

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.



ATTORNEYS FOR APPELLANT

Casey D. Cloyd
Indianapolis, Indiana

Daniel J. Pfleging
Terry & Gookins, LLC
Carmel, Indiana

ATTORNEY FOR APPELLEE

Peter P. Ten Eyck
Hackman Hulett LLP
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Event Holding, LLC, and
Hassan Shanehsaz,
Appellants-Plaintiffs,

v.

Kidz Heaven, LLC, and Azeem
Niazi,
Appellees-Defendants.

December 21, 2022

Court of Appeals Case No.
22A-PL-658

Appeal from the Hamilton
Superior Court

The Honorable William J. Hughes,
Judge

Trial Court Cause No.
29D03-1710-PL-9329

Robb, Judge.

Case Summary and Issues

- [1] Kidz Heaven, LLC and Azeem Niazi (collectively “Kidz Heaven”) sold personal property to Event Holding, LLC and Hassan Shanehsaz (collectively “Event Holding”). At the time of the sale, R & C Fuller, LLC (“Fuller”) maintained a security interest in the personal property at issue. Fuller filed a complaint against Kidz Heaven and Event Holding. While litigation by Fuller was pending, Kidz Heaven and Event Holding negotiated a Mutual Partial Release of Claims agreement (“Mutual Release”). Subsequently, Patricia Molter joined Fuller as a co-plaintiff and Kidz Heaven and Event Holding filed crossclaims against each other. Fuller’s and Molter’s claims against Kidz Heaven and Event Holding were settled; however, Kidz Heaven’s and Event Holding’s crossclaims proceeded to a bench trial. The trial court ruled in favor of Kidz Heaven.
- [2] Event Holding now appeals raising multiple issues for our review, which we restate as: (1) whether claims raised by Event Holding against Kidz Heaven were released pursuant to their Mutual Release; and (2) whether the trial court erred by concluding Event Holding failed to prove fraud. Concluding that Event Holding’s claims were released under the Mutual Release and that the trial court did not err in determining Event Holding failed to show fraud, we affirm.

Facts and Procedural History

- [3] In 2016, Kidz Heaven operated a Goddard School day care franchise at 2291 Greenfield Avenue. Kidz Heaven leased the property from Molter. In order to operate the day care, Kidz Heaven purchased the Goddard School franchise rights, personal property, and equipment from Fuller. Fuller maintained a security interest in the assets sold to Kidz Heaven. *See Exhibits, Volume 3 at 72.*
- [4] In May 2017, Kidz Heaven lost its Goddard School franchise and would have to close its day care. Event Holding learned that Kidz Heaven was closing and inquired about purchasing a list of Kidz Heaven's students. Kidz Heaven told Event Holding the list was not available but that its personal property was for sale. Event Holding agreed to buy the personal property for \$20,000. The parties then completed a Bill of Sale to which a list of the personal property being purchased was attached.
- [5] Event Holding was able to remove most of the personal property from the building; however, Event Holding was unable to complete the removal because Molter stopped them. Fuller then notified Kidz Heaven and Event Holding about its security interest and demanded the personal property be returned. Subsequently, Fuller filed a complaint against Kidz Heaven and Event Holding claiming, in part, breach of asset purchase agreement and conversion. Molter later joined as a co-plaintiff.

[6] While litigation by Fuller was pending, Kidz Heaven and Event Holding negotiated the Mutual Release which released claims against one another. However, the release reserved the following claims:

Reserved claims. Seller and Buyer each reserve claims against one another as follows: (1) claims against one another arising from or related to liability asserted against Seller or Buyer arising from any third party's claims against either Seller or Buyer related to the storage or transport of the Property; (2) claims against one another arising from or related to liability asserted against Seller or Buyer [sic] arising from any third party's claim against either Seller or Buyer that the Property has been damaged; or (3) claims against one another arising from or related to liability asserted against Seller or Buyer arising from any third party's claim against either Seller or Buyer for attorneys' fees, exemplary or statutory damages in addition to compensatory damages, litigation costs, pre-judgment interest or court costs in connection to the transport or storage of the Property or damage to the Property. The parties intend these Reserved Claims to remain viable and not released by this Release, so that they may assert claims against one another for indemnity under the circumstances described herein.

Appellants' Appendix, Volume 2 at 128.

[7] On May 30, 2018, Event Holding filed a crossclaim against Kidz Heaven claiming breach of contract and fraud based on the allegation that Kidz Heaven represented it had good title to the personal property described in the Bill of Sale when it was in fact subject to a security interest. Kidz Heaven filed an answer raising its own crossclaims against Event Holding including negligence, breach of contract, and fraud based on the allegations that Event Holding

committed misconduct in removing and storing the personal property and violated the Mutual Release by suing Kidz Heaven. Subsequently, Fuller's and Molter's claims against Kidz Heaven and Event Holding were settled. Kidz Heaven repaid Event Holding the \$20,000 Event Holding paid for the personal property plus \$2,000 as additional compensation. Event Holding returned the personal property to Fuller. Event Holding paid a total of \$14,000 to Fuller and Molter in the settlements. Kidz Heaven's and Event Holding's crossclaims then proceeded to a bench trial.

[8] Following the bench trial, the trial court concluded that “[n]o representation as to ownership, title or liens appear in the Bill of Sale” and “[t]he Bill of Sale contract was completed and neither party breached it[.]” *Id.* at 47-48. Therefore, Event Holding's breach of contract and fraud claims failed. Further, the trial court found that both of Event Holding's claims were barred by the Mutual Release and that attorney's fees were not available under either the Bill of Sale or Mutual Release. The trial court entered an order in favor of Kidz Heaven.

[9] Event Holding now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[10] Event Holding did not prevail on its crossclaims at trial; therefore, it appeals from a negative judgment. *Garling v. Ind. Dep't of Nat. Res.*, 766 N.E.2d 409, 411 (Ind. Ct. App. 2002) (stating that a negative judgment is one entered against a

party who bore the burden of proof at trial), *trans. denied*. On appeal, we will not reverse a negative judgment unless it is contrary to law. *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994). A judgment is contrary to law when the evidence is without conflict and leads to but one conclusion which is contrary to that reached by the trial court. *In re Marriage of Wooten*, 563 N.E.2d 636, 638 (Ind. Ct. App. 1990). And in determining whether a judgment is contrary to law, we consider the evidence in the light most favorable to the appellee, together with all the reasonable inferences to be drawn therefrom. *J.W. v. Hendricks Cnty. Off. of Fam. & Child.*, 697 N.E.2d 480, 482 (Ind. Ct. App. 1998).

[11] The trial court entered findings of fact and conclusions thereon at Event Holding's request pursuant to Indiana Trial Rule 52(A). We may not set aside the findings or judgment unless they are clearly erroneous. *Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1210 (Ind. 2000). In our review, we first consider whether the evidence supports the factual findings. *Id.* Second, we consider whether the findings support the judgment. *Id.* We will set aside findings and conclusions only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. *Est. of Henry v. Woods*, 77 N.E.3d 1200, 1204 (Ind. Ct. App. 2017). In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Id.* We do not reweigh the evidence nor do we assess witness credibility. *Id.*

II. Release of Claims

[12] Event Holding and Kidz Heaven entered into a release of claims agreement. “A release is a surrender of a claimant’s right to prosecute a cause of action. We construe a release to carry out the intent of the parties to the release. That intent is disclosed by the language the parties used to express their rights and duties considered in light of all the facts and circumstances.” *Wright Motors, Inc. v. Marathon Oil Co.*, 631 N.E.2d 923, 925 (Ind. Ct. App. 1994) (internal citations omitted). A release is construed in the same manner as any other contract. *Id.* The construction of a release is a question of law for the court’s determination. *Id.* In construing a contract, we may not consider individual clauses or phrases in isolation and without reference to the whole instrument. *See Pennington v. Am. Fam. Ins. Grp.*, 626 N.E.2d 461, 464 (Ind. Ct. App. 1993). Rather, all of a contract’s provisions must be harmonized so as not to place undue emphasis upon a particular clause or to take language out of context. *See id.*

A. Barred Claims

[13] Event Holding argues that its fraud claim against Kidz Heaven was reserved in Paragraph 5 of the Mutual Release. Specifically, Event Holding contends that the final sentence of Paragraph 5 reserves a claim of fraud because “[t]he parties expressly reserved indemnity claims against one another[.]” Appellants’ Brief at 19. That sentence provides as follows:

Reserved claims. . . . The parties intend these Reserved Claims to remain viable and not released by this Release, so that they

may assert claims against one another for indemnity under the circumstances described herein.

Appellants' App., Vol. 2 at 128.

- [14] Indemnity is defined as “[t]he right of an injured party to claim reimbursement for its loss, damage or liability from a person who has such a duty.” *Masters v. Masters*, 99 N.E.3d 711, 719 (Ind. Ct. App. 2018) (quoting Black’s Law Dictionary 784 (8th ed. 2004)), *trans. denied*. As a general matter, courts in Indiana disfavor indemnification clauses. *Moore Heating & Plumbing, Inc. v. Huber, Hunt & Nichols*, 583 N.E.2d 142, 145 (Ind. Ct. App. 1991). Accordingly, “indemnification clauses are strictly construed and the intent to indemnify must be stated in clear and unequivocal terms.” *Fresh Cut, Inc. v. Fazli*, 650 N.E.2d 1126, 1132 (Ind. 1995).
- [15] Event Holding’s interpretation that the last sentence of Paragraph 5 reserves broad or general indemnity claims is a misreading of the contract as it ignores limiting language in the sentence. *See Wright Motors*, 631 N.E.2d at 926 (holding this court would not disregard a limiting phrase in a release); *see also INB Banking Co. v. Opportunity Options, Inc.*, 598 N.E.2d 580, 582 (Ind. Ct. App. 1992) (stating that courts may not read words or phrases in a contract alone but must read them in the context of the entire contract), *trans. denied*. Here, Paragraph 5 states that the parties “may assert claims against one another for indemnity *under the circumstances described herein*.” Appellants’ App., Vol. 2 at 128 (emphasis added). The phrase “under the circumstances described herein”

refers to the claims expressly reserved in Paragraph 5. *Id.* Event Holding’s fraud claim is based on the transaction between it and Kidz Heaven. Further, the claim does not attempt to indemnify Event Holding for any third-party claim and is not related to the damage, storage, or transportation of property.

[16] Accordingly, we conclude that Event Holding’s fraud claim was not reserved in the Mutual Release.

B. Attorney’s Fees

[17] Indiana follows the “American Rule” that each party involved in litigation must pay its own attorney’s fees. *Hill v. Davis*, 850 N.E.2d 993, 996 (Ind. Ct. App. 2006). Generally, attorney’s fees are not recoverable from the opposing party “in the absence of an agreement between the parties, statutory authority, or rule to the contrary.” *Id.* (citation omitted). Event Holding argues that its “attorneys’ fees claims are part of the reserved claims” in the Mutual Release. Appellants’ Br. at 20.

[18] However, Event Holding concedes that the Mutual Release has an express reservation of claims for attorney’s fees in subsection (3) of Paragraph 5 and states, “In drafting the [Mutual Release] the parties anticipated that each might incur attorneys’ fees defending third party claims.” *Id.* Subsection 3 of Paragraph 5 reserves:

(3) claims against one another arising from or related to liability asserted against Seller or Buyer *arising from any third party’s claim against either Seller or Buyer for attorneys’ fees, exemplary or statutory damages in addition to compensatory damages,*

litigation costs, pre-judgment interest or court costs in connection to the transport or storage of the Property or damage to the Property.

Appellants' App., Vol. 2 at 128 (emphasis added). Subsection 3 contemplates indemnity for attorney's fees claims raised by third parties but does not provide for Event Holding's or Kidz Heaven's own attorney's fees.

[19] Therefore, we conclude the Mutual Release does not reserve a direct claim of attorney's fees by Event Holding against Kidz Heaven.

III. Fraud

[20] Notwithstanding our holding above, we address Event Holding's argument that the trial court erred by determining Kidz Heaven did not commit fraud. The elements of actual fraud are: (1) material misrepresentation of past or existing facts by the party to be charged; (2) which was false; (3) which was made with knowledge or reckless ignorance of the falseness; (4) which was relied upon by the complaining party; and (5) proximately caused the complaining party injury. *Song v. Iatarola*, 76 N.E.3d 926, 934 (Ind. Ct. App. 2017), *trans. denied*.

[21] Event Holding contends that Kidz Heaven's silence regarding the security interest Fuller maintained on the personal property constituted a material representation. Ordinarily, in the absence of some fiduciary relationship, a party owes another party no duty to disclose anything about an item of property being sold. *Fimbel v. DeClark*, 695 N.E.2d 125, 127 (Ind. Ct. App. 1998), *trans. denied*. However, when a buyer makes inquiries about the condition, qualities,

or characteristics of property “it becomes incumbent upon the seller to fully declare any and all problems associated with the subject of the inquiry.” *Lawson v. Hale*, 902 N.E.2d 267, 275 (Ind. Ct. App. 2009) (citation omitted). In *Lawson*, the buyer made several inquiries about any potential problems with a tractor he wished to purchase and despite this the seller failed to disclose that the engine block was cracked. The seller simply told the buyer that the tractor leaked oil and fuel. The court in *Lawson* held that the seller’s omission constituted fraud.

[22] Event Holding attempts to analogize Kidz Heaven’s failure to disclose Fuller’s security interest with the *Lawson* seller’s withholding of information regarding the tractor’s engine block. However, Event Holding fails to show it made any inquiries, like those made by the buyer in *Lawson*, regarding the personal property’s “condition, qualities, or characteristics[.]” *Lawson*, 902 N.E.2d at 275. Further, Event Holding fails to present evidence that Kidz Heaven affirmatively acted in a way that suppressed the existence of Fuller’s security interest in the personal property. In *Wise v. Hays*, we stated:

[I]f a seller undertakes to disclose facts within his knowledge, he must disclose the whole truth without concealing material facts and without doing anything to prevent the other party from making a thorough inspection. For, *if in addition to his silence, there is any behavior of the seller which points affirmatively to a suppression of the truth or to a withdrawal or distraction of the other parties’ attention to the facts*, the concealment becomes fraudulent.

943 N.E.2d 835, 840 (Ind. Ct. App. 2011) (emphasis added) (citation omitted); *see also Thompson v. Best*, 478 N.E.2d 79, 84 (Ind. Ct. App. 1985) (“One cannot

be allowed, under the law, to *partially* disclose the facts as he knows them to be, yet create a false impression in the mind of the hearer by failing to fully reveal the true state of affairs.”), *trans. denied*.

[23] Accordingly, we conclude that Event Holding failed to show that Kidz Heaven’s silence regarding Fuller’s security interest in the personal property amounted to a material misrepresentation. Thus, even if the fraud claim were not barred by the Mutual Release, Event Holding would not be entitled to relief.

Conclusion

[24] We conclude that Event Holding’s claims were not reserved under the Mutual Release. Further, notwithstanding Event Holding’s release of any fraud claim against Kidz Heaven, we conclude that the trial court did not err in determining that Event Holding failed to show fraud. Accordingly, we affirm.

[25] Affirmed.

Mathias, J., and Foley, J., concur.