IN THE UTAH COURT OF APPEALS

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The Burgess Company, Plaintiff and Appellee, v. Riverside Mobile Home Park, L.L.C.; Robert R. Busch, an individual; Starley D. Bush, an individual; D. Gregory Hales, an individual; S and M Co., L.L.C.; and B and B, L.L.C., a Utah company, Defendants and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050740-CA F I L E D (August 31, 2006) 2006 UT App 357

Third District, Salt Lake Department, 020907609
The Honorable Stephen L. Henriod

Attorneys: Barry N. Johnson and David M. Kono, Salt Lake City, for Appellant
Robert S. Campbell, Scott M. Lilja, and Nicole M. Deforge, Salt Lake City, for Appellee

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Before Judges Greenwood, McHugh, and Orme.

ORME, Judge:

Having "a very narrow application," the parol evidence rule functions "to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an integrated contract." Hall v. Process Instruments & Control, Inc., 890 P.2d 1024, 1026 (Utah 1995) (emphasis in original). "Thus, before considering the applicability of the parol evidence rule in a contract dispute, the court must first determine that the parties intended the writing to be an integration." Id. In other words, the initial determination to be made is whether the writing was intended "'as the final and complete expression of [the parties'] bargain.'" Id. at 1027 (quoting Eie v. St. Benedict's Hosp., 638 P.2d 1190, 1194 (Utah 1981)) (emphasis omitted). "To resolve this question of fact, any relevant evidence is admissible." Id. (citing Union Bank v. Swenson, 707 P.2d 663, 665 (Utah 1985)). Accordingly,

the trial court erred in refusing to look at parol evidence--including the fax cover sheet and the February 27 letter--in making its determination of integration.

Although such an error would ordinarily require remand, because there is no disputed issue of material fact we are able to affirm the summary judgment on other grounds. See Dipoma v. McPhie, 2001 UT 61,¶18, 29 P.3d 1225 ("[I]t is well settled that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record[.]") (internal quotations and citation omitted). Even if we accept, as Riverside Mobile Home Park argues, that the fax cover sheet was intended as part of the parties' agreement and that the February 27 letter shows that The Burgess Company always intended to split its commission, Riverside points to nothing else in the record to show that the three-page fax, including the cover sheet, was not intended as the final expression of their agreement.[1] See Union Bank, 707 P.2d at 665 (explaining that courts apply "a rebuttable presumption that a writing which on its face appears to be an integrated agreement is what it appears to be"). The three-page agreement is clear on its face, requiring that Riverside pay Burgess a 4% fee and that Burgess then evenly divide its fee with Realty West/Development West. See note 1. Thus, summary judgment on the undisputed facts is proper. See Faulkner v. Farnsworth, 665 P.2d 1292, 1293 (Utah 1983) ("When a contract is clear on its face, extraneous or parol evidence is generally not admissible to explain the intent of the contract.").

As to the claim of fraud, Riverside is correct that the parol evidence rule only applies "in the absence of fraud," Union Bank, 707 P.2d at 665, and thus, claims of fraudulent inducement may be supported by parol evidence. In this case, however, we conclude as a matter of law that Riverside is precluded from arguing fraud as a defense because after it learned of the alleged fraud it proceeded to ratify the contract by selling the property to the buyer procured by Burgess. See Hull v. Flinders, 83 Utah 158, 27 P.2d 56, 58 (1933) ("[I]f [a party] become[s] advised of the fraud perpetrated upon him in season to recede from his engagement, and yet, with knowledge of the falsity of the representations which had induced the contract, elects to

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[1]At oral argument, reference was made to the affidavit of Gregory Hales, a principal of Riverside. But this affidavit does not raise a disputed issue of material fact concerning the agreement. Rather, it reinforces our clear reading of the agreement by recognizing that Riverside "entered the [limited licensing agreement] with a four percent (4%) commission" and that Burgess "agreed to evenly split the four percent (4%) commission with Realty West."

perform, and clearly manifests his intention to abide by the contract, he condones the fraud and is without remedy.") (internal quotations and citation omitted). Therefore, summary judgment on the issue of fraudulent inducement was properly granted.

For the foregoing reasons, we affirm.

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Gregory K. Orme, Judge

WE CONCUR:

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Pamela T. Greenwood,
Associate Presiding Judge

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Carolyn B. McHugh, Judge