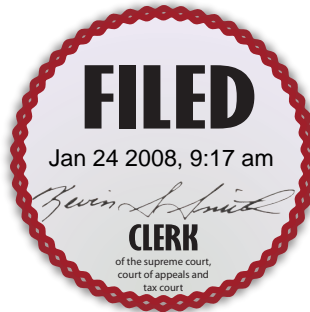


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

PATRICE S. TRAORE
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PATRICE S. TRAORE,
Appellant-Plaintiff,

vs.

SHERRY RIGHTMYER and
PREFERRED PROFESSIONAL, INC.,
Appellees-Defendants.

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No. 49A02-0706-CV-520

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Burnett Caudill, Magistrate
The Honorable Cynthia J. Ayers, Judge
Cause No. 49D04-0512-PL-49369

January 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Plaintiff Patrice S. Traore appeals from the trial court's judgment in favor of Appellee-Defendants Sherry Rightmyer and Preferred Professional, Inc. ("Defendants"). We affirm.

FACTS

On March 30, 2005, Traore contracted to purchase a property at 1024 E. Bradbury Street in Indianapolis from Sherry Wilkins. (Defendant's Ex. A; Plaintiff's Ex. 2). The purchase agreement specified that Traore would purchase the home for \$86,500 and submit \$500 in earnest money. (Defendant's Ex. A). Paragraph 4 of the purchase agreement provides, in part, that

[t]he listing broker shall deposit earnest money received into its escrow account within two (2) banking days of acceptance of this Agreement and hold it until time of closing the transaction or termination of this Agreement.... If the offer is accepted and Buyer fails or refuses to close the transaction, without legal cause, the earnest money shall be retained by Seller for damages the Seller has or will incur, and Seller retains all rights to seek other legal and equitable remedies.... Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith disbursement of earnest money in accordance with the Agreement and licensing regulations.

(Defendant's Ex. A).

In the end, after Traore was unable to secure financing for the purchase of the property due to a lack of job income, the sale never occurred, and Wilkins refused to authorize the return of the \$500 earnest money to Traore. (Tr. 19; Plaintiff's Ex. 2). Traore apparently filed a small claims action to regain his earnest money, and, after losing in small claims court, filed an appeal in Marion Superior Court. (Appellant's Br. 2). After a bench trial, the trial court ruled in favor of Defendants.

DISCUSSION AND DECISION

We need concern ourselves only with the first ground on which the trial court ruled in favor of Defendants, that they were not proper parties in interest. This case is, essentially, a suit alleging breach of the earnest money provisions of the purchase agreement between Traore and Wilkins. Traore, however, has not sued Wilkins, but, rather, Wilkins's real estate agent Rightmyer and the company for which she worked. "The essential elements of a breach of contract action are the existence of a contract, *the defendant's breach thereof*, and damages." *Rogier v. Am. Testing and Eng'g Corp.*, 734 N.E.2d 606, 614 (Ind. Ct. App. 2000) (emphasis added). Simply put, Defendants cannot have breached the purchase agreement with Traore because they were never parties to it. Consequently, the trial court correctly concluded that Defendants were not proper parties in interest.

The judgment of the trial court is affirmed.

BAKER, C.J., and DARDEN, J., concur.