Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-286

JANUARY TERM, 2018

David & Peggy Howrigan* v. Ronald & Lynn Paradis**	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 494-12-15 Frcv
		Trial Judge: Michael J. Harris

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal from the trial court's decision in favor of defendants on their complaint. We affirm.

I. Facts

This dispute involves the validity of a lease agreement with an option to purchase a farm. Defendants (Ronald and Lynn Paradis), husband and wife, own the farm as tenants by the entirety. Plaintiffs (David and Peggy Howrigan) sued defendants to enforce their claimed right to purchase the farm.[*] Following a three-day bench trial, the court granted judgment to defendants on plaintiffs' claims. It made the following findings. In late 2011, the parties orally agreed that plaintiffs would lease defendants' farm for $6000 per month with the option to purchase the farm for $1,000,000 contingent on securing financing. The lease payments were the same as those paid by a prior lessor. The parties agreed that the option to purchase would expire in May 2015.

As of January 2015, plaintiffs were aware that their option to purchase would expire either at the beginning or end of May. In February 2015, Mr. Howrigan and Mr. Paradis spoke about the option contract. Mr. Howrigan stated that he could close in April or early May but that he wanted a three-month extension, which would allow plaintiffs to also borrow for improvements. Mr. Paradis orally agreed to a three-month extension. Ms. Paradis was not part of this agreement. Mr. Howrigan took it on faith that both Mr. and Ms. Paradis would honor the three-month extension. Mr. Howrigan discussed the extension with his financial advisor/lender, who took steps to be ready to finalize any $1,000,000 purchase loan.

[*] Defendants filed counterclaims against plaintiffs, which are not at issue in this appeal. The court granted judgment to plaintiffs on the counterclaims. Defendants have also filed a cross-appeal. However, in their cross appeal they do not seek modification or reversal of the trial court's judgment but, rather, offer alternative grounds, rejected by the trial court, for affirming the trial court's judgment. Because we affirm the trial court's judgment on the grounds relied upon by the trial court, we need not address the myriad issues raised in defendants' "cross-appeal."

Ms. Paradis testified that later that spring or early summer, she told Mr. Howrigan that their son was returning home to take up farming. Mr. Howrigan denied learning this, but indicated that if the topic did come up, Ms. Paradis did not say that she would avoid selling the farm if she could. By the same token, Mr. Howrigan did not discuss with Ms. Paradis, between May and early August 2015, his understanding that an oral ninety-day closing extension had been granted. The court found that while Mr. Howrigan may have had such an understanding and relied on it in fact, Ms. Paradis, apart from any continued silence on the topic (assuming she was informed that Mr. Howrigan and her husband discussed an oral extension), did nothing to affirm or provide reasons to justifiably rely on the premise that she was agreeable to the extension. The court found that Ms. Paradis had not expressly, or through any clear conduct, authorized her husband to speak for her or to make decisions for her regarding the sale of the property and no evidence was presented that Ms. Paradis was present but remained silent when others may have made statements to that effect.

During June and July 2015, plaintiffs provided rent checks, which defendants cashed. The court found this consistent with either a ninety-day extension to the original lease and its purchase option or simple holdover tenant status after the prior lease and purchase option expired. By August 2015, Ms. Paradis made known to her husband that she did not want to sell the farm. That same month, defendants presented Mr. Howrigan with a proposed lease for the farm fields and farm buildings. The three-year lease would keep the farm in defendants' family. Mr. Howrigan responded by seeking to close on the property. He requested a loan commitment letter from his financial advisor/lender. A loan commitment letter, dated August 25, 2015, was provided, stating that the application to purchase the Paradis Farm was approved. The letter was silent as to the amount of the approved loan. It also mentioned an "application," but as the financial advisor and plaintiffs testified, there was no separate formal written application for the $1,000,000 loan. The letter stated that closing should occur within thirty to sixty days. Although plaintiffs' balance-sheet financial condition was demonstrably worse in the summer of 2015 than it had been in late 2011, the advisor insisted that he and his company were in fact ready and willing to make the $1,000,000 loan in the summer of 2015 had defendants gone forward with the sale.

At an August 2015 meeting of all parties, Ms. Paradis informed plaintiffs that she did not want to go forward with the sale and was no longer willing to sell the farm. Plaintiffs remained in possession of the farm, paying $6000 in monthly rent, with each party reserving their legal positions as to whether an enforceable sale agreement existed.

II. Legal Conclusions

Based on these and numerous additional findings, the court concluded that the parties' 2012 oral contract was enforceable outside the Statute of Frauds. It found that plaintiffs had made substantial changes in their family agricultural business in reliance on the oral option to purchase. The court also found that the parties considered the original May 2015 closing date as a "time-of-the-essence" term. See Alling v. C.D. Cairns Irrevocable Trusts P'ship, 927 F. Supp. 758, 764 (D. Vt. 1996) ("As a general rule, time is of the essence in an option contract." (citing A. Corbin, Corbin on Contracts § 1177, at 320 (1951 & Supp. 1994 (in an option contract, time is generally regarded as of the essence, even in equity)) (additional citations omitted)). The parties did not all agree to extend the closing date to August 2015. The court explained that Mr. Howrigan knew that Ms. Paradis was a joint owner of the farm, and he had previously recognized that she must be consulted and agree for the original deal to be finalized. Ms. Paradis had signed two documents relating to the original agreement. Because defendants held the land as tenants by the entirety, Mr. Paradis could not sever the tenancy by deed or alienate or encumber the property so as to bind Ms. Paradis. The court made numerous additional conclusions, which we discuss below. Ultimately, the court concluded that plaintiffs failed to complete their obligations under the oral option contract

by failing to close by May 31, 2015. They therefore were not entitled to specific performance. The court also rejected plaintiffs' equitable estoppel claim. This appeal and cross-appeal followed.

III. Plaintiffs' Arguments on Appeal

We begin with plaintiffs' arguments. Plaintiffs state that they do not challenge any of the court's findings. Instead, they challenge the trial court's rejection of their arguments concerning the extension of the option contract. Plaintiffs argue that the extension agreement was valid because: Mr. Paradis was Ms. Paradis' agent and he acted with apparent authority for her; Mr. Paradis, as agent, purported to bind Ms. Paradis to an extension of the option contract and Ms. Paradis ratified the extension and waived her right to object to it through her silence and acceptance of contract benefits; and defendants waived the deadline in the original option agreement by failing to notify plaintiffs that they were not agreeing to the requested extension and by continuing to accept monthly payments. Finally, plaintiffs argue that they are entitled to purchase the farm under the doctrine of equitable estoppel. They assert that where a principal attempts to repudiate a contract on the grounds that his or her agent acted beyond the scope of his or her authority, the principal's "culpable silence" may serve as a basis for estoppel. They ask this Court to evaluate the relevant factors and reach a conclusion in their favor. They suggest, apparently for the first time on appeal, that Vermont should adopt a more specific test to determine if "[e]quity will grant relief to a lessee who has failed to exercise an option within the required time." 49 Am. Jur. 2d Landlord and Tenant § 324 (2018). They cite cases acknowledging that "[t]he granting of equitable relief rests with the sound discretion of the trier of fact depending on the circumstances of each case." Carroll v. Daigle, 463 A.2d 885, 888 (N.H. 1983).

A. Standard of Review

Our standard of review is multifaceted. The question of whether the parties entered into a binding oral agreement is one of fact. Quenneville v. Buttolph, 2003 VT 82, ¶ 16, 175 Vt. 444; see also Bixler v. Bullard, 172 Vt. 53, 58 (2001) ("Intent to be bound is a question of fact to be determined at trial."). The court's findings will stand unless clearly erroneous. Quenneville, 2003 VT 82, ¶ 16. The interpretation of an unambiguous contract presents a question of law, which we review de novo. See John A. Russell Corp. v. Bohlig, 170 Vt. 12, 16 (1999) (explaining that question of whether contract is ambiguous presents question of law, as does interpretation of unambiguous contract; when ambiguity exists, interpretation of contract becomes question of fact to be decided by factfinder). Finally, we review the trial court's discretionary rulings, including whether to grant equitable remedies, for abuse of discretion. Quenneville, 2003 VT 82, ¶ 11. It is elemental, of course, that "[a]s the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997).

B. Specific Trial Court Rulings at Issue

As noted, the trial court considered and rejected plaintiffs' arguments. It found that neither Paradis ever said or did anything to lead the Howrigans to believe that Mr. Paradis had the authority to make contract decisions for Ms. Paradis. There were no express statements to that effect, no statements by either Paradis spouse that Mr. Paradis spoke for Ms. Paradis (or silence or acquiescence by her when any suggestion may have been made in her presence). The court found that the facts that Mr. Paradis might have told Ms. Paradis of his conversation with Mr. Howrigan about an extension, that Ms. Paradis told her husband she did not want to extend the contract, and that she did not reach out to the Howrigans, were not determinative. Ms. Paradis had no duty to act. She had created no misperceptions of her intent. Nor did she have reason to believe that any

information had been communicated to the effect that her actual or tacit agreement was included in Mr. Paradis' oral statements. The court found that plaintiffs, not Ms. Paradis, had the duty to determine Ms. Paradis' intent for the extension where her intent had not been stated by anyone.

The court reached the same conclusion even accepting Mr. Howrigan's testimony that in the spring and summer of 2015, Ms. Paradis did not affirmatively state that she did not want to go forward under the contract and that she also told Mr. Howrigan that her son was returning to Vermont to farm but she did not mention the Paradis farm. Under this version of events, Ms. Paradis made no statements to provide Mr. Howrigan a justifiable basis to conclude that she might be willing to extend the contract. At most, neither person raised the topic with the other. The court emphasized that Ms. Paradis had the right to make her own decisions. She had not led anyone on. She, like any of the contracting parties, had to be a knowing participant of any extensions. The court found no meeting of the minds by one of the key contracting parties. In a similar vein, the court found no facts showing a "course of dealing" where Mr. Paradis had the apparent authority to act as agent for Ms. Paradis. The court noted that although during the time defendants operated their farm, Ms. Paradis concentrated on the finances while Mr. Paradis concentrated on farm operations, that farm operation was closed down when the parties here entered their agreement. The court found that the past conduct did not correlate as to how defendants contracted to sell the lion's share of the remainder of their jointly owned real property. As previously noted, the court found that Mr. Howrigan knew from the beginning of the contract discussions that Ms. Paradis must agree and that her signature was sought out for the two contract-related documents generated in this case.

The court also rejected the assertion that there was some failure to act that amounted to a contract ratification under the principles stated in Lakeside Equipment Corp. v. Town of Chester, 173 Vt. 317, 326 (2002). That case held that one may allow an inferred ratification of a contract where the party not wanting to be bound failed to object within a reasonable time after learning what transpired or by accepting the benefits of the contract. In this case, however, the court found that as soon as plaintiffs let Ms. Paradis know that they wanted to extend the contract, or tendered a check referencing the expired option, she protested. It found that Ms. Paradis' receipt of $6000 monthly rent checks was not a benefit of the option to purchase but rather fair market value rental payments for plaintiffs' ongoing use and occupancy of the Paradis farm premises. Although defendants continued to accept rent, the underlying ongoing monthly lease agreement had not been terminated by either party and the payments were referable to the oral lease. It was undisputed that the first time the claimed option-to-purchase extension was mentioned to Ms. Paradis by plaintiffs in her presence, she immediately stated her position that the option had expired in May.

Finally, the court rejected plaintiffs' argument that defendants' post-May 2015 acceptance of monthly rent checks acted as a form of waiver, apparently referring to waiver of the initial deadline of May 2015. The court reiterated many of the same findings recited above.

C. Resolution of Plaintiff's Arguments

First, the record supports the court's finding that Mr. Paradis was not the agent of Ms. Paradis for purposes of the contract. A California case cited in Lakeside Equipment Corp., 173 Vt. at 324, is instructive on this point. As explained there, "[a]n agent is one who represents another, called the principal, in dealings with third persons." Magnecomp Corp. v. Athene Co., 257 Cal. Rptr. 278, 283 (Ct. App. 1989). "Proof of an agency relationship may be established by evidence of the acts of the parties and their oral and written communications." Id. (quotation omitted). "Ordinarily, the question of agency is one of fact; however, where the evidence is undisputed the issue becomes one of law." Id. In this case, the court made detailed findings to

support its conclusion that Mr. Paradis was not acting as Ms. Paradis' agent. These findings are set forth above and we do not repeat them here. Plaintiffs simply war with the court's assessment of the evidence. They contend that based upon their prior course of dealing with defendants, it was reasonable for them to believe that Mr. Paradis had the authority to act on Ms. Paradis' behalf in extending the option contract. They point to evidence that they believe supports their contention. The trial court found otherwise, however, and its decision is supported by the evidence. While plaintiffs disagree with the court's conclusion, they fail to show any error.

Because Mr. Paradis was not acting as Ms. Paradis' agent, we need not address plaintiffs' assertion that Ms. Paradis, as the principal, ratified her agent's actions after the fact. See Lakeside Equip. Corp., 173 Vt. at 325 (recognizing that agency relationship must be established before turning to question of ratification). We reject plaintiffs' remaining assertion that defendants waived the deadline in the original contract by "failing to notify" plaintiffs that they did not agree to an extension. As set forth above, the court found that Ms. Paradis' actions were inconsistent with waiver and its findings are supported by the evidence.

Finally, we turn to plaintiff's equitable estoppel claim. The trial court explained that its discussion about the enforceability of oral contracts outside the Statute of Frauds described how the doctrine applied in the land sale context. To the extent that plaintiffs were also asserting that they could pursue a classic four-element general equitable estoppel claim, the court rejected such claim. It concluded that plaintiffs failed to show that they had a justifiable right to rely on Mr. Paradis' oral acceptance of the oral lease extension request where plaintiffs took no measures to see if Ms. Paradis agreed to an extension. The court found that plaintiffs had no factual basis to justifiably believe that Mr. Paradis possessed some authority to speak for his equal co-owner of the property. Whatever Mr. Paradis' own intent and predilections as to extending the contract, the court found that plaintiffs knew he was speaking without his wife's authority and plaintiffs did not make further inquiries on that key issue.

We find no basis to disturb the court's decision. As we have explained,

> The elements of equitable estoppel are well established in our jurisprudence: (1) the party to be estopped must know the facts; (2) the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely to his or her detriment on the estopped party's former conduct.

In re Griffin, 2006 VT 75, ¶ 18, 180 Vt. 589.

The court found that Ms. Paradis did nothing to indicate that she agreed to an extension and that plaintiffs could not have reasonably believed that she did so. These findings are supported by the evidence. Again, plaintiffs disagree with the court's conclusion, but they fail to demonstrate error. Plaintiffs also fail to show that they asked the court below to grant them equitable relief based on a test not yet adopted in Vermont. We therefore do not address this argument. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). We find no basis to disturb the court's decision.

In light of our conclusion, we need not address defendants' argument in their cross-appeal that the court erred in concluding that the parties' agreement was enforceable outside the Statute of Frauds.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice