MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark J. Crandley
Barnes & Thornburg LLP
Indianapolis, Indiana

D. Randall Brown
Carrie M. Raver
Barnes & Thornburg LLP
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEES JOHN WRIGHT, BETTE SUE ROWE, AND COLDWELL BANKER ROTH WEHRLY GRABER

Barrett McNagny LLP
Michael H. Michmerhuizen
Patrick G. Murphy
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEES OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Scott J. Fandre
Alexander E. Porter
Krieg DeVault LLP
Mishawaka, Indiana

IN THE COURT OF APPEALS OF INDIANA

Larry Lee and Linda Lee,
Appellants-Plaintiffs,

v.

Stephen Coats, Margaret Coats, John Wright, Bette Rowe, Coldwell Banker Roth Wehrly Graber, and Old Republic National Title Insurance Company,
Appellee-Defendants.

April 29, 2022

Court of Appeals Case No. 21A-PL-274

Appeal from the Allen Superior Court

The Honorable Craig J. Bobay, Judge

Trial Court Cause No. 02D02-1807-PL-256

Pyle, Judge.

Statement of the Case

[1] Larry ("Larry") and Linda ("Linda") Lee (collectively "the Lees") purchased a home and adjacent land from Stephen ("Stephen") and Margaret ("Margaret") Coats (collectively "the Coatses"). Following the closing on the home and the adjacent land, the Lees filed a multi-count complaint against: (1) the Coatses; (2) John Wright ("Wright"), the Lees' real estate agent; (3) Bette Sue Rowe ("Rowe"), the Coates' real estate agent; (4) Coldwell Banker Roth Wehrly Graber ("Coldwell Banker"); and (5) Old Republic National Title Insurance

Company ("Old Republic"). Wright, Rowe, and Coldwell Banker filed a summary judgment motion, which the trial court granted in part in favor of Wright and granted in favor of Rowe and Coldwell Banker. In this appeal, the Lees argue that the trial court erred in granting partial summary judgment in favor of Wright and in granting summary judgment in favor of Rowe.[1] Concluding that the trial court did not err either in partially granting Wright's summary judgment motion or in granting Rowe's summary judgment motion, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether the trial court erred in granting summary judgment in favor of Wright and Rowe on the Lees' deception claims.

2. Whether the trial court erred in granting partial summary judgment in favor of Wright and summary judgment in favor of Rowe on the Lees' violation of statutory duties claims.

3. Whether the trial court erred in granting summary judgment in favor of Rowe on the Lees' constructive fraud claim.

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[1] The Lees do not challenge the trial court's grant of summary judgment in favor of Coldwell Banker. In addition, Wright does not cross-appeal the trial court's partial denial of his summary judgment motion. We also note that although Old Republic has filed an appellate brief in this appeal, Old Republic's summary judgment motion is still pending in the trial court.

Facts

[3] In 2017, the Coatses owned a home, which sits on five acres, located on Sylvan Meadows Drive ("the Sylvan Meadows home") in Fort Wayne. The Coatses, who had lived in the home for over thirty years, also owned three parcels of land adjacent to the home ("the adjacent land"). Lot 5 was located directly north of the home, Lot 6 was located directly south of the home, and Lot 7 was located directly east of the home. Stephen is a retired physician, who practiced medicine in Fort Wayne for forty years. He also partially owns Dupont Hospital in Fort Wayne. Margaret, who has a bachelor's degree in nursing and a master's degree in counseling, is both the Clinical Director at Fort Wayne Recovery and the owner of Margaret Coats Counseling, Inc.

[4] In the spring of 2017, the Coatses, who owned two additional homes, decided to sell the Sylvan Meadows home. They enlisted the services of Rowe, a real estate agent with thirty-five years of experience, to sell the home. In May 2017, the Coatses completed a Seller's Residential Real Estate Sales Disclosure form ("the Seller's Disclosure Form"). One of the questions on the Seller's Disclosure Form asked whether "the property [was] subject to covenants, conditions and/or restrictions of a homeowner's association[.]" (App. Vol. 4 at 81). The Coates responded that it was. Rowe placed the Seller's Disclosure Form and a copy of the restrictions ("the Restrictions") in a brochure box in the Coates' kitchen for potential purchasers to review. In addition, Rowe uploaded the Restrictions, which were recorded in the county auditor's office, to the Multiple Listing Service for Indiana ("the MLS listing").

[5] Also in 2017, the Lees were looking for a new home. Larry graduated from law school in 1969. Immediately thereafter, Larry clerked for a federal trial court judge and then went to work for his family's business, Leepoxy Plastics ("Leepoxy"). In 2017, Larry was the sole owner and president of Leepoxy. Larry had also been involved in multiple other business ventures over the years. Specifically, Larry had been the sole owner of Midwest Epoxy Applicators and Charlotte 65, LLC. In addition, Larry had been a member of the Sherman Group, LLC, which had owned Deister Machine Company. Larry and Linda had also bought and sold real estate investment properties.

[6] At the time that the Lees began searching for a new home, the Lees had lived on an eighteen-acre property on Aboite Center Road in Fort Wayne for more than thirty years. This property was subject to restrictive covenants as was another former residence of the Lees. The Lees also owned a lake home, which Larry believed was also subject to restrictive covenants. Larry believed that he had received a copy of the restrictive covenants associated with these properties but did not recall whether he had ever read them.

[7] The Lees enlisted the services of Wright, a real estate agent with more than six years of experience, to help them find and purchase a home. The Lees wanted to remain in southwest Fort Wayne with as much privacy as possible. In September 2017, Wright told the Lees about the Coatses' Sylvan Meadows home. After visiting the Coatses' home with Wright, the Lees asked Wright who owned the adjacent land and if it was available to purchase with the home. The Lees explained to Wright that the primary reason that they were interested

in the adjacent land was to maintain a buffer around the home to prevent other homes from being built and to maintain the view of the woods, creek, and rolling hills. Wright subsequently told the Lees that the adjacent land was owned by the Coatses and was available to purchase.

[8] During the time that the Lees were considering purchasing the Sylvan Meadows home and the adjacent land, the Lees had minimal contact with Rowe. Specifically, Rowe opened the door for Linda one time when Linda viewed the property. Rowe never spoke with Larry. In addition, Wright told Rowe that he had reviewed the Restrictions with the Lees.

[9] One month later, in October 2017, the Lees offered the Coates $800,000 for the Sylvan Meadows home and $600,000 for the adjacent land. The Coatses accepted the Lees' offer, and, on October 10, 2017, the Lees entered into a purchase agreement ("the Purchase Agreement") with the Coatses. The Purchase Agreement provided that the Lees agreed to purchase the Sylvan Meadows home and the five acres upon which the home sat. Pursuant to the terms of the Purchase Agreement, the Lees also agreed to purchase Lots 5, 6 and 7, which the Purchase Agreement identified as totaling 10.2 acres. In the Purchase Agreement, the Lees checked a box indicating that they had "received and executed" the Seller's Disclosure Form, wherein the Coatses had responded that "the property [was] subject to covenants, conditions and/or restrictions of a homeowner's association[.]" (App. Vol. 2 at 68, App. Vol. 4 at 81). In addition, the Purchase Agreement provided, in relevant part, as follows:

> T. **HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION ("Association"):** Documents for a mandatory membership association shall be delivered by the Seller to Buyer within _7_ days after acceptance of this Agreement, but not later than 10 days prior to closing pursuant to I.C. 32-21-5-8.5. Brokers are not responsible for obtaining or verifying this information. If the Buyer does not make a written response to the documents within _7_ days after the receipt, the documents shall be deemed acceptable. In the event the Buyer does not accept the provisions in the documents and such provisions cannot be waived, this Agreement may be terminated by the Buyer and earnest money deposit shall be refunded to Buyer promptly[.]
>
> Buyer acknowledges that in every neighborhood there are conditions which others may find objectionable. Buyer shall therefore be responsible to become fully acquainted with [the] neighborhood and other off-site conditions that could affect the Property.

(App. Vol. 4 at 69). An Addendum to the Purchase Agreement ("the Addendum") provided that the Purchase Agreement would include "Lots 5 & 7 totally 6.6 acres[.]" (App. Vol. 4 at 72). The Addendum further provided a legal description of Lots 5 and 7. The Addendum also provided that the Purchase Agreement would include Lot 6, which was either 3.6 acres as set forth in the Coatses' map or 3.16 acres as set forth in the tax records. The Addendum further provided a legal description of Lot 6 and explained that, following a required survey, the sale price would be adjusted if the tax records were correct about the size of the lot. Although Larry and Linda signed the Purchase Agreement, Larry doubted that he had read it, and Linda had not

read it. Larry and Linda also signed the Seller's Disclosure Form. However, Linda did not review the form before signing it.

[10] The total purchase price for the Sylvan Meadows home and the adjacent land was subsequently reduced to $1,364,639, which included $750,839 for the home and $613,800 for the adjacent land. The Lees and the Coatses closed on the sale of the home and the adjacent land in November 2017. Shortly after the closing, Larry had a conversation with a Sylvan Meadows neighbor ("the neighbor"). The neighbor told Larry that the neighbor believed that the Restrictions prohibited the sale or development of parcels of land that were less than five acres. The Restrictions provide, in relevant part, as follows:

> 3. SUBDIVISION OF DOMINANT TENEMENT. Subdivision of the Dominant Tenement shall be restricted to no more than eight (8) dwelling units being located on the north ½ of the Dominant Tenement and eight (8) dwelling units being located on the south ½ of the Dominant Tenement; provided, that any tract of land within the Dominant Tenement shall not be further subdivided after the date hereof into separate tracts of less than five (5) acres per tract[.] The term "subdivision" for the purposes of these Protective Restrictions shall be deemed to mean the division, by conveyance, of a single tract of land within the Dominant Tenement which results in the creation of two (2) or more tracts of land which, taken together, comprise the original tract which existed prior to the conveyance.

(App. Vol. 4 at 34-35). Larry told the neighbor that Larry had not been aware of the Restrictions.

[11] In January 2019, the Lees filed a twenty-three-page amended multi-count complaint against: (1) the Coatses; (2) Wright; (3) Rowe; (4) Coldwell Banker; and (5) Old Republic. In the complaint, the Lees alleged that "[a]t no time until after the closing did [they] have any knowledge of the Property being governed by [the Restrictions,]" which the Lees believed prohibited the transfer and development of lots smaller than five acres. (App. Vol. 2 at 183).

[12] The Lees' complaint further alleged that, based upon the Restrictions, there had been "no need whatsoever for [them] to [have] offer[ed] anything to purchase the Surrounding Parcels in order to maintain a buffer around the Residence." (App. Vol. 2 at 184). According to the Lees, "[t]he Surrounding Parcels [were] also unable to be built upon and [were] worthless." (App. Vol. 2 at 184). The complaint further alleged that Wright and Rowe "knew that it was not necessary for the Lees to spend $613,800 on the Surrounding Parcels in order to get the buffer they wanted and that the Lees would never be able to legally convey or build on the Surrounding Parcels." (App. Vol. 2 at 185).

[13] Furthermore, the complaint specifically alleged, in relevant part, that Wright had: (1) "knowingly and intentionally misrepresented by omission the Restrictions on the Surrounding Parcels with the intention of deceiving the Lees[;]" and (2) "breached his [statutory] duties owed to the Lees by, among other things, failing to deliver the Restrictions [to the Lees.]" (App. Vol. 2 at 194, 191). The complaint also alleged that Rowe had: (1) "knowingly and intentionally misrepresented by omission the Restrictions with the intention of deceiving the Lees[;]" (2) "breached the [statutory] duties she owed to the Lees

[when she] failed to deliver the Restrictions to the Lees[;]" and (3) committed constructive fraud when she "remained silent about and failed to disclose the Restrictions to the Lees." (App. Vol. 2 at 197, 195, 196).

[14] In August 2020, Wright and Rowe filed a joint motion for summary judgment. In support of their motion, Wright and Rowe designated: (1) the Purchase Agreement; (2) the Seller's Disclosure Form; (3) excerpts from Larry's deposition; (4) excerpts from Linda's deposition; (5) excerpts from Wright's deposition; and (6) excerpts from Rowe's deposition.

[15] Three months later, in November 2020, the Lees filed a brief in opposition to Wright and Rowe's summary judgment motion. In support of their brief, the Lees designated: (1) the Restrictions; (2) the Purchase Agreement; (3) the Seller's Disclosure Form; (4) excerpts from Larry's deposition; (5) excerpts from Linda's deposition; (6) excerpts from Stephen's deposition; (7) excerpts from Margaret's deposition; (8) excerpts from Wright's deposition; and (9) excerpts from Rowe's deposition.

[16] In December 2020, Wright and Rowe filed a reply to the Lees' opposition to Wright and Rowe's summary judgment motion. Also in December 2020, the trial court held a hearing on the summary judgment motions. Following the hearing, in January 2021, the trial court issued a detailed forty-four-page order, which included findings of fact and conclusions. In its order, the trial court partially granted Wright's summary judgment motion on the Lees' deception and violation of statutory duties claims and granted Rowe's summary judgment

motion on the Lees' claims of deception, violation of statutory duties, and constructive fraud.

[17] The Lees now appeal.

Decision

[18] The Lees argue that the trial court erred in partially granting Wright's summary judgment motion and in granting Rowe's summary judgment motion. At the outset, we note that when reviewing the grant of a summary judgment motion, our well-settled standard of review is the same as it is for the trial court. *Goodwin v. Yeakle's Sports Bar and Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016). Specifically, we must determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id*. The party moving for summary judgment has the burden of making a prima facie showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id*. Once the moving party has met these two requirements, the burden shifts to the non-moving party to demonstrate a genuine issue of material fact by setting forth specifically designated facts. *Id*. In deciding whether summary judgment is proper, we consider only the evidence the parties specifically designated to the trial court. Ind. Trial Rule 56(C), (H). We construe all factual inferences in favor of the nonmoving party and resolve all doubts regarding the existence of a material issue against the moving party. *Carson v. Palombo*, 18 N.E.3d 1036, 1041 (Ind. Ct. App. 2014). "Summary judgment should be granted only if the evidence

sanctioned by Indiana Trial Rule 56(C) shows there is no genuine issue of material fact and that the moving party deserves judgment as a matter of law." *Goodwin*, 62 N.E.3d at 386.

[19] In addition, we note that the trial court in this case entered detailed findings of fact and conclusions thereon in support of its judgment. Special findings are not required in summary judgment proceedings and are not binding on appeal. *Cruz v. New Centaur, LLC*, 150 N.E.3d 1051, 1055 (Ind. Ct. App. 2020). However, such findings offer this Court valuable insight into the trial court's rationale for its review and facilitate appellate review. *Id.*

[20] We further note that the Indiana Supreme Court recently reiterated that summary judgment "'is a desirable tool to allow the trial court to dispose of cases where only legal issues exist.'" *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 813 (Ind. 2021) (quoting *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014)). The supreme court further reiterated that, "'Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims.'" *Griffin*, 175 N.E.3d at 813 (quoting *Hughley*, 15 N.E.3d at 1005)). This is because we do not want to prematurely close the courthouse doors to the non-moving party. *Griffin*, 175 N.E.3d at 813. However, this standard is not without bounds. *Id.* Specifically, even with our standard that is generous to the non-moving party, where the non-moving party fails to illustrate a genuine issue of material fact, we will affirm the trial court's grant of summary judgment. *See id.*

[21] Here, the Lees specifically argue that the trial court erred in granting summary judgment in favor of Wright and Rowe on the Lees' deception claim. The Lees also argue that the trial court erred in granting partial summary judgment in favor of Wright and summary judgment in favor of Rowe on their violation of statutory duties claims. In addition, the Lees argue that the trial court erred in granting summary judgment in favor of Rowe on their constructive fraud claim. We will address each of these three arguments in turn.

1. Deception Claim Against Wright and Rowe

[22] The Lees first argue that the trial court erred in granting summary judgment in favor of Wright and Rowe on the Lees' deception claim. Specifically, the Lees contend that Wright and Rowe each "committed deception by failing to disclose the . . . Restrictions in order to induce the Lees into buying the Property." (Lees' Br. 20). However, the Lees, who are the non-moving party in this summary judgment proceeding, did not file a cross-motion for summary judgment on their deception claim. Therefore, we rephrase the issue as whether the Lees have met their burden of showing that there is a genuine issue of material fact regarding whether Wright and Rowe each committed deception. We conclude that the Lees have not met that burden.

[23] At the time that the Lees filed their complaint, INDIANA CODE § 35-43-5-3, ("the Deception Statute"), provided, in relevant part, that "(a) A person who: . . . (2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity . . .

commits deception, a Class A misdemeanor."[2] I.C. § 35-43-5-3(a)(2). The Deception Statute allows treble damages for a person who has suffered a pecuniary loss. *Heartland Resources, Inc. v. Bedel*, 903 N.E.2d 1004, 1008 n.2 (Ind. Ct. App. 2009). A criminal conviction under the Deception Statute is not required to recover in a civil action. *Id*. Rather, a plaintiff need only prove the elements of the underlying crime by a preponderance of the evidence. *Klinker v. First Merchants Bank, N.A.*, 964 N.E.2d 190, 193 (Ind. 2012). One of these elements is "proof of a false or misleading *written* statement." *Ecker v. Rochester Ford New Holland, Inc.*, 694 N.E.2d 289, 291 (Ind. Ct. App. 1998) (emphasis in original).

[24] Here, however, our review of the Lees' designated materials reveals no statutorily required written statements. Indeed, the Lees argue that Wright and Rowe violated the Deception Statute by failing to disclose the Restrictions. However, the statute requires more than a failure to disclose. Rather, the statute specifically requires that the person who is alleged to have committed deception must have knowingly or intentionally made a false or misleading written statement. We further note that this written statement must have been made with the intent to obtain property, employment, or an educational opportunity. Here, the Lees have neither alleged nor designated evidence that either Wright or Rowe made a false or misleading written statement with intent to obtain property, employment, or an educational opportunity. The Lees

[2] The Deception Statute was repealed effective July 1, 2021.

have, therefore, failed to demonstrate a genuine issue of material fact. Accordingly, the trial court did not err in granting summary judgment in favor of both Wright and Rowe on the Lees' deception claim.[3]

2. Violation of Statutory Duties Claims Against Wright and Rowe

[25] The Lees also argue that the trial court erred in granting partial summary judgment in favor of Wright on their violation of a buyer's agent's statutory duties claim and summary judgment in favor of Rowe on their violation of a seller's agent's statutory duties claim. *See* IND. CODE § 25-34.1-10-10 (setting forth the statutory duties of a seller's agent) and IND. CODE § 25-34.1-10-11 (setting forth the statutory duties of a buyer's agent). The Lees specifically argue that there are genuine issues of material fact regarding whether Wright and Rowe violated their specific statutory duties when they failed to disclose the Restrictions to the Lees and provide them with a copy of the Restrictions. The Lees' argument is premised on their claim that they had no knowledge or notice of the Restrictions. However, because our review of the designated materials reveals undisputed evidence that the Lees had both constructive and

[3] We note that the Lees' reliance on *Concordia Theological Seminary, Inc. v. Hendry*, 2006 WL 1408385 (N.D. Ind. May 17, 2006) is misplaced. First, federal district court decisions are not binding authority on state courts. *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877, 894 (Ind. Ct. App. 2007), *trans. denied*. Second, the facts in the *Concordia* case are distinguishable from the facts before us. Specifically, in *Concordia*, Hendry made a written statement, a resume, with intent to obtain employment.

actual notice of the Restrictions, Wright and Rowe are entitled to judgment as a matter of law.

[26] The law recognizes two kinds of notice, constructive and actual. *Crown Coin Meter Co. v. Park P, LLC*, 934 N.E.2d 142, 147 (Ind. Ct. App. 2010). "Constructive notice is a legal inference from established facts." *Id*. (citation and quotation marks omitted). "A purchaser of real estate is presumed to have examined the records of such deeds as constitute the chain of title thereto under which he claims, and is charged with notice, actual or constructive, of all facts recited in such records showing encumbrances, or the non-payment of purchase money." *Id*. (citation and quotation marks omitted). *See also McIntyre v. Baker*, 660 N.E.2d 348, 352 (Ind. Ct. App. 1996) ("Deeds and mortgages, when properly acknowledged and placed on record as required by statute, are constructive notice of their existence and charge a subsequent grantee with notice of all that is known by the record.") (citation omitted). Actual notice occurs when notice has been directly and personally given to the person to be notified. *Id*.

[27] Here, the undisputed evidence reveals that the Restrictions were properly recorded. The Lees, therefore, had constructive notice of them. *See id*. The Lees also had actual notice of the Restrictions. Specifically, our review of the undisputed evidence reveals that, in October 2017, one month before the closing on the Sylvan Meadows home and the adjacent land, the Lees, who are experienced property purchasers and sellers, were given and signed the Coatses' Seller's Disclosure Form. That form clearly notified the Lees that the property

they were planning to purchase from the Coatses was subject to covenants, conditions, and/or restrictions. At the same time, the Lees entered into a Purchase Agreement with the Coatses. In the Purchase Agreement, the Lees checked a box indicating that they had received and executed the Seller's Disclosure Form, which clearly notified them of the Restrictions. In addition, by signing the Purchase Agreement, the Lees acknowledged that it was their responsibility to become fully acquainted with the neighborhood and any conditions that could affect the property. Although the Lees signed the Purchase Agreement, Larry doubted that he had read it, and Linda had not read it. Linda had also failed to read the Seller's Disclosure Form. However, this Court has previously explained that parties are obligated to know the terms of the agreements that they sign and cannot avoid their obligations under such agreements simply because they failed to read them. *Park 100 Investors, Inc. v. Kartes*, 650 N.E.2d 347, 349 (Ind. Ct. App. 1995).

[28] Because the Lees had both constructive and actual notice of the Restrictions, the trial court did not err in granting partial summary judgment in favor of Wright and summary judgment in favor of Rowe on the Lees' violation of statutory duties claims.

3. Constructive Fraud Claim Against Rowe

[29] Lastly, the Lees argue that the trial court erred in granting Rowe summary judgment on their constructive fraud claim. The Lees specifically argue that Rowe "committed constructive fraud by failing to disclose the . . . Restrictions

when she had a duty to do so." (Lees' Br. 36). However, the Lees, who are the non-moving party in this summary judgment proceedings, did not file a cross-motion for summary judgment on their constructive fraud claim. We, therefore, rephrase the issue as whether the Lees have met their burden of showing that there is a genuine issue of material fact regarding whether Rowe committed constructive fraud.

[30] Initially, however, we note that the Lees' brief, conclusory argument fails to set forth the elements of constructive fraud and cases applying these elements. The Lees have, therefore, waived appellate review of this issue. *See Bertucci v. Bertucci*, 177 N.E.3d 1211, 1224 (Ind. Ct. App. 2021) (explaining that a party who fails to set forth the relevant statute and cases interpreting it waives those arguments for appellate review).

[31] Waiver notwithstanding, there are no genuine issues of material fact regarding whether Rowe engaged in constructive fraud, and we, therefore, conclude that she is entitled to judgment as a matter of law on this claim. "Constructive fraud arises by operation of law from a course of conduct which, if sanctioned by law, would secure an unconscionable advantage, irrespective of the existence or evidence of actual intent to defraud." *Demming v. Underwood*, 943 N.E.2d 878, 892 (Ind. Ct. App. 2011) (citation and quotation marks omitted), *trans. denied*.

[32] Constructive fraud requires proof of the following elements:

> 1) a duty owing by the party to be charged to the complaining party due to their relationship; 2) violation of that duty by the making of deceptive material misrepresentations of past or

> existing facts or remaining silent when a duty to speak exists; 3) reliance thereon by the complaining party; 4) injury to the complaining party as a proximate result thereof; and 5) the gaining of an advantage by the party to be charged at the expense of the complaining party.

Butler v. Symmergy Clinic, PC, 158 N.E.3d 407, 412 (Ind. Ct. App. 2020).

[33] INDIANA CODE § 25-34.1-10-10 sets forth the limited statutory duties that Rowe, as the sellers' agent, owed to the Lees, as buyers, and provides, in relevant part, as follows:

> (c) A licensee representing a seller or landlord owes no duties or obligations to the buyer or tenant except that a licensee shall treat all prospective buyers or tenants honestly and shall not knowingly give them false information.
>
> (d) A licensee shall disclose to a prospective buyer or tenant adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the buyer or tenant.

I.C. § 25-34.1-10-10(c) and (d).

[34] The gravamen of the Lees' specific argument appears to be that a genuine issue of material fact remains regarding whether Rowe committed constructive fraud by violating the duties that she owed to them. Although the acts alleged to have constituted the violation, or breach, are generally a matter left to the trier of fact, where the facts are undisputed and lead to be a single inference or conclusion, we may as a matter of law determine whether a breach of duty has

occurred. *Mangold ex rel. Mangold v. Indiana Department of Natural Resources*, 756 N.E.2d 970, 975 (Ind. 2001).

[35] Here, our review of the designated evidence reveals undisputed evidence that Rowe, the Coates' real estate agent, placed a copy of the Seller's Disclosure Form, as well as a copy of the Restrictions, in a brochure box in the Coates' kitchen for potential purchasers to review. She also uploaded information about the Sylvan Meadows home, including the Restrictions, to the MLS listing. Rowe had minimal contact with the Lees. Specifically, Rowe opened the door for Linda when Linda viewed the property. Rowe never spoke with Larry. In addition, Rowe believed that Wright had spoken with the Lees about the Restrictions because that is what Wright had told her. Lastly, we note that the Purchase Agreement, which the Lees signed, specifically stated that the real estate agents were not responsible for obtaining or verifying information regarding the Sellers delivering the Restrictions to the Lees. None of this designated evidence establishes a genuine issue of material fact regarding whether Rowe violated the limited statutory duties that she owed to the Lees. Specifically, the Lees have not shown that there is a genuine issue of material fact regarding whether Roe violated her statutory duties by making material or past representations of past or existing facts. Nor have they shown that there is a genuine issue of material fact regarding whether Rowe violated her statutory duties by remaining silent when she had a duty to speak. Because the undisputed evidence leads to the single conclusion that Rowe did not commit constructive fraud, Rowe is entitled to judgment as a matter of law on the Lees'

constructive fraud claim. Accordingly, the trial court did not err in granting summary judgment in favor of Rowe on this claim.

[36] Affirmed.

Bailey, J., and Crone, J., concur.