[Cite as *Lucas v. Brindle*, 2026-Ohio-4592.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

DIANA L. LUCAS, EXECUTRIX
OF THE ESTATE OF
ETHEL MAE MCFARLAND,

Plaintiff-Appellee,

v.

MICHAEL R. BRINDLE, ET AL.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case Nos. 26 BE 0013 & 26 BE 0015

Civil Appeals from the
Court of Common Pleas of Belmont County, Ohio
Case No. 21 CV 44

BEFORE:
Scott Lynch, John J. Eklund, Eugene A. Lucci, Eleventh District Judges, sitting by assignment.

JUDGMENT:
Affirmed in part, reversed in part, and remanded.

Atty. Richard O. Hamilton, Jr. and *Atty. Adam J. Turer*, Robbins, Kelly, Patterson & Tucker, L.P.A., 312 Elm Street, Suite 2200, Cincinnati, OH 45202, for Plaintiff-Appellee, Diana L. Lucas, Executrix of the Estate of Ethel Mae McFarland.

Atty. Joshua E. O'Farrell and *Atty. J. Alex Quay*, Buckingham, Doolittle & Burroughs, L.L.C., 4277 Munson Street, N.W., Canton, OH 44718, for Defendants-Appellants, Gateway Royalty V, LLC and Molly K. Johnson.

Dated: November 17, 2026

SCOTT LYNCH, J.

{¶1} Defendants-appellants, Gateway Royalty V, LLC, and Attorney Molly K. Johnson, appeal the judgment of the Belmont County Court of Common Pleas, granting summary judgment in favor of plaintiff-appellee, Diana L. Lucas, Executrix for the Estate of Ethel Mae McFarland, and sanctioning Gateway and Johnson for frivolous conduct.

{¶2} We affirm the grant of summary judgment with respect to Lucas's claims for Quiet Title and Conversion on the grounds that a forged instrument cannot pass title or a colorable claim of title. We reverse the grant of summary judgment with respect to her claims for Tortious Interference, Slander of Title, and Civil Conspiracy finding that genuine issues of material fact exist regarding Gateway's complicity in the underlying forgery. For similar reasons we reverse the award of punitive damages and attorney fees. The malice necessary to sustain a punitive award cannot be established as a matter of law for summary judgment purposes in the present case. We find the economic loss rule inapplicable in the present case and affirm the award of compensatory damages. Finally, we reverse the sanctions awarded for frivolous conduct as there were legitimate grounds for moving for reconsideration.

{¶3} Accordingly, the judgment of the court below is affirmed in part, reversed in part, and remanded for further proceedings consistent with this Opinion.

Substantive and Procedural Background

{¶4} On March 19, 2021, Ethel Mae McFarland filed a Complaint against Michael R. Brindle; Terra Firma Energy & Land Consults, LLC; American Mineral Solutions, LLC ("AMS"); Daniel F. Spitznagel; Gateway Royalty V, LLC; Ascent Resources – Utica, LLC; Timothy Paul Miller; Paloma Partners III, LLC; Gulfport Energy Corporation (as successor in interest to Paloma Partners); and XTO Energy Inc.

{¶5} According to the Complaint, McFarland owned real estate and the associated oil and gas rights in Belmont County. The oil and gas rights (hereafter mineral rights) are subject to lease agreements with defendants, Ascent, Paloma, Gulfport, and XTO. The Complaint alleged that Brindle, Terra Firma, AMS, Sptiznagel, Gateway, and Miller had fraudulently conspired to deprive McFarland of her mineral rights by forging deeds transferring the rights to Terra Firma. Thereafter, the mineral rights were transferred to AMS and then to Gateway.

{¶6} With respect to Gateway, the Complaint raised claims of Quiet Title; Fraud; Tortious Interference; Conversion; Equitable Disgorgement; Slander of Title; Breach of Accounting / Specific Performance; Civil Conspiracy; and Punitive Damages.

{¶7} On April 20, 2021, Gateway filed an Answer and counterclaimed against McFarland raising claims of Quiet Title, Declaratory Judgment, Breach of Contract, and Unjust Enrichment. Gateway asserted its ownership of the mineral rights as a *bona fide*

purchaser in good faith and alleged that McFarland had breached an agreement to execute a deed transferring the mineral rights to Terra Firma.

{¶8} On July 25, 2022, the trial court entered default judgment in favor of McFarland against Brindle and Terra Firma.

{¶9} On October 18, 2022, a Suggestion of Death was filed on behalf of McFarland. Thereafter, Lucas, as executrix of McFarland's estate, was substituted as the new party plaintiff.

{¶10} On December 13, 2022, Lucas filed a Motion for Judgment on the Pleadings as to Gateway's Counterclaim.

{¶11} On January 27, 2023, the trial court dismissed Gateway's counterclaims against substitute plaintiff Lucas.

{¶12} On February 14, 2023, Lucas filed a Motion for Summary Judgment as to Spitznagel, AMS, and Gateway.

{¶13} On March 14, 2023, Lucas settled and dismissed her claims against Ascent.

{¶14} On March 15, 2023, Gateway filed a Motion for Summary Judgment as to Plaintiff's Complaint.

{¶15} On April 6, 2023, Lucas settled and dismissed her claims against Miller.

{¶16} On April 19, 2023, Lucas settled and dismissed her claims against XTO.

{¶17} On May 16, 2024, the trial court granted summary judgment in favor of Lucas and overruled Gateway's competing Motion for Summary Judgment. Counsel for Lucas was granted until June 10, 2024, "within which to submit a proposed Judgment Journal Entry containing Plaintiff's recommended findings of fact, conclusions of law, and

damage, and/or a hearing, if requested, for punitive damages as to Plaintiff's ownership of the subject mineral rights."

{¶18} On July 2, 2024, Lucas settled and dismissed her claims against Spitznagel and AMS.

{¶19} On July 15, 2024, Gateway filed a Motion for Status Conference and Motion to Dismiss Plaintiff's Unresolved Claims, asserting that Lucas's claims for Fraud, Equitable Disgorgement, Breach of Accounting / Specific Performance, and Punitive Damages remained unresolved by the grant of summary judgment in Lucas's favor.

{¶20} On July 17, 2024, the trial court "direct[ed] all counsel to sign an Agreed Entry listing all pending claims and suggesting a briefing schedule."

{¶21} On September 5, 2024, an Agreed Entry was issued which provided, in relevant part:

> By agreement and stipulation, Plaintiff's claim for fraud as against Defendant Gateway is hereby dismissed. Plaintiff's claims for equitable disgorgement, accounting/specific performance, and punitive damages are hereby mooted to the extent that these are remedies sought by Plaintiff, not additional claims against Defendants. Accordingly, Defendant Gateway's Motion to Dismiss Plaintiff's Unresolved Claims filed herein on July 15, 2024 is moot and is hereby withdrawn.

{¶22} On February 11, 2025, Gateway filed a Motion for Reconsideration, asking the trial court to reconsider, *inter alia*, the dismissal of its counterclaims against Lucas and the grant of summary judgment in her favor.

{¶23} On February 20, 2025, Lucas filed her opposition to reconsideration as well as a Motion for Sanctions against Gateway, and its Counsel, Johnson, pursuant to R.C. 2323.51, Civil Rule 11, and Civil Rule 56(G).

{¶24} On March 5, 2025, the trial court issued Findings of Fact and Conclusions of Law, supplementing the earlier grant of summary judgment in Lucas's favor. The court expressly determined that Lucas was entitled to judgment against Gateway, Brindle, and Terra Firma on her claims for Quiet Title, Tortious Interference, Conversion, Slander of Title, and Civil Conspiracy. The court awarded against these defendants, "jointly and severally, compensatory damages in the amount of $658,860.30, plus punitive damages in the amount of $1,976,580.90, plus her reasonable attorney's fees and costs incurred in this action."

{¶25} On March 6, 2025, the trial court denied the Motion for Reconsideration and granted the Motion for Sanctions. The court noted that "the Grace Affidavit is self-serving, untimely, and ill-suited as the summary judgment deadline passed previously," while "[t]he supposed new, direct, and binding authority cited by Gateway fails to meet those descriptions."

{¶26} On March 24, 2025, a sanctions hearing was held.

{¶27} On April 22, 2025, Lucas filed a Motion to Determine Attorneys' Fees and Costs pursuant to the trial court's finding that Gateway acted in bad faith and award of punitive damages and attorney fees.

{¶28} On May 21, 2025, the trial court issued a "proposed" Judgment and Journal Entry, reaffirming its finding that Gateway's Motion for Reconsideration was groundless and granting Lucas's Motion for Sanctions against both Gateway and Johnson.

{¶29} On June 3, 2025, Lucas filed, pursuant to court order, an Affidavit of Adam J. Turer for Plaintiff's Fees and Costs limited to the Opposition of Gateway's Motion for Reconsideration.

{¶30} On October 20, 2025, a hearing was held to determine Lucas's attorney fees and costs.

{¶31} On February 12, 2026, the trial court issued a Final Appealable Judgment and Journal Entry. The court found, in relevant part, as follows:

> 3. Plaintiff's family has owned the subject property known as 50050 Methodist Ridge Road, St. Clairsville, OH 43950 ("Property") for over 100 years. Ethel Mae McFarland was the sole owner of the Property from her husband's death on August 6, 2006, until Ethel's death on October 5, 2022. Ethel was also the owner of the mineral rights and oil and gas rights on the Property (collectively, "Mineral Rights").
>
> 4. On or about August 26, 2013, Ethel Mae McFarland granted an Oil and Gas Lease to Paloma Partners III, LLC ("Paloma").
>
> 5. On or about July 10, 2015, Paloma subsequently assigned the Lease to XTO Energy Inc. ("XTO").
>
> 6. On or about November 21, 2017, XTO assigned 95% of the working interest in the Lease to Ascent Resources – Utica, LLC ("Ascent"), and retained a 5% non-operating working interest via a Stipulation and Cross Conveyance effective November 21, 2017.
>
> 7. XTO subsequently assigned its 5% non-operating working interest in the Paloma Lease to Ascent via Assignment and Bill of Sale effective July 1, 2022.
>
> 8. Upon learning of the [present] dispute, Ascent and XTO each suspended all royalty payments under the Lease.
>
> 9. In November 2018, June 2019, and August 2020, Ascent made three payments to McFarland in the amount of $83,996.22 each as consideration for an Amendment and Ratification of Oil and Gas Lease executed by McFarland.
>
> 10. In November 2019, Gateway Royalty V, LLC ("Gateway") made an offer to McFarland to purchase her Mineral Rights for up to $763,560; the offer was good through December 15, 2019. McFarland did not accept this or any other offer to sell her Mineral Rights.

11. At some point between December 2019 and prior to June 2020, Brindle, acting as an agent of American Mineral Solutions LLC ("AMS"), met with McFarland at the Property to solicit her to sell her Mineral Rights. Brindle was informed that McFarland would not sell her Mineral Rights or sign any document without first speaking to her lawyer. Brindle left his business card which identifies him as a Land Agent for AMS and left the property.

12. Sometime between June 24, 2020, and July 2, 2020, Daniel Spitznagel ("Spitznagel"), the sole member and owner of AMS, received at AMS's business address a package in the mail from the Belmont County Recorder's Office addressed to Terra Firma which contained a Mineral Deed ("June 2020 Mineral Deed") allegedly signed by Ethel Mae McFarland on June 15, 2020, and recorded on June 24, 2020, which purported to convey McFarland's Mineral Rights to Terra Firma Energy & Land Consults, LLC ("Terra Firma").

13. The June 2020 Mineral Deed was purportedly notarized by Timothy P. Miller. The deed was allegedly notarized in Belmont County, Ohio, while Miller's notarial seal identifies him as a notary in the state of West Virginia. Timothy P. Miller testified he did not witness Ethel Mae McFarland execute a deed in his presence on June 15, 2020, or witness McFarland sign any documents.

14. Brindle, sole member and owner of Terra Firma, at the request of Spitznagel and AMS, obtained an alleged corrective mineral deed purported to be signed by McFarland ("Corrective Mineral Deed").

15. This Corrective Mineral Deed was allegedly signed by Ethel Mae McFarland on July 15, 2020, and recorded on July 23, 2020, was purportedly notarized by Timothy P. Miller, and was allegedly notarized in Belmont County, Ohio, while Miller's notarial seal identifies him as a notary in the state of West Virginia. Timothy P. Miller did not witness Ethel Mae McFarland execute a corrective deed in his presence on July 15, 2020.

16. According to the analysis and opinion of Vickie L. Willard, a forensic document examiner identified by Plaintiff as an expert witness, neither the June 2020 Mineral Deed nor the Corrective Mineral Deed were signed by Ethel Mae McFarland.

17. McFarland's alleged signature on the June 2020 Mineral Deed and Corrective Mineral Deed do not resemble her signatures on 35 other documents reviewed by Ms. Willard, a board-certified forensic document examiner, and there is no reasonable explanation for the differences in signatures.

18. Terra Firma executed a mineral deed dated June 17, 2020, which purported to convey the Mineral Rights to AMS. This deed was recorded on July 17, 2020.

19. AMS executed a mineral deed dated July 28, 2020, which purported to convey the Mineral Rights to Gateway.

20. No payments related to the Mineral Rights or mineral deeds had been exchanged between or among any of the parties at the time the most recent mineral deed was delivered to and accepted by Gateway.

21. Without conducting a title exam, confirming that McFarland had been compensated, or identifying the defective notarizations of the fraudulent deeds, Gateway agreed to purchase the Mineral Rights from AMS.

22. Terra Firma issued a payment to McFarland via check dated September 4, 2020 in the amount of $83,996.22. The check sent to McFarland identified the payment as "Oil and Gas Lease" and was for the exact amount of three lease bonus payments previously sent to McFarland by Ascent.

23. Just four months prior, in February 2020, Gateway had offered McFarland $545,000 for the same Mineral Rights.

24. At the time the Terra Firma payment was issued to McFarland, Gateway had already paid AMS, AMS had made payments to Terra Firma and others, Terra Firma had executed a deed conveying Mineral Rights to AMS, and AMS had executed a deed conveying the Mineral Rights to Gateway.

25. Rice Drilling D, LLC ("Rice") and EQT Corporation ("EQT") obtained an interest in the Mineral Rights after the instant lawsuit was filed. Rice acquired an interest in Plaintiff's Mineral Rights … via an Assignment and Bill of Sale from Ascent … and via a Partial Assignment of Leases from XTO … which granted Rice an interest in the Paloma Lease limited only to those lands inside the Skyhawk 1 Unit.

26. AMS and Gateway knew or should have known McFarland had a contract with Paloma, as evidenced by the Memorandum of Lease recorded in Belmont County. AMS and Gateway knew or should have known Paloma had assigned its lease interests as evidenced by the assignment, also recorded in Belmont County. AMS and Gateway knew McFarland was the lessor under

the lease agreement, as both AMS and Gateway contacted Ascent to advise it of the purported conveyance of the Mineral Rights.

27. AMS and Gateway instructed Ascent and EQT to stop paying McFarland lease payments and royalties under the lease agreement and to instead pay Gateway. These payments rightfully belong to McFarland as owner of the fee simple estate and leasehold interest in the fee simple estate.

28. Spitznagel, AMS, and Gateway acted in concert with Brindle and Terra Firma to perpetuate the fraud and deprive Plaintiff of her rights. All three contacted Ascent and other lessees and worked in concert to make sure the lessees did not issue any further payments to McFarland.

29. Spitznagel and AMS prepared the deed from Terra Firma to AMS, backdated to show it was executed on June 17, 2020, which was admittedly false, and Spitznagel notarized the deed without witnessing Brindle sign it on that date.

30. As a result of the forged deeds, Gateway received $142,840.04 in royalty payments from Ascent as of March 31, 2023.

31. As a result of the forged deeds, Gateway received $150,396.95 in royalty payments from Rice and/or EQT as of January 2, 2023.

32. XTO never issued any royalty payments under the Lease to AMS or Gateway.

33. As of March 5, 2025, Gateway had failed to provide an accounting of the payments received from EQT as a result of the forged deeds. These funds should have been paid to Plaintiff.

34. Upon being served with the instant lawsuit, Gateway notified Ascent and XTO and instructed them to hold funds in suspense due to potential fraud and forgery.

35. As of March 31, 2023, Ascent was holding $356,874.67 in royalties in suspense.

36. Upon learning of the dispute presented in the above-captioned lawsuit, XTO suspended all royalty payments under the Lease. As of February 13, 2023, XTO was holding $8,748.64 in royalties in a suspense account.

37. McFarland did not sign the June 2020 Mineral Deed or Corrective Mineral Deed. The evidence establishes, clearly and

convincingly, that McFarland's purported signatures on both documents were forged.

38. Spitznagel and AMS were suspicious of the June 2020 Mineral Deed yet failed to make any further inquiry and instead worked with Brindle, Terra Firma, and Gateway to flip the Mineral Rights as quickly as possible.

39. The Corrective Mineral Deed was created by Brindle and Terra Firma upon the direction of Gateway, AMS, and Spitznagel.

40. This is not the first time these Defendants have engaged in similar behavior. Brindle, Terra Firma, Spitznagel, AMS, and Gateway were named as defendants in Belmont County Common Pleas Case No. 20CV274, *Connie Jo Gerritz v. Michael R. Brindle, et al.* That lawsuit was resolved by an unwinding of deeds, transferring the mineral rights back to the rightful owner of the fee simple estate.

41. Brindle, Terra Firma, Spitznagel, AMS, and Gateway deprived Plaintiff, at the time an 84-year-old widow, of the Mineral Rights that have been in her family for generations. Despite full understanding of their actions, they continued to intentionally deprive her of her property rights and the payments to which she was entitled under her lease agreements.

42. While the initial forged deed was created by Terra Firma, Brindle, and Miller, the continuing fraud perpetrated on Plaintiff could not have existed but for the reckless, intentional, and conspiratorial conduct of AMS, Spitznagel, and Gateway. These parties knew that Brindle forged another mineral rights deed in Belmont County yet refused to unwind the McFarland transaction.

43. Defendants AMS, Spitznagel, and Miller settled with Plaintiff, obtained a full release of Plaintiff's claims, and were ultimately dismissed from Plaintiff's case with prejudice by Agreed Entries and Notices of Dismissal of Claims.

{¶32} Based on the foregoing findings, the trial court reaffirmed judgment in Lucas's favor on the claims of Quiet Title, Tortious Interference, Conversion, Slander of Title, and Civil Conspiracy. The court ordered title to the mineral rights to be quieted in favor of Lucas and all deeds to the contrary to be voided. Lucas was awarded against Brindle, Terra Firma, and Gateway, jointly and severally, compensatory damages in the

amount of $628,860.30, plus punitive damages in the amount of $1,886,580.90, plus her reasonable attorney fees and costs incurred in the action totaling $262,928.09. Additionally, Lucas was awarded against Gateway and Johnson, jointly and severally, reasonable attorney fees and costs incurred in opposing Gateway's Motion for Reconsideration and related sanctioned conduct totalling $19,057.00.

Assignments of Error

{¶33} Gateway filed a Notice of Appeal on February 25, 2026, and Johnson filed Notice on March 6, 2026.[1] This Court consolidated the two appeals. On appeal, Gateway and Johnson raise the following assignments of error:

> [1.] The trial court erred in granting McFarland's [Motion for Summary Judgment].
>
> [2.] The trial court erred by sanctioning Gateway and its Counsel.
>
> [3.] The trial court erred in awarding McFarland Attorneys' Fees.
>
> [4.] The trial court erred in denying Gateway's Motion for Summary Judgment.

Summary Judgment Standard of Review: Assignments of Error One, Three and Four

{¶34} Summary judgment is properly granted when "there is no genuine issue as to any material fact and … the moving party is entitled to judgment as a matter of law," i.e., when "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." Civ.R. 56(C).

1. The February 12, 2026 Final Appealable Judgment and Journal Entry is also the subject of an appeal by Brindle and Terra Firma. *See Lucas v. Brindle*, Belmont App. No. 26 BE 0014.

{¶35} "When reviewing the decision of a trial court granting or denying a party's motion for summary judgment, an appellate court applies a de novo standard of review." *Smathers v. Glass*, 2022-Ohio-4595, ¶ 30. "The appellate court conducts an independent review of the evidence without deference to the trial court's findings." *Id.* "It examines the evidence available in the record, including deposition or hearing transcripts, affidavits, stipulated exhibits, and the pleadings, *see* Civ.R. 56(C), and determines, as if it were the trial court, whether summary judgment is appropriate." *Id.* When a party seeks to resolve a case on summary judgment, the evidence cannot be weighed, only reviewed de novo. *Id.* at ¶ 32. "When factual ambiguities exist," and even when they do not, "inferences must still be resolved in favor of the nonmoving party." *Id.*

Whether Fraud was Pled with Particularity

{¶36} Ohio Civil Rule 9(B) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Appellants argue that the Complaint failed to plead fraud with particularity and, therefore, the right to argue Fraud has been waived. *Allied Erecting & Dismantling Co., Inc. v. Ohio Edison Co.*, 2011-Ohio-2627, ¶ 42 (7th Dist.) ("failure to plead fraud with particularity results in waiver of that claim").

{¶37} We note preliminarily that this issue is moot inasmuch as Lucas voluntarily dismissed the Fraud claim in the September 5, 2025 Agreed Entry. The implications of that dismissal for the Civil Conspiracy claim will be discussed below.

{¶38} Furthermore, we agree with Lucas that the appellants waived the argument or defense by not asserting the failure to plead with particularity in a responsive pleading. Following the federal practice, Ohio appellate courts have held that "[a] plaintiff's failure

to plead fraud with particularity in the complaint is deemed waived if it is not raised in the first responsive pleading or an early motion." *Klasa v. Rogers*, 2004-Ohio-4490, ¶ 39 (8th Dist.); *Mihalca v. Malita*, 2000 WL 372309, *5 (9th Dist.); *Hoover v. Wherry*, 1999 WL 333302, *2 (10th Dist.), citing 2A Moore, *Federal Practice*, Paragraph 9.03[9-35] (2d Ed. 1984).

Whether a Forged Deed to Real Property Conveys Title

{¶39} Fundamental to many of the issues raised in these appeals is whether title passed to Gateway so that Gateway may claim an interest in the mineral rights as a *bona fide* purchaser for value.

{¶40} It is unequivocal that a forged deed does not pass title and that subsequent purchasers do not acquire an interest in the property regardless of *bona fides*. "A forged instrument is not merely voidable, but absolutely void." *Shinew v. First Natl. Bank*, 84 Ohio St. 297 (1911), syllabus; *Workman v. Wright*, 33 Ohio St. 405 (1878), paragraph two of the syllabus ("the act of the forger is void").

{¶41} Accordingly, "if one forges a deed for another's property and puts it upon record, he neither acquires nor has power to convey any title to such property." *Ogden v. Ogden*, 4 Ohio St. 182, 195 (1854). "The original fraud so taints the transaction that a *bona fide* purchaser from such source could claim as against the real owner, no title whatever to the property." *Id.*; *accord Montgomery Cty. Treasurer v. Rush Plaza Corp.*, 2025-Ohio-1484, ¶ 36 (2d Dist.) ("[a] forged deed is void and ineffective to pass any title or rights to the grantee"); *Third Fed. S. & L. Assn. of Cleveland v. Shaver*, 1976 WL

188844, *1 (9th Dist.) ("[a] forged deed is absolutely void and ineffective to pass any title or rights in the grantee").

Fraud and Forgery Distinguished

{¶42} It will also be profitable in considering the appellants' arguments to recognize the distinction between forgery and fraud, both criminally and civilly.

{¶43} In criminal law, to defraud someone is to obtain something "by deception," *i.e.*, "deceiving another or causing another to be deceived by any false or misleading representation." R.C. 2913.01(B) and (A). To forge, in contrast, is "to fabricate or create, in whole or in part and by any means, any spurious writing." R.C. 2913.01(G). While deception and forgery are not unrelated (the purpose of a forgery is typically to deceive), they are recognized as distinct criminal acts. "The 'act of obtaining another's property is distinct from the act of fabricating documents.'" (Citation omitted.) *State v. Walker*, 2016-Ohio-8615, ¶ 53 (5th Dist.); *State v. Smith*, 2014-Ohio-5076, ¶ 26 (11th Dist.) ("[t]he offense of Forgery by the fabrication or creation of spurious writings is not allied with the offense of Theft by deception").

{¶44} The "various elements" comprising civil fraud have been set forth as follows: "(1) a representation (or concealment of a fact when there is a duty to disclose) (2) that is material to the transaction at hand, (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, and (4) with intent to mislead another into relying upon it, (5) justifiable reliance, and (6) resulting injury proximately caused by the reliance." *Volbers-Klarich v. Middletown Mgt., Inc.*, 2010-Ohio-2057, ¶ 27.

{¶45} Contrast these elements in which a false representation and reliance are essential with the understanding of forgery in the civil context: "The forgery of the signature of another is a recognized variant of the tort known generally as invasion of privacy" and "amounts to the appropriation of the name or likeness of another." (Citation omitted.) *James v. Bob Ross Buick, Inc.*, 2006-Ohio-2638, ¶ 13 (2d Dist.); *Economy Linen & Towel Serv., Inc. v. McIntosh*, 2001 WL 1081376, *7 (12th Dist.) ("[i]t is the use of the person's name as a symbol of his identity that gives rise to an action based on the right of privacy").

{¶46} The distinction between fraud and forgery is not irrelevant in the present case inasmuch as a forged deed is void and not subject to ratification while a deed obtained by fraud may only be voidable and subsequently ratified. *Johnston v. Shale Play Land Servs. Inc.*, 2024-Ohio-5934, ¶ 38-44 (7th Dist.). It is also relevant because Lucas voluntarily dismissed the Fraud claim against Gateway and Gateway argues that, by doing so, she has forfeited her ability to bring other claims based on the purportedly fraudulent conduct.

{¶47} This Court addressed those implications in *R.C. Olmstead, Inc. v. GBS Corp.*, 2009-Ohio-6808 (7th Dist.). This Court considered "whether forgery is fraud in the execution [as opposed to fraud in the inducement] and if so whether such is an affirmative defense [subject to Civil Rule 8]." *Id.* at ¶ 34.

{¶48} This Court held, despite contrary authority, "that forgery is just another way of saying that the defendant never signed a contract and thus no contract ever existed." *Id.* at ¶ 38.

> We acknowledge that Ohio Jurisprudence lists forgery of a signature as a type of fraud in the execution. 50 Ohio Jurisprudence 3d (2002,

> Supp. 2007), Fraud and Deceit, Section 14. However, the case it cites for this proposition did not make such a pronouncement. It did say that if one forges a deed, he does not acquire title with power to convey to a bona fide purchaser because the original "fraud" taints the transaction. *Ogden v. Ogden* (1854), 4 Ohio St. 182, 195. This does not classify forgery of a signature as fraud in the execution. Furthermore, this was pure dicta. *Ogden* had nothing to do with a forged signature. Rather, the issues surrounded possible fraud in the procurement of an actual signature and a premature delivery of a deed contrary to its conditions.

Id. at ¶ 37.

{¶49} The proposition that a forged signature prevents an agreement or contract from coming into existence is wholly consistent with the foregoing law that a forged instrument is "absolutely void."

{¶50} Although the parties have argued that forgery is a type of fraud in the execution, we will adhere to our holding in *R.C. Olmstead* and treat it as grounds for finding that a contract, *i.e.*, the deed transfers, never existed. Such a holding seems particularly sound given the substantive distinctions between fraud and forgery outlined above, especially the element of deception which is necessary for fraud but not forgery.

Reasonable Minds Can Only Conclude that the June Mineral Deed and July Corrective Mineral Deed are Forged Instruments

{¶51} The evidence presented by Lucas that the Mineral Deed and Corrective Mineral Deed transferring McFarland's interest in the mineral rights to Terra Firma were forged is sufficient to satisfy the summary judgment standard.

{¶52} The following statements were attested by affidavits in support of summary judgment. McFarland averred that she "did not sign the deeds," "did not sell or convey my Oil and Gas Rights," and "did not authorize anyone to sell or convey my Oil and Gas Rights." She had previously received offers as high as $750,000 for the mineral rights and she refused all such offers.

{¶53} McFarland's son, Robert Lloyd McFarland, Jr., averred that Michael Brindle came to the residence where he and his mother resided and spoke with his mother about selling her mineral rights. "[I]t was explained to Mr. Brindle that [his] mother would not sell her mineral rights or sign anything without first speaking with her lawyer." Brindle left a business card identifying himself as a "Land Agent" for AMS.

{¶54} Timothy Miller, the notary who notarized the deeds, averred that he has never met McFarland and did not witness her sign either deed. Rather, he placed his notary stamp upon the deeds and signed his name to them "at the instruction of Michael R. Brindle."

{¶55} Vickie Willard, a certified forensic document examiner, analyzed the mineral rights deeds and compared McFarland's signatures thereupon with thirty-five specimen signatures (thirty-four of which "were dated within a few days to six months of the date on the questioned deeds"). She found "no reasonable explanation for the differences observed between the specimen signatures and the [deed] signatures," and opined "that the signatures on the Mineral Deed and Corrective Mineral Deed were not written by the same individual who signed the name 'Ethel McFarland', 'Ethel M. McFarland' or 'Ethel Mae McFarland' on the documents listed as K-1 through K-35."

{¶56} Finally, the fact that McFarland is to have sold the mineral rights to Terra Firma for $83,996.22 while, a few months earlier, rejecting an offer for the same rights for $545,000.00 is compelling circumstantial evidence that the sale was either fraudulent or fabricated.

{¶57} No evidence or argument disputing the foregoing testimonies was presented in opposition to summary judgment.

{¶58} In light of the foregoing exposition, we will now consider the appellants' arguments as they relate to specific claims on which judgment was granted.

Quiet Title

{¶59} Quiet Title is a statutory cause of action. "An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest." R.C. 5303.01.

Whether the Appeal is Moot with Respect to Quiet Title

{¶60} Lucas argues that the appeal became moot with respect to Quiet Title as that judgment was satisfied upon the recording of the Final Appealable Order and Journal Entry. The Final Appealable Order provided: "The Clerk of this Court is directed to cause a certified copy of this Journal Judgment Entry to be recorded in the Deed Records of Belmont County, Ohio, which recording shall quiet title to the Real Estate, the Real Estate's Mineral Rights, including oil and gas rights, and the Lease, to Plaintiff Diana L. Lucas, Executrix of the Estate of Ethel Mae McFarland."

{¶61} Pursuant to a Confirmation Entry filed on February 20, 2026, the Journal Judgment Entry was recorded on February 17, 2026. On February 25, 2026, Gateway filed a Notice of Appeal and Motion for Stay of Execution of Judgment Pending Appeal.

{¶62} "It is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot." *Blodgett v. Blodgett*, 49 Ohio St.3d 243, 245 (1990). "Generally, a party may avoid a voluntary satisfaction of judgment by moving to stay execution of the judgment and by posting a supersedeas bond in an amount deemed by the trial court to be adequate to secure the judgment." *Crites v. Crites*, 2019-

Ohio-1043, ¶ 11 (3d Dist.). Conversely, "[a]n appealing party's failure to obtain a stay renders a satisfied judgment 'voluntary.'" *Edwards v. Wilcox*, 2024-Ohio-1123, ¶ 16 (11th Dist.). *See also Salone v. Stovall*, 2025-Ohio-968, ¶ 14 (8th Dist.) (cases cited).

{¶63} "This rule has been applied to real estate cases, including when a judgment was satisfied merely by the appellee recording the judgment." *Crowe v. Tillimon*, 2024-Ohio-6053, ¶ 18 (6th Dist.); *Salone* at ¶ 16 ("the issues raised in defendants' appeal have been rendered moot by Salone's satisfaction of the judgment — filing the judgment entry in the fiscal's office and effectively quieting title against defendants — prior to defendants obtaining a stay"); *Filip v. Wakefield Rune Master Homeowners' Assn., Inc.*, 2018-Ohio-1171, ¶ 9 (9th Dist.) (the appeal was rendered moot where, "[i]n accordance with the trial court's judgment entry, the Adverse Parcel was legally transferred into Mr. Filip's name and recorded with the Medina County Recorder on April 12, 2017, prior to this appeal being filed").

{¶64} The appellants counter that the Supreme Court of Ohio, in *Wells Fargo Bank, Natl. Assn. v. Doberdruk*, 2026-Ohio-2674, limited the application of the *Blodgett* rule so that, "when a court can provide effectual relief by a favorable judgment on appeal, the lack of a stay 'has no bearing' on the question of mootness." *Id.* at ¶ 29.

{¶65} During the pendency of this appeal, the Supreme Court of Ohio decided this issue in Gateway's favor. In *Drushal v. Miller*, 2026-Ohio-3269, the Supreme Court agreed with the following propositions of law: (1) "An involuntary satisfaction of judgment does not render an appeal moot"; (2) "A conveyance as ordered by a decree does not deprive the defendant of the right of appeal"; and (3) "The failure of the appellant to post a supersedeas bond does not moot the appeal." *Id.* at ¶ 9. Underlying these propositions

is the principle that "when a judgment is reversed on appeal, the appellant is entitled to restitution for all that the appellant lost because of the reversed judgment." *Id.* at ¶ 14; *Hiler v. Hiler*, 35 Ohio St. 645, 647 (1880) ("[a] court reversing a judgment has the inherent power to make such order of restitution").[2]

Lucas Does Not Need to Prove Fraud to Prevail

{¶66} Gateway argues that, since Lucas voluntarily dismissed the Fraud claim, she cannot prevail on her claim to Quiet Title. Gateway maintains that by dismissing the claim Lucas has waived her "ability to argue fraud" which is necessary to prove that she was "the victim of fraud and/or forgery" and that "Gateway had actual knowledge of the allegations of fraud and/or forgery." Amended Brief of Appellants at 18.

{¶67} We disagree with every point of Gateway's position. Waiving a claim for Fraud does not prevent a party from arguing that conduct may have been fraudulent. *See State ex rel. Morrison v. Wiener*, 2017-Ohio-364, ¶ 17 (9th Dist.) (fraud need not be pled separately but may be alleged within a claim for civil conspiracy). Fraud and forgery, as demonstrated above, are distinct acts and forgery may be proven without fraud. Finally, a forged deed is void and ineffective to pass title regardless of whether a subsequent purchaser has notice of the forgery.

{¶68} Gateway raised the claim during oral argument that Lucas, in lieu of pursuing a Fraud claim against Gateway, should have filed declaratory judgment and forgery actions. We are aware of no authority that supports this proposition. An action for Quiet Title, in and of itself, is sufficient to determine the issue of title between Lucas and Gateway. "The purpose of any quiet-title action is to conclusively determine the

2. As for *Blodgett*, the Supreme Court found the decision "misguided," but that its "correctness" was not before it given the different facts in *Drushal*. *Id.* at ¶ 18-19.

allocation of property interests." *Ochsenbine v. Cadiz*, 2005-Ohio-6781, ¶ 13 (7th Dist.); *Marchbanks v. JPMorgan Chase Bank, N.A.*, 2024-Ohio-5876, ¶ 45 (11th Dist.) ("[i]n a dispute against title, a quiet-title action is the statutory cause of action utilized to settle a dispute in the chain of title and determine true ownership"). Claims to quiet title can, and have been, premised upon a variety of different contexts such as adverse possession, as in *Ochsenbine*, as well as forgery, as in *Rush Plaza Corp.* The important point is that the party seeking to quiet title bears the burden of proof "as to all issues which arise upon essential allegations of his complaint." (Citation omitted.) *Ochsenbine* at ¶ 13.

{¶69} Here, Lucas has carried her burden of proof on summary judgment as to the essential allegation to establishing her claim for title, *i.e.*, that the deeds transferring the mineral rights were forged. To the extent that Lucas seeks relief in damages, it is necessary for her to raise additional claims, and Lucas has raised claims for Slander of Title, Tortious Interference, Civil Conspiracy, and Conversion. The merits of these claims are discussed below. The fact that she has not raised an independent claim for Forgery precludes her from obtaining any relief that would be peculiar to Forgery, but not from obtaining relief on the causes of action she has raised.

Lucas is in Possession of the Real Property

{¶70} The Quiet Title statute requires that the action be brought "by a person in possession of real property." *Menges v. Strunk*, 2025-Ohio-252, ¶ 29 (7th Dist.). Gateway asserts that Lucas cannot be "in possession" of the mineral rights because Gateway exercises "dominion and control" over them.

{¶71} Gateway cites no authority for the proposition that the exercise of dominion and control of mineral resources equates to possession (if so, the lessees extracting the resources would have an even greater claim to possession).

{¶72} "The minerals may be severed from the rest of the realty for purposes of separate ownership." *Chesapeake Exploration, L.L.C. v. Buell*, 2015-Ohio-4551, ¶ 21. With respect to mineral rights which have been severed from the surface estate, "[o]nly productive uses are sufficient for actual possession" and "[t]his requires the actual development of the oil and gas mineral rights." *Tomechko v. Garrett*, 2021-Ohio-1377, ¶ 44 (7th Dist.). "Courts in Ohio have construed the requirement that the plaintiff be 'in possession of real property' to include constructive possession, i.e. the claim of superior title, in certain circumstances," such as "where neither party may be said to have actual possession of the property." *Bergholtz Coal Holding Co. v. Dunning*, 2006-Ohio-3401, ¶ 39 (11th Dist.).

{¶73} In virtually all respects Lucas's claim to be in possession is superior to Gateway's claim. The transfer of the mineral rights to Terra Firma was void *ab initio* and, therefore, no separate mineral estate was properly created. The lease under which the mineral resources are being developed was entered into by McFarland, who, as the party that has put the minerals to productive use, may claim actual possession. Gateway asserted its right to receive payment under the lease, but the lease itself has never been assigned or transferred to Gateway. Finally, as the party with superior title, McFarland may claim constructive possession.

Lucas is Not Estopped from Asserting Superior Title

{¶74} Even in the case of a forged title, the wronged party may be estopped from denying his signature on the instrument.

{¶75} "One may by conduct, statements, or silence estop himself from claiming that his signature is a forgery; but before he can be estopped by mere silence facts must be alleged and proven showing a duty and opportunity to speak, that he knew or had reason to believe that the holder of the forged instrument would rely on his silence, and that the holder in fact did rely on his silence, and was in fact injured thereby." *Shinew*, 84 Ohio St. 297, at paragraph two of the syllabus; *Shurtz v. Colvin*, 55 Ohio St. 274, 291 (1896) ("in all such cases the party complaining is found to have been guilty of some negligence in his dealings, or to have trusted some agent, who has disappointed his confidence, and is more to blame for the consequences than the innocent purchaser, so that his equity is inferior to that of such purchaser").

{¶76} As grounds for estoppel, Gateway cites to the fact that McFarland accepted the check from Terra Firma for $83,996.00, cashed it, and retained the funds. Gateway charges McFarland with failing to exercise reasonable care in determining to cash the check. Moreover, Gateway contends that a real thief would not convey $83,996.00 to his victim and that a real victim would not retain the funds.

{¶77} Gateway's estoppel claim fails as a matter of law. Regardless of how one is inclined to construe McFarland's actions regarding the check issued by Terra Firma, Gateway cannot claim to have been "in fact injured thereby." The check from Terra Firma was not issued to McFarland until September 4, 2020. By this time, Gateway had already agreed to purchase the mineral rights from AMS, the deed purportedly conveying the rights to Gateway had been executed, and payment tendered by Gateway. In no way

can Gateway claim to have been influenced in its actions by McFarland's accepting the check.[3]

Slander of Title

{¶78} "A claim for slander of title arises when a person falsely and maliciously defames a title to property and causes some special pecuniary damages or loss." *Metzler v. Fifth Third Bank*, 2017-Ohio-7088, ¶ 14 (10th Dist.). "Generally, a claim for slander of title involves the wrongful recording of an unfounded claim against the property of another." *Id.*; *Gasper v. Bank of Am., N.A.*, 2019-Ohio-1150, ¶ 36 (9th Dist.) ("[t]he wrongful filing for the record of a document which casts a cloud upon another's title to or interest in realty is considered to be an act of publication which gives rise to an action for slander of title") (citation omitted).

{¶79} To prevail on a slander of title claim, "a plaintiff must prove '(1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages.'" (Citation omitted.) *N. Royalton Court Condo Owners' Assn. v. Stadul*, 2024-Ohio-1280, ¶ 27 (8th Dist.). "In terms of a claim for slander of title, a person acts with malice when they act with reckless or wanton disregard of the rights of others." *Cuspide Properties, Ltd. v. Earl Mechanical Servs.*, 2015-Ohio-5019, ¶ 37 (6th Dist.); *compare Jackson v. Columbus*, 2008-Ohio-1041, ¶ 10 (defining "malice" as "acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity" and "reckless disregard" as "when

3. In fact, the check is far more probative of Brindle's fraud and/or forgery than negligence on McFarland's part. The amount of the check was well below a reasonable price for the mineral rights. The amount of the check, $83,996.00, was the same amount as the three previous checks McFarland had received under the lease agreement. And, lastly, the memo line of the check contained the words "OIL & GAS LEASE."

a publisher of defamatory statements acts with a 'high degree of awareness of their probable falsity'") (citations omitted).

A Genuine Issue of Fact Exists as to Whether Gateway Acted with Malice or Reckless Disregard

{¶80} Gateway correctly notes that there is no direct evidence that it was aware the initial deeds transferring the mineral rights from McFarland to Terra Firma were forged. Gateway purchased the rights from AMS without communicating with Brindle or McFarland. Gateway's vice president, Blaine Grace, testified by deposition that, prior to agreeing to purchase the rights from AMS, an examination of record title to the mineral rights was conducted to ensure "[t]hat the mineral owner that's selling it to us, that they own the mineral interest." Satisfied that AMS owned the mineral rights, Gateway closed the transaction on August 3, 2020, by making an initial payment to AMS of $299,970.00.

{¶81} Construing these facts and the reasonable inferences derived therefrom in a light most favorable to Gateway, it cannot be concluded as a matter of law that Gateway acted with malice and/or reckless disregard for McFarland's title when it had the deed from AMS recorded on August 3 despite evidence that supports the contrary conclusion. Given the record before us, the issue is for determination by the trier of fact.

Tortious Interference

{¶82} "The elements of the tort 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) lack of justification, and (5) resulting damages." *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 1999-Ohio-260, paragraph one of the syllabus. "Only improper interference with a contract is actionable." *Id.* at ¶ 19. "One who intentionally and improperly interferes with the performance of a

contract … between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract." (Citation omitted.) *Kenty v. Transamerica Premium Ins. Co.*, 1995-Ohio-61, ¶ 14.

A Genuine Issue of Fact Exists as to Whether Gateway Intentionally and Improperly Interfered with McFarland's Oil and Gas Leases

{¶83} For the same reasons Lucas is not entitled to judgment as a matter of law on the Slander of Title claim, the evidence is not such that reasonable minds could only conclude that Gateway intentionally procured the breach of the oil and gas leases by directing the lessees to make payments to it rather than McFarland. The examination of the chain of title revealed a transfer of mineral rights from McFarland to Terra Firma to AMS. Gateway paid AMS a substantial sum to acquire those rights. It could be inferred, then, that by representing to the lessees that it was the owner of the rights and entitled to payment it was not intentionally procuring the breach of the lease contracts. Accordingly, summary judgment could not be granted. *Michael v. Miller*, 2025-Ohio-271, ¶ 34 (8th Dist.) ("Ohio courts have found that where a defendant is 'merely trying to enforce its perceived legal rights' this does not 'in and of itself, equate to an intention to procure the breach of any contract'") (citation omitted).

Civil Conspiracy

{¶84} "'Civil conspiracy' has been defined as 'a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages.'" *Kenty* at ¶ 17. "An underlying unlawful act is required before a civil conspiracy claim can succeed." *Williams v. Aetna Fin. Co.*, 1998-Ohio-294, ¶ 48. "The malice involved in the tort is 'that state of mind under which a person

does a wrongful act purposely, without a reasonable or lawful excuse, to the injury of another.'" (Citation omitted.) *Id.*

A Genuine Issue of Fact Exists as to Whether Gateway Acted with Malice and Whether an Underlying Unlawful Act Can be Proven

{¶85} Again, the evidence is not sufficient to establish that Gateway acted with malice, *i.e.*, that it conspired purposely with the forgery committed by Brindle to the injury of McFarland, as a matter of law. Therefore, we must reverse the grant of summary judgment. However, a few points should be noted.

{¶86} With respect to all the tort claims, Lucas emphasizes in her brief that they have been established by "clear and convincing evidence." Brief of Appellee at 26-28. While this would be adequate to sustain a verdict at trial, it is not the standard on summary judgment. As long as there is some evidence which, if believed, would allow the trier of fact to find in favor of Gateway, the evidence must be construed in that way. The Supreme Court of Ohio has explained that "determining whether issues of disputed fact exist is different from making findings of fact." *Smathers*, 2022-Ohio-4595, at ¶ 32. "While it is true that trial courts are generally in the best position to determine the weight of the evidence and the credibility of witnesses when acting as the trier of fact, … on a summary-judgment motion, any inferences regarding the evidence, including the resolution of ambiguities or inconsistencies, must be made in a manner that favors the nonmoving party, Civ.R. 56(C)." *Id.*; *Tera, L.L.C. v. Rice Drilling D, L.L.C.*, 2024-Ohio-1945, ¶ 20 ("it is no more proper for this court to weigh evidence and the credibility of witnesses to decide issues of fact at the summary-judgment stage than it is for a trial court to do so").

{¶87} A second point concerns the appellants' assertion that, because Lucas failed to plead Fraud with particularity and/or dismissed the claim, it cannot prevail on its

claim for Civil Conspiracy (as well as Tortious Interference). Amended Brief of Appellants at 26.

{¶88} It was explained above that appellants waived the argument that Fraud was not pled with particularity, although the issue is moot as the Fraud claim was dismissed. Moreover, the Fraud claim is not necessary to sustain Civil Conspiracy. Conspiracy requires an unlawful act commonly understood to be a tort. *Cambridge Health Leasing, LLC v. Embassy Cambridge, LLC*, 2025-Ohio-3278, ¶ 114 (8th Dist.); *Gevedon v. Decker*, 2021-Ohio-77, ¶ 43 (2d Dist.); *Strama v. Allstate Ins.*, 2015-Ohio-2590, ¶ 35 (7th Dist.). Fraud was not the only tort claim pled by Lucas. Although we are reversing summary judgment with respect to the Tortious Interference and Slander of Title claims, they remain viable.

Conversion

{¶89} "Conversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner or the withholding of the property from the owner's possession under a claim inconsistent with the owner's rights." *Bunta v. Superior VacuPress, L.L.C.*, 2022-Ohio-4363, ¶ 20.

Whether Conversion Applies to Mineral Rights

{¶90} Gateway argues that Ohio does not recognize a claim for conversion of real property and the mineral rights are real property. This Court has so held:

> [C]onversion only applies to personal property, not real estate. *Sandy v. Rataiczak*, 7th Dist. Noble No. 08 NO 347, 2008-Ohio-6212, ¶ 9. A lease of oil and gas rights create[s] an interest in real estate. *Chesapeake Expl., L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, ¶ 49, citing R.C. 5301.09. Consequently, a claim for conversion cannot be asserted here as this case deals with an interest in realty.

Seachrist v. Rousenberg, 2020-Ohio-1269, ¶ 58 (7th Dist.).

{¶91} However, "[o]il and gas can be viewed as realty or as personalty depending on the location of the oil and gas relative to the land in which it lies." *Chesapeake Exploration, L.L.C. v. Buell*, 2015-Ohio-4551, ¶ 20. "Ohio has long recognized that minerals underlying the surface," *i.e.*, before severance or extraction, "are part of the realty." *Id.* at ¶ 21. "[T]he minerals become personal property immediately upon severance." *Terteling Bros. v. Glander*, 151 Ohio St. 236, 243 (1949); *Schlabach v. Kondik*, 2017-Ohio-8016, ¶ 23 (7th Dist.) ("minerals become personal property when severed from the land").

{¶92} Moreover, the distinction between minerals *in situ* and those that have been extracted applies to the interests therein. "There is a recognized difference between royalties that have accrued, which are personal property, and the right to unaccrued royalties, which is real property." *Peppertree Farms, L.L.C. v. Thonen*, 2022-Ohio-395, ¶ 26; *see also id.* at ¶ 25 ("Professor Eugene Kuntz, the author of a renowned treatise on the law of oil and gas, has noted that the word 'royalty' has been used 'loosely,' including in the broad sense of referring to the mineral interest itself").

{¶93} In conclusion, the mineral rights at issue in the present case are a proper subject of the claim for Conversion. *Yoder v. Stocker & Sitler Oil Co.*, 1996 WL 251821, *11 (5th Dist.) ("upon its inevitable extraction, oil and gas becomes personal property, thereby triggering the applicability of conversion as a potential theory of liability"); *Waterloo Coal Co., Inc. v. Maynard*, 1994 WL 675682, *4 (4th Dist.) ("an action in trespass lies for the wrongful removal of minerals or the wronged party may sue for damages for conversion of the several minerals").

Conversion Does Not Require Malice or Wrongful Intent

{¶94} In contrast to Tortious Interference, Slander of Title, and Civil Conspiracy, Conversion does not require that the exercise of dominion be done with malice or wrongful intent. "Wrongful purpose or intent is not a necessary element of conversion; thus, a defendant is liable even if he is acting under a misapprehension or mistake." (Citation omitted.) *Vienna Beauty Prods. Co. v. Cook*, 2015-Ohio-5017, ¶ 12 (2d Dist.); *Whiting v. PetSmart, L.L.C.*, 2026-Ohio-1915, ¶ 32 (11th Dist.) ("[t]o establish conversion, plaintiff need not demonstrate intent or wrongful purpose or assertion of ownership by defendant") (citation omitted); *but see Baltimore & Ohio RR Co. v. O'Donnell*, 49 Ohio St. 489 (1892), paragraph five of the syllabus ("[t]he motive by which a party was controlled in the conversion of property is of no avail as a defense, though it may be shown when exemplary damages are claimed").

{¶95} In the present case, it is established as a matter of law that the transfer of mineral rights from McFarland to Terra Firma by forgery was absolutely void and, therefore, Gateway did not acquire any interest therein by the purchase from AMS. Having no interest in the mineral rights, Gateway wrongfully exercised dominion over them by directing the lessees to cease the payment of royalties to McFarland. Summary judgment on the Conversion claim is affirmed.

The Amount of Compensatory Damages was Proper

{¶96} The trial court awarded compensatory damages, jointly and severally, against Gateway, Terra Firma, and Brindle, in the amount of $628,860.30. This amount represented $293,236.99 wrongfully received by Gateway from the lessees ($142,840.04 from Ascent and $150,396.95 from Rice/EQT), and $365,623.31 held in suspense by the lessees ($356,874.67 held by Ascent and $8,748.64 held by XTO). The sum of these

amounts was offset by $30,000.00 received through the settlement with Miller, AMS, and Spitznagel. The Final Journal and Judgment Entry further ordered all lessees "holding funds in a suspense account related to the Real Estate" to release those funds to Lucas, "provided that in the event of appeal(s) of this Court's final, appealable order, such funds shall continue to be held in suspense until the final disposition of this lawsuit, including exhaustion of all such appeals, and paid out pursuant to such final disposition."

{¶97} We find no error in the trial court's calculation of compensatory damages. "The fundamental rule of the law of damages is that the injured party shall have compensation for all of the injuries sustained," with "[c]ompensatory damages … defined as those which measure the actual loss." *Fantozzi v. Sandusky Cement Prods. Co.*, 1992-Ohio-138, ¶ 35. In the present case, Gateway's wrongful exercise of dominion over McFarland's mineral rights resulted in the loss of $628,860.30 in royalty and lease payments. *Erie RR. Co. v. Steinberg*, 94 Ohio St. 189 (1916), paragraph two of the syllabus ("the general rule for the measure of damages is the value of the property at the time of conversion"). It is not disputed that Gateway is responsible for these payments not being made to McFarland nor is the amount of the payments disputed.

The Economic Loss Rule

{¶98} Gateway asserts that "the economic loss doctrine bars McFarland's recovery from Gateway as to any tort claim." Amended Brief of Appellants at 28.

{¶99} The scope and purpose of the rule has been set out by the Supreme Court of Ohio as follows:

> The economic-loss rule generally prevents recovery in tort of damages for purely economic loss. See *Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins. Co.* (1989), 42 Ohio St.3d 40, 45, 537 N.E.2d 624; *Floor Craft Floor Covering, Inc. v. Parma*

> *Community Gen. Hosp. Assn.* (1990), 54 Ohio St.3d 1, 3, 560 N.E.2d 206. "'[T]he well-established general rule is that a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner which is legally cognizable or compensable.'" *Chemtrol*, 42 Ohio St.3d at 44, 537 N.E.2d 624, quoting *Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.* (Iowa 1984), 345 N.W.2d 124, 126. See, also, *Floor Craft*, 54 Ohio St.3d at 3, 560 N.E.2d 206. This rule stems from the recognition of a balance between tort law, designed to redress losses suffered by breach of a duty imposed by law to protect societal interests, and contract law, which holds that "parties to a commercial transaction should remain free to govern their own affairs." *Chemtrol*, 42 Ohio St.3d at 42, 537 N.E.2d 624. See, also, *Floor Craft*, 54 Ohio St.3d at 7, 560 N.E.2d 206, quoting *Sensenbrenner v. Rust, Orling & Neale Architects, Inc.* (1988), 236 Va. 419, 425, 374 S.E.2d 55. "'Tort law is not designed * * * to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement. That type of compensation necessitates an analysis of the damages which were within the contemplation of the parties when framing their agreement. It remains the particular province of the law of contracts.'" *Floor Craft*, 54 Ohio St.3d at 7, 560 N.E.2d 206, quoting *Sensenbrenner*, 236 Va. at 425, 374 S.E.2d 55.

Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc., 2005-Ohio-5409, ¶ 6.

{¶100} The $628,860.30 in compensatory damages are purely economic loss, *i.e.*, "losses that are *exclusively* economic, without any accompanying physical damage or loss of use of tangible property." (Citation omitted.) *Motorists Mut. Ins. Co. v. Ironics, Inc.*, 2022-Ohio-841, ¶ 21. The damages arise from the contractual/lease agreements between McFarland and defendants Ascent, Rice/EQT, and XTO, against whom claims of Breach of Lease and Breach of Accounting/Specific Performance were raised in the Complaint. Arguably, under the economic loss rule, Lucas's recovery for damages arising out of breach of the lease agreements should be limited to the lease defendants.[4]

4. The claims against these defendants have been dismissed in the course of the litigation.

Limited Application of the Economic Loss Rule to Intentional Torts

{¶101} Significantly, the Supreme Court cases establishing the economic loss rule in Ohio were negligence cases and the rule was defined in terms of negligence, *i.e.*, breach of duty.

{¶102} Some, but not all, appellate courts have declined to apply the rule to intentional torts. In *Eysoldt v. ProScan Imaging*, 2011-Ohio-2359 (1st Dist.), the First District held that the economic loss rule did not apply to intentional torts (conversion and invasion of privacy), relying on the interpretation of Ohio law by the federal courts: "the fundamental policy consideration underlying the economic loss rule—the inevitable absence of a duty independent of that created by a contract in a negligence action for purely economic loss—is missing in the intentional tort context, where duty is not an element of the claim." *Id.* at ¶ 21, quoting *Reengineering Consultants, Ltd. v. EMC Corp.*, 2009 WL 113058, *6 (S.D. Ohio).

{¶103} Likewise, the Eleventh District held that the economic loss rule "would not bar a plaintiff from bringing a tort where the tort duty is independent of the contract." *TRAX Constr. Co. v. Reminderville*, 2021-Ohio-3481, ¶ 34 (11th Dist.). The court concluded that "public policy is best served by acknowledging an independent duty not to commit fraud and leaving open the potential of an intentional tort suit to loom over a party considering actual fraud." *Id.* at ¶ 35.

{¶104} Other courts, however, have adopted the position that, in addition to establishing the existence of a duty independent of the contract, it must be shown that "the intentional tort involves damages that are separate and distinct from the breach of contract." *Rena Lyon Revocable Trust v. Berry*, 2026-Ohio-2369, ¶ 32 (3d Dist.); *accord*

Fast Tract Title Servs., Inc. v. Barry, 2026-Ohio-461, ¶ 23 (8th Dist.); *Pham Constr. and Co., LLC v. Tran*, 2024-Ohio-634, ¶ 40 (5th Dist.).

{¶105} Precedent from the Seventh District supports the need to demonstrate damages separate and distinct from the breach of contract. In *Lucas v. Eclipse Cos., LLC*, 2023-Ohio-4728 (7th Dist.), this Court held that "[w]here the tort claim alleges a breach of an independent duty, it must also allege damages that are separate and distinct from the breach of contract." (Citation omitted.) *Id.* at ¶ 37. The tort claim in *Lucas*, however, was a negligence claim rather than an intentional tort.

{¶106} In *KSMAC Holdings, Ltd. v. Ice Zone Realty, Ltd.*, 2022-Ohio-1456 (7th Dist.), this Court applied the economic loss rule to claims of fraud and conversion against defendants who were not parties to the underlying contract. We held that "[a]n actionable tort claim against [these defendants] exists only where [plaintiff] can demonstrate that those [defendants] owed an independent duty to [plaintiff]," and "[n]o evidence has been introduced that there was an existing duty owed [plaintiff] by any other [defendant]." *Id.* at ¶ 58. "[H]ence, no viable claim for conversion appears to exist." *Id.* It was further observed, "as the breach of contract claim seeks economic damages …, [plaintiff] is precluded from seeking the same damages based on the same set of facts in a tort action." *Id.* at ¶ 59.

{¶107} We do not find *KSMAC* controlling in the present situation. In *KSMAC*, the damages were based on the same underlying facts in that the same conduct constituting the breach of contract (the removal of a purported fixture – "chilling equipment" or refrigerant – from real property) was identical to the conduct constituting the fraud and conversion (the removal of the same purported fixture from real property). In the present

case, the facts underlying the breach are not the same conduct underlying the conversion. Ascent and Rice/EQT arguably breached the lease agreement by paying Gateway instead of McFarland whereas Gateway committed Conversion by wrongfully exercising dominion over McFarland's interests, by recording a deed without legal effect and thereby diverting payments to itself which properly belonged to McFarland.[5]

{¶108} We further note that the result in *KSMAC* served the purpose of the economic loss rule by preventing the "tortification of contract law." (Citation omitted.) *Motorists Mut.*, 2022-Ohio-841, at ¶ 28. The fundamental issue in *KSMAC* was whether a contract for sale of real property allowed the seller to remove a purported fixture belonging to the property. Whether it was proper to remove the purported fixture depended on the construction of contract for sale which the court found to be ambiguous. *KSMAC* at ¶ 46 ("genuine issues of material fact exist in this matter and reasonable minds may come to more than one conclusion regarding the intent of the parties in conveying 'chilling equipment' under the Agreement"). The case was fundamentally about determining what the parties (the plaintiff and contract defendant) had agreed to in the sale of the property rather than remedying acts of fraud or wrongful exercise of dominion over another's property.

{¶109} In the present case, there is no real dispute between Lucas and the lessees about the contract or its terms. Instead, the determinative issue is who owns the mineral rights, an issue in which the lessees have no real interest. Ascent and Rice/EQT made payments to Gateway based on Gateway's representations that it was entitled to receive

5. The facts of the present case present a mirror image of the facts in *KSMAC*. In *KSMAC*, the tort defendants removed a fixture at the direction of the contract defendant. In the present case, the contract defendants diverted payments at the direction of the tort defendant.

them. Once advised that ownership of the rights was in dispute, the lessees ceased making any payments to either party and retained the royalties in suspense. Given the facts of this case, requiring Lucas to recover solely from the lessees for breach of agreements induced by Gateway does absolutely nothing to preserve the integrity of contract law. Neither the Supreme Court nor this Court's precedents compel such a result and we decline to adopt it under these circumstances.

Clarification of the Award of Compensatory Damages

{¶110} As noted above, of the $628,860.30 to which Lucas is entitled in compensatory damages, $293,236.99 was wrongfully received by Gateway but $365,623.31 has been held in suspense by Ascent and XTO.[6] Upon the release of the $365,623.31 held in suspense that portion of the judgment shall be deemed satisfied and Gateway's liability reduced accordingly.

The Award of Punitive Damages Must be Reversed

{¶111} The trial court awarded Lucas punitive damages in the amount of $1,886,580.90 "as a result of Defendants' reckless, intentional, knowing, and conspiratorial conduct and egregious fraud perpetuated against Plaintiff with actual malice and in bad faith." The court deemed the justification for such an award to be "self-evident," "including the prior conduct of the same Defendants attempting to defraud another mineral rights owner; the refusal to acknowledge title cannot be had through

6. We note the following from Ascent's Answer and Affirmative Defenses to Gateway's Cross-Claims: "Ascent admits a controversy has arisen as to the ownership of the Mineral Rights and awaits determination of ownership so Ascent can direct royalties owed under the Paloma Lease … to the proper party. Until that time, all payments under the Paloma Lease will remain in suspense, per Ascent's express rights under the Paloma Lease."

forgery; lack of voluntary relinquishment of title to Plaintiff; and the advanced age of Mrs. McFarland."

{¶112} Punitive or exemplary damages are recoverable from a defendant in a tort action when "[t]he actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud," and "[t]he trier of fact has returned a verdict or has made a determination … of the total compensatory damages recoverable by the plaintiff from that defendant." R.C. 2315.21(C)(1) and (2). "Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, *or* (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." *Preston v. Murty*, 32 Ohio St.3d 334 (1987), syllabus. "In each case of alleged fraud the plaintiff, in order to be awarded punitive damages, must establish not only the elements of the tort itself but, in addition, must either show that the fraud is aggravated by the existence of malice or ill will, or must demonstrate that the wrongdoing is particularly gross or egregious." *Charles R. Combs Trucking, Inc. v. Internatl. Harvester Co.*, 12 Ohio St.3d 241 (1984), paragraph three of the syllabus.

{¶113} Given our disposition of Lucas's claims for Tortious Interference, Slander of Title, and Civil Conspiracy, the award of punitive damages must also be reversed. As explained above, reasonable minds are capable of reaching different conclusions regarding Gateway's awareness of, participation in, and culpability for the forgery of the deeds conveying McFarland's mineral rights. *Preston* at 335 ("[s]ince punitive damages are assessed for punishment and not compensation, a positive element of conscious wrongdoing is always required"). Any of these claims, as well as the claim for Conversion,

could support an award of punitive damages if the statutory requirements are satisfied. But, given the record before this Court, this determination is not appropriately made by summary judgment. *See Whetstone v. Binner*, 2016-Ohio-1006, ¶ 20 ("an award of punitive damages is not automatic" and "[e]ven when a plaintiff can establish entitlement to punitive damages, whether to impose punitive damages, and in what amount, is left to the trier of fact").

{¶114} To the extent indicated above, the first assignment of error is with merit. The grant of summary judgment on the claims of Quiet Title and Conversion are affirmed. Summary judgment is reversed with respect to the Tortious Interference, Slander of Title, and Civil Conspiracy claims. The award of compensatory damages is affirmed and the award of punitive damages is reversed.

Standard of Review to Impose Sanctions: Assignment of Error Two

{¶115} The standard of review for the imposition of sanctions, whether under Civil Rule 11, R.C. 2323.51, or Civil Rule 56(G), is abuse of discretion. *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2010-Ohio-5073, ¶ 9 (Civ.R. 11); *State ex rel. Striker v. Cline*, 2011-Ohio-5350, ¶ 11 (R.C. 2323.51); *Hoffman v. Gunawan*, 2025-Ohio-5697, ¶ 34 (9th Dist.) (Civ.R. 56(G)). As long as some competent, credible evidence exists to support the judgment imposing sanctions, no abuse of discretion has occurred, and a reviewing court cannot substitute its judgment for that of the lower court and reverse the judgment. *Bardwell* at ¶ 9.

The Motion for Reconsideration and the Motion for Sanctions

{¶116} On January 27, 2023, the trial court granted Lucas's Motion for Judgment on Gateway's Counterclaim. The court ruled:

> Construing the allegations and assertions in all of the subject pleadings most strongly in favor of Gateway, this Court finds beyond doubt that Gateway has stated no claim against Plaintiff.
>
> Under no set of facts can Gateway be considered as having a direct breach of contract claim, a third party beneficiary claim, and/or a claim for unjust enrichment. This is true due to the fact established by the pleading that Gateway paid AMS a full month before the fraudulent payment to Plaintiff [on September 4, 2020]. Thus, Gateway fails to qualify as a good faith bona fide purchaser, despite its claims.
>
> Instead, the pleadings indicate that if Gateway has any justiciable claims, they lie against the Co-Defendants.

{¶117} On May 16, 2024, the trial court granted Lucas's Motion for Summary Judgment. The court ruled:

> Judgment is rendered in favor of Plaintiff and against those Defendants, jointly and severally, for precisely the relief sought by Plaintiff in her said Motion.
>
> Plaintiff's counsel is granted through and including Monday, June 10, 2024, within which to submit a proposed Judgment Journal Entry containing Plaintiff's recommended findings of fact, conclusions of law, and damages, and/or a hearing, if requested, for punitive damages as to Plaintiff's ownership of the subject mineral rights.

{¶118} On June 10, 2024, Lucas filed a Motion for Extension of Time to Submit Proposed Findings of Fact and Conclusions of Law. Lucas sought a thirty-day extension, on the grounds that there were ongoing settlement negotiations. "Plaintiff intends on dismissing its claims against certain defendants in accordance with the parties' settlement agreement" and "will then submit its proposed findings of fact and conclusions of law, including judgment against the remaining defendants." The trial court granted Lucas until July 15, 2024, to file the proposed Entry.

{¶119} The proposed Judgment Journal Entry was never filed with the trial court, although, apparently, a proposed Entry was served on the defendants. Gateway filed

objections to the proposed Entry on July 15, 2024. Objections were subsequently filed by Ascent, XTO, Terra Firma and Brindle. These objections were never ruled upon.

{¶120} On September 5, 2024, an Agreed Entry was filed. The parties acknowledged that "[t]here are no pending claims by or against Plaintiff which have not yet been decided by the Court or by Agreed Entry of the parties." The remaining claims were cross-claims between the defendants. A briefing schedule for resolving the cross-claims was fixed whereby briefing on the claims would be finished by February 22, 2025. Additionally, Gateway "preserve[d] all arguments raised in its 7/15/24 Objections to Plaintiff's Proposed Judgment Entry Including Findings of Fact and Conclusions of Law."

{¶121} On February 11, 2025, Gateway filed its Motion for Reconsideration, asking the trial court to reconsider its January 27, 2023 dismissal of its counterclaims and the May 16, 2024 grant of summary judgment. Gateway raised various arguments.

{¶122} Gateway claimed that the trial court improperly granted judgment on the pleadings "due to the fact established by the pleadings that Gateway paid AMS [for the mineral rights] a full month before the fraudulent payment to the Plaintiff [for the same rights]." Not only did the court weigh the evidence but, Gateway maintained, the "fraudulent" nature of the payment to McFarland could not be established on the pleadings alone.

{¶123} By ruling on the pleadings that Gateway was "not a good faith purchaser for value," "was involved in a civil conspiracy," and "must bear its own loss," the trial court had improperly determined issues that were still being litigated as part of the crossclaims between Gateway, AMS, Terra Firma, and Brindle. *See Zelek v. Tomlinson*, 2021-Ohio-3973, ¶ 11-13 (11th Dist.).

{¶124} Gateway also challenged the finding that it was "not a good faith purchaser for value" on substantive grounds. It cited this Court's decision in *Johnston*, 2024-Ohio-5934 (7th Dist.), decided on December 17, 2024, in which title to disputed mineral rights was quieted in favor of a *bona fide* purchaser. In *Johnston*, the original vendor claimed that she had been fraudulently induced to sell the rights. This Court held that the vendor's unrecorded interest was not evidenced in the chain of title and, therefore, the *bona fide* purchaser did not have constructive notice. *Id.* at ¶ 60-65. Gateway cited *Johnston* as new authority for the proposition that "a Bonafide purchaser of minerals may rely on record title alone" and, therefore, "Gateway was not required to assure itself that the Plaintiff in this case had been paid before Gateway elected to purchase the mineral rights."

{¶125} Gateway attached an Affidavit of its Vice President, Blaine Grace, to its Motion for Reconsideration to establish that, like the purchaser in *Johnston*, Gateway had relied on recorded deeds in the chain of title in deciding whether to purchase the mineral rights from AMS.

{¶126} Finally, Gateway argued that the grant of summary judgment should be reconsidered as there were disputed facts that should be decided by a jury.

{¶127} On March 6, 2025, the trial court denied the Motion for Reconsideration and granted the Motion for Sanctions.

{¶128} The Final Appealable Judgment and Journal Entry contained the trial court's findings and conclusions relative to sanctions:

> 45. Gateway and Ms. Johnson's filing of the Motion for Reconsideration and Affidavit of Blaine Grace constitute frivolous conduct under R.C. 2323.51. The Motion and Affidavit served merely to harass Plaintiff and cause a needless increase in the cost of

> litigation. Further, Ms. Johnson's conduct is not warranted under existing law and cannot be supported by a good-faith argument for modification of existing law [or] the establishment of new law. Gateway's motion for reconsideration consists of allegations or other factual contentions that have no evidentiary support, are not warranted by the evidence, and are not reasonably based on a lack of information or belief. The evidence does not support Gateway's allegations or factual contentions raised in the Motion for Reconsideration.
>
> 46. Ms. Johnson's conduct violated Civ.R. 11. She willfully filed a motion for reconsideration not supported by any credible legal or evidentiary basis of support. A reasonable inquiry into the factual and legal contentions asserted by Ms. Johnson would have revealed no legal basis for filing them; to represent otherwise was a willful violation of Civ.R. 11. *See Bergman v. Genoa Banking Co.*, 2015-Ohio-2797, ¶¶ 35-37 (6th Dist.). Ms. Johnson did not harbor good grounds to support the Motion for Reconsideration which appears to have been filed as yet another tactic to unnecessarily increase the costs of this litigation. Ms. Johnson has argued for her client's bona fide purchaser status at multiple stages of this proceeding, yet the well-settled law in Ohio remains unchanged: "a deed that is void due to fraud in the execution is not subject to a bona fide purchaser defense by the current holder of title." *Johnston v. Shale Play Land Servs.*, 2024-Ohio-5934, ¶ 39. To represent otherwise, and to represent that *Johnston* is new, binding case law to the contrary, was a willful violation of Civ.R. 11.
>
> 47. Gateway and Ms. Johnson's filing of the Affidavit of Blaine Grace is sanctionable under Civ.R. 56(G). Mr. Grace's affidavit purports to support a motion for summary judgment, yet was filed two years after the dispositive motion deadline in this matter. The parties' competing motions for summary judgment were fully briefed in 2023, and this Court granted Plaintiff's motion for summary judgment and overruled all competing motions on May 16, 2024. *May 16, 2024 Docket and Journal Entry*. Therefore, the affidavit of Blaine Grace filed February 11, 2025 was filed in bad faith, in an abuse of process, to unnecessarily increase the costs of litigation, and solely for the purpose of delay. Under Civ.R. 56(G), Plaintiff is entitled to an award of her reasonable expenses, including reasonable attorney's fees, incurred as a result of the filing of the affidavit.

Sanctions under R.C. 2323.51 are Not Warranted

{¶129} Conduct is sanctionable under R.C. 2323.51 under the following circumstances:

> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

R.C. 2323.51(A)(2)(a). "R.C. 2323.51 employs an objective standard in determining whether sanctions may be imposed for frivolous conduct." *Striker*, 2011-Ohio-5350, at ¶ 21.

{¶130} Contrary to the trial court, we do not find Johnson's conduct under R.C. 2323.51 to be objectively frivolous. The Motion and Affidavit did not serve merely to harass Lucas or increase litigation costs. The Motion explained that certain determinations made by the trial court in granting judgment on the pleadings had compromised its ability to litigate crossclaims involving other defendants and cited authority in support of its position. *Zelek*, 2021-Ohio-3973, at ¶ 11-13 (11th Dist.). The *Johnston* case cited by Gateway, while it may not have merited reconsideration, was not irrelevant to the issues before the court (more on this below). Finally, Gateway's Motion contained legitimate claims that genuine issues of fact existed which precluded summary judgment. Such conduct was not unwarranted.

{¶131} "[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties

… is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Civ.R. 54(B). When Gateway filed the Motion for Reconsideration, crossclaims between the defendants remained pending. Accordingly, the trial court had the authority to reconsider both judgment on the pleadings and summary judgment. With respect to summary judgment, over eight months had passed since the court granted the Motion, but it had yet to make any conclusions of law on the issues before it although it had ordered conclusions to be submitted to the court.

{¶132} It is also claimed that factual assertions were made in the Motion for Reconsideration that lacked evidentiary support although no specific assertions are identified and no specific assertions are obviously unsupported. The assertions made in Grace's affidavit do not conflict with other evidence. They detail the actions taken by Gateway to confirm the chain of title to the mineral rights. The Affidavit was submitted not so much to create a factual dispute as to bolster Gateway's claim to *bona fide* purchaser status which had been decided on the pleadings and, thus, without recourse to the evidentiary record.

{¶133} In sum, there were objectively legitimate reasons for seeking reconsideration, the trial court was authorized to grant such relief if merited, and no demonstrably false factual assertions were made.

Sanctions under Civil Rule 11 are Not Warranted

{¶134} Civil Rule 11 provides:

> The signature of an attorney or *pro se* party[7] constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or

7. Gateway correctly notes that Civil Rule 11 sanctions could only be awarded against Johnson: "Civ.R. 11 does not authorize the imposition of sanctions or attorney's fees on a party to the suit *unless* the party is a pro se litigant who signed the pleadings." *Henderson v. Haverfield*, 2022-Ohio-2194, ¶ 35 (7th Dist.).

> party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

Unlike R.C. 2323.51, "Civ.R. 11 employs a subjective bad-faith standard to invoke sanctions by requiring that any violation must be willful." *State ex rel. Dreamer v. Mason*, 2007-Ohio-4789, ¶ 19. "Under Civ.R. 11, a court can impose sanctions only when the attorney or pro se litigant acts willfully and in bad faith by filing a pleading that he or she believes lacks good grounds or is filed merely for the purpose of delay." *Bardwell*, 2010-Ohio-5073, at ¶ 8.

{¶135} With respect to Civil Rule 11, the trial court found that the Motion for Reconsideration lacked "any credible legal or evidentiary basis of support." As explained in the preceding section, there was legal and evidentiary support for Gateway's Motion objectively speaking. There is nothing in the record to suggest that subjectively speaking Johnson did not believe the positions argued on reconsideration were without legal or evidentiary foundation.

{¶136} The trial court stated that Gateway had argued "at multiple stages" of the proceedings that it was a *bona fide* purchaser contrary to well-settled Ohio law. We find the statement unsupported by the record.

{¶137} Gateway raised its status as a *bona fide* purchaser in its Answer and Crossclaim. Based on the pleadings, the trial court found that Gateway was not a *bona fide* purchaser. The issue having been decided, Gateway did not argue at the summary

judgment stage that it was a *bona fide* purchaser. Apart from its Answer and Crossclaim, the only time that Gateway raised its *bona fide* purchaser claim (of which this court is aware) was on reconsideration. The characterization that Gateway has repeatedly raised this claim throughout the proceedings is not accurate.

{¶138} In granting judgment on the pleadings, the trial court found that Gateway did not qualify as a *bona fide* purchaser but its reason for making this conclusion, "the fact established by the pleading that Gateway paid AMS a full month before the fraudulent payment to Plaintiff," is not legally sufficient to support the conclusion. While not entirely clear, the court's statement suggests that Gateway's *bona fide* purchaser status was compromised by its failure to account for payment irregularities in the transfer of the mineral rights. If so, the *Johnston* case was relevant to this issue inasmuch as it involved a purchaser for value and whether the purchaser had notice of defaulted payments under the original purchase agreement. *Johnston*, 2024-Ohio-5934, at ¶ 65 (7th Dist.).

{¶139} Only in the Final Appealable Judgment and Journal Entry did the court explain that Gateway is not a *bona fide* purchaser because the original transfers were void for fraud in the execution (which, as explained above, is not the position taken by this Court). Until that time, it was not bad faith for Gateway to challenge the court's conclusion regarding its *bona fide* purchaser status. In fact, the court did find "some merit" in the fact that Gateway's Motion caused it "to review the files to ascertain … that the Clerk had never filed the Entry containing the decision Gateway wanted reconsidered [providing findings of fact and conclusions of law]."

Sanctions under Civil Rule 56(G) are Not Warranted

{¶140} The rules for summary judgment provide:

> Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Civ.R. 56(G). The rule applies "where affidavits contained perjurious or blatantly false allegations or omitted facts concerning central issues to the resolution of the case." (Citation omitted.) *DeepRock Disposal Solutions, LLC v. Forté Prods., LLC*, 2021-Ohio-1436, ¶ 51 (4th Dist.). "Additionally, courts have not awarded sanctions under Rule 56(g) 'where a litigant's actions, even though wrongful, did not affect the disposition of the summary judgment motion.'" (Citation omitted.) *Id.*

{¶141} As an initial matter, Grace's Affidavit was not submitted in support of reconsideration of the grant of summary judgment, but in support of Gateway's claim of *bona fide* purchaser status, an issue that was decided on the pleadings and was not addressed on summary judgment. In other words, the Affidavit was not presented pursuant to Rule 56. *AAA All City Heating v. New World Communications of Ohio, Inc.*, 2004-Ohio-5591, ¶ 27 (8th Dist.) (when "the affidavit … was not made in support of a motion for summary judgment …sanctions would not be appropriate").

{¶142} Moreover, the record does not support a finding of bad faith or purpose of delay inasmuch as the Affidavit was not perjurious, blatantly false, or misleading.

{¶143} For these reasons we find that the trial court erred and abused its discretion in awarding sanctions under R.C. 5353.21, Civil Rule 11, and Civil Rule 56(G).

{¶144} The second assignment of error is with merit.

The Award of Attorney Fees and Costs Must be Reversed: Assignment of Error Three

{¶145} Attorney fees are recoverable to the prevailing party in a civil action under these circumstances: "(1) when a statute creates a duty to pay attorney fees, (2) when the losing party acted in bad faith, and (3) when the parties contracted to shift the fees." *Cruz v. English Nanny & Governess School*, 2022-Ohio-3586, ¶ 36. With respect to the second exception (applicable herein), the award of attorney fees is linked to an award of punitive damages. "Since the earliest cases at common law, juries in Ohio have been permitted to include reasonable attorney fees as part of compensatory damages when the jury also awards exemplary or punitive damages." *Id.* at ¶ 37; *Roberts v. Mason*, 10 Ohio St. 277, 282 (1859).

{¶146} Given our decision to reverse the grants of summary judgment as to the intentional tort claims involving bad faith and/or malice and the award of punitive damages, there are no grounds at present to justify an award of attorney fees.

{¶147} The third assignment of error is with merit.

Gateway's Motion for Summary Judgment was Properly Denied: Assignment of Error Four

{¶148} In the fourth assignment of error, Gateway argues that it was entitled to summary judgment. The bases on which Gateway claims entitlement to judgment have all been rejected under the analysis of earlier assignments of error: (1) a forged instrument is void and does not pass title regardless of whether fraud is pled or proven; (2) Lucas is not estopped from asserting superior title by virtue of McFarland's acceptance of the $83,996.00 payment; (3) the transfer of mineral rights to Terra Firma was void and Lucas is not "out of possession" as to the mineral rights; and (4) Gateway's "good faith" belief

that it purchased the real property interest at issue is a question for the trier of fact to decide.

{¶149} The fourth assignment of error is without merit.

{¶150} For the foregoing reasons, the judgment of the Belmont County Court of Common Pleas, granting summary judgment in favor of Lucas, and sanctioning Gateway and Johnson for frivolous conduct is affirmed in part, reversed in part, and remanded for further proceedings consistent with this Opinion. Costs to be taxed between the parties equally.

{¶151} A certified copy of this Opinion and Judgment Entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

J. Eklund, J., Eleventh District Court of Appeals, sitting by assignment, concurs.

E. Lucci, J., Eleventh District Court of Appeals, sitting by assignment, concurs.

Reversed and Remanded

For the reasons stated in the Opinion rendered herein, assignments of error one, two, and three are sustained to the extent indicated in the Opinion and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed in part and reversed in part. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the parties equally.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

_____

JUDGE SCOTT LYNCH,
ELEVENTH DISTRICT COURT OF APPEALS,
SITTING BY ASSIGNMENT

_____

JUDGE JOHN J. EKLUND
ELEVENTH DISTRICT COURT OF APPEALS,
SITTING BY ASSIGNMENT
concurs

_____

JUDGE EUGENE A. LUCCI
ELEVENTH DISTRICT COURT OF APPEALS,
SITTING BY ASSIGNMENT
concurs

NOTICE OF COUNSEL

Pursuant to App.R. 22 and 27, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the Clerk.