2012 IL App (2d) 110980-U
No. 2-11-0980
Order filed September 17, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BETTE GREER and	)	Appeal from the Circuit Court
GREER EXCAVATING, INC.,	)	of Kane County.
	)	
Plaintiffs-Appellants and	)	
Counterdefendants,	)	
	)	
v.	)	No. 08-MR-627
	)	
MATTHEW GREER	)	
	)	Honorable
Defendant-Appellee and	)	Robert B. Spence
Counterplaintiff.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

Held: Mother entered into a valid contract for sale to her son of a 51% ownership interest in her business and in her real property on which the business was located. The mother breached the contract by failing to execute documents necessary to effectuate the transfer of title, and the trial court did not err in ordering her to so perform. On a separate issue of conversion, the court's finding was not against the manifest weight of the evidence. Affirmed.

¶ 1 Following a bench trial, the court found valid a contract between plaintiffs/counter-defendants, Elizabeth (Bette) Greer and Greer Excavating, Inc., and defendant/counter-plaintiff, Matthew Greer. The court ordered Bette to specifically perform her duties under the contract, which Bette had sought to invalidate. On a separate issue of conversion, the court found that Matthew improperly used business funds, but not tools, for personal use. Matthew accepts the rulings against him. Bette appeals those made against her. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Greer Excavating began as a sole proprietorship owned by Donald Greer, husband of Bette and father of Matthew. Also in the family were son Donnie and daughter Kelly. Initially, Greer Excavating was not incorporated. Greer Excavating is a trucking company with a fleet of 10 trucks that haul dirt and construction materials. It operates on real estate that also contains the Greer family home, 17N590 U.S. Highway 20 in Hampshire (PIN 01-13-100-011-0000). Donald and Bette bought the real property for $500,000 in 2000, and a March 2008 bank appraisal valued the property at just over $1,000,000.

¶ 4 Matthew began working for Donald after quitting school in 11th grade. Soon after, he developed a substance-abuse problem and, in 1999, was sentenced to two years' probation. Matthew continued working for Donald. Donnie also worked for Donald. According to Matthew, Donald planned to give Greer Excavating to Donnie and him.

¶ 5 However, in May 2002, Donald passed away in an "untimely" manner, leaving no will. Bette asked the then 22-year-old Matthew and his siblings to disclaim any interest in Donald's estate, including Greer Excavating and the real property on which it sat (which would then be owned solely by Bette). Matthew and his siblings did so. According to Matthew, Bette told him that, if he disclaimed his interest in the estate, she would give him an ownership interest in the business later.

¶ 6 One month after Donald's death, Matthew was arrested for retail theft. He was in prison from 2002 to 2004. During that time, Donnie ran Greer Excavating, although he had no ownership interest. Donnie left Greer Excavating in 2004 following a dispute with Bette. Bette then took over the management of the business, despite having little prior experience.

¶ 7 In 2004, Matthew returned to work at Greer Excavating. Matthew's responsibilities grew from laborer, to truck driver, to principal mechanic. His hourly wage increased from $18 to $23 per hour. However, according to Matthew, Bette often paid him late, only partially, or not at all. Bette claimed that Greer Excavating did not have sufficient funds to pay Matthew. As a result, in June 2007, Matthew decided to leave Greer Excavating.

¶ 8 Approximately one week later, Matthew began working as a mechanic for Christensen Excavating, owned by Carl Christensen. Christensen had been friends with Donald. Christensen Excavating and Greer Excavating had a history of sharing equipment and excess work.

¶ 9 In September 2007, Bette, on numerous occasions, asked Matthew to return to Greer Excavating. According to Bette, she wanted to give Matthew an opportunity to return to the family business. According to Matthew, Bette also needed Matthew to save the business. Christensen and Matthew's fiancé, Jennie Seydlitz, corroborated Matthew's testimony, stating that they heard Bette repeatedly tell Matthew she needed him at Greer Excavating. In any case, both parties agree that, in September 2007, the business was in trouble. The business's greatest assets were its trucks and trailers, valued between $235,000 and $310,000 (when functioning). However, the trucks were broken, and Bette could not afford outside mechanics to fix them. The business was in debt between $200,000 and $500,000. The collateral for the debt was the broken trucks. Bette was considering putting up for collateral the real property upon which the business was located.

¶ 10 Following Bette's requests, the parties had numerous discussions. In each of these discussions, Matthew made clear his position that, in exchange for his return, he wanted a 51% interest in the business. On September 21, 2007, during one such discussion, Matthew also asked that a 51% interest in the real property, including the family home, be included in exchange for his return to the business. Matthew explained that, because the business was floundering, and because he did not want "to be the 51% owner of nothing," a corresponding interest in the real property would be a way to hedge his ownership investment in the business. Bette initially balked on the inclusion of the real property, but led Matthew to believe that an arrangement could be reached, and Matthew returned to work and began repairing the trucks. Jennie, who took part in the September 21, 2007, discussion, corroborated this account of the negotiation process.

¶ 11 On September 28, 2007, Matthew and Jennie memorialized their requests in a "Bill of Sale," which they presented to Bette in her home that day. The Bill of Sale reads:

> "Bill of Sale. Seller, Elizabeth Greer, sole proprietor[] of Greer Excavating, Hampshire, IL, in consideration of ten dollars, receipt whereof is hereby acknowledged, does hereby assign, transfer[,] and set over to Buyer, Matthew Greer, of Hampshire, IL, the following described personal property, to wit:
>
> 51% ownership of Greer Excavating—including but not limited to:
>
> [A.] Trucks and trailers
>
> [B.] Tools
>
> [C.] All equipment used by the business
>
> [D.] All inventory
>
> [E.] All land owned by the Greer family

PIN [] 01-13-100-011-0000

[asterisk] Prior to January 2, 2008, Elizabeth Greer[,] sole proprieter of Greer Excavating[,] will change from a sole proprietorship to a corporation showing Matthew Greer as 51% owner.

Seller hereby represents and warrants to Buyer that Seller is the absolute owner of said property, and said property is free and clear of all liens, charges[,] and encumberances, and that Seller has full right, power[,] and authority to sell said personal property and to make this bill of sale. All warranties of quality, fitness[,] and merchantability are hereby excluded.

***

IN WITNESS WHEREOF, Seller has signed and sealed this bill of sale at 17N590 U.S. Hwy 20, Hampshire, IL[,] this 28 day of September, 2007.

Elizabeth Greer [signature]

Notarized by Jennie Seydlitz."

¶ 12 Jennie, who worked at a bank and was familiar with various forms, drafted the Bill of Sale. According to Matthew and Jennie, it was a cordial meeting. No one raised his or her voice. Bette took about five minutes to read the Bill of Sale before signing it. Then, Jennie notarized it. Bette went to her office (on-site) and made a photocopy of the Bill of Sale.

¶ 13 According to Bette, however, the meeting was not cordial. Matthew came to her house screaming and yelling. Bette's daughter, Kelly, and Bette's employee, Mark Shields, neither of whom were present, confirmed that Matthew has a tendency to "blow up" when he does not get his way. Matthew gave Bette only 10 to 20 seconds to review the Bill of Sale and said he would leave the business if Bette did not sign it. Bette stated that she only signed the agreement because she was afraid of Matthew. Bette denied that she photocopied the Bill of Sale. She denied that the Bill of Sale included the real property and insinuated that Matthew and Jennie added that term at a later date.

¶ 14 However, Bette conceded that she understood that the purpose of the contract was to give Matthew a 51% ownership interest in Greer Excavating. Bette further conceded that, despite signing the contract, she did not take any steps to incorporate Greer Excavating so as to reflect a 51% interest to Matthew (as the Bill of Sale required her to do). In fact, she did not take any steps to incorporate the business at all until a customer insisted.

¶ 15 To pursue incorporation, Bette and Matthew went to see attorney Kaarsten Goettel in April 2008. Matthew did not inform Goettel of the Bill of Sale granting him a 51% interest in the business. It is unclear to what extent Matthew was involved thereafter, but, on August 1, 2008, the business incorporated with Bette as sole owner, officer, and director.

¶ 16 On August 8, 2008, Matthew realized that he was not named an officer or a director of Greer Excavating. Sensing that Bette was not going to honor the Bill of Sale, he approached her with a quitclaim deed, drawn up by Jennie, meant to formalize the transfer of 51% interest and provide title in the real property. Matthew told Bette that he would quit working for Greer Excavating if she did not sign the deed. Bette refused to sign the deed, and, as a result, Matthew left Greer Excavating. However, by this point, Matthew had already repaired Greer Excavating's trucking fleet. As a result, Greer Excavating's trucking business was able to resume and be profitable.

¶ 17 On September 2, 2008, Matthew recorded a document in the Kane County Recorder's Office, entitled "Affidavit of Interest and Memorandum of Sale." In it, Matthew attested that Bette sold and transferred a 51% interest in the real property to him through the Bill of Sale. Matthew attached the Bill of Sale.

¶ 18 Meanwhile, Matthew returned to Christensen Excavating. According to Bette, Matthew wrongfully brought Greer Excavating tools with him. Bette noted that Matthew continued to have access to Greer Excavating's shop. Greer employee Shields, who was familiar with Greer's tools, testified that he noticed the tools in Christensen's shop. Particularly, Shields noticed an orange clutch jack. However, Matthew stated that the jack was his, personally. Bette admitted she had no personal knowledge whether Greer Excavating had an ownership interest in the jack. Finally, Christensen testified that Christensen Excavating did not acquire any additional shop equipment in 2008, meaning that no tools from Greer Excavating were added to his inventory.

¶ 19 On September 9, 2008, Bette filed an eight-count complaint for declaratory judgment and other relief against Matthew, the first seven of which are relevant to this appeal. Counts I, II, and III challenged the legitimacy of the September 2007 contract. In count I, Bette sought a declaration that the contract was void because it lacked consideration and was "ineffective to transfer or vest" any ownership in the real property. In count II, Bette sought a declaration that the contract was void for unconscionability in that Bette had no meaningful opportunity to negotiate the "one-sided" terms. In count III, Bette sought rescission of the contract, arguing that, even if the contract were valid, defendant breached his fiduciary duties by leaving the business in August 2008. In counts IV through VII, Bette made various allegations of conversion against Matthew for use of business accounts and credit cards (an offense Matthew ultimately admitted) and tools.

¶ 20 On July 17, 2009, Matthew filed a counterclaim for, as is relevant to this appeal, breach of contract. Matthew requested over $50,000 in damages and whatever additional relief deemed just.

¶ 21 The trial court heard the case over several days in December 2010, and then continued the case for submission of written closings. In April 2011, the court released a 25-page written opinion and corresponding order. In it, the court made express credibility determinations. It considered Christensen to be the most credible witness. Christensen's testimony was generally more consistent with Matthew than with Bette. The court found that, despite Matthew's prior convictions and history of substance abuse, he was "forthright and truthful." The court found Matthew to be "uneducated," with poor recall as to details but credible as to "big picture" events. The court found Jennie to be "credible and articulate," with good recall of the facts. Jennie's credibility was *not* significantly undermined when she inaccurately stated that she did not have an interest in the outcome of the case even though she was Matthew's fiancé. The court found Bette to be the "least credible witness" and it "put little credence in her testimony." Particularly, the court found Bette to be "shrewd in her dealings, especially with Matthew." Bette's testimony that she only signed the Bill of Sale because she was intimidated by Matthew was "suspect;" if anything Bette was in the superior bargaining position due to Matthew's lack of education and relatively young age.

¶ 22 The trial court found that a valid contract existed, that it was supported by consideration, and that Bette breached the contract by refusing to: (1) incorporate the business in a manner reflecting Matthew's 51% ownership; and (2) sign any documentation (such as the August 2008 quitclaim deed) that would transfer legal title in the real property to Matthew. The court found that Matthew had already performed his obligations under the contract by paying $10 (per the Bill of Sale), returning to work, fixing the trucks, and reviving business operations (per oral agreement). The court found that the Bill of Sale effectively transferred a 51% "ownership interest," if not legal title, to the real property. The court did not find the exchange to be unconscionable because, at the time of contract, the business was floundering, and "the least expensive option [for Bette] was to re-hire Matthew and give him an ownership interest." The court ordered Bette to specifically perform her obligations under the contract by executing documents necessary: (1) to convey to Matthew a 51% ownership interest in Greer Excavating; and (2) to document, in recordable form, the conveyance to Matthew of a 51% ownership interest in the real property (*i.e.*, to provide him with legal title). Finally, the court ordered Matthew to pay damages for funds converted from the Greer Excavating accounts. However, the court found that Matthew did *not* convert the tools. Bette appealed, challenging each of the rulings against her.

¶ 23 II. ANALYSIS

¶ 24 Before we begin our analysis, we address a quirk in the contract at issue. That is, although the Bill of Sale appears to be a complete contract on its face, setting forth a consideration amount of $10 in exchange for ownership in an (indebted) business and in real property, the trial court implicitly found the parties' complete contract included Matthew's oral agreement to return to work for the company.

¶ 25 We treat the contract as partly oral and partly written because neither party sufficiently challenges the trial court's implicit finding in that regard (by invoking the four-corners rule, etc.). And, indeed, the written Bill of Sale did not contain an integration clause (stating that the parties' agreement is contained exclusively therein). Other courts have taken similar approaches with Bills of Sale. See, *e.g.*, *Session v. Chartrand Equipment Co.*, 133 Ill. App. 3d 719, 726-28 (1985) (even though the Bill of Sale, which contained a clause stating that the tractor was sold "as is," was final as to certain matters, the Bill of Sale did not purport to contain all details of the transaction;

therefore, the Bill of Sale did not preclude the introduction of evidence of an express oral warranty stating that the engine would operate for 1,000 hours).

¶ 26 However, in the end, the consideration offered in the oral portion of the contract provides Bette with a benefit similar to that offered exclusively, albeit less obviously, in the written Bill of Sale. As will be discussed, the contextual evidence shows that, upon Bette's incorporation of the business reflecting Matthew's 51% ownership, Matthew would provide more than just the obvious, tangible $10. The Bill of Sale requires Matthew to take on a 51% ownership interest, and, therefore, responsibility, in a floundering business. Critically, as Bette herself argues, this ownership, once established, would bind Matthew as a fiduciary of the business. As a fiduciary, Matthew would be required to apply his attention and skill to accomplish basic business goals such as returning the business to profitability, a task Bette admits she could not do without Matthew's help. Therefore, Matthew's actions as a fiduciary would serve Bette in the same manner as an oral promise to return to work; each would give the business a chance to return to profitability. Put another way, whether we treat the Bill of Sale as fully integrated or not, our analyses on the various issues below would lead to the same result(s).

¶ 27 A. The Contract Is Valid

¶ 28 Bette first argues that the contract is invalid due to: (1) lack of consideration; and (2) substantive and procedural unconscionability. The two sub-issues are related because, when examining whether a contract is supported by consideration, courts generally will not inquire into the amount of the consideration unless the amount can be said to "shock the conscience" of the court. *Hurd v. Wildman, Harrold, Allen & Dixon*, 303 Ill. App. 3d 84, 93 (1999). For the reasons that follow, we reject Bette's arguments.

¶ 29 1. The Contract was Supported by Consideration

¶ 30 To be valid, a contract must be supported by an offer, acceptance, and consideration. *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 329 (1977). Consideration is a bargained-for exchange of acts or promises. *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1027 (2007). Any act or promise that is a benefit to one party or a disadvantage to the other constitutes sufficient consideration to support a contract. *Harris v. Johnson*, 218 Ill. App. 3d 588, 592 (1991). That one party's consideration may be less than fully equivalent to the consideration provided by the other is of no import; the contract cannot be undone merely because one party made a bad deal. *Piehl v. Norwegian Old Peoples' Home Society*, 127 Ill. App. 3d 595, 596 (1984); *Dillman & Assoc., Inc., v. Capitol Leasing Co.*, 110 Ill. App. 3d 335, 343 (1982).

¶ 31 Here, the contract was supported by consideration. Orally, Matthew agreed to return to work to repair the trucking fleet (which would enable the business to return to operation and profitability). Moreover, the Bill of Sale required Matthew to give $10 and to take on 51% ownership responsibility for a semi-operational business that was between $200,000 and $500,000 in debt, the collateral for which was a fleet of broken trucks and trailers that, barring Matthew's in-house labor, the business could not afford to fix. On Bette's part, she was required to give 51% ownership interest in the business (as discussed, itself part asset and part burden) and 51% ownership interest in a real property purchased for $500,000 in 2000 and valued at just over $1,000,000 in 2008. According to Matthew and Jennie, who the court found credible, the parties negotiated Matthew's ownership of the business, complemented by the collateral of the real property, over a period of weeks before memorializing the arrangement. These circumstances demonstrate a bargained-for exchange of acts or promises.

¶ 32 2. The Contract Was Not Substantively or Procedurally Unconscionable

¶ 33 i. Substantive Unconscionability

¶ 34 A contract is substantively unconscionable where its terms are "inordinately one-sided" such that no reasonable man would make and no honest man would accept. *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 28 (2006); *Piehl*, 127 Ill. App. 3d at 596. Again, it is not enough that one party's consideration is less than that provided by the other party. *Id*. Courts are not to take an overly paternalistic attitude toward contracting parties by relieving them of the consequences of their bargain. *Dillman*, 110 Ill. App. 3d at 343. Whether the terms of a contract are substantively unconscionable is ultimately a question of law subject to *de novo* review; however, the trial court's factual determinations that form the basis of its understanding of the terms and their relative values to the parties are entitled to deference. See *Tortoriello v. Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214, 227 (2008).

¶ 35 Bette argues that, here, the terms were so one-sided in favor of Matthew as to render the contract substantively unconscionable. Bette states that Matthew received a 51% interest in the business and a 51% interest in the real property all for just "$10 and a promise that [Matthew] would return to paid employment [he] could quit anytime he wanted." Bette's statement misrepresents the value of the exchanged property and services.

¶ 36 Again, Matthew testified that, at the time of contract, he understood the business's debt to be more than the value of the trucks and trailers and in the neighborhood of $500,000. The real property was purchased in 2000 for $500,000, and Bette submitted a March 2008 appraisal valuing the property at just over $1,000,000. Admittedly, and mindful that inequality is not synonymous with unconscionability, these financial stats tip the balance in favor of Matthew. However, by

Bette's own admission, these valuations were not static. The trucks were falling further into disrepair. The $1,000,000 property was soon to be put up as collateral against the business's growing debt. As the court stated, "the least expensive option [for Bette] was to re-hire Matthew and give him an ownership interest in Greer Excavating." One way to ensure Matthew's stewardship to the business and secure his motivation to *keep* the business up and running was to give him a 51% interest in that business. In this way, Matthew did not simply "return to paid employment [he] could quit anytime he wanted." As Bette admitted, she did not want any mechanic; she wanted Matthew. His value was unique; he could repair the trucks at a lower cost than other mechanics. He was hired to restore business operations and he did. In point of fact, the business earned approximately $500,000 in gross sales in 2008, *after* Matthew repaired the trucking fleet. Even if Bette's ownership interest in the newly successful company would be less (49% rather than 100%), her actual profit would be more—as Bette testified, the business would fail without Matthew's involvement. For these reasons, the contract was not substantively unconscionable.

¶ 37 ii. Procedural Unconscionability

¶ 38 A contract may be procedurally unconscionable where an impropriety in the contract-formation process deprived a party of a meaningful choice. *Frank's Maintenance & Engineering, Inc., v. C.A. Roberts Co.*, 86 Ill. App. 3d 980, 989 (1980). When determining whether a contract was procedurally unconscionable, the court considers the manner in which the contract was entered, whether there was a disparity in bargaining power, and whether each party had a reasonable opportunity to understand the terms of the contract. *Kinkel*, 223 Ill. 2d at 22-23. The question of whether one party deprived the other of a meaningful choice through intimidation or abuse of bargaining power is one of fact, which is not to be disturbed unless it is against the manifest weight of the evidence. See, *e.g.*, *Bess v. DirecTV, Inc.*, 381 Ill. App. 3d 229, 237 (procedural unconscionability may be informed by the facts and circumstances surrounding the contract formation).

¶ 39 Bette challenges the trial court's credibility determination that her testimony—*i.e.*, that she only signed the Bill of Sale because she was afraid of Matthew—was "suspect." Bette argues that her testimony was corroborated by Kelly and Shields, who stated that Matthew frequently "blows up," whereas Matthew's testimony was weakened by inconsistencies. Bette notes that Matthew and Jennie testified inconsistently as to the date Jennie drafted the Bill of Sale, which person arrived first to Bette's house on the date of signing, and Bette's initial reaction to the inclusion of the real property.

¶ 40 In a bench trial, the trial court's credibility determinations must be given deference because the court is in the best position to view and evaluate witness testimony and demeanor. See, *e.g.*, *Kel-Keef Enterprises, Inc. v. Quality Components Corp.*, 316 Ill. App. 3d 998, 1012 (2000). Here, none of Bette's complained of inconsistencies undermine the court's credibility determinations. The court acknowledged weaknesses in Matthew's testimony, such as his poor recall of details. However, the court found him to be credible overall. The record supports this determination as reasonable, particularly where Christensen testified in a manner consistent with Matthew on other matters.

¶ 41 Alternatively, Bette accepts the trial court's credibility determinations but contends that Matthew abused his bargaining power because "he knew [that] Bette needed him to work on trucks and [that Bette] still felt a moral obligation to include him in the family business in some way." Bette notes that she was in a "desperate" position and "needed Matthew or else the business would close altogether." These circumstances hardly constitute an unconscionable disparity in bargaining power. To the contrary, these circumstances show that what Matthew had to offer was indeed valuable to Bette, hence working against her *substantive* unconscionability argument.

¶ 42 B. Real Property Provision

¶ 43 Bette next argues that, even if the portions of the contract concerning the 51% transfer of the business is valid and enforceable, the portion of the contract concerning the 51% transfer of the real property is not. Bette argues that: (1) Matthew and Jennie fraudulently added the real property provision to the contract *after* Bette had signed it; and (2) the Bill of Sale was not an effective instrument to transfer real estate. Bette's first argument is essentially a repeat challenge to the trial court's credibility determinations, which we will not revisit. Bette's second argument also fails.

¶ 44 In support of her position that the Bill of Sale was not an effective instrument to transfer legal title to real estate, Bette cites to sections 9 and 10 of the Conveyances Act (765 ILCS 5/9, 5/10 (West 2006)). Sections 9 and 10 set forth the requirements of warranty deeds and quitclaim deeds, respectively. Bette argues that the contract fell short of the requirements set forth in sections 9 and 10 because it did not utilize the specific conveyance language and terminology set forth by statute. Essentially, Bette argues that the contract was not in a conventional format to transfer legal title to real estate, *i.e.*, it was not a deed.

¶ 45 However, Bette's premise that only a deed creates ownership interest is flawed. Even if the contract itself did not operate to transfer legal title of the real estate, it created an ownership interest and established Bette's obligation to transfer legal title. When an owner of real property enters into a valid and enforceable contract for its sale, he or she continues to hold the legal title, but in trust for the buyer. *Ruva v. Mente*, 143 Ill. 2d 257, 264 (1991). The buyer becomes the equitable owner, holding the purchase money in trust for the seller if he or she has not already performed said obligation. *Id*. The conversion takes place at the time of entering into the contract. *Id*.

¶ 46 Bette does not dispute that a contract for sale is sufficient to establish an obligation to convey legal title to real property. However, she responds that, here, the contract: (1) was not valid in that it lacked consideration (a point we have already rejected); and (2) cannot be enforced because it did not sufficiently describe the real property to be conveyed. As to her second point, Bette points to various flaws in the contract that *could* render uncertain the real property at issue. For example, although the real property at issue was owned solely by Bette, the Bill of Sale states that the property was owned by Greer Excavating (which, at the time of contract, was owned solely by Bette). Additionally, the contract does not indicate the county or state in which property with the PIN of 01-13-100-011-0000 is located. However, in light of the evidence, we disagree that these flaws render uncertain the identity of the property.

¶ 47 An instrument will not be rendered unenforceable for uncertainty of the property to which it relates if, by the aid of extrinsic evidence, the property can be identified and located. *Werling v. Grosse*, 76 Ill. App. 3d 834, 841 (1979) (property referred to as "my farm" not uncertain). Here, the Bill of Sale recites on its face the PIN number of the property. As to extrinsic evidence, Bette's own complaint identifies the property as "the real property owned individually by Elizabeth Greer that is being occupied by the business," and states that said business is "located at 17N590 US Highway 20, Hampshire, Illinois, 60140." This evidence makes clear the property referenced in the contract, and Bette suggests no alternative property. See *id*. (the property is not uncertain where there is "no other real estate to which the statement could relate").

¶ 48 Therefore, we reject Bette's argument and find enforceable the agreement to transfer a 51% interest in the real property. Per *Ruva*, even if the contract itself did not actually transfer legal title, it created an ownership interest and established Bette's obligation to perform and/or cooperate with the transfer of title. We affirm the trial court's order that Bette "execute such further documents as may be necessary and appropriate to [record] the conveyance of [51% ownership interest in the real property located at 17N590 U.S. Highway 20, Hampshire, Illinois, PIN 01-13-100-011-000] to Matthew."

¶ 49 C. Bette Not Entitled to Recision

¶ 50 Next, Bette argues that, even if there was a valid contract, she was entitled to a recision. A party may rescind a contract due to substantial nonperformance or breach by the other party. *Eager v. Berke*, 11 Ill. 2d 50, 54 (1957). Bette asserts that Matthew breached the contract by failing to act as a fiduciary to the company. Bette considers this to be an implied material term, noting that, in a closely held corporation, a shareholder owes a fiduciary duty to his or her company and fellow shareholders. *Visvardis v. Eric P. Ferlerger, P.C.*, 375 Ill. App. 3d 719, 725 (2007). Bette states that Matthew breached his fiduciary duties when, in August 2008, he left Greer Excavating for a competitor, Christensen, and when he removed funds from company accounts.

¶ 51 Bette's argument is misplaced. An alleged breach of fiduciary duty would be a separate cause of action, not grounds to revoke an ownership interest. For example, Bette *was* compensated for Matthew's conversion of company funds, which constituted a separate cause of action. In any case, Bette's argument fails because it ignores the time line of events. Bette failed to name Matthew as an owner, so he never became a fiduciary. Matthew did not cease his employment with Greer

Excavating until after it became apparent that Bette herself repudiated the contract by incorporating the business without reflecting Matthew's ownership interest.

¶ 52 D. Bette's Specific Performance is an Appropriate Remedy

¶ 53 Bette argues that the trial court erred in ordering her to specifically perform under the contract. To order specific performance, the terms of the contract must be clear, definite, and unequivocal. *McCormick Road Associates, L.P. II, v. Taub*, 276 Ill. App. 3d 780, 783 (1995). Specific performance is not appropriate where the parties have yet to reach agreement on essential terms. *Id*. Bette states that the following essential terms were not clear or were not present: (1) Matthew's obligations under the contract (arguing, specifically, that there was no meeting of the minds concerning the details of Matthew's return to the business, and that, even if Matthew's return to the business constituted adequate consideration, it was not memorialized in writing and, therefore, the statute of frauds barred enforcement); and (2) each party's respective obligations for taxes and debts of the real property and business.

¶ 54 As to the first point, the trial court did not order Matthew to specifically perform. Rather, it found that Matthew already performed under the contract (by paying $10, returning to work, fixing the trucks, and reviving business operations). Where there has been partial performance, the case may be brought outside the statute of frauds, allowing for an order of specific performance. See *John O. Schofield, Inc. v. Nikkel*, 314 Ill. App. 3d 771, 785 (2000); 33A Ill. Law and Prac. Specific Performance § 21 (2012). The order for specific performance pertained only to Bette's obligation to execute documents necessary to reflect Matthew's ownership interest in Greer Excavating and the real property.

¶ 55 As to the second point, these are not essential terms. For example, the default rule is that co-owners of real property are proportionately liable for costs, repairs, and taxes. See, *e.g.*, *In re Marriage of Sally Adams*, 92 Ill. App. 3d 797, 805 (1981); Robin Cheryl Miller, J.D., *Cause of Action for Contribution by Cotenant for Expense Necessary or Beneficial to Real Property*, 26 Cause of Action 521, § 4 (1991) (a cotenant's proportionate share is determined by the cotenant's ownership percentage multiplied by the total cost of the obligation). Therefore, a contract that assigns a 51% ownership interest in real property implicitly contains the obligation to pay 51% of the costs, repairs, and taxes. While co-owners *may* contract with each other to create alternative allocations of liability, *Adams*, 92 Ill. App. 3d at 805, there is no obligation to do so. Similarly, that co-owners of a business may later decide upon a debt-management plan does not mean that their initial contract for ownership allocation was missing an essential term for failure to decide therein. In sum, the trial court did not err in ordering Bette to specifically perform her obligations under the contract.

¶ 56 E. No Conversion of Tools

¶ 57 Finally, Bette argues that the trial court's finding that Matthew did not convert tools owned by Greer Excavating was against the manifest weight of the evidence. A finding is against the manifest weight when the opposite result is clearly apparent. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). A person commits an act of conversion when he or she, without authorization, deprives another of his or her property, either permanently or for an indefinite amount of time. *In re Thebus*, 108 Ill. 2d 255, 259 (1985). The elements of conversion are: (1) plaintiff's absolute, unconditional right to immediate possession of the property; (2) defendant's unauthorized and wrongful assumption of control, dominion, or ownership over the property; and (3) plaintiff's demand for possession. *Stathis v. Geldermann*, 295 Ill. App. 3d 844, 856 (1998).

¶ 58 Bette's theory of the case was that the allegedly converted tools were brought to and stored at Christensen Excavating, where Mark Shields recognized an orange clutch jack as belonging to Greer Excavating. However, the evidence does not support this theory as clearly apparent. Bette admitted at trial that she had no personal knowledge as to whether Greer Excavating had ownership interest in the orange clutch jack. Christensen, who the court deemed to be the most credible witness, testified that Christensen Excavating did not acquire any additional shop equipment in 2008, meaning that no tools from Greer Excavating were added to his inventory (whether stolen or not). Moreover, to the extent that the orange clutch jack may have belonged to Greer Excavating, the evidence did not mandate a finding that it was stolen therefrom. Shields conceded that Greer Excavating and Christensen Excavating historically shared tools and equipment with each other. Therefore, the trial court was not required to infer that the clutch jack was taken with the intent to deprive Greer Excavating of its use. For these reasons, we will not upset the trial court's determination as to the tools.

¶ 59 III. CONCLUSION

¶ 60 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 61 Affirmed.