

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-896

ANTHONY STEWART, ET AL.
APPELLANTS

V.

COPELAND HOLDINGS, LLC
APPELLEE

Opinion Delivered MARCH 4, 2009

APPEAL FROM THE VAN BUREN
COUNTY CIRCUIT COURT,
[NO. CV-2007-309]

HONORABLE DAVID M. CLARK,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

The Van Buren County Circuit Court granted summary judgment to appellee Copeland Holdings, LLC, finding that no contract between the parties had been formed, and requiring appellants Anthony Stewart, Waylan Henley, Rebecca Henley, and Bob Hopkins to release the earnest money of \$20,000 plus interest to appellee. Appellants raise two points on appeal. First, they contend that the trial court improperly granted summary judgment because the pleadings, affidavits, and discovery responses raise genuine issues of fact. Second, they maintain that the trial court erred in its application of the law. We affirm.

Appellee paid \$20,000 earnest money to appellants as part of a contract to purchase property consisting of approximately 1277 acres lying in Van Buren and Searcy counties in Arkansas. Appellants Waylan and Rebecca Henley, husband and wife, held the property in



Henley Properties, LLC. The Henleys were the sole owners and only members of the LLC, and they executed and delivered to Eric Bray a durable power of attorney dated March 23, 2007, causing Eric Bray to be their attorney-in-fact.

Appellee sought to purchase the property and tendered an offer for appellants' acceptance on June 13, 2007. Appellants accepted the offer through their attorney-in-fact on July 25, 2007. On the same day, appellee tendered \$20,000 to the escrow company. However, the terms of the contract were never performed, and appellee claimed entitlement to its earnest money. Appellee filed a complaint in Van Buren County Circuit Court alleging misappropriation of the earnest money, breach of contract based upon failure to meet the feasibility contingency of the contract, and alternatively, asking for a finding that no contract was formed because appellants failed to fully execute the agreement.

After some discovery was conducted, appellee filed a Motion for Partial Summary Judgment alleging that appellants had failed to produce the power of attorney authorizing the attorney-in-fact to enter into the contract; that the Henleys' agency relationship was not disclosed to appellee; and that because the Henleys had no ownership interest in the property individually, but rather the property belonged to the LLC, there could be no binding contract. Appellants responded that a copy of the durable power of attorney, together with affidavits from Waylan and Rebecca Henley and Eric Bray, were attached to their response. Further, they claimed that Waylan and Rebecca Henley were the same as Henley Properties, LLC. They argued that they each had the right to bind and commit the LLC, and that there was part



performance on the part of both parties to the contract. Thus, they contended that they entered into a valid real-estate contract.

After a hearing on the summary-judgment motion, the trial court granted summary judgment to appellee, ordering the escrowed money to be returned to appellee.¹ Appellants timely filed a notice of appeal. This appeal followed.

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Castaneda v. Progressive Classic Ins. Co.*, 357 Ark. 345, 166 S.W.3d 556 (2004). In reviewing summary-judgment cases, we determine whether the trial court's grant of summary judgment was appropriate based on whether the evidence presented by the moving party left a material question of fact unanswered. *Norris v. State Farm Fire & Cas. Co.*, 341 Ark. 360, 16 S.W.3d 242 (2000). The moving party always bears the burden of sustaining a motion for summary judgment. *Youngman v. State Farm Mut. Auto. Ins. Co.*, 334 Ark. 73, 971 S.W.2d 248 (1998). Where there are no disputed material facts, our review must focus on the trial court's application of the law to those undisputed facts. *See id.*

Appellants first argue that the trial court improperly granted summary judgment to appellee because the pleadings, affidavits, and discovery responses raise genuine issues of

¹Although appellee had filed a Motion for Partial Summary Judgment, the resulting order is entitled Summary Judgment and is a final order as it concludes all claims as to all parties, and no certification of final judgment is required on appeal. *See Ark. R. Civ. P. 54(b)*.



fact. Appellants claim that the trial court failed to acknowledge the factual disputes between the parties from a review of these documents. First, appellants contend that a plain and ordinary reading of the real-estate contract raises a question of as to whether that a binding and enforceable contract was entered into between the parties. Appellees cited in their summary-judgment motion Arkansas Code Annotated section 4-59-101(a)(4), which provides:

(a) Unless the agreement, promise, or contract, or some memorandum or note thereof, upon which an action is brought is made in writing and signed by the party to be charged therewith, or signed by some other person properly authorized by the person sought to be charged, no action shall be brought to charge any:

. . . .

(4) Person upon any contract for the sale of lands, tenements, or hereditaments, or any interest in or concerning them. . . .

Appellants point out that, pursuant to that statute, someone other than a party, acting on behalf of that party as an agent, can enter into a binding contract for the sale of lands. The trial court granted appellee's motion because it determined that the attorney-in-fact signed the contract on behalf of appellants Waylan and Rebecca Henley individually and not as their agent or in the capacity of their LLC. Appellants assert that this is a misapplication of the law. Further, they claim that there remain factual issues to be litigated regarding the agreements of the parties. Appellants submitted affidavits by Eric Bray and Waylan and Rebecca Henley. Bray claims to have signed the Henleys' names on behalf of the LLC. The Henleys' affidavit claims that they had given their attorney-in-fact authority and that they felt he had bound them to the terms of the real-estate contract. They attached to their exhibit the



LLC's Articles of Incorporation, board resolutions, the power of attorney, and the contract.

Appellants argue that these documents raise factual issues making summary judgment inappropriate.

However, appellee claims that appellants have failed to describe any fact that is in issue regarding the formation of a contract. We agree. The trial court found that no contract was formed because neither the owner nor its agent were ever a party to the contract. The Henleys are the only persons identified in the contract, and Eric Bray signed as their agent. However, the Henleys did not own the property; the LLC owned it.

The trial court did not err in its application of the law based on a finding of fact that neither the owner of the property nor its agent signed the contract nor was ever identified as a party to the contract. The facts regarding whether a contract was formed are not in dispute. The sellers in the contract are listed as Tony Stewart, Waylan Henley and Rebecca Henley. However, the Henleys owned no interest in this property because they had conveyed by way of warranty deed recorded April 18, 2006, their right, title, and interest to the land at issue. Eric Bray signed the contract as attorney-in-fact for Waylan Henley and Rebecca Henley. Again, the Henleys had no ownership interest in the property.

An essential element of a contract is "competent parties." *See Youree v. Eshaghoff*, 99 Ark. App. 4, 256 S.W.3d 551 (2007). Because the LLC was never a party to the contract, it cannot be argued that an enforceable contract was ever formed. Accordingly, we hold that the trial court's decision granting summary judgment was not clearly erroneous.



Affirmed.

VAUGHT, C.J., and KINARD, J., agree.