[Cite as *Thomas v. Maras*, 2015-Ohio-2674.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Steven H. Thomas — Court of Appeals No. L-14-1136

Appellee — Trial Court No. CI0201204406

v.

Jeff Maras — **DECISION AND JUDGMENT**

Appellant — Decided: June 30, 2015

* * * * *

Fan Zhang, for appellee.

Thomas A. Yoder, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Jeff Maras, appeals the June 10, 2014 judgment of the Lucas County Court of Common Pleas which, in interpreting the terms of a land installment contract, declared that the contract terms provided that the monthly payment of $700 was inclusive of property taxes, homeowner's insurance premiums, and the principal balance

on real property located in Holland, Lucas County, Ohio, and purchased from appellant by appellee, Steven H. Thomas. For the reasons that follow, we affirm.

{¶ 2} A recitation of the relevant facts is as follows. On October 19, 2010, appellee/vendee, Steven H. Thomas, and appellant/vendor, Jeff Maras, entered into a land installment contract for real property located on Crissey Road in Holland, Ohio. The contract provided for a $125,000 purchase price, less a deposit of $1,400, for a balance of $123,600. The contract provided for monthly installments of $700 beginning November 1, 2010, and continuing for 247.6 months. The contract further provided:

> Vendees may pay the remaining balance, or any additional portion thereof, without a prepayment penalty. Vendor shall keep a record of all payments made by Vendees, and shall provide Vendees annually with a list of all payments, which list will show the application of each payment and the outstanding balance.
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> All payments made by Vendees on this contract shall first be applied to any accrued interest, then to any unpaid taxes or assessments, unpaid insurance premiums, late charges, and finally to the principal balance remaining.
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> * * *
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> 3. TAXES AND UTILITIES: Vendees shall pay the cost of all water, sewer, electric, heating and such other utilities serving the premises.

> The parties acknowledge that the taxes and assessments on the premises for the full calendar year 2009 are paid and current. Vendees shall be responsible for the payment of all taxes and assessments due and payable for calendar year 2010 and thereafter, with taxes being prorated to the date of the execution of this contract.
>
> If Vendees fail to do so, Vendor may pay such utilities, taxes and assessments for the Vendees, and the same shall become a part of the indebtedness due under this agreement and shall be paid by Vendees to Vendor on the first installment due after Vendor notifies vendees of said payment.
>
> * * *
>
> 6. MORTGAGE: Vendor warrants that said premises are free and unencumbered as of the date of this contract. Vendor may mortgage said premises, but Vendor shall keep any mortgage thereon in good standing * * *.

{¶ 3} From November 2010, through April 2011, appellant sent appellee a receipt following acceptance appellee's monthly payment. The receipts showed the initial payment of $700, and had a break-down of how the amount was applied. The first column, labelled "Insurance" had the sum of $62.47 for each of the six months. Next, "Taxes" from November through December 2010 was $122.41; for January through April

2011, the amount was $126.92. The next column showed the amount paid on the principal loan balance. For November 2010 through January 2011, the principal payment was $515.12; from February through April 2011, the sum was $510.61.

{¶ 4} In 1999, appellant's mother took out a $60,000 mortgage on the property. Appellant inherited the property and did not disclose the mortgage to appellee prior to the sale. Appellee, after receiving notices from appellant's lender, became concerned that the mortgage was not in good standing and feared the home being foreclosed upon. Appellee also discovered that the taxes on the home were in arrears. At that point, and through an attorney, the land installment contract was recorded and appellee received a copy of the title work. Appellee also received a copy of the 1999 mortgage.

{¶ 5} Also beginning in May 2011, appellee's payments were sent to appellant's attorney who managed his trust account. Beginning in September 2011, after discovering that appellant's home owner's policy would not cover the residence because it was occupied by appellee, appellee obtained his own insurance and, per appellant's attorney's instruction, deducted the amount from his monthly payment. The new monthly payment was approximately $646.59.

{¶ 6} On July 20, 2012, appellee commenced the instant action requesting that the court declare the parties' rights and obligations under the contract. Appellee also requested a full accounting of the payments and their allocation. Further, appellee alleged that appellant intentionally misrepresented the "mortgage situation" in the

contract and collected tax and insurance premiums yet failed to forward them to creditors. In his answer, appellant asserted that the monthly payments, sent to his trust account, were being used to "pay the mortgage and the real estate taxes."

{¶ 7} Appellant filed a "motion in limine" to prevent any evidence contrary to the terms of the contract which, he argued, clearly and unambiguously required that appellee pay the tax and insurance on the property. Appellant also requested that appellee's attorney be prevented from presenting any arguments that were not "good faith arguments of existing law" and requested that he be sanctioned. The court denied the motion finding that some of the arguments had potential merit.

{¶ 8} The matter proceeded to a bench trial on January 16, 2014. Appellee's wife, Lisa Thomas, who was his fiancé at the inception of the contract, provided the majority of the testimony. Thomas testified that the $123,600 balance, as represented in the contract, was to be paid in 247.6 monthly installments which, dividing the amounts, equaled approximately $500 per month. Thomas testified that the additional $200 were the sums for homeowners' insurance and property taxes. Exhibits admitted into evidence showed that monthly property tax was approximately $125, and homeowners' insurance was approximately $75.

{¶ 9} Thomas testified that she and appellee understood that they would be responsible for taxes and insurance beginning in October 2010, and going forward. Thomas testified regarding the receipts they received from appellee which were admitted

into evidence. On their November 2010 receipt, appellant noted that the "homestead" credit would be removed in January 2011, pending the November tax levy, and that the property tax amount could increase from $122.41 monthly to $163.50.

{¶ 10} Around April 2011, Thomas testified that she contacted the Lucas County Auditor's Office and was informed that the taxes were in arrears. Thomas stated that appellant had collected $507.68 for the payment of the taxes but that only $150 had been paid. The auditor's office informed her that the taxes were behind by $687.71.

{¶ 11} The contract further stated that the property was free from encumbrances; Thomas stated that appellant failed to inform them of the 1999 mortgage. Thomas testified that a letter was sent to their residence dated April 3, 2011, and addressed to the "Estate of Jeanne H. Hoffmaster" informing them they were in default on their home loan. At that point they contacted appellant who said he would take care of it. After receipt of two additional letters they contacted their attorney.

{¶ 12} In August 2011, appellee's attorney received a letter that he forwarded to appellee and Thomas. Thomas testified that the letter stated that appellant's insurance company would not insure a non-owner occupied property, so the two would have to obtain their own insurance and deduct the monthly premium from the monthly payments. Appellee's subsequent payments were reduced to approximately $646; this was reflected in an exhibit detailing the payments made from 2010 through 2013. The letter itself was not admitted into evidence.

{¶ 13} Appellee testified, over objection, that his "understanding" of the contract was that the monthly $700 payment was to be applied to taxes, insurance, and then the principal balance on the contract. He stated that they never received a notice that they owed more money.

{¶ 14} In its June 10, 2014 judgment entry, the trial court found that "Plaintiff's and Defendant's acts in furtherance of the land installment contract warrant a declaration that Plaintiff's $700 monthly payment includes property taxes and homeowners insurance premiums, as well as principal." The court further found:

> The parties' acts in furtherance of the Contract warrant a declaration that the parties intended for Defendant to be responsible for payment of taxes due and payable in 2010 prior to the execution of the Contract and for Plaintiff to be responsible for the taxes payable in 2010 on and after the execution of the Contract.

{¶ 15} This appeal followed. Appellant raises the following assignment of error for our review:

> The trial court's decision was contrary to Ohio case law and the evidence presented at trial when it held "acts of the plaintiff, Steven H. Thomas and the defendant, Jeff Maras * * * warrant a declaration that plaintiff's $700.00 monthly payment to the defendant as prescribed in the contract, includes property taxes and homeowner's insurance premiums, as

well as principal" despite the clear, unambiguous language of the Land Installment Contract that is the subject matter of this appeal.

{¶ 16} Appellant's sole assignment of error challenges the trial court's finding that the land installment contract provided that the $700 monthly payment included amounts for property taxes and homeowner's insurance. Appellant contends that such finding is contrary to Ohio contract law and the evidence presented at trial.

{¶ 17} We first note that appellate review of a trial court's findings of fact at trial is undertaken under a manifest weight of the evidence standard. *C.E. Morris Co. v. Foley Constr. Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus; *Seasons Coal Co., Inc. v. Cleveland,* 10 Ohio St.3d 77, 79-80, 461 N.E.2d 1273 (1984). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Foley* at syllabus.

{¶ 18} Appellant specifically contends that the contract itself was not ambiguous in that it clearly stated "that the taxes and insurance are to be paid by the appellee in addition to the $700 monthly payment to the appellee." Thus, there was no reason to look past the "four corners of the contract." Conversely, appellee asserts that the parties performed the contract as requiring that taxes and insurance be paid from the $700 monthly payment from October 2010 on for its duration (247.6 months). Further, that the

term of the contract did not correspond to a $700 payment solely being applied to the principal.

{¶ 19} This dispute involves the interpretation of a land installment contract drafted in accordance with R.C. 5313.02. If a contract is "'clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.'" *Barhorst, Inc. v. Hanson Pipe & Prods. Ohio, Inc.*, 169 Ohio App.3d 778, 2006-Ohio-6858, 865 N.E.2d 75, ¶ 10 (3d Dist.), quoting *Inland Refuse Transfer Co. v. Browning-Ferris Indus. of Ohio, Inc.*, 15 Ohio St.3d 321, 322, 474 N.E.2d 271 (1984).

{¶ 20} However, "if a term cannot be determined from the four corners of a contract, factual determination of intent or reasonableness may be necessary to supply the missing term." *Inland Refuse,* 15 Ohio St.3d at 322, citing *Hallet & Davis Piano Co. v. Starr Piano Co.*, 85 Ohio St. 196, 97 N.E. 377 (1911). Further, a contract ambiguity is to be interpreted against the drafter. *See Four Howards, Ltd. v. J & F Wenz Rd. Invest., L.L.C.*, 179 Ohio App.3d 399, 2008-Ohio-6174, 902 N.E.2d 63 (6th Dist.).

{¶ 21} In the present case, we must conclude that the trial court's judgment is supported by competent evidence. The land installment contract, while it does state that vendees are responsible for the payment of the taxes and insurance, created an ambiguity where the monthly payment and the contract term did not add up. The contract price and duration is supported by the monthly payment being inclusive of taxes and insurance which is evidenced in the exhibit detailing the payments made by appellee and their

application. As further support, once appellee was required to obtain his own insurance, the monthly payment was reduced accordingly. Appellant's assignment of error is not well-taken.

{¶ 22} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE