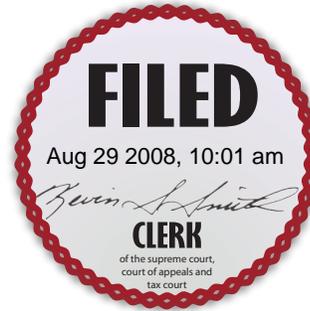


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TRAM DEVELOPMENT GROUP, INC.,)

Appellant-Defendant,)

vs.)

No. 45A03-0805-CV-256)

JOSEPH MAGINOT and)
FLORENCE MAGINOT,)

Appellees-Plaintiffs.)

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
The Honorable Richard F. McDevitt, Magistrate
Cause No. 45C01-0410-PL-239

August 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Tram Development Group, Inc., appeals the trial court's award of specific performance of the real estate contract in favor of Appellees-Plaintiffs Joseph and Florence Maginot. We affirm.

Issue

Whether the trial court abused its discretion in ordering specific performance as opposed to legal damages.

Facts and Procedural History

The briefs submitted for this appeal fail to meet the basic standards set forth in the Indiana Appellate Rules. Without the aid of the opinion from this Court addressing this case on a prior appeal, we could not adequately set out the basis for the litigation between the parties. Furthermore, the appendix submitted is deficient. Despite this Court remanding the case due to the absence of the complaint in the record, Tram again fails to include the complaint in its appendix.¹ Also absent is the rudimentary evidence: the contract.²

We are able to glean from the prior opinion that in 2001, the Maginots agreed to sell approximately fifty acres of property located in St. John, Indiana, to Tram. Tram Dev.

¹ See Indiana Appellate Rule 50(A)(2)(f) (Contents of appendices should include pleadings and other documents from the Clerk's Record in chronological order that are necessary for the resolution of the issues raised on appeal).

² Despite realizing the contract was not in the Appellant's Appendix, the Appellees choose to cite to the appendix from the first appeal rather than submit a separate appendix to provide an adequate record for this appeal. Appellees' Br. at 3. Indiana Appellate Rule 50(A)(3) states that Appellees' Appendices are also governed by Section (A)(2) of the Rule. Therefore, the Appellees should have submitted an appendix rather than cite to evidence not available to this Court.

Group, Inc. v. Maginot, No. 45C01-0410-PL-239, slip op. at 2 (Ind. Ct. App. June 22, 2007).

Pursuant to the written contract, the parties agreed they would not close on all of the property in any one calendar year for purposes of the Maginots' tax considerations. Id. at 5. The price per acre was dependent upon when each transaction closed. Id. at 3. The price for the latest time frame of September 30, 2003 to September 30, 2004 was \$18,000 per acre. Id.

By August 2004, Tram had purchased all but 9.067 acres. Id. Tram built a residential subdivision on the property. At that time, Tram notified the Maginots in writing that it would not purchase the remaining acres, indicating that they were not suitable for new home construction. Id. at 6.

On October 20, 2004, the Maginots filed a complaint against Tram, alleging breach of contract. Id. After a bench trial, the trial court found in favor of the Maginots, awarding \$163,206 plus amounts for pre-judgment interest, unpaid real estate taxes and the remaining earnest money. Id. Tram appealed.

On prior appeal, another panel of this Court concluded that Tram did breach the contract by refusing to purchase the remaining acreage as the contract was for the sale of the entire fifty acres. Id. at 8. However in addressing the issue of damages, the Court concluded that the trial court's order for the price of the remaining realty without requiring the conveyance of title to Tram resulted in double recovery. Id. at 10. Furthermore, it was noted that it was unclear what remedy the Maginots had requested as the complaint was not in the record nor was it clear what remedy the trial court had intended to impose. Id. at 9. Accordingly, this Court remanded the case to the trial court "to determine whether specific performance or legal damages is an appropriate remedy, including the proper disposition of

title to the real estate at issue.” Id. at 10. This Court also ordered the prejudgment interest to be recalculated as simple interest rather than compound. Id. at 13.

On remand, a hearing was held that mainly consisted of argument by counsel. Tram called its president to testify as to the value of the remaining parcel and tendered exhibits suggesting a calculation of legal damages utilizing this value. Tram continued to argue that the Maginots never requested the remedy of specific performance yet did not refer to the complaint or introduce it into evidence. The trial court took the arguments and evidence under advisement. In its subsequent order, the trial court awarded \$163,206, the same as the original order, plus amounts for prejudgment interest in terms of simple interest and unpaid real estate taxes. It also required the Maginots to convey the title to the real estate to Tram. After Tram filed a motion to correct errors, the trial court issued another order to take the earnest money, already paid, into account, reducing the total price for the land by that amount.

Tram now appeals.

Discussion and Decision

I. Standard of Review³

This is an appeal from a general judgment, as the trial court did not enter any findings of fact or conclusions of law. A general judgment may be affirmed upon any legal theory supported by the evidence. Humphries v. Ables, 789 N.E.2d 1025, 1030 (Ind. Ct. App.

³ Neither party provides the appropriate standard of review for the issue on appeal. See Indiana Appellate Rule 46(A)(8)(b). Furthermore, both parties rely on the same Indiana Supreme Court case in which *that* trial court did enter findings of facts and conclusions of law. See Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind.

2003). The decision whether to grant specific performance is a matter within the trial court's sound discretion. Stainbrook v. Low, 842 N.E.2d 386, 394 (Ind. Ct. App. 2006), trans. denied. As an action to compel specific performance sounds in equity, particular deference must be given to the judgment of the trial court. Id. We will reverse a trial court's decision compelling specific performance only if it is clearly against the reasonable deductions that may be drawn from the facts and circumstances before the court. Poppe v. Jabaay, 804 N.E.2d 789, 795 (Ind. Ct. App. 2004), trans. denied.

II. Analysis

Despite the absence of the complaint on appeal, it is undisputed that the Maginots' complaint sought monetary damages or "in the alternative that TRAM be ordered to complete the performance of same agreement." Appellant's Br. at 3.⁴ Contrary to Tram's contention, this quoted phrase is a request for specific performance of the contract. Thus, the Maginots requested alternative remedies of legal damages and specific performance.

There appears to be significant confusion in this case as to the difference between legal damages and specific performance. Damages is money claimed by, or ordered to be paid to, a person as compensation for loss or injury. Black's Law Dictionary 393 (7th ed. 2001). The measure of legal damages for these circumstances where the vendor/seller is suing for relief due to the purchaser's breach of an executory contract to purchase land is "(a) the difference between the market price of the land at breach and the contract price, plus

1997). We advise counsel to be more thoughtful in their determination of the appropriate standard of review.

⁴ See Ind. App. Rule 46(A)(6)(a) ("The facts shall be supported by page references to the Record on Appeal

special damages; or (b) the forfeiture of any reasonable earnest money deposit under the rules for liquidated damages.” Dan D. Dobbs, Law of Remedies, § 12.12 at 306 (2d ed. 1993).

“Injunctive performance of the contract is usually called specific performance. Such enforcement is another way of enforcing the plaintiff’s expectancy. It does so by requiring actual performance rather than a monetary valuation of that performance.” Id., § 12.1, at 10. This is exactly what the trial court’s order imposes. Tram is required to pay the Maginots \$163,206 [9.067 x \$18,000], and the Maginots shall convey title to the realty to Tram. These are the exact terms called for in the contract.

It is a matter of course for courts to grant specific performance of a valid contract for the sale of real estate. Ruder v. Ohio Valley Wholesale, Inc., 736 N.E.2d 776, 779 (Ind. Ct. App. 2000). Specific performance is an equitable remedy, and thus, the power to compel such a remedy is an extraordinary power. Id. “The equitable doctrine is that the enforcement of contracts must be mutual, and, the vendee being entitled to specific performance, his vendor must likewise be permitted in equity to compel the acceptance of his deed and the payment of the stipulated consideration. This remedy is available, although the vendor may have an action at law for the purchase money.” Migatz v. Stieglitz, 166 Ind. 361, 77 N.E. 400, 401 (1906).

Tram appears to have performed its portion of the contract up until the point that it was no longer advantageous. Despite agreeing to purchase all fifty acres, Tram waited until the last minute to inform the Maginots that it was not willing to buy the last portion of the land, which just happens to be the portion that is not suitable for Tram’s purposes. Tram is

of Appendix in accordance with Rule 22(C).”).

essentially asking this Court to permit it to keep the best portions of the land, break its original agreement, and pay a nominal amount as compensation to the Maginots. We do not believe such a solution is equitable. Therefore, we conclude that the trial court did not abuse its discretion in ordering specific performance for the outstanding portion of the contract for real estate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.