[Cite as *Peirsol v. Haumschild*, 2026-Ohio-3692.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
DELAWARE COUNTY, OHIO

DEBRA L. PEIRSOL, Plaintiff-Appellant/Cross-Appellee -vs- KRISTEN D. HAUMSCHILD, ET AL., Defendants-Appellees/Cross-Appellants	Case No. 26 CAE 01 0001 Opinion And Judgment Entry Appeal from the Delaware County Court of Common Pleas, Case No. 24 CVH 03 0827 Judgment: Affirmed Date of Judgment Entry: September 21, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: ALEX J. CASTLE, MARISSA A PEIRSOL and JOHN C. CAMILLUS, for Plaintiff-Appellant/Cross-Appellee; NATHAN D. PAINTER, for Defendants-Appellees/Cross-Appellants.

Montgomery, J.

{¶1} Plaintiff-appellant/Cross-appellee Debra Peirsol (hereinafter "Appellant") appeals the summary judgment entered by the Delaware County Common Pleas Court dismissing her complaint for fraudulent inducement, fraudulent nondisclosure, unjust enrichment, and promissory estoppel against Defendant-appellees/Cross-appellants Kristen Haumschild and David Johnson (hereinafter "Haumschild," "Johnson," or collectively "Appellees"). Appellees cross-appeal the summary judgment entered by the Delaware

County Common Pleas Court dismissing their counterclaim for tortious interference of contract against Appellant.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant lives with members of her family on a farm in Delaware County, Ohio. The farm is divided into multiple parcels owned by family members. Brock and Marissa Peirsol, Appellant's nephew and niece, also live on the farm. Brock and Melissa were friends with Appellees, and Appellant considered Appellees to be a part of the family.

{¶3} In 2020 and 2021, Appellees were searching for vacant land on which to build a house. At a pool party in the summer of 2020, Appellant overheard Appellees discussing their plans. Several months later, Brock Peirsol contacted Johnson on Appellant's behalf expressing Appellant's willingness to sell land on the farm to Appellees.

{¶4} In January of 2021, Appellant had a conversation with Johnson in the driveway of the farm. Appellant explained her conceptual vision for Appellees' ownership of the property. Appellant indicated she was willing to sell eleven acres, which would allow Appellees to build a home and qualify for a special tax valuation for agricultural land. Appellant explained where she thought a house, barn, septic system, garden, and driveway would be located on the property. Johnson remembered responding "okay," without making any promises. Appellant recalled Johnson saying they would do what Appellant told them. Appellant ended the conversation by explaining that Appellees should make a formal offer. At this point, she had laid out her concept for the property but had not made an offer to sell.

{¶5} On February 28, 2021, Appellees offered to purchase the property for $93,500 in a written purchase contract. The price-per-acre was the price Appellant would be willing to sell the property to family. Appellant signed the purchase contract without further discussion. The contract did not require Appellees to build a house on the property or to keep the property as an undivided parcel. The contract contained an integration clause stating the written agreement supersedes all prior agreements and understandings, both oral and written, to the extent they are related to the subject matter thereof. The contract also stated it represented the complete and exclusive statement of its terms, and no extrinsic evidence could be introduced in any proceeding involving the contract.

{¶6} The contract included a right of first refusal in the event Appellees ever sold the property. The right of first refusal gave Appellant the option to buy the property at the price and terms Appellees agreed to sell the property to a third party.

{¶7} In March of 2021, Haumschild and Marissa Peirsol got into an argument concerning COVID protocols, which dissolved the friendship. Appellees remained close to other members of the Peirsol family.

{¶8} Appellees entered a contract with a builder on May 2, 2021, to build a house on the property. Appellees terminated the contract with the builder on June 22, 2021, due to the increase in the cost of building materials due to supply chain issues, the lack of reliable Internet service on the property, the lack of public water and sewer on the property, and Appellees' desire not to live near Marissa Peirsol.

{¶9} Before Appellees terminated the construction contract, Appellant asked Johnson if he wanted recommendations for builders. He informed Appellant that Appellees had entered into a contract with a builder. After they terminated the construction contract, Appellees did not inform Appellant that they had changed their minds about building on the property.

{¶10} The purchase contract for the property was amended twice. On July 13, 2021, after completing a survey of the property, the acreage was modified from eleven acres to 11.134 acres, and the purchase price was adjusted to $94,639. On July 15, 2021, Appellant assigned her right of first refusal to Brock and Marissa Peirsol. Johnson also assigned his rights in the contract to Haumschild because if she purchased the property alone, they would obtain a more favorable interest rate. After signing the addendums to the contract, the parties closed on the property on July 15, 2021. The deed as recorded contains no restrictions on the use or transfer of the property.

{¶11} Appellees separated in October of 2023, and their marriage was dissolved in January of 2024. On April 18, 2023, Haumschild split the property into four separate lots to aid in selling the property. On February 17, 2024, Haumschild's real estate agent offered the property to Brock and Marissa Peirsol for $500,000 pursuant to their right of first refusal and provided separate prices for each lot.

{¶12} The property was listed for sale by Haumschild in March of 2024 as four separate lots. Haumschild agreed to sell lots three and four to one party, and lot two to another party. On March 19, 2024, Haumschild's real estate agent offered to sell the property to Brock and Marissa Peirsol and notified them of the contracts for sale of the property. The next day Marissa Peirsol sent a letter to the realtor requesting that she notify the buyers and potential buyers of a notice of lis pendens recorded on the property and of the complaint filed in the instant case. Appellant filed the instant action on March 20, 2024, and recorded the lis pendens on March 26, 2024. The sale of the lots did not close and the purchase contracts lapsed.

{¶13} Appellant filed the instant action against Appellees for fraud in the inducement, fraudulent nondisclosure, promissory estoppel, and unjust enrichment. Appellant alleged that Appellees promised to build a home on the property and use the remainder for agricultural use. Appellees counterclaimed for slander of title, two counts of tortious interference regarding the sale of lots two, three, and four, and for false-light invasion of privacy. The trial court granted judgment on the pleadings on the counterclaim for slander of title and Appellees dismissed the counterclaim for false-light invasion of privacy. Appellees filed a third-party complaint against Brock and Marissa Peirsol, which they later dismissed. Appellees moved for summary judgment on all claims brought by Appellant. Appellant moved for summary judgment in her favor on her fraud claims, and for summary judgment dismissing Appellees' counterclaim for tortious interference.

{¶14} The trial court granted summary judgment dismissing all of Appellant's claims and Appellees' remaining counterclaims. It is from the December 15, 2025, judgment of the trial court Appellant prosecutes her appeal, assigning as error:

{¶15} "I. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS-APPELLEES' MOTION FOR SUMMARY JUDGMENT ON MS. PEIRSOL'S FRAUDULENT INDUCEMENT CLAIM."

{¶16} "II. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS-APPELLEES' MOTION FOR SUMMARY JUDGMENT ON MS. PEIRSOL'S FRAUDULENT NONDISCLOSURE CLAIM."

{¶17} "III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANTS-APPELLEES ON MS. PEIRSOL'S UNJUST ENRICHMENT CLAIM."

{¶18} "IV. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANTS-APPELLEES ON MS. PEIRSOL'S PROMISSORY ESTOPPEL CLAIM."

{¶19} It is also from the December 15, 2025, judgment of the trial court Appellees prosecute their cross-appeal, assigning as error:

{¶20} "I. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF/CROSS-APPELLEE'S MOTION FOR SUMMARY JUDGMENT ON CROSS-APPELLANTS' TORTIOUS INTERFERENCE WITH CONTRACT COUNTERCLAIMS AS GENUINE ISSUES OF FACT REMAIN AND THE TRIAL COURT ERRED AS A MATTER OF LAW."

STANDARD OF REVIEW

{¶21} All assignments of error on direct appeal and cross-appeal allege error in the trial court's grant of summary judgment and are therefore all subject to the same standard of review.

{¶22} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 36 (1987). As such, we must refer to Civ.R. 56(C) which provides in pertinent part:

> Summary Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be

> considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶23} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record demonstrating the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 1997-Ohio-259, *citing Dresher v. Burt*, 1996-Ohio-107.

ANALYSIS OF APPELLANT'S ASSIGNMENTS OF ERROR

I.

{¶24} In her first assignment of error, Appellant argues the trial court erred in granting summary judgment on her claim for fraud in the inducement.

{¶25} A claim for fraudulent inducement arises when a party is induced to enter into an agreement through fraud or misrepresentation. *Strategy Group for Media v. Lowden,* 2013-Ohio-1330, ¶ 35 (5th Dist.). To prove fraud in the inducement, a plaintiff must establish that the defendant made a knowing, material misrepresentation with the intent of inducing the plaintiff's reliance, and that the plaintiff relied on that misrepresentation to his detriment. *Id*. A party's subjective misunderstanding as to the terms of the agreement is insufficient to establish fraud; rather, a specific false representation must have been made. *See Hildreth Mfg. v. Semco, Inc.,* 2003-Ohio-741, ¶ 65 (3d Dist.).

{¶26} Appellant argues the trial court found Johnson's reply of "okay" after Appellant laid out her concept for the Appellees' use of the land was ambiguous, and because of the ambiguity in his response, the trial court erred in granting summary judgment.

{¶27} Appellant has pointed to no evidence of specific false statements made by Appellees other than Johnson's seemingly positive response to her explaining her concept for his use of the land. Before the purchase contract was signed, the only conversation between the parties concerning the sale of the land was the conversation during the winter of 2021 between Appellant and Johnson. During a single conversation in the driveway, Appellant explained where she saw the location of a house, barn, driveway, and septic system, and the use of ten acres of the property for farming. Appellant explained that it was important for tax purposes to keep the eleven acres intact. However, in her deposition, Appellant did not testify that Johnson made any specific representation to her about accepting her "concept," which in her mind, were the conditions of the sale. She testified as follows regarding Johnson's response to her ideas:

> Q. Did he say – did he agree to it? Did he say, I agree to all those terms, Deb?
>
> Or did he say, I want to go back and talk to Kristen about it?
>
> A. He said, we'll do what you tell us.
>
> Q. Okay.

A. Looking back on, "we'll do what you tell us," he was unfamiliar with CAUV, and I meant I'll help you through that short process of replying after transfer – there's a little bit of paperwork you have to do to preserve CAUV, preserve tax for your property taxes, before, during, and after you build.

Q. Okay.

A. And that – that was discussed?

Q. Did Dave in this conversation say, Deb, I will – me and Kris will eventually build a house on this property? Did Dave say anything along the lines that explicit?

A. The most I remember from this conversation is that I said [my grandnephew] could come up here and never take his bicycle out on the road and come visit or come stay with you or – if he ever decides to run away, he can run away to Uncle Dave's house. And he said – he agreed. He said, yeah. But, I mean, he never –

Q. Was that yes as to [Appellant's grandnephew] being able to ride his bike up to his house or yes to the deal you were proposing?

A. It's been too long.

Peirsol Depo. 103-104.

{¶28} Despite the fact that Appellant did not testify to any statement made by Johnson which she affirmatively interpreted as a specific agreement with her ideas about the property as a condition of the sale, Appellant testified she left the conversation "feeling" she had an agreement that the parcel would contain eleven acres, a pole barn would be constructed first, a house would be built on the property, and the farmer currently farming the remainder of the land would farm the ten acres exclusive of the parcel where the house would be located.

{¶29} When asked if she expected Johnson to go back and discuss the matter with his wife, Appellant responded that when Johnson left the conversation, Appellant believed that Johnson thought it would be a great place to live. Appellant was clear in her testimony that she was not offering the property for sale to Johnson in that conversation but rather was attempting to solicit an offer to purchase the property from Johnson based on her concept for the land. When Appellees made a written offer to purchase the property with no other questions, Appellant interpreted the offer as acceptance of her "concept" for the property. However, Appellant never communicated to Appellees that the sale was conditioned on their acceptance of her concept for the property and the written purchase contract contained no language incorporating Appellant's plans for the property. Appellant testified she signed the contract "under the assumption" that Appellees would "keep 11 acres, build a house, a barn, and live there." Peirsol Depo. 116. However, Appellant pointed to no specific representation by Appellees on which she based this assumption. We agree with the trial court that the evidence is undisputed that there was no evidence of an affirmative misrepresentation by Appellees which fraudulently induced Appellant into entering the purchase contract. Appellant's subjective assumptions drawn from the "concept" conversation do not form the basis of a fraud claim in the absence of a specific misrepresentation made by Appellees.

{¶30} In addition, a party may not prove fraud by claiming that the inducement to enter into an agreement was a promise that was within the scope of the integrated agreement but was ultimately not included in the agreement. *Great Water Capital Partners, LLC v. Down-Lite International, Inc.,* 2015-Ohio-4877, ¶ 23 (1st Dist.). In the instant case, Appellant claims that part of the inducement to enter into the purchase agreement was Appellees' promise they would not subdivide or sell the property but would maintain the eleven acres as a single parcel and live on the property. However, the contract specifically contemplated Appellees' sale of the property by giving Appellant a right of first refusal to purchase the property should Appellees desire to sell "all or part" of Appellees' interest in the property. Appellant's claim of fraud concerning the possibility of subdividing and selling the property was within the scope of the integrated agreement but was not included in the agreement and therefore cannot serve as the basis of her fraud claim.

{¶31} The first assignment of error is overruled.

II.

{¶32} In her second assignment of error, Appellant argues the trial court erred in dismissing her claim for fraudulent nondisclosure on summary judgment.

{¶33} An action for fraud and deceit is maintainable not only as a result of affirmative misrepresentations, but also for negative ones, such as the failure of a party to a transaction to fully disclose facts of a material nature where there exists a duty to speak. *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.,* 115 Ohio App.3d 137, 150. Fraud based on nondisclosure exists only where the defendant has a duty to disclose. *Advanced Prod. Ctr. V. Emco Maier Corp.*, 2003-Ohio-6206, ¶ 14 (5th Dist.). "The duty to disclose arises when one party has information that the other party is entitled to know because of a fiduciary or another similar relation of trust and confidence between them." *Strategy Group for Media v. Lowden*, 2013-Ohio-1330, ¶ 28 (5th Dist.). While a fiduciary relationship may arise from an informal relationship, such a relationship exists only where both parties understand that a "special trust or confidence has been reposed." *Umbaugh Pole Bldg. Co. v. Scott*, 58 Ohio St.2d 282, 282. "[A] party is under a duty to speak, and therefore liable for non-disclosure, if the party fails to exercise reasonable care to disclose a material fact which may justifiably induce another party to act or refrain from acting, and the non-disclosing party knows that the failure to disclose such information to the other party will render a prior statement or representation untrue or misleading." *Miles v. McSwegin,* 58 Ohio St.2d 97, 100 (1979).

Failure to Disclose Termination of Construction Contract

{¶34} Appellant argues the trial court erred in granting summary judgment on her claim for fraudulent nondisclosure as it relates to Appellees' failure to inform her that they had terminated their building contract before closing. Two months after entering into the purchase contract, Appellees signed a contract to build a home on the property. In May or June of 2021, Appellant asked Johnson if they needed recommendations for builders. Johnson responded that they had entered into a contract with a builder. Appellees terminated the building contract before they closed on the property without telling Appellant they had terminated the building contract.

{¶35} Appellant argues that Appellees were required to correct the misrepresentation about hiring a builder because the information was material to her understanding that Appellees would build on the property. However, as discussed in our discussion of Appellant's first assignment of error, Appellees did not promise to build on the property as a condition of the sale. As found by the trial court, Appellant's argument is that Appellees were required to correct her incorrect assumption, which was based on her own concept for the property, but not based on the agreement between the parties or any representation by Appellees that they would use the property exactly as outlined by Appellant in the "concept discussion" between Appellant and Johnson. At most, Appellees knew Appellant envisioned them building a house and living on the property; however, Appellant did not make their compliance with her vision for the property a condition of the sale, nor did Appellees make any affirmative representation that they would use the property as outlined by Appellant which would give rise to a duty to correct a prior misrepresentation concerning the property. The testimony as set forth in Appellant's deposition, outlined earlier in our opinion, supports the trial court's finding:

> The reality is that Plaintiff appears to have relied on a misimpression that is best described as a dream or aspiration that she created in her own mind. That misimpression was not the result of Defendants' representations, and Defendants therefore were under no duty to inform Plaintiff that they cancelled their construction contract and changed their plans for the Property.
>
> Judgment Entry, December 15, 2025, page 17.

{¶36} Further, Appellees and Appellant were not in a relationship that gave rise to a duty to disclose. "Ordinarily in business transactions where parties deal at arm's length, each party is presumed to have the opportunity to ascertain relevant facts available to others similarly situated and, therefore, neither party has a duty to disclose material information to the other." *Blon v. Bank One*, 35 Ohio St.3d 98, 101. The parties in this case were not in a fiduciary relationship or in a special position of trust which removed this transaction from the general rule that neither party had a duty to disclose material information to the other.

Failure to Disclose the Dispute Between Haumschild and Marissa Peirsol

{¶37} Appellant argues the trial court erred in finding Appellees had no duty to disclose the argument between Haumschild and Marissa Peirsol because Appellant already knew of the dispute. The trial court found as follows:

> Regarding the dispute with Brock and Marissa Peirsol, Plaintiff admits that she knew about the dispute shortly after it occurred and, certainly, prior to closing. Defendants were under no duty to inform Plaintiff that Haumschild had a dispute with Brock and Marissa Peirsol because Defendants never made representations to Plaintiff about their friendship with Brock and Marissa Peirsol and the impact of that friendship on their purchase of the Property. Further, Plaintiff knew about the dispute prior to closing and proceeded with the closing anyway.
>
> Judgment Entry, December 15, 2025, p. 15.

{¶38} We find the trial court did not err in granting summary judgment on the claim for fraudulent nondisclosure as it relates to the dispute between Appellees and Appellant's niece and nephew. Appellant cannot demonstrate that she justifiably relied on the failure of Appellees to disclose the existence of the rift when she knew about the disagreement prior to closing. Further, as discussed in relation to the failure of Appellees to disclose they had terminated the contract with the builder, Appellees did not have a duty to disclose arising from a special relationship between the parties.

{¶39} We find the trial court did not err in granting summary judgment on Appellant's claim for fraudulent nondisclosure. The second assignment of error is overruled.

III.

{¶40} In her third assignment of error, Appellant argues the trial court erred in dismissing her claim for unjust enrichment on summary judgment.

{¶41} When competent parties contract, and no fraud or illegality is involved, unjust enrichment cannot be claimed. *Zara Constr., Inc. v. Belcastro*, 2022-Ohio-788, ¶ 62 (5th Dist.), *citing Ullmann v. May*, 147 Ohio St. 468 (1947). "The law does not recognize the coexistence of a quasi contract and an express contract covering the same subject." *Williams v. Goodyear Aircraft Corp.*, 84 Ohio App. 113, 117 (9th Dist. 1948).

{¶42} In the instant case, Appellant's unjust enrichment claim alleged that Appellees unjustly received a benefit in the form of a substantially reduced "family" price for the property as a result of Appellees' alleged fraud in the inducement of the contract. However, we have found the trial court did not err in dismissing Appellant's claims for fraud. Therefore, the written contract exclusively governs the price paid for the property, regardless of whether the property could have been sold at a higher price to another buyer, and Appellant cannot obtain relief under a claim for unjust enrichment.

{¶43} Appellant's third assignment of error is overruled.

IV.

{¶44} In her fourth assignment of error, Appellant argues the trial court erred in dismissing her claim for promissory estoppel.

{¶45} Promissory estoppel is not available as a remedy where the legal relationship between the parties is governed by a valid and enforceable contract. *Bridgestone Ams. Tire Operations, LLC v. Harris,* 2018-Ohio-63, ¶ 41 (5th Dist.). Because we have found the trial court did not err in dismissing Appellant's claims of fraud, the contract remains valid and enforceable and governs the relationship between the parties. Appellant's claim for promissory estoppel is therefore barred, and the trial court did not err in dismissing the claim on summary judgment.

{¶46} The fourth assignment of error is overruled.

ANALYSIS OF APPELLEES' ASSIGNMENT OF ERROR ON CROSS-APPEAL

{¶47} Appellees argue the trial court erred in granting summary judgment dismissing their counterclaims for tortious interference with contract.

{¶48} The elements of tortious interference with contract are: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages. *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 176 (1999).

Existence of a Contract

{¶49} The trial court found time had not expired on Brock and Marissa Peirsol's right of first refusal on the two sales contracts in question, and because this condition precedent was not fulfilled, the contracts for the sales of the lots to third parties were not yet enforceable.

{¶50} "A failure to satisfy a condition precedent prevents the creation of the contract subject to that condition precedent." *GEM Dev. V. Pepsi-Cola Bottling Co.,* 2007-Ohio-3010, ¶ 31 (5th Dist.).

{¶51} A right of first refusal is triggered when a property owner intends to accept a bona fide offer for a package of properties that includes property burdened by a right of first refusal. *Gordon Rests., Inc. v. W.S. Carlile & Sons Co.,* 2022-Ohio-4589, ¶ 27 (10th Dist.). To honor the right of first refusal, the property owner and purchaser must agree on a separate price for the burdened property, and the property owner must submit to the right-holder a separate offer, which the property owner intends to accept, for the burdened property. *Id*. The right-holder will then have the opportunity to meet the terms and conditions of the separate offer. *Id*.

{¶52} The right of first refusal as recorded between Appellees and Brock and Marissa Peirsol provides in pertinent part:

> Upon receipt of any accepted contract to transfer or convey any interest in the real estate or any other proposed or intended transfer or conveyance, the Grantor shall deliver to the Grantee written notice of any such proposed or

intended transfer or conveyance to which shall include all material details of the proposed or intended transfer or conveyance together with complete, legible and signed copies of all writings or instruments which collectively form any agreement or contract or evidence the intentions and agreements of the Grantor and any prospective transferees. Further, the Grantor hereby grants to the Grantee a Right of First Refusal to purchase or accept transfer of the real estate and any other property included in the proposed transaction on the same exact terms and conditions of any accepted contract to transfer or convey any interest in the real estate or any other proposed or intended transfer or conveyance which is accepted or agreed upon by the Grantor or which the Grantor intends to make. Within ten (10) days, exclusive of any Saturday, Sunday or United States Postal Service holiday, after delivery by the Grantor to the Grantee of written notice delivered in person or by certified mail, return receipt requested, or by FedEx to the Grantor's most recent address for the Grantee and above described documents related to the real estate, the Grantee shall notify the Grantor in writing at the address specified in the notice that the Grantor exercises their Right of First Refusal or this Right of First Refusal shall immediately and automatically lapse and be null and void as to the exact transaction for which the Grantee failed to exercise this Right of First Refusal and this Right of First Refusal shall thereupon terminate. However, if the exact transaction for which the Grantee failed to exercise this Right of First Refusal is not consummated and performed without any modification to the terms and conditions submitted to the Grantee, this Right of First Refusal shall remain in

> full force and effect as to the real estate and the Grantor shall continue to be obligated to give the same form of written notice and same type of supporting documents to the Grantee as to each and every separate deal or transaction, or modification thereto, which is different in any way from the terms and conditions previously submitted to Grantee.

{¶53} On February 17, 2024, Appellees mailed Brock and Marissa Peirsol what purported to be a notice in accordance with the terms of the right of first refusal. However, this notice did not specify the specific contracts later entered into by Appellees to sell the lots in question. The letter disclosed that Appellees had split the property into four separate properties, and in the event the Peirsols did not exercise their right of first refusal, Haumschild intended to list and sell the four lots individually. Haumschild offered the property to the Peirsols for $500,000 for the entire parcel. The letter stated that in the event the Peirsols did not exercise their right of first refusal at this time, Haumschild would provide them with "the required opportunities" to exercise their right of first refusal at the time she enters into contract with respect to each individual parcel. The letter listed the individual anticipated listing prices of each parcel. The Peirsols did not respond to this offer.

{¶54} We find the February 17, 2024, letter did not satisfy the contractual right of first refusal with respect to the two sales contracts at issue in Appellees' counterclaim for tortious interference with contract. Both the contractual right of first refusal and Ohio law state that the right of first refusal is specific to a proposed contract to sell the property. The February 17, 2024, offer to sell, while purporting to be pursuant to the right of first refusal, was not tied to a specific transaction to sell the property. By its own terms, the offer recognizes that Haumschild would be required to give the Peirsols an opportunity to purchase the property at a later time, in the event she entered into contracts to sell the parcels.

{¶55} On March 19, 2024, one day before the instant lawsuit was filed and one week before the lis pendens was recorded, Haumschild notified the Peirsols of the two contracts she had entered into with regard to the sale of three of the parcels. Therefore, the ten-day period of time within which the Peirsols possessed a right of first refusal had not expired at the time of the lawsuit and lis pendens were filed, and the sales contracts with the third parties did not exist at the time Appellant filed the lawsuit due to the condition precedent not having been satisfied. Appellees' counterclaim was premised on Appellant's actions in filing the instant lawsuit and the lis pendens to block the sale of the lots to the third parties; however, a contract with the third parties did not exist at the time Appellant filed the suit and lis pendens because the Peirsols' right of first refusal was still pending. We find the trial court did not err in granting summary judgment dismissing the counterclaims for tortious interference of contract.

Knowledge of the Contract

{¶56} The trial court found there was no evidence that Appellant had actual knowledge of the contracts between Appellees and the potential buyers of the lots in question. "The knowledge required is actual knowledge; constructive knowledge is not sufficient to sustain a cause of action for tortious interference with contract, actual knowledge is required." *Gentile v. Turkoly*, 2017-Ohio-1018, ¶ 29 (7th Dist.), *citing Norris v. Philander Chase Co.,* 2010-Ohio-5297, ¶ 26 (5th Dist.).

{¶57} Appellant testified in her deposition that she had no knowledge of the contract between Haumschild and the third-party buyers at the time she filed the instant lawsuit. She saw the "For Sale" sign on the property but was unaware of the potential sales contracts.

{¶58} Appellees argue because Brock and Marissa Peirsol were notified of the contracts one day before the instant action was filed by Appellant, and because Marissa Peirsol was acting as an attorney on Appellant's behalf, reasonable minds could find Appellant had actual knowledge of the contracts in question. We disagree. In the absence of any evidence that Appellant was notified of the specific contracts in question, we find the notification provided to her niece and nephew and the timing of her filing the lawsuit provides mere speculation that Appellant had actual knowledge of the third-party sales contracts. Appellant by her own admission knew the property had been placed for sale, but pursuant to Ohio law, actual knowledge of the contracts with which she allegedly interfered is required. There is no evidence in the record that Appellant knew of the specific contracts for the sale of the property in question.

{¶59} Appellees' assignment of error on cross-appeal is overruled.

CONCLUSION

{¶60} The judgment of the Delaware County Common Pleas Court is affirmed. Costs of the appeal are assessed to Appellant. Costs of the cross-appeal are assessed to Appellees.

By: Montgomery, J.

Hoffman, P.J. and

Popham, J. concur.