

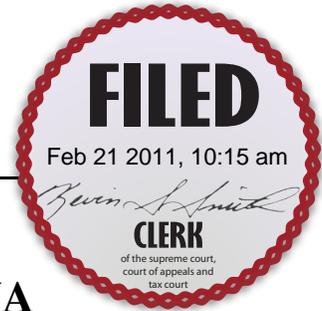
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**IN THE
COURT OF APPEALS OF INDIANA**

RICK DELON,)
)
Appellant-Defendant,)
)
vs.)
)
TIMOTHY RALLINGS and)
LAURINE RALLINGS,)
)
Appellees-Plaintiffs.)

No. 34A04-1006-PL-355

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Christopher M. Goff, Special Judge
Cause No. 34D02-0907-PL-814

February 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Rick Delon (“Delon”) appeals the trial court’s judgment in favor of Timothy (“Timothy”) and Laurine (“Laurine”) Rallings (collectively, “Rallings”) on Rallings’s complaint for breach of contract in the sale of residential real estate. Delon raises the following, restated issue for our review: whether the trial court erred in entering judgment in favor of Rallings when it construed payments made by them to be a down payment for the purchase of Delon’s real estate and not to be consideration for an option to purchase the subject real estate.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 5, 2007, Rallings and Delon entered into a Purchase Agreement, under which Rallings agreed to purchase from Delon certain residential real estate located in Kokomo, Howard County, Indiana. On the same day, Rallings and Delon executed other documents related to the real estate, including a Residential Lease Agreement (“Lease Agreement”), an Option to Purchase Property (“Option to Purchase”), and a Promissory Note.¹ Additionally, on that date, Rallings paid Delon \$7,500, which Rallings viewed as a portion of the down payment for the home. Subsequently, on an unknown date after April 5, 2007, Rallings and Delon entered into an Addendum to the Lease Agreement, an Addendum to the Option to Purchase, and an Addendum to the Promissory Note. After entering into the original contracts with Delon, Rallings paid \$1,100 a month rent for the home, which they

¹ Although both parties signed the Purchase Agreement, it appears that Rallings, but not Delon, signed the Lease Agreement, Option to Purchase, and Promissory Note, among other documents.

were to pay until they could obtain proper financing to purchase the home; this amount was raised to \$1,200 a month pursuant to the Addendum to the Lease Agreement. Rallings also paid \$589 per month towards the down payment until an additional \$7,000 was paid, making their total payment \$14,500.

Sometime in November 2008, Rallings received notice that the property at issue was under foreclosure. Shortly thereafter, Rallings, who had been having difficulty contacting Delon, made a monthly rent payment of \$1,000, rather than \$1,200 in an attempt to spur Delon to make contact with them. On December 9, 2008, Delon filed a Verified Claim for Immediate Possession and a Notice of Small Claims Action against Rallings. In resolution of this filing, the small claims court allowed Rallings to remain in the home until the end of April 2009 and did not order them to pay any money to Delon.

Rallings filed a complaint alleging that Delon committed fraud and was in breach of contract, and Delon filed an answer that contained a counterclaim alleging breach of the Lease Agreement and Purchase Agreement. After a bench trial, the trial court made findings and entered judgment in favor of Rallings for the amount of \$14,500. Delon now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

Although not entitled as such, the trial court's order contained findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). We review such findings and conclusions with a two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. *Sagarin v. City of Bloomington*, 932 N.E.2d

739, 743 (Ind. Ct. App. 2010) (citing *City of South Bend v. Dollahan*, 918 N.E.2d 343, 349 (Ind. Ct. App. 2009), *trans. denied* (2010)). Findings will only be set aside if they are clearly erroneous, i.e., when the record contains no facts or inferences supporting them. *Id.* A trial court's judgment is clearly erroneous if it is unsupported by the findings and the conclusions that rely upon the findings. *Id.* (citing *Rennaker v. Gleason*, 913 N.E.2d 723, 728 (Ind. Ct. App. 2009)). On appeal, we cannot reweigh the evidence or judge the credibility of any witness, and must affirm the trial court's decision if the record contains any supporting evidence or inferences.

Delon argues that the trial court erred in entering judgment in favor of Rallings because the facts presented at the bench trial did not support the trial court's findings. He specifically contends that, contrary to the trial court's findings, the documents entered into by the parties were not vague, confusing, or ambiguous. Rather, Delon asserts that the language in the documents was "quite clear" and that the \$14,500 paid by Rallings was merely for an option to purchase the property and not intended to be a down payment for the purchase of the property. *Appellant's Br.* at 8. He therefore claims that the trial court erred in looking to extrinsic evidence and should have only interpreted the contract according to its terms.

Appellate review under Trial Rule 52(A) is interwoven with the applicable substantive law. *Bernal v. Bernal*, 930 N.E.2d 673, 681 (Ind. Ct. App. 2010). When interpreting a contract, our paramount goal is to ascertain and effectuate the intent of the parties. *Stewart v. TT Commercial One, LLC*, 911 N.E.2d 51, 56 (Ind. Ct. App. 2009), *trans. denied*. A contract is not ambiguous merely because the parties disagree as to its proper construction. *Trs. of*

Ind. Univ. v. Cohen, 910 N.E.2d 251, 257 (Ind. Ct. App. 2009). A contract is ambiguous only if a reasonable person could find its terms susceptible to more than one interpretation. *Evan v. Poe & Assocs., Inc.*, 873 N.E.2d 92, 98 (Ind. Ct. App. 2007). When this court interprets an unambiguous contract, we must give effect to the intentions of the parties as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent. *Fid. Nat'l Title Ins. Co. v. Mussman*, 930 N.E.2d 1160, 1165 (Ind. Ct. App. 2010). We will not construe clear and unambiguous provisions, nor will we add provisions not agreed upon by the parties. *Id.*

Here, the evidence presented showed that, on April 5, 2007, the parties signed the Purchase Agreement, which purported to sell Rallings the subject real estate for the purchase price of \$144,900. Although several other documents were signed on that date, including the Option to Purchase, the Lease Agreement, and the Promissory Note, none of these other documents was referenced in the Purchase Agreement. In fact, except for the Option to Purchase's reference to the Purchase Agreement, none of the documents signed on that date referred to one another. Further, the addendums to the Option to Purchase, Lease Agreement, and Promissory Note were undated and refer only to the documents they purport to amend and not to any other documents.

On April 5, 2007, Rallings also paid Delon \$7,500 toward a down payment on the property, and they paid \$589 each month thereafter until they paid an additional \$7,000, for a total payment of \$14,500. Both Timothy and Laurine testified that they believed that the \$14,500 was a down payment for the purchase of the property, and Timothy stated that he

would not have paid the money toward a property that they did not plan to purchase. *Tr.* at 9, 13, 27. Delon, who had prepared all of the documents, maintained that the money was paid as consideration for an option to purchase the real estate at issue. *Id.* at 44, 57.

The trial court made the following, pertinent findings and conclusions:²

1. That on or about April 5, 2007, the parties signed a Purchase Agreement, the subject of which was certain residential real estate located . . . in Howard County, Indiana. By the terms of the agreement, [Delon] was to sell the real estate to [Rallings].

2. That at the same time the Purchase Agreement was signed, the parties also signed certain other documents relating to the real estate including: A Lease Agreement; and an Option to Purchase.

3. That between April of 2007 and November of 2008, almost without exception, [Rallings] paid [Delon] the monthly sum of \$1,100. Additionally, [Rallings] also paid [Delon] \$14,500 (\$7,500 initially and \$7,000 paid in monthly installments). [Rallings] viewed the \$14,500 payment as a down payment on the subject real estate.

4. That [Delon] maintains he viewed the \$14,500 payment as consideration for his extending to them an option to purchase the subject real estate.

....

7. That at some point, and the exact timing is not clear from the evidence, [Delon] stopped paying a mortgage that was secured by the real estate that is the subject of this lawsuit.

8. That the real estate went into foreclosure and [Rallings] received notice of that fact when a Howard County Sheriff's Deputy served papers at the subject real estate.

9. That [Rallings] had a horrible time maintaining contact with [Delon]. He changed addresses, changed phone numbers, and failed to return their calls. In an effort to obtain contact with [Delon], [Rallings] shorted him \$200 on one monthly payment. Thereafter, [Delon] filed a Small Claims action for eviction

² We commend the trial court on its thorough findings, which greatly facilitated out appellate review.

and back rent against [Rallings] in Howard County. . . . As a result of such filing, [Rallings] were allowed to remain in the subject property and were not ordered to pay any money to [Delon].

. . . .

11. That the subject Purchase Agreement, Lease Agreement, and Option to Purchase were all prepared by [Delon]. They were signed contemporaneously, and this fact created a very confusing situation which has resulted in this litigation. Specifically, [Rallings] viewed the \$14,500, over and above the monthly payments made to [Delon], as a down payment toward the purchase of the subject real estate. [Delon] maintains, conveniently so, that the \$14,500 was consideration paid in exchange for his extending [Rallings] an option to purchase the real estate.

. . . .

13. That, although [Delon] may have followed the technical letter of the contractual documents (which he prepared), the documents as prepared, and as presented to [Rallings], are at worst mutually exclusive and at best vague, confusing, and ambiguous as to what is expected of [Rallings] under the terms of the agreement.

14. That, specifically, [Rallings] testified that they thought they were making a \$14,500 down payment on a home which they were purchasing. They would not have paid \$14,500 in exchange for a right to purchase the subject real estate. No one would. Where, as here, [Rallings] paid all monies due and owing under their agreements with [Delon], one would expect that you would receive what you initially bargained for: A home.

15. That instead, due to [Delon]'s actions in not paying the mortgage secured by the subject real estate, [Rallings] are out all of the money that they paid to [Delon.] The Court finds that, due to the ambiguity in the contractual documents prepared by [Delon], it is proper to view the \$14,500 payments which [Rallings] made as a down payment on the subject real estate. Further, because of [Delon]'s actions, [Rallings] were unable to purchase the real estate despite the fact that they paid all monies which they agreed to pay [Delon] The Court finds that the proper remedy is to order [Delon] to pay [Rallings] back the sum of \$14,500 which they have now lost due to his failure to maintain payments on the mortgage secured by the subject real estate.

Appellant's App. at 8-10.

The trial court found that the contract documents were “at best vague, confusing, and ambiguous,” and our review of the evidence supports such a finding. *Id.* at 10. The documents were prepared by Delon, and when there is ambiguity in a contract, it is construed against its drafter. *MPACT Constr. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 910 (Ind. 2004). Construing the documents as a whole, the intention of the parties was that Rallings would enter into a lease-purchase agreement, under which they would lease the subject property until they had paid the down payment/option to purchase price, which would then be credited against the purchase price of the real estate. The third-party foreclosure of the property was sufficient cause for Rallings to deem themselves insecure, to cancel the contract and to obtain a refund of their down payment. We conclude that the evidence presented supported the trial court’s findings, and the findings supported the trial court’s judgment. The trial court did not err in entering judgment in favor of Rallings in the amount of \$14,500 and ordering Delon to pay such amount.

Affirmed.

CRONE, J., and BRADFORD, J., concur.