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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-636

No. COA22-110

Filed 20 September 2022

Nash County, No. 20CVS1210

F6 LAND COMPANY, LLC, Plaintiff,

v.

RONALD O. EDWARDS, Defendant.

Appeal by defendant from order entered 1 October 2021 by Judge Jeffery B. Foster in Nash County Superior Court. Heard in the Court of Appeals 24 August 2022.

Farris & Thomas Law, P.A., by Albert S. Thomas, Jr. and William MJ Farris for plaintiff-appellee.

Battle, Winslow, Scott & Wiley. P.A., by W. Dudley Whitley III and M. Greg Crumpler for defendant-appellant.

TYSON, Judge.

¶ 1 Ronald O. Edwards ("Defendant") appeals from order entered granting summary judgment in favor of F6 Land Company, LLC ("Plaintiff"). We affirm.

I. Background

¶ 2 Defendant is the owner of a sixteen-acre parcel of real property ("Old Mill

Property") located in Nash County. The Old Mill Property is adjacent to other tracts owned by Defendant's brother and two cousins. Defendant's two cousins had listed their tracts adjacent to the Old Mill Property for sale with real estate agent Scott Hicks with Whitetail Properties Real Estate, LLC. Defendant had listed an unrelated twelve-acre parcel with Hicks and understood him to be his exclusive agent. Hicks is not a party to this action.

¶ 3 On 15 October 2018, Hicks solicited Defendant to sell the Old Mill Property via text message. Hicks texted Defendant stating, "his buyers were looking to buy [the] 16 Acre Old Mill Property for $[3,]000 per acre." Defendant believed the Old Mill Property was worth $4,000 per acre and was not interested in selling the property at that price. Hicks continued to solicit Defendant to sell the Old Mill Property.

¶ 4 Defendant and Hicks spoke on the telephone when Defendant relayed his concerns with selling the property: (1) the water source to Defendant's brother's parcel would have to be protected; (2) the small parcel of land adjacent to the Old Mill Property owned by Defendant and his brother would have to be included in the sale; (3) Defendant and his brother would not grant access to a fifty-foot wide easement shown on a survey map; and, (4) Defendant wanted $4,000 per acre.

¶ 5 On 8 December 2018, Hicks told Defendant he had received a "great offer" for the Old Mill Property and his concerns were agreed to. Hicks informed Defendant of an offer for $3,000 per acre and all other concerns had been met. Defendant offered

to compromise the sale price at $3,500 per acre. Defendant and his brother agreed to sign the listing agreement with Hicks, as their exclusive agent. The listing agreement contained a designated agent option which Defendant believed meant Hicks was acting as his and his brother's sole agent. After receiving the listing agreement, Defendant questioned Hicks about certain portions of the listing agreement. Hicks told Defendant "to sign the document and they would 'fix' the document in their office later."

¶ 6 Defendant and his brother signed the listing agreement with Hicks on 10 December 2018. Two days later, Hicks presented Defendant with an offer to purchase and contract on 12 December 2018. The offer to purchase and contract listed Hicks as a dual agent. On 13 December 2018, Defendant signed the offer to purchase, which provided a sale price of $48,000, $250 in due diligence payments, and $1,000 in earnest money. Plaintiff paid the $250 due diligence fee to Defendant and paid $1,000 to Hicks to hold in escrow for closing. The due diligence period expired on 24 December 2018, with neither party stating any objections, and settlement and closing was scheduled for 30 January 2019.

¶ 7 In January 2019, Defendant attempted to cancel the contract. Defendant stated his brother's contract to sell the adjoining land did not contain language to preserve the easement to the well. Defendant contacted the closing attorney and offered to pay his attorney's fees if he could cancel the contract. The closing attorney

replied Plaintiff wanted to close. Defendant also contacted Hicks, who prepared a termination of contract with release between Plaintiff and Defendant. Defendant agreed to pay Hicks $1,920 for commission. Defendant signed the termination of contract with release, but Plaintiff did not.

¶ 8 On 24 September 2020, Plaintiff filed this action seeking specific performance of the 13 December 2018 contract to sell the Old Mill Property. Defendant answered and asserted affirmative defenses, *inter alia*: fraud, accord and satisfaction, and duress. On 12 March 2021, Plaintiff filed a motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure. Following a hearing on 27 September 2021, the trial court granted Plaintiff's motion by order filed 1 October 2021. Defendant appeals.

II. Jurisdiction

¶ 9 This Court possesses jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2021).

III. Issues

¶ 10 Defendant argues the trial court erred by granting summary judgment for Plaintiff.

IV. Plaintiff's Motion for Summary Judgment

A. Standard of Review

¶ 11 "Our standard of review of an appeal from summary judgment is de novo; such

judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)).

¶ 12 A genuine issue of material fact is one supported by evidence that would "persuade a reasonable mind to accept a conclusion." *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579, 573 S.E.2d 118, 124 (2002) (citation omitted). "An issue is material if the facts alleged would . . . affect the result of the action[.]" *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518, 186 S.E.2d 897, 901 (1972).

¶ 13 "The party moving for summary judgment bears the burden of establishing that there is no triable issue of material fact." *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681, 565 S.E.2d 140, 146 (2002) (citation omitted). A party may meet this burden "by proving that an essential element of the opposing party's claim is non-existent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim or cannot surmount an affirmative defense which would bar the claim." *Id.* (citation and quotation marks omitted).

¶ 14 When the court reviews the evidence at summary judgment, "[a]ll inferences of fact from the proofs offered at the hearing must be drawn against the movant and in favor of the party opposing the motion." *Boudreau v. Baughman*, 322 N.C. 331,

343, 368 S.E.2d 849, 858 (1988) (citation omitted). We review the grant of summary judgment *de novo*. *Id.*

B. Analysis

¶ 15 Defendant argues the trial court erred by granting Plaintiff's motion for summary judgment. He asserts there was fraud in the inducement; the purchase and sale agreement was later rescinded, accorded, and satisfied; and, he entered the contract under duress.

¶ 16 Our general statutes provide:

> All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, . . . shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

N.C. Gen. Stat. § 22-2 (2021). This contract meets those requirements.

¶ 17 Precedents concerning the validity of a land sales contract are long established. "The well-settled elements of a valid contract are offer, acceptance, consideration, and mutuality of assent to the contract's essential terms." *Se. Caissons, LLC v. Choate Constr. Co.*, 247 N.C. App. 104, 110, 784 S.E.2d 650, 654 (2016) (citation omitted). "A contract is simply a promise supported by consideration, which arises . . . when the terms of an offer are accepted by the party to whom it is extended." *McLamb v. T.P., Inc.*, 173 N.C. App. 586, 588, 619 S.E.2d 577, 580 (2005) (citation and quotation marks

omitted). "Generally, a party seeking to enforce a contract has the burden of proving the essential elements of a valid contract[.]" *Orthodontic Ctrs. of Am., Inc. v. Hanachi*, 151 N.C. App. 133, 135, 564 S.E.2d 573, 575 (2002) (citation omitted).

¶ 18 "The heart of a contract is the intention of the parties, which is ascertained by the subject matter of the contract, the language used, the purpose sought, and the situation of the parties at the time." *Pike v. Wachovia Bank & Trust Co.*, 274 N.C. 1, 11, 161 S.E.2d 453, 462 (1968) (citations omitted).

¶ 19 "One of the most fundamental principles of contract interpretation is that ambiguities are to be construed against the party who prepared the writing." *Chavis v. Se. Life Ins. Co.*, 318 N.C. 259, 262, 347 S.E.2d 425, 427 (1986) (citations omitted).

¶ 20 Our Supreme Court has held:

> The remedy of specific performance is available to "compel a party to do precisely what he ought to have done without being coerced by the court." The party claiming the right to specific performance must show the existence of a valid contract, its terms, and either full performance on his party or that he is ready, willing and able to perform.

Munchak Corp. v. Caldwell, 301 N.C. 689, 694, 273 S.E.2d 281, 285 (1981) (citations omitted). "It is accepted doctrine that a binding contract to convey land, when there has been no fraud or mistake or undue influence or oppression, will be specifically enforced." *Combes v. Adams*, 150 N.C. 64, 68, 63 S.E. 186, 187 (1908).

1. Fraud in the Inducement

¶ 21 "The essential elements of fraud in the inducement are: (1) False representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Media Network, Inc. v. Long Haymes Carr, Inc.*, 197 N.C. App. 433, 453, 678 S.E.2d 671, 684 (2009) (citation and quotation marks omitted).

¶ 22 "Allegations of fraud are subject to more exacting pleading requirements than are generally demanded by our liberal rules of notice pleading." *Harrold v. Dowd*, 149 N.C. App. 777, 782, 561 S.E.2d 914, 918 (2002) (citations and quotation marks omitted). Allegations of fraud are rarely resolved in the pleading or summary judgment stage because the cause of action "usually requires the determination of a litigant's state of mind." *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 260, 266 S.E.2d 610, 619 (1980) (*overruled on other grounds*, *Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 323 N.C. 559, 568-69, 374 S.E.2d 385, 391-92 (1985)); *see also Whitman v. Forbes*, 55 N.C. App. 706, 713, 286 S.E.2d 889, 893 (1982) (citation omitted).

¶ 23 Rule 9(b) of the North Carolina Rules of Civil Procedure requires: "[i]n all averments of fraud, . . . the circumstances constituting fraud . . . shall be stated with particularity." N.C. Gen. Stat. § A-1, Rule 9(b) (2021). Our Supreme Court has held Rule 9(b)'s particularity requirement for a fraud claim "is met by alleging time, place and content of the fraudulent representation, identity of the person making the

representation and what was obtained as a result of the fraudulent facts or representations." *Terry v. Terry*, 302 N.C. 77, 85, 273 S.E.2d 674, 678 (1981).

¶ 24 Defendant argues he was fraudulently induced into entering the 13 December 2018 contract to sell the Old Mill Property by Hicks. Defendant relayed to Hicks his concerns with selling the Old Mill Property. When Defendant asked Hicks about these concerns, Hicks stated he would "work on it" once executed. Defendant argues he relied on these statements to his detriment and damage. As noted above, Hicks is not a party to this action.

¶ 25 Our Supreme Court has long held: "[T]he law will not relieve one who can read and write from liability upon a written contract, upon the ground that he did not understand the purport of the writing, or that he has made an improvident contract, when he could inform himself and has not done so." *Leonard v. Se. Power Co.*, 155 N.C. 10, 11, 70 S.E.2d 1061, 1063 (1911). "Persons entering contracts . . . have a duty to read them and ordinarily are charged with knowledge of their contents." *Nationwide Mut. Ins. Co. v. Edwards*, 67 N.C. App. 1, 8, 312 S.E.2d 656, 661 (1984) (citation omitted).

¶ 26 Defendant challenges Findings of Fact Nos. 2, 5, 7, 8, 10, 11, 12, 14, 16. Defendant does not challenge Finding of Fact 4, which provides: "In that section the Defendant initialed beside where the document states: '[Defendant] authorizes the Firm [Hicks] to act as a dual agent, representing both the Seller [Plaintiff and

Defendant] and the buyer, subject to the terms and conditions set forth in Paragraph 13." Defendant also does not challenge Finding of Fact 6, which provides: "That the Defendant also fully executed the 'Offer to Purchase and Contract-Vacant Land/Lot' Agreement on December 13th, 2018[.]" "Unchallenged findings of fact are binding on appeal." *Peters v. Pennington*, 210 N.C. App. 1, 13, 707 S.E.2d 724, 733 (2011) (citation omitted).

¶ 27 The trial court found and concluded Defendant initiated the dual agency language contained in the listing agreement, and Defendant "fully executed the 'Offer to Purchase and Contract-Vacant Land/Lot' Agreement on December 13th 2018[.]" Once Defendant voluntarily signed the Offer to Purchase and Contract, he was bound to the Plaintiff to close after Plaintiff declined to cancel the contract. Defendant's argument is overruled.

2. Recission, Accord, and Satisfaction

¶ 28 Defendant argues he later rescinded and successfully sought accord and satisfaction of the contract. Defendant points to his actions with Hicks. All of these actions require agreement by Plaintiff, the other party to the contract. Defendant does not point to any action by Plaintiff, but instead only points to Hicks' assertions and actions, including Defendant offering to pay Hicks' commission from the transaction representing Defendant upon cancellation. Defendant's argument is overruled.

3. Duress

¶ 29 Defendant argues the contract should be rescinded because he entered it as a result of Hicks' duress. "Duress exists when a person, by an unlawful or wrongful act of another, is induced to make a contract or perform or forego some act under circumstances which deprive him of the exercise of free will." *Reynolds v. Reynolds*, 114 N.C. App. 393, 398-99, 442 S.E.2d 133, 136 (1994) (citation and quotation marks omitted). Defendant does not assert he was deprived of his free will or was compelled or forced to execute the offer to purchase and contract upon the terms stated therein. *Id.* Defendant's argument is overruled.

V. Conclusion

¶ 30 Viewed in the light most favorable to Defendant and giving him the benefit of any disputed inferences, the trial court properly found no genuine issues of material fact existed. Plaintiff was entitled to summary judgment as a matter of law. The trial court's order is affirmed. We express no opinion on the validity of claims, if any, Defendant may assert against Hicks. *It is so ordered.*

AFFIRMED.

Judges ARROWOOD and GRIFFIN CONCUR.

Report per Rule 30(e).