MEMORANDUM DECISION

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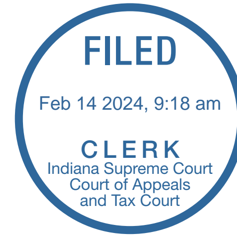

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IN THE COURT OF APPEALS OF INDIANA

John Anderson and Brigette Rosco,

Appellants,

v.

Terry R. Holder, as Personal Representative of the Estate of Arthur G. Holder,

Appellee.

February 14, 2024

Court of Appeals Case No. 23A-EV-2096

Appeal from the Lake Circuit Court

The Honorable Marissa McDermott, Judge

Trial Court Cause No. 45C01-2202-EV-359

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

[1] John Anderson ("Anderson") and Bridgette Rosco ("Rosco")[1] appeal the entry of summary judgment in favor of Terry R. Holder, as the personal representative of the estate of Arthur G. Holder (the "Estate"). We affirm.

Facts and Procedural History

[2] On February 3, 2022, the Estate filed an "Eviction Notice of Claim" against Rosco alleging that Arthur G. Holder ("Arthur") had owned property located at 3329 New Mexico Street, Lake Station, Indiana (the "Property"), that Arthur died in January 2022, and that Rosco was living at and wrongfully occupying the Property. Appellants' Appendix Volume II at 19.

[3] On January 4, 2023, the Estate filed a motion for summary judgment and immediate possession alleging Rosco "claimed she was a purchaser/owner, rather than a tenant on the property" and "[d]ocuments provided to try to evidence ownership or an agreement to purchase the property are inadequate under Indiana law, as they are missing essential material terms for the sale of real estate." *Id*. at 22. The Estate designated evidence including a deed executed in July 2011 conveying the Property to Arthur and a "Sales Contract for Purchase & Sale of Real Estate" (the "Sales Contract"). *Id*. at 41. The Sales Contract was dated March 3, 2012, provided that Arthur as the "Seller" agreed

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[1] Rosco, in an affidavit, states her name as "Bridgette E. Gilmer f/k/a Bridgette E. Rosco." Appellants' Appendix Volume II at 113.

to sell the Property to Rosco and Anderson as the "Buyer," and contained the signatures of Arthur, Rosco,[2] and Anderson. *Id*. The Sales Contract provided:

> 2. PURCHASE PRICE. The total purchase price to be paid by Buyer will be $10,000.00 DOWN payable as follows:
>
> Non-refundable earnest money deposit (see below) $ 0.00
> Balance due at closing in cash or certified funds $ 0.00
> Owner financing from seller (see below) $ ________
> New loan (See below) $ ________
>
> Assumption of existing loan with ___________ $ ________

Id. at 41-42. It also provided:

> 6. SETTLEMENT. Settlement will held be on ______________, 20___, time being of the essence, at a time and place designated by seller. Closing agent will be ______________________________.
>
> * * * * *
>
> Seller agrees to deliver possession of the property within ______________ days of closing.[3]

Id. at 42.

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[2] The Sales Contract identified Rosco as "Bridgette E. Gilmer." Appellants' Appendix Volume II at 43.

[3] Paragraph 6 also stated "[t]he following Items will be prorated at closing," an "X" was placed next to the phrase "Property taxes" and no mark was placed next to the items of mortgage insurance, PMI insurance, hazard insurance, homeowner's association dues, or rents. Appellants' Appendix Volume II at 42.

[4] The Estate also designated a document which it stated was received during discovery. The document was titled "3329 New Mexico agreement to sell," was unsigned, and provided:

> I Arthur Grant Holder agree to sell the property located at 3329 New Mexico Street, Lake Station, In. to Bridgett Gilmer and John Anderson, under the following conditions.
>
> They are to pay me the original cost and expenses of the filings of title etc. plus a $10,000 profit. They are also to pay for any and all expenses to repair the house at which I will pay the original cost and they will repay my expenses in a timely manner.

Id. at 56. The document, following the above language, includes about sixteen pages listing dates and expenses between 2011 and 2021.

[5] Rosco filed a response in opposition to the Estate's summary judgment motion stating that she paid Arthur $10,000, she was the lawful owner of the Property, and she had lived at the Property for over ten years. She designated the Sales Contract and an "[a]ccounting transaction of all money exchanges between [Arthur] and [her] pertaining to the property."[4] *Id*. at 79.

[6] On February 9, 2023, the Estate filed a motion to add Anderson as a defendant, alleging that Anderson lived at the Property and signed the Sales Contract. The court added Anderson as a defendant on February 13, 2023.

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[4] The attached "[a]ccounting transaction" was the "3329 New Mexico agreement to sell."

[7] On March 30, 2023, the court held a hearing and issued an order stating that the Estate had shown that "no question of fact exists regarding whether the Statute of Frauds has been met" and granting the Estate's motion for summary judgment. *Id.* at 18. On May 15, 2023, Anderson filed a motion for relief from judgment alleging that no service was perfected on him, and on May 23, 2023, the court held a hearing and issued an order finding there was no proof of service on Anderson prior to its March 30, 2023 order, granting Anderson's motion for relief from judgment with respect to Anderson, and affirming its March 30, 2023 order as to Rosco.

[8] On May 24, 2023, the Estate filed a motion for summary judgment and immediate possession arguing "the facts as applied to Defendant Anderson are no different than they were as applied to prior Defendant Rosco." *Id.* at 120. On July 20, 2023, the Estate filed a Motion for Immediate Default Summary Judgment and Immediate Possession arguing that Anderson did not file a response to its May 24, 2023 summary judgment motion within thirty days. On July 21, 2023, the court issued an order granting the Estate's motion for summary judgment and scheduling a hearing on the matter of immediate possession.

[9] On August 9, 2023, the court held a hearing. Terry Holder testified that Arthur was his father, the Property contained a single family home, and he was not aware of any lease which entitled Anderson to live at the Property. Anderson testified "I'm the one that lives at their house because I bought it" and indicated he had lived at the Property since 2012. Transcript Volume II at 15. The court

stated ownership had already been decided and the issue was possession. Anderson testified "I went and spent all this money on his house," "I wouldn't have all these things if I didn't, it wasn't my house," and "[h]e's trying to take something away and sell it and make a profit." *Id*. at 19. The court granted the Estate possession of the Property.

Discussion

[10] Anderson and Rosco argue the trial court erred in entering summary judgment in favor of the Estate and, specifically, in finding that the Sales Contract did not satisfy the Statute of Frauds. They argue that Arthur "entered a contract with [them] which explicitly provided the date, the parties involved, the property's address, the purchase price, and various other terms." Appellant's Brief at 10. They also refer to the "3329 New Mexico agreement to sell" and assert the document "suggest[ed] [they] fulfilled the contemplated agreement." *Id*. at 13.

[11] The Estate argues the Sales Contract did not satisfy the Statute of Frauds and did not include a final purchase price, a closing date, or a date for the delivery of possession. It argues the Sales Contract was not recorded and Arthur did not execute a deed transferring the Property to Rosco or Anderson. It notes the language "$10,000 DOWN" in the Sales Contract and argues Rosco and Anderson's "reading renders the word 'down' completely superfluous in the agreement, as the parties merely needed to write that the purchase price was [']$10,000,' full stop, had that been their intent." Appellee's Brief at 7.

[12] A party moving for summary judgment bears the initial burden of making a prima facie showing there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. *Id.* We construe all factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party. *Id*.

[13] The Indiana Statute of Frauds requires that contracts for the sale of real property be in writing. *Jernas v. Gumz*, 53 N.E.3d 434, 445 (Ind. Ct. App. 2016) (citing *Fox Dev., Inc. v. England*, 837 N.E.2d 161, 166 (Ind. Ct. App. 2005)), *trans. denied*. The Statute, found at Ind. Code § 32-21-1-1, provides that a person may not bring an action involving a contract for the sale of land "unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent." The Statute is intended to preclude fraudulent claims that would probably arise when one person's word is pitted against another's and that would open wide the floodgates of litigation. *Id*. at 446 (citing *Fox Dev*., 837 N.E.2d at 166). The Statute does not govern the formation of a contract but only the enforceability of contracts that have been formed. *Fox Dev*, 837 N.E.2d at 165. Contracts are formed when parties exchange an offer and acceptance. *Id*. If a party cannot demonstrate agreement

on one essential term of the contract, then there is no mutual assent and no contract is formed. *Id*. Further, specific filled-in language in a purchase agreement controls over more general pre-printed language. *Ryan v. Laws. Title Ins. Corp.*, 959 N.E.2d 870, 877 (Ind. Ct. App. 2011).

[14] "An agreement required to be in writing must completely contain the essential terms without resort to parol evidence in order to be enforceable." *Knapp v. Est. of Wright*, 76 N.E.3d 900, 907 (Ind. Ct. App. 2017) (citing *Coca-Cola Co. v. Babyback's Int'l, Inc.*, 841 N.E.2d 557, 565 (Ind. 2006)), *trans. denied*.

> Under the Statute, an enforceable contract for the sale of land must be evidenced by some writing: (1) which has been signed by the party against whom the contract is to be enforced or his authorized agent; (2) which describes with reasonable certainty each party and the land; and (3) which states with reasonable certainty the terms and conditions of the promises and by whom the promises were made.

Id. (citing *Schuler v. Graf*, 862 N.E.2d 708, 713 (Ind. Ct. App. 2007) (citing *Johnson v. Sprague*, 614 N.E.2d 585, 588 (Ind. Ct. App. 1993))).

[15] Further, in order to be enforceable, a contract must be reasonably definite and certain in its material terms so that the intention of the parties may be ascertained. *Id*. (citing *Wenning v. Calhoun*, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005), *opinion on reh'g*, *trans. denied*). The parties to a contract "have the right to define their mutual rights and obligations, and a court may not make a new contract or supply omitted terms while professing to construe the contract." *Id*. (citing *Johnson*, 614 N.E.2d at 588). "Absolute certainty in all terms is not

required, but if any essential elements are omitted or left obscure and undefined, so as to leave the intention of the parties uncertain respecting any substantial terms of the contract, the case is not one for specific performance." *Id*. (citing *Johnson*, 614 N.E.2d at 588). *See also Zukerman v. Montgomery*, 945 N.E.2d 813, 819 (Ind. Ct. App. 2011) ("To be enforceable, contracts must be sufficiently definite, and amounts and prices must be fixed or subject to some ascertainable formula or standard.").

[16] Here, the writings designated by the parties do not adequately describe with reasonable certainty the terms of the agreement such that the intention of the parties may be ascertained. The Sales Contract merely provided that the purchase price "will be $10,000.00 DOWN." Appellants' Appendix Volume II at 41. The inclusion of the word "DOWN" suggests that the parties did not intend for the amount of $10,000 to constitute the total purchase price. Generally, the term "down payment" means "[a] partial payment made at the time of purchase, with the balance to be paid later." AMERICAN HERITAGE DICTIONARY 542 (4th ed. 2006). The term is also defined as "[t]he portion of a purchase price paid in cash (or its equivalent) at the time the sale agreement is executed." BLACK'S LAW DICTIONARY 1310 (10th ed. 2014). The document titled "3329 New Mexico agreement to sell," which was not signed by Arthur or referenced in the Sales Contract, stated that Rosco and Anderson would "pay [Arthur] the original cost and expenses of the filings of title etc. plus a $10,000 profit" and "[t]hey are also to pay for any and all expenses to repair the house at which [Arthur] will pay the original cost and [they] will repay [his]

expenses in a timely manner." *Id*. at 56. The unsigned document listed a variety of expenses between July 2011 and July 2021. Neither document included a description of the repairs which Rosco and Anderson were required to complete or a method for calculating the amount they were required to pay for repairs or the amount of the total purchase price. Further, neither document included a closing date or a manner to determine the closing date.

[17] Based on the designated evidence and construing the documents as a whole, we conclude the trial court did not err in entering summary judgment in favor of the Estate. *Cf. Wolvos v. Meyer*, 668 N.E.2d 671, 677-678 (Ind. 1996) (holding a contract sufficiently identified the essential terms of the agreement including the purchase price and the time frame in which closing was to be completed); *Johnson*, 614 N.E.2d at 590 (finding a contract enforceable where it identified the parties, the real estate, the purchase price, and the closing date and was signed by the party against whom enforcement was sought); *see also* 10 WILLISTON ON CONTRACTS § 29:14 (4th ed. May 2021 update) ("The purchase price for the land or goods that are the subject of the transaction must be stated or the criteria for determining the price must be included in the memorandum to render the contract enforceable under the Statute of Frauds."); 14 R. Powell, POWELL ON REAL PROPERTY, § 81.02[1][c], at 81-31 ("[S]everal writings together can be shown to satisfy the specific requirements of the statute of frauds. . . . Courts generally require that the several documents refer to each other and to the agreement itself sufficiently to establish that they can be considered as a related set of writings, each contributing to the necessary

contents of the memorandum requirement."); *id.*, § 81.02[1][d], at 81-32 to -33 and 81-41 to -43 ("[C]ourts have generally settled on three specific matters beyond the signature requirement that must be in writing . . . . The writing must (1) designate the parties, (2) describe the property, and (3) state the price. . . . [C]ourts have generally required that a writing specify the price for the agreed real estate transaction . . . . Their reasoning is that if the parties could establish the price to be paid by parol evidence alone, then the purpose underlying the statute of frauds—to prevent fraud and perjury—would be undermined with respect to one of the most crucial aspects of the agreement. . . . [A] statement of the price is sufficient to satisfy the statute of frauds, even though it is not specifically stated, as long as the method of ascertaining the price is set out with certainty. . . . A price term involving deferred payments to the seller is not complete or adequate if it fails to give details regarding the time period and the terms of the agreement regarding the purchaser's deferred payments.") (footnotes omitted).

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

[19] Affirmed.

Riley, J., and Foley, J., concur.