MEMORANDUM DECISION

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

Singleton St. Pierre Realty Investments, LLC,

Appellant-Plaintiff/Counterclaim Defendant,

v.

Estate of William E. Singleton,

Appellee-Defendant/Counterclaimant

December 6, 2022

Court of Appeals Case No. 22A-PL-890

Appeal from the Marion Superior Court

The Honorable Heather A. Welch, Judge

Trial Court Cause No. 49D01-1912-PL-51688

Crone, Judge.

Case Summary

[1] Singleton St. Pierre Realty Investments, LLC (SSP), filed a complaint against the Estate of William E. Singleton (the Estate) alleging breach of a loan sale agreement and seeking a declaratory judgment in its favor. The Estate counterclaimed against SSP alleging breach of a purchase and sale agreement and seeking a declaratory judgment in its favor. The parties filed cross-motions for summary judgment. The trial court denied SSP's motion and granted the Estate's motion and awarded the Estate damages and attorney's fees. SSP appeals the trial court's summary judgment rulings and fee award. We affirm.

Facts and Procedural History

[2] The relevant facts are undisputed.[1] William E. Singleton (Singleton) operated a funeral home in Indianapolis and owned a company known as Singleton Family Properties, LLC (Singleton Properties). Singleton Properties owned commercial property (the Property) that was used as a funeral home. Pursuant

[1] Indiana Appellate Rule 46(A)(6) provides that an appellant's statement of facts "shall describe the facts relevant to the issues presented for review" and "shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)." SSP's statement of facts is primarily a verbatim recitation of the trial court's order, which includes many findings not relevant to the issues presented for review and refers to documents that SSP failed to include in its appendix. Indiana Appellate Rule 50(A)(2) provides in pertinent part that an appellant's appendix "shall contain … (f) pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]" Among the necessary documents missing from SSP's original appendix are its complaint, the Estate's affirmative defenses and counterclaims, SSP's reply thereto, and the parties' summary judgment motions, supporting briefs, and designations of evidence. The Estate filed its own appendix, which includes its designation of evidence, affirmative defenses, and counterclaims, as well as SSP's complaint. Finally, SSP filed a supplemental appendix, which includes other necessary documents omitted from its original appendix. We deny the Estate's request to dismiss SSP's appeal due to its failure to file a conforming appendix, but we encourage counsel to comply with Rule 50(A) in future appeals, which would obviate the need for us to ping-pong among multiple appendices.

to a lease agreement that was executed in 2013 (the Lease), Singleton Properties leased the funeral home to an entity known as Singleton Enterprises II, Inc. (Singleton II), which was owned by an unrelated third party that operated the funeral home. Singleton II's lease payments were infrequent, and an arrearage of over $300,000 accrued.

[3] Also in 2013, one of Singleton's businesses sold its assets to Singleton II and extended a $1,300,000 loan (the Loan) to that entity. Singleton II executed a promissory note (the Note) that was secured by a security agreement and the personal guaranty of Anthony Edwards and Kimberly Edwards (collectively the Loan Documents). The Note was later assigned to Singleton individually. When Singleton died testate in April 2017, Singleton II owed more than $1,000,000 on the Note. After Singleton's death, the Note, the Lease, and Singleton Properties became part of the Estate. Singleton's will was submitted to supervised probate in Johnson Superior Court, and The National Bank of Indianapolis was appointed personal representative of the Estate.

[4] The Estate negotiated to sell both the Property and the Loan to St. Pierre Realty Investments, LLC (St. Pierre Realty). The parties drafted and executed both an agreement for the sale of the Property for $1,500,000 (the Purchase and Sale Agreement) and an agreement for the sale of the Loan and the Loan Documents for $500,000 (the Loan Sale Agreement). The Estate petitioned the probate court for authorization to sell the Property and the Note pursuant to the terms of the agreements. On October 7, 2019, after a hearing, the probate court issued an order approving the transactions. Pursuant to the terms of the

agreements and the probate court's order, closing on the agreements was required to occur no later than October 15, 2019.

[5] On October 9, Singleton II paid off the outstanding balance on the Note. The Estate notified St. Pierre Realty, and the latter's counsel acknowledged that the payoff meant that the Note "cannot be transferred" to St. Pierre Realty. Appellee's App. Vol. 2 at 8. St. Pierre Realty's counsel made two offers to amend the Purchase and Sale Agreement by reducing the Property's sale price and deleting Section 7.3(d) of the agreement, which provides,

> As of August 9, 2019, Tenant [Singleton II] is in arrears for amounts due under the Lease in the total amount of $366,183.91, and Seller [the Estate] is owed certain amounts under the Loan Documents. To the extent Purchaser [St. Pierre Realty/SSP] (i) is paid in full for all amounts owed (including collection costs) under the Loan Documents, and (ii) receives all or a portion of the $366,183.91 (or such other amount as calculated as of the Closing) in cash or same day funds after the Closing and after payment in full of all amounts owed under the Loan Documents, Purchaser will promptly remit such amounts to Seller. Section 7.3 (d) shall survive the Closing.

Appellant's App. Vol. 2 at 57. The Estate rejected both offers. On October 11, St. Pierre Realty assigned its interests under the agreements to SSP. On October 15, the Estate and SSP closed on the sale of the Property. After closing, SSP collected Singleton II's full arrearage under the Lease and refused to pay it to the Estate. The Loan Sale Agreement transaction did not close.

[6] In December 2019, SSP filed a complaint against the Estate in the trial court alleging that the Estate breached the Loan Sale Agreement and requesting a judgment declaring that SSP was not obligated to remit the Lease arrearage to the Estate. The Estate filed counterclaims alleging that SSP breached the Purchase and Sale Agreement and requesting a judgment declaring that SSP was obligated to remit the Lease arrearage. The parties filed cross-motions for summary judgment. In December 2021, after a hearing, the trial court issued a detailed order denying SSP's motion and granting the Estate's motion. The Estate requested a hearing on damages and attorney's fees. In March 2022, after a hearing, the trial court issued an order awarding the Estate $424,496.93 in damages for the arrearage plus $50,102.04 in prejudgment interest. The court also awarded the Estate $90,295 in attorney's fees and costs. SSP now appeals the trial court's summary judgment rulings and fee award.

Section 1 – The trial court did not err in granting the Estate's summary judgment motion and denying SSP's summary judgment motion on the Estate's claim for breach of the Purchase and Sale Agreement.

[7] SSP first challenges the trial court's rulings on the parties' summary judgment motions. "Summary judgment is a tool which allows a trial court to dispose of cases where only legal issues exist." *Rossner v. Take Care Health Sys., LLC*, 172 N.E.3d 1248, 1254 (Ind. Ct. App. 2021), *trans. denied*. "Summary judgment is appropriate only if the designated evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id*. (citing, inter alia, Ind. Trial Rule 56(C)). "Summary judgment may be

particularly appropriate in contract disputes, as interpretation of a contract presents a question of law and is reviewed de novo." *Sapp v. Flagstar Bank, FSB*, 956 N.E.2d 660, 663 (Ind. Ct. App. 2011). "We may affirm the grant of summary judgment on any basis argued by the parties and supported by the record. However, neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court." *Id*. (citation omitted). "Our standard of review is not altered by the fact that the parties made cross-motions for summary judgment. Instead, we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law." *Id*. (citation omitted). "A trial court's findings on summary judgment are helpful in clarifying its rationale, but they are not binding on this court on review." *Brandell v. Secura Ins.*, 173 N.E.3d 279, 284 (Ind. Ct. App. 2021). "A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous." *Hussain v. Salin Bank & Tr. Co.*, 143 N.E.3d 322, 328 (Ind. Ct. App. 2020), *trans. denied*.

[8] "The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts." *Peoples Bank & Trust Co. v. Price*, 714 N.E.2d 712, 716 (Ind. Ct. App. 1999), *trans. denied*. "Courts may not construe clear and unambiguous provisions, nor may courts add provisions not agreed upon by the parties." *Lake Imaging, LLC v. Franciscan Alliance, Inc.*, 182 N.E.3d 203, 211 (Ind. 2022). "Unambiguous contracts must be specifically enforced as written without any additions or deletions by the court." *Perfect v. McAndrew*, 798

N.E.2d 470, 479 (Ind. Ct. App. 2003). "In interpreting a written contract, the court should attempt to determine the intent of the parties at the time the contract was made as discovered by the language used to express their rights and duties." *Peoples Bank*, 714 N.E.2d at 717. "If the language of the instrument is unambiguous, the intent of the parties is determined from the four corners of that instrument." *Id*. at 716. "If, however, a contract is ambiguous or uncertain, its meaning is to be determined by extrinsic evidence and its construction is a matter for the fact finder." *Id*. "The contract is to be read as a whole when trying to ascertain the intent of the parties." *Id*. at 717. "The court will make all attempts to construe the language in a contract so as not to render any words, phrases, or terms ineffective or meaningless." *Id*.

[9] The Estate alleged that SSP breached the Purchase and Sale Agreement by "failing to pay the [Lease] arrearage to the Estate" and that the Estate was "entitled to a declaratory judgment compelling" the payment of the arrearage. Appellee's App. Vol. 2 at 89, 90. To reiterate, Section 7.3(d) of the agreement reads as follows:

> As of August 9, 2019, Tenant [Singleton II] is in arrears for amounts due under the Lease in the total amount of $366,183.91, and Seller [the Estate] is owed certain amounts under the Loan Documents. To the extent Purchaser [St. Pierre Realty/SSP] (i) is paid in full for all amounts owed (including collection costs) under the Loan Documents, and (ii) receives all or a portion of the $366,183.91 (or such other amount as calculated as of the Closing) in cash or same day funds after the Closing and after payment in full of all amounts owed under the Loan Documents,

> Purchaser will promptly remit such amounts to Seller. Section 7.3 (d) shall survive the Closing.

Appellant's App. Vol. 2 at 57.

[10] It is undisputed that *no* amounts were owed under the Loan Documents at the time of Closing because Singleton II had paid the Note in full, and that SSP did not remit the arrearage to the Estate. SSP argues that because the Note had a balance of over $1,000,000 when the Purchase and Sale Agreement was executed, "*[t]hat's* the amount—plus [its] collection costs—that the parties understood and intended that [SSP] had to recover before it would be obligated to remit the Arrearage to the Estate." Appellant's Br. at 28. But the Estate correctly observes that "[t]he plain language of the contract shows that the parties contemplated that [SSP] might ultimately receive less than the balance due on the Note as of the date the contract was executed[,]" as the contract does not specify a sum certain, and that if SSP "had wanted to guarantee that it would receive a certain minimum amount under the Note before paying the Arrearage, it could have bargained for that language." Appellee's Br. at 20. SSP did not bargain for that language, however, and we must enforce the unambiguous provisions of the agreement as written. *Perfect*, 798 N.E.2d at 479.

[11] SSP complains that enforcing the agreement as written "renders the Loan Payment Condition both ineffective and meaningless" and is unreasonable and unfair. Appellant's Br. at 29. The condition was rendered "ineffective and meaningless" only because SSP failed to negotiate a guaranteed minimum payment under the Note, and thus SSP has only itself to blame for any

perceived unreasonableness or unfairness. The Estate points out that if SSP "no longer wanted to proceed with the sale once it learned that the Note had been paid in full, [it] could have elected to terminate the Purchase and Sale Agreement." Appellee's Br. at 24. In sum, we affirm the trial court's entry of summary judgment for the Estate on its claim for breach of the Purchase and Sale Agreement, as well as the award of damages for the arrearage and the award of prejudgment interest, the amounts of which are not disputed.

Section 2 – The trial court did not err in denying SSP's summary judgment motion and granting the Estate's summary judgment motion on SSP's claim for breach of the Loan Sale Agreement.

[12] SSP alleged that the Estate breached the Loan Sale Agreement by "fail[ing] and refus[ing] to sell the Loan and the Loan Documents" to SSP. Appellee's App. Vol. 2 at 77. The Loan Sale Agreement reads in pertinent part as follows:

> C. Subject to the terms and conditions contained in this Agreement, Seller desires to sell, and Purchaser desires to purchase, Seller's rights under the Loan and related documents.[2]
>
> ….
>
> 2.1 **Agreement to Buy and Sell Loan**. Subject to and in accordance with the terms and conditions contained in this

[2] Contrary to SSP's assertion, the probate court's October 7, 2019 order authorized, but did not compel, this transaction. *See* Appellee's App. Vol. 2 at 92 ("The Personal Representative requests that the Court authorize the sale of two assets of the estate."), 97 ("The Personal Representative is authorized to sell [the assets]."). The order states only that closing "shall occur" no later than October 15. *Id.* at 97.

> Agreement, Seller agrees to sell, transfer and assign, without recourse, (except as expressly set forth in this Agreement), and Purchaser agrees to purchase for the Purchase Price, the Loan and the Loan Documents.
>
> ….
>
> 3.1 **Purchase Price**. In consideration of and as a condition precedent to Seller's conveyance of its interests in the Loan Documents, Purchaser shall pay to Seller $500,000.00 on or before the Closing Date.
>
> 3.2 **Payment of Purchase Price**. The Purchase Price shall be paid to Seller by Purchaser in immediately available funds, in lawful money of the United States of America, which shall be legal tender for all debts due at the time of payment.
>
> ….
>
> 4.1 **Closing**. The Closing shall not be deemed to have occurred, and the Transfer Documents[3] … shall not be deemed effective, unless and until: (a) the funds have been disbursed to Seller in accordance with Section 3.2 above; (b) the Transfer Documents have been released to Purchaser in accordance with this Agreement; and (c) the closing shall have occurred under [the] Purchase and Sale Agreement ….

Appellant's App. Vol. 2 at 65, 67-68 (underlining replaced with bolding).

[3] The Transfer Documents include the Note ("endorsed by Seller without recourse, payable to the order of Purchaser"), "assignments with respect to all documents securing the indebtedness evidenced by the Note," and the Loan Documents themselves. Appellant's App. Vol. 2 at 68.

[13] The Estate notes that on appeal, SSP "does not identify which term of the Loan Sale [Agreement] the Estate allegedly breached." Appellee's Br. at 24.[4] The Estate points out that nothing prevented the Estate from accepting the amount due under the Note before the closing date and that nothing gave SSP any right to the Note's proceeds before the closing date. The Estate further observes that had SSP "wanted to prevent an early payoff of the Note or require that the Note have some minimum balance at the time of closing, it could have demanded that the Loan Sale Agreement include language to that effect." *Id*. at 26. Additionally, the agreement "could have included language reducing the purchase price on the Loan Sale Agreement to account for any payments made on the Note prior to the closing date[,]" but it did not. *Id*. at 28. More to the point, SSP did not tender $500,000 to the Estate and did not go forward with the closing as required by the agreement, thus relieving the Estate of performing its obligations under the agreement. *See Rogier v. Am. Testing & Eng'g Corp.*, 734 N.E.2d 606, 621 (Ind. Ct. App. 2000) (noting that appellee's conduct could be perceived as "a breach of its duty under the parties' exclusive listing agreement, which, in turn, relieved [appellant] of performing his obligations under the agreement"), *trans. denied* (2001). Accordingly, we affirm the trial court's summary judgment rulings on this claim.

[4] SSP makes much ado about allegedly inapplicable affirmative defenses that the Estate waived by failing to assert them in its answer, none of which are at issue here.

Section 3 – The trial court did not abuse its discretion in awarding the Estate attorney's fees.

[14] Finally, SSP challenges the trial court's award of attorney's fees to the Estate. "We review a trial court's award of attorney's fees for an abuse of discretion." *Prater v. Harris & Sons Landscaping, LLC*, 175 N.E.3d 855, 859 (Ind. Ct. App. 2021). "An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances before the court, or the court misinterprets the law." *Id*.

[15] The trial court awarded fees pursuant to Section 22 of the Purchase and Sale Agreement, which states, "If a party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party to be fixed by the court in the same action." Appellant's App. Vol. 2 at 60. SSP asserts that this provision is inapplicable because SSP initiated this lawsuit to enforce the terms of the Loan Sale Agreement. We disagree. By filing its counterclaim, the Estate commenced its own legal proceeding to enforce the terms of the Purchase and Sale Agreement, in which it was the prevailing party; the fact that SSP won the race to the courthouse is irrelevant. *See Delacruz v. Wittig*, 42 N.E.3d 557, 560 (Ind. Ct. App. 2015) ("A counterclaim for affirmative relief is one that could have been maintained independently of the plaintiff[']s action."), *trans. denied*. Accordingly, we find no abuse of discretion in this regard.

[16] SSP also argues that the Estate "did not present evidence as to how much of the $90,250.00 in attorneys' fees was incurred to enforce the Purchase and Sale Agreement, and how much was incurred to defend [SSP's] claim for breach of the Loan Sale Agreement[,]" which did not have a fee-shifting provision. Appellant's Br. at 37. This argument ignores the trial court's finding, which SSP does not challenge, that "[a]ll of the claims asserted, and arguments made by the parties in this action are intertwined and relate to the enforcement of the Purchase and Sale Agreement." Fee Order at 5.[5] SSP has failed to establish an abuse of discretion in this respect, so we affirm the trial court's fee award.

[17] Affirmed.

May, J., and Weissmann, J., concur.

[5] This finding is supported by the testimony of the Estate's counsel. When asked whether the requested fees were "all of the attorney fees that [he] incurred both prosecuting and defending the claims in this action[,]" he replied, "Well, we certainly don't characterize it as prosecuting and defending. […] I would say it's litigating this action because the issues are so intertwined." Tr. Vol. 2 at 31, 32.