

United States Court of Appeals
for the Fifth Circuit

No. 23-50528

United States Court of Appeals
Fifth Circuit

FILED

November 26, 2024

Lyle W. Cayce
Clerk

AARON MULVEY; CAROLYN MULVEY,

Plaintiffs—Appellants/Cross-Appellees,

versus

LIQUID PROPERTY GROUP, L.L.C.,

Defendant—Appellee/Cross-Appellant,

JOHN MICHAEL TIFFIN; TINA ANDERSON,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-1210

Before SMITH, CLEMENT, and HIGGINSON, *Circuit Judges.*

STEPHEN A. HIGGINSON, *Circuit Judge:**

This dispute concerns a real estate transaction gone awry. On September 20, 2021, Aaron and Carolyn Mulvey (collectively “the Mulveys”) agreed to purchase a lot located in Comal County, Texas, from Liquid

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Property Group, L.L.C. (“LPG”). Under the terms of the contract, the Mulveys promised to pay LPG \$180,000 by November 1, 2021, or at most seven days after certain of their objections had been waived or cured, “whichever date is later.” The Mulveys further agreed to tender to an escrow agent \$5,000 as earnest money and \$100 as an option fee. Pursuant to the contract, the Mulveys could retrieve their earnest money by terminating the deal within a specified period.

Paragraph 15 of the contract contemplates a breach by either party. It states that if the Mulveys do not “comply with th[e] contract,” LPG may “(a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate th[e] contract and receive the earnest money as liquidated damages, thereby releasing both parties from th[e] contract.” If, on the other hand, LPG fails to comply, the Mulveys can “(a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate th[e] contract and receive the earnest money, thereby releasing both parties from th[e] contract.”

The Mulveys did not pay LPG on November 1. And they did not terminate the contract either. Instead, the Mulveys filed suit in federal court, alleging, among other things, that LPG and certain of its employees committed fraud and that LPG breached the contract by failing to cure the Mulveys’ objections to the property’s title. LPG, for its part, filed a counterclaim asserting that the Mulveys breached the contract when they did not tender the purchase price on the closing date without first terminating the agreement.

The case proceeded to trial, where a jury awarded the Mulveys zero dollars in damages despite finding that LPG and two of its employees violated the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code Ann. §§ 17.41 *et seq.* (West 2023). Neither breach of contract claim went to the

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jury. When the parties cross-moved for judgment as a matter of law (“JMOL”) at the close of evidence, the magistrate judge presiding over the case ruled that both LPG and the Mulveys introduced “insufficient evidence as a matter of law to present to the jury that there’s a breach by either party.”

I

The Mulveys appeal the district court’s denial of summary judgment; its ruling that the evidence was insufficient to show that LPG breached the contract; its limitation on permissible damages; and its decision to permit the testimony of certain witnesses. We have reviewed the parties’ briefing, the record, the applicable law, and the oral arguments presented by counsel. The Mulveys have not identified any reversible error of law. *See* 5TH CIR. R. 47.6. We therefore AFFIRM.

II

LPG appeals the district court’s denial of judgment as a matter of law on its breach of contract claim. According to LPG, the district court erred because the evidence presented at trial was, in fact, sufficient to show that the Mulveys breached the contract.

“The standard of review for rulings on motions for JMOL is de novo.” *Broussard v. State Farm Fire and Cas. Co.*, 523 F.3d 618, 624 (5th Cir. 2008). “JMOL is proper when ‘the facts and inferences point so strongly and overwhelmingly in favor of one party that the court concludes that reasonable jurors could not arrive at a contrary verdict.’” *Arsement v. Spinnaker Expl. Co.*, 400 F.3d 238, 248–49 (5th Cir. 2005) (quoting *Bellows v. Amoco Oil Co.*, 118 F.3d 268, 273 (5th Cir. 1997)).

“[W]e review matters of contract interpretation de novo.” *Keiland Constr., L.L.C. v. Weeks Marine, Inc.*, 109 F.4th 406, 415 (5th Cir. 2024) (cleaned up). Under Texas substantive law, which governs this dispute,

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“every contract should be interpreted as a whole and in accordance with the plain meaning of its terms.” *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 892 (Tex. 2017). “The goal of contract interpretation is to ascertain the parties’ true intent as expressed by the plain language they used.” *Id.* at 893. In this endeavor, courts “take care to ensure that no provision is rendered meaningless.” *Id.* at 892–93.

We hold that the Mulveys breached the contract as a matter of law. Before the scheduled closing date, LPG attempted to cure the Mulveys’ objections to the property’s title by sending them a general warranty deed. At this juncture, the contract gave the Mulveys two options: “pay the [s]ales [p]rice” on the closing date or, if the purported cure was not curative, “terminate th[e] contract” and retrieve the earnest money. But the Mulveys did not take either approach. At trial, Aaron Mulvey testified that he did not attend the closing or offer to pay the full sales price at any time on or about the closing date. He further testified that he did not exercise any option to terminate the contract and retrieve the earnest money. The contract is unambiguous: “[The Mulveys] shall pay the [s]ales [p]rice” at closing and, “[i]f [the Mulveys] fail[] to close the sale by the [c]losing [d]ate, [LPG] may exercise the remedies contained in Paragraph 15,” including “relief as may be provided by law.” Because the undisputed evidence shows that the Mulveys failed to close the transaction without first terminating the agreement, we hold that the Mulveys breached the contract as a matter of law and therefore REVERSE the district court’s contrary ruling.

* * *

For the foregoing reasons, we AFFIRM the district court’s rulings with respect to the Mulveys’ claims on appeal but REVERSE and REMAND for further proceedings consistent with this opinion as to LPG’s counterclaim for breach of contract. Final judgment, including the award of

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attorneys' fees, is VACATED. Additionally, we GRANT LPG's motion to expunge the Mulveys' third notice of *lis pendens* and DENY its motion to sanction Aaron Mulvey.