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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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MICHAEL WELSH and THE PATCH FACTORY, INC.,	)	Appeal from the Circuit Court of DeKalb County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 08-CH-464
	)	
STEPHEN PARKER, LYNN PARKER, RANDY ULLRICH, and CASTLE BANK, N.A., as Trustee of Trust No. 1692,	)	Honorable
	)	Melissa S. Barnhart,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

**ORDER**

*Held:* The trial court properly denied Welsh's complaint for specific performance because the option to purchase was never exercised, and because a subsequent agreement between the parties controlled.

¶ 1 In 2004, plaintiffs, Michael Welsh and The Patch Factory, Inc. (Welsh), entered into a lease agreement with defendants, Stephen and Lynn Parker and Randy Ullrich (Parker), to rent a portion of a commercial building located at 1600 E. Lincoln Highway in DeKalb (the property). In the property, Welsh, the owner and president of the Patch Factory, operated a business of manufacturing

and distributing patches. Based on Welsh's failure to pay rent, Parker sued for possession in June 2008. A jury found in favor of Parker, and an order for possession was entered on January 15, 2009. Welsh then appealed the jury verdict, and the order of possession was stayed pending the appeal. This court affirmed that Parker was entitled to possession on March 17, 2010. See *Parker v. The Patch Factory*, No. 2-09-0270 (2010) (unpublished order under Supreme Court Rule 23).

¶ 2 In the meantime, on November 4, 2008, Welsh filed a two-count complaint for specific performance to exercise his option to purchase the property. It is this suit that forms the basis of the current appeal. In count I, Welsh alleged that he had exercised his option to purchase the property, but that Parker failed to sign or deliver the necessary documents. Count II sought damages. Following a bench trial, the trial court denied Welsh's complaint for specific performance. Parker then gained the right to possession of the property on March 15, 2011. Prior to that date, Welsh filed a petition for a temporary restraining order (TRO) and permanent injunction to prevent Parker from taking possession on March 15, 2011. In his petition, Welsh argued that he was appealing the court's denial of his suit for specific performance, and that he had a meritorious claim to possession and a substantial likelihood of success on appeal. The trial court denied Welsh's request for a TRO, Welsh filed an interlocutory appeal, and this court affirmed. See *Parker v. The Patch Factory*, No. 2-11-0243 (2011) (unpublished order under Supreme Court Rule 23). In now the third appeal to this court, Welsh appeals the denial of his suit for specific performance. We affirm.

¶ 3

#### I. BACKGROUND

¶ 4 At the trial, Michael Welsh testified generally regarding his educational background and business history. Welsh received a bachelor's degree in finance with a minor in accounting in 1979. His business of manufacturing patches began in 1983, and he had two locations. In 1993, Welsh

merged his two locations into a building on Sycamore Road in DeKalb. He purchased the building “on contract” with a 10-year amortization. In 2000, he secured a mortgage from National Bank and Trust to pay for the Sycamore building. As Welsh’s business expanded beyond manufacturing to giving tours, Welsh began looking for a different building, which led him to Parker’s property in September 2003. A “flurry of discussions and correspondence” occurred as he and Parker negotiated Welsh’s purchase of the property. They signed a pre-lease agreement on January 20, 2004. The pre-lease agreement gave Welsh the option to buy the property for \$1,580,000 at any time in 2004. The terms were \$100,000 down, with the remainder to be financed. In addition, 100% of the base rents would be applied towards the purchase price. Welsh committed to renting a certain portion of the property, which had other tenants, and he began moving his equipment there in late February or early March 2004. About that time, Larry Breeden, a pastor of Christ Community Church, contacted Welsh about renting space in the property. Welsh intended to sublease part of his space in the property to Breeden, and Breeden signed a lease agreement with Welsh and Parker. The pre-lease agreement gave Welsh the ability to sublease any of his space because Welsh was doing the marketing to find additional tenants. On cross-examination, Welsh admitted that his property at Sycamore had gone into foreclosure at approximately the same time he was moving into Parker’s property.

¶ 5 Welsh and Parker entered into a “final draft” of the lease on April 2, 2004. In that lease, which Parker drafted, Parker would receive half of the rent from the sublessors. Welsh did not appreciate that Parker had “manipulated a pretty sizable income stream after the fact,” so he told Parker “ ‘today I am exercising my right to purchase this building on April 2nd and that I would have a check for \$100,000 on May 1st to consummate that deal.’ ” Parker said, “ ‘okay,’ ” and that he

would get started on it. Although Welsh was not happy with the April 2 lease, his purchase of the property in May would negate the issue. Parker's attorney prepared drafts of possible installment contracts for the purchase, and Welsh reviewed the documents and wrote in changes. Then, they typically sat down to negotiate; most of the changes were technicalities.

¶ 6 A meeting was scheduled for April 30, 2004. The meeting had a dual purpose: to sign the lease with the church and receive a one-year prepayment of \$138,000, \$100,000 of which he would give to Parker upon signing the installment contract. Pastor Breeden offered consistent testimony that he negotiated with Parker and Welsh to rent a space, and that the parties entered into a lease dated April 30, 2004. Breeden testified that the Church prepaid one year's rent of \$138,520 by issuing two checks. The first check for \$100,000 was payable to Welsh and Parker; the second check for \$38,520 was payable to Welsh. Breeden understood that Welsh had an option to buy the property, and that the Church's prepayment of rent would aid Welsh in making a down payment.

¶ 7 Welsh went on to testify that before the April 30 meeting started, Parker informed Welsh that he would not be able to sign the installment contract that day because his bank wanted to see the Church sign its lease first; Parker told Welsh it was a "technicality" that would take "just couple of days." When Welsh received the \$100,000 check from the Church, which was payable to both Welsh and Parker, Welsh told Parker that as soon as Parker was ready to sign the installment contract, he would sign the back of the check. During the first week of May 2004, Welsh and Parker were "moving ahead full force" with Welsh's purchase of the building. Parker provided information to Welsh regarding the income he could expect from tenants, payment of utilities, and property management. Under the April 2, 2004, lease, Parker was to pay maintenance and utilities. After May 1, 2004, Welsh was to pay maintenance and utilities. Welsh continued with the move-in

process and began handling the needs of other tenants in the building. He also made “constant requests” in May, June, and July that Parker sign the installment contract. “There was always a reason why it hadn’t happened,” and Parker would not “come through” when Welsh tried to schedule a meeting. On July 2, 2004, Welsh wrote Parker a letter expressing his concern and urgent business need for completing the installment contract and signing it.

¶ 8 On cross-examination, Welsh testified that from May 2004 to September 2006, he did not pay rent but paid the utilities of the property, which were in his name. The utilities for the property were put back in Parker’s name at the end of September 2006. When asked if he was to start paying rent in October 2006, Welsh denied being a “lessee” at that point. When asked if there were months that Welsh could not pay rent to Parker, Welsh replied that there were months that “payment would be delayed for the utilities checks to be cut to Mr. Parker.” Welsh admitted that a July 2007 rent check may have bounced, although he did not believe a March 2008 check bounced. Welsh could not recall whether he made rent payments in April through July of 2008, October through December of 2008, or January 2009. Welsh admitted that, in order to remain in the property, he was ordered by the trial court to write a check to Parker in August 2010. He denied that his bank reported insufficient funds for the check but admitted obtaining a cashier’s check to validate that check.

¶ 9 Welsh admitted that he and Parker signed a document, “Agreement to Extend Option to Buy,” on January 27, 2005. The Agreement to Extend, which was entered into evidence and drafted by Parker, stated as follows. Welsh had found a tenant, the Church, that wanted to occupy a portion of Welsh’s space and a portion that was not Welsh’s space. The Church had paid a full year’s rent of \$138,000 up front in May 2004, and the Church’s check for \$100,000 had not been cashed.

¶ 10 The Agreement to Extend further stated that the parties had negotiated in good faith the terms of a proposed Installment Sale Agreement, which had never been signed; that Welsh's option in the pre-lease agreement had expired on December 31, 2004, "without being exercised," and that the parties were now desirous of extending the option to purchase according to the following terms. The Agreement acknowledged that the parties had previously disputed whether Welsh had exercised the option, and that the parties were "now desirous [*sic*] of settling between themselves any and all disputes that existed prior to their execution of this agreement." The Agreement was "intended to supercede any and all other agreements that reference[d] an option to buy the property." The parties further agreed that a "contract sale" was no longer an option and that Welsh agreed that the option to purchase by December 31, 2004, had "not been exercised." Welsh's option to purchase was extended to March 31, 2005. The terms of sale were a cash purchase for \$1,575,125 with the \$100,000 check from the Church as a down payment. Finally, the Agreement to Extend stated that if Welsh was unable to secure financing prior to March 31, 2005, a second and final extension would be granted until June 30, 2005. Failure to exercise the second option would result in the expiration of the "options given" in the Agreement to Extend.

¶ 11 Welsh gave his version of events surrounding his signing of the Agreement to Extend on January 27, 2005. According to Welsh, Parker came into his office that morning, which was typical. He explained that the bank was giving him a hard time about the sale and that they needed to work together to make the deal work. Consistent with past conversations, Parker told Welsh that Welsh should "sign the \$100,000 check to him." Welsh responded as he usually did, which was to say that if Parker signed the contract for sale, Welsh would sign the back of the check that Parker had held for nine months. Parker was "kind of laughing hysterically and came about two-thirds of the way

across” Welsh’s desk. Welsh demonstrated that Parker faced him directly and put both of his hands on the desk, with his shoulders hunched towards Welsh. Welsh jerked back into the corner of his office. Parker then said that if Welsh did not sign the document, “ ‘we’re both going to be out. My bank’s going to call the mortgage. We’re both going to be out at the end of the month,’ ” which was in three or four days. Parker shoved the document across Welsh’s desk. Welsh asked Parker to sit down, but Parker “jerked forward another three or four inches with his face, kind of wild looking.” Thinking he was about to get hit, Welsh wrapped his hand around a flashlight in case he needed to defend himself. Welsh considered calling 911 but knew assistance would take several minutes to arrive. Welsh signed the document and told Parker to “get out of there.” Welsh did not read the document; he did not have the opportunity. Welsh thought he was signing a document to let the bank know that he and Parker wanted to work together.

¶ 12 Ronald Bemis, senior vice-president of Castle Bank, testified that he had worked there as a lender for 18 years. Parker had a mortgage for the property from Castle Bank. The language in the mortgage document prevented Parker from transferring ownership of the property without the bank’s approval. Bemis recalled discussion of Parker entering into an installment contract for the sale of the property to Welsh in 2004. Bemis told Parker the bank “needed to do more due diligence to answer the question of whether or not [the bank] would allow that to happen.” Bemis met with Welsh at his location on Sycamore to learn more about his business [in the spring of 2004]. Welsh’s building on Sycamore was “in some form of foreclosure or liens from the institution” that had provided the mortgage. Based on this financial information, Bemis advised Welsh that “ ‘it’s going to be very hard for me to move to the next level with any type of financing proposal or approval of the contract.’ ” Based on his meeting with Welsh and other information, Bemis told Parker that the

bank was not going to allow the sale. Bemis did not instruct Parker to have Welsh sign any document. Since being a customer of the bank since 1999, Parker was never in default under any of the notes.

¶ 13 Stephen Parker testified that he and his wife purchased the property in 1995 and then placed it into a trust. Sometime in 2003, Welsh approached him about renting or buying the property. When he first spoke with Welsh about renting space in the building, Parker was not aware that Welsh had pending federal tax liens against him or foreclosure proceedings against him in Welsh's Sycamore building. Parker entered into a pre-lease agreement with Welsh on January 20, 2004, and the parties signed a lease agreement on April 2, 2004. Welsh occupied the property around that time. The lease incorporated the pre-lease agreement regarding Welsh's option to purchase the property. Welsh told Parker he wanted to exercise the option to purchase the property at the end of April 2004. Parker then met with his attorneys, who drafted an installment contract. Parker received a \$100,000 check as a down payment on the installment contract. According to Parker, the installment contract was never signed because Parker's bank, who held the mortgage, needed to approve the contract, and the bank had "concerns" regarding Welsh.

¶ 14 Parker testified that he experienced problems with Welsh paying the rent. Welsh's July 2007 and March 2008 rent checks were returned by the bank for insufficient funds. These checks were never "made good" by the bank. After entering into the lease, Welsh paid rent in April 2004. The next month, May 2004, Welsh paid the building's utilities in lieu of rent. Welsh made the utility payments from May 2004 to September 2006. Parker placed the utilities back into his own name in September 2006. In 2008, Parker did not receive any rent payments from Welsh April through July, or October through December 2008.

¶ 15 Jeffrey Lewis, an attorney who had previously represented Welsh, testified regarding his communication with Parker's attorney, Keith Foster, in January 2005. Attorney Lewis sent attorney Foster an email on January 25, regarding the Agreement to Extend. The email stated that he and Welsh had reviewed the latest draft of the Agreement to Extend, and that they proposed three changes. Attorney Lewis stated in the email that if the changes were agreeable, attorney Foster could send a final version of the Agreement to Extend to Parker, so that Parker and Welsh could both sign it. The three changes were incorporated into the final version of the Agreement to Extend, dated January 27, 2005, that was signed by Parker and Welsh. Attorney Lewis testified that Parker and Welsh often discussed things between themselves, and then Welsh would contact Lewis to review documents. Attorney Lewis did not review the final Agreement to Extend with Welsh prior to Welsh signing it.

¶ 16 The trial court ruled as follows. The parties began negotiations regarding the property in 2003. Then, on January 20, 2004, they entered into a pre-lease agreement with an option to buy. On April 2, 2004, the parties signed the lease which specifically incorporated the pre-lease agreement. Claiming that he was unhappy with changes to the lease regarding who received the sublease rent from the Church, Welsh advised Parker at that time that he was exercising the option to buy by May 1. Over the course of the next eight months, the parties continued to negotiate and exchange various drafts of documents. In July 2004, Welsh sent Parker a letter saying he wanted to get the deal done. Then, on January 27, 2005, the parties signed an Agreement to Extend.

¶ 17 According to the court, the Agreement to Extend was a fully enforceable contract, and there was no duress or a mistaken understanding as to what was in that contract. By its terms, the Agreement to Extend cancelled all previous agreements and totally nullified everything that the

parties had done in January and April of 2004. The court did not find Welsh's testimony credible as to what transpired in negotiating the Agreement to Extend. It rejected Welsh's testimony that he did not know anything about that document; that he saw only the last page; and that he was threatened by Parker to the point that he grabbed his flashlight. The court found that "story to be totally unbelievable" and a "totally incredible recitation of facts," especially in light of attorney Lewis's testimony that there were ongoing negotiations and drafts going back forth between he and attorney Foster in early January 2005. Welsh was a person who had degrees from Northern Illinois University; he had been operating his business since he was 18 years old. The court did not think a businessman who professed to be able to develop properties and run successful businesses was going to sign a document as important as the Agreement to Extend without reading the whole document or at least going over it with his attorney. Aware that attorneys were negotiating this Agreement to Extend, Welsh had every opportunity to call attorney Lewis when Parker came into his office. The court noted that there was even an email from attorney Lewis telling attorney Foster that if the suggested changes to the Agreement to Extend were made, then Welsh would be ready to sign it. The changes were in fact made. Though the January 27, 2005 Agreement to Extend provided Welsh an extended period in which to exercise his option to purchase, Welsh did not follow through with the purchase.

¶ 18 In general, the court noted that Welsh devoted much testimony to expounding on his business acumen and the success of his business. However, he did not remember bouncing checks, missing rent payments, and acquiring federal tax liens on his other property. Welsh's "memory seemed to fail him on those simple business matters." For all of these reasons, the court denied Welsh's complaint for specific performance.

¶ 19 Welsh filed a motion to reconsider, attacking in particular the Agreement to Extend on the basis of duress, fraud, ignorance, mutual mistake, lack of consideration, and the capacity in which the parties signed. In denying Welsh's motion, the court reiterated that it "took into account Mr. Welsh's testimony," finding it to be "so incredulous that it would stretch the Court's imagination to find that Mr. Welsh was ignorant of what was in that document or that the duress or the fraud occurred." Welsh's testimony as to the events of January 27, 2005, was not believed by the court based on the testimony of attorney Lewis, Parker, and Welsh's own testimony, which the court found "at times to be offensive." Despite Welsh's testimony that he felt physically threatened by Parker on January 27, 2005, he never called the police or attorney Lewis, with whom he had just been working on the Agreement to Extend. In fact, Welsh never took any action regarding Parker's alleged threat until after he got sued by Parker. Attorney Lewis and the documents revealed that Welsh knew that the parties would be getting together to sign the Agreement to Extend, "so now to claim surprise that Mr. Parker was coming to his office two days hence I don't find to carry any credibility at all." Welsh's claim that Parker threatened that the bank would have them both out by the end of the month defied Welsh's 30-year history as a businessman, meaning Welsh did not have a reasonable expectation that a four-day foreclosure eviction was going to occur on January 31, 2005.

¶ 20 According to the court, Welsh understood what he was signing, and the meeting of the minds had been occurring throughout the negotiations with the lawyers in the weeks leading to the signing of the Agreement to Extend. If Welsh was mistaken as to his antecedent rights, he had the opportunity to demand different terms in the contract when consulting with attorney Lewis in the weeks leading up to the signing of the Agreement to Extend. In terms of consideration, Parker allowed Welsh to continue to occupy the property as well as extend the option to buy the property

for cash. Finally, Welsh's argument that his signature on the Agreement to Extend did not bind the Patch Factory was "a very interesting argument given that the syntax in a couple of the other documents," specifically the pre-lease agreement and the lease itself contained mixed pronouns and errors. Welsh held himself out to be the Patch Factory, and he had the authority to bind his company in signing the Agreement to Extend.

¶ 21 Welsh timely appealed.

¶ 22

## II. ANALYSIS

¶ 23 Welsh first argues that because he exercised his 2004 option to purchase the property, as provided in the pre-lease agreement and then the lease, the trial court erred by failing to order specific performance. Specific performance may be granted where there is a valid and enforceable contract. *Omni Partners v. Down*, 246 Ill. App. 3d 57, 62 (1993). It is an equitable remedy that must be proved by clear and convincing evidence. *Butler v. Kent*, 275 Ill. App. 3d 217, 227 (1995). Our standard of review for the trial court's grant or denial of specific performance is whether the court abused its discretion. *New Park Forest Associates II v. Rogers Enterprises, Inc.*, 195 Ill. App. 3d 757, 762 (1990). Before addressing whether Welsh is entitled to specific performance, however, we consider the intertwined issue of whether the last document signed by the parties, the Agreement to Extend, is valid. This is because the Agreement to Extend, by its terms, stated that Welsh's 2004 option to buy had expired without being exercised. It further stated that it superseded all other documents referencing the option to buy the property. In an effort to not be bound by the Agreement to Extend, Welsh launches the same attacks against it as he made in his motion to reconsider. In addition, he challenges the trial court's assessment of his credibility. We begin with the credibility issue as it pertains to the Agreement to Extend.

¶ 24 Characterizing his testimony as “uncontroverted,” Welsh argues that the trial court erred by disregarding his testimony as to the circumstances under which he signed the Agreement to Extend. It is well-settled that the trial court’s findings of fact are entitled to deference, particularly where credibility determinations are involved. *Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007). Underlying this rule is the recognition that, especially where the testimony is contradictory, the trial judge as the trier of fact is in a superior position than the reviewing court to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh the evidence and determine the preponderance thereof. *Id.* Welsh relies on *Sweilem v. Department of Revenue*, 372 Ill. App. 3d 475 (2007), for the proposition that a fact finder may not discount witness testimony unless it was impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable. Welsh’s argument that we reject the court’s credibility determinations is unpersuasive for two reasons. First, as we explain, it is not accurate to say that Welsh’s testimony was unrebutted; there was evidence contradicting his testimony. Second, the trial court, in finding Welsh’s version to be “totally unbelievable,” a “total incredible recitation of facts,” and so incredulous that it would stretch the Court’s imagination to find that Mr. Welsh was ignorant of what was in” the Agreement to Extend, essentially found the testimony inherently improbable. Such an assessment, even under *Sweilem*, is within the province of the trial court.

¶ 25 Turning now to Welsh’s challenges to the Agreement to Extend, Welsh argues that it was the product of duress and fraud. As evidence of duress, Welsh relies on his testimony that Parker came into his office clutching a document of several pages, leaned over Welsh’s desk, demanded that Welsh sign the document, and caused Welsh to fear for his safety due to Parker’s posture, demeanor, and words. As evidence of fraud, Welsh relies on his testimony that Parker “falsely” told Welsh that

his bank had said that unless the two men signed the Agreement to Extend, that they would both be out on the street by the end of the month.

¶ 26 Economic duress, which is also known as business compulsion, is an affirmative defense to a contract that releases the party signing under duress from all contractual obligations. *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 150, 173 (2010). “Duress occurs where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one’s own free will.” *Krilich v. American National Bank & Trust v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 572 (2002). Acts or threats must be legally or morally wrongful to constitute duress. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 775 (2007). Duress is measured by an objective test, rather than a subjective one: the person claiming duress has the burden of proving, by clear and convincing evidence, that he was bereft of the quality of mind essential to the making of a contract. *Id.* Where consent to an agreement is secured merely through hard bargaining positions or financial pressures, however, economic duress does not exist. *Krilich*, 334 Ill. App. 3d at 572. We review a court’s determination regarding duress under a manifest-weight-of-the-evidence standard. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d at 775.

¶ 27 Regarding fraud, Welsh cites to *People v. Gilmore*, 345 Ill. 28, 46 (1931), for the general proposition that fraud includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, and whether it be by direct falsehood or by innuendo, by speech or by silence. It appears that more specifically, Welsh is arguing fraud in the inducement, which renders a contract voidable at the election of the innocent obligor. *Tower Investors v. 111 East Chestnut*, 371 Ill. App. 3d 1019, 1030

(2007). In order for a misrepresentation to constitute fraud that would permit a court to set aside a contract, the party must establish that there was a representation in the form of a material fact, made for the purpose of inducing a party to act; it must be false and known by the party making it to be false, or not actually believed by him, on reasonable grounds to be true; and the party to whom it is made must be ignorant of its falsity, must reasonably believe it to be true, must act thereon to his damage, and in so acting must rely on the truth of the statement. *Id.* We will not disturb a trial court's findings on a claim of fraud unless they are against the manifest weight of the evidence. *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 343 (2011).

¶ 28 We reject Welsh's claims of duress and fraud. The gist of Welsh's argument is that Parker's threatening behavior and statement about the bank caused him to sign the Agreement to Extend. However, by focusing exclusively on Parker's behavior, Welsh ignores the circumstances leading up to signing the document. Prior to the date it was signed, negotiations had been ongoing between Parker's attorney and Welsh's attorney. See *Krilich*, 334 Ill. App. 3d at 572-73 (a finding of duress is less likely if the party has the assistance of counsel and adequate time to consider the proposed contractual terms). Attorney Lewis testified that two days before the Agreement to Extend was signed, he sent attorney Foster an email indicating that he and Welsh had reviewed the latest draft of the Agreement to Extend, and that they proposed three changes. Assuming the changes were agreeable to Parker and attorney Foster, attorney Lewis recommended sending the final version of the Agreement to Extend to Parker, so that Parker and Welsh could sign it. This is exactly what transpired. The three changes were incorporated into the final version of the Agreement to Extend; Parker brought that document to Welsh to sign; and Welsh signed it.

¶ 29 Regarding Parker’s alleged statement to Welsh about the bank forcing them out by the end of the month if he did not sign, the trial court found Welsh’ testimony “totally unbelievable.” Nevertheless, even assuming that Parker made such a statement, the court further reasoned that Welsh’s 30 years in the business world meant that he did not have a reasonable expectation that the four-day foreclosure eviction was going to occur on January 31, 2005. See *Hassan*, 408 Ill. App. 3d at 35 (in determining whether a party justifiably relied on another’s representations, courts consider all of the circumstances surrounding the transaction, including the parties’ relative knowledge of the facts available, opportunity to investigate the facts and prior business experience). Again, Welsh’s version ignores the prior negotiations leading up to the final January 27, 2005, Agreement to Extend signed by the parties.

¶ 30 For the same reason, we reject Welsh’s third argument, which is that the “uncontroverted evidence” is that he never read the January 27, 2005, document before signing the signature page. Welsh’s testimony is contradicted by attorney Lewis’s email that he and Welsh had reviewed the latest draft of the Agreement to Extend and recommended three changes. As stated, these changes were made to the final version before Welsh signed it. To now claim surprise or unfamiliarity with the terms of the Agreement to Extend runs contrary to the exchange of prior drafts of the installment contract and Welsh’s involvement in the process with his attorney. Also, attorney Lewis did not ask attorney Foster to return the document to him after making the requested changes; attorney Lewis fully expected that Parker’s attorney would simply forward the final version to Parker so that Parker and Welsh could sign it. Attorney Lewis testified that it was customary for Welsh and Parker to meet on their own. Moreover, the trial court did not believe that a businessman who professed to be able to develop properties and run successful businesses was going to sign a document as

important as the Agreement to Extend without reading the whole document or going over it with his attorney.

¶ 31 Welsh's fourth argument is that the Agreement to Extend lacked consideration. Here, Welsh makes a circular argument that he gained nothing from signing the Agreement to Extend because he had already exercised his option to buy, which in turn obligated Parker to complete the installment sale. Welsh's argument is based on the faulty premise that he effectively exercised his option to buy the property. The trial court found otherwise, however. In conjunction with its finding that the Agreement to Extend was a valid and enforceable contract, the trial court found that Welsh had *not* exercised his option to buy the property.

¶ 32 According to the trial court, after Welsh informed Parker on April 2, 2004, that he would be exercising his option to buy the property on May 1, 2004, "both parties testified that they were trying to get documentation signed to finish the transaction." In fact, Welsh's July 2004 letter to Parker acknowledged that a subsequent contract was necessary to complete the sale. Welsh also testified that he refused to endorse the \$100,000 check from the Church until a subsequent installment contract was signed by Parker. Parker testified that the installment contract was never signed because his bank, who held the mortgage, had concerns about Welsh, and the witness from the bank confirmed that it would not approve the sale. Therefore, the record shows that although Welsh told Parker he was exercising the option to buy the property, the deal never came to fruition and an installment contract for the sale of the property was never signed. See *Chapman v. Brokaw*, 225 Ill. App. 3d 662, 667 (1992) (an option contract does not become an enforceable contract for sale until the option is effectively exercised in accordance with its terms; because the tenant had never

effectively exercised the option, a contract for the sale of the property was never formed, and there was no contract for the court to specifically enforce).

¶ 33 Even so, the parties continued to try to work together, and this culminated in the Agreement to Extend. The court stated that “[i]n spite of further negotiations, discussions, arguments, gnashing of teeth between the two of them between May and December of 2004, Mr. Welsh and Mr. Parker in January 2005 through their respective attorneys endeavored to continue their business relationship with a new contract which was titled ‘Agreement to Extend Option to Buy’ dated January 27, 2005.” We agree with the trial court that this latest contract between the parties controlled, and it was not lacking in consideration.

¶ 34 Consideration is a bargained-for exchange of promises or performances that may consist of a promise, an act, a forbearance, or the creation, modification, or destruction of a legal relation. *Ross v. May Co.*, 377 Ill. App. 3d 387, 391 (2007). The Agreement to Extend, which superseded all other documents, specifically stated that Welsh had not exercised option to buy the property in 2004. Therefore, the consideration in the Agreement to Extend was affording Welsh an extension of the option to buy until March 31, 2005. Then, if Welsh could not secure financing, a second and final extension would be granted until June 30, 2005.

¶ 35 Welsh’s fifth argument is that the Agreement to Extend reveals a mutual mistake shared by the parties about their antecedent legal rights and obligations. In other words, he argues that the parties were mistaken as to whether the option to buy had already been exercised. See *In re Marriage of Harris*, 203 Ill. App. 3d 241, 251 (1990) (whenever a person is ignorant or mistaken with respect to his own antecedent or existing private legal rights and enters into some transaction the legal scope and operation of which he correctly apprehends, for the purpose of affecting such

assumed rights equity will grant its relief, defensive or affirmative, treating the mistake as analogous to, if not identical with a mistake of fact). Again, this argument might carry some weight if Welsh had effectively exercised his option to buy the property, but he did not.

¶ 36 In any event, the language in the Agreement to Extend runs contrary to Welsh's argument that he was mistaken as to his rights and obligations. The Agreement to Extend specifically recognized that the parties had previously disputed whether Welsh had exercised his option to buy; it stated that the parties were now desirous of settling between themselves "any and all disputes that existed prior to their execution of" the Agreement to Extend; and it stated that Welsh had not exercised his 2004 option to purchase the property. Therefore, any confusion about whether Welsh had effectively exercised his 2004 option to purchase the property was resolved by the Agreement to Extend. Moreover, as the trial court reasoned, even if Welsh was mistaken as to his antecedent rights, he had the opportunity to demand different terms in the Agreement to Extend when consulting with his attorney Lewis and when different drafts of that agreement were being exchanged. The three changes requested by Welsh and his attorney that were reflected in the final version of the Agreement to Extend had nothing to do with Welsh's concerns expressed here.

¶ 37 Likewise, we are unpersuaded by Welsh's final argument that the Agreement to Extend "did not constitute a rescission or abandonment of the contractual obligations that arose once [Welsh] exercised the option to buy." See *Artful Dodger Pub, Inc. v. Koch*, 230 Ill. App. 3d 806, 810 (1992) (in order to constitute an abandonment, the acts relied upon must be positive, unequivocal, and inconsistent with the existence of a contract). Once again, Welsh's argument is based on the faulty premise that he effectively exercised the option to buy. Indeed, the distinguishing factor between this case and *Artful Dodger* is that in *Artful Dodger*, there was no dispute that the tenant had validly

exercised the option to buy. *Artful Dodger*, 230 Ill. App. 3d at 808. The issue in that case was whether a letter mistakenly sent by the tenant's counsel rescinding the agreement to purchase the building constituted an abandonment of the real estate contract. *Id.* at 808-09. Noting that the tenant retracted its notice of rescission four days later, the court ordered specific performance of the option to buy. *Id.* at 810-11. Given our conclusion that the option to buy was never effectively exercised in this case, and that the Agreement to Extend controlled, Welsh's reliance on *Artful Dodger* is misplaced.

¶ 38

### III. CONCLUSION

¶ 39 Because Welsh did not effectively exercise his option to purchase the property, and the Agreement to Extend controlled, the trial court properly denied Welsh's complaint for specific performance. Thus, the judgment of the circuit court of DeKalb County is affirmed.

¶ 40 Affirmed.