

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

YORKLAND, LTD.,

Plaintiff - Appellee

-vs-

TIM KILDOW, ET AL.,

Defendant - Appellant

Case No. 26 CAE 04 0035

Opinion And Judgment Entry

Appeal from the Delaware County Court of
Common Pleas, Case No. 24 CVH 03 0297

Judgment: Affirmed

Date of Judgment Entry: October 7, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: NICHOLAS S. BOBB and DANIELLE M. CRANE, for Plaintiff-Appellee; J.C. RATLIFF, ROCKY RATLIFF and NICHOLAS BARONS , for Defendant-Appellant.

Montgomery, J.

{¶1} Defendants-appellants, Tim Kildow and Warehouse Italian Diners, LLC, appeal the summary judgment entered by the Delaware County Common Pleas Court dismissing their counterclaims and their claims against third-party defendant Kevin Hensel for breach of contract, quiet title, specific performance, fraud, fraudulent misrepresentation, fraudulent inducement, and unjust enrichment, and awarding Plaintiff-appellee Yorkland, Ltd. damages of \$38,232.63 on its claim for breach of contract.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 30, 2017, Appellee purchased property on U.S. Highway North, in Delaware, Ohio, at a sale conducted by the property's court-appointed receiver. Kevin Hensel is the sole owner of Appellee. The property had previously been owned by Kildow but had gone into a receivership. Appellee purchased the property to allow Appellants to continue to operate a restaurant on the property. Kildow and Hensel had a long-standing business and personal relationship. Eventually, Hensel intended to sell the property to Kildow at a favorable price.

{¶3} After Appellee purchased the property, Appellants occupied the property at the same rental price as the prior oral lease between Kildow and the receiver, paying \$3,250 a month to Appellee. As part of the terms of the lease with Appellee, Appellants were responsible for paying real estate taxes, insurance, and maintenance on the property. The lease was not reduced to writing.

{¶4} Hensel kept a running total of the amount for which he would sell the property to Kildow in order to cover his hard costs and anticipated profit. Because of the friendship between Hensel and Kildow, Hensel reduced the amount for which he would agree to sell the property each month by an unspecified portion of the rent Appellants paid to Appellee. However, the parties never reduced the option to purchase the property to writing, never agreed on a price, and never agreed to a formula to calculate the price.

{¶5} In 2020, Hensel approached Kildow about purchasing the property for \$136,405.72. Kildow did not accept. Hensel approached Kildow again in April of 2023 about buying the property and indicated to Kildow that he wanted to sell the property by the end of

June. On June 19, 2023, Hensel offered to sell the property to Kildow for \$135,323 plus transfer costs. Kildow did not respond.

{¶6} Hensel again offered to sell the property to Kildow in September of 2023 for \$150,000, stipulating that the offer would remain open only until December 31, 2023. On September 15, 2023, Appellee notified Appellants that the monthly rent was increasing to \$4,000 effective November 1, 2023. The parties did not reach an agreement for the sale of the property by the expiration date of the offer.

{¶7} Appellants stopped paying rent in December of 2023, leaving rent unpaid from December of 2023 through April of 2024. On November 30, 2023, Appellants paid the November 2023 rent thirty days late, and paid the original rent of \$3,250, rather than the increased rent of \$4,000. Appellants failed to pay the real estate taxes on the property, which Appellee paid on June 26, 2023, after the taxes became delinquent.

{¶8} Appellee also purchased five other properties in Marion, Ohio, which formerly belonged to Kildow or to one of Kildow's family members. According to Kildow, he had an oral agreement with Hensel to apply some of the portions of the sales of these properties, if and when Hensel sold them, to reduce the purchase price of the Delaware property. This alleged agreement was also not formalized in writing.

{¶9} Appellee filed the instant action seeking declaratory relief, damages for breach of contract, and forcible entry and detainer. Appellants counterclaimed and filed third-party claims against Hensel for breach of contract, fraud, fraudulent misrepresentation, fraudulent inducement, unjust enrichment, and quiet title, and specific performance. After a bench trial solely on the forcible entry and detainer claim, the trial court determined the parties had an

oral lease agreement for the property, not a land installment contract or other purchase agreement. This Court affirmed. *Yorkland, Ltd. v. Kildow*, 2025-Ohio-152 (5th Dist.).

{¶10} The trial court entered summary judgment dismissing Appellants' counterclaims against Appellee and their claims against Hensel. The trial court found the claims for breach of contract, quiet title and specific performance were barred by issue preclusion and res judicata based on the trial court's earlier ruling, as affirmed by this Court, that the agreement between the parties was an oral lease, not a land installment contract or other form of real estate purchase agreement. The trial court found Appellants presented no evidence to support their fraud claims. The trial court found the parties had an oral lease concerning the property, and an unjust enrichment claim cannot be based on rent payments under the lease. The trial court further found no unjust enrichment in Appellee keeping the proceeds of the sale of the Marion properties because there was no enforceable agreement to sell the Delaware property to Appellants.

{¶11} The trial court entered summary judgment in favor of Appellee on its claim for breach of the oral lease. The trial court awarded Appellee damages in the amount of \$38,232.63.

{¶12} On July 21, 2025, Appellee moved to quash six subpoenas issued to nonparty witnesses by Appellants and also moved for a protective order as to the same subpoenas. The trial court denied Appellee's motion as to one subpoena and granted the motion as to the remaining five subpoenas.

{¶13} Appellants filed a motion to compel on September 30, 2025, seeking to compel Appellee to provide supplemental responses to interrogatories and requests for documents. The trial court denied the motion to compel. Appellee filed a motion for sanctions against

Appellants on October 20, 2025. The trial court denied sanctions under Civ.R. 11 but awarded discovery sanctions under Civ.R. 37 in the amount of \$6,982.50.

{¶14} It is from the March 17, 2026, judgment of the trial court Appellants prosecute their appeal, assigning as error:¹

{¶15} “I. THE TRIAL COURT ERRED WHEN IT FOUND THE TERMS OF THE ORAL MONTH TO MONTH LEASE AS THERE WAS NO AGREEMENT TO THOSE TERMS UNDER A LEASE AGREEMENT.”

{¶16} “II. THE TRIAL COURT ERRED WHEN IT ENFORCED THE OPTION TO PURCHASE WITHIN THE ORAL MONTH TO MONTH LEASE IT CREATED.”

{¶17} “III. THE TRIAL COURT ERRED WHEN IT FAILED TO ALLOW KILDOW TO DEPOSE WITNESSES AND TO COMPEL DISCOVERY IN FURTHERANCE OF HIS DEFENSES AND COUNTERCLAIMS THAT REMAINED PENDING IN THE CASE.”

{¶18} “IV. THE TRIAL COURT ERRED WHEN IT GRANTED YORKLAND’S MOTION TO QUASH AND FOR A PROTECTIVE ORDER AND MOTION FOR SANCTIONS UNDER CIV.R. 37.”

STANDARD OF REVIEW, ASSIGNMENTS OF ERROR ONE AND TWO

{¶19} Appellants’ first two assignments of error claim error in the trial court’s dismissal of their counterclaims and to its grant of summary judgment to Appellee on its breach of contract claim and are therefore governed by the same standard of review.

¹ Appellee filed a notice of cross-appeal with this Court on April 27, 2026. Appellee did not file a brief in support of its cross-appeal. The cross-appeal is therefore dismissed for want of prosecution.

{¶20} 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.

{¶21} 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 the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-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.

I.

{¶22} In their first assignment of error, Appellants argue the trial court erred in finding their counterclaims barred by issue preclusion and res judicata and further erred by finding no disputed facts as to the terms of the lease because there was no meeting of the minds on such terms.

{¶23} In *Hamdan v. Traish*, 2015-Ohio-4561, ¶¶ 39-40 (7th Dist.), the court set forth the law regarding the res judicata effect of a forcible entry and detainer judgment on later litigation between a landlord and tenant:

R.C. 1923.03 provides that judgments under the forcible entry and detainer chapter "are not a bar to a later action brought by either party." An action in forcible entry and detainer "determines the right to immediate possession of the property and nothing else." *Seventh Urban, Inc. v. Univ. Circle Prop. Dev., Inc.*, 67 Ohio St.2d 19, 25, 423 N.E.2d 1070 (1981), fn. 11. In addressing res judicata as applied to forcible entry and detainer actions, this court found that a forcible entry and detainer action "by its very statutory construction is summary in nature and determines one point only, the right to immediate possession." *John D. Tonkovich & Son, Inc. v. N. Am. Coal Corp.*, 7th Dist. No. 81-B-7, 1981 Ohio App. LEXIS 11291, 1981 WL 2700, at *1 (Dec. 30, 1981). We noted that our determination was supported by the fact that a judgment in forcible entry and detainer does not operate as a bar to later and other proceedings. *Id.*

But courts have held that a "forcible entry and detainer action bars relitigation of issues that were *actually and necessarily decided* in the former action." (Emphasis added.); *McAlpine v. Patrick*, 8th Dist. No. 86453, 2006-Ohio-1101, ¶10. R.C.1923.03 permits subsequent suits between landlords and tenants involving issues and disputes *not actually litigated* in the previous cause of action. *Showe Mgt. Corp. v. Hazelbaker*, 12 Dist. No. CA2006-01-004, 2006-Ohio-6356, ¶9. When the trial court has already actually and necessarily determined an issue in the forcible entry and detainer action, the issue is barred by the doctrine of res judicata. *Marous/Church, LLC v. Stanich*, 11th Dist. No. 2000-L-188, 2001-Ohio-8763.

{¶24} In the prior forcible entry and detainer action in the instant case, the trial court determined that an oral lease of the property existed whereby Appellants leased the property from Appellee, and no valid contract for purchase of the property existed. The trial court necessarily determined these issues in order to determine that Appellee had a right to possession of the property. Appellants' counterclaims for breach of contract, to quiet title in the property, and for specific performance of a land purchase contract all rely on Appellants' claim that a valid contract for the sale of the property existed. Because this issue was determined in the forcible entry and detainer action and affirmed by this Court on appeal, res judicata bars Appellant's counterclaims and third-party claims for breach of contract, specific performance, and quiet title, and the trial court did not err in dismissing these counterclaims on the basis of res judicata and issue preclusion.

{¶25} Appellants argue their counterclaims for fraud and unjust enrichment are not barred by res judicata. We agree. However, the trial court did not dismiss these claims on

the basis of res judicata. The trial court set forth independent grounds for its dismissal of these counterclaims in its judgment entry, to which Appellants have not assigned error, and Appellants have therefore waived any error with regard to the trial court's dismissal of these counterclaims.

{¶26} Appellants argue there was no meeting of the minds on the existence of an oral lease because they believed they were entering into a land installment contract. Again, the existence of an oral lease and the lack of an enforceable land purchase contract are issues which were resolved in the prior action and are res judicata in the instant action.

{¶27} Appellants also argue that the trial court erred in finding they paid taxes, insurance, and maintenance on the property as a part of a triple-net lease. In this Court's earlier opinion in this case, Appellant assigned as error that the trial court erred in finding a triple-net lease. We found the terms of the lease were not yet litigated, and therefore this issue was not yet ripe for review. In the summary judgment proceeding, the trial court found Appellants were required to pay taxes, insurance and maintenance as part of a triple-net lease, and thus Appellee was entitled to damages for breach of contract based on Appellants' failure to pay. There are no disputed facts as to Appellants' duty to pay taxes, insurance, and maintenance on the property. Rather, Appellants argue they paid for these items because this was a land installment contract, and not a lease. The issue of whether the agreement between the parties was an oral lease or a land installment contract was settled in the forcible entry and detainer action. Therefore, Appellants cannot now claim they paid for these items as a part of a land installment contract rather than a triple-net lease.

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

II.

{¶29} In their second assignment of error, Appellants argue that the trial court erred in enforcing the option to purchase within the oral month-to-month lease it created.

{¶30} We find Appellants have misconstrued the trial court's decision. The trial court did not enforce an option to purchase. With regard to the parties' discussions surrounding the possibility of purchasing the property, the trial court found:

The court further found that Hensel kept a running total of the amount for which Yorkland would sell the Property to Kildow and cover its hard costs and anticipated profit but that the parties never reduced Defendants' purchase option to writing. The court also held that, because of Hensel and Kildow's long-standing relationship, Hensel reduced the amount for which Yorkland would agree to sell the Property to Kildow each month by an unspecified portion of Defendants' rent payment but that no agreement required Yorkland to sell the Property to Defendants for any specific price.

Judgment Entry, January 2, 2026, p. 5 (internal citations omitted).

{¶31} Appellants argue that if the option to purchase was not enforceable because it was not in writing, they are entitled to the return of any money that Appellee applied to the purchase price. However, as found by the trial court, there was not a firm agreement to sell the property to Appellants. While the parties may have discussed Appellants eventually purchasing the property from Appellee, Appellee was not applying a set amount of money every month to the principal of the purchase price because the parties never agreed on a sale of the property. Rather, because of their friendship, Hensel was willing to reduce the price for which he would possibly sell the property to Kildow by a portion of the rent Appellants

paid pursuant to the month-to-month oral lease. However, because the parties never agreed to a purchase price for the property and never reached an agreement as to the sale of the property, none of the rent money Appellants paid to Appellee was applied to acquire equity in the property, contra to Appellants' argument.

{¶32} The second assignment of error is overruled.

III.

{¶33} In their third assignment of error, Appellants argue the trial court erred in failing to allow him to depose witnesses with information related to the sale of the Marion properties, and erred in overruling his motion to compel discovery with regard to the these depositions.

STANDARD OF REVIEW

{¶34} A trial court has broad discretion to regulate discovery proceedings. *Hahn v. Satullo*, 2004-Ohio-1057, ¶ 13 (10th Dist.). Absent an abuse of discretion, an appellate court must affirm a trial court's disposition of discovery issues. *Id.* An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

ANALYSIS

Appellee's Motion to Quash

{¶35} Appellants first argue that the trial court erred in refusing to allow them to depose Joe Fields and Luke Henry.

{¶36} Civ.R. 26(B)(1) provides:

Unless otherwise limited by court order, the scope of discovery is as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Information within this scope of discovery need not be admissible in evidence to be discoverable.

{¶37} Pursuant to Civ.R. 26(C), the trial court may grant a protective order to protect a party against annoyance, embarrassment, or undue burden and expense.

{¶38} The trial court found Luke Henry is the person who purchased a building in Marion, Ohio, from Appellee, and this building is a location where Appellants formerly operated a restaurant. The trial court found the sale of the property by Appellee to Henry had no relevance to the case. While Appellants argue Appellee was required to apply the proceeds from the sale of the property to Appellants' loan to purchase the subject property in the instant case, the trial court found in the forcible entry and detainer action that Appellants did not have a valid contract for the purchase of the property and occupied the property under an oral lease with Appellee. The trial court found Henry had no relevant information to offer.

{¶39} The trial court found that Joe Field would purportedly testify that Hensel represented to him that Appellants' monthly payments were loan payments, not rent payments. The trial court found this was Appellants' attempt to relitigate issues previously

decided by the trial court. Appellants also contended Field delivered documents related to the eviction of Appellants from the property. The trial court found any information Field had related to the eviction was a part of the forcible entry and detainer claim, which had already been decided.

{¶40} We find the trial court did not abuse its discretion in quashing the subpoenas of Henry and Field. Appellants argue their counterclaims for unjust enrichment and fraud were still pending. However, both Henry and Field were being subpoenaed to provide information related to Appellants continuing claim that the parties had a contract for the sale of the property. This issue had been decided by the trial court, and affirmed by this Court, in the forcible entry and detainer action. Therefore, any testimony regarding an agreement to purchase the property was relevant only to issues that were res judicata as to the claims remaining in the action.

Motion to Compel

{¶41} Appellants also argue the trial court abused its discretion in denying their motion to compel supplemental answers to interrogatories and for production of additional documents. Appellants do not make any specific arguments related to the trial court's individual rulings on specific issues raised in the motion to compel but argue generally the trial court erred because their counterclaims were still pending concerning whether the agreement between the parties was a lease or a purchase contract.

{¶42} At the outset, we note the discovery period had lapsed when Appellants filed their motion to compel, and thus much of the financial information they sought was of little use to Appellants because they could no longer issue subpoenas or request records. As to the remaining requests for further information, the trial court found either the interrogatories had

been fully answered, or they sought additional information regarding a purchase contract, which had previously been determined did not exist. We find no abuse of discretion in the trial court's judgment overruling Appellants' motion to compel.

{¶43} The third assignment of error is overruled.

IV.

{¶44} In their fourth assignment of error, Appellants argue the trial court erred in imposing sanctions pursuant to Civ.R. 37 in conjunction with the overruling of their motion to compel.

STANDARD OF REVIEW AND APPLICABLE LAW

{¶45} Civ.R. 37 provides for the imposition of sanctions when a motion to compel discovery is overruled:

If the motion is denied, the court may issue any protective order authorized under Civ.R. 26(C) and shall, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court shall not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

{¶46} We review a trial court's imposition of a sanction pursuant to Civ.R. 37 for abuse of discretion. *Collins v. Vitori*, 2026-Ohio-3571, ¶ 22 (12th Dist.).

ANALYSIS

{¶47} In the absence of a finding that Appellants' motion to compel discovery was substantially justified or other circumstances make an award of expenses unjust, the trial court shall require the movant to pay reasonable expenses incurred in opposing the motion. Appellants again argue that they believed the agreement between the parties was a land installment contract, and therefore the motion to compel was justified. However, the trial court and this Court had previously rejected Appellants' claim of an existing purchase contract in the forcible entry and detainer action. We find the trial court did not abuse its discretion in failing to find the motion to compel was substantially justified and did not abuse its discretion in awarding sanctions under Civ.R. 37.

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

CONCLUSION

{¶49} The judgment of the Delaware County Common Pleas Court is affirmed.

{¶50} Costs are assessed to Appellants.

By: Montgomery, J.
Hoffman, P.J. and
Baldwin, J. concur.