

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2496

September Term, 2013

BARBARA A. LUTZ-HEIMAN

v.

CLAIRE SHARP ET AL.

Graeff,
Kehoe,
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 3, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Anne Arundel County ordering specific performance of a contract to convey an interest in real estate. The original plaintiffs to the suit—now the appellees—were John Lutz and Claire Sharp. The original defendants were Barbara Lutz-Heiman and her spouse, Robert Heiman. (Because the last names are similar, we will refer to the parties by their first names.)

The contract at issue pertained to two pieces of property in Anne Arundel County, both of which were at one time owned by Barbara and Robert. The first is 2721 Alden Road (the “Alden Road” property). The second is 245 Cypress Creek Road (the “Cypress Creek Road” property). Before the events occurred that gave rise to this litigation, Barbara and Robert sold the Alden Road property to John and the Cypress Creek Road to Claire and John. However, because Claire and John did not pay the full purchase price on the Cypress Creek Road property, Barbara and Robert retained an undivided interest in the property. There was an agreement that they would “remove their names from the deed,” i.e., convey their undivided interest in the property to Claire and John, when the purchase price was paid in full.

On October 28, 2011, the parties signed the contract that is in dispute. The pertinent provision of the contract states that “the names of Robert P. Heiman and Barbara A. Lutz will be removed from the deed to 245 Cypress Creek Road as soon as the proceeds to 2721 Alden Road are delivered to Robert P. Heiman and Barbara A. Lutz.”

Some of the circumstances that led to the preparation and execution of the contract were disputed at trial. This much appears to have been undisputed: in the latter part of 2011,

Barbara and Robert faced financial difficulties that led to the filing of a foreclosure proceeding against their residence. Barbara testified that foreclosure would not take place if she satisfied the debt by November 1, 2011. Coincidentally, the Alden Road property was under contract to a third party with settlement scheduled for the last week of October, 2011.¹ Barbara, who had an oral agreement with John to receive the proceeds of the Alden Road Property, approached John on the 27th of October asking him for the proceeds as soon as he had them in order to pay off her debt.

At this point, the parties part company. According to John, he had an oral agreement with Barbara and Robert whereby they agreed to “remove their names” from the Cypress Creek Road deed in exchange for the proceeds of the sale of the Alden Road property. Barbara testified that their agreement was that the Alden Road proceeds would be applied to the Cypress Creek Road debt, but that the proceeds were less than the full amount owed. According to her, payment of the proceeds was not intended to be full satisfaction of the debt.

Barbara and Robert prepared a written contract that provided that, upon payment of the Alden Road proceeds, they would transfer their interests in the Cypress Creek property to Claire and John. The contract did not indicate that the Alden Road proceeds were less than what Claire and John owed on the property. The contract did not have a “time is of the

¹It is not clear in the record exactly what day John sold the Alden Road property, but it was around the same day as the signing of the October 28 contract.

essence” clause. Barbara testified that she told John that the promise to transfer their interest in the Cypress Creek Road deed was contingent on receiving the Alden Road proceeds before November 1, 2011. However, there was no such provision in the written agreement.

According to Barbara, John never made any effort to reach out to her to give her the proceeds from Alden Road. As a result, Barbara’s and Robert’s house was foreclosed upon. John disputes this. According to him, he made several attempts to contact Barbara to deliver a check to her. He testified that, before November 1, he called Barbara once, but that she did not answer, and that he also called and spoke to Robert on three occasions but that he and Robert were unable to agree on a time to deliver the proceeds. He further testified that after November 1, he arranged a settlement date through his attorney for June 22, 2012, but Barbara and Robert did not appear at settlement.

In July, 2012, John and Claire filed this action, seeking the specific performance of the contract. Robert passed away prior to trial. Barbara asserted that the contract was invalid and unenforceable. After a trial, the circuit court entered judgment in favor of John’s and Claire’s behalf and ordered Barbara to perform the contract. Barbara has appealed the court’s judgment.

Analysis

Barbara presents several issues on appeal, but they boil down into two contentions: (1) that the contract itself was invalid and unenforceable, and (2) that the contract was

contingent upon being carried out prior to November 1, 2011, and thus became unenforceable after that date.

Standard of Review

Trials involve factual and legal disputes. Disputes of fact are resolved by evidence and, as in the case before us, evidence can be conflicting. The trial judge settles factual disputes. The trial judge sees the witnesses testify, listens to their tones of voice, and observes their demeanor. For these reasons, appellate judges typically defer to a trial judge’s express or implicit factual findings. We set aside a trial judge’s factual conclusion only when it appears to us to be “clearly erroneous,” that is, when we conclude that there was *no* evidence to support the trial court’s conclusion.

Of course, trial judges also apply legal principles to reach their ultimate conclusions. Trial judges have no particular advantages over appellate judges when it comes to knowledge of the law and we give no deference to the trial judge’s legal conclusions. This means that appellate review usually consists of our applying the law as we understand it to the facts as found by the trial judge.

I. Was the Contract Valid?

Barbara asserts that the contract was never validly formed—and thus is unenforceable—for two reasons: (1) Claire and John never accepted the contract, and (2) Barbara was under duress when she signed the contract.

First, with regard to Claire and John’s acceptance of the contract, Barbara argues that there was no “meeting of minds,” and that the appellees’ acceptance was invalid because the actual signed contract was never returned to her. {Appellant’s brief 8-9.} We disagree.

For a valid acceptance, parties must have “a meeting of the minds” with regard to both parties understanding that a contract has been formed. *See Cochran v. Norkunas*, 398 Md. 1, 23 (2007) (“[C]ommon to all manifestations of acceptance is a demonstration that the parties had an actual meeting of the minds regarding contract formation.”). This manifestation of acceptance can be “accomplished by acts as well as words.” *Prince George's County. v. Silverman*, 58 Md. App. 41, 57 (1984). In the present case, John testified that he informed Robert of his acceptance of the contract over the telephone on October 29, 2011. Claire and John’s acceptance is further evidenced by their signatures on the contract. The trial court found that Claire and John executed the contract and this conclusion was not clearly erroneous.

Second, Barbara argues that the contract is invalid because she was under duress when she entered into it. When Barbara entered into the contract, she was facing foreclosure on her home. She testified at trial that John had previously agreed to give her the proceeds to the Alden Road property, and that this agreement **was not** contingent on John’s receiving anything in return. Thus, she argues that his refusal to give her the proceeds when foreclosure was imminent put her in duress that induced her to agree to remove her name from the deed to the Cypress Creek Road property in exchange for the proceeds.

In *Cheek v. United Healthcare of Mid-Atl., Inc.*, 378 Md. 139, 164 (2003), the Court of Appeals explained the test for duress: “[The] test for duress is essentially composed of two elements: ‘(1) a wrongful act or threat by the opposite party to the transaction . . . , and (2) a state of mind in which the complaining party was overwhelmed by fear and precluded from using free will or judgment.’ ” (quoting *Food Fair Stores, Inc. v. Joy*, 283 Md. 205, 217 (1978)). The evidence shows that Barbara was under a great deal of stress and was desperate to save her and Robert’s house from foreclosure. But in order for a court to set a contract aside for duress, the court must find wrongful conduct by the other party. There was conflicting evidence on this issue.

According to John, the October 28th contract merely put into writing an existing oral agreement between the parties. Asking for written confirmation of an oral agreement, particularly an oral agreement to transfer real estate, is not a wrongful act, and thus cannot induce duress. Necessarily implicit in the trial court’s conclusion is a determination that John’s version of events was more likely to have occurred than Barbara’s. Based on our review of the record, we cannot say that the trial court’s conclusion was clearly erroneous.

II. The Time of Performance

Barbara’s second set of arguments pertain to her understanding that the contract was only valid if she and Robert received the proceeds from the Alden Road sale before November 1, 2011. She argues: (1) that her offer was contingent on receiving the proceeds

before November 1, 2011, and (2) that Claire and John breached the contract when they failed to tender the proceeds before that date.

The first difficulty with Barbara’s argument is that the written contract itself says nothing about the timing of the Alden Road payment and certainly doesn’t provide that, if the proceeds were not received before a specific date, Barbara and Robert were not obligated to transfer title. Even if Barbara orally communicated that her offer was contingent on receiving the proceeds to the Alden Road property before November 1, *oral* statements typically cannot vary the terms of a *written* agreement. *See Tricat Indus., Inc. v. Harper*, 131 Md. App. 89, 107 (2000) (“Maryland law generally . . . bars the admission of prior or contemporaneous agreements or negotiations to vary or contradict a written contractual term.”) (quoting *Calomiris v. Woods*, 353 Md. 425, 432 (1999)). Because the contract did not indicate a specific date for performance, the parties were obligated to perform the contract within a reasonable time period after the contract was entered into. *Jaeger v. Shea*, 130 Md. 1, 4 (1917). John testified that he had attempted to contact Barbara to arrange for a settlement date and the trial court found this testimony to be credible. The trial court’s conclusion that the contract was still enforceable after November 1, 2011 was legally correct and its finding that John made efforts after that date to arrange for settlement is not clearly erroneous.

Finally, Barbara argues that her contractual offer was limited to removing her name from 245 Cypress only *after* the proceeds of 2721 Alden were transferred to her. However,

because the trial court's order for specific performance did not order her to remove her name prior to receiving the proceeds for 2721 Alden, we do not believe this argument presents a valid challenge to the court's conclusions or order.

**THE JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY IS AFFIRMED.
APPELLANT TO PAY COSTS.**