

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

NANCI ACOSTA, et al.,

Plaintiffs-Appellants,

- vs -

TANIA RUBALCAVA, et al.,

Defendants-Appellees.

CASE NO. 2026-L-0006

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2023 CV 000790

OPINION AND JUDGMENT ENTRY

Decided: October 13, 2026

Judgment: Affirmed

Erik L. Walter, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiffs-Appellants).

Matthew Vincel, *Michael E. Hamper, III*, and *Zoe M. Suntheimer*, The Legal Aid Society of Cleveland, 1223 West Sixth Street, Cleveland, OH 44113 (For Defendants-Appellees).

EUGENE A. LUCCI, J.

{¶1} Appellants, Nanci Acosta, et al., appeal from the final judgment of the Lake County Court of Common Pleas, after a trial to the bench, concluding that the contract into which appellants and appellees, Tania Rubalcava, et al.,¹ entered was a land installment contract rather than a lease agreement with the option to purchase certain

1. We point out that, although the underlying complaint and this court's case management system indicates appellee Tania's last name is "Rubalcava," during her direct examination she spelled her name for the record. Specifically, Tania stated "[m]y name is Tania . . . R as in Robert, U as in umbrella V as in Victor, A as in Adam, C as in Charlie, A as in apple, L as in Larry, V as in Victor, A as in apple." Accordingly, Tania testified her last name is "Ruvacalva." Because, however, the court filings regularly refer to Tania's last name as "Rubalcava," this court's opinion shall use that name, even though it would appear, given Tania's testimony, her true last name is Ruvacalva.

residential property. At issue is whether the trial court's legal determination was against the manifest weight of the evidence. We affirm the trial court's decision.

I. Facts and Procedural History

{¶2} Ms. Acosta and Ms. Rubalcava are sisters-in-law. Their husbands are brothers and Ms. Acosta, with her husband, owned, at the time of the transaction at issue, the underlying real estate which formed the basis of the contract at issue.

{¶3} On September 14, 2019, appellants and appellees entered into an "Agreement to Sell Real Estate" ("Sales Agreement") located at 146 Linden Drive, Painesville Township, Ohio 44077. The Sales Agreement provided, at paragraph 2(a), that the property's purchase price is "\$105,000.00" and that appellees would pay a "[d]eposit" of "\$15,000.00[.]" Paragraph 2(c) of the contract additionally stated that a \$1,000 "monthly payment" would be "due the 1st[.]" presumably of each month. The same paragraph additionally provided, however, that \$90,000 "[c]ash, or certified or local cashier's check, due on closing and delivery of deed (or such greater or lesser amount as may be necessary to complete payment of purchase price after credits, adjustments[, and prorations." And, at paragraph 19, the Sales Agreement provided that the "contract shall be closed and the deed and possession shall be delivered on or before" November 1, 2019, "unless extended by other provisions of this contract."

{¶4} Shortly after the contract was signed, Ms. Rubalcava testified that Ms. Acosta expressly stated that the \$1,000 monthly payment would be deducted from the \$90,000 owed. Ms. Rubalcava stated this representation occurred only "minutes" after the contract was signed. Ms. Rubalcava asserted that this was the collective understanding of the parties at the time of contract, and appellants did not challenge this

understanding. Moreover, during a follow-up conversation, Ms. Rubalcava testified that Ms. Acosta represented that appellees would have five years to pay the \$90,000 balance (despite the language in paragraph 19).

{¶5} Given Ms. Acosta's alleged statement, Ms. Rubalcava understood she would have paid \$60,000 (\$12,000 X 5 years) against the outstanding \$90,000 owed and, thus, would owe and be required to pay \$30,000 before or at the end of the five-year period.

{¶6} Appellees paid the \$15,000 "deposit," and appellants placed the funds into their personal account. Appellees moved into the residence on November 1, 2019. At that point, appellees commenced payments of \$1,000 per month.

{¶7} In February 2022, Ms. Rubalcava received a letter from Ms. Acosta which read:

This letter is a notice to review our agreement signed on November 1, 2019 for the rent to buy property located at 146 Linden dr. It was agreed by both parties that Monthly payments in the amount of \$1,000 would be made to the owner of the property along with lump sum amounts to be able to reach the 5-year mark agreed upon to have the property paid off in full and or acquire a loan by a bank of your choice to have the property paid in full as stated in the Sale agreement signed on Nov 1. At this point you have breached your contract due to failure to pay lump sum amounts. Below are two options I will offer in regards to this matter.

A: Return the property and treat your monthly payments as rent.

B: Acquire a loan in the remaining amount of the sale to pay off property within 6 months.

(Sic. throughout.)

{¶8} Ms. Rubalcava disputed that an arrangement was reached between the parties for appellees to pay any "lump sum" amount prior to the expiration of the five-year

term. Further, Ms. Rubalcava stated appellees did not fail to make the \$1,000 payments as set forth in the agreement. And pursuant to the post-agreement discussions, she believed she had five years before any final sum would be due.

{¶9} At trial, Ms. Acosta claimed that appellees failed to make certain payments on the real estate. In her deposition testimony, however, Ms. Acosta stated appellees did not miss a payment and continued to make payments on the property taxes when they were due. Appellees' counsel impeached Ms. Acosta's testimony with her deposition testimony at trial. Ms. Acosta was not able to reconcile the inconsistencies.

{¶10} Further, Ms. Acosta testified at trial that the parties met in February 2021 to discuss the contract. During her deposition, however, Ms. Acosta stated the parties met around "March 2022." During the meeting, Ms. Acosta stated she agreed to give appellees until January 2023 to pay the full amount.

{¶11} Despite the various communications and Ms. Acosta's alleged verbal and acknowledged written representations regarding the five-year window,² appellants filed their complaint for forcible entry and detainer and for rent/damages against appellees on October 7, 2022, in the Painesville Municipal Court. Appellees filed an answer and counterclaims. In the initial counterclaim, appellees sought declaratory judgment that a land installment contract was legitimately formed by the parties; appellees also claimed appellants engaged in fraud, and that their complaint, if successful, would result in unjust enrichment. In the second and third counterclaims, appellees sought damages that

2. Despite Ms. Acosta's recognition of the five-year pay-down period, her testimony indicated that January 2023 was the timeframe to which she agreed. This testimony is arithmetically inaccurate. If, as her letter and Ms. Rubalcava's testimony reflect, the window for final payment was five years from the entry of the agreement, final payment would be due on September 14, 2024.

amounted to a total of \$175,000, an amount that exceeded the monetary jurisdiction of the municipal court.

{¶12} Appellees moved the municipal court to transfer the entirety of the matter to the court of common pleas. On November 4, 2022, the municipal court issued a judgment ordering the matter certified to the Lake County Court of Common Pleas. The municipal court, however, did not remove the matter and the scheduled hearing date of November 10 remained apparently in effect.

{¶13} Because the matter was not removed from the municipal court docket, appellees filed a motion for clarification of the November 4, 2022 judgment. Appellants filed a brief in opposition to appellees' motion to transfer. On November 10, 2022, the municipal court issued a judgment entry purporting to "void" its November 4, 2022 transfer order. The court then granted appellants until November 21, 2022, to file a motion to dismiss appellees' counterclaims and afforded appellants until November 28, 2022, to respond.

{¶14} Appellants filed their motion to dismiss, and appellees duly opposed the motion. The motion was not formally ruled upon. The municipal court, however, on December 6, 2022, granted appellants' complaint for forcible entry and detainer and ordered appellants' restitution of the premises. The municipal court indicated in the judgment entry that appellants' count alleging money damages remained pending. Upon appellees' motion, the municipal court stayed the judgment pending appeal.

{¶15} Appellees appealed the decision to this court.

{¶16} In *Acosta v. Rubalcava*, 2023-Ohio-1794 (11th Dist.), this court reversed and remanded the matter. This court first determined "that the forcible entry and detainer

action and the counterclaim are so interrelated that they could not be decided separately.” *Id.* at ¶ 13. As such, this court held “in light of the interrelationship of the claims and because the counterclaim requested damages were in excess \$15,000, the municipal court did not have jurisdiction over this action.” *Id.* at ¶ 14. This court consequently ordered the matter to be transferred to the court of common pleas. *Id.* at ¶ 27. This court further observed that, because appellees did not have an opportunity to present evidence or be heard before the trial court granted appellants’ complaint, appellees’ right to due process was violated. *Id.* at ¶ 23, 26-27.

{¶17} Upon remand, the matter proceeded to a bench trial in the Lake County Court of Common Pleas. After hearing evidence, the trial court, on December 29, 2025, concluded the September 14, 2019 Sales Agreement between the parties was an enforceable land installment contract. Specifically, the trial court cited R.C. 5313.02(A) which sets forth 16 provisions that a contract must include in order for it to be deemed a land installment contract. The trial court, however, noted that this court has determined that regardless of the mandatory language of R.C. 5313.02, a land installment contract may be enforceable even without strict compliance. *See Phillips v. May*, 2004-Ohio-5942, ¶ 21 (11th Dist.). The trial court further concluded, in light of the contractual language, the agreement was ambiguous and it was therefore permitted to consider extrinsic evidence. After reviewing the contract, the trial court concluded the contract was legally sufficient to meet the requirements of law thereby creating a valid land installment contract.

{¶18} The court additionally concluded that even if the contract were a rental agreement, appellants would not be entitled to restitution because they accepted future alleged rent payments after posting notices to vacate.

{¶19} The trial court accordingly concluded appellees were entitled to declaratory judgment on their claim that the Sales Agreement at issue was a land installment contract. The trial court determined appellees' claims for fraud and unjust enrichment were moot. By implication, appellants' claims against appellees were denied. This appeal follows.

{¶20} Appellants assign the following as error:

{¶21} "The trial court erred in finding that the agreement between the parties was a land contract."

II. Standard of Review

{¶22} Appellants essentially assert a manifest-weight-of-the-evidence challenge.

{¶23} This court has observed that, in an "appeal from a bench trial we review the trial court's factual findings under the manifest weight standard of review" *Holman v. Wiser*, 2023-Ohio-4095, ¶ 36 (11th Dist.), quoting *Ultimate Salon & Spa, Inc. v. Legends Constr. Group*, 2019-Ohio-2506, ¶ 30 (11th Dist.). "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. . . . Weight is not a question of mathematics[] but depends on its effect in inducing belief.'" (Emphasis deleted.) *State v. Thompkins*, 1997-Ohio-52, ¶ 24, quoting *Black's Law Dictionary* (6th Ed. 1990). *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 17 (the *Thompkins* standard applies to civil matters).

{¶24} Under a manifest-weight review, an appellate court reviews "the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment]

must be reversed and a new trial ordered.” *Thompkins* at ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶25} With these points in mind, “[T]he trial court’s legal findings are reviewed de novo.” *Ultimate Salon* at ¶ 30. De novo review requires an appellate court to independently review the record and accord no deference to the trial court’s legal conclusion. *Holman* at ¶ 38, citing *In re Placement of A.R. V.*, 2016-Ohio-4929, ¶ 12 (11th Dist.).

{¶26} In this matter, the trial court drew the legal conclusion that the agreement at issue was a land installment contract. This conclusion was partially premised upon the trial court’s determination that the agreement was ambiguous. These legal conclusions must be reviewed de novo. Nevertheless, this conclusion was informed by specific factual findings relating to extrinsic evidence advanced by appellees; these factual findings are subject to a general manifest-weight standard.

{¶27} Under their sole assignment of error, appellants argue land installment contracts cannot be created outside the strict parameters and requirements of R.C. 5313.02(A) and, as a result, the underlying contract was a lease with an option to purchase. As such, all monies paid by appellees were merely rent, and appellees did not exercise their option to purchase by virtue of their failure to pay the balance in full by November 1, 2019—the date referenced in the Sales Agreement in paragraph 19.

III. Appellees’ Claim that Appellants Waived or Forfeited Arguments

{¶28} In the “Introduction” of appellees’ appellate brief, appellees claim that appellants failed to advance arguments in the trial court that the Sales Agreement was a

lease with an option to purchase—the basic foundation of appellants’ argument on appeal. This argument is disingenuous.

{¶29} Appellees, in their trial brief, filed on October 8, 2025, shortly before trial, acknowledged that appellants’ arguments embraced the lack of strict compliance with R.C. 5313.02(A), the statute governing land installment contracts. Appellees noted the statute apparently required such compliance but argued, pursuant to caselaw and policy, that courts had previously found only substantial compliance was necessary. Moreover, appellees strenuously argued that the Sales Agreement at issue was ambiguous such that extrinsic evidence could be considered.

{¶30} While these points are not tantamount to an acknowledgement that appellants were positing a legal theory that the Sales Agreement was simply a lease with an option to buy, appellees’ arguments implicitly recognize that the issues raised on appeal were clearly before the trial court. Appellees’ claim that appellants’ arguments were raised for the first time on appeal is not well taken.

IV. Application of R.C. 5313.02(A)

{¶31} R.C. 5313.02(A) provides:

(A) Every land installment contract shall be executed in duplicate, and a copy of the contract shall be provided to the vendor and the vendee. The contract shall contain at least the following provisions:

- (1) The full names and then current mailing addresses of all the parties to the contract;
- (2) The date when the contract was signed by each party;
- (3) A legal description of the property conveyed;
- (4) The contract price of the property conveyed;

- (5) Any charges or fees for services that are includable in the contract separate from the contract price;
- (6) The amount of the vendee's down payment;
- (7) The principal balance owed, which is the sum of the specified in divisions (A)(4) and (5) of this section less the specified in division (A)(6) of this section;
- (8) The amount and due date of each installment payment;
- (9) The interest rate on the unpaid balance and the method of computing the rate;
- (10) A statement of any encumbrances against the property conveyed;
- (11) A statement requiring the vendor to deliver a general warranty deed on completion of the contract, or another deed that is available when the vendor is legally unable to deliver a general warranty deed;
- (12) A provision that the vendor provide evidence of title in accordance with the prevailing custom in the area in which the property is located;
- (13) A provision that, if the vendor defaults on any mortgage on the property, the vendee can pay on the mortgage and receive credit on the land installment contract;
- (14) A provision that the vendor shall cause a copy of the contract to be recorded;
- (15) A requirement that the vendee be responsible for the payment of taxes, assessments, and other charges against the property from the date of the contract, unless agreed to the contrary;
- (16) A statement of any pending order of any public agency against the property.

(Footnotes omitted.)

{¶32} Appellants argue that the agreement at issue did not include all the points required by R.C. 5313.02(A), and, as a result, the agreement was merely a lease with an option to purchase, i.e., an option contract. Appellants point out that “[o]ption contracts for the purchase of real property are not land installment contracts.” R.C. 5313.01(A).

{¶33} “Ohio courts have defined a ‘lease’ as ‘a conveyance of an estate in real property for a limited term, with conditions attached, in consideration of rent.’” *Fadelsak v. Hagley*, 2003-Ohio-3413, ¶ 11 (4th Dist.), quoting *Cuyahoga Metro. Hous. Auth. v. Watkins*, 23 Ohio App.3d 20, 23 (8th Dist. 1984) and *Jones v. Keck*, 79 Ohio App. 549, 552 (5th Dist. 1946). Further, Ohio courts have defined “[a]n option contract for the purchase of real property [as] an agreement wherein the legal titleholder of the property grants another person the privilege, without the obligation, to purchase the real property at a set price within a set time.” *Judson v. Lyendecker*, 2013-Ohio-1060, ¶ 10 (10th Dist.), citing *Wolf v. Miller Diversified Consulting, LLC*, 2008-Ohio-1233, ¶ 22 (6th Dist.).

A. Strict or Substantial Compliance with the Statute

{¶34} Considering the foregoing legal principles, appellants recognize that the Fourth, Fifth, Sixth, Tenth, and *Eleventh* Districts have determined that a land contract may be enforceable even when it does not strictly comply with all of the factors set forth under R.C. 5313.02(A).³ See *Phillips*, 2004-Ohio-5942, at ¶ 21 (11th Dist.); *Grexa v. Hollenbaugh*, 2014-Ohio-4746, ¶ 36 (11th Dist.); *Elkins v. Colburn*, 2019-Ohio-2681, ¶ 31 (4th Dist.); *Shimko v. Marks*, 91 Ohio App.3d 458, 462 (5th Dist.); *Merivale Invests v. Tuggle*, 2009-Ohio-6502, ¶ 27 (6th Dist.); *Gollihue v. Russo*, 2003-Ohio-2663, ¶ 33 (10th

3. It would appear that appellants only reluctantly recognized this court’s adoption of this legal point because, in their appellate brief, they observe “there is not seeming to be a decision on this issue in the Eleventh District Court of Appeals[.]” (Sic.) In their reply brief, however, appellants acknowledged this court’s prior holdings but request this court to reconsider its position.

Dist.). Appellants contend, however, that the plain language of the statute requires a strict application of at least all 16 factors. See *Lovejoy v. Diel*, 2021-Ohio-1124, ¶ 40 (12th Dist.); see also *Hamilton v. Barth*, 2022-Ohio-3451, ¶ 13 (1st Dist.). While the statutory language does indicate the 16 components of R.C. 5313.02 are mandatory, given the policy behind R.C. 5313.02(A), discussed below, we decline to reverse this court's prior precedent.

{¶35} The purpose of R.C. 5313.02(A) is not to create a “weapon” for the vendor to use in order to void or invalidate an otherwise valid land contract. *Real Flo Properties v. Kelly*, 1999 WL 1203751, *2 (6th Dist. Dec. 17, 1999). Instead, the purpose of the statute is “to protect the buyer by making specific information available in a land installment contract.” *Id.* This court, quoting from other districts, emphasized:

“Despite the mandatory language of R.C. 5313.02, it is well-established that a land contract may be held to be enforceable as between parties even though it does not strictly comply with the requirements of R.C. 5313.02.’ *Gollihue* . . . at ¶ 33 . . . , citing *Real Flo Properties* . . . at *6 . . . (‘a document need not strictly comply with R.C. 5313.02(A) in order to be deemed an enforceable land installment contract’), and *Shimko* . . . [at] 461-462 . . . (substantial compliance with the statutory requirements of R.C. 5313.02 was sufficient to establish a valid installment contract).” (Parallel citations omitted).

Grexa at ¶ 37.

{¶36} Further, this court, in *Phillips*, noted that Revised Code Chapter 5313 is a consumer protection statute. *Id.* at ¶ 22. Accordingly, the statutory scheme is generally designed to protect consumers by requiring vendors to specifically disclose information, beyond the basic identification of the parties, the price, and the parcel, to vendees in the land installment contract. *Id.*, citing *Young v. Hodapp*, 1986 WL 14965, *3 (12th Dist. Dec.

29, 1986). To this end, in *Young*, the Twelfth Appellate District observed “the statute was not designed as a way for sellers to escape from contracts they wished to void.” *Id.*

{¶37} Considering the general policy, a vendor cannot invalidate an otherwise valid land installment contract simply by identifying statutory factors that were omitted from the contract. This is particularly true where, as here, the vendors “created” or were admittedly responsible for obtaining the agreement upon which this matter is premised.

{¶38} Indeed, when read in context and not in a vacuum, the factors illustrate these points. While various factors are pro forma in any contract, e.g., names of the parties, date of the execution of the contract, a legal description, and a contract price, other points set forth in R. C. 5313.02(A) are clearly prophylactic provisions designed to assist a vendee in acquiring knowledge of a property and not shield a vendor who might not disclose such facts.

{¶39} Most salient are a vendor’s statement of encumbrances against the property conveyed, see subsection R.C. 5313.02(A)(10), and the provision requiring a copy of the contract be recorded. See subsection R.C. 5313.02(A)(14). These provisions are obviously designed to protect the vendee against potential collateral challenges by other parties who could claim an interest in the subject real property without the knowledge of vendee(s).

{¶40} As a counterbalance to the foregoing, we recognize that consumer protection statutes are not enacted “exclusively for the benefit of vendees” *Phillips*, 2004-Ohio-5942, at ¶ 23 (11th Dist.). Nevertheless, in *Phillips*, this court recognized that “in practice, courts have usually . . . [found] contracts [unenforceable] under R.C. 5313.02 where there has been material non-compliance to the detriment of the buyer.” *Phillips* at

¶ 23, citing *Standard Federal v. Asencio*, 1999 WL 61425, *4 (9th Dist. Feb. 9, 1999) (concluding a vendor's failure to make material disclosures under R.C. 5212.02 were material omissions rendering the contract voidable).

{¶41} We accordingly continue to follow this court's precedent, and other Ohio appellate courts' positions, that a land installment contract, precisely to the extent it is designed to protect a vendee, need only substantially comply with the statute in order to be valid and enforceable. This is especially the case where the vendor is responsible for the creation of the formal agreement and where features of the statute are omitted which redound to the disadvantage of the vendee.

{¶42} We must next consider whether the agreement at issue substantially complied with the statutory factors such that it should be construed as a land contract. Appellees, in their appellate brief, set forth a chart which aids this court in its determination.

1. Analysis of Substantial Compliance

{¶43} Regarding R.C. 5313.02(A)(1) and (2), the Sales Agreement provides the full names of the parties and appellants' mailing address. Although appellees asserted they did not move into the home until November 1, 2019, they listed the subject property as their mailing address. The agreement also included the date of the execution of the agreement.

{¶44} Moreover, the agreement set forth the address and permanent parcel number of the residence as well as the contract price for the property, i.e., \$105,000. See R.C. 5313.02(A)(3) and (A)(4), respectively. Further, the contract allocated charges and

fees for services separate from the contract price. Specifically, the agreement allocated taxes, costs, and expenses, as well as insurance proration. See R.C. 5313.02(A)(5).

{¶45} The contract set forth the amount of down payment (\$15,000), the principal amount owed after applying the down payment (\$90,000), and the amount of each installment payment (\$1,000). See R.C. 5313.02(A)(6), (A)(7), and (A)(8). Nothing in the contract addresses any interest charges and, as such, R.C. 5313.02(A)(9) is not at issue.

{¶46} Regarding R.C. 5313.02(A)(10), while the agreement states that the property is subject to zoning and easements of record, there is *no statement* by appellants regarding any potential encumbrances. We recognize that paragraph four of the contract subjects appellees to “assumed mortgages and purchase money mortgages[.]” It is unclear what these phrases mean; this is particularly important because appellants indicated no balance on a “first mortgage” to which the property would be subject.

{¶47} The agreement included provisions indicating that, upon closing, a deed would be issued and prepared by the seller. See R.C. 5313.02(A)(11). The agreement additionally states that appellants’ attorney will prepare a deed and affidavits required for perfecting title upon closing. This appears to satisfy R.C. 5313.02(A)(12).

{¶48} As noted above, appellants represented there was no existing mortgage on the property and thus R.C. 5313.02(A)(13), which discusses the vendor’s default on any mortgage and the vendee’s rights, is inapplicable. R.C. 5313.02(A)(14) requires the vendor to cause a copy of the contract to be recorded. This point is not discussed in the agreement but militates against appellants’ argument. The general point of recording the instrument is to place others on notice of the instrument’s import. Without a recordation provision—and no evidence that the instrument was recorded—appellees’ equitable

interests in the property were not entirely protected because there was no public notice of the agreement.

{¶49} Regarding R.C. 5313.02(A)(15), which addresses the responsibility for taxes, assessments and other charges, the agreement indicates that taxes and insurance shall be prorated as of the date of closing, and that appellees would take the property subject to taxes for the year of closing. Finally, the agreement indicates that appellants warranted that there were no violations of building or zoning codes at the time of closing. It would appear this would satisfy the requirement of R.C. 5313.02(A)(16).

{¶50} Overall, the contract more than substantially comports with the statute and, to the extent it does not, the omissions inure to the detriment of appellants' legal position. As discussed at length, R.C. Chapter 5313 is a consumer protection statute. And appellants' failure to include (or fully ensure) that subsections (10) and (14) were covered operate to the fundamental disadvantage of the vendee—an outcome not favored in consumer protection law.

{¶51} We accordingly hold the trial court did not err in concluding, as a matter of law, that the underlying Sales Agreement was a land installment contract.

{¶52} Our analysis, however, does not end with this conclusion; rather, the trial court utilized alleged ambiguities in the Sales Agreement to support its legal conclusion. We shall accordingly consider this legal point as a supplement to our initial conclusion.

V. Ambiguities in the Sales Agreement

{¶53} In its judgment entry, the trial court concluded that, upon reviewing the Sales Agreement, “paragraph 19 renders the contract ambiguous” and, as a result, “the

Court can consider extrinsic evidence such as the parties' conduct and statements to determine the parties' intent."

{¶54} Contract terms are ambiguous if the meaning of the terms cannot be discerned from reading the entire contract, or if the terms are reasonably susceptible to two or more conflicting interpretations. *Salvato v. Salvato*, 2013-Ohio-5268, ¶ 39 (11th Dist.). While the issue of whether a contract is ambiguous is a question of law, the meaning of words or phrases in an ambiguous contract is a question of fact. *Atelier Dist. v. Parking Co. of Am., Inc.*, 2007-Ohio-7138, ¶ 17 (10th Dist.). Where the language of a contract is ambiguous, a court may consider extrinsic evidence, i.e., evidence not contained in the body of the agreement, to ascertain the parties' intent. *Westfield Ins. Co. v. Galatis*, 2003-Ohio-5849, ¶ 12, citing *Shifrin v. Forest City Ents., Inc.*, 1992-Ohio-28.

{¶55} Outside evidence can help clarify the circumstances surrounding the agreement, what the parties intended to accomplish with the agreement, and what the parties thought the agreement meant. *Mosier v. Parry*, 60 Ohio St. 388 (1899), paragraph one of the syllabus. If the extrinsic evidence does not clarify the meaning of the contract, the court will strictly construe the ambiguous language against the party that drafted the contract. *Id.*; *Graham v. Drydock Coal Co.*, 1996-Ohio-393, ¶ 11.

{¶56} The trial court focused upon paragraph 19 of the contract, entered on September 14, 2019, which provides the "contract shall be closed and deed and possession shall be delivered on the 1 day of November, 2019, unless extended by other provisions in the contract." (Sic.) This provision, when read in conjunction with paragraph 2(c), which permits "MONTHLY PAYMENT DUE THE 1ST[,]" (emphasis sic), creates an inherent ambiguity. Specifically, paragraph 19 appears to require the \$90,000 principal to

be paid on November 1, 2019; however, paragraph 2(c) explicitly states that appellees could tender monthly payment on the Sales Agreement. If appellees were required to pay the \$90,000 balance on November 1, 2019, how could they also be permitted to pay \$1,000 installments toward the finalization of the Sales Agreement?

{¶57} Given the competing provisions of the agreement, we conclude, as a matter of law, the contract was ambiguous. The trial court was therefore permitted to consider extrinsic evidence to inform its opinion regarding the nature of the Sales Agreement.

{¶58} Regarding extrinsic evidence, the trial court, in its judgment entry, determined appellants “did not demand \$90,000 payment on November 1, 2019, Ms. Acosta told Ms. Rubalcava that she had five years to pay the balance of the contract price. [Appellees] performed duties on the property normally reserved for a landlord [Appellees] also paid property taxes. Finally, the monthly checks were identified as house payments, as opposed to rent payments.”

{¶59} The trial court’s observations are valid and supported by the record. Irrespective of paragraph 19 of the Sales Agreement, appellants did not require payment of the full principal amount on November 1, 2019. Instead, appellants continued to accept \$1,000 monthly payments, which Ms. Rubalcava testified she believed would be counted against the principal balance. Specifically, Ms. Rubalcava testified that, on the same day the Sales Agreement was entered, Ms. Acosta expressly advised her that the \$1,000 monthly payments would reduce the \$90,000 balance accordingly.

{¶60} In their appellate brief, however, appellants cite trial testimony which they maintain demonstrated that Ms. Rubalcava conceded the Sales Agreement was simply a lease. We find this point problematic.

{¶61} In their brief, appellants note that their trial counsel asked Ms. Rubalcava whether Ms. Acosta’s February 2022 letter asserted that she “failed to make the rent payments?” Ms. Rubalcava stated she made all payments. After this question, the trial court interceded, admonishing plaintiffs’ counsel stating “[q]uit characterizing what these things are saying. [The letter] says that she didn’t pay rent and the witness just testified that’s what your client says but she paid everything she was supposed to pay.” Given the context of the testimony, Ms. Rubalcava did not concede or acquiesce to the legal theory that she was paying rent on a lease rather than payments towards purchasing the property via a land installment contract.

{¶62} Appellants also cite to a portion of the proceedings wherein Ms. Acosta states that she believed the \$1,000 payments were for “rent.” Despite Ms. Acosta’s statement, the trial court was entitled to assess the credibility of her testimony in relation to the remaining evidence. Simply because Ms. Acosta testified to her “belief” the payments were “rent” does not undermine the credence the trial court accorded Ms. Rubalcava’s overall testimony. This observation is further buttressed by documentary evidence of checks appellees paid to appellants. On multiple occasions, appellees noted (on the checks) the payments were “pago casa,” or “house payments.”⁴

{¶63} Moreover, and critically, Ms. Acosta’s February 2022 letter acknowledged the five-year arrangement to which Ms. Rubalcava testified the parties agreed immediately after entering into the agreement. In that letter, Ms. Acosta stated the

4. Appellees’ primary language is Spanish, and, therefore, the notation on the checks is written as such.

agreement signed on November 1, 2019,⁵ was somehow breached by appellees failing to “pay lump sum amounts.”

{¶64} There is nothing in the Sales Agreement regarding “lump sum amounts” other than paragraph 19, which provided that appellees would pay \$90,000 on November 1, 2019. This provision, however, was only “active” unless “extended by other provisions in the contract.” Paragraph 2(c) permitted monthly payments of \$1,000. Paragraph 2(c), therefore, extended the time to pay the principal in “lump sum” of \$90,000 because it allowed for \$1,000 monthly payments. The ambiguity in terms must be strictly construed against appellants (as the “drafters”). Given the extrinsic evidence, the \$1,000 payments act as an extension of the final payment time.

{¶65} Further, Ms. Acosta’s express recognition of the “five-year” extension, as well as appellants consistent acceptance of appellees’ monthly payments, undermines appellants’ claim of breach. This extrinsic evidence militates *strongly* in favor of appellees’ position.

{¶66} Finally, there was a surfeit of evidence demonstrating that appellees made improvements to the subject home and property. Ms. Rubalcava testified that, among other things, appellees installed a new roof. Although appellants provided the shingles (which were on the property), Ms. Rubalcava noted that the parties agreed appellees would pay for the shingles in the final payment appellees owed on the property.

{¶67} Further, Daniel Nicasio Padilla, Ms. Rubalcava’s husband, testified that, when appellees began observing problems with the home, he contacted his brother (Ms.

5. For clarification, the Sales Agreement was entered on September 14, 2019. The letter appears to mistake this fact.

Acosta's husband) who told him the problems were appellees responsibility "because that was [his] house now."

{¶68} Mr. Padilla testified that appellees—together—replaced the roof in 2021. Due to insulation and heating problems, appellees removed the walls in various rooms of the home to re-insulate the home. They replaced the walls with sheet rock and added wood trim. Appellees also replaced floors and lighting cables. After the improvements, appellees painted the home and replaced light fixtures, light switches, and window frames. Additionally, Mr. Padilla testified appellees replaced the roof on a back-yard shed and re-landscaped the property.

{¶69} None of the foregoing testimony was contradicted by appellants.

{¶70} As emphasized above, it is well settled that R.C. Chapter 5313 was not designed as a way for vendors, such as appellants, to escape contracts they no longer wish to fulfill. See *Young*, 1986 WL 14965, at *3. The trial court did not err in ruling in appellees' favor. The law and the record support the conclusion that the parties entered into a land installment contract. Moreover, the trial court did not err in considering extrinsic evidence to support its conclusion as the Sales Agreement was fundamentally ambiguous in its material feature.

VI. The Alleged Eight Areas of Error Argued by Appellants Beyond the Primary Issues

{¶71} We must finally address eight errors allegedly committed by the trial court in rendering its decision. These errors, as alleged in appellants' appellate brief are:

{¶72} (1) The trial court committed a mathematical error regarding the total payments made by appellees.

{¶73} (2) The trial court punished appellants for their counsel's conduct by not allowing them to provide a closing brief, thereby arguably denying them their rights while giving appellees an unfair advantage in allowing them to file a closing brief.

{¶74} (3) The trial court failed to consider testimony of appellees supporting the fact that they were to pay \$90,000 under the Sales Agreement.

{¶75} (4) The trial court did not consider the impact of the various appeals on the running of the five-year contract period.

{¶76} (5) The trial court accepted testimonial evidence without documentary support of any tax payments allegedly being made by appellees.

{¶77} (6) The trial court failed to consider the tax payments, with documentary proof, made by appellants on the property.

{¶78} (7) The trial court failed to consider that it was appellants who continuously maintained the property and not appellees.

{¶79} (8) The trial court allowed appellees credit for improvements allegedly made to the property without documentary support.

{¶80} In their initial appellate brief, appellants asserted the foregoing alleged errors, but did not elucidate how they individually, partially, or cumulatively undermined the trial court's legal conclusion(s). In their reply brief, appellants simply asserted that the allegations were designed to illustrate "how the Trial Court lost its way and created a miscarriage of justice by holding the agreement was a land installment contract."

{¶81} An appealing party "bears the burden of affirmatively demonstrating error on appeal." *Tally v. Patrick*, 2009-Ohio-1831, ¶ 22 (11th Dist.), quoting *S. Russell v. Upchurch*, 2003-Ohio-2099, ¶ 10 (11th Dist.).

“It is not the obligation of an appellate court to search for authority to support an appellant’s argument as to an alleged error. See *Kremer v. Cox* . . . 114 Ohio App.3d 41, 60 [(9th Dist. 1996)] . . . Furthermore, if an argument exists that can support appellant’s assignments of error, ‘it is not this court’s duty to root it out.’ *Harris v. Nome*, . . . 2002-Ohio-6994[, ¶ 15 (9th Dist.)].”

Tally at ¶ 22, quoting *Upchurch* at ¶ 10. “Accordingly, we may disregard an assignment of error that fails to comply with App.R. 16(A)(7).” *Tally* at ¶ 22.

{¶82} We shall briefly address appellants’ contentions. First, it is unclear what “mathematical error” the trial court committed. The transcript and record indicate that appellees made the installment payments and did not miss any such payments. Moreover, appellees paid property taxes on the real estate.

{¶83} Second, appellees orally moved the trial court for sanctions prior to trial for appellants’ failure to file a trial brief, failure to provide a witness list, failure to provide an exhibit list, failure to communicate regarding stipulations, and failure to file the witness and exhibit list with the trial court. These omissions violated the trial court’s pretrial orders, and appellants counsel admitted (although with some rationale) to the omissions. A trial court is permitted, pursuant its authority under Civ.R. 37(B)(1)(b) to sanction a party who disobeys a court order by prohibiting that party or parties from submitting certain filings. *Id.* (the trial court has the authority to prohibit “the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence”). Pursuant to rule, the trial court did not allow appellants to file a post-trial closing memorandum. We cannot say the trial court’s decision was in error.

{¶84} Third, appellees' prior testimony regarding the \$90,000 payment was consistent throughout trial. Moreover, the extrinsic evidence supported the trial court's determination. Ms. Rubalcava testified that she was only required to submit \$1,000 installment payments and, after five years, submit the remaining monies due on the Sales Agreement. This point is consistent with the evidence.

{¶85} Fourth, it is unclear and appellants do not "flesh out" the possible impact of the prior appeal in this matter. We decline to further excavate appellants' assertion.

{¶86} Regarding their fifth and sixth contentions, appellants fail to elucidate how the trial court's acceptance of testimony rather than documentary evidence on the issue of the payment of taxes prejudiced their case. Moreover, appellants did not provide documentary proof that they made any tax payments that were not reimbursed by appellees. In this regard, their argument would apply equally against their position. Still, pursuant to App.R. 16(A)(7), we will not ferret out an argument that appellants failed to advance on their own.

{¶87} Seventh, appellants did not present any evidence to establish they, rather than appellees, maintained the property. To the contrary, as discussed above, the greater weight of the testimony demonstrated appellees maintained and, indeed, improved the property after moving into the same.

{¶88} Finally, and similar to the seventh issue, appellants seem to suggest the trial court erred by giving credence to appellees' evidence indicating they made improvements to the property without documentary support. Trial testimony, which was unrefuted, demonstrated improvements were made to the property by appellees. The trial court did not err in relying upon the testimony.

{¶89} In summary, the eight issues raised (but not clearly argued) do not provide a basis in part, or in their entirety, to undermine the trial court's determination.

VII. Conclusion

{¶90} For the reasons discussed in this opinion, we conclude the trial court did not err in its determination that the Sales Agreement met fundamental features of a land installment contract under R.C. 5313.02(A) as a matter of law. We further conclude that the trial court properly, as a matter of law, determined the Sales Agreement was ambiguous such that extrinsic evidence could be considered. Finally, we conclude the trial court's consideration and use of the extrinsic evidence in aid of its decision was consistent with the manifest weight of the evidence.

{¶91} Appellants' assignment of error lacks merit.

{¶92} The judgment of the Lake County Court of Common Pleas is affirmed.

MATT LYNCH, P.J.,

JOHN J. EKLUND, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellants' assignment of error is without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

Costs to be taxed against appellants.

JUDGE EUGENE A. LUCCI

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE JOHN J. EKLUND,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.