

Circuit Court for Montgomery County
Case No. 447324V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3472

September Term, 2018

DENNIS HAMILTON

v.

MURRAY ROTTENBERG, ET AL.

Friedman,
Gould,
Wright, Alexander Jr.
(Retired Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 28, 2020

*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.

The Circuit Court for Montgomery County found that equitable title in real property passed from the seller, Hija Son Carmel to the buyers, Murray and Geraldine Rottenberg, on August 15, 2017—some six weeks before Dennis Hamilton won a money judgment against Carmel and, thus, before Hamilton’s lien could attach to Carmel’s property. We agree with the circuit court’s reasoning and, therefore, affirm.

BACKGROUND

The Rottenbergs entered into a contract to purchase real property, located in Chevy Chase, Maryland, from Carmel on July 6, 2017. Several liens encumbered the property at the time the parties entered into the contract of sale. The sum of the liens on the property exceeded the purchase price of the property and, as a result, Carmel could not pay the lienholders in full with the sale proceeds.

Meanwhile, and unbeknownst to the Rottenbergs, Carmel was in the midst of an ongoing lawsuit against Hamilton, regarding a debt Carmel owed from a previous, unrelated investment. Hamilton won a money judgment against Carmel in the amount of \$300,000 on September 28, 2017. Less than a week later, on October 3, 2017, the Rottenbergs closed on the property. Hamilton asserted that his judgment against Carmel became a judgment lien which attached to the real property now owned by the Rottenbergs. The Rottenbergs filed suit to quiet title in the Circuit Court for Montgomery County. The circuit court entered an order quieting title. Hamilton timely appealed to this Court.

DISCUSSION

Equitable conversion describes the metaphysical moment at which equity treats a purchaser as if she or he is the owner despite not having finished the paperwork. *DeShields v. Broadwater*, 338 Md. 442, 437 (1995). One way to determine when equitable conversion occurred is to ask whether a court sitting in equity would have been able to grant the purchaser specific performance—that is, transfer of the title of the property rather than money damages—as compensation for breach of a contract to sell the property. *Watson v. Watson*, 304 Md. 48, 60-61 (1985). And, whether specific performance was available as a remedy turns, in part, on whether the contract was binding as is or whether the contract had any unfulfilled preconditions or contingencies that could have delayed it from being binding. *Noor v. Centreville Bank*, 193 Md. App. 160, 168 (2010) (“If there is some condition or contingency to the seller’s duty to convey, however, equitable conversion would not take effect until that condition or contingency is resolved to the point that the duty can be specifically enforced.”).

Thus, this case turns on the legal interpretation of the contract of sale between Carmel and the Rottenbergs and whether certain provisions within that contract of sale operated as preconditions or contingencies. That is a matter of contract interpretation, which we review without deference to the trial court. *Clancy v. King*, 405 Md. 541, 556-57 (2008). We observe, *first*, that all parties agree, and the circuit court held, that the contract of sale included a financing contingency, which states: “This Contract is contingent (‘Financing Contingency’) on Buyer’s ability to obtain Specified Financing.” Moreover, there is little doubt that this financing contingency was satisfied on August 15, 2017. If this

was the only contingency in the contract of sale, then it was satisfied before Hamilton's lien had an opportunity to attach. And, as a result, Hamilton's lien did not attach, the property equitably converted to the Rottenbergs free and clear of Hamilton's claims, and the judgment of the circuit court must be affirmed. On the other hand, if there was a second contingency in the contract of sale and it was not satisfied by the Rottenbergs before Hamilton's lien sought to be attached, then Hamilton's lien attached, and the Rottenbergs' subsequent purchase of the property is subject to Hamilton's lien and we must reverse.

Hamilton points to the "sell free and clear" provision in the contract and argues that it is a precondition or a contingency. That "sell free and clear" provision states:

Fee simple title to the Property, and everything that conveys with it, will be sold free of liens except for any loans assumed by Buyer. Title is to be good and marketable, and insurable by a licensed title insurance company with no additional risk premium. Title may be subject to commonly acceptable easements, covenants, conditions and restrictions of record, if any; otherwise, Buyer may declare this Contract void, unless the defects are of such character that they may be remedied within 30 Days beyond the Settlement Date.

Hamilton suggests that this provision operates as a contingency because, in effect, it allows the seller's lienholders to block the sale by refusing to accept a short sale. The trial court disagreed, finding that the lienholder's "approval was not a contractual contingency or a condition precedent of that contract." We agree with the trial court. *First*, while there are no magic words that must be used to create a contingency—there should be some indication in the writing that the parties intend to create a contingency. *Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 274 (2005) ("[W]ords and phrases such as 'if,' 'provided that,' 'when,' 'after,' 'as soon as' and 'subject to,' have commonly been

associated with creating express conditions.”) (citing *Gilbane Bldg. Co. v. Brisk Waterproofing Co., Inc.*, 86 Md. App. 21, 26-27 (1991)). Nothing in the “sell free and clear” provision indicated an intent to create a contingency. *Second*, the second sentence in the “sell free and clear” provision, makes clear that the buyers could, at their discretion, either void the transaction or waive the defects in title. This demonstrates that the provision was not a contingency as the sale could go through or not go through regardless of whether Carmel could transfer good title. Moreover, the provision allows title issues to be resolved for 30 days after settlement, demonstrating that transfer wasn’t contingent on resolution of title issues. And *third*, to the extent that there was any doubt, we would have expected the contract drafters to have used the same, or at least a similar, format to indicate their intention to create a title contingency as they did to create the “Financing Contingency,” described above. They did not.

For these reasons, we think it is clear that the “sell free and clear” provision was not a precondition or a contingency. As such, all preconditions and contingencies were satisfied by August 15, 2017. As of that date, the Rottenbergs could have obtained specific performance—transfer of the property rather than money damages—if Carmel had breached the contract of sale. The property, therefore, was equitably converted from Carmel to the Rottenbergs on that date and Hamilton’s attempt to attach a lien came too late.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**