

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110147-U

Filed 12/9/11

NOS. 4-11-0147, 4-11-0148 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|------------------------------------|---|---------------------|
| LUTHER CLARK, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Douglas County |
| CHARLES STEINER and LARRY KIRKMAN, |) | Nos. 09SC218 |
| Defendants-Appellants. |) | 10CH21 |
| |) | |
| |) | Honorable |
| |) | Michael G. Carroll, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The court affirmed the trial court's judgment finding (1) Clark and Steiner entered into an enforceable oral contract for the sale of real property, and (2) Clark is entitled to specific performance of the oral contract.

¶ 2 In July 2010, the trial court found plaintiff, Luther Clark, entered into an enforceable oral contract for the sale of land located at 102 West Seminary, Murdock, Douglas County, Illinois (disputed property), with its owner defendant, Charles Steiner. In January 2011, the court found Clark's claim to the disputed property superior to defendant, Larry Kirkman's, and granted Clark's motion for specific performance of the oral contract and his petition to quiet title. Steiner and Kirkman appeal, arguing the court erred in (1) finding an enforceable oral contract existed between Clark and Steiner and (2) ordering specific performance of the oral contract where monetary damages provided an adequate remedy at law. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In December 2009, Clark filed a two-count complaint against Steiner in Douglas County case No. 09-SC-218. The complaint alleged the parties entered into an oral contract for the disputed property's sale and argued Clark was entitled to either (1) specific performance of the oral contract or (2) monetary damages totaling \$5,804.53, which represented the amount he paid for the disputed property (\$804.53) plus the value of improvements he made to the land (\$5,000).

¶ 5

In March 2010, Steiner filed a motion to dismiss Clark's complaint, arguing (1) he never entered into an oral contract with Clark and (2) any alleged oral contract was invalid under section 2 of the Frauds Act, commonly referred to as the statute of frauds (740 ILCS 80/2 (West 2008)). In his motion, Steiner disclosed he no longer owned the disputed property, having transferred ownership to Kirkman.

¶ 6

In April 2010, Clark filed a petition to quiet title in Douglas County case No. 10-CH-21, naming Steiner and Kirkman as defendants. The petition alleged Clark, as the disputed property's rightful owner, had a right in the disputed property superior to Steiner's and Kirkman's. The success of Clark's petition in case No. 10-CH-21 rested on the validity of the oral contract with Steiner in case No. 09-SC-218.

¶ 7

In June 2010, the trial court set a hearing in case No. 09-SC-218 to determine the validity of the oral contract. The parties agreed to settle this matter first and pursue any other issues later. The hearing consisted of testimony from Clark, Steiner, and Kirkman and exhibits entered by the parties. Prior to offering testimony, the parties stipulated to the following facts in a written document filed with the court: (1) as of September 1, 2009, Steiner owned the disputed

property and owed \$804.53 in back taxes on it; (2) on September 23, 2009, Clark paid \$804.53 in back taxes on the disputed property; and (3) on December 1, 2009, Steiner transferred the disputed property to Kirkman. The evidence introduced at the hearing showed the following, in pertinent part.

¶ 8 Clark testified on or about September 21, 2009, he and Steiner attended a party at a friend's house. Clark was an acquaintance of Steiner's, but they were not close friends. At some point, Clark spoke to Steiner about the disputed property. According to Clark, Steiner told him he was behind on property taxes for the disputed property and would be willing to sell it to anyone who would pay the back taxes. Eventually, Clark agreed to purchase the disputed property from Steiner by paying the back taxes, and Steiner agreed to transfer the property to Clark once he paid the taxes in full. Clark offered to have an attorney draft a contract, but Steiner told him it was not necessary. Clark claimed Steiner gave him a tax notice to take with him when he went to pay the back taxes and entered an original copy of the notice into evidence. The notice was stamped "PAID" and indicated Clark paid \$804.53 in cash.

¶ 9 On September 22, 2009, Clark called Steiner and informed him he was going to pay the back taxes the next day. According to Clark, Steiner was pleased because he would not have to go to court in November. On September 23, 2009, Clark paid the back taxes due on the disputed property and informed Steiner. According to Clark, Steiner told him he could start cleaning up the disputed property as he now owned it. Clark then began clearing brush, garbage, and trees from the disputed property. Clark claimed he contacted Steiner and attempted to obtain title to the disputed property on at least three separate occasions between September 23 and December 1, 2009. In addition, Clark claimed he presented a deed to Steiner on November 20,

2009, but Steiner did not sign it. Clark claimed Kirkman began harassing him in late November, claiming the property belonged to him and Clark was trespassing. On December 1, 2009, Clark learned Steiner transferred ownership of the disputed property to Kirkman.

¶ 10 On cross-examination, Clark admitted the oral agreement with Steiner did not allow for closing costs or taxes due upon filing the deed. Clark stated the only terms were the payment of back taxes by him and the transfer of title by Steiner, and he and Steiner only discussed the terms of the oral agreement once, at the party on September 21, 2009.

¶ 11 Steiner testified he and Clark were present at the same party on or about September 21, 2009. Steiner also admitted he talked about the taxes due on the disputed property with a group of people and indicated a desire to sell it. However, Steiner denied ever discussing specific sales terms with Clark. He also denied entering into an oral agreement to sell the disputed property to Clark in exchange for Clark paying the back taxes. In addition, Steiner denied giving the tax notice to Clark and stated Clark never contacted him after September 21, 2009, to inform him he paid the taxes.

¶ 12 According to Steiner, he was unaware Clark was claiming ownership of the disputed property until on or about November 30, 2009, when a local deputy informed him Clark was working on the property and claiming ownership. The next day, December 1, 2009, Steiner accompanied Kirkman to the county courthouse and filed a quitclaim deed transferring his interest in the disputed property to Kirkman "for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration in hand paid." Steiner claimed Kirkman attempted to pay the back taxes, but the clerk told him they had been paid and refused to accept any money. Steiner entered a copy of the deed transferring the disputed property to Kirkman

into evidence.

¶ 13 On cross-examination, Steiner stated Kirkman never paid him any consideration for the disputed property. Steiner further stated the transfer to Kirkman took place after he learned Clark was claiming ownership of the property, and he did receive a deed from Clark's attorney sometime in the beginning of December. Steiner also stated he did not inquire into the status of the disputed property between September 23 and December 1, 2009, though it was scheduled to be sold at a tax sale in November if the back taxes were not paid in full. Finally, Steiner claimed he did not know how Clark came to possess the tax notice.

¶ 14 Kirkwood substantiated Steiner's testimony and testified it was true and accurate to the best of his knowledge. On cross-examination, Kirkwood testified he engaged in discussions with Steiner to purchase the disputed property over a year before the transfer was made and admitted he never paid Steiner to transfer the disputed property to him in December 2009. Under the terms of the purported agreement between Kirkwood and Steiner, Steiner intended to transfer the disputed property to Kirkwood after he paid the back taxes.

¶ 15 Following Kirkwood's testimony, the trial court took the matter under advisement. In July 2010, the court issued a letter ruling. In the ruling, the court found (1) Clark's full performance under the contract rendered the statute of frauds inapplicable (740 ILCS 80/2 (West 2010)), and (2) Clark and Steiner entered into an enforceable oral agreement for the sale of the disputed property. The court consolidated case Nos. 09-SC-218 and 10-CH-21 and set a hearing on specific performance, damages, and Clark's petition to quiet title.

¶ 16 In December 2010, the trial court held a hearing on the remaining matters. At the hearing, the court took judicial notice of the testimony from the June 2010 hearing. Additional

testimony given by Steiner and Kirkman showed the following, in pertinent part.

¶ 17 Steiner testified he entered into an agreement with Kirkman to sell the disputed property at least a year before the actual transfer took place on December 1, 2009. Kirkman's residence abutted the disputed property, and he intended to hold it as a rental property. Steiner further testified the deal was delayed while Kirkman attempted to raise the funds to complete the transaction, but the parties always intended on finalizing the deal when possible. Steiner maintained Kirkman never paid any consideration for the disputed property transfer.

¶ 18 Kirkman testified he engaged in ongoing discussions with Steiner to purchase the disputed property starting in 2007 or 2008, but the transaction was delayed because of its uncertain tax status. Sometime in late 2009, before the parties completed the transfer, Kirkman received word Clark claimed to own the disputed property. Kirkman testified Clark's reputation for honesty in the community was very poor, and he did not believe Clark's claims were true, but he never investigated them. Upon hearing Clark was purporting to own the disputed property, Kirkman contacted Steiner, and they finalized the contract for its sale. Since December 1, 2009, Kirkman maintained the disputed property to the exclusion of all others, including Clark. Finally, Kirkman stated he stood ready, willing, and able to pay Clark \$804.53 for the back taxes Clark paid in September 2009.

¶ 19 On cross-examination, Kirkman claimed he paid Steiner \$10 for the disputed property, though he admitted he did not have a receipt. Kirkman also admitted he did not like Clark and did not want him as a neighbor.

¶ 20 The case then proceeded to closing arguments. At closing, Clark's counsel argued (1) equity required specific performance because (a) the parties disputed the amount of damages

and (b) real property is always considered unique, (2) Kirkman was not a *bona fide* purchaser because he had a duty to investigate Clark's claims of ownership of the disputed property, and (3) Clark had a superior claim to the property against Steiner and Kirkman. Counsel for Steiner and Kirkman argued (1) the proper remedy was to award Clark damages of \$804.53, (2) specific performance was improper as an adequate remedy at law existed, and (3) Kirkman possessed superior title to the disputed property against Clark.

¶ 21 After closing arguments, the trial court took the matter under advisement. In January 2011, the court issued a letter ruling. In its ruling, the court found (1) no adequate remedy at law existed for Clark's injuries, entitling him to specific performance; (2) Kirkman was not a *bona fide* purchaser because he was on notice Clark had a claim to the property and failed to investigate the matter; and (3) Clark held title to the disputed property in fee simple, free and clear of Kirkman's purported interest.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Steiner argues the trial court erred in (1) finding he entered into an oral contract to sell the disputed property to Clark and (2) granting Clark's request for specific performance where an adequate remedy at law existed.

¶ 25 A. Enforceability of the Oral Contract

¶ 26 "The existence of an oral contract, its terms, and the intent of the parties are questions of fact, and the trial court's determinations on those questions will be disturbed only if they are against the manifest weight of the evidence." *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785, 922 N.E.2d 8, 18 (2009). "A finding is against the manifest weight of the evidence only if

the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006). Under this standard, great deference is given to the trial court as the trier of fact, and "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Best*, 223 Ill. 2d at 351, 860 N.E.2d at 245.

¶ 27 In the case at bar, the trial court found Clark and Steiner entered into an enforceable oral contract for the sale of the disputed property. The evidence required the court to resolve conflicting testimony. In its June 2010 letter ruling, the court resolved the conflicting evidence in Clark's favor, noting:

"[T]wo important facts *** are in [Clark's] favor. The first is that [Steiner] did, in fact, at a later date, sell the property to another upon basically the same terms that [Clark] said he offered him: pay the taxes. Secondly, and perhaps more importantly, is [Clark's] Exhibit No. 1 being a 'Reminder Notice' of the taxes due. *** The court takes judicial notice of the protocol and practices of the Treasurer's Office. *** The 'Reminder Notice' is sent to the taxpayers as a courtesy. The yellow paper is the original document the Treasurer would mail to the taxpayer."

The court went on to conclude Steiner must have provided Clark with the original copy of the "Reminder Notice," giving credence to Clark's argument an oral contract existed. Reviewing the facts of the current case under the deferential manifest-weight-of-the-evidence standard, we do

not find the court's ruling unreasonable, arbitrary, or counter to the evidence presented.

¶ 28 Steiner contends any oral contract between him and Clark is invalid under the statute of frauds (740 ILCS 80/2 (West 2008)), because a contract for the sale of land must be in writing. While this is the general rule, it is well established an oral contract is not unenforceable under the statute of frauds if one party has rendered complete performance under the contract terms. See *David v. Schiltz*, 415 Ill. 545, 555, 114 N.E.2d 691, 697 (1953) ("Where, pursuant to an oral sale of land, the consideration is fully paid and possession given the purchaser, there is sufficient performance to take the agreement out of the Statute of Frauds."); see also *Kozasa v. Guardian Electric Manufacturing Co.*, 99 Ill. App. 3d 669, 677, 425 N.E.2d 1137, 1144 (1981) ("[T]he law in Illinois is clear that an oral contract is not unenforceable under the statute of frauds if the contract has been completely performed by one party."). In addition, while the statute of frauds is designed to prevent false claims by requiring a writing evincing the parties' intentions, full performance by one party to the alleged contract strongly indicates the contract exists. *Kohler*, 397 Ill. App. 3d at 785, 922 N.E.2d at 19. In the present case, the trial court found Clark paid the full asking price and occupied and improved the land; thus, Clark's actions constituted full performance under the terms of the oral contract and rendered the statute of frauds inapplicable.

¶ 29 B. Specific Performance

¶ 30 A court's decision to grant specific performance is a matter of sound judicial discretion and will not be disturbed absent an abuse of discretion. *Chariot Holdings Ltd. v. Eastmet Corp.*, 153 Ill. App. 3d 50, 56, 505 N.E.2d 1076, 1081 (1987). If the judgment of the trial court is justified in the law for any reason or ground appearing in the record, we will affirm

the judgment. *Id.* Steiner argues the trial court erred in granting Clark specific performance because monetary damages provided an adequate remedy at law. We disagree.

¶ 31 "Illinois courts have long held that where the parties have fairly and understandingly entered into a valid contract for the sale of real property, specific performance of the contract is a matter of right and equity will enforce it, absent circumstances of oppression and fraud." *Giannini v. First National Bank of Des Plaines*, 136 Ill. App. 3d 971, 981, 483 N.E.2d 924, 933 (1985). "Thus where land, or any estate therein, is the subject matter of the agreement, the inadequacy of the legal remedy is well established." (Internal quotation marks omitted.) *Id.* However, for a contract to be specifically enforceable the court must be able to ascertain the parties' agreement, though it need not provide for all collateral matters or possible future contingencies. *Welsh v. Jakstas*, 401 Ill. 288, 294-95, 82 N.E.2d 53, 57 (1948) (upholding an option contract where "[i]t contain[ed] a description of the property sufficient to identify it, and stat[ed] the price, terms[,] and conditions of the sale.>").

¶ 32 In the present case, the oral contract between Clark and Steiner was simple and straightforward. Clark agreed to pay the back taxes on the disputed property, and Steiner agreed to transfer it to Clark once he paid the taxes. Further, the property in question is presumed unique, rendering any remedy at law insufficient. We are not persuaded by Steiner's argument the agreement was insufficient to allow specific performance where the parties failed to allocate the cost of transfer taxes and closing costs. We conclude these are the type of collateral matters found to be unnecessary by the court in *Jakstas*. Clark and Steiner fairly and understandingly entered into an oral contract for the sale of the disputed property, and Clark is entitled to specific performance of the contract.

¶ 33

III. CONCLUSION

¶ 34

We affirm the trial court's judgment.

¶ 35

Affirmed.