



IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

VIRGINIA W. CRAWFORD,	)	
	)	
Respondent,	)	
	)	WD87674
v.	)	
	)	OPINION FILED:
	)	November 4, 2025
JOHN A. GARDNER,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Boone County, Missouri
The Honorable J. Hasbrouck Jacobs, Judge

Before Division Three: Alok Ahuja, Presiding Judge,
Mark D. Pfeiffer, Judge, and Karen King Mitchell, Judge

Mr. John A. Gardner (“Gardner”) appeals from the judgment of the Circuit Court of Boone County, Missouri (“trial court”), which granted, following a bench trial, Ms. Virginia W. Crawford’s (“Crawford”) claim for specific performance of a contract to buy Gardner’s share of a partnership that the two co-owned in equal part. We affirm.

Factual and Procedural History¹

In 1993, Gardner and Crawford's husband ("Husband") formed a general partnership by signing a partnership agreement. The agreement provided that Gardner and Husband would each own fifty percent of the partnership. Additionally, the agreement included a "buy-sell" clause to force the sale of the entirety of one partner's share to the other. Upon written notice, the partner invoking the clause, the "Optionor," would propose a price to the other party, the "Optionee." The Optionee would then choose whether to *buy* all of the Optionor's shares of the partnership at that price or to *sell* all of the Optionee's shares to the Optionor at that price. Upon delivery of written notice of the Optionee's decision, a contract would be formed. From the time of the contract's formation, the partners would have sixty days to close the transaction, which required the purchasing party to "deliver the entire purchase price in cash or by certified or cashier's check."

Regarding written notice, the agreement further provided: "All notices required to be made to the Partners to this Agreement shall be made by regular mail, postage prepaid, mailed to the address of the respective Partners as shown beneath their respective names at the end of this Agreement." However, at the end of the agreement, neither partner provided a mailing address.

¹ "On appellate review of a court tried case, the evidence is viewed in the light most favorable to the circuit court's judgment," and the appellate court "defer[s] to the circuit court's credibility determinations." *ROH Farms, LLC v. Cook*, 572 S.W.3d 121, 123 n.2 (Mo. App. W.D. 2019) (citation modified) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 200 (Mo. banc 2014)).

The partnership operated for several years, and the trial court found that it owned the following assets at the time of trial: a commercial building and the land underneath it; a checking account and a money market account held in the partnership's name, as mandated by the partnership agreement;² other personal property; and various ongoing liabilities, including for taxes and repairs.

After Husband passed away in 2009, Crawford inherited his half-interest in the partnership. In 2019, Gardner made a series of offers to Crawford to buy the entirety of her share of the partnership. For the first offer, Gardner proposed to purchase Crawford's share and an easement across one of Crawford's commercial properties for \$690,000. On May 31, 2019, Gardner's wife delivered this offer to Crawford at her home. On July 12, Gardner's attorney sent a modified version of the same offer to Crawford's attorney via email. On August 1, Crawford's attorney³ sent an email to Gardner's attorney informing him that both offers were rejected. The email also instructed that Crawford would not consider any offer unless it invoked the forced buy-sell clause of the partnership agreement and requested that all future offers be directed to Crawford's attorney.⁴

On September 19, 2019, Gardner instructed his attorney to draft an offer that invoked the partnership agreement's forced buy-sell clause and an additional voluntary

² These two accounts had account balances on the date of trial of approximately \$109,000.

³ Pursuant to Missouri Supreme Court Operating Rule 2.02(c)(3), we do not identify the names of non-party witnesses in our ruling today.

⁴ Gardner's attorney testified that Crawford's attorney informed him that Crawford made this request because Crawford's attorney believed that Gardner had been "unprofessional" when communicating directly with Crawford.

offer. Gardner and his attorney met again on the morning of September 23 to confirm the final details of the draft. Then at 12:58 p.m. that day, Gardner's attorney sent Gardner a final draft of the email containing the offers. In the body of this email to Gardner, Gardner's attorney indicated that he would send the email to Crawford's attorney if Gardner approved it. The forced buy-sell offer in the email proposed a price of \$550,000 for Crawford's half interest of the partnership. The voluntary purchase offer in the email proposed a total price of \$705,000: \$605,000 for Crawford's partnership interest and \$100,000 for additional property owned by Crawford. The draft email also included an attached estimate that the commercial building would bring a net sale price of \$1,035,000. After commission and fees, the partnership would receive \$975,000, suggesting Crawford's half share of the partnership would be worth at least \$487,500 based solely on the value of the commercial building. After Gardner received the draft email, he called his attorney to indicate that he approved it to be sent to Crawford's attorney.

Upon receipt of the two offers in the email, Crawford rejected Gardner's voluntary purchase offer and instead elected to buy Gardner's shares under the forced buy-sell clause for \$550,000. On September 25, Crawford's attorney emailed Crawford's response to Gardner's attorney. Gardner's attorney forwarded the emailed response to Gardner the same day. After Gardner received this response, he fired his attorney and hired a new one.

On October 10, fifteen days after Gardner received Crawford's response, the new attorney sent an email to Crawford's attorney, which (1) noted Gardner had fired his

previous attorney; (2) asserted the forced buy-sell offer was made without Gardner's authorization; (3) asserted the offer was not submitted in compliance with the partnership agreement's terms because it was emailed rather than mailed, rendering it void; (4) withdrew the forced buy-sell offer to any extent it was not considered void; and (5) offered to purchase Crawford's half of the partnership for \$750,000, outside of the forced buy-sell clause. The following day, Gardner's new attorney mailed a letter containing essentially the same content as the email to Crawford's attorney.

On October 18, Crawford's attorney responded to Gardner's new attorney via both mail and email, contending that each party had implicitly waived any right to receive physically mailed notice of the September buy-sell offer and that Crawford's acceptance on September 25 had created an enforceable contract under the terms of the partnership agreement. The physically mailed package also included a letter from Crawford indicating that she believed a contract had been formed on September 25 but that she again elected to exercise her option to purchase Gardner's share of the partnership for \$550,000. Crawford also requested that Gardner propose a closing date and that it be no later than November 23, which marked sixty days from the date of her attorney's email communicating her election to purchase Gardner's shares. Gardner never suggested a closing date, maintaining his position that the parties never formed a contract.

On November 20, Crawford's attorney sent a demand to Gardner's attorney to close the transaction by 4:00 p.m. on November 22 by assigning his partnership interests to her in exchange for a \$550,000 check. Crawford's attorney also forwarded to Gardner's attorney an unsigned assignment form and a letter signed by the assistant

branch manager of Crawford's bank that stated "[t]here is currently enough funds at the time of this letter to clear the check being written for \$550,000 by Virginia Crawford," which was dated November 20. Below the text of the letter, an image of a personal check for \$550,000 from Crawford was photocopied onto the letter to demonstrate that Crawford was ready and willing to pay the closing price at any time. Nonetheless, Gardner never assigned his partnership shares to Crawford, so Crawford never tendered the physical check to Gardner.

When Gardner failed to respond to Crawford's demand to close by 4:00 p.m. on November 22, 2019, Crawford filed this lawsuit, alleging that Gardner breached the contract and demanding specific performance of the contract as a remedy. The parties proceeded to a bench trial, which was held on March 19, 2024. After the bench trial, the trial court entered judgment in favor of Crawford. The judgment found that, despite his assertions to the contrary, Gardner had authorized his attorney to send the forced buy-sell offer to Crawford on September 23; found that Crawford had created a contract with Gardner by accepting his offer on September 25; found that Gardner breached the contract by refusing to close the sale of his partnership interest; and ordered specific performance, instructing Gardner to assign his partnership interest to Crawford in exchange for Crawford tendering the purchase price. The trial court also granted Crawford's motion for costs and attorneys' fees, which were requested pursuant to the terms of the partnership agreement, and awarded \$4,967.10 in costs and \$54,090.00 in attorneys' fees.

Gardner timely appealed, raising three points on appeal.

Standard of Review

“On review of a court-tried case, an appellate court will affirm the circuit court’s judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *ROH Farms, LLC v. Cook*, 572 S.W.3d 121, 125 (Mo. App. W.D. 2019) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 198-99 (Mo. banc 2014)) (reviewing a trial court’s judgment denying specific performance following a bench trial).

Point I

In Point I, Gardner argues the trial court erred in granting specific performance because the parties never reached a meeting of the minds due to a mutual mistake. Specifically, Gardner asserts that both parties mistakenly believed the bank accounts held in the partnership’s name were not contemplated to be part of Gardner’s forced buy-sell proposal and that the trial court’s finding that no mutual mistake occurred was against the weight of the evidence.

As an initial matter, we note that Gardner incorrectly suggests that a mutual mistake can prevent two parties from reaching a meeting of the minds. A meeting of the minds—that the parties to a contract agree to the same thing in the same sense at the same time—is an element of contract formation:

The elements required to form a valid contract in Missouri are offer, acceptance, and bargained for consideration. Offer and acceptance requires a mutual agreement. A mutual agreement is reached when the minds of the contracting parties meet upon and assent to the same thing in the same sense at the same time. A meeting of the minds occurs when there is a definite offer and unequivocal acceptance. Whether there was a meeting of the minds is a question of fact for the trial court to decide.

Miller v. Securitas Sec. Servs. USA Inc., 581 S.W.3d 723, 729 (Mo. App. W.D. 2019) (citation modified). Without a meeting of the minds, i.e., a definite offer and unequivocal acceptance, a contract is not formed. *See Youngs v. Conley*, 505 S.W.3d 305, 314 (Mo. App. W.D. 2016) (“A contract does not exist without a definite offer and a ‘mirror-image’ acceptance.”). “In order to succeed on a breach of contract, a plaintiff must show the making of a valid enforceable contract between the plaintiff and defendant” *Koger v. Hartford Life Ins. Co.*, 28 S.W.3d 405, 413 (Mo. App. W.D. 2000). As the plaintiff here, Crawford held the burden to demonstrate mutual assent in the form of a meeting of the minds between the parties.

Mutual mistake, in contrast, is an affirmative defense to a breach of contract claim. *McGruder v. Curators of Univ. of Mo.*, 617 S.W.3d 464, 470 (Mo. App. W.D. 2021). “To justify a [rescission] because of a mistake, the mistake must relate to the existence or non-existence of a fact, past or present, material to the agreement and not to a future contingency.” *Liquidation of Pro. Med. Ins. Co. v. Lakin*, 88 S.W.3d 471, 481 (Mo. App. W.D. 2002) (quoting *In re Est. of Hysinger*, 785 S.W.2d 619, 624 (Mo. App. E.D. 1990)). “[A] mutual mistake occurs when *both* parties, at the time of contracting, share a misconception about a basic assumption of vital fact upon which they based their bargain. [W]hether parties are laboring under a mutual mistake is normally a question of fact.” *Brown v. Mickelson*, 220 S.W.3d 442, 448 (Mo. App. W.D. 2007) (alteration in original) (emphasis added) (quoting *Alea London Ltd. v. Bono-Soltysiak Enters.*, 186 S.W.3d 403, 415 (Mo. App. E.D. 2006)). The party seeking to avoid the enforcement of the contract due to a mutual mistake has the burden of proving the mistake. *R & R Land Dev., L.L.C.*

v. Amer. Freightways, Inc., 389 S.W.3d 234, 239 (Mo. App. S.D. 2012); *see also Lakin*, 88 S.W.3d at 481 (“A party must prove mutual mistake of material fact by clear, cogent and convincing evidence.” (citing *Hysinger*, 785 S.W.2d at 624)). As the party seeking non-enforcement of the contract, Gardner held the burden of demonstrating mutual mistake.

Ultimately, Gardner asserts the trial court erred in rejecting his affirmative defense of mutual mistake because the rejection was against the weight of the evidence.

“Because the trial court is entitled to disbelieve the evidence of the party bearing the burden of proof, even if the opposing party presents no contrary evidence, relief ‘based on a claim that the trial court’s judgment against the party having the burden of proof is against the weight of the evidence is rarely granted.’” *Keystone Hosp., LLC v. Capitol Food Grp., LLC*, 698 S.W.3d 461, 467 (Mo. App. W.D. 2024).

Here, the trial court expressly found that the parties formed a contract for Crawford to buy Gardner’s share of the partnership and that “any mistake as it related to what the ‘partnership interests’ at issue encompassed was unilateral on the part of [Gardner], and no showing has been made to show that [Crawford] knew of this mistake”

Gardner argues the trial court “overlooked” the following three pieces of evidence that purportedly demonstrated Crawford mistakenly believed the partnership’s bank accounts were not included in the forced buy-sell agreement: (1) the absence of any mention of the bank accounts in the forced buy-sell proposal, which offered Crawford the option to buy all of Gardner’s shares in the partnership and only included an estimate of

the value of the building without reference to any other partnership assets or liabilities; (2) Crawford's pre-trial deposition testimony where she mistakenly identified Central Bank as the custodian of the partnership bank accounts when the accounts were actually held by Bank of America; and (3) Crawford's pre-trial deposition testimony that purportedly demonstrates she believed the partnership's bank accounts were owned by herself and Gardner, and not the partnership.

However, in that same deposition, Crawford testified that she believed the partnership agreement required the creation of bank accounts to hold partnership funds in the partnership name and that *because she and Gardner each owned half of the partnership*, they each owned half of the money in the partnership's account. Crawford also testified at trial that she always believed the bank accounts held in the partnership's name would be included in the transaction to buy Gardner's shares of the partnership because the bank account belonged to the partnership, not the partners individually.

The trial court credited Crawford's testimony and concluded that she was not operating under any mistaken belief that the partnership's bank accounts were not included in the forced buy-sell proposal. "We defer to the trial court's factual findings, giving due regard to the trial court's opportunity to judge the credibility of the witnesses." *Brown*, 220 S.W.3d at 447 (reviewing whether a trial court's finding of mutual mistake was supported by substantial evidence). Furthermore, "the factfinder is not required to accept all evidence uncritically or weigh all evidence equally; rather, the factfinder is entitled to believe all of the evidence, some of the evidence, or none of the

evidence and to resolve contradictory evidence.” *Chan v. Chan*, 704 S.W.3d 761, 768 (Mo. App. W.D. 2025) (citing *Zink v. State*, 278 S.W.3d 170, 192 (Mo. banc 2009)).

At trial, the parties presented conflicting evidence on whether Crawford was mistaken with regard to whether the contract included the transfer of Gardner’s interest in the partnership bank accounts. The trial court exercised its judgment as a factfinder to credit Crawford’s testimony and to reject Gardner’s evidence.⁵ Because we defer to these credibility determinations, we conclude the trial court’s finding that Gardner failed to carry his burden of proving a mutual mistake regarding the contract was not against the weight of the evidence.

Point I is denied.⁶

Point II

In Point II, Gardner argues the trial court erred in finding that the parties created a contract because neither party strictly complied with the notice requirements of the partnership agreement when corresponding about the forced buy-sell proposal, rendering

⁵ The trial court also rejected Gardner’s testimony that he did not realize the transaction would include the partnership’s bank accounts. To support its rejection of Gardner’s self-serving testimony, the trial court cited Gardner’s awareness of the partnership agreement’s terms that required the creation of a bank account in the partnership’s name; that Gardner had personally signed checks from each of the partnership’s bank accounts, which were titled in the partnership’s name and not his own; that Gardner sought authorization for any distribution from the partnership’s account instead of simply withdrawing his personal share; and that the partnership’s accounts were listed as assets on the partnership’s balance sheets, which Gardner reviewed. Furthermore, the forced buy-sell clause required that the selling partner would sell the entirety of their shares in the partnership—not individual partnership assets—and nothing less.

⁶ Gardner did not argue at trial and does not argue on this appeal that rescission of the contract would have been proper under a theory of unilateral mistake.

any offer or acceptance invalid. Gardner further argues that the trial court's finding that the parties waived the partnership's notice requirements was against the weight of the evidence.

Under the terms of the partnership agreement, notice of an offer invoking the forced buy-sell clause and notice of the Optionee's election were each required to be delivered either personally or through physical mail directly to the other partner. Here, neither Gardner's notice invoking the forced buy-sell clause nor Crawford's notice electing to purchase Gardner's shares strictly complied with this notice provision: each notice was sent via email to the other partner's attorney. However, this failure to strictly comply with the terms of the agreement does not automatically invalidate either notice because both Gardner and Crawford had the option to waive their right to direct, mailed notice:

A party may waive its rights under a contract through express waiver or implied waiver. To find implied waiver, however, a party's conduct must clearly and unequivocally show a purpose to relinquish the right. Such conduct must be so manifestly consistent with and indicative of an intention to waive that no other reasonable explanation is possible.

Lange v. GMT Auto Sales, Inc., 708 S.W.3d 147, 152 (Mo. banc 2025) (citation modified). “Generally, whether a party's conduct can be construed as an implied waiver is a question of fact.” *Old Navy, LLC v. S. Lakeview Plaza I, LLC*, 673 S.W.3d 122, 133 (Mo. App. E.D. 2023) (citation modified) (quoting *Smith v. Md. Cas. Co.*, 500 S.W.3d 244, 250 (Mo. App. S.D. 2015)); see also *Horne v. Ebert*, 108 S.W.3d 142, 147 (Mo. App. W.D. 2003) (“Whether Parker received certificates of insurance from Accu that failed to name Parker as an additional insured is central to the question of whether Parker

knowingly relinquished its contractual right to have Accu obtain such insurance. The trial court cannot weigh the credibility of the conflicting affidavits presented by Parker and Accu. Those affidavits create a genuine dispute of material fact that precludes summary judgment for either party.” (citations omitted)).

Here, the trial court concluded that the parties each waived their respective rights to receive direct, written notification regarding the forced buy-sale proposal when each party acted contrary to that right by communicating required notice via email to the other party’s attorney. We agree.

The forced buy-sell offer emailed from Gardner’s attorney to Crawford’s attorney included an attached letter, which was never sent through physical mail, that was expressly intended to constitute satisfactory notice under the partnership agreement: “[O]n behalf of Dr. Gardner, please consider this letter to constitute notice of Dr. Gardner’s exercise of the ‘Forced Buy or Sell Option’” Furthermore, Gardner’s attorney sent this *emailed* notice in response to Crawford’s attorney’s *emailed* instruction that Crawford would only consider offers *emailed* to her attorney invoking the forced buy-sell clause of the partnership agreement, which required written notice under the terms of the partnership agreement. Because Gardner sent the forced buy-sell offer in a manner that contradicted the partnership agreement’s requirement that the offer be sent through the mail, Gardner implicitly communicated his intent to waive strict compliance with that requirement. If Gardner did *not* intend to waive his right of mailed notice, he could have sent his forced buy-sell offer through the mail. Meanwhile, Crawford

expressly waived her right to receive personal, mailed notice when she specifically requested that all correspondence instead be *emailed* to her attorney.

Gardner argues that he never intentionally waived his notice rights under the partnership agreement because he never authorized his attorney to send out the emailed forced buy-sell offer. The only evidence supporting this assertion is Gardner's own self-serving testimony. The trial court did not credit Gardner's testimony and instead credited the testimony of Gardner's former attorney: that Gardner not only authorized him to send the offer but also that Gardner reviewed the contents of the final draft before it was sent via email, indicating that Gardner was aware the email was explicitly intended to constitute proper notice under the terms of the partnership agreement—even though the email did not strictly comply with those terms. Viewing the record in light of the trial court's credibility determinations, as we are required, Gardner provided approval for his attorney to send the forced buy-sell offer in a manner that was inconsistent with the terms of the partnership agreement, demonstrating an intent to waive strict compliance of the notice requirements.

The trial court's finding that the conduct of the parties demonstrated clear and unequivocal intent to waive the requirement of regular mailed notice—and instead consented to *emailed* notice—as satisfying the written notice requirement of the partnership agreement, was not against the weight of the evidence.

Point II is denied.

Point III

In Point III, Gardner argues the trial court erred as a matter of law in awarding specific performance because Crawford failed to tender her performance in the manner required by the partnership agreement in two distinct ways. First, Gardner argues Crawford failed to follow the partnership agreement's requirements for tender by offering a personal check for the purchase amount with an accompanying letter from Crawford's bank attesting to Crawford's ability to pay instead of offering cash or a certified or cashier's check. Second, Gardner argues that no tender occurred because the parties did not close the transaction within sixty days of Crawford's election to purchase Gardner's shares, as required by the partnership agreement.

"Specific performance is purely an equitable remedy and must be governed by equitable principles. As an equitable remedy, specific performance is not a matter of right so that the trial court has judicial discretion within the established doctrines and principles of equity to award or withhold the remedy based on the facts before it." *Bhoot v. 701-709 NE Woods Chapel Rd., LLC*, 704 S.W.3d 710, 724 (Mo. App. W.D. 2024) (citation modified) (quoting *Brown v. Smith*, 601 S.W.3d 554, 559 (Mo. App. W.D. 2020)). "Specific performance is ordered so that 'justice may be done between the parties, and courts of equity will not decree specific performance where it will result in injustice.'" *Id.* (quoting *Kopp v. Franks*, 792 S.W.2d 413, 419 (Mo. App. S.D. 1990)). "A trial court 'is afforded much discretion' in determining whether specific performance is an appropriate remedy for breach of contract." *Id.* (quoting *McBee v. Gustaaf Vandecnocke Revocable Tr.*, 986 S.W.2d 170, 173 (Mo. banc 1999)).

However, a court does not have unlimited discretion to award specific performance. Before a court may do so, “[t]he party seeking specific performance must prove by clear and convincing evidence that he or she has performed, or tendered performance of, his or her portion of the contract.” *ROH Farms*, 572 S.W.3d at 126 (quoting *Kassebaum v. Kassebaum*, 42 S.W.3d 685, 699 (Mo. App. E.D. 2001)). “A ‘tender’ is an offer to perform a contract with the present ability to do so, and comprehends a readiness and willingness to perform.” *Id.* (quoting *Johnson v. Moore*, 931 S.W.2d 191, 195 (Mo. App. E.D. 1996)). “A mere announcement of readiness to settle the transaction, a premature offer to perform, or an offer to close a real estate contract, is not a sufficient tender.” *Id.* (quoting *Kassebaum*, 42 S.W.3d at 699).

However, a party’s right to demand tender is waived when that party announces an intention not to perform the contract:

The law does not require a person *who is ready and able to perform* his contractual duties to tender his performance where such would be a “vain and idle ceremony.” In particular, a *tender of the balance of the purchase price is waived* when the seller maintains a position that would render the tender a useless act. Where a tender is due on closing and the seller is not ready and willing to close, *tender of the purchase price is not required to enforce the contract*. In the present case, tender was waived when seller did not appear for closing.

Johnson, 931 S.W.2d at 195 (emphasis added) (citations omitted); *see also Collins v. Trammell*, 911 S.W.2d 635, 638 (Mo. App. E.D. 1995) (“Defendant informed plaintiff that he would not release the truck for the amount offered. At that point, presenting a release would have been a futile gesture. Defendant thus waived his right to insist plaintiff tender this performance.”).

Here, the trial court found that Gardner refuted any intention to close the transaction by asserting the invalidity of the contract and refusing to answer Crawford's calls to schedule a closing meeting. Gardner does not challenge this finding on appeal. Because Gardner waived his right to tender, Crawford had no obligation to perform the futile act of tendering performance. Thus, Crawford was not required to withdraw \$550,000 in cash and deliver it to Gardner because he unequivocally stated he would not accept it. And, Crawford was not required to schedule and attend a closing meeting that Gardner indicated he would refuse to attend.

Nonetheless, even when one party waives tender by repudiating the contract, the contract will only be enforced if the party seeking enforcement demonstrates that it was "ready, willing, and able to perform its obligations under the contract." *ROH Farms*, 572 S.W.3d at 126 (citing *Johnson*, 931 S.W.2d at 195). Therefore, to succeed in her claim for relief under the contract, Crawford was still required to demonstrate to the trial court that she was ready, willing, and able to perform her pre-closing obligations. The trial court found that Crawford was indeed ready, willing, and able to perform her obligation of paying \$550,000 to Gardner by cash or certified check. Crucially, Gardner does not challenge this specific finding on appeal—instead he asserts only a legal argument that Crawford's tender was insufficient because it did not comply with the terms of the partnership agreement. But even if Gardner had raised a factual challenge to Crawford's ability to perform the contract, her personal check for the full purchase amount and the bank's letter certifying that Crawford had sufficient funds to cover the check amount in her account constituted sufficient evidence to support the trial court's finding that

Crawford was ready, willing, and able to satisfy the contract's tender requirements if Gardner had rightfully demanded her performance. Thus, Crawford satisfied the requirements to be eligible for an award of specific performance.

Nonetheless, Gardner argues that, even if he waived his right to tender, the trial court was not authorized to award specific performance unless Crawford tendered her performance as described in the terms of the partnership agreement. To support his argument, Gardner cites two cases: *ROH Farms* and *Kassebaum*. In each case, the defendant in the action for specific performance repudiated the underlying contract, waiving the plaintiff's obligation to tender performance. *See ROH Farms*, 572 S.W.3d at 126-27; *Kassebaum*, 42 S.W.3d at 691-92, 698. The plaintiff in each case submitted evidence that purportedly showed they were ready and willing to perform the contract. *See ROH Farms*, 572 S.W.3d at 126 ("The only evidence adduced by ROH Farms of its readiness, willingness, and ability to perform, besides Harris's stated desire to close on the closing date, was a number of pre-signed documents which had been drafted in preparation for the closing."); *Kassebaum*, 42 S.W.3d at 699 ("Plaintiffs identify the following as evidence of their tender of performance: (1) the September 1996 letter from Plaintiffs to Defendants in which Plaintiffs called for a closing date and tendered full payment of the amount owed under the Contract; and (2) at trial, Plaintiffs admitted into evidence a letter of commitment from their bank committing to loan Plaintiffs sufficient funds to pay off the balance of the Contract."). Yet in each case, the trial court refused to award specific performance, and the court on appeal found that the trial court did not abuse its discretion in refusing to award specific performance. *See ROH Farms*, 572

S.W.3d at 127; *Kassebaum*, 42 S.W.3d at 699. Because both cases are distinguishable, we reject Gardner’s argument.

As an initial matter, this case comes to us in different procedural posture. The trial courts in *ROH Farms* and *Kassebaum* each exercised their discretion *against* the award of specific performance. See *ROH Farms*, 572 S.W.3d at 125 (“[T]he trial court found that ROH Farms was not entitled to specific performance because ROH Farms failed to establish that it was ready, willing, and able to perform its obligations under the contracts.”); *Kassebaum*, 42 S.W.3d at 699. Thus, the appellate courts in *ROH Farms* and *Kassebaum* were required to view the record in the light most favor to the *denial* of specific performance and were required to presume that the denial of specific performance was valid unless the plaintiffs demonstrated error. Here, in contrast, the trial court exercised its discretion to *award* specific performance; unlike the courts in *ROH Farms* and *Kassebaum*, we must view the record in the light most favorable to an award of specific performance, and we must presume the grant of specific performance was valid unless Gardner can demonstrate error.

Furthermore, in *ROH Farms* and in *Kassebaum*, the plaintiffs failed to demonstrate a readiness and willingness to perform the contract as intended for reasons not applicable to the case here.

In *Kassebaum*, the underlying contract to purchase a family farm required the plaintiffs to pay the purchase price in a series of installments, which could not be prepaid under the express terms of the contract. *Kassebaum*, 42 S.W.3d at 690-91, 699 & n.4. Under the contract, a warranty deed for the farm was to be held in escrow, and the

plaintiffs were to receive a warranty deed for the farm after completing the full series of installment payments. *Id.* at 691-92, 699 & n.4. After the defendants repudiated the contract, the plaintiffs instead tendered the *entirety* of the purchase amount and demanded the warranty deed *immediately*—despite the express terms of the contract. *Id.* at 691-92. The trial court in *Kassebaum* declined to award the warranty deed to the plaintiffs and instead exercised its discretion to order the parties to perform the contract as intended—placing the warranty deed in escrow until the plaintiffs completed the installment payments as scheduled:

Plaintiffs are entitled to have a Warranty Deed in escrow. . . . Further, Defendants are entitled to a Quit Claim deed to [e]nsure that if Plaintiffs do not make the required payments then they will be able to cancel the Contract for Deed. This will return the parties to their intended positions.

Id. at 692. The Eastern District held that “the trial court did not abuse its discretion in failing to order specific performance because it ordered the parties to perform in such a manner as to put them in the position that they intended under the Contract.” *Id.* at 699. Here, in contrast, the underlying contract contemplated that each party would provide *full performance* at closing without any delay. Thus, unlike in *Kassebaum*, an order of specific performance here placed the parties in precisely the positions intended by the partnership agreement.

Gardner’s citation to *ROH Farms* is similarly unpersuasive. In *ROH Farms*, all of the documents presented by ROH Farms to demonstrate its readiness to perform were actually signed by a non-party, Harris Ventures. *ROH Farms*, 572 S.W.3d at 126 (“The only evidence was that Harris Ventures, Inc. which was not a party to the contracts, had

performed some of the obligations of ROH Farms.”). None of the documents demonstrated that ROH Farms, the party to the contract, was ready and capable of performing: “Providing documents executed by a third party is insufficient to show that ROH Farms was ready[,] willing[,] and able to tender performance.” *Id.* at 127. Here in contrast, Crawford’s personal check demonstrated that she, not a third party, was ready, willing, and able to perform the contract.

Because the trial court found that Gardner waived his right to demand tender under the partnership agreement’s buy-sell clause and that Crawford demonstrated she was ready, willing, and able to perform the partnership agreement’s buy-sell terms as those contractual terms were intended to be performed, the trial court was authorized to order specific performance. Gardner has not demonstrated that the trial court abused its discretion in ordering specific performance.

Point III is denied.

Crawford’s Motion for Attorneys’ Fees

Crawford has separately filed a motion for attorneys’ fees on appeal, which was taken with the case. “[T]he entitlement to attorneys’ fees on appeal stands upon the same ground as that at the trial court level.” *St. Louis-Jefferson Solid Waste Mgmt. Dist. v. Dep’t of Nat. Res.*, 678 S.W.3d 152, 162 (Mo. App. W.D. 2023) (alteration in original) (quoting *City of Aurora v. Spectra Commc’ns Grp., LLC*, 592 S.W.3d 764, 801 (Mo. banc 2019)). “Attorney fees may be awarded when a statute specifically authorizes recovery or when a contract provides for attorney fees.” *Id.* (citing *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 431 (Mo. banc 2013)). Here, the partnership agreement

provides for an award of attorney fees to the prevailing party in litigation pertaining to the enforcement of the forced buy-sell clause:

If a party to this Agreement is required to enforce the [contract created by the forced buy-sell clause] by legal or equitable proceedings, then the prevailing party in such proceedings shall receive, in addition to all other remedies to which such party shall be entitled, his reasonable costs and expenses (including a reasonable attorney's fee) incurred in such proceedings.

Below, the trial court granted Crawford's motion for attorneys' fees as the prevailing party. Because we affirm the trial court's judgment, Crawford is also the prevailing party on appeal.

"While we have the authority to award attorney fees on appeal, 'the trial court is better equipped to hear evidence and determine the reasonableness of the fee requested.'" *Id.* Thus, Crawford's motion for attorneys' fees on appeal is granted, and the case is remanded to the trial court to determine and award reasonable attorneys' fees on appeal.

Conclusion

The judgment of the trial court is affirmed. The case is remanded to the trial court for a determination of an award of reasonable attorneys' fees to Crawford related to her defense of Gardner's appeal.



Mark D. Pfeiffer, Judge

Alok Ahuja, Presiding Judge, and Karen King Mitchell, Judge, concur.