

## 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

Benjamin A. Spandau  
Brandon E. Tate  
Ann Marie Waldron  
Waldron Tate Bowen Funk Spandau  
LLC  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Calvert S. Miller  
Vincent J. Heiny  
Kimberly Martin  
Carson LLP  
Fort Wayne, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Michael Spirtos,  
*Appellant-Plaintiff,*

v.

Metropolitan Title of Indiana,  
LLC,  
*Appellee-Defendant.*

November 30, 2021

Court of Appeals Case No.  
21A-PL-892

Appeal from the Allen Superior  
Court

The Honorable Jennifer L.  
DeGroote, Judge

Trial Court Cause No.  
02D03-1912-PL-463

**Brown, Judge.**

- [1] Michael Spirtos appeals the trial court’s denial of his motion for leave to file a second amended complaint against Metropolitan Title of Indiana, LLC (“Title Company”). We reverse.

### *Facts and Procedural History*

- [2] On December 3, 2019, Spirtos filed a Complaint for Declaratory Judgment and for Damages. On March 19, 2020, he filed a motion for leave to amend his complaint stating that he was seeking to add additional counts and parties and attached a copy of his proposed Amended Complaint for Declaratory Judgment and for Damages. The next day, the court granted Spirtos’s motion and ordered that his amended complaint be deemed filed. The amended complaint named the defendants as: Ameritrust Lending, LLC, Chicago Equity Trust, LLC, DC&B, Inc., Hannover Lending LLC, Lincoln Investments LLC, MJ&K, Inc., Metro Real Estate, Inc., Property Max MMXIV LLC, and Brian Schaper (collectively, “Sellers”); William Browand, Roth & Wehrly Inc. d/b/a Coldwell Banker Roth Wehrly Graber, and Metro Realty, Inc. (collectively, “Brokers”); and Title Company (Title Company, Sellers, and Brokers, collectively, “Defendants”).
- [3] The amended complaint alleged Spirtos and Sellers had entered into nine purchase agreements related to 255 properties; Spirtos chose Title Company to be the escrow agent and title insurance underwriter; and in December 2018 Spirtos deposited \$50,000 with Title Company as earnest money. The amended complaint further alleged that the title commitments received by Spirtos included many exceptions to the title policies which would preclude Sellers

from granting marketable title prior to the closing date contemplated in the purchase agreements; the parties agreed to an extension of the inspection period under the purchase agreements; Sellers impeded Spirtos's due diligence during the inspection period; and on April 15, 2019, Spirtos requested the return of the earnest money funds. The amended complaint also stated that "Title Company is named as a Defendant herein for the sole reason that it is currently in possession of the Escrow Funds." Appellant's Appendix Volume II at 35.

[4] The amended complaint raised the following claims: Count I, breach of contract by Sellers; Count II, declaratory relief; Count III, fraudulent misrepresentation by Sellers; Count IV, breach of a fiduciary duty by Browand and Coldwell Banker; Count V, negligence by Schaper and Metro Realty; and Count VI, negligence by Browand and Coldwell Banker. In particular, Count II alleged that Spirtos canceled each of the purchase agreements prior to the end of the inspection period, he requested mutual releases from Sellers for each of the agreements, Sellers failed to respond to his requests, Title Company as the escrow agent remained in possession of the earnest money, and he was entitled to return of the earnest money.

[5] Sellers filed a counterclaim for declaratory judgment, breach of contract, and damages against Spirtos and Title Company alleging in part that Spirtos directly requested Title Company to cease any further title work on the properties despite the fact that time under the purchase agreements had not expired. Browand and Roth & Wehrly filed cross-claims. On June 10, 2020, the court issued a Case Management Order stating: "By agreement of the parties, [Title

Company] will pay the escrow funds it is holding (\$50,000.00) into Court to be held pending a resolution of the claims. Plaintiff and Counter-Claimant will then dismiss [Title Company] without prejudice.” Appellant’s Appendix Volume II at 197. The order stated “[t]his matter is Ordered to mediation,” “[t]he Court or the mediator shall determine the individuals who shall be present at any mediation session,” “[a]ll parties, their attorneys, representatives with full settlement authority, and other individuals necessary for resolution of all disputed issues shall be present at each mediation conference unless excused by the mediator or the Court,” and “[a]t least 7 days prior to the mediation conference, the attorney for each side shall submit to the mediator a Confidential Statement of the Case.” *Id.* at 197-198.

[6] On December 16, 2020, mediation was held at which Spirtos, Sellers, and Brokers were present.<sup>1</sup>

[7] In January 2021, Spirtos, Sellers, and Brokers entered into a Settlement Agreement and Release which provided in part:

WHEREAS, a dispute exists between Spirtos, Roth & Wehrly, and Sellers regarding nine (9) separate purchase agreements for a total of two hundred fifty-five (255) separate properties . . . , which are all

---

<sup>1</sup> According to Title Company, in response to an email from the mediator’s assistant regarding availability for mediation, Title Company’s counsel sent an email to the assistant, copying all counsel, stating: “There are no allegations in this lawsuit relating to [Title Company] other than it holds the \$50,000 in earnest money in escrow for the other parties to figure out who gets it. So, [Title Company] and [its] counsel will not be attending the mediation and, therefore, [Title Company] has no preference as to when the mediation is scheduled.” Appellant’s Appendix Volume III at 106. Title Company stated that “[n]one of the parties objected or otherwise responded to [its] stated intent not to attend the mediation.” *Id.*

attached to Spirtos' Complaint filed in the currently pending lawsuit between the Sellers, Spirtos, and Roth & Wehrly in the Superior Court of Allen County, Indiana under Cause No. 02D03-1912-PL-000463 (the "Lawsuit"); . . .

\* \* \* \* \*

NOW, THEREFORE, . . . the Parties agree as follows:

\* \* \* \* \*

2. Obligations of Roth & Wehrly.

- (a) Roth & Wehrly shall pay Spirtos the sum of [\$17,500] by February 15, 2021. . . .

\* \* \* \* \*

- (c) Roth & Wehrly agrees to dismiss the Lawsuit, with prejudice.

3. Obligations of Sellers.

- (a) Sellers will jointly and in association with Spirtos cause [Title Company] to release earnest money it currently holds in escrow as follows: the sum of \$20,000.00 shall be disbursed to Sellers and the remaining sum of \$30,000.00 shall be disbursed to Spirtos. . . .

\* \* \* \* \*

- (c) Sellers agree to dismiss the Lawsuit, with prejudice.

4. Obligations of Spirtos.

- (a) Spirtos will, in association with Sellers, cause [Title Company] to release earnest money it currently holds in escrow as follows: the sum of \$20,000.00 shall be disbursed to Sellers and the remaining sum of \$30,000.00 shall be disbursed to Spirtos. Spirtos shall execute such documents as may be necessary to

effectuate the above disbursement. Spirtos shall release and forever discharge Roth & Wehrly and Sellers, including their respective members, agents, representatives, officers, managers, shareholders, directors, employees, insurers, sureties, attorneys, successors, and assigns from any and all claims, demands, causes of action, damages, and/or liabilities whatsoever, including without limitation, claims to any regulatory agency or attorney general, both at law and in equity which Spirtos may possess, whether known or unknown, as of the date of the execution of this Agreement, which are related to or in any way arise out of the facts, circumstances and/or claims pending in the Lawsuit.

\* \* \* \* \*

(c) Spirtos agrees to dismiss the Lawsuit, with prejudice.

Appellant's Appendix Volume III at 129-131. The settlement agreement was signed by Sellers, Spirtos, Roth & Wehrly, and Browand.

[8] Spirtos's counsel sent a letter dated February 1, 2021, to Title Company requesting disbursement of the earnest money funds pursuant to the Settlement Agreement. According to Spirtos, Title Company distributed the funds on or about February 25, 2021.<sup>2</sup>

---

<sup>2</sup> In his March 16, 2021 response, Spirtos stated "on February 3, 2021, Title Company, in confirming receipt of the instructions to release the Escrow Funds, desired confirmation that it would be released with prejudice once the checks were issued" and, when Spirtos would not confirm Title Company would be dismissed with prejudice, Title Company "evaded the clear joint instruction from its principals to 'consider its options'." Appellant's Appendix Volume IV at 17. He stated "[i]t was not until February 25, 2021, and only after Spirtos notified Title Company of his intention to move to file a second amended complaint that would add

[9] On February 26, 2021, Spirtos filed Plaintiff's Motion for Leave to File Second Amended Complaint which included a proposed Second Amended Complaint for Declaratory Judgment and for Damages (the "Second Amended Complaint") as an attached exhibit. He asserted he is seeking to add additional counts as it pertains [to] Title Company, the additional claims are not barred by any statute of limitations and could be raised by the filing of a new separate lawsuit, amending the complaint versus filing a new lawsuit is proper for judicial efficiency as the added counts pertain to the purchase and sale involved in the lawsuit, Title Company had not yet responded to discovery requests served on May 29, 2020, and Title Company was invited to the mediation, elected not to participate, and was not a party to the settlement agreement.

[10] Spirtos's proposed Second Amended Complaint raises the following counts: Count I, breach of contract against Sellers; Count II, fraudulent misrepresentation against Sellers; Count III, negligence by Schaper and Metro Realty; Count IV, breach of a fiduciary duty to Spirtos by Title Company; Count V, tortious interference with a contractual relationship alleging that Title Company took actions, including but not limited to unilaterally ceasing title work, causing Spirtos to terminate his contractual relationship with Sellers; Count VI, conversion alleging that Title Company refused to distribute the earnest money funds when directed; and Count VII, negligence alleging Title

---

counts relating to the Title Company, that Title Company finally distributed the Earnest Money" and "Spirtos has received his portion of the Earnest Money." *Id.*

Company breached its duties to Spirtos to supply accurate information for the guidance of Spirtos and Sellers in their business transaction.

[11] On March 1, 2021, Spirtos, Sellers, and Brokers filed a joint partial motion to dismiss requesting an order dismissing the claims against and by Brokers. On March 11, 2021, Title Company filed a Response and Objection to Plaintiff's Motion for Leave to File Second Amended Complaint and Motion to Enforce Settlement Agreement. Title Company requested an order dismissing all Defendants with prejudice. It argued Spirtos's substantive claims were all asserted against the other Defendants, it was a third party beneficiary of the settlement agreement, and it was the agent of Spirtos and Sellers in regard to the escrow funds. On March 12, 2021, the court granted the joint motion to dismiss the claims against and by Brokers. On March 16, 2021, Spirtos and Sellers filed a joint partial motion to dismiss requesting an order dismissing with prejudice the claims of Spirtos and Sellers against each other and stating that the action remained pending as to Spirtos and Title Company. Also on that date, Spirtos filed a response to Title Company's objection.

[12] On March 18, 2021, the court held a hearing. Spirtos's counsel argued there was no evidence of intent that Title Company would be a third party beneficiary and "no intent to release the title company in any way other than limiting it to what it did as an agent for claims being sought." Transcript Volume II at 14. Title Company's counsel argued "[w]e are clearly agents. Spirtos says that in the Complaint so we are clearly an agent." *Id.* at 19. Spirtos's counsel argued Title Company was "ignoring the fact they wore



multiple hats,” “they were an agent to the limited extent they were the escrow agent,” and “[t]hey were not an agent to the extent they were abstracting title or procuring title or any of that.” *Id.* at 24.

[13] The court issued an Order Denying Plaintiff’s Motion for Leave to File an Amended Complaint and Granting Defendant’s Motion to Enforce Settlement Agreement. The order stated: “The mediated settlement agreement contemplated a release of the entire lawsuit including all claims which involved [Title Company]. Therefore, [Title Company], who has complied with the obligations contemplated in the settlement agreement, shall now be dismissed from this case, with prejudice.” Appellant’s Appendix Volume II at 22. The court also granted the joint motion to dismiss the claims of Spirtos and Sellers against each other.

[14] Spirtos filed a motion to correct error requesting that the court “[g]rant Plaintiff’s Motion for Leave to file a Second Amended Complaint and grant Defendant’s Motion to Enforce Settlement Agreement only to the extent that the Settlement Agreement releases claims by the Plaintiff regarding Title Company’s holding of the Earnest Money prior to execution of the Settlement Agreement” or “clarify the only claim against Title Company dismissed with prejudice is the declaratory judgment claim relating to its holding of the escrowed funds prior to settlement – the only claim existing in the litigation pertaining to Defendant in light of the denial for Motion for Leave.” Appellant’s Appendix Volume IV at 48. The court denied Spirtos’ motion to correct error.

## *Discussion*

[15] We generally review rulings on motions to correct error for an abuse of discretion. *Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1270 (Ind. 2008), *reh'g denied*. Ind. Trial Rule 15(A) provides that a party may amend a pleading once as a matter of course at any time before a responsive pleading is served and thereafter “a party may amend his pleading only by leave of court or by written consent of the adverse party” and “leave shall be given when justice so requires.” We review a trial court’s ruling for an abuse of discretion. *Hilliard v. Jacobs*, 927 N.E.2d 393, 398 (Ind. Ct. App. 2010), *trans. denied*. We may evaluate a number of factors including undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment. *Id.* Further, piecemeal litigation is disfavored, “[t]he stated policy of this court and our Supreme Court is to freely allow such amendments in order to bring all matters at issue before the court,” and “[l]eave to amend should be granted unless the amendment will result in prejudice to the opposing party.” *See Rusnak v. Brent Wagner Architects*, 55 N.E.3d 834, 843-844 (Ind. Ct. App. 2016) (citations omitted), *trans. denied*.

[16] Spirtos maintains that he did not release his claims against Title Company for its actions in its role as his agent. He maintains “the only claims asserted . . . in his Second Amended Complaint that concern [Title Company] acting as an escrow agent are for conversion and breach of a fiduciary duty, both of which

were for events occurring after the Settlement Agreement was executed” and “[t]he remaining claims, namely tortious interference with contract and negligence, concern [Title Company] as an independent party or title insurance procurer.” Appellant’s Brief at 24-25. Title Company contends the court properly determined “that Spirtos had agreed to dismiss the pending lawsuit, with prejudice, and that necessarily included the dismissal of all claims against [it].” Appellee’s Brief at 23. It argues “Spirtos broadly released all ‘agents’ of Sellers,” which included it as “the agent of the Sellers,” and that it was a third party beneficiary of the settlement agreement. *Id.* at 27.

[17] Settlement agreements are governed by the same general principles of contract law as any other agreement. *Zukerman v. Montgomery*, 945 N.E.2d 813, 819 (Ind. Ct. App. 2011). Interpretation of a contract is a pure question of law and is reviewed de novo. *Dunn v. Meridian Mut. Ins. Co.*, 836 N.E.2d 249, 252 (Ind. 2005). The unambiguous language of a contract is conclusive, and the parties’ intent is determined from the four corners of the document. *Zukerman*, 945 N.E.2d at 819. Additionally, this Court has recognized that a title agent may wear “two hats,” one as a settlement agent to provide escrow and closing services and the other as a title insurance agent to issue or sell title insurance policies on behalf of a title insurer. *See Fid. Nat. Title Ins. Co. v. Mussman*, 930 N.E.2d 1160, 1167 (Ind. Ct. App. 2010), *trans. denied*. As for escrow services, this Court has stated that an “escrow holder is generally considered the agent of both parties to the escrow” and “owes an obligation to each party measured by an application of the ordinary principles of agency.” *Meridian Title Corp. v.*

*Pilgrim Fin., LLC*, 947 N.E.2d 987, 992 (Ind. Ct. App. 2011) (quoting *In re Marriage of Glendenning*, 684 N.E.2d 1175, 1178 (Ind. Ct. App. 1997) (a party which acts “as a depositary in escrow occupies a fiduciary relationship to each of the parties”) (citation omitted), *trans. denied*).

[18] Here, Title Company did not execute and was not a party to the settlement agreement. To enforce a contract as a third party beneficiary, the third party must show a clear intent by the actual parties to the contract to benefit the third party, a duty imposed on one of the contracting parties in favor of the third party, and performance of the contract terms is necessary to render the third party a direct benefit intended by the parties to the contract. *Eckman v. Green*, 869 N.E.2d 493, 496 (Ind. Ct. App. 2007) (citing *Luhnnow v. Horn*, 760 N.E.2d 621, 628 (Ind. Ct. App. 2001)), *trans. denied*. The settlement agreement does not express a clear intent to benefit Title Company or clearly impose an obligation on one of the contracting parties in favor of Title Company.

[19] The record reveals that Spirtos’s March 2020 amended complaint sought declaratory relief under Count II alleging that “Title Company, as the escrow agent under the Purchase Agreements, remains in possession of the Earnest Money” and stated Title Company was named as a defendant solely because it was in possession of the escrow funds. Appellant’s Appendix Volume II at 36. The settlement agreement included provisions that Roth & Wehrly would make a certain payment to Spirtos, that Spirtos and Sellers would cause Title Company to disburse the earnest money funds, and that Spirtos, Sellers, and Roth & Wehrly would dismiss the Lawsuit which, as defined, was a reference

to the then-pending disputes and claims. The settlement agreement resolved the then-pending claim under Count II regarding disbursement of the earnest money funds. However, the agreement did not expressly refer to or preclude subsequent claims against Title Company for breach of a fiduciary duty to Spirtos, tortious interference with a contractual relationship, conversion, or negligence as raised in Counts IV through VII of Spirtos's proposed Second Amended Complaint. *See Mussman*, 930 N.E.2d at 1167 (recognizing the separate functions of a title insurance agent and an escrow holder). These claims were not pending at the time the settlement agreement was executed. The settlement agreement does not foreclose the claims against Title Company in Spirtos's proposed Second Amended Complaint. Further, Spirtos argues there is no evidence of bad faith or dilatory motive and the basis for his claims was not known until Sellers complied with discovery requests in December 2020. We note that piecemeal litigation is disfavored and the policy of this Court is to freely allow amendments to bring all matters before the court. *See Rusnak*, 55 N.E.3d at 843-844. Based on the record, we conclude the trial court abused its discretion in denying Spirtos's motion for leave to file his Second Amended Complaint. We express no opinion as to the merits of Spirtos's claims against Title Company.

[20] For the foregoing reasons, we reverse and remand for proceedings consistent with this opinion.

[21] Reversed and remanded.

Najam, J., and Riley, J., concur.