

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Richard W. Lorenz
John R. McKay
Spencer, Indiana

ATTORNEY FOR APPELLEE

Samuel C. Drummy
Linton, Indiana

IN THE COURT OF APPEALS OF INDIANA

William Bates and Greg Bates,
Appellants-Plaintiffs,

v.

Wiper Corporation and Vinod
Gupta,
Appellees-Defendants

August 23, 2023

Court of Appeals Case No.
23A-PL-27

Appeal from the Owen Circuit
Court

The Honorable Kelsey Blake
Hanlon, Judge

Trial Court Cause No.
60C02-1911-PL-531

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] William Bates and Greg Bates (the Purchasers) executed a real estate contract (the Contract) for the purchase of certain real estate (the Property) from Vinod Gupta. Three and a half years later, the Purchasers stopped making payments on the Contract ostensibly because of continuing liability related to known underground storage tanks (USTs) and concern as to ownership of the Property after discovering that it was titled to Wiper Corporation (the Corporation), not Gupta.¹

[2] The Purchasers filed a complaint against Gupta and the Corporation for breach of contract, fraud, and negligent misrepresentation, seeking return of money paid and other damages. Gupta filed a counterclaim. After a bench trial, the trial court granted judgment in favor of Gupta and the Corporation on all claims. The Purchasers appeal, presenting the following restated issues for review:

1. Did the trial court err in determining that there was a valid contract between the Purchasers and Gupta?
2. Did the trial court err in determining that Gupta did not commit fraud in contracting to sell real estate of which he was not the titled owner?

¹ Gupta is the President of the Corporation.

3. Assuming there was a valid contract, did the trial court err by applying the forfeiture clause of the Contract rather than requiring the Property be foreclosed upon?

[3] We affirm.

Facts & Procedural History

[4] On September 1, 2010, Gupta purchased a tax sale certificate for the Property, which is located in Owen County, Indiana. Thereafter, Gupta titled the Property in the name of the Corporation, and the tax sale deed was recorded November 18, 2011.² On February 27, 2015, Gupta, in his personal capacity, and the Purchasers executed the Contract pursuant to which Gupta agreed to sell the Property to the Purchasers³ for \$25,000.

[5] Upon execution of the Contract, the Purchasers made a down payment to Gupta of \$1000 and, consistently made monthly payments, often more than the minimum due, for three and a half years. In total, the Purchasers paid \$14,450.28 in principal and interest, calculated at a rate of 8% per annum. They also paid the property taxes,⁴ insurance premiums, UST fees, and for

² At the time, Gupta had twelve parcels of real estate in Owen County titled in his name. In addition, other entities owned and controlled by Gupta were the titled owners to approximately twenty-eight parcels of real estate in Owen County.

³ William Bates owned the Property from 1980 through 1999 and operated a “service station” thereon. *Transcript* at 75. The USTs on the Property in 2015 were the same USTs that were on the Property when he previously owned it.

⁴ The Purchasers acknowledge that the property tax documents they received were addressed to the Corporation as the titled owner of the Property.

mowing and maintenance, all as required by the Contract. The Purchasers spent substantial funds relining the USTs and performing testing required by the Indiana Department of Environmental Management (IDEM).

[6] Although Section 3 of the Contract provided that any evidence or assurance of title was to be obtained at the expense of the Purchasers, they did not procure a title search. The Contract also contained a provision in which the Purchasers acknowledged that Gupta had made no warranties or representations pertaining to the quality or condition of the Property and that they had inspected the premises and agreed to purchase the Property in an “‘AS IS’ CONDITION WITH ALL ITS FAULTS.” *Exhibits* at 8 (capitalization in original).

[7] The Contract contained a forfeiture clause, providing in relevant part:

In the event Buyer deserts or abandons the Real Estate or commits any other willful breach of this Contract which materially diminishes the security intended to be given to Seller under and by virtue of this Contract, then, it is expressly agreed by Buyer that, Seller may, at Seller’s option, cancel this Contract and take possession of the Real Estate and remove Buyer therefrom or those holding or claiming under Buyer without any demand and to the full extent permitted by applicable law. In the event of Seller’s cancellation upon such default by Buyer, all rights and demands of Buyer under this Contract and in and to the Real Estate shall cease and terminate and Buyer shall have no further right, title or interest, legal or equitable, in and to the Real Estate and *Seller shall have the right to retain all amounts paid by Buyer toward the Purchase Price as an agreed payment for Buyer’s possession of the Real Estate prior to such default.* Such retention shall not bar Seller’s right to recover damages . . . including reasonable attorney fees incurred by Seller in enforcing any right hereunder.

Exhibits at 9 (emphasis supplied).

- [8] In 2018, IDEM instituted regulatory proceedings concerning remediation and cure for the USTs on the Property and assessed a civil penalty of \$10,100. This prompted the Purchasers to seek legal advice. It was then they learned that the Property was not titled to Gupta, but rather was titled to the Corporation. After November 2018, the Purchasers stopped making payments under the Contract and they did not pay any additional property tax installments, insurance, or maintenance fees. As of that time, \$16,747.20 of the original \$25,000 contract price remained unpaid.
- [9] After several months of nonpayment, Gupta contacted the Purchasers, at which time they informed him that they were no longer interested in purchasing the Property, citing their concerns about continued liability related to the USTs and the title defect they discovered. Gupta immediately offered to cure the title defect by retroactively ratifying the Contract on behalf of the Corporation, but the Purchasers refused Gupta's offer. Gupta then offered to sign the Property over to the Purchasers by quitclaim deed on behalf of the Corporation and forego collection of the remaining balance of the purchase price. The Purchasers rejected this offer as well, informing Gupta that they were no longer interested in the Property and would not accept title under any circumstances.⁵

⁵ In April 2019, Gupta quitclaimed title to the Property to another individual.

[10] On November 25, 2019, the Purchasers filed their complaint against Gupta and the Corporation alleging breach of contract, fraud, and negligent misrepresentation, and seeking actual and punitive damages. Gupta answered the complaint and filed a counterclaim for breach of contract. After unsuccessful mediation and the trial court’s denial of the Purchasers’ summary judgment motion, the trial court conducted a bench trial on October 6, 2022. On December 12, 2022, the trial court entered its final judgment, including findings of fact and conclusions of law, in favor of Gupta. The trial court enforced the forfeiture clause and awarded no additional damages .⁶ The Purchasers now appeal. Additional facts will be provided as necessary.

Discussion & Decision

Standard of Review

[11] The following two-tier standard of review applies in this case:

First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court’s proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence but consider only the evidence favorable to the trial court’s judgment. Challengers must establish that the trial court’s findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced

⁶ At the bench trial, Gupta made it clear that he was seeking only attorney’s fees incurred as a result of defending the action brought by the Purchasers. Finding that “Gupta’s conduct concerning the sale of the real estate contributed significantly to the dispute in this cause,” the trial court declined to award him attorney’s fees. *Id.* at 23.

a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law.

RCM Phoenix Partners, LLC v. 2007 E. Meadows, LP, 118 N.E.3d 756, 760 (Ind. Ct. App. 2019) (quoting *Estate of Kappel v. Kappel*, 979 N.E.2d 642, 651-52 (Ind. Ct. App. 2012)). Questions of contract formation are legal issues we review de novo. *Clark Cnty. REMC v. Reis*, 178 N.E.3d 315, 318 (Ind. 2021).

I. Validity of Contract - Statute of Frauds

[12] The Purchasers present several arguments challenging the trial court’s determination that there was a valid contract and that they were the ones who breached the Contract and triggered the forfeiture clause. We first note that the Purchasers’ reliance on Ind. Code § 32-21-1-3,⁷ is misplaced. The matter at issue is a contract for the purchase of real estate, not a conveyance of real estate. Therefore, the appropriate statute to consider is I.C. § 32-21-1-1(b), which provides in relevant part:

A person may not bring any of the following actions 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:

⁷ I.C. § 32-21-1-3 provides that “[a] conveyance of an existing trust in land, goods, or things in action is void unless the conveyance is in writing and signed by the party making the conveyance or by the party’s lawful agent.”

* * * *

(4) An action involving any contract for the sale of land.

The Statute of Frauds “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.” *Jernas v. Gumz*, 53 N.E.3d 434, 446 (Ind. Ct. App. 2016), *trans. denied*. It typically comes into play when there is an oral contract for the conveyance of land. In such case, “oral contracts for the conveyance of land are not void, but voidable and, the statute affects only the enforceability of contracts that have not yet been performed.” *Stephens v. Tabscott*, 159 N.E.3d 634, 639 (Ind. Ct. App. 2020). Here, we have more than an oral contract. Indeed, there is a written contract that the Purchasers seek to invalidate based on what they maintain was fraud committed by Gupta.

[13] The trial court found that the Purchasers and Gupta executed the Contract and that for the next three and a half years, the Purchasers acted in accordance with the terms of the Contract by paying the downpayment, monthly installments, property taxes, insurance, and maintenance fees. Indeed, there is no dispute that the parties intended to execute the Contract and be bound by the terms. For over three years, the parties were unaware of the title defect, proving that such had no bearing on their intent in executing the Contract. As the trial court noted, had the Purchasers completed a title search prior to executing the contract, they would have discovered the title defect and had it corrected prior to execution of the Contract. Having reviewed the record, we conclude that the

court's findings of fact are supported by the record and those findings support the trial court's conclusion that there was a valid contract between Gupta and the Purchasers for the sale of the Property.

II. Titled Ownership - Fraud

- [14] The Purchasers argue that the trial court erred in failing to find that Gupta committed fraud when he purported to sell real estate of which he was not the titled owner. The elements of actual fraud are: (a) material misrepresentation of past or existing facts by the party to be charged (b) which are false (c) which was made with knowledge or reckless ignorance of the falseness (d) was relied upon by the complaining party and (e) proximately caused the complaining party injury. *Kapoor v. Dybwad*, 49 N.E.3d 108, 121 (Ind. Ct. App. 2015), *trans. denied*.
- [15] Gupta acknowledged that he should not have executed the Contract in his personal capacity but rather on behalf of the Corporation, of which he was registered agent. In rejecting the Purchasers' claims of fraud, the court accepted Gupta's testimony that the representation in the Contract that he was titled owner of the Property was an "honest mistake resulting from his ownership and management of numerous properties in Owen County" and that such explanation was "supported by the uncontested evidence that, upon being notified of the mistake, Gupta . . . immediately offered to cure the title defect." *Appellants' Appendix* at 20. We will not second-guess the trial court's evaluation of the evidence or assessment of Gupta's credibility. The findings support the

trial court's conclusion that Gupta did not misrepresent ownership with knowledge or reckless ignorance of its falseness.

[16] The trial court also determined that Gupta's misrepresentation was not the proximate cause of the Purchasers' injuries. Specifically, the court found that the Purchasers refused to accept Gupta's offer to cure the title defect and his subsequent offer to immediately convey the Property to them and forego collection of the balance of the purchase price. Thus, the court found that their claimed damages were attributable to their agreement to purchase the Property "as is."

[17] To the extent the Purchasers suggest that Gupta committed fraud because he was aware of the severity of the problems with the USTs but did not disclose such to the Purchasers, their argument is not supported by the record. The court accepted Gupta's testimony that he had not withheld information and that, in fact, the purchase price was discounted because of the existence of the USTs. Further, the Purchasers admitted that they knew there were USTs on the Property and that they had the right to inspect the Property before executing the Contract. Finally, in executing the Contract, the Purchasers acknowledged that they were accepting the Property "as is." The Purchasers have not established that the trial court erred in determining that Gupta did not commit fraud.

III. Forfeiture versus Foreclosure

- [18] The Purchasers argue that the trial court erred in enforcing the forfeiture provision contained in the Contract. They rely on *Skendzel v. Marshall*, 301 N.E.3d 641 (1973), for the proposition that foreclosure, rather than forfeiture, was the appropriate remedy.
- [19] In *Skendzel*, our Supreme Court considered the equity of forfeiture as a remedy in land contracts given that forfeitures are generally disfavored in the law as significant injustice can result. *Id.* at 645-46. Forfeiture provisions in a land contract are not per se to be deemed unenforceable; but, under certain circumstances they may become unenforceable because of the equity underlying any contract. *Morris v. Weigle*, 383 N.E.2d 341, 344 (Ind. 1978). The court, in the exercise of its equitable powers, does not infringe upon the rights of citizens to freely contract. *Id.* The court may refuse, upon equitable grounds, to enforce the contract because of the actual circumstances at the time the court is called upon to enforce it. *Id.*
- [20] Here, the trial court concluded that because the Purchasers suddenly stopped making payments under the Contract, refused Gupta's offer to cure the title defect as well as his offer to transfer title to them and forego the balance of the contract price, and made express statements that they would not accept title "under any circumstances," "it was reasonable for Gupta to conclude that [the Purchasers] had repudiated and abandoned the Contract." *Appellants' Appendix* at 19. The court further concluded that this abandonment/repudiation of the

Contract justified invocation of the forfeiture clause contained therein. The trial court also determined that the alleged damages the Purchasers sought to recover, including payments made to Gupta toward the purchase price, insurance premiums, property taxes, mowing and maintenance expenses, UST fees, and UST testing required by IDEM, were expenses that were the responsibility of the Purchaser under the terms of the Contract and therefore, the Purchasers would not have been entitled to reimbursement for such through foreclosure proceedings.

[21] Pursuant to the Contract, the parties contemplated the circumstances under which a forfeiture could be had and, as the trial court determined, the circumstances here fit within that provision and justified forfeiture. The Purchasers have not convinced us that that trial court erred in enforcing the forfeiture provision of the Contract.

[22] Judgment affirmed.

Riley, J. and Pyle J., concur.