In the Missouri Court of Appeals
Eastern District

NORTHERN DIVISION

PAUL W. BRINGER, ET AL.,	)	No. ED113352
	)	
Appellants,	)	
	)	
v.	)	
	)	
STEPHEN BRINGER, ET AL.,	)	
	)	
Respondents.	)	Filed: December 16, 2025

Appeal from the Circuit Court of Lewis County
The Honorable Matthew J. Wilson, Judge

Introduction

The central issue in this appeal is the enforcement of an option to purchase ("Option") a family-owned farm. Paul Wayne Bringer, Grace Bringer, Kenneth Bringer, Kimberly Bringer-Gailbraith, and Kyle Bringer ("Appellants") appeal the trial court's judgment in favor of Jan Bringer, Stephen Bringer and Lynette Bringer (the "Respondents Bringer") and the Bank of Monticello (the "Bank") (collectively, "Respondents") on Appellants' petition for specific performance and breach of contract.

Appellants raise seven points on appeal. Points I–II contend the trial court misapplied the law in finding the Option was not a valid contract on the grounds there was no mutual assent and consideration. In Point III, Appellants argue the trial court

erred in finding the Option was not valid based upon the subjective opinion of Stephen Bringer that the Option was a right of first refusal. Point IV contends the trial court misapplied the law in finding Appellants' first notice to exercise the Option failed because one of them did not sign the notice. In Points V and VI, Appellants argue the trial court erred in finding Respondents Bringer did not repudiate the Option because the finding is not supported by substantial evidence and is against the weight of the evidence. Lastly, Point VII contends the trial court misapplied the law in failing to find the Bank's second deed of trust was inferior to the Option because the Bank had actual knowledge of the Option.

This Court holds the Option is a valid contract, and the terms are clear and unambiguous. Points I–III are granted. Further, we hold Appellants gave timely notice to Respondents Bringer to exercise the Option in accordance with the terms of the Option, and there was sufficient evidence to support Respondents Bringer repudiated the Option. Points IV–V are granted, making Point VI moot. Finally, despite the Option not being recorded, it has priority over the second deed of trust because the Bank had actual knowledge of the Option. Thus, Point VII is granted.

Accordingly, the trial court's judgment is reversed.

Factual and Procedural Background

The issue in this appeal concerns two sides of the Bringer family which are connected by two brothers, Paul and Ron. Paul is married to Grace and they have three children, Kenneth, Kimberly and Kyle. Jan was married to Ron, who passed away prior

to the dispute arising between the parties, and their son is Stephen. Stephen is married to Lynette.[1]

Due to financial difficulties, Paul and Grace sold 39.9 acres of farm land (the "Farm") to Ron, Jan, Stephen, and Lynette. Ron's counsel drafted the contract for the sale of the land (the "Contract"), which included an "Option to Purchase Real Estate" (the "Option"). Paragraph 12 of the Contract specifically states:

> As part of the consideration for this contract, [Respondents Bringer and Ron] shall grant to Paul Wayne Bringer, Grace A, Bringer, Kenneth Bringer, Kimberly Bringer and Kyle Bringer the exclusive option to purchase the real estate described above, upon the terms and conditions set forth in the option agreement, which is attached hereto, initialed by the parties, and incorporated herein by reference.

The Option granted Appellants "the exclusive right to purchase" the Farm within thirteen years of the date of the Option.

On May 26, 2010, Paul, Grace, Ron, Jan, Stephen, and Lynette signed the Contract. The Option attached to the Contract was also signed on the same day by Paul, Grace, Kenneth, Kimberly, Kyle, Ron, Jan, Stephen, and Lynnette. Contemporaneously with the execution of the Contract and Option, Paul and Grace executed a general warranty deed transferring ownership of the Farm to Ron, Jan, Stephen, and Lynette.[2] As a lender for part of the purchase price, the Bank received a deed of trust from Ron, Jan,

[1] Because the parties share surnames, at times, we will refer to the parties by their first names to avoid confusion; no disrespect or undue familiarity is intended.
[2] Pursuant to the general warranty deed, each couple received an undivided one-half interest in the Farm.

Stephen, and Lynette. Then in June of 2013, Ron, Jan, Stephen, and Lynette executed a second deed of trust with the Bank on the Farm.

In 2023, Appellants sent two notices to exercise the Option to Respondents Bringer. The first notice was sent on March 1, 2023, and was signed by all but one of the Appellants. The second notice, sent on May 17, 2023, included the signatures of all Appellants. On March 12, 2023, after receipt of the first notice, Stephen and Lynette's counsel[3] communicated to Appellants' counsel: "My client is not agreeable to sell the property under the alleged option contract. Just letting you know he will not be voluntarily signing any deeds or voluntarily accepting any monies from your clients." Jan did not oppose Appellants' exercise of the Option. However, the Bank refused to give a partial release to allow Jan to sell her undivided one-half interest for one-half of the Option price. The Bank's decision was based upon having two deeds of trust on the Farm and the Option price being insufficient to pay off the promissory notes.

On August 10, 2023, Appellants filed suit against Respondents for specific performance and breach of contract. Following a bench trial, the trial court found no valid contract was formed because there was no mutual assent and no independent consideration separate from the purchase price paid for the Farm. The trial court also found the Option was ambiguous stating:

> [The Option] could be interpreted and has been interpreted by the parties to either be an option to purchase real estate without condition within thirteen (13) years of its execution or, as [Respondents Bringer] assert, a right of

[3] Stephen and Lynette retained separate counsel from Jan to represent their respective interests in this matter.

> first refusal triggered only if the [Respondents Bringer] expressed their intent to sell the parcel in question within thirteen (13) years.

As to Appellants' notice of intent to exercise the Option, the trial court found the first notice to Respondents Bringer "failed" because not all of Appellants signed the notice. Then, the trial court found, after the second notice was sent, Respondents Bringer did nothing to repudiate their obligations under the terms of the Option and Appellants did nothing to complete the purchase of the Farm and, instead, filed their lawsuit.

With respect to the Bank, the trial court found Appellants failed to present sufficient evidence to demonstrate the Bank violated a duty of care in not recording the Option or that Appellants suffered any damages as a result of the Bank not recording the Option.

This appeal follows.

Standard of Review

In reviewing a court-tried case, "an appellate court will affirm the [trial] 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." *Ivie v. Smith*, 439 S.W.3d 189, 198–99 (Mo. banc 2014) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

Discussion

Points I–III: Enforceability of the Option

For ease of analysis, we discuss Points I–III together. In Points I–II, Appellants contend the trial court misapplied the law in concluding the Option was not a valid contract on the grounds there was neither mutual assent nor consideration. In Point III,

Appellants claim the trial court erred in ruling the contract was not valid based upon Stephen's subjective opinion of the Option because his subjective opinion of the meaning of the Option was legally immaterial. This Court holds the Option is a valid contract and the terms of the Option are clear and unambiguous.

Before we begin our discussion, it is paramount to address the trial court's findings regarding these points, and explain the principles of contract formation and construction. First, the trial court ***construed the terms*** of the Option and found Appellants' "exclusive right to purchase exists only upon the terms and conditions as set forth in later paragraphs of the Option" and the Option cannot be exercised by individual Appellants, but rather by Appellants as a whole. Then, the trial court considered the ***elements necessary to form a contract*** and concluded no contract was formed because the agreement lacked consideration and mutuality of agreement. Lastly, the trial court again ***construed the terms*** of the Option, but rather than apply the canons of construction to the language of the Option, the trial court relied on the parties' testimony to find: (1) the Option is *ambiguous* because it was interpreted by the parties as either an option to purchase or a right of first refusal; and (2) *no contract* was formed because there was no mutual assent because "[t]he conflicting testimony of the parties indicates that there was no mutual understanding regarding the nature of the [Option]."

Put simply, the trial court engaged in two separate legal analyses, which led to inconsistent conclusions. The trial court found no contract was formed because the necessary elements were not met, but then proceeded to construe certain sections of the same contract it concluded did not exist. Additionally, in construing certain provisions of

the Option, the trial court improperly relied on the parties' testimony to determine an ambiguity existed rather than applying the canons of contract construction.

While we will discuss the rules of contract law and canons of contract interpretation in depth in our analysis below, we begin with a short overview of these principles. A court must first determine if there is a valid contract and, if so, then determine whether its terms are ambiguous. The analysis for whether a valid contract is formed and whether the terms of a contract are ambiguous are distinct. In Missouri, there are five essential elements of a valid contract. *See Women's Care Specialists, LLC v. Troupin,* 408 S.W.3d 310, 315 (Mo. App. E.D. 2013) (listing the five elements necessary to form a contract). Without one of the elements, for instance, "[w]ithout a meeting of the minds, there is no mutuality of agreement, and no contract." *Id.* at 317. If a trial court determines that no contract was formed, there is no need to determine whether the contract is ambiguous or to construe or interpret any of the contract's terms.

But, if a contract is properly formed, and the construction of the contractual terms are in question, then the trial court must decide whether the contract's terms are ambiguous. "An ambiguity must come from within the four corners of the contract; extrinsic evidence cannot be used to create an ambiguity." *ATC Co., Inc. v. Myatt*, 389 S.W.3d 732, 735 (Mo. App. E.D. 2013). "If the ambiguity cannot be resolved within the four corners of the contract, the parties' intent can be determined by use of parol evidence." *G&G Mech. Constructors, Inc. v. Jeff City Indus., Inc*., 549 S.W.3d 492, 497 (Mo. App. W.D. 2018) (citation omitted). Finding that an ambiguity exists does not automatically render the contract invalid or unenforceable; it simply triggers the trial

court to interpret the terms of the contract. *See generally Don King Equip. Co. v. Double D Tractor Parts, Inc*., 115 S.W.3d 363, 369–70 (Mo. App. S.D. 2003); *see also Farm Bureau Town & Country Ins. of Missouri v. Hilderbrand*, 926 S.W.2d 944, 948 (Mo. App. W.D. 1996) ("Ambiguity in a contract is not an affirmative defense in a cause of action to enforce the contract. The issues of ambiguity and the intent of the parties arise in the interpretation of the contract."). With the forgoing principles in mind, this Court now turns to Appellants' points on appeal.

A. Formation of a Contract

Appellants argue the trial court misapplied the law in finding no contract existed. This Court reviews a misapplication-of-law challenge *de novo*. *Sender v. City of St. Louis*, 681 S.W.3d 189, 193 (Mo. banc 2024). In Missouri, the essential elements of an enforceable contract are: "(1) competency of the parties to contract; (2) proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation." *Women's Care Specialists, LLC*, 408 S.W.3d at 315 (citation omitted). At issue here are the third element, consideration, and the fourth element, mutuality of agreement.

1. Consideration

With respect to consideration, Appellants contend the trial court misapplied the law in finding there was no additional consideration to support the Option, and thus the third element of contract formation was not met. Specifically, the trial court found:

> It has been held that "a valid option to purchase land requires independent consideration separate and apart from the purchase price to be paid for the land." *HGS Homes, Inc. v. Kelly Residential Group. Inc.,* 948 S. W.2d 251,

> 255 (Mo. Ct. App. 1997); *Rockhill Tennis Club of Kansas City v. Volker,* 56 S.W.2d 9, 17 (Mo. 1932). It is clear from the testimony and evidence presented at trial that [Appellants] have failed to prove to the Court that there existed independent consideration separate and apart from the purchase price paid for the real property.

A complete reading of the case indicates the trial court relied on one statement of law this Court made in *HGS Homes, Inc. v. Kelly Residential Group. Inc*., 948 S. W.2d 251, 255 (Mo. App. E.D. 1997) to support its conclusion that the element of consideration was not satisfied. *HGS Homes* does in fact state, "[a] valid option to purchase land requires independent consideration separate and apart from the purchase price to be paid for the land." *Id*. However, this Court went on to explain "where the option is incorporated into a larger real estate contract or lease, the mutual considerations supporting the entire contract or lease support the option provision." *Id*.

Here, it is clear the Option was incorporated by reference into the Contract, thus no additional consideration was necessary to support the Option. *See id*. Therefore, the trial court misapplied the law in finding additional consideration was necessary to support the Option. *See Johnson v. Farrow*, 594 S.W.2d 655, 657 (Mo. App. E.D. 1980) (finding that where the option was a part of the entire real estate installment contract, the mutual considerations served to support the entire contract, including the option provision).

2. Mutuality of Agreement

Next, we turn to the element of mutuality of agreement. In the present case, the trial court found there was no meeting of the minds because the Option meant different things to the parties.

"Mutuality of agreement" is essential to the formation of a contract and implies mutuality of assent by the parties to the terms of the contract, i.e. meeting of the minds. *Women's Care Specialists, LLC*, 408 S.W.3d at 315; *Don King Equip. Co.,* 115 S.W.3d at 368. "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." *Kunzie v. Jack-in-the-Box, Inc*., 330 S.W.3d 476, 483 (Mo. App. E.D. 2010) (quoting *Viacom Outdoor, Inc. v. Taouil*, 254 S.W.3d 234, 238 (Mo .App. E.D.2008)) (internal quotations omitted). To determine whether a "meeting of the minds" occurred, the court looks to the intent of the parties as expressed or manifested from their words or acts. *Women's Care Specialists, LLC*, 408 S.W.3d at 316. Whether there was a meeting of the minds is a question of fact for the trial court to decide. *Id*. "We defer to the findings of fact in a court-tried case, but we make an ***independent evaluation of the conclusions of law*** the trial court draws from its factual findings." *Id*. (quoting *Don King Equip. Co.*, 115 S.W.3d at 369) (emphasis added).

Missouri courts have applied the *objective* theory of contracts since 1892. *Don King Equip. Co.*, 115 S.W.3d at 369. Under the objective theory, "courts look to the parties' *objective* manifestations of intent to determine whether there was a 'meeting of the minds.'" *Id*. (emphasis in original). "[T]he stress is on the outward manifestation of assent made to the other party, in contrast to the older idea that a contract was a true 'meeting of the minds.'" *Id*. "It is presumed the parties' intent is expressed by the natural and ordinary meaning of the language in the contract." *Peet v. Randolph*, 33 S.W.3d 614, 618 (Mo. App. E.D. 2000). "A person's subjective intent is irrelevant." *Don King Equip.*

Co., 115 S.W.3d at 369. "Disregarding either party's secret surmise or undisclosed assumption, the court must ascertain the parties' meaning and intent as expressed in the language used and give effect to that intent." *Id*.

On appeal, Appellants contend the trial court misapplied the law in concluding the Option was not a valid contract on the grounds there was no mutual assent because the trial court used a subjective test for mutual assent that has been rejected by Missouri courts since 1892. On the other hand, Respondents argue this Court should rely on the parties' subjective understanding of what the Option meant to them because "appellate courts are to defer to the trial court's findings of fact and disregard all contrary inferences and evidence." We agree with Appellants. Respondents' attempt to characterize the trial court's findings as an issue of credibility is unpersuasive. The trial court did not (nor did it need to) make any credibility determinations to resolve this issue; rather, it made a conclusion of law that no mutual assent existed due to the conflicting testimony of the parties.

In the present case, the trial court erroneously relied on the parties' testimony, mainly their respective subjective beliefs regarding the Option, to conclude no mutual assent existed. To be clear, in assessing whether there was mutuality of agreement, the parties' subjective intent when they entered into the Option is irrelevant to this analysis. *See id.* (stating that, in analyzing the element of mutuality of agreement, a party's subjective intent is irrelevant). It is well established simply because differences subsequently arise between the parties, it is not, in and of itself, "sufficient to affect the validity of the original contract or to show that the minds of the parties did not meet with

respect thereto." *Id*. at 370 (citation omitted). The Supreme Court of Missouri "has held that if a written instrument, on its face, expresses a contractual obligation, one of the parties should not be permitted to avoid it on the grounds that it was never intended as such unless the evidence to such effect is cogent and convincing." *Id*. at 369 (citing *Berry v. Crouse*, 376 S.W.2d 107, 113 (Mo. 1964)).

It is undisputed there is a written contract, i.e. the Option, signed by the parties. Accordingly, "a meeting of the minds is necessarily implied by the existence of a contract." *Id*. Expressed differently, "the fact that an executed written contract contains within itself difficulties of construction about which the parties disagree does not enable the parties to contend that the minds of the parties never met…." *Id*. (quoting 17A Am.Jur.2d, *Contracts* § 30). Simply put, the trial court erred as it did not need to resort to evidence aside from the executed written contract, i.e. the Option, to determine whether there was a meeting of the minds.

If this Court accepted the trial court's conclusion and resorted to the parties subjective understanding of the Option, "a literal application would result in there being no meeting of the minds, and thus no contract, any time parties are unable to agree upon the meaning or interpretation of a contract or its terms." *Id*. Therefore, this Court holds the trial court's conclusion that there was no meeting of the minds because the Option meant different things to the parties was a misapplication of the law.

Accordingly, the Option is a valid contract because the necessary elements, particularly consideration and mutuality of agreement, were satisfied.

B. Contract Interpretation

Having found the Option is a valid contract, we now turn to whether the terms of the Option are ambiguous.[4]

Questions of contract interpretation are questions of law, which are reviewed *de novo*. *Am. Fed'n of State, Cnty. & Mun. Employees, AFL-CIO, Council 61 v. State*, 653 S.W.3d 111, 127 (Mo. banc 2022). "The cardinal rule in interpreting a contract is to ascertain the intent of the parties and to give effect to that intent." *Abduhamed v. Carol House Furniture, Inc*., 711 S.W.3d 427, 432–33 (Mo. App. E.D. 2025) (quoting *Cheek v. Cheek*, 669 S.W.3d 155, 159 (Mo. App. E.D. 2023)). In order to ascertain the original intent of the parties to a contract, this Court must give the words of the contract their natural, ordinary, and common sense meaning. *Id*. at 433.

Any ambiguity "must come from within the four corners of the contract; it cannot be created by the use of extrinsic, or parol, evidence." *Stratman v. Wagner*, 427 S.W.3d 915, 919 (Mo. App. S.D. 2014) (quoting *Central Stone Co. v. Warning*, 412 S.W.3d 908, 912 (Mo. App. E.D. 2013)). "Terms are ambiguous when, in the context of the entire agreement, the term is reasonably susceptible to more than one construction." *Cheek*, 669 S.W.3d at 159. The use of extrinsic evidence for interpretation is only proper when a contract is ambiguous and other means of construction fail. *Yerington v. La-Z-Boy, Inc*., 124 S.W.3d 517, 522 (Mo. App. S.D. 2004). In other words, when a contract is

[4] Appellants' point relied on is presented as a substantial-evidence challenge. However, the argument is one of misapplication of the law. Thus, this Court considers the point as a misapplication-of-the-law challenge.

ambiguous, only then can parol evidence be used "to show the surrounding circumstances and the relationship of the parties as indicating their real intent and the meaning of the contract, and also to show the practical construction placed upon the contract by the parties." *Id*. (citation omitted). Where a contract is clear and unambiguous, this Court may not supply additional terms nor may it make a new contract for the parties. *Cheek*, 669 S.W.3d at 159. Instead, this Court is to enforce the contract as written. *Id*.

As to the issue of ambiguity, the trial court found:

> The Court finds that the Option to Purchase Real Estate received into evidence as [Appellants'] Exhibit 1 is ambiguous. That is, it could be interpreted and has been interpreted by the parties to either be an option to purchase real estate without condition within thirteen (13) years of its execution or, as [Respondents Bringer] assert, a right of first refusal triggered only if the [Respondents Bringer] expressed their intent to sell the parcel in question within thirteen (13) years. As a result, the Court finds that from the four corners of the contract alone, it appears that the terms are susceptible of more than one meaning so that reasonable persons may fairly and honestly differ in their construction of the terms. *Keipp v. Keipp*, 385 S.W.3d 470 (Mo. App. W.D. 2012).

Although the trial court concluded the ambiguity originated from the four corners of the Option, a complete reading of its judgment makes clear to this Court that the trial court impermissibly considered the parties testimony to create an ambiguity. In particular, the trial court relied on the parties' different opinions of what the Option meant to them: to Stephen, the Option was a right of first refusal and to Paul, it was an option to purchase. "A disagreement between the parties as to the proper interpretation of the contract does not render the contract ambiguous." *Venture Stores, Inc. v. Pac. Beach Co. Inc*., 980 S.W.2d 176, 181 (Mo. App. W.D. 1998). Thus, the trial court improperly created an ambiguity by relying on the contradictory testimony of the parties.

It bears repeating, an ambiguity must come from within the four corners of the contract—not parol or extrinsic evidence. *ATC Co., Inc.*, 389 S.W.3d at 735. In order to find the Option ambiguous, the trial court had to look at the contract and determine if, in the context of the entire agreement, ***the terms*** are reasonably susceptible to more than one construction. *Id*. Here, the Option is titled: "OPTION TO PURCHASE REAL ESTATE." The document begins with: "THIS OPTION TO PURCHASE, made and entered into on this 19th of May 2010…." by the parties. It includes 14 paragraphs setting forth the terms and obligations under the option. In pertinent part, it provides:

> 1. [Respondents Bringer and Ron] grant to [Appellants] ***the exclusive right to purchase***, upon the terms and conditions hereinafter set out, within thirteen (13) years of the date of this option, the following described real estate….
>
> 2. This option is personal to Paul Wayne Bringer, Grace A. Bringer, Kenneth Bringer, Kimberly Bringer and Kyle Bringer, and it expires and becomes null and void upon the death of the survivor of Paul Wayne Bringer, Grace A. Bringer, Kenneth Bringer, Kimberly Bringer and Kyle Bringer….
>
> 3. Upon notice by [Respondents Bringer and Ron] to [Appellants] of [Respondents Bringer and Ron's] intent to sell and/or convey the real estate described above, [Appellants] shall have thirty (30) days in which to exercise this option. If [Appellants] shall fail to exercise this option with[in] (30) days after notice to them as aforesaid, [Respondents Bringer and Ron] may proceed with sale and/or conveyance of the real estate; **provided, however**, that if the real estate is not actually sold and/or conveyed by [Respondents Bringer and Ron], this option will remain in full force and effect.
>
> 4. If this option is not exercised by notice in writing prior to midnight exactly thirteen (13) years from the date of this option to purchase, this option shall expire….
>
> 5. Notice of election of the [Appellants] to exercise this option, or notice of the intent of [Respondents Bringer and Ron] to sell and/or convey the real estate, may be delivered, or by certified United States mail, postage

> prepaid, addressed to the party being notified at the address given in this option, and the same shall be deemed to have been delivered on the day it is postmarked … This clause shall not limit the effectiveness of other methods of giving notice.
>
> 6. The purchase price for the above-described real estate shall be the sum of One Hundred Seventy-nine Thousand [Five] Hundred Fifty and No/100 Dollars ($179,550.00)….
>
> ***
>
> 13. The sale shall be closed at the Bank of Monticello, Canton, Missouri, or at such place as may be agreed upon by the parties. The deed shall be delivered and the sale closed within thirty (30) days after the exercise of the option, provided that if title is not acceptable at that time, the sale shall be closed within ten (10) days after title is accepted by the [Appellants]. [Respondents Bringer and Ron] shall deliver possession of the real estate on the date the real estate purchase option is closed.
>
> The document is identified in the title section as an option to purchase real estate.

The document specifies "THIS OPTION TO PURCHASE" is a contract between the parties, and Appellants have "***the exclusive right***" to purchase the Farm within thirteen years of the date the Option was executed. The Option clearly prescribes: it is personal to Appellants; gives a description of the Farm; lists the purchase price; states the specific duration of the Option period; details how the Appellants should notify Respondents Bringer and Ron of their intent to exercise the Option; and lists the rights and responsibilities of each party. The Option is clear and unambiguous.[5] "Accordingly, parol

[5] To the extent the parties believe Paragraph 3 is inconsistent with other terms of the contract, we find it is not. Paragraph 3 provides terms and conditions in the event Respondents Bringer and Ron want to put the Farm up for sale. This paragraph simply provides, in the event Respondents Bringer and Ron wanted to sell the property, Respondents Bringer and Ron must give notice of their intent to sell to Appellants. After receiving notice of the intent to sell, Appellants have 30 days to exercise the Option. If Appellants failed to exercise the Option within 30 days, Respondents Bringer and Ron could then proceed with the sale and/or conveyance of the Farm to a third party. But if

or other extrinsic evidence regarding the parties' intent cannot be considered." *G&G Mech. Constructors, Inc.*, 549 S.W.3d at 498.

This Court does not have the authority to supply additional terms or go outside the agreement and make a new contract for the parties. *Cheek*, 669 S.W.3d at 159. Finding the Option is clear and unambiguous, it must be enforced as written. *See id*.

Points I–III are granted.

Point IV: Notice to Exercise Option

In Point IV, Appellants argue the trial court misapplied the law in finding the first notice to exercise the Option failed because one of the Appellants did not sign the notice. We hold the first notice is valid.

The Option prescribed when and how notice should be given to Respondents Bringer and Ron in order for Appellants to exercise the Option. The first notice was sent on March 1, 2023, which was signed by each of the Appellants except Kenneth. The second, sent on May 17, 2023, was signed by all of the Appellants. The trial court found the "evidence is clear that the first Notice to Exercise Option failed to provide proper notice to [Respondents Bringer] as all [Appellants] had not signed the Notice. This is a clear requirement of paragraph 5 of the Option." Curiously, the trial court made no findings regarding the second notice.

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the Farm did not actually sell, the Option would remain in full force and effect. It is well-established these types of provisions are common and not inconsistent with the terms of an option. "The giving of an option to purchase does not deprive the optionor of the right during the life of the option to sell the land subject to the rights of the optionee, and a sale to one with notice of, and subject, to the option, is not a breach of the option contract." *Hendricks v. Northcutt*, 820 S.W.2d 689, 693 (Mo. App. S.D. 1991) (citation omitted).

Appellants contend the trial court misapplied the law because: (1) the Option is a joint and several contract and thus it could be exercised by all or some of the Appellants and (2) nothing in paragraph five required all of the Appellants to sign. Therefore, Appellants argue, the first notice was valid. Respondents, in a conclusory fashion, contend: "What [Appellants] did or did not do to exercise the agreement has no bearing on the outcome of this case. There is an unenforceable contract, so the fact that [Appellants] properly or improperly tried to enforce an unenforceable contract does not matter."

To determine if the Option is a joint and several contract, we look to section 431.110, RSMo (2024).[6] Section 431.110 states, "All contracts which, by the common law, are joint only, shall be construed to be joint and several." "A 'joint and several' contract is a contract with each promisor and a joint contract with all, so that parties having a joint and several obligation are bound jointly as one party, and also severally as separate parties at the same time." *Crosmer v. Harris*, 718 S.W.3d 110, 119 (Mo. App. E.D. 2025) (quoting *Schubert v. Trailmobile Trailer, L.L.C.*, 111 S.W.3d 897, 902 (Mo. App. S.D. 2003)). Applying section 431.110, this Court must construe the Option as joint and several.

Furthermore, in construing a contract, this Court does not look at provisions in isolation. *Tuttle v. Muenks*, 21 S.W.3d 6, 9 (Mo. App. W.D. 2000). Rather, "[a] contract must be construed as a whole. It must be viewed from end to end and corner to corner."

[6] All references are to Mo. Rev. Stat. Cum. Supp. (2024).

Fuller v. TLC Prop. Mgmt., LLC, 402 S.W.3d 101, 104 (Mo. App. S.D. 2013) (quoting *Campus Lodge of Columbia, Ltd. v. Jacobson*, 319 S.W.3d 549, 552 (Mo. App. W.D. 2010)). Here, the express language of the Option made clear Appellants were the grantees of the Option, and, as other provisions specified, the Option could *not be exercised* by a deceased grantee's heirs, personal representatives, or assignees. Reading the contract as a whole, it is clear the intention of the parties was for the Option to be ***solely*** personal to Appellants. And nothing in the express language of the Option provides Appellants had to exercise the Option as a collective group.

Even assuming, *arguendo*, the Option required all of the Appellants to exercise the Option and send notice to Respondents Bringer, the second notice was also valid since timely notice was given by *all* Appellants.[7]

Accordingly, the trial court erred in finding the first notice from Appellants to Respondents Bringer failed.

Point IV is granted.

Points V–VI: Repudiation of Option

In Point V, Appellants contend the trial court erred in finding Respondents Bringer did not repudiate the Option because the finding is not supported by substantial evidence.

[7] As mentioned in our analysis, this Court notes the trial court did not make any findings regarding the second notice. The trial court only found that "*After receiving the second notice*, [Respondents Bringer] did nothing to repudiate their obligations under the terms of the Option. [Appellants] also did nothing to complete the repurchase of the real property as required by the plain language of the Option." (Emphasis added). As discussed in Point V, this finding relates to repudiation of the Option, not a finding that the second notice was invalid. Therefore, Appellants' challenge was limited to appealing the finding that the first notice was invalid.

Point VI asserts the same error but under an against-the-weight-of the evidence challenge. Specifically, Appellants argue the undisputed statements and conduct of each of the Respondents Bringer communicated a "[p]ositive [i]ntention not to [p]erform and any attempt to perform by Paul and Grace would have been futile." We hold the trial court erred because there was substantial evidence to support Respondents Bringer repudiated the Option by expressly informing Appellants they would not voluntarily sign the deed or voluntarily accept money for the Farm. This Court finds there is no evidence to support the trial court's finding Respondents Bringer did not repudiate the Option. Because we find Point V dispositive, Point VI is moot.

A no-substantial-evidence challenge claim asserts that "there is no evidence in the record tending to prove a fact that is necessary to sustain the [trial] court's judgment as a matter of law." *Ivie*, 439 S.W.3d at 200. When reviewing whether the trial court's judgment is supported by substantial evidence, we view the evidence in the light most favorable to the trial court's judgment, disregarding all contrary evidence and inferences. *Id.*

Missouri recognizes the doctrine of anticipatory breach of contract by repudiation. *Prof'l Funding Co. v. Bufogle*, 655 S.W.3d 243, 248 (Mo. App. E.D. 2022). "Anticipatory breach of contract by repudiation occurs when a party to a contract repudiates that contract by manifesting, by words or conduct, a positive intention not to perform." *Id*.

Here, the trial court found:

> After receiving the second notice, [Respondents Bringer] did nothing to repudiate their obligations under the terms of the Option. [Appellants] also did nothing to complete the repurchase of the real property as required by the plain language of the Option. Instead of trying to close [on] the repurchase of the real estate with thirty (30) days as required in paragraph 13 of the Option, [Appellants] simply waited until August 10, 2023, to file their lawsuit.

There is no evidence in the record tending to prove the Option was not repudiated. The record supports Appellants' counsel sent Respondents Bringer notice to exercise the Option in March of 2023. After the first notice was sent, Appellants' counsel emailed Respondents Bringer's counsel to inform him Paul had the purchase money "lined up" and the title work had been ordered. He also indicated Appellants would be ready to close as soon as the title work was completed. Stephen and Lynette's counsel responded: "My client is not agreeable to sell the property under the alleged option contract. Just letting you know he will not be voluntarily signing any deeds or voluntarily accepting any monies from your clients." Appellants' counsel followed up with Stephen and Lynette's counsel and inquired, "Any theory why the Option Contract is not valid?" Stephen and Lynette's counsel responded, "I wish I could tell you." Later, in April of 2023, Appellants' Bringer counsel once again emailed Stephen and Lynette's counsel notifying him: "We have received from you Steve Bringer's anticipatory repudiation of the Option[.] Litigation will be forthcoming." In May of 2023, Appellants sent a second notice to exercise the Option to Respondents Bringer. After the second notice was sent to Respondents Bringer, there was no action or reply from Respondents Bringer.

At trial, Stephen made crystal clear his unwavering position: he was not agreeable to selling the property under what he stated was the "alleged option contract," was not

voluntarily signing any deeds or voluntarily accepting any money from Appellants to purchase the Farm.[8] From their counsel's response in March of 2023 through trial, Stephen and Lynette's position was unequivocal and firm. The only Respondent who wanted to comply with the terms of the Option was Jan, however, the Bank refused to release her undivided one-half interest in the Farm for one-half of the Option price. As a result, Jan was unable to fulfill her obligations and comply with the terms of the Option independently of Steven and Lynette.

Repudiation could not be any clearer in this case. Appellants complied with the terms and obligations to purchase the Farm as prescribed by the Option. Stephen and Lynette manifested, by words, a positive intention not to perform. *See id*. Though Jan wanted to comply with the terms of the Option, she was unable to do so without Stephen, and Lynette's cooperation and thus she was prohibited from selling her interest in the Farm by the Bank. Nevertheless, Jan's inability to act still constitutes a repudiation. After sending notices to exercise the Option and informing Respondents Bringer the money was "lined up" and the title work was ordered, there was nothing more Appellants could

[8] At trial, Stephen Bringer made his position clear.

> [Counsel] And that's still your position, isn't it, that -- that you're not agreeable to selling the property under the alleged option contract, not voluntarily signing any deeds or voluntarily accepting any money. That's still your position, isn't it?
> [Stephen] Correct. It's not for sale.

do to get Respondents Bringer to comply with the terms of the Option and close on the Farm. Appellants' only avenue to enforce the Option was to file suit.[9]

We find the trial court erred as there is no substantial evidence to support the trial court's finding Respondents Bringer did not repudiate the Option. *See id.*

Point V is granted.

Point VII: Bank's Deed of Trust

Lastly, Point VII contends the trial court misapplied the law in failing to hold the Bank's second deed of trust was inferior to the Option because the Bank had actual knowledge of the Option before its execution.

The only finding the trial court made regarding the Bank is:

> [Appellants] have failed to present sufficient evidence that the Bank of Monticello violated a duty of care in not recording the Option to Purchase Real Estate or that [Appellants] suffered any damages as a result of Bank of Monticello not recording the Option. There is nothing in the Warranty Deed, or Option to Purchase Real Estate that prevents the Bank of Monticello from using said property as collateral."

The issue Appellants put forth before the trial court was whether the second deed of trust was inferior to the Option because the Bank had actual notice of the Option before receiving the second deed of trust. The Bank, however, maintained no contract

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[9] Respondents Bringer and the Bank did not put forth any argument for Points V and VI, except for the following:

> If there is a valid and enforceable contract, the issue of repudiation would be relevant and material. However, as discussed previously, there is no valid, enforceable contract. What Respondents Bringer did or did not do in response to Plaintiffs' attempt to exercise the agreement does not change the fact that the agreement is unenforceable. Efforts to enforce or repudiate an unenforceable contract are moot.

existed and thus there was no need to determine whether the second deed of trust was subordinate to the Option.

The trial court agreed with the Bank, finding no valid contract existed and therefore the Bank had not breached any duty of care and Appellants had not suffered any damages as a result of the Bank not recording the Option. The trial court's findings are erroneous. The Option is a valid contract and the Option has priority over the second deed of trust.

"Generally, a lien that is first in time is entitled to satisfaction before subsequently filed liens." *Collector of Revenue of St. Louis v. Parcels of Land Encumbered With Delinquent Tax Liens Land Tax Suit 178*, 533 S.W.3d 816, 819 (Mo. App. E.D. 2017) (citing *Howard, Singer & Meehan v. Clayton Fed. Sav. & Loan Ass'n*, 578 S.W.2d 56, 57 (Mo. App. E.D. 1979)). Effectively, a prior recorded lien has priority over any subsequent lien, unless a statute provides the subsequent lien has special priority status. *See generally id*.

Additionally, section 442.380 specifies which instruments are mandated to be recorded.

> Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged and certified in the manner herein prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

Section 442.400 further explains, "No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the recorder for record." To be clear, "[n]otice can be either

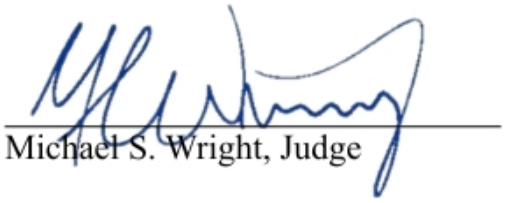
constructive notice under the recording laws ***or actual notice***." *Casady v. Fehring*, 360 S.W.3d 904, 908 (Mo. App. S.D. 2012) (quoting *White v. Buntin*, 77 S.W.3d 702, 705 (Mo. App. E.D. 2002)) (emphasis added). "Accordingly, the recording statutes serve to protect persons who acquire an interest in the real property without notice of prior encumbrances and to 'establish[ ] a system of statutory priorities' for encumbrances affecting the real property." *Bob DeGeorge Associates, Inc. v. Hawthorn Bank*, 377 S.W.3d 592, 597 (Mo. banc 2012) (quoting *Dreckshage v. Cmty. Fed. Sav. & Loan Ass'n*, 555 S.W.2d 314, 319 (Mo. banc 1977)).

Here, the Option was executed in 2010. Then, in 2013, a promissory note was executed by Respondents Bringer with the Bank, which was secured by a second deed of trust on the Farm. Pursuant to section 442.380, the Option should have been recorded to put other parties on notice. However, it is clear, and the Bank concedes, it had actual notice of the Option. The Bank, as lender, was involved in the closing of the Farm in 2010 and, in fact, conceded the Option was kept in its official file. Indeed, the Bank took a risk in accepting a second promissory note with a second deed of trust on the Farm, but that decision is not for this Court to question. Nevertheless, there is no legal theory in which the failure to record the Option can excuse the Bank's ***actual knowledge*** of the Option. Missouri's recording laws are not supposed to serve as a shield when a party has actual notice of an instrument which is later found to not have been recorded. It is undeniable the Option was executed before the second deed of trust, and the Bank had actual knowledge of the Option. This Court is reminded of the familiar phrase, "first in time, first in right." Accordingly, the Option has priority over the second deed of trust.

Point VII is granted.

Conclusion

For the reasons stated above, the judgment is reversed and the cause is remanded with directions for the trial court to enter a judgment in favor of Appellants and for any further proceedings consistent with this opinion.



Michael S. Wright, Judge

John P. Torbitzky, Chief Judge and
Rebeca Navarro-McKelvey, Judge concur.