# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| JAMES LUPINETTI,<br><br>Plaintiff-Appellant,<br><br>vs.<br><br>CARL CLAXTON,<br><br>and<br><br>LANE CLAXTON,<br><br>Defendants/Third-Party Plaintiffs-Appellees,<br><br>vs.<br><br>BEVERLY LUPINETTI,<br><br>Third-Party Defendant-Appellant. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | APPEAL NO. C-260009<br>TRIAL NO. A-2202938<br><br>*JUDGMENT ENTRY* |

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed in part and reversed in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs are taxed 50% to appellants and 50% to appellees.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

**To the clerk:**

**Enter upon the journal of the court on 10/16/2026.**

**Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.**

**By:** Jennifer A. Hensley
**Administrative Judge**

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# HAMILTON COUNTY, OHIO

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| JAMES LUPINETTI, | : | APPEAL NO. C-260009<br>TRIAL NO. A-2202938 |
| Plaintiff-Appellant, | : | |
| vs. | : | |
| CARL CLAXTON, | : | |
| | | *O P I N I O N* |
| and | : | |
| LANE CLAXTON, | : | |
| Defendants/Third-Party Plaintiffs-Appellees, | : | |
| vs. | : | |
| BEVERLY LUPINETTI, | : | |
| Third-Party Defendant-Appellant. | : | |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: October 16, 2026

*James R. Hartke*, for Plaintiff-Appellant and Third-Party Defendant-Appellant,

*Gail King Gibson*, for Defendants/Third-Party Plaintiffs-Appellees.

**KINSLEY, Presiding Judge.**

**{¶1}** This appeal arises from a dispute between plaintiff-appellant James Lupinetti, his wife, third-party defendant-appellant Beverly Lupinetti ("the Lupinettis"), and defendants/third-party plaintiffs-appellees Carl and Lane Claxton ("the Claxtons") over the possible sale of the Lupinettis' residence on Blue Meadow Lane ("Blue Meadow") to the Claxtons. In the wake of the Covid-19 pandemic, the Lupinettis moved out of the home, and the Claxtons moved in and made repairs and improvements to the property. But when the parties did not close on the sale, James Lupinetti sued to evict the Claxtons, and the Claxtons counterclaimed for breach of contract, specific performance of the agreement to sell the property, and unjust enrichment. After a bench trial, the trial court sided with the Claxtons on all issues, dismissing the eviction claim and awarding specific performance and escrowed funds to the Claxtons. In doing so, the trial court found that the parties had failed to commit their agreement for the sale of Blue Meadow to writing in violation of the statute of frauds, but that the Claxtons' renovations of the home were sufficient to partially perform the contract. The trial court also found that the Claxtons could not be evicted because they were not tenants and because they had not failed to pay rent.

**{¶2}** We reverse the trial court's judgment in part. Based on the evidence presented at trial, the Lupinettis were entitled to evict the Claxtons from their home, as no evidence supported the Claxtons' ongoing ability to occupy the premises. And the evidence presented at trial similarly did not support the trial court's determination that partial performance of the contract excused noncompliance with the statute of frauds. While the Claxtons did perform upgrades to the property, repairs alone are insufficient to establish partial performance. We accordingly conclude that there was not an enforceable contract between the Lupinettis and the Claxtons for the sale of

Blue Meadow and reverse the trial court's judgment on the Claxtons' counterclaims for breach of contract and specific performance.

**{¶3}** However, none of the Lupinettis' assignments of error challenge the trial court's judgment in the Claxtons' favor on their counterclaim for unjust enrichment. Nor could they. The Lupinettis stipulated below that the Claxtons spent $30,000 improving the kitchen at Blue Meadow and do not dispute on appeal that they upgraded other aspects of the residence as well. We accordingly affirm the trial court's judgment as to the unjust enrichment counterclaim and remand the matter to the trial court to determine the damages that the Lupinettis owe the Claxtons for the upgrades they made to Blue Meadow.

### *Background*

**{¶4}** This case began on April 14, 2022, when James Lupinetti sued in the Hamilton County Municipal Court to evict the Claxtons from Blue Meadow. In his complaint, he alleged that the Claxtons owed outstanding rent of $8,314.55. To avoid eviction, the municipal court ordered the Claxtons to pay a monthly rent bond of $1,662.91 into an escrow account maintained by the court.

**{¶5}** On May 9, 2022, the Claxtons answered James's eviction complaint and counterclaimed for breach of contract, specific performance, and unjust enrichment.[1] The counterclaim alleged that the parties had entered into an oral contract for the sale of Blue Meadow, that two letters of intent ("LOIs") outlined the terms of the sale, and that, pursuant to the LOIs, the Lupinettis were to sell Blue Meadow to the Claxtons within one year of May 2021. The Claxtons further alleged that they had made both mortgage payments towards the Lupinettis' Blue Meadow mortgage and substantial

[1] The Claxtons added Beverly Lupinetti as a third-party defendant to their counterclaim.

repairs and improvements to the property.

**{¶6}** The value of the Claxtons' counterclaims exceeded the jurisdictional limit for the municipal court. That court accordingly transferred jurisdiction to the Hamilton County Court of Common Pleas, which conducted a bench trial on the parties' respective claims.

**{¶7}** James Lupinetti testified first. James testified that he met Carl Claxton between 2010 and 2011 at the YMCA where the two played basketball. Over the years, the two men built a friendship. In 2019, James suffered financial hardship after his dump truck business failed. Carl, a silent investor in the dump truck business, loaned him $10,000, which James agreed to pay back with interest in the amount of $15,000.

**{¶8}** As James explained, by the summer of 2020, he and his wife had moved out of their home in Blue Meadow and into a condo. Blue Meadow then became vacant. At the time, the Lupinettis' mortgage was placed into forbearance as part of a Covid-19 program, but James was nonetheless worried that the property might slip into foreclosure. He confided his concern to Carl.

**{¶9}** Shortly thereafter, Carl told James that he and his wife Lane might be interested in buying Blue Meadow. In October 2020, while the property was still in mortgage forbearance, the Claxtons moved in. James considered them to be tenants.

**{¶10}** James testified that the forbearance period lasted until May 2021. Thus, between October 2020 and May 2021, the Claxtons lived in Blue Meadow rent-free, which James believed canceled out the $10,000 loan Carl had given him for his dump truck business. This was by agreement, so that the Claxtons could get their finances in order to ultimately purchase the property. Pursuant to this plan, James understood that the Claxtons would apply for a mortgage for Blue Meadow later in 2021. When the forbearance program expired in May 2021, and James's mortgage payments

became due again, James told Carl to pay the mortgage directly, which Carl did.

**{¶11}** In October 2021, James learned that the Claxtons had started to remodel the kitchen at Blue Meadow. This concerned him, because the Claxtons had not yet purchased the home, and he thought the upgrade was premature. James also became aware of other repairs the Claxtons had made to Blue Meadow, including painting and installing a deck. James believed the deck did not comply with the building code and should be taken down. Despite these issues, James testified that he was willing to pay the Claxtons $30,000 for the improvements they made to Blue Meadow.

**{¶12}** James testified that, in November 2021, he learned that the Claxtons were pre-approved for a $215,000 mortgage. He and Carl set the price for Blue Meadow based on this pre-approval figure. At one point James had asked $225,000 for the property, but the Claxtons said they could only afford $215,000. James testified that he could have sold the property for $265,000 to someone else. He did not do so because he felt an obligation to the Claxtons. Carl later offered $204,000, which James rejected.

**{¶13}** James agreed that the parties signed two LOIs about the sale, both of which expressly said they were nonbinding. One of the LOIs, dated December 8, 2021, indicated that the Claxtons would take possession of Blue Meadow on December 15, 2021. But that did not occur, because the Claxtons could not get approved for a mortgage as a result of their debt-to-income ratio. Carl told James that a Yukon truck the couple had purchased was the cause of the ratio imbalance, and James advised Carl to sell the truck to make the numbers work. James did not know if the Claxtons actually sold the truck.

**{¶14}** Shortly thereafter, Carl mentioned Ray Wilkins to James as a potential

buyer of Blue Meadow. However, James was not interested in selling the property to Wilkins. Wilkins had offered to privately finance the Claxtons' purchase of Blue Meadow, but James disclaimed knowing about this plan.

**{¶15}** The Claxtons did not pay the Blue Meadow mortgage from December 2021 to March 2022. Thus, in March 2022, James served the Claxtons with an eviction notice. James admitted that he failed to deliver the December 2021 mortgage statement to the Claxtons so that they could make the payment. This was because the mortgage had been sold to a different company. James testified that, since the mortgage had been sold, he did not know where to make the mortgage payment. He did not receive any information about this until late February 2022.

**{¶16}** Beverly Lupinetti testified that, in March 2020, she and James moved out of Blue Meadow and into a condominium that she had purchased. While she hoped that they could return to Blue Meadow, she did not believe that would be possible because of James's inability to work. Beverly acknowledged that she signed an LOI regarding the Claxtons' potential purchase of Blue Meadow.

**{¶17}** Lane Claxton, Carl's wife, testified that in May 2020, she and Carl discussed purchasing Blue Meadow from the Lupinettis after Carl explained to her that James could no longer afford the home. Lane understood that, pursuant to the agreement, she and Carl would take over James's mortgage payments as of May 2021. Lane and Carl also paid the utilities at Blue Meadow, except for the water bill. After they moved into Blue Meadow, she and Carl still owned their previous residence. According to Lane, the Claxtons were perfectly fine with the home they had been living in.

**{¶18}** Prior to moving into Blue Meadow, the Claxtons painted the home and repaired several floorboards, a hole in the wall, and the septic tank. In October 2020,

James also saw that Lane was remodeling the kitchen and supported her making the repairs. Lane testified that she would not have made any improvements to the property but for James's agreement to sell it.

**{¶19}** Lane acknowledged that from October 2020 through May 2021, the Claxtons did not make any payments to live at Blue Meadow. They began making mortgage payments in May 2021. The Claxtons also paid all of the utility bills for the property except for the water bill.

**{¶20}** Lane testified that, in November 2021, the Claxtons obtained mortgage pre-approval to purchase the property. The loan officer required a written document outlining the terms of the sale, so the Claxtons obtained an LOI from Wilkins, Carl's best friend from college and their daughter's godfather. Lane admitted she signed the LOI but had not read it. The LOI required a $2,000 deposit to secure the Claxtons' purchase of Blue Meadow, but Lane admitted the Claxtons had not paid it.

**{¶21}** According to Lane, as the closing approached, the Claxtons learned that the purchase of their truck negatively affected their debt-to-income ratio, and as a result, they could not close on the sale of Blue Meadow. The Claxtons then sold their truck to Wilkins to help bring their debt-to-income ratio down. But James then wanted $10,000 more for Blue Meadow than he had previously asked for the property.

**{¶22}** Lane testified that, in January 2022, the Claxtons obtained mortgage pre-approval for $250,000 through Rocket Mortgage. However, James called the Claxtons' loan officer and told her that the Claxtons had not been making their mortgage payments, which destroyed the financing. Wilkins then attempted to help the Claxtons purchase the property by taking out a second mortgage on his home and by drafting a real estate purchase agreement to buy the property himself. But James refused to sell Blue Meadow to Wilkins.

**{¶23}** On cross-examination, Lane admitted that the Claxtons never had a firm commitment for financing from a mortgage lender. Lane read into the record text messages she received from her loan officer about the status of the loan. Those messages indicated that, in order to approve the loan, the lender still required payoff information, including a paid-in-full statement for the Yukon truck, along with "updated bank statements, all pages, and updated proof of loss statements, [and] statements of the 2021 taxes that you have filed." The loan officer also texted that "[n]one of this can happen until I get truck payoff confirmation and I do not have that." Lane further explained that, at some point, the Claxtons tried to assume James's mortgage, but could not because James was $24,000 "in the hole."

**{¶24}** Carl Claxton testified that he gave James a job after James confided in him that he was about to lose his home. Carl later mentioned buying Blue Meadow, since James still owed him $10,000 from a previous loan. Together, James and Carl agreed that Carl would purchase Blue Meadow.

**{¶25}** According to Carl, the agreement was that James would sell Blue Meadow "at cost," meaning for the remaining mortgage balance, and that in return Carl would cancel the loan James owed him. Carl testified that he signed LOIs, which he obtained from Wilkins and did not personally review.

**{¶26}** Like Lane, Carl testified that the Claxtons made improvements to Blue Meadow. Carl agreed that James never objected to any of the improvements.

**{¶27}** Carl testified that the parties were scheduled to close on the property in December 2021 for a purchase price of $215,000. However, they did not close because the Yukon vehicle that the Claxtons owned precluded the Claxtons' mortgage financing. After this happened, Carl sold the truck to Wilkins to remove it from his credit so they could move forward with the closing. The Claxtons then obtained pre-

qualification from Rocket Mortgage, but James raised the purchase price by $10,000, which Carl rejected.

**{¶28}** Carl explained that, at this point, Wilkins agreed to loan the Claxtons the money to buy the property, putting his own home up as collateral to obtain the money. But James rejected the proposal. On February 22, 2022, James sent Carl a letter indicating that he would not sell Carl the property.

**{¶29}** Wilkins, the final witness, testified that he agreed to purchase the Claxtons' Yukon Denali for $46,000 to help with their debt-to-income ratio problem. Wilkins then sold the vehicle to a third party. Wilkins also provided the Claxtons with LOIs for the Blue Meadow transaction. He was unaware that the letters were nonbinding.

**{¶30}** Wilkins testified that, after he bought the Claxtons' truck, they obtained a second mortgage pre-approval. However, according to Wilkins, that loan did not close because James told the loan officer that the Claxtons missed mortgage payments. After that, Wilkins sold one of his properties to provide the Claxtons with funds for closing. However, James stopped answering Wilkins's phone calls. Wilkins also prepared a purchase agreement to buy Blue Meadow himself for $215,000, but James asked for more money and refused to sign. When Wilkins agreed to pay the additional amount, James did not respond.

**{¶31}** In addition to the witnesses' testimony, the parties entered the two LOIs as stipulated exhibits. The first was dated December 8, 2021, and was signed by James and Beverly Lupinetti and Carl and Lane Claxton. It described the "basic terms" of the "proposed purchase" of Blue Meadow, which included a "proposed purchase price" of $215,000. According to the December 8 LOI, the Claxtons were to deposit $2,000 of the $215,000 purchase price with the Lupinettis when the parties entered into a

binding purchase agreement. The LOI further contemplated that the Claxtons would take possession of Blue Meadow no later than December 15, 2021. It specifically stated that its terms do not and are "not intended to, contractually bind the parties." Rather, according to the December 8 LOI, "[t]he parties shall not be contractually bound unless and until they enter into a formal, written Purchase Agreement."

**{¶32}** The second LOI, dated December 30, 2021, was only signed by the Lupinettis, although it purported to describe an agreement between the Lupinettis and Wilkins. The December 30 LOI contained the same nonbinding agreement language as the December 8 LOI.

**{¶33}** At trial, the parties also entered factual stipulations into the record. Among them was a stipulation that the cost of the kitchen remodel undertaken by the Claxtons at Blue Meadow was $30,000. The parties also stipulated that the Claxtons lived at Blue Meadow from October 2020 to May 2021 without paying financial consideration. Lastly, the parties stipulated that the Lupinettis permitted the Claxtons to take occupancy of Blue Meadow in October 2020.

**{¶34}** On September 25, 2025, the trial court issued findings of fact, conclusions of law, and a judgment entry ruling in the Claxtons' favor on all claims. As to the eviction claim, the trial court dismissed the cause of action rather than reaching its merits. In doing so, it held that the Claxtons were not tenants, but rather intended purchasers. It also held that the Claxtons had not failed to pay rent for their time residing in Blue Meadow, because the parties agreed that the Claxtons would not pay rent during the mortgage forbearance period and because the Lupinettis did not instruct them where to direct the mortgage payment when the lender changed in December 2021.

**{¶35}** As to the Claxtons' counterclaims, the trial court only directly addressed

the breach of contract cause of action and the equitable remedy of specific performance. Regarding breach of contract, the trial court found that the doctrine of partial performance exempted the parties' noncompliance with the statute of frauds. Because the Claxtons had made substantial improvements to Blue Meadow, the trial court concluded that they had partially performed the parties' oral sales contract. The trial court then looked to the parties' LOIs to supply the terms of that oral contract, holding that "a contract to purchase the Subject Property at a purchase price of $215,000 exists between the parties, [was] formed when the Claxtons took exclusive possession of the Subject Property, and the LOIs executed in December 2022 [sic] are writings that, when construed together, set forth the terms of the contract." It also found that "the Lupinettis breached the contract by failing to act in good faith and terminating the contract on February 22, 2022 without providing the Claxtons with an opportunity to close."

**{¶36}** The trial court determined that specific performance was an appropriate equitable remedy for the Lupinettis' breach. It accordingly ordered the Lupinettis to convey Blue Meadow to the Claxtons for $215,000 within 60 days and further limited the proceeds that the Lupinettis could recover from the sale to $10,000. In addition, the trial court ordered the $24,962.91 the Claxtons had paid into escrow pursuant to the municipal court's rent bond order to be released to them. The trial court later modified this aspect of its judgment by way of a nunc pro tunc order to clarify that the funds it ordered released to the Claxtons were being escrowed by the municipal court.

**{¶37}** After the trial court issued its judgment, the Lupinettis filed a Civ.R. 59 motion for a new trial and, in a supplemental memorandum, argued for relief from judgment under Civ.R. 60(B) as well. The trial court denied both motions.

**{¶38}** The Lupinettis have appealed.

### *I. Analysis*

**{¶39}** The Lupinettis raise five assignments of error on appeal. First, they argue that the trial court erred as a matter of law in finding that the parties entered into an enforceable contract for the sale of real property based on the nonbinding LOIs. Second, they argue that the trial court erred in applying the doctrine of partial performance to excuse the application of the statute of frauds. Third, they claim that the trial court erred in dismissing the eviction claim and in awarding a remedy—specific performance—that the contract for sale did not contemplate. Fourth, they assert that the trial court erred in denying their Civ.R. 59 and 60 post-judgment motions. Lastly, they argue that the trial court entered an improper nunc pro tunc order. We address the second and third assignments of error first, as they are dispositive of this appeal.

#### *A. Statute of Frauds and Partial Performance*

**{¶40}** In their second assignment of error, the Lupinettis argue that the trial court erred in applying the partial performance exception to the statute of frauds. We agree.

##### *1. Standard of Review*

**{¶41}** Before addressing the merits of the Lupinettis' argument, we first must clarify the applicable standard of review. The Claxtons argue that we owe deference to the trial court's determination that partial performance of the parties' oral contract excuses the statute of frauds because the Lupinettis did not move for post-trial findings of fact under Civ.R. 52. The Lupinettis argue that the standard of review is de novo.

**{¶42}** The Claxtons are correct that we defer to the trial court's factual findings at this stage of the appeal, but not for the reason they state. In a civil appeal from a

bench trial, we apply the manifest weight standard of review to a trial court's factual findings. *See Zeedyk v. 5C's Drying, LLC*, 2026-Ohio-618, ¶ 33 (3d Dist.). Under that standard, and not under Civ.R. 52, we presume that the trial court's findings of fact are correct. *Id.* at ¶ 34.

**{¶43}** As to the standard of review applicable to the trial court's legal conclusions, there is a split of authority in Ohio on that point. Four appellate districts—the Second, Third, Fifth, and Tenth—treat the partial performance issue as a question of law and apply a de novo standard of review. *See Canter v. Garvin*, 2021-Ohio-99, ¶ 43 (3d Dist.) (summarizing cases). The Fourth District, however, treats the partial performance doctrine as an equitable one subject to abuse-of-discretion review. *See Bumgarner v. Bumgarner*, 2010-Ohio-1894, ¶ 26 (4th Dist.). We must therefore determine whether the partial performance question is a legal or equitable one in order to assess the appropriate standard of review.

**{¶44}** Questions of contract formation are generally treated as questions of law. *See N. Side Bank & Trust Co. v. Trinity Aviation LLC*, 2020-Ohio-1470, ¶ 15 (1st Dist.). Whether a contract comports with the statute of frauds is also a question of law. *See Stiles v. Bugno*, 2024-Ohio-1262, ¶ 32 (7th Dist.). Equity, in contrast, creates a remedy where legal principles are inadequate. *See, e.g., Civil Serv. Personnel Assoc. v. Akron*, 48 Ohio St.2d 25, 27 (1976). The doctrine of partial performance is more closely aligned with the legal question of contract formation than the equitable remedy that should apply if a contract is not formed. This is so because the statute of frauds operates to bar an existing contract from being enforced. By excusing the statute of frauds, the doctrine of partial performance restores the contract that was originally formed. It therefore determines the existence of a contract, not its remedy.

**{¶45}** For this reason, we align with the Second, Third, Fifth, and Tenth

Districts and review the partial performance question de novo.

### *2. Doctrine of Partial Performance*

**{¶46}** Because this dispute involves an agreement for the sale of land, the statute of frauds requires the agreement to be in writing. *See* R.C. 1335.05. Under the statute of frauds, "a writing must (1) identify the subject matter, (2) establish that a contract has been made, and (3) state the essential terms with reasonable certainty." *Canter*, 2021-Ohio-99, at ¶ 28 (3d Dist.). The essential terms are the parties, the subject matter of the contract, a price term, a quantity term, and consideration. *Id.* "Agreements that do not comply with the statute of frauds are unenforceable." (Cleaned up.) *6610 Cummings Court, LLC v. Scott*, 2018-Ohio-4870, ¶ 38 (8th Dist.).

**{¶47}** "An agreement that fails to satisfy the statute of frauds . . . may still be enforceable if the parties partially performed the agreement." (Cleaned up.) *Id.* at ¶ 41. To remove an agreement from the statute of frauds by partial performance, there must be "unequivocal acts by the party relying upon the agreement which are exclusively referable to the agreement." (Cleaned up.) *TLOA Acquisitions, LLC v. Unknown Heirs*, 2021-Ohio-3678, ¶ 17 (8th Dist.). Further, the party asserting partial performance must show that they detrimentally changed their position and that, as a result, it is impossible or impractical for the parties to return to the status quo. *Id.* "If the performance can reasonably be accounted for in any other manner or if plaintiff has not altered his position in reliance on the agreement, the case remains within the operation of the statute." *Canter* at ¶ 41.

**{¶48}** In determining the applicability of the partial performance doctrine, courts generally consider three factors: "(1) evidence of a change in possession; (2) payment of all or part of the consideration for the land; and, (3) improvements, alterations or repairs upon the land by the possessor." (Cleaned up.) *Monea v. Lanci,*

2009-Ohio-6446, ¶ 21 (5th Dist.). However, neither possession nor payment of consideration, standing alone, are sufficient to avoid the statute of frauds. *Id.* Generally, more than one factor is needed to establish the partial performance exception. *Areawide Home Builders v. Hershberger Constr.*, 1998 Ohio App. LEXIS 340, *12 (9th Dist. Feb. 4, 1998). And "the substantiality of a party's acts allegedly done in pursuance of a contract, or a detrimental change in the performing party's economic position caused by performance of the acts, do not, by themselves, support application of the doctrine of part performance." *Canter* at ¶ 46.

**{¶49}** In this case, the trial court found that the Claxtons improved Blue Meadow and that this fact by itself was sufficient to establish partial performance of the parties' oral contract for the sale of the residence. Because more than one factor is needed, this conclusion was incorrect. *Id.*

**{¶50}** Reviewing the question de novo, we consider whether other factors may have supported the partial performance exception. Relevant to our inquiry, the trial court made findings of fact that the Claxtons moved into the property in October 2020, that the parties agreed no rent or mortgage payments would be due while the Lupinettis' mortgage was in forbearance, that the Claxtons began paying monthly mortgage payments for the property in May 2022, and that the Claxtons paid the utilities for the property. In addition, the trial court found that the Claxtons made numerous improvements to the property, including installing a new septic tank and new appliances, that together totaled over $30,000. The Lupinettis do not challenge the correctness of these findings of fact. And under the manifest weight standard of review, we must presume their correctness. *See Zeedyk*, 2026-Ohio-618, at ¶ 34 (3d Dist.). The question is then whether these facts amount to partial performance of the parties' oral contract for the sale of Blue Meadow. Under prevailing case law, they do

not.

**{¶51}** As to the possession factor, it is undisputed that the Claxtons exclusively possessed the property beginning in October of 2020. From that time on, the Lupinettis no longer resided at Blue Meadow. This factor supports the partial performance exception. But exclusive possession alone is insufficient to constitute partial performance. *See Monea*, 2009-Ohio-6446, at ¶ 21 (5th Dist.).

**{¶52}** With respect to the payment factor, the undisputed evidence demonstrated that the Claxtons made no payments towards the purchase of Blue Meadow. Rather, they lived in the home from October 2020 to May 2021 rent-free. They then made payments directly to the Lupinettis' mortgage company from May 2021 to December 2021 and again beginning in May 2022. But these payments were more in the nature of rent than towards the actual purchase price. *See, e.g., Lutz v. Carter*, 1990 Ohio App. LEXIS 4342, *19 (2d Dist. Oct. 3, 1990) ("Part performance requires more than just possession and payment of rent to remove the agreement from the application of the Statute of Frauds."). In other words, the payments were never credited towards the Claxtons but rather reduced the Lupinettis' mortgage. The oral agreement between James and Carl contemplated that Carl would purchase Blue Meadow *from* James. But Carl never made any payments to James for the purchase price, nor did he pay the $2,000 deposit towards the purchase price that the parties contemplated would accompany a binding sales agreement. Moreover, the testimony at trial established that the parties intended for the Claxtons to live in Blue Meadow and pay the mortgage while arranging for financing for the purchase, which never happened. This factor therefore fails to support the partial performance exception to the statute of frauds. The Claxtons simply made no payments that counted as partial performance of the purchase agreement.

**{¶53}** Regarding improvements to the property, the trial court found, and the parties stipulated, that the Claxtons made improvements to the home exceeding $30,000 in value. However, this is not enough to warrant the application of the partial performance doctrine. For one, the improvements must be exclusively or unmistakably referable to the parties' purchase contract. *See Canter*, 2021-Ohio-99, at ¶ 46 (3d Dist.). The parties' contract included no terms under which the Claxtons agreed to improve the property. For another, some of the repairs—like painting and filling a hole in the wall—were merely cosmetic changes that a tenant might make to make the home more to their liking. *See id.* at ¶ 53 (suggesting that some improvements to real property are consistent with a tenant's rental status). And finally, the improvements are capable of being compensated through damages, removing the case from the partial performance exception. *See id.* ("[i]mprovements made by a purchaser under an oral contract must be of such a character as to be incapable of compensation in damages in order to constitute part performance of such contract sufficient to take it out of the operation of the statute [of frauds]"). James testified that he would agree to pay the Claxtons $30,000 for the kitchen, and the trial court ruled in the Claxtons' favor on their unjust enrichment claim for the value of the home remodeling. The Claxtons' improvements therefore fail to demonstrate partial performance of the parties' oral contract.

**{¶54}** As a result, the only factor established by the Claxtons to satisfy the doctrine of partial performance and to remove the alleged purchase contract from the operation of the statute of frauds is possession. However, possession alone is insufficient to warrant the exception. *See Monea*, 2009-Ohio-6446, at ¶ 21 (5th Dist.). Because there is no writing to satisfy the statute of frauds, the alleged oral contract for the sale of Blue Meadow is legally unenforceable. We accordingly sustain the

Lupinetti's second assignment of error in part and reverse the judgment of the trial court as to the Claxtons' counterclaims for breach of contract and specific performance.

**{¶55}** However, we affirm the trial court's judgment on the unjust enrichment counterclaim, as the Lupinettis raise no arguments addressed to this specific aspect of the outcome below. The trial court's judgment did not provide a remedy for the unjust enrichment counterclaim, which was based on the upgrades the Claxtons made to Blue Meadow. Thus, we remand the cause to the trial court to establish the damages the Lupinettis owe the Claxtons for the improvements to the property.

**{¶56}** The Lupinettis' second assignment of error is therefore sustained in part and overruled in part. We reverse the trial court's judgment as to the breach of contract and specific performance counterclaims, affirm its judgment as to the unjust enrichment counterclaim, and remand the matter to the trial court to calculate damages.

### *B. Eviction*

**{¶57}** In their third assignment of error, the Lupinettis argue that the trial court erred by awarding an improper equitable remedy. They also challenge the trial court's dismissal of the eviction claim, arguing that the Claxtons could be evicted for their failure to pay rent. Our disposition of the second assignment of error renders the Lupinettis' arguments about the specific performance remedy moot, and we decline to address them. Thus, our review of the Lupinettis' third assignment of error focuses on whether the trial court properly dismissed the eviction claim.

**{¶58}** We review the judgment of the trial court following a bench trial under the manifest weight standard and "determine whether the evidence on each element satisfies the burden of persuasion." (Cleaned up.) *Price v. Brooks*, 2022-Ohio-2800,

¶ 9 (1st Dist.). Under this standard, an appellate court weighs the evidence, considers the credibility of the witnesses, and determines whether the finder of fact clearly lost its way and created a manifest miscarriage of justice in resolving the conflict. *Id.* at ¶ 10.

**{¶59}** The trial court dismissed the Lupinettis' eviction claim—rather than issuing judgment in the Claxtons' favor—based on two conclusions. First, the trial court determined that the Claxtons were not tenants. Rather, the trial court characterized the Claxtons as prospective purchasers who lived in the property pursuant to their agreement with James to pay the mortgage after the forbearance period expired. Second, the trial court concluded that the Claxtons did not breach that agreement because the Lupinettis failed to provide the mortgage payment information when the mortgage was sold to a new provider in December 2021. On both accords, the trial court's decision was not supported by the manifest weight of the evidence.

**{¶60}** As to the question of whether the Claxtons were tenants at the property, the evidence at trial showed they clearly were. Pursuant to R.C. 5321.01, a tenant is "a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others." What constitutes a "rental agreement" under this definition is construed broadly, and *any* agreement or lease, written or oral, which establishes the terms of occupancy and amount of rent will suffice. *See* R.C. 5321.01(D). For example, an oral agreement to exclusively occupy a house in exchange for paying the utilities and property taxes is sufficient to create a tenancy. *See Treen v. Treen*, 2026-Ohio-1927, ¶ 9 (3d Dist.); *Ramsdell v. Ramsdell*, 2013-Ohio-409, ¶ 15 (6th Dist.).

**{¶61}** The evidence at trial established that the Claxtons moved into Blue Meadow and exclusively occupied the residence as of October 2020. By Lane's own

testimony, they paid the utilities at the property. Lane and Carl agreed that the terms of the agreement required them to pay James's mortgage payments when his forbearance period expired in May 2021. The oral agreement for exclusive occupancy, secured by the Claxtons' agreement to pay the utilities and mortgage payments, established a tenancy in Blue Meadow. *See Treen* at ¶ 9.

**{¶62}** In addition, the trial court's determination that the Claxtons did not breach the payment term of the oral agreement to occupy Blue Meadow is not supported by the manifest weight of the evidence. According to that agreement, the Claxtons agreed to pay the Lupinettis' mortgage after the forbearance period expired in May 2021. Notably, that date occurred well before the anticipated sale of Blue Meadow in December 2021. The Claxtons knew the amount of the monthly payment, because they paid it from May 2021 to November 2021, and they knew how to contact James to provide payment to him directly. At no point did James agree for the Claxtons to live in his home rent-free after May 2021. The evidence unequivocally establishes that the Claxtons did not pay monthly rent, as the parties had agreed they would, from December 2021 to May 2022. Therefore, James Lupinetti is entitled to evict the Claxtons.

**{¶63}** We accordingly sustain the Lupinettis' third assignment in part, reverse the judgment of the trial court as to the eviction claim, and remand the matter to the trial court to determine the appropriate relief. We decline to review the third assignment of error in all other respects, as our disposition of the second assignment of error renders the Lupinettis' arguments moot.

### *II. Conclusion*

**{¶64}** Because the trial court erred in finding that the alleged oral contract between the parties could be removed from the statute of frauds under the doctrine of

partial performance, the Lupinettis' second assignment of error is sustained in part, and the judgment of the trial court is reversed as to the Claxtons' counterclaims for breach of contract and specific performance. We affirm the trial court's judgment as to the Claxtons' unjust enrichment claim, as the Lupinettis raised no assignments of error challenging that aspect of the decision below. Therefore, the second assignment of error is overruled as to that claim.

**{¶65}** We also hold that the trial court erred in dismissing the eviction claim because the trial court's judgment was not supported by the manifest weight of the evidence. We accordingly sustain the Lupinettis' third assignment of error in part and reverse the judgment of the trial court on the eviction claim. The remainder of the appeal is moot, and we decline to address it.

**{¶66}** The matter is remanded to the trial court for further proceedings consistent with this opinion.

Judgment affirmed in part, reversed in part, and cause remanded.

**CROUSE** and **NESTOR, JJ.,** concur.