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Budget Truck Sales, LLC v. Tilley Appellant's Reply 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' REPLY 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. ARGUMENT

In his brief, the respondent, Kent Tilley (“Tilley”), argues that this Court should apply the “clearly erroneous” standard of review, rather than the standard of review applicable to motions for summary judgment. Tilley further argues that the condition of the CAT 950 loader (the “Loader”) was not a material term of the parties’ agreement, that the appellants (the “Budget Parties”) should be estopped from asserting otherwise, and that they have not properly appealed this issue. Tilley also argues that the district court correctly held that the evidence did not support a finding of fraud in this case. As will be discussed, below, Tilley’s arguments are either misplaced, immaterial, or without merit as the Budget Parties did not raise a breach of contract claim, but a claim of fraud in the inducement. The district court also misstated and misapplied the law with regard to the Budget Parties’ defense of fraud and ignored the issues of material fact in that regard. Therefore, the district court’s decision should be reversed and the Judgment vacated.

A. BECAUSE THE FRAUD ISSUE IS THE ONLY DISPOSITIVE ISSUE ON APPEAL AND INVOLVES A QUESTION OF LAW, THIS COURT SHOULD NOT APPLY THE “CLEARLY ERRONEOUS” STANDARD OF REVIEW.

Tilley’s argument that this Court should apply the “clearly erroneous” standard is based on the cases of *Kohring v. Robertson*, 137 Idaho 94, 44 P.3d 1149 (2002) and *Conley v. Whittlesey*, 126 Idaho 630, 888 P.2d 804 (Ct. App. 1995). Tilley asserts that the procedural history of those cases is similar to the history of this case and that, therefore, the Court should apply the “clearly erroneous” standard here, just as it did in both *Kohring* and *Conley*. However,

a more thorough review of those cases reveals that they are readily distinguishable from this one and that this Court applied the “clearly erroneous” standard due to the nature of the issues on appeal in those cases.

Unlike in this case, the issue on appeal in both *Kohring* and *Conley* was whether the parties intended their stipulation to be a final, binding agreement. *Kohring*, 137 Idaho at 101, 44 P.3d at 1156; *Conley*, 126 Idaho at 637, 888 P.2d at 811. “Whether the parties to an oral agreement or stipulation become bound prior to the drafting and execution of a contemplated formal writing is largely a question of intent.” *Kohring*, 137 Idaho at 99, 44 P.3d at 1154 (quoting *Conley*, 126 Idaho at 634, 888 P.2d at 808). The resolution of that question requires a factual finding by the trial court.

In each of those cases, the trial court was present when the stipulation was placed on the record. Because of this, an evidentiary hearing was unnecessary for the trial court to determine whether the parties intended their stipulation to be binding upon them when one of the parties later asserted otherwise. A review of the transcripts of the hearings during which the stipulations were recited provided sufficient evidence to make this finding.

The Budget Parties, however, have never contested the fact that they intended the stipulation placed on the record to be a final and binding agreement. Rather, their contention is that because of Tilley’s fraudulent representations made to obtain the settlement agreement, the agreement is unenforceable. This Court has held that in such situations “there [is] no contract.” *Utilities Eng’g Inst. v. Criddle*, 65 Idaho 201, 141 P.2d 981, 985 (1943). Unlike both *Kohring* and *Conley*, where the trial court was present when the statements material to its finding were

made, the trial court in this case was not present during the course of settlement negotiations when Tilley made false representations concerning the condition of the tractor.

Furthermore, the trial court did not make any findings of fact regarding the Budget Parties' defense of fraud. As acknowledged by Tilley, the "clearly erroneous" standard applies to appellate review of findings of fact, not to questions of law. In making its decision, the trial court expressly held that the evidence of fraud submitted by the Budget Parties was "insufficient as a matter of law." Tr Vol. II, p. 60, L. 5. As argued in their opening brief, the Budget Parties contend that this holding is incorrect and was based upon a misstatement of the law as it pertains to fraud in the inducement.

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)). Because the issue before this Court involves a question of law—not a finding of fact—this Court should act in accordance with its previous opinions addressing the issue and apply the same standard of review as it would in reviewing a trial court's decision to grant a motion for summary judgment. *See, e.g., Vanderford Co. v. Knudson*, 150 Idaho 664, 249 P.3d 857 (2011).

B. IT IS IMMATERIAL TO THE BUDGET PARTIES' DEFENSE OF FRAUD WHETHER THE CONDITION OF THE LOADER WAS A TERM OF THE STIPULATION.

Much of Tilley's brief is devoted to arguments centered on the issue of whether the condition of the Loader was a material term of the parties' stipulation. For example, Tilly argues that there substantial, competent evidence to support the trial court's finding that the condition of

the Loader was not *a material term of the parties' agreement* and that the Budget Parties failed to appeal the trial court's finding in this regard. Resp't's Br., pp. 13, 20. Tilley also argues that the Budget Parties are estopped from asserting that the condition of the Loader was *a material term of the settlement agreement*. *Id.* at p. 21. Each of these arguments misses the mark with respect to the dispositive issue on appeal, namely whether Tilley fraudulently induced the Budget Parties to enter into the stipulation.

Discussion of the “material terms” of an agreement is relevant to whether a contract has been formed, not whether fraud has occurred. “Formation of a valid contract requires that there be a meeting of the minds as evidenced by a manifestation of mutual intent to contract.” *P.O. Ventures, Inc. v. Loucks Family Irrevocable Tr.*, 144 Idaho 233, 238, 159 P.3d 870, 875 (2007) (quoting *Inland Title Co. v. Comstock*, 116 Idaho 701, 703, 779 P.2d 15, 17 (1989)). Stated differently, “A contract must be complete, definite, and certain in all its material terms” *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). Normally, the terms of a written contract—or, in this case, an oral stipulation placed on the record—will control what the terms of the contract are. *Aspiazu v. Mortimer*, 139 Idaho 548, 551, 82 P.3d 830, 833 (2003).

However, when that agreement is obtained by fraud, the specific terms set forth therein are vitiated, and the contract is voidable. *Id.* It is immaterial whether the contract is silent concerning the fraudulent representations or expressly provides that the parties are relying only upon those representations specifically set forth in the written agreement. *Advance-Rumely*

Thresher Co. v. Jacobs, 51 Idaho 160, 4 P.2d 657, 660 (1931). If a party was fraudulently induced to enter into an agreement, the agreement may be rendered unenforceable. *Id.*

Accordingly, whether the parties in this case expressly stated on the record that the condition of the Loader is a term of their settlement is immaterial if the Budget Parties were induced to enter into that stipulation in reliance on Tilley's fraudulent representations. This was the case in *Lindberg v. Roeth*, 137 Idaho 222, 46 P.3d 518 (2002), where the parties' written agreement stated that a house was being sold "AS IS," but the seller falsely represented during negotiations that the building's roof was free of leaks. This was also the case in *Advance-Rumely Thresher Co.*, where the seller misrepresented the condition of a tractor being sold. 51 Idaho 160, 4 P.2d at 659. Even though the parties' written agreement provided that there were "no representations, warranties or conditions, express or implied, statutory or otherwise," this Court affirmed the judgment in favor of the buyer with regard to the buyer's fraud defense. *Id.*

It does not matter what the terms recited by the parties are if one of the parties fraudulently induced the other to agree to those terms. Thus, Tilley's argument that the Judgment should be affirmed because the condition of the Loader was not among the terms recited as the parties' agreement is misfocused. If Tilley misrepresented the condition of the Loader to induce the Budget Parties to so stipulate, then the agreement is unenforceable regardless of its terms or whether the misrepresentation was incorporated into the agreement.

Tilley's argument seeks to transform the Budget Parties' fraud defense into one of breach of contract. Because the condition of the Loader was not an express term of the contract, Tilley contends that the Budget Parties are without a remedy, regardless of his prior representations

concerning the Loader. If this Court was to accept this logic, all claims of fraud in the inducement would effectively become breach of contract claims, as the aggrieved party would be able to maintain an action or defense only if the representation was expressly made a term of the agreement, i.e. a warranty. Claims or defenses of fraud in the inducement would cease to exist, despite a multitude of opinions from this Court that hold otherwise. Furthermore, this Court has held that such logic would allow a guilty party to profit from his wrongdoing and is contrary to public policy. *Advance-Rumely Thresher Co.*, 51 Idaho 160, 4 P.2d at 660.

For these reasons, the fact that the trial court found that the condition of the Loader was not a material term of the parties' agreement is not dispositive of the Budget Parties' fraud defense. Again, the trial court misstated and misapplied the law as it pertains to fraud in the inducement. Specifically, the trial court held that fraud in the inducement was not a defense available for an alleged breach of a fully integrated agreement. Tr Vol. II, pp. 58–59. As a result, the trial court considered only the stipulation recited on the record, not the misrepresentations made by Tilley to obtain that stipulation.

Tilley's argument that the Budget Parties have not appealed the trial court's factual finding regarding the material terms of the parties' agreement overlooks the fact that that finding is irrelevant for purposes of this appeal. If Tilley committed fraud to induce the Budget Parties to enter into the settlement agreement, then it does not matter what the trial court found regarding the terms of that stipulation, as the stipulation is vitiated by the fraud.

Likewise, Tilley's quasi-estoppel argument is without merit, as it focuses exclusively on the terms of the stipulation recited on the record and ignores the effect of Tilley's fraudulent

representations on the enforceability of that stipulation. The Budget Parties are not changing their position from the one stated on the record in open court, as Tilley contends. Rather, they are stating that they were tricked by Tilley into taking that position in the first place. Tilley cannot now claim that the Budget Parties are estopped from asserting their defense of fraud simply because he has upheld the terms of an agreement obtained by his false representations. Again, such a result would allow Tilley to profit from his own wrongdoing and is contrary to public policy. *See Advance-Rumely Thresher Co.*, 51 Idaho 160, 4 P.2d at 660.

C. TILLEY’S ARGUMENT WITH REGARD TO THE BUDGET PARTIES’ DEFENSE OF FRAUD IS NOT SUPPORTED BY THE RECORD OR BY IDAHO LAW.

Tilley contends that the trial court “essentially” ruled that “there was no support for any finding of justifiable reliance . . . because the settlement on the record . . . did not include any reference to the alleged representation.” Resp’t’s Br. p. 19. Not only is this the same argument presented elsewhere in Tilley’s brief—and is invalid for the same reasons addressed above—it is also unsupported by the record. Contrary to Tilley’s assertions, the trial court did not correctly state the law concerning fraud in the inducement and then hold that the Budget Parties failed to establish one or more elements of their defense. The trial court misstated the law. Tr Vol. II, pp. 58–60. Any conclusion that the trial court held that there was no support for a finding of justifiable reliance is not supported by the record.

The cases cited by Tilley for the proposition that this Court may nevertheless uphold the trial court’s decision because the circumstances support no inference of reliance are distinguishable from this case. In *Gray v. Tri-Way Const. Servs., Inc.*, 147 Idaho 378, 210 P.3d

63 (2009), the Court held that an employee's reliance on his employer's statements of intent to enter into a written employment agreement was not justified because the parties were circulating drafts of the agreement and still negotiating the terms of that agreement. Consequently, the employee was not justified in believing that there was a final agreement between the parties. In *King v. Lang*, 136 Idaho 905, 42 P.3d 698 (2002), the purchaser had the opportunity to independently inspect the truth of the representations and was authorized to terminate the agreement if the representations proved to be inaccurate. Thus, in both cases on which Tilley relies, the circumstances clearly evidenced situations where the plaintiff was not justified in relying on the representations.

That is not the case here. The Budget Parties had no opportunity to confirm the accuracy of Tilley's representations concerning the condition of the Loader prior to placing the stipulation on the record, and there is no evidence in the record that Tilley agreed to make the Loader available for inspection. The Budget Parties also did not have the ability to terminate the agreement in the event Tilley's representations were false. Their sole source of information concerning the condition of the Loader was Tilley himself. Given the circumstances in this case, the Budget Parties were justified in relying on Tilley's representations. At a minimum, there is a question of fact in this regard, which requires an evidentiary hearing.

Tilley also argues that the Budget Parties "must show that the condition or repair of the loaders was a *material term of the Agreement*." Resp't's Br., p. 20 (emphasis added). Tilley cites to no authority for this proposition, and his position is contrary to established law in Idaho. It is not the materiality of the term to the contract that is an element of fraud, but rather the

materiality of the representation. As this Court has explained, “Materiality refers to the importance of the misrepresentation in determining the plaintiff’s course of action.” *Watts v. Krebs*, 131 Idaho 616, 619, 962 P.2d 387, 390 (1998). This Court has never held that the representation must be a material term of the parties’ agreement.


Furthermore, as explained above, if this Court requires a party’s claim of fraud to be based solely upon the terms and representations expressly stated in the contract, then the fraud claim becomes meaningless; it is no different than a breach of contract claim. This is contrary to public policy. *See Advance-Rumely Thresher Co.*, 51 Idaho 160, 4 P.2d at 660. Thus, Tilley’s arguments with regard to the Budget Parties’ fraud defense are not supported by Idaho law.

II. CONCLUSION

For the reasons set forth above and in their prior brief, the Budget Parties respectfully request that this Court reverse the Judgment entered by the trial court and remand this case for further proceedings.

DATED this 5th day of December, 2017.

WORST, FITZGERALD & STOVER, PLLC

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of December, 2017, I caused a true and correct copy of the foregoing APPELLANTS' REPLY BRIEF to be served by the method indicated below, and addressed to the following:

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