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Budget Truck Sales, LLC v. Tilley Appellant's Brief Dckt. 45082

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BUDGET TRUCK SALES, LLC, an Idaho
limited liability company,

Plaintiff/Counterdefendant/
Appellant,

vs.

KENT H. TILLEY,

Defendant/Counterclaimant/
Respondent,

Supreme Court Docket No. 45082-2017
Cassia County Case Nos. CV-2013-316
CV-2015-719
(Consolidated Cases)

KENT H. TILLEY,

Plaintiff/Respondent,

vs.

BREK A. PILLING; and BRIAN L.
TIBBETTS,

Defendants/Appellants.

Supreme Court Docket No. 45083-2017
Cassia County Case No. CV-2012-1257

APPELLANTS' BRIEF

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
in and for the County of Cassia
Honorable Robert J. Elgee, District Judge, Presiding

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I. STATEMENT OF CASE

A. NATURE OF THE CASE

This appeal arises from the trial court's entry of Judgment after it granted respondent's Motion to enforce an oral settlement agreement that had been placed on the record by the parties. The appellants objected to the Motion on the grounds that the settlement agreement was procured through fraud. The trial court held that the facts set forth in the affidavits submitted by appellants in support of their objection did not establish fraud in the inducement, which arises only in extremely limited circumstances not present in this case.

B. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Approximately six (6) years ago, Brek Pilling, Brian Tibbets, and Budget Truck Sales, LLC (together with Mike Tilley,¹ the "Budget Parties") entered into various agreements with Kent Tilley ("Tilley") related to the sale of large trucks and heavy equipment. Ultimately, the relationship between the parties broke down, leading to the filing of three (3) separate lawsuits: Cassia County Case Nos. CV-2012-1257, CV-2013-316, and CV-2015-719. Pursuant to the order of the trial court, Case Nos. CV-2013-316 and CV-2015-719 were consolidated (the "Consolidated Cases"). R Vol. I, pp. 18–19.

During the trial in the Consolidated Cases, the parties engaged in settlement negotiations in an effort to resolve all three lawsuits. During the course of these negotiations, Tilley proposed to convey title to a certain Cat front loader (the "Loader"), which the Budget Parties would then

¹ Mike Tilley is a Member of Budget Truck Sales, LLC and voluntarily appeared at the hearing on December 14, 2016, discussed below, but is not a named party to this action.

sell. *Id.* at p. 82. Steven McRae, counsel for the Budget Parties at the time, inquired of Tilley concerning the condition of the Loader, to which Tilley replied that the Loader “worked great” and “was in great working condition.” *Id.* Mr. McRae conveyed this information to the Budget Parties, who relied upon it in ultimately agreeing to accept the Loader as part of a settlement of the three lawsuits. *Id.* at pp. 78–79.

The parties placed the terms of their settlement agreement on the record before the trial court. Tr Vol I. After counsel recited the terms of the parties’ settlement, the trial court inquired of each of the parties whether they understood that “the result of this [agreement] is this case will be over and you cannot add anything to this agreement or take anything away from this agreement, and at least as far as what’s recited on the record, . . . that’s a final agreement.” *Id.* at p. 10, L. 7–11; *see also* p. 12, L. 2–9; p. 14, L. 18–25. Each of the parties responded in the affirmative. *Id.* at pp., 10–14.

Among the terms of the agreement placed on the record, Tilley was to deliver the Loader to the Budget Parties, and the Budget Parties were to pay Tilley \$100,000 the day after such delivery. *Id.* at p. 5, L. 19–24. When the Loader was delivered, the Budget Parties discovered that it was not in “great working condition” as Tilley had represented. R Vol. I, p. 9. In fact, the Loader was not in working condition at all and was inoperable. *Id.* Upon learning this, the Budget Parties refused to pay Tilley the \$100,000 that was due the following day.

Tilley responded by filing a Motion to Enforce Settlement Agreement, which the Budget Parties opposed, claiming Tilley had defrauded them relative to the condition of the Loader. R Vol. I, pp. 25–26, 71–76. At the hearing on Tilley’s Motion, the trial court analogized the oral

agreement placed on the record to a fully integrated, written agreement and held that Tilley's misrepresentation, as a matter of law, was insufficient to constitute fraud.

[O]ne of the arguments is that you can always . . . get around a fully integrated writing by claiming fraud in the inducement. And one of the arguments is, well, if that's the case, you can always claim fraud in the inducement and you could undo the most onerous, integrated contract that says there are no representations made outside this contract, this is full and final, nobody is relying on any statements that were made, no representations that were made before this contract was entered into, and then if somebody gets to claim, oh, fraud in the inducement, all that goes out the window.

That is not how fraud in the inducement works. Fraud in the inducement works by saying I would not have signed this except that I was cheated, because what happened right when we were signing the sales agreement for me to purchase this semi truck, there was a warranty, and I said, well, wait a minute, I'm supposed to get the warranty as part of this before I sign and I don't see that here. And the salesman says, no, that's a separate document, don't worry, that's being prepared next-door, just go ahead and sign.

That's the kind of fraud in the inducement that gets a contract undone when the warranty isn't delivered and the buyer says I would not have signed that except the salesman told me I was going to get the warranty in five minutes, and then they never delivered it to me and I've been cheated. That's fraud in the inducement, not that the condition of the truck was X, Y or Z, and I relied on the salesman's representation in buying the truck because he told me it was in good condition when the written contracts say you're not relying on any representations from our salesmen, they don't have the authority to make those contracts, you're buying a truck as is with no warranties. Those -- that type of writing forecloses those arguments and fraud in the inducement is more limited than it might seem.

There is case law that says, speaking in broad terms that, yes, you can always raise fraud in the inducement and get around a written -- or a fully integrated agreement, but that means that there has to be fraud in the inducement, and it's more limited than might first appear when you read some of those cases. So, to me, that's not fraud in the inducement, what went on in this case. The showing made by Mr. Gadd's clients is insufficient as a matter of law in my view to show fraud in the inducement.

Tr Vol. II, p. 58, L. 11 through p. 60, L. 6. Contrary to the trial court’s statements, the parties in this case did not agree that the Loader was being accepted “as is,” that the Budget Parties were not relying on any representations of Tilley, or that Tilley was not authorized to make representations concerning the condition of the Loader. *See* Tr Vol I. The transcript is silent in that regard. *Id.*

Nevertheless, based upon the above-quoted reasoning, the trial court granted Tilley’s Motion without conducting an evidentiary hearing. Tr Vol II, pp. 57–63. The trial court subsequently entered an Order to Enforce Settlement Agreement and a Judgment in accordance with its ruling, from which the Budget Parties appeal. R Vol. I, pp. 124, 194, 307.

II. ISSUES ON APPEAL

- A. Did the trial court err when it held that fraud in the inducement does not arise when a party misrepresents the condition of equipment to be conveyed pursuant to a contract?
- B. Are the Budget Parties entitled to attorney fees on appeal under Idaho Code §§ 12-120 and 12-121?

III. STANDARD OF REVIEW

“A motion for the enforcement of a settlement agreement is treated as a motion for summary judgment when no evidentiary hearing has been conducted.” *Vanderford Co. v. Knudson*, 150 Idaho 664, 671, 249 P.3d 857, 864 (2011). This Court reviews the grant of a summary judgment motion under the same standard the district court used in ruling on the motion. *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 212 P.3d 982 (2009). Summary judgment is proper only “if the movant shows that there is no genuine dispute as to any material fact and the

movant is entitled to judgment as a matter of law.” Idaho R. Civ. P. 56(a). The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Finholt v. Cresto*, 143 Idaho 894, 896, 155 P.3d 695, 697 (2007).

This Court must construe the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences in that party’s favor. *Id.* If reasonable people could reach different conclusions or inferences from the evidence, the motion must be denied. *Id.* The nonmoving party must submit more than just conclusory assertions that an issue of material fact exists to establish a genuine issue. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 401, 987 P.2d 300, 313 (1999). Mere speculation or a scintilla of evidence or only slight doubt is not sufficient to create a genuine issue of material fact. *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991).

Additionally, this Court exercises free review over questions of law. *Wright v. Ada Cty.*, 160 Idaho 491, 495, 376 P.3d 58, 62 (2016) (citing *Buckskin Properties, Inc. v. Valley Cnty.*, 154 Idaho 486, 490, 300 P.3d 18, 22 (2013)).

IV. ARGUMENT

A. THE TRIAL COURT ERRED IN GRANTING TILLEY’S MOTION TO ENFORCE SETTLEMENT AGREEMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST RELATIVE TO THE BUDGET PARTIES’ DEFENSE OF FRAUD.

In its ruling, the Trial Court correctly acknowledged that fraud is grounds to rescind a contract, even one that has been fully integrated. However, the trial court then incorrectly held that fraud in the inducement is limited to a very narrow set of circumstances, which it found were

not present in this case. By limiting the circumstances in which fraud in the inducement may be found, the trial court erred. The Budget Parties have submitted evidence of facts that, if proven, establish a valid defense of fraud and entitle them to rescission of the settlement agreement.

Although these facts are disputed, the trial court was required to view the facts and all reasonable inferences from them that may be drawn in a light most favorable to the Budget Parties. The trial court erred by not conducting an evidentiary hearing to determine the facts at issue. For these reasons, the Judgment entered by the trial court should be vacated and this case remanded for further proceedings.

1. The Trial Court Misstated and Misapplied the Law Pertaining to Fraud in the Inducement Relative to the Settlement Agreement.

It is well established in Idaho that a contract, including a settlement agreement, that has been procured through the use of fraudulent representations is voidable. *Advance-Rumely Thresher Co. v. Jacobs*, 51 Idaho 160, ___, 4 P.2d 657, 659 (1931); *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 808, 25 P.3d 117, 121 (2001). “Fraud vitiates the specific terms of the agreement and can provide a basis for demonstrating that the parties agreed to something apart from or in addition to the written documents.” *Aspiazu v. Mortimer*, 139 Idaho 548, 551, 82 P.3d 830, 833 (2003). Indeed, “the theory is that because of fraud there was no contract.” *Utilities Eng’g Inst. v. Criddle*, 65 Idaho 201, ___, 141 P.2d 981, 985 (1943). Thus, any contract may be invalidated by a showing that it was obtained by fraud. *Advance-Rumely Thresher Co.*, 51 Idaho 160, 4 P.2d at 659.

Notwithstanding this authority, the trial court held that “fraud in the inducement is more limited than it might seem.” Tr. Vol I, p. 59, L. 21.

Fraud in the inducement works by saying I would not have signed this except that I was cheated, because what happened right when we were signing the sales agreement for me to purchase this semi truck, there was a warranty, and I said, well, wait a minute, I’m supposed to get the warranty as part of this before I sign and I don’t see that here. And the salesman says, no, that’s a separate document, don’t worry, that’s being prepared next-door, just go ahead and sign.

That’s the kind of fraud in the inducement that gets a contract undone when the warranty isn’t delivered and the buyer says I would not have signed that except the salesman told me I was going to get the warranty in five minutes, and then they never delivered it to me and I’ve been cheated. **That’s fraud in the inducement, not that the condition of the truck was X, Y or Z, and I relied on the salesman’s representation in buying the truck because he told me it was in good condition when the written contracts say you’re not relying on any representations from our salesmen, they don’t have the authority to make those contracts, you’re buying a truck as is with no warranties. Those -- that type of writing forecloses those arguments and fraud in the inducement is more limited than it might seem.**

Id. at p. 58, L. 24 through p. 59, L. 21 (emphasis added). Thus, according to the trial court, when an agreement provides that a party may not rely upon any representations concerning the quality or condition of the subject of the agreement other than those recited in the agreement itself, fraud cannot invalidate the contract. This is so despite any misrepresentations in that regard that were actually made to obtain the contract. This holding is not supported by Idaho law.

Fraud in the inducement occurs “when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved . . . , esp. about a fact relating to value or the ability to perform.” FRAUD, Black’s Law Dictionary (10th ed. 2014) (emphasis added). When a party misrepresents the quality or condition of equipment, he creates a

false impression concerning the value of that equipment and the ability of that equipment to perform.

Accordingly, where the seller of a tractor misrepresented the tractor's quality to the buyer, this Court held that such representations were a defense to the seller's breach of contract claim. *Advance-Rumely Thresher Co.*, 51 Idaho at ____, 4 P.2d at 658. Although the parties had entered into a written agreement that provided, in part, that there were "no representations, warranties or conditions, express or implied, statutory or otherwise" with respect to the tractor, this Court held that evidence of fraudulent representations made prior to the execution of the contract concerning the quality of the tractor was admissible to show fraud. *Id.* "[I]f a contract is induced by fraud, whether the fraud enters into the execution of the contract or is antecedent to it, the contract cannot stand regardless of any stipulation to the contrary contained in the contract[.]" *Id.* at ____, 4 P.2d at 659. Any contract that has the effect of waiving the very fraud that induced a party to enter into it is "contrary to public policy" in that it would allow "the guilty party to profit by his own wrong and denies the application of the rule that fraud vitiates any contract." *Id.* Thus, a contract's terms cannot "foreclose the argument" that the contract is invalid due to fraud.

False representations made during negotiations concerning the condition of the subject of the contract can support a finding of fraud. *Lindberg v. Roseth*, 137 Idaho 222, 46 P.3d 518 (2002). In *Lindberg*, the plaintiffs alleged that the seller of a residential property misrepresented the existence of water leaks in the building's roof prior to the parties entering the agreement. Those representations, however, were not included in the parties' written agreement. *Id.* at 227,

46 P.3d 524. After a court trial, the trial court entered judgment against the buyers, holding that the only representations upon which a claim of fraud may be based are those contained within the parties' agreement. *Id.* This Court reversed the trial court in that regard, holding that representations upon which a fraud claim can be based are not limited to those stated in the contract. *Id.*

These cases directly contradict the trial court's view that fraud in the inducement is found in only a narrow set of circumstances. "[F]raud vitiates any contract." *Advance-Rumely Thresher Co.*, 51 Idaho 160, 4 P.2d at 659 (emphasis added). It matters not whether the contract is oral or written, whether it is fully integrated, or whether it contains terms that attempt to limit the representations upon which a party may rely. Any contract may be invalidated by a showing that it was obtained by fraud.

2. The Budget Parties Have Submitted Evidence of Facts That, If Proven, Establish Fraud.

To establish fraud, a party must prove each of the following elements: (1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge about its falsity or ignorance of its truth; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *Frontier Dev. Grp., LLC v. Caravella*, 157 Idaho 589, 594, 338 P.3d 1193, 1198 (2014). The evidence submitted by the Budget Parties establishes a prima facie case of fraud.

Mr. McRae, then-counsel for the Budget Parties, testified in his affidavit that during the course of settlement negotiations, he directly inquired of Tilley concerning the condition of the Loader. R Vol. I, p. 155. Tilley represented that the Loader “worked great” and that it “was in great working condition.” *Id.* Mr. McRae conveyed this information to the Budget Parties, who relied on it in determining to agree to settle the pending actions on the terms set forth on the record. *Id.* at p. 152. At that time, the Budget Parties believed Tilley’s representations to be true, and there was no way for them to confirm otherwise. *Id.* Unfortunately, the condition of the Loader was not as Tilley represented, as it was inoperable when Tilley delivered it to the Budget Parties. *Id.* These facts demonstrate fraud by Tilley and, if proven, entitle the Budget Parties to rescission or the settlement agreement. The Judgement entered by the trial court should, therefore, be vacated and this case remanded so that the trial court may conduct an evidentiary hearing on the matter.

B. THE BUDGET PARTIES ARE ENTITLED TO AN AWARD OF THEIR ATTORNEY’S FEES ON APPEAL.

Pursuant to Idaho Appellate Rules 35(a)(5) and 41, the Budget Parties respectfully request an award of their reasonable attorney’s fees on appeal under Idaho Code §§ 120(3) and 121. Under section 12-120(3), the prevailing party in a civil action involving a commercial transaction is entitled to an award of reasonable attorney fees on appeal. *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 187, 75 P.3d 743, 748 (2003). Although the trial court entered Judgment based upon the parties’ stipulated settlement, the underlying claims of the parties, as alleged in their various pleadings in the three actions, arise from commercial transactions between the

parties. Further, the trial court expressly held that “[t]he gravamen of these cases is a commercial transaction.” R Vol. I, pp. 128, 198, 311. Accordingly, the Budget Parties are entitled to an award of their attorney’s fees incurred on appeal.


Further, this Court has held that an award of attorney fees on appeal under Idaho Code § 12–121 is appropriate “when this Court has the abiding belief that the appeal was . . . defended frivolously, unreasonably or without foundation.” *New Phase Investments, LLC v. Jarvis*, 153 Idaho 207, 212, 280 P.3d 710, 715 (2012) (quoting *Lovelass v. Sword*, 140 Idaho 105, 90 P.3d 330 (2004)). Because Tilley has not yet briefed his arguments relative to the issues on appeal, the Budget Parties are not presently in a position to argue whether this appeal has been defended frivolously, unreasonably, or without foundation. However, given the prior decisions of this Court relevant to the issues on appeal, the Budget Parties believe that Tilley’s argument will not be supported by Idaho law. Accordingly, the Budget Parties respectfully request that this Court award their attorney’s fees on appeal pursuant to Idaho Code § 12-121.

V. CONCLUSION

For the reasons set forth above, the Budget Parties respectfully request that this Court reverse the Judgment entered by the trial court and remand this case for further proceedings. Additionally, the Budget Parties request that this Court award them their attorney’s fees incurred in connection with this appeal.

DATED this 28th day of September, 2017.

WORST, FITZGERALD & STOVER, PLLC

By: 
David W. Gadd
Attorneys for the Budget Parties

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 28th day of September, 2017, I caused a true and correct copy of the foregoing APPELLANTS' BRIEF to be served by the method indicated below, and addressed to the following:

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