

Mervin, and Kenneth Inman.

This is essentially a dispute over a land sale contract. The parties involved, Richard Mervin (Mervin), and Cinniman Thomas (Thomas), signatories of the buyer, Kissing and More Ranch, LLC, and Kimberly Inman (Inman), the seller, all signed the Agreement to Sell Real Estate ("Agreement"), Exhibit 2. That Agreement constitutes a land sale contract. The Agreement was not prepared by an attorney. The Court finds that the Agreement was prepared by Thomas acting for Mervin, but with input from Inman. As to how inferences are to be applied against the person drafting the document, this Court finds that since Mervin and Thomas are aligned, Mervin and Thomas, and Kissing and More Ranch, LLC, are the parties who prepared the Agreement.

Because there is a factual dispute between the testimony of the witnesses as to what happened and why, this Court must make credibility determinations. The Court generally finds Mervin and Thomas be more credible than Inman. The only testimony of Mervin which this Court finds to be incredible, is his estimate that he had spent about 80,000 hours (himself and friends who would help), clearing the land (cutting trees and removing stumps) and preparing the soil for a horse riding arena. However, that testimony pertains to fact which is not really relevant to the issues presented to this Court.

Inman was less credible. There were many times where she answered questions "I don't know that", which, granted, could have been the appropriate answer to a given question, but she said that phrase every time in a condescending, evasive and irritated manner. For example, Inman was asked on cross-examination, "Didn't you have an obligation to facilitate the balloon payment?" to which Inman responded, "I don't know." Clearly, Inman had a duty to act in good faith, and instead she chose to be obstreperous when it appeared that Mervin was now in a position to get the loan to pay Inman off, under the contract. To answer, "I don't know" to this question was disingenuous. Later in cross-

examination, Inman was asked if Exhibit 15 was a letter from Erik Smith, and she responded, "I don't know." Inman testified on direct examination that she never received any benefit from the \$1,000.00 per month payments that Mervin made to her. Obviously, that is a false statement as she was receiving \$1,000.00 per month from Mervin, which totaled \$44,000.00. That clearly is a benefit to Inman.

II. FINDINGS OF FACT

1. This action concerns a parcel of real property located in Kootenai County and which is more particularly described as:

The North Half of the South Half of the South Half of the Southeast Quarter of the Northeast Quarter, Section 23, Township 52 North, Range 4 West, Boise Meridian, Kootenai County, Idaho.

The Subject Property is more commonly known as 18511 N. Elk Run Lane, Rathdrum, Idaho 83858.

2. The Subject Property is approximately 5 acres in size and improved with a mobile home.

3. Inman purchased the Subject Property on October 26, 2007. Ex. C. At that time, she was in nursing school. To assist her with the purchase, her grandmother, Mary Sorensen, agreed to co-sign on the loan and use her residence on East Ohio Match Road in Kootenai County as collateral for the loan. Inman acquired this property before her marriage to Ken Inman and Ken Inman is not on the title to the property.

4. Inman took out two separate loans to purchase the Subject Property; a primary loan and home equity line of credit. Together, the monthly payments of both loans is \$1,000.60. Inman has been responsible for making this payments since acquiring the Subject Property.

5. Following the purchase, on September 30, 2009, Mary Sorensen quitclaimed her interest to Inman. Ex. D.

6. Inman has been the legal owner of the Subject Property at all times since September 30, 2009. Crossclaim, ¶ 8, Ex. A; Answer, ¶ 6.
7. Mary Sorensen passed away in 2011. There are two heirs to Mary Sorensen's estate, Cynthia Waller (Inman's mother) and Pamela Koester. Since 2012, Mary Sorensen's property on East Ohio Match Road, which was pledged as security for purchase of the Subject Property, has been owned by Cynthia Waller and Pamela Koester as tenants in common. Ex. E.
8. The Subject Property is improved with a single-wide mobile home. Due to presence of the mobile home, Inman understood that it was not possible to obtain conventional financing for the Subject Property. It was her further understanding that until the mobile home was removed, the Subject Property would similarly not qualify for financing as "raw land."
9. In mid-2016, Mervin was contemplating purchasing 15 acres in southern Idaho outside Parma, Idaho to develop for his horse boarding/training/farrier business.
10. On May 11, 2016, Inman moved out of the mobile home on the Subject Property to her property on Silver Meadows Loop.
11. Around this time, Inman approached Mervin about purchasing the Subject Property.
12. At that time, the parties had known each other for approximately five years. During that time, Inman had utilized Mervin's farrier services for the horse that Inman owned. Inman also hired Mervin to train her daughter and husband's horses.
13. During the parties' discussions, Inman acknowledged that because of the age of mobile home on the Subject Property, it would not qualify for conventional financing.
14. Mervin served in the armed forces. In 2008, he filed a disability claim with the Veteran's Association. It was his understanding that when these claims are settled, they

would typically consist of a lump sum payment for past damages/compensation. Mervin anticipated using these proceeds as a down payment for the purchase of the Subject Property.

15. It was for these reasons that Inman proposed to Mervin to owner carry the Subject Property with a balloon payment due “in about two years.” At that point, the parties believed the Subject Property would qualify for conventional financing.

16. Thomas previously worked in the lending and title insurance industries. As a result, she was familiar with the process to search the County Recorder’s Office land records.

17. During the parties discussions concerning the purchase of the Subject Property, Thomas visited the Kootenai County Recorder’s Office and searched the records concerning the status of the title for the Subject Property. During this search, she did not discover any outstanding loans secured by the Subject Property.

18. In September, 2016, Mervin and Thomas moved into the Subject Property with Inman’s permission. Mervin and Thomas have occupied it as their primary residence at all times since.

19. Mervin and Thomas are equal member of Kissing and More Ranch, LLC.

20. After moving onto the property, Inman, Mervin and Thomas met to finalize the terms of their agreement. Thomas, who had previous experience in the title and lending industry, acted as a scrivener for the parties and typed up the agreement during this meeting.

21. During these negotiations, Inman did not disclose the outstanding loans she had obtained for the Subject Property and which were secured by her grandmother’s property on E. Ohio Match Road.

22. On December 5, 2016, Inman was at the Subject Property. During this visit,

Mervin and Thomas presented her with a draft copy of the document titled Agreement to Sell Real Estate ("Agreement"). Ex. 2. The Agreement had been previously executed by Mervin and Thomas. At that time, Inman signed the document and delivered it to Mervin and Thomas. Ken Inman did not sign the Agreement.

23. The Agreement provides that Inman agreed to sell the Subject Property for the "sum of \$150,000." Inman agreed to carry note due, which was to be paid in "\$1000 monthly payments, with a balloon payment due in about 2 years," with the "monthly payments to be applied to the purchase price of \$150,000."

24. The Agreement does not contain any provision for interest. Ex. 2.

25. According to Inman, she read the Agreement before signing it. She also conceded that there was no deadline to sign the Agreement and she had the opportunity to consult with an attorney if she so desired.

26. The Agreement provides an effective date of September 1, 2016. Ex. 2; Crossclaim, ¶ 9, Ex. B; Answer, ¶ 6.

27. Commencing in September, 2016, Mervin and Thomas started making monthly payments in the amount of \$1,000 to Inman. These payments continued through April, 2020. To date, they have paid Inman a total of \$44,000.00. Exs. 3 and K.

28. At all times since September, 2016, Inman has held title to the Subject Property. Because of this, all of the property tax notices were mailed to Inman's personal residence. Ex. 5.

29. Since taking possession, Mervin and Thomas (and others helping them) cleared and leveled approximately 2 ½ acres. Afterwards, they hauled dirt and sand to build a 240' by 120' horse arena which they have utilized for their horse boarding/training/farrier business.

30. Since taking possession, Mervin and Thomas were required to make a number of

necessary repairs to the mobile home to render it habitable. This has included replacing a portion of the roof decking, replacing a portion of the subfloor and flooring, and various plumbing repairs. All of these were done at their own expense and time.

31. After signing the Agreement, Inman provided Mervin a copy of the tax notices. At that time, he discovered arrears were owed for the property taxes for the Subject Property. Having never owned real property previously, Mervin was not familiar with the property tax process.

32. Being on a limited, fixed income at the time, Mervin had to work to pay the arrears off over time.

33. Being a disabled veteran, Mervin qualifies for the circuit breaker property tax program. However, because he is not on title, he has been unable to take advantage of that program.

34. Since September, 2016, Mervin and Thomas have paid a total of \$6,970.92 in property taxes due for the Subject Property. Ex. 6. This includes a \$100.00 payment by Mervin on December 30, 2019 that the Kootenai County Treasurer's Office credited to Inman.

35. Inman's husband, Ken, paid the sum of \$3,675.28 for property taxes on November 20, 2020. At that time, the Subject Property was not in jeopardy of a tax deed sale. Days before, Mervin had attempted to pay these taxes in person but was turned away by the Treasurer's Office due to restrictions related to the COVID-19 pandemic.

36. On November 12, 2021, Mervin tendered payment for the 2021 property taxes. There are not presently any delinquent property taxes owed.

37. On October 1, 2018, Inman and Mervin met at Inman's house. During this meeting, they discussed an extension of the balloon payment due date in light of Mervin's inability to obtain conventional financing due to the mobile home age.

38. The parties had a follow up discussion on January 5, 2019. During this discussion, Mervin and Inman discussed the “balloon payment.” Inman represented she would give Mervin and Thomas “as much time as she could,” “as much time as possible”.

39. In late 2019, Inman was receiving from her mother and aunt to sell their property on E. Ohio Match Road. Because it was encumbered by a deed of trust, they needed her to pay off the outstanding loans before they could sell it.

40. On December 8, 2019, Inman contacted Mervin and arranged a meeting at Inman’s house. During this meeting, Inman, her husband Ken, her son Little Mike, and Mervin and Thomas were all present at Inman’s house. At that meeting, Inman told Mervin and Thomas that Inman had to call in the loan, and that Mervin and Thomas had to come up with the balloon payment in 90 days or else she would have to sell the property. This Agreement was subsequently confirmed by Inman in an email she sent to Mervin’s lender. Ex N; INMAN070.

41. Following this meeting, Mervin began working with his mortgage officer, Dan Cansino, to obtain financing.

42. On December 10, 2019, Mervin texted Inman concerning his efforts to obtain financing. In his text to Inman, Mervin wrote:

Good morning, Good news, I found a mortgage company willing to work with me right now, and may qualify for VA. They need my most recent mortgage report. Is there anyway you could put one together and I could swing by and pick it up after practice tonight?

(Ex. M, INMAN064). In response, Inman wrote:

I need the most statements and probably will need to get an appraisal of the property.

Id. Mervin replied by writing:

I can bring those by. He said he just needs to know how much I’ve paid and how much is owed.

Id.

43. On December 23, 2019, Mervin sent a letter to Inman. In his letter, Mervin requested on behalf of his lender copies of:

- A copy of the Notarized Purchase Agreement
- Receipts of Monthly mortgage payments made from September 2016-Present towards the purchase price of \$150,000 for the real property located at 18511 N. Elk Run Ln, Rathdrum, ID also known as N2-S2-SE-NE 23 52N 0W, City of Rathdrum, State of Idaho
- A mortgage status report for the remaining balance

Ex. 9. Inman did not provide a response to this inquiry. Although Inman stated she was confused by the nature of the request, she did not seek clarification of what was requested.

44. On December 27, 2019, Dan Cansino emailed Inman. In his email, Dan Cansino requested that she provide:

- Notarized copy of Buyer/Seller agreement (All parties signed)
- Invoice showing outstanding balance of Rich's loan

(Ex. 10; Ex. N – INMAN077). That same day, Inman's husband responded by stating:

I'd be happy to supply you with a notarized buyer seller agreement with all parties signed but no such document exists, nothing in my knowledge has ever been notarized. As for an outstanding balance of Richs loan there is no loan in Richs name. The only loan in conjunction with the property at hand is with my wife and her deceased grandmother and the loan doesn't mention the property Rich is interest in, but on her deceased grandmother's home which my wife's mother and aunt along with countless others currently reside in.

Id.

45. On January 10, 2020, Mervin obtained preapproval for a conventional loan in the amount of \$137,500. Ex. 11. This was communicated to Inman that same day. Ex. 2, 12 and 13.

46. On January 14, 2020, Mervin sent Inman a follow up letter. In his letter, he again requested:

- Memorandum of Land Contract and Property Transfer Affidavit to be filed

with the appropriate county offices. Copies to be provided to Evergreen Home Loans.

- Schedule of Payments Received or Receipt of payments made by the buyer to Evergreen Home Loans.

Ex. 14. The letter included a note further stating, "Please contact Don as soon as possible to set up an apt to funding." Inman did not respond to this letter or otherwise seek clarification regarding the nature of the information requested.

47. On January 22, 2020, Inman sent Mervin a demand letter stating he was in default of the parties' agreement and demanding he vacate within 30 days. Ex. 15. This demand was never subsequently retracted by Inman. The Court notes that the original 90-day period beginning December 8, 2019, would have ended about March 8, 2020. Thus, giving Mervin 30 days to vacate as of January 22, 2020, Inman shortened the original 90-day period by about two weeks.

48. On February 17, 2020, Mervin's lender emailed Inman requesting:

- Current lien on property (your loan with Rich) filed with Kootenai County
- Current Invoice of outstanding balance left on Rich's loan with you

Ex. 16. Inman responded on March 13, 2020 stating:

The pay off on the mortgage loan connected to this property is \$129,559.16 and this does not include any funding for the back taxes or any cost incurred due to closing.

Id. This amount represented the balance owed on her personal loans secured by her grandmother's property on E. Ohio Match Road.

49. On March 18, 2020, Dan Cansino responded to Inman's email in an effort to move the financing along. In the course of these emails, Cansino addressed Inman's questions concerning the need to record "a lien with the county." In response, he offered to have a title officer contact her to "answer all of your Title questions if you need any more detail on that."

50. On April 14, 2020, Inman responded by stating, inter alia, "Just to be clear the

agreement to sell the property to Rich [Mervin] was a rent to own contract until he could successfully finance the property. Ken Inman and I are not a bank and we did not loan him any money toward a mortgage. The agreement references a mortgage that is in my deceased Grandmother name in which the property was originally financed. Rich was aware of this at the time of the agreement was signed. On December 8th Rich Mervin was notified he had 3 months to finance the property as the purchase price was stated in a previous email. It has now been 4 months and this has not been successfully purchased.” (Ex. 17).

51. Dan Cansino responded to this email with a lengthy email explaining the nature of the parties’ Agreement, the need to record the Agreement with Kootenai County and why the loan would be underwritten as a refinance as opposed to a purchase loan. *Id.*

52. A short time later, Dan Cansino sent Inman another email with the contact information for the title officer previously reference in his March 18, 2020 email. Ex. N; INMAN083.

53. Inman never followed sought further clarification from a title officer regarding this issue.

54. On at least four documented occasions after December 8, 2019 and before March 8, 2019, Inman was requested to provide an itemization of the amount owing under the parties agreement and cooperate to record a notarized copy of the Agreement with Kootenai County.

55. These reasonable requests were necessary to finish the underwriting process with Mervin’s lender.

56. Because of Inman’s refusal to cooperate with Mervin’s lender, he was not able to complete the loan process necessary to obtain the balloon payment due to Inman under the Agreement.

57. By letter dated April 30, 2020, Mervin notified Inman that she was in default of the parties' Agreement. At that point, Mervin ceased making any further monthly payments to Inman.

58. The Court finds the Agreement is not vague or ambiguous in its essential terms. The Agreement accurately and sufficiently describes the property. Ex. 2. The Agreement makes clear that the selling price for the property is \$150,000.00. *Id.* ¶¶ 3-4. The Agreement does not provide for any interest as the Agreement makes clear that the buyer make monthly payments of \$1,000.00 each month, with all monthly payments to be applied to the purchase price of \$150,000.00. *Id.* The Agreement makes clear that "a balloon payment [is] due in about 2 years." *Id.* ¶ 3. The Agreement begins on September 1, 2016. *Id.* ¶ 5.

59. Inman claims:

Mrs. Inman asserts that the Agreement identifies her indebtedness on the property that had an original balance of \$150,000, that this indebtedness was payable in monthly installments of \$1,000.60, and that there would be a balloon payment of \$150,000 due on the purchase price in two (2) years.

Amended Proposed Findings of Fact and Conclusions of Law 2, ¶ 9. This claim by Inman is directly refuted by the fact that the Agreement unambiguously states: "The seller [Inman] acknowledges monthly payments to be applied towards the purchase price of \$150,000." Ex. 2, ¶ 4.

III. CONCLUSIONS OF LAW.

58. The parties entered into an enforceable agreement for the purchase and sale of the Subject Property. The plain and unambiguous terms provided that the Subject Property was to be sold for the total price of \$150,000.00

59. The Agreement was structured as an installment land sale contract.

60. On December 8, 2019, the parties orally agreed that the balloon payment due

under the terms of the Agreement would be due within 90 days.

61. Inman had an obligation to cooperate in good faith with Mervin's lender Dan Cansino to facilitate his conventional loan necessary to tender the balloon payment due under the terms of the parties' Agreement.

62. Inman breached this obligation by ignoring Mervin and Casino's timely and reasonable requests for verification of the amount outstanding under the Agreement and to provide a notarized copy suitable for recording with the Kootenai County Recorder's Office.

63. In addition, Inman provided deliberately misleading information during this process, including but not limited to, an itemization of the balance owed on her personal mortgage as opposed to the parties' Agreement, a statement that the Agreement was a rent-to-own contract; and denying that any agreement existed for the purchase and sale of the Subject Property.

64. Under the circumstances, the Court finds that a tender would have been futile and the purchasers' performance is excused.

65. In addition to her breach, Inman's demand letter dated January 22, 2020 constitutes an anticipatory repudiation of her obligations under the Agreement.

66. Mervin and Thomas possess a vendee's lien which is secured by the Subject Property. The lien secures the principal sum of \$44,000.00 which is the amount of the payments they have tendered to date under the Agreement. The priority of this lien relates to September 1, 2016; the date of their first installment payment.

67. The Agreement is a valid contract. "A contract must be complete, definite and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty." *Lawrence v. Jones*, 124 Idaho 748, 750 (Ct. App. 1991). This Court finds this Agreement is complete, definite and certain in all its

material terms. While the Agreement does not specify who holds title, the conduct of the parties certainly indicates that title would remain with Inman until such time as Mervin made the balloon payment.

68. Because there is no ambiguity in the Agreement, the resolution of any ambiguity against the drafter of the Agreement (Mervin and Thomas), under *Kunz. V. Nield, Inc.*, 162 Idaho 432, 439, 398 P.3d 165, 182 (2017), is not applicable.

69. The Court specifically finds that Inman breached her duty of good faith in not providing information to Dan Cansino, and that but for Inman's bad conduct, Mervin and Thomas would have made the balloon payment prior to the March 8, 2020, deadline set by Inman.

70. Inman's bad conduct in accelerating (or shortening) the 90 day window Inman set on December 8, 2019, and Inman's bad conduct in not providing Dan Cansino the information he needed to provide Mervin a loan, constitutes anticipatory breach.

71. The parties' Agreement does not include a traditional forfeiture clause calling for forfeiture of the purchaser's installment payments. Given that such frequently operate as an unconscionable penalty, Idaho appellate authority both disfavors such clauses and requires judicial sales as an equitable remedy to avoid the unconscionable result of forfeiture.

Idaho courts have long observed "the general principle that 'forfeitures are abhorrent to the law and all intendments are against them.'" *Daniel v. O'Dell*, 129 Idaho 8, 11 (Ct. App. 1996). "In cases involving title retaining land sale installment contracts, the Court has sometimes been in disagreement concerning forfeiture of the purchaser's installment payments, although such procedures may be authorized in the contract."

Rickel v. Energy Sys. Holdings, Ltd., 114 Idaho 585, 587 (1988). "However, it is clear that a judicial foreclosure sale of the property is always an available remedy to a trial court and

may well be the most equitable remedy.” *Id.*; see also *Thomas v. Klein*, 99 Idaho 105, 106 (1978) (“In such actions, it is within the court’s equitable power to decree that the property be sold by judicial sale.”). In *Rickel*, the Idaho Supreme Court cited with approval an earlier concurring opinion from Justice Bistline where he remarked:

Primarily, though, I have always been of the view that in nearly all of these contract cases, the only practical solution, and a just one, is that equity settle the matter by a judicial sale. Generally when fairness and the equities of a case so dictate, courts have the inherent power to order that property subject to an installment land sale contract be sold by judicial sale.

Rickel, 114 Idaho at 587.

In *Thomas*, the Idaho Supreme Court ordered the following remedy:

The trial court shall direct that the proceeds of such sale be first applied toward the costs and expenses of the sale and then to satisfy the amount owed appellants, including unpaid principal indebtedness, accrued interest to date, attorney fees and costs of action including this appeal. The balance remaining after payment of these amounts, if any, shall be apportioned among respondents Swank, respondent Hiller and respondent Johnson as the trial court shall find them to be entitled.

Thomas, 99 Idaho 105, 107 (1978). In *Rickel*, the Court similarly exercised its equitable powers and ordered judicial sale of the real property. In doing so, it provided the vendees (purchaser) “a reasonable time, not to exceed 120 days, to remedy its default and tender such amount into court.” *Id.*, at 588. This is consistent with the limited right to cure default prior to nonjudicial sales under I.C. § 45-1506(12) (providing grantor and junior lienholders 115 day cure period prior to trustee’s sale).

72. The equitable doctrine of “unclean hands” affords the trial court considerable discretion to fashion relief relative to the conduct of both parties and to determine whether the party seeking equitable relief should in the light of all the circumstances be precluded from such relief. *Curtis v. Becker*, 130 Idaho 378 (1997); see also *Schmidt v. Huston*, 167 Idaho 320, 324, 470 P.3d 1129, 1133 (2016) (“the court may act *sua sponte* or of its own

motion.”). More specifically, a litigant may be denied equitable relief by a court on the ground that his conduct “has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy at issue.” *Gilbert v. Nampa School District No. 131*, 104 Idaho 137, 145, 687 P.2d 1, 9 (1983); *Hobbs v. First Interstate Bank of Idaho, N.A.*, 109 Idaho 990, 992, 712 P.2d 691, 693 (Ct.App.1985).

73. Since taking possession, Mervin and Thomas have expended significant amount of labor and expense performing necessary maintenance on the mobile home located on the Subject Property to make it habitable. In addition, they have cleared 2 ½ acres and developed a 240' x 120' horse arena for use with their horse training/board/farrier business. However, Mervin and Thomas have not presented sufficient evidence as to the value of any improvements they have made. However, the Court specifically finds Mervin and Thomas are entitled to the \$44,000.00 payments they have made to Inman, and if Inman cannot make that payment, then there is a lien on the Subject Property in the amount of \$44,000.00 and the Subject Property will be sold to provide that payment.

74. Because the Agreement is a valid contract, Mervin and Thomas must make the balloon payment of \$106,000.00 within 90 days of the entry of a judgment, and Inman must convey the Subject Property to Mervin and Thomas upon payment.

75. Alternatively, if Mervin and Thomas are unable to make the \$106,000.00 payment, then Mervin and Thomas have a lien in the amount of \$44,000.00 against the Subject Property owned by Inman.

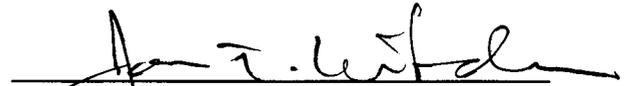
76. Mervin and Thomas are the prevailing parties in this litigation as compared to Inman.

IV. ORDER.

IT IS HEREBY ORDERED that counsel for plaintiffs prepare a judgment consistent with these Findings of Fact and Conclusions of Law. Plaintiffs have 90 days from the entry of that judgment to make the balloon payment to Inman. Alternatively, if

such payment cannot be made, plaintiffs may elect to receive \$44,000.00 from Inman (and such election by plaintiffs is automatic if they do not close on the balloon payment within 90 days of entry of the judgment), and if that \$44,000.00 cannot be paid by Inman within 90 days of that election by plaintiffs, then the Subject Property will be sold with proceeds of \$44,000.00 of that sale going directly to Mervin and Thomas.

Entered this 27th day of May, 2022.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 27 day of May, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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