his counsel to transfer the property from the personal representatives had been unsuccessful. He requested an order directing the personal representatives to transfer the Bittersweet Property to him pursuant to the terms of the Balcerak Contract. On May 13, 2021, Co-Personal Representatives Rhonda and Donald filed a Response to Motion to Transfer

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<sup>3</sup> Craft's last will and testament provided in part: "I give, devise and bequeath all the rest, residue and remainder of my estate wheresoever situated of which I may die, to Rhonda Bates and Donald Bates, in equal shares and per stirpes." Appellant's Appendix Volume II at 22. It also appointed Balcerak as the personal representative.

<sup>4</sup> The order lists the date as January 15, 2020, but this appears to be a scrivener's error as Indiana's Odyssey Case Management System indicates that the order was signed on January 15, 2021.

<sup>5</sup> The Motion to Transfer Property lists the cause number as 07C01-2012-EU-38, but this appears to be a typographical error.

Property and argued that the Balcerak Contract was invalid because it lacked consideration.

[6] On June 23, 2021, the court held a hearing. When asked if he had been living in “this property” since 2012, Balcerak answered: “Uh, before that, ten or eleven.” Transcript Volume II at 18. He testified that the property was “very rough” when he moved in and he cleaned it up “for free for [Craft] and because he’s a friend . . . .” *Id.* He stated that he decided it might be a good place for him to move, he talked to Craft, Craft agreed, and he started making payments in 2012. He testified that he installed all new floors, redid the ceilings, had “done bathroom facilities, sub windows, tons of landscaping, [and] removed garbage.” *Id.* at 19. Balcerak’s counsel asked: “[A]ssuming that the Court doesn’t grant you this property based on any number of issues that could come forward, are you asking the Court for some value that you’ve made improvements to this property with or some benefit of this . . . .” *Id.* Balcerak answered: “Well, we’ve made the payments, the record of payments plus yes, I have made, I’ve probably have improved it a hundred thousand dollars.” *Id.* at 20.

[7] On July 16, 2021, the court entered an Order Denying Motion to Transfer Property.

### *Discussion*

[8] Balcerak argues that the Balcerak Contract was supported by consideration. He asserts that the Balcerak Contract obligated him to do certain things he would

not have been obligated to do in the absence of the agreement. Specifically, he argues that the Balcerak Contract required him to pay property taxes beginning in November 2017, it required him to indemnify and hold Craft harmless for injuries associated with the property, and even though he benefited from Alldredge's payments, he was not excused from purchasing the Bittersweet Property if Alldredge did not pay Craft pursuant to the Alldredge Contract. He contends that "[a]s an enforceable contract, the Balcerak Contract was deemed paid in full upon Craft's death pursuant to Paragraph 16, and the trial court's denial of [his] motion to transfer property should be reversed." Appellant's Brief at 12. He also asserts that, in the event that the Balcerak Contract is not legally enforceable, the matter should be remanded for the trial court to address his payments and improvements to the Bittersweet Property under the theory of unjust enrichment as argued at the hearing. The Estate argues that this Court should not order specific performance of the Balcerak Contract because Balcerak has not established that he has substantially performed his contractual obligations, the contract lacks adequate consideration, and it leaves much to the future.

[9] Specific performance is defined generally as "[t]he rendering, as nearly as practicable, of a promised performance through a judgment or decree; specific., a court-ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article is involved." BLACK'S LAW DICTIONARY 1617 (10th ed.). While Balcerak's Motion to Transfer Property did not

specifically use the phrase “specific performance,” it did refer to and attach the Balcerak Contract as an exhibit and moved the court “for an order directing the Personal Representatives to transfer this property to him pursuant to the terms of the Contract the parties entered into . . . .” Appellant’s Appendix Volume II at 30. We find that Balcerak requested specific performance.

[10] “We review a trial court’s decision to grant or deny specific performance for an abuse of discretion.” *Fulp v. Gilliland*, 998 N.E.2d 204, 210 (Ind. 2013). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

[11] Even assuming that the Balcerak Contract’s mention that Balcerak pay the property taxes and agree to hold Craft harmless and indemnify him constituted consideration, we cannot say that reversal is warranted. A party seeking specific performance of a real estate contract must prove that he has substantially performed or offered to do so. *King v. Conley*, 87 N.E.3d 1146, 1152-1153 (Ind. Ct. App. 2017) (citing *Pinkowski v. Calumet Twp. of Lake Cty.*, 852 N.E.2d 971, 982 (Ind. Ct. App. 2006), *trans. denied*), *reh’g denied, trans. denied*; *see also Cutsinger v. Ballard*, 115 Ind. 93, 95, 17 N.E. 206, 207 (1888) (“*The party seeking to enforce performance must prove the contract substantially as laid in his pleading, by satisfactory evidence, and he must in like manner show such a part performance on his part of the identical contract set up, and such acts done in reliance thereon, as that injustice would be done and a fraud perpetrated if the contract were held inoperative under the statute of frauds.*”) (emphasis

added). Balcerak does not assert that he paid the property taxes pursuant to the Balcerak Contract and our review of the record does not reveal that he presented any evidence regarding the payment of property taxes. Under these circumstances, we cannot say that Balcerak has demonstrated that reversal is warranted.

[12] To the extent Balcerak argues that we remand for the trial court to address his payments and improvements to the Bittersweet Property under the theory of unjust enrichment, we cannot say that the court considered the argument raised at the hearing regarding whether Balcerak was entitled to some value for the improvements he made to the property. We remand for the trial court to consider Balcerak's claim that he was entitled to the value of the improvements he made to the property, and we do not retain jurisdiction.<sup>6</sup>

[13] For the foregoing reasons, we affirm the trial court's order denying Balcerak's Motion to Transfer Property and remand for consideration of his claim that he was entitled to the value of certain improvements.

[14] Affirmed and remanded.

May, J., and Pyle, J., concur.

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<sup>6</sup> To the extent the Estate argues that Balcerak waived his quantum meruit claim because he failed to timely file it by June 29, 2021, as required by Ind. Code § 29-1-14-1, the record reveals that Balcerak filed his Motion to Transfer Property on April 26, 2021, and Balcerak and his counsel requested that the court award some value for the improvements to the property at the June 23, 2021 hearing. Under these circumstances, we cannot say that Balcerak waived his claim.