MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James A. Grewe, Mary Jane Grewe, William J. Gardtner, and Patricia A. Gardtner,

Appellants-Defendants,

and

Mary Diana Leach,

Defendant,

v.

Alvin Ray Boggs and Jane B. Boggs,

Appellees-Plaintiffs.

April 29, 2022

Court of Appeals Case No. 21A-PL-2296

Appeal from the Washington Circuit Court

The Honorable Larry W. Medlock, Judge

Trial Court Cause No. 88C01-2009-PL-439

Brown, Judge.

[1] James A. Grewe, Mary Jane Grewe, William J. Gardtner, and Patricia A. Gardtner ("Appellants") appeal the trial court's September 21, 2021 order concerning certain real property which required that the property be transferred to Alvin Ray Boggs and Jane B. Boggs. Appellants claim the court erred in ordering specific performance to the Boggses. We affirm.

Facts and Procedural History

[2] In August 2020, the parties all owned property in Pine Hills Lake Development, Inc., in Washington County, Indiana. The Boggses owned Lot 16, Mary Diana Leach owned Lots 17 and 18, the Gardtners owned Lots 19 and 20, and the Grewes owned Lot 14. Lot 16 was adjacent to Lot 17, and Lot 19 was adjacent to Lot 18. The properties were subject to "Amended Bylaws and Restrictions of Pine Hills Lake Development, Inc." which were recorded with the Washington County Recorder on April 5, 2013 (the "Restrictions"). Plaintiff's Exhibit 9. Section 2 of Article XI of the Restrictions provides:

> Any owner desiring to sell or dispose of his or her property must notify the Board of Directors at least thirty (30) days prior to placing said property up for public sale.
>
> a. All adjoining property owners have first chance to purchase.
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> b. Any potential purchaser(s) who is not a current member of the corporation must have a criminal background check performed at the expense of the purchaser or seller. The results of the background check are to be provided to the Board of Directors. The Board of Directors shall either approve or deny the potential member within seventy-two (72) hours of receipt of the background check. Any sale of property completed

> without approval of the Board of Directors may be rescinded at the discretion of the Board of Directors.
>
> c. Any contract for sale of property must be provided to the Board of Directors seven (7) days prior to execution for approval. All contracts for sale must be recorded with the Washington County Recorder.
>
> d. The Board has the authority to make sure that the seller complies with the bylaws before a sale is made.

Id.

[3] On August 18, 2020, Leach and the Boggses signed a written Purchase Agreement (the "Purchase Agreement") which provided that Leach agreed to sell Lots 17 and 18 to the Boggses, the purchase price was $22,000, the deposit was $300,[1] the transaction was not subject to the Boggses obtaining a mortgage, title insurance would be paid for by the Boggses, and the transaction would be completed on or before September 19, 2020. On August 19, 2020, the Boggses paid $195 for a title search from Salem Title Company.

[4] On September 10, 2020, the Boggses filed a complaint against Leach which stated that Leach had sold Lots 17 and 18 "to her other neighbor for $2000 more dollars," alleged breach of contract, and requested specific performance. Appellants' Appendix Volume II at 22. Also on September 10, 2020, the Boggses filed a Lis Pendens Notice with the Washington County Recorder

[1] Leach indicated the Boggses gave her a check for the deposit. Alvin Boggs indicated Leach did not deposit the check.

indicating they had filed a complaint and sought specific performance with respect to Lots 17 and 18.

[5] On September 16, 2020, Leach signed a warranty deed (the "September 16, 2020 Warranty Deed") conveying an undivided one-half interest in Lots 17 and 18 to the Gardtners and an undivided one-half interest in the lots to the Grewes, and the deed was recorded with the Washington County Recorder on September 18, 2020.

[6] On October 2, 2020, the Boggses filed an amended complaint against Leach, the Gardtners, and the Grewes. Under Count 1, the Boggses alleged the Purchase Agreement is binding and enforceable and requested specific performance. Under Count 2, they requested a determination of their damages. Under Count 3, they stated the September 16, 2020 Warranty Deed was entered six days after their lawsuit was filed and their Lis Pendens Notice was recorded, alleged Appellants took the property subject to their claim, and requested an order setting aside the September 16, 2020 Warranty Deed.

[7] Appellants filed an answer, affirmative defenses, and counterclaim. As affirmative defenses, they asserted the doctrines of unclean hands and equitable estoppel and alleged the Boggses had an adequate remedy at law. In their counterclaim, they alleged the Boggses failed to obtain the Board of Director's approval of the Purchase Agreement and sought a declaration quieting their title to Lots 17 and 18. The Boggses filed an answer and affirmative defenses to the counterclaim. They alleged as an affirmative defense that they were

required to file the Lis Pendens Notice under Ind. Code § 32-30-11-3 and Appellants obtained the property subject to constructive notice of their interest.[2]

[8] On July 27, 2021, the court held a bench trial at which it heard testimony from the Boggses, Leach, William Gardtner, James Grewe, and Michael Marcosa. The court admitted a number of exhibits including the Purchase Agreement, the Restrictions, the Lis Pendens Notice, the September 16, 2020 Warranty Deed, and documents containing aerial images showing the location of the lots relative to each other.

[9] Alvin Ray Boggs testified that he and his wife purchased Lot 16 in 2010, he knew that Leach had stopped using Lots 17 and 18, and he inquired with her once a year for the previous two or three years as to whether she was interested in selling. When asked if he communicated with the Gardtners about Lots 17

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[2] Ind. Code § 32-30-11-3 provides:

> (a) This section applies to a person who commences a suit:
> (1) in any court of Indiana or in a district court of the United States sitting in Indiana;
> (2) by complaint as plaintiff or by cross-complaint as defendant; and
> (3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:
> (A) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or
> (B) a judgment of record in the county in which the real estate is located, against the party having the legal title to the real estate, as appears from the proper records.
> (b) The person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is located, a written notice containing:
> (1) the title of the court;
> (2) the names of all the parties to the suit;
> (3) a description of the real estate to be affected; and
> (4) the nature of the lien, right, or interest sought to be enforced against the real estate.

and 18, Alvin Boggs replied affirmatively and testified "I have a text message that I talked to Bill Gardtner [on] July 9th of 2019, I talked to Ms. Leach and my text said Bill, I talked to [] Leach last night and let her know that I was interested in buying half or all of her property if you did not want any of it," and "[s]he is still not sure what she's going to do but she said when she's ready she will let you and I know." Transcript Volume II at 8. He testified that he called Leach on August 17, 2020, and asked if she was ready to sell, she responded affirmatively and gave him a price of $22,000, and he said "I'll agree to that." *Id*. at 9. He testified: "The next question I asked her was I said what about the Gardtners . . . . She responded that she had talked to them and they were not willing to offer her, her price. They offered her $17,000.00. So . . . we went over the next day, the 18th of August, got a purchase agreement signed [] for the $22,000.00, gave her some earnest money." *Id*. He indicated he paid for a title search the following day.

[10] Alvin Boggs further testified he spoke with Leach on September 3, 2020, he told her that a closing was scheduled for September 8, 2020, at Salem Title Company, and she said she was not available that day and would speak with her brother about a closing date. He indicated he called Leach on September 4, 2020, and asked if she had talked to her brother about a closing date and testified "that's when she informed me that she wasn't going to sell it to us. That she was going to sell it to the Gardtners and Grewes and I was like well, you know, what, what's up with that," "I said we have a signed purchase

agreement," and "she said no, that's not any good it's not notarized." *Id*. at 11. When asked if he had further communications with Leach, Alvin Boggs stated:

> Yeah, we had several [] phone calls. One of them was that you know that we well that I would you know if they were I think she said they offered her a little bit more money I said well, I'm willing to do that if that's what it takes to . . . get this deal done and she wouldn't . . . agree to that. [O]n let's see September 5th of 2020, I left her a message that . . . we had incurred some fees and . . . couldn't be out that and you know I never did say that we weren't still interest[ed] in buying the property. I was really just trying to get the Gardtners and Ms. Leach to talk to me. You know they just wouldn't you know, there was no communication. I, I tried thinking I would you know we could straighten it out before we got to this point here.

Id. at 13. He indicated he deposited $22,000 with the clerk of the court.

[11] On cross-examination, when asked if he presented the Purchase Agreement to the Board of Directors, Alvin Boggs testified: "That is a provision that if you are purchasing the property on a contract. That the contract has to be recorded with . . . the Recorder I suppose only on a contract sale. This was a cash sale. I did - those requirements weren't required for me." *Id*. at 17. He indicated he did not record the Purchase Agreement with the Washington County Recorder. When asked about the voicemail he left for Leach on September 5, 2020, and "you expressed to her that [] you were not going to proceed forward with the sale," he replied "[n]o, I didn't say that. I said you're, you're not willing to sell it to us, it doesn't look like we are going to get to buy it" and "like I said I didn't know what my legal rights were at that point." *Id*. at 19. On redirect examination, when asked "you understood that there was an offer made by Mr.

Gardtner to Ms. Leach in the Summer of 2020," Alvin Boggs testified: "She told me that she had offered it to him and she never offered it to me at that time. That she had offered it to him and he was willing to give her 17,000 and she would not take that. I don't have any dates." *Id*. at 24. When asked "is there an obligation to get into a sort of a back and forth bidding [] arrangement per the Restrictive Covenants per your knowledge," he replied "[n]ot that I know of, no," and when asked "[w]ere you offered another chance after she went back to the Gardtners who pulled in the Grewes," he answered "[n]o." *Id*. at 24-25.

[12] Leach testified that, when she signed the Purchase Agreement, she did not know she needed the Board's approval and, after she found out that Board approval was required, she believed the agreement was void. When asked "after you expressed to [] Mr. Boggs that you weren't going forward with the sale, [] what did he tell you," she stated "[h]e told me that there was $1,000 that I had to pay." *Id*. at 28-29. She stated "[h]e acted like it was, it was, it was a done deal so," and when asked "the deal was over," she said "[y]es." *Id*. at 29. When asked if she relied on his statement the deal was over and sold to the Gardtners based on that understanding, she responded affirmatively.

[13] On cross-examination, Leach indicated that Alvin Boggs's voicemail did not explicitly state the deal was cancelled. When asked "you've made some assumptions and took some, some steps to assume that it was cancelled and then sold it [to] others, is that right," she replied affirmatively. *Id*. at 30. When asked if she obtained approval from the Board prior to entering into any

agreement with Appellants, she answered "[n]o. I didn't know I needed it." *Id.* When asked "[t]o the best of your recollection, Ms. Leach, when do [you] first recall talking to the Gardtners about your interest in selling your property or having contracted with Mr. and Mrs. Boggs," she replied "I guess when I signed the contract with them." *Id.* at 31. She indicated that she told "them prior to that that [she] had a contract with Mr. and Mrs. Boggs." *Id.* When asked "did you have any conversation about your property with them prior to having the purchase agreement with Mr. and Mrs. Boggs," she answered "[n]o," and when asked "[t]hey didn't know anything about it from you," she replied "I did tell them . . . that I said I - I did say he, they was [sic] interested is all I said. You know I wasn't going to do anything with (inaudible) . . . I wasn't going to do anything with Bogg [sic]." *Id.* During the cross-examination of Leach, the following exchange occurred:

> Q Okay [] you heard Mr. Boggs['s] testimony that something about you had told Mr. and Mrs. Gardtner that you wanted to sell the property before you contracted with Mr. and Mrs. Boggs . . .
>
> A I did.
>
> Q . . . but, but they, but the Gardtners would only pay you $17,000.00, is that correct?
>
> A Yes.
>
> Q How long ago would that have been prior to contracting with Mr. and Mrs. Boggs?
>
> A It was probably - I don't remember the dates.
>
> Q Well was it months, was it weeks?

A It was weeks.

Id. at 32. She indicated she did not know why she signed the Purchase Agreement. When asked "[d]id you tell Mr. Boggs that you had offered it to the Gardtners and they only wanted to offer you 17,000," Leach replied "I had a talk with them but that – I mean I was – they was going to give me more than that," and when asked "[t]hey offered 17,000 but you wanted twenty-two," she replied affirmatively. *Id*. She later stated "I didn't agree to sell it for no twenty-two." *Id*. at 37. She agreed that she signed the Purchase Agreement. When asked if she thought she could "get out of the purchase agreement" by tearing up the check, had said the agreement was not valid because it was not notarized, and had communicated to the Boggses that she was not going forward with the agreement, she responded affirmatively. *Id*. at 38. The voicemail left for Leach by Alvin Boggs was played on the record and stated:

> Hi, [Leach], it's Ray Boggs again. Uh, I'd just like to talk to you. Uh I, I thought of one other thing uh, you know, we've got almost $1,000.00 uh tied up in closing costs because you know we had that signed agreement and you know since we're not going to get to buy it you know we can't be out that. So, I don't know if that makes a difference to you or not but uh you know if you could just give me a call. Thank you. Bye, bye.

Id. at 41.

[14] William Gardtner testified that he offered Leach $17,000 "a year and a half before this transpired." *Id*. at 43. He indicated James Grewe contacted him and said that Leach "had a contract," "we notified [Leach] that she really

needed to [] give us a chance to bid on it as well," and "she said that the check that she had that Mr. Boggs had said that she could tear it up if she didn't want to sell it? So she – we offered her at that point, I think it was 23,000 and then my understanding is Mr. Boggs offered her twenty-four and we ended up offering her I think maybe he jumped it up to twenty-five and we offered twenty-five." *Id*. at 44-45. James Grewe indicated that, after they learned about the Purchase Agreement, which was sometime after August 18th, Appellants went to see Leach at her apartment in Louisville, told her they felt like they had a right to make an offer, and they agreed to a purchase price of $25,000.

[15] Michael Marcosa testified he was a board member of Pine Hill Lakes Development, Inc., had been on the Board about eight to ten years, and had been the President in 2020. When asked "[d]oes the Board bother itself with whether there is a back and forth, this first right of refusal or bidding requirements," he replied "[i]n general, no because we believe that the owner of the property is responsible for that." *Id*. at 67. The court admitted an email authored by Marcosa on September 8, 2020, which stated:

> The title company handling the purchase of Diane Leaches [sic] property to the Gardtner and Grewe Family requested a copy the [sic] bylaws from us . . . . I do not believe that we need to approve the sale as I believe that is only in the case of a contract sale and this is not. I also believe that as long as both adjoining properties are notified of the property being available for sale it is up to the seller to decide who she/he wants to sell it too [sic]. . . .

Plaintiff's Exhibit 13. When asked what he meant by a contract sale, Marcosa testified "our understanding at the time was a contract sale . . . where the land owners is [sic] selling it to a party and they are receiving the payments as if they were the bank, let's say," and when asked "[s]eller financing," he said "[y]eah, there you go." Transcript Volume II at 68. When asked "[h]ow many contract sales has the Board approved whenever contract sale is defined as Seller financing," he replied "one for sure. There might have been two." *Id*. at 75. He indicated there had been other transfers over the eight to ten years that did not require Board approval because they did not involve seller financing. Alvin Boggs indicated he was on the Board for "[p]robably at least fifteen" years and did not recall that there was ever a purchase agreement before the Board for approval. *Id*. at 80.

[16] On September 21, 2021, the court issued a fourteen-page order containing findings of fact and conclusions. The court found that the Boggses' Lis Pendens Notice was timely filed and recorded on September 10, 2020, at the time of filing the lawsuit and prior to the recording of the September 16, 2020 Warranty Deed and that Appellants purchased Lots 17 and 18 subject to constructive notice of the Boggses' interest and are bound by any judgment in favor of the Boggses. The court concluded:

> 12. The phone message from Boggs to Leach that was played at trial did not act to rescind or modify the purchase agreement but was rather an attempt by Boggs to get Leach to communicate with Boggs.
>
> * * * * *

14. The Bylaws and Restrictive Covenants, Article XI, section 2 has never been interpreted by the Board to require board approval for non-seller financing matters or when existing subdivision members transfer amongst themselves and thereby not requiring criminal background checks.

15. The Bylaws and Restrictive Covenants, Article XI, Section 2 does not reasonably require purchase agreements to be approved by the Board when the contemplated transfer does not involve non-members and does not involve seller financing.

16. It is not reasonable to interpret a purchase agreement as a "contract for sale of property" within the subdivision's Bylaws and Restrictive Covenants, Article XI Section 2, that would require Board approval and be recorded.

17. It is only reasonable to interpret the language within the [Restrictions] to require approval of Land Contracts, Real Estate Contract, Contracts for Deeds and other seller financing matters that are normally recorded with the local Recorder's Office, which is how the Board had actually interpreted the language in the past.

18. The purchase agreement between Boggs and Leach dated August 18, 2020 formed a legally valid and enforceable contract between Boggs and Leach concerning the sale of Lots 17 and 18.

19. Leach, without good cause or excuse has breached the purchase agreement with Boggs.

20. Boggs is entitled to the equitable remedy of specific performance and to require Leach to follow through the sale of Lots 17 and 18 to Boggs.

Appellants' Appendix Volume II at 17-19. The court ordered that: (1) the Boggses' amended complaint for breach of contract is granted and a hearing may be set upon the Boggses' motion to determine damages; (2) the Boggses' amended complaint to set aside the September 16, 2020 Warranty Deed from

Leach to Appellants is granted and Appellants shall execute documents necessary to return title to Lots 17 and 18 to Leach; (3) that the Boggses's amended complaint for specific performance is granted and Leach shall execute a warranty deed for Lots 17 and 18 to the Boggses within fifteen days of the recording of the deed set forth in (2) above; (4) the $22,000 held by the clerk shall be released to Leach upon notice being filed with the clerk that the deed described in (3) has been executed and delivered to counsel for the Boggses; and (5) Appellants' counterclaim be denied and the issue of damages raised in the Boggses' affirmative defenses shall be set for hearing upon the Boggses' motion.

Discussion

[17] When a trial court enters findings of fact and conclusions thereon, findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. *Jernas v. Gumz*, 53 N.E.3d 434, 443 (Ind. Ct. App. 2016) (citing *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)), *trans. denied*. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. *Id.* When the trial court has entered findings of fact, an appellate court first determines whether the evidence supports the findings of fact and then determines whether those findings of fact support the trial court's conclusions. *Id.* Findings will only be set aside if they are clearly erroneous. *Id.* Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. *Id.* A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.* In order to determine that a

finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. *Id.* We review questions of law *de novo*. *Id*. Interpretation of a contract presents a question of law. *Id*.

[18] Appellants assert the trial court erred in ordering the remedy of specific performance. They argue the Boggses' "request for equitable relief should have been denied for unclean hands," the Boggses' "noncompliance with Article XI Section 2 of the Restrictions was intentional," and Alvin Boggs "had been a longtime Board member and either knew or should have known of the provisions of the Restrictions requiring that Gardtner be given an opportunity to purchase the Leach Property prior to his contracting for its purchase." Appellant's Brief at 12-13. They further argue the Boggses' claim for specific performance "should properly have been barred by equitable estoppel," point to the voicemail which Alvin Boggs left for Leach, and assert "[i]n representing to Gardtner that she was free to convey the Leach Property subsequent to her repudiation of the Boggs Purchase Agreement, Leach clearly relied upon Boggs' tacit admission and/or acquiescence that Boggs would not be purchasing the property provided Boggs was refunded his out-of-pocket costs." *Id*. at 14-15. They also argue the Boggses had an adequate remedy of monetary damages.

[19] Covenants relating to real property are a species of express contract and are generally construed in the same manner as other written contracts. *Village Pines at the Pines of Greenwood Homeowners' Ass'n, Inc. v. Pines of Greenwood, LLC*, 123 N.E.3d 145, 155-156 (Ind. Ct. App. 2019), *reh'g denied*. If a contract's terms are

clear and unambiguous, courts must give those terms their clear and ordinary meaning. *Jernas*, 53 N.E.3d at 444. A contract will be found to be ambiguous if reasonable persons would differ as to the meaning of its terms. *Id*. Our paramount goal is to ascertain the intent of the parties. *Id.* This requires the agreement to be read as a whole. *Id.* Rules of contract construction and extrinsic evidence may be employed in giving effect to the parties' reasonable expectations. *Id*. When a contract's terms are ambiguous or uncertain and its interpretation requires extrinsic evidence, its construction is a matter for the fact-finder. *Id*. at 445 (citing *McDivitt v. McDivitt*, 42 N.E.3d 115, 117 (Ind. Ct. App. 2015) ("When a contract is ambiguous, extrinsic evidence may be examined to determine the parties' reasonable expectations."), *trans. denied*). One purpose of covenants is to maintain or enhance the value of land by controlling the nature and use of lands subject to a covenant's provisions, and "[r]estrictive covenants are generally disfavored in the law and will be strictly construed by the courts, which resolve all doubts in favor of the free use of property and against restrictions. *Grandview Lot Owners Ass'n, Inc. v. Harmon*, 754 N.E.2d 554, 557 (Ind. Ct. App. 2001), *trans. denied*.

[20] Contracts are formed when parties exchange an offer and acceptance. *Jernas*, 53 N.E.3d at 445. The basic requirements for a contract are offer, acceptance, consideration, and a meeting of the minds between the contracting parties on all essential elements or terms of the transaction. *Id*. The rescission of a contract can occur only by the mutual consent of the parties to the contract. *Bowyer v. Vollmar*, 505 N.E.2d 162, 164 (Ind. Ct. App. 1987), *reh'g denied*, *trans. denied*.

The function of rescission is to restore parties to their pre-contract position. *Id*. Rescission is a fact, and trial courts look to the course of conduct of the parties to determine if rescission occurred in fact. *Horine v. Greencastle Prod. Credit Ass'n*, 505 N.E.2d 802, 805 (Ind. Ct. App. 1987), *reh'g denied*, *trans. denied*. A party generally does not have a right to unilaterally rescind a contract. *Matter of Supervised Est. of Kent*, 99 N.E.3d 634, 642 (Ind. 2018). A novation is a new contract made with the intent to extinguish one already in existence. *Sullivan Builders & Design, Inc. v. Home Lumber of New Haven*, *Inc.*, 834 N.E.2d 129, 137 (Ind. Ct. App. 2005), *reh'g denied*, *trans. denied*. A novation requires: a valid existing contract, the agreement of all parties to a new contract, a valid new contract, and an extinguishment of the old contract in favor of the new one. *Id*.

[21] The purpose of the *lis pendens* notice is to provide machinery whereby a person with an in rem claim to property which is not otherwise recorded or perfected may put his claim upon the public records so that third persons dealing with the defendant will have constructive notice of it. *RCM Phoenix Partners, LLC v. 2007 E. Meadows, LP*, 118 N.E.3d 756, 762 (Ind. Ct. App. 2019) (citations omitted). A party who has a claim to title of real estate under a contract for the real estate's purchase has the kind of interest that requires filing a *lis pendens* notice under the statute to protect third parties. *Id*.

[22] The decision whether to grant specific performance is a matter within the trial court's sound discretion. *Stainbrook v. Low*, 842 N.E.2d 386, 394 (Ind. Ct. App. 2006), *trans. denied*. Because an action to compel specific performance sounds in equity, particular deference must be given to the judgment of the trial court.

Id. While courts generally do not exercise equitable powers where an adequate remedy at law exists, *see Kesler v. Marshall,* 792 N.E.2d 893, 897 (Ind. Ct. App. 2003), *reh'g denied*, *trans. denied*, specific performance is a matter of course when it involves contracts to purchase real estate. *Stainbrook*, 842 N.E.2d at 394; *Candlelight Properties, LLC v. MHC Operating Ltd. P'ship*, 750 N.E.2d 1, 10 (Ind. Ct. App. 2001) ("Indiana courts order specific performance of contracts for the purchase of real estate as a matter of course."), *reh'g denied*, *petition for transfer dismissed*. Courts readily order specific performance because each piece of real estate is considered unique without an identical counterpart. *Candlelight Properties, LLC*, 750 N.E.2d at 10. A party seeking specific performance of a real estate contract must show the party has substantially performed the party's contract obligations or offered to do so. *Stainbrook*, 842 N.E.2d at 394.

[23] We have stated that estoppel doctrines generally prevent "one who by deed or conduct has induced another to act in a particular manner" from adopting an inconsistent position that causes injury to such other. *Fox v. Barker*, 170 N.E.3d 662, 668 (Ind. Ct. App. 2021) (citation omitted). Equitable estoppel is a defense that applies when the party claiming estoppel: (1) lacks knowledge and the means of knowledge of the facts in question; (2) relied on the conduct of the party to be estopped; and (3) experienced a prejudicial change in position because of that conduct. *Id*. (citing *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 523 (Ind. 2021)).

[24] The doctrine of unclean hands is an equitable tenet which demands one who seeks equitable relief to be free of wrongdoing in the matter before the court.

Fairway Devs., Inc. v. Marcum, 832 N.E.2d 581, 584-585 (Ind. Ct. App. 2005), *trans. denied*. For the doctrine of unclean hands to apply, the misconduct must be intentional. *Id*. The purpose of the doctrine is to prevent a party from reaping benefits from his misconduct. *Id*. The alleged wrongdoing must have an immediate and necessary relation to the matter being litigated. *Shriner v. Sheehan*, 773 N.E.2d 833, 848 (Ind. Ct. App. 2002), *trans. denied*. Further, the doctrine of unclean hands is not favored by the courts and must be applied with reluctance and scrutiny. *Id*. at 847-848.

[25] Here, Appellants do not argue the trial court erred in finding the Boggses had appropriately filed their Lis Pendens Notice or in finding for the Boggses on Appellants' counterclaim. Further, the evidence shows there was an offer, acceptance, and consideration with respect to Leach's agreement to sell Lots 17 and 18 to the Boggses pursuant to the Purchase Agreement. The evidence shows that Leach conveyed the lots to Appellants and thus breached her Purchase Agreement with the Boggses. Appellants assert the Boggses did not comply with the Restrictions and thus, based on the doctrine of unclean hands, are not entitled to specific performance.

[26] The trial court found the Restrictions required approval by the Board of Directors only where a property transaction involved seller-financing, which was consistent with the Board's interpretation, and thus did not require Board approval of the Purchase Agreement. The language of the Restrictions, including its reference to recording contracts for sale with the Washington County Recorder, and the Board's practice supports the court's conclusion.

Also, the Restrictions refer to a seller, rather than prospective purchaser, notifying the Board. As for the "first chance to purchase" language, the record reveals that the Boggses and the Gardtners were both adjoining property owners. Leach indicated that she had spoken with the Gardtners weeks before she entered the Purchase Agreement. As mentioned above, we disfavor and strictly construe restrictive covenants and resolve all doubts against restrictions. *See Grandview Lot Owners*, 754 N.E.2d at 557. We also apply the doctrine of unclean hands with reluctance and scrutiny. *See Shriner*, 773 N.E.2d at 847-848. Based on the record and the Restrictions, we cannot conclude the doctrine of unclean hands precluded the Boggses from seeking specific performance.

[27] Further, we do not find Appellants' argument related to equitable estoppel to be persuasive. The trial court did not find, and we cannot say the evidence would support a finding, that there was mutual assent to rescind the Purchase Agreement. Leach agreed that Alvin Boggs's voicemail did not explicitly state the Purchase Agreement was cancelled and that she "took [] some steps to assume that it was cancelled and then sold it [to] others." Transcript Volume II at 30. The evidence supports the trial court's conclusion that the Purchase Agreement was enforceable and that Leach breached the Purchase Agreement. Further, Appellants do not specify the information that they were lacking when she conveyed the lots to them. *See Fox*, 170 N.E.3d at 668-669 (noting the appellant did not specify the information he was lacking, the appellant and appellee would have had access to the same information, and "[p]erhaps [the appellant] relied on his understanding of [the appellee's] note to his detriment,

but this does not satisfy the elements of equitable estoppel").

[28] In addition, as noted above, the evidence supports the conclusion that Leach breached the Purchase Agreement, specific performance is a matter of course when it involves contracts to purchase real estate, *see Stainbrook*, 842 N.E.2d at 394, and the Boggses deposited the purchase price with the clerk. Based upon the record, we cannot say the trial court abused its discretion in ordering specific performance and we are not left with the firm conviction that a mistake has been made.

[29] For the foregoing reasons, we affirm the trial court.

[30] Affirmed.

Mathias, J., and Molter, J., concur.