STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2165

Charlotte Saclolo,
Appellant,

vs.

Gary L. Shaleen,
Respondent.

Filed July 18, 2011
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CV-08-15093

Jeffrey H. Olson, Eden Prairie, Minnesota (for appellant)

Charles W. Hollenhorst, Nicklaus, Braaten & Hollenhorst, P.L.L.C., Chaska, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

In this appeal involving a real-estate transfer, appellant-buyer challenges the district court's denial of her motion to amend the complaint and the entry of summary judgment in favor of respondent-seller. Because we addressed the denial of the motion to amend in a prior appeal, we do not revisit that issue here. And because the district court properly determined that the statutory limitations period expired before the complaint was filed, we affirm the entry of summary judgment.

FACTS

Appellant-buyer Charlotte Saclolo and respondent-seller Gary L. Shaleen entered two purchase agreements for a residential property in Mound: an original agreement on January 20, 1999, and an amended agreement on July 8, 1999. The agreed purchase price was $53,500, which appellant was to pay, in part, by assuming an existing mortgage on the property and by providing respondent with a purchase-money mortgage. The transaction closed on August 4, 1999.

Appellant fell behind on her mortgage payments in 2006 or 2007, and respondent foreclosed on the purchase-money mortgage. On December 21, 2007, respondent purchased the property at a sheriff's sale. He is currently the fee owner of the property.

Following the foreclosure sale, but before expiration of the redemption period, appellant sued respondent for breach of the purchase agreement, fraudulent misrepresentation, consumer fraud, and fraud. Appellant sought rescission of the purchase agreement and restitution or money damages. Appellant asserted that in the

purchase agreement respondent represented that he had "not received any notice from any governmental authority as to condemnation proceedings, violation of any law, ordinance or regulation." Appellant alleged that this representation was false and misleading because, prior to appellant's purchase of the property, the City of Mound had issued three inspection notices regarding the property, cataloguing a number of building code violations and citing the lack of necessary permits.

Appellant also moved for a temporary restraining order (TRO) enjoining the expiration of the foreclosure redemption period until her claims could be determined. The district court denied appellant's motion for a TRO and dismissed appellant's fraud claims on the grounds that they were barred by the statute of limitations and pleaded with insufficient particularity. Appellant appealed the district court's denial of a TRO.

While the appeal was pending, appellant moved to amend the complaint to add claims of breach of warranty and usury. In response, respondent moved for judgment on the pleadings under Minn. R. Civ. P. 12.03. The district court denied appellant's motion to amend the complaint on the grounds that appellant's breach-of-warranty and usury claims were brought outside the statutory limitations period, or alternatively, because they could not survive summary judgment. But the district court declined to rule on respondent's motion for judgment on the pleadings because the denial of appellant's motion for a TRO was before this court on appeal.

We affirmed the district court's denial of a TRO. *Saclolo v. Shaleen* (*Saclolo I*), No. A08-1384 (Minn. App. June 9, 2009). Thereafter, the district court dismissed with prejudice all of appellant's claims, presumably acting on respondent's pending motion for

judgment on the pleadings. Appellant filed an appeal challenging the dismissal of her fraud and breach-of-purchase-agreement claims and the denial of her motion to amend the complaint to state claims for breach-of-warranty and usury.

We reversed the dismissal of appellant's fraud claims. *Saclolo v. Shaleen* (*Saclolo II*), No. A09-1502, at 4–7 (Minn. App. Mar. 24, 2010) (order opinion). But we affirmed the dismissal of appellant's breach-of-purchase-agreement claim because appellant did not brief the issue on appeal and therefore waived it. *Id.* at 7. We also affirmed the district court's denial of appellant's motion to amend the complaint because appellant offered no legal argument or authority to support the contention that her breach-of-warranty and usury claims could withstand summary judgment. *Id.* at 7–9. Appellant did not file a petition for review.

On remand, respondent moved for summary judgment on appellant's remaining fraud claims. These claims were based on respondent's representation that he had not received any condemnation or violation notices, even though he had received inspection notices from the City of Mound on July 12, 1995, August 28, 1997, and May 4, 1999. The 1995 notice stated "demolition—no visible permit." The 1997 notice indicated that there was "no permit" and noted "repair in progress," including "new first floor being installed[,] dilapidated structure[,] needs new roof[,] rotted facia[, and] new stairway installed." The 1999 notice stated that no action had been taken on the building permit, that work had not been done for some time, and that there were "numerous rehabilitation issues," including "roof, windows, doors, foundation, siding, gas meter unsecured-hazard, plumbing, electric issues[, and] code violations."

Respondent submitted an affidavit in which he stated that appellant approached him in 1999 about purchasing the property and that she visited the property several times prior to the closing date. Respondent also stated that, during appellant's visits, (1) the house had been lifted off the foundation walls with steel jacks to replace and repair the foundation walls and windows, heating ducts, water pipes, and electrical services; (2) the front foundation wall was entirely missing, the two side walls were partially missing, and all of these walls were in states of reconstruction; (3) the plumbing was disconnected between floors, the electrical wiring to the second floor was disconnected, the gas lines to the second floor were disconnected, the heating air ducts had been removed, and the furnace was not connected to any heating ducts; and (4) the outside gas service meter panel was lying on the ground because the foundation walls were missing or being repaired. According to respondent, appellant asked him to stop working on the house so that she could minimize the purchase price and complete the remodel to her own specifications.

In response, appellant filed an affidavit in which she stated that she "disputes and denies or partially disputes and denies" most of respondent's allegations. Appellant admitted that she contacted respondent about purchasing the property, but she did not admit visiting the property several times before the closing. Appellant also admitted that respondent's statements about the condition of the property were "partially true." She identified the following omissions in respondent's affidavit: (1) there were no permits for the work being done; (2) she did not see new materials being used anywhere; and (3) the outside gas-service meter was still connected to the furnace in an unsafe manner.

Appellant did not admit that she asked respondent to cease work in order to minimize the purchase price and allow her to complete the remodel herself, as asserted by respondent.

Appellant stated that she first learned of the notices from the City of Mound in April 2007, when the city sent her a letter following up on recent exchanges about expired building permits and building code violations at the property. Appellant further stated that she would not have purchased the property if respondent had disclosed the inspection notices from the city. Appellant estimated that the disclosure would have reduced the purchase price by at least $29,000.

The district court granted summary judgment on appellant's fraud claims, concluding that they were barred by the applicable statute of limitations because appellant knew about the condition of the property when she purchased it in 1999. The district court also reasoned that, in the alternative, appellant could not succeed on the merits because she had produced no evidence that respondent misrepresented a material fact and because she had not produced evidence of any damages suffered as a result of any alleged misrepresentation by respondent. This appeal followed.

D E C I S I O N

I.

Appellant challenges the district court's denial of her motion to amend the complaint to state claims for breach of warranty and usury. Before reaching the merits of appellant's argument we must examine whether this issue is properly before us. Respondent contends that we decided this issue in *Saclolo II* and cannot reexamine it in this appeal. We agree.

"Law of the case applies when the appellate court has ruled on a legal issue and remanded for further proceedings on other matters." *Sigurdson v. Isanti Cnty.*, 448 N.W.2d 62, 66 (Minn. 1989). Issues determined in the first appeal cannot be relitigated by the district court nor reexamined by the appellate court. *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987). But issues that were not determined in the first appeal may be relitigated on remand and examined in a second appeal. *Id.*

In *Saclolo II*, appellant challenged the denial of her motion to amend the complaint to include the claims she raises in her current challenge to the denial of her motion to amend. *Saclolo II*, No. A09-1502, at 8–9. But because appellant provided no legal analysis or support for her argument, we concluded that appellant had "fail[ed] to demonstrate that the district court abused its discretion by denying her motion to amend" and that the district court's order should therefore be "affirm[ed] in part." *Id*. at 9. We have thus already adjudicated the appeal of the denial of appellant's motion to amend the complaint. *See id.* at 8–9.

Appellant contends that in *Saclolo II*, we expressly "decline[d]" to address appellant's argument regarding the denial of the motion to amend. *Id.* Appellant misinterprets our use of the word "decline." We did not decline to address appellant's argument; rather, we declined to reach the merits because appellant's argument was not adequately supported by legal authority or analysis. *See id.* The absence of a sound legal justification for reversing the district court's decision compelled us to affirm. *See id.* Having done so, we will not reexamine that decision in this appeal.

II.

On appeal from summary judgment, this court reviews de novo whether genuine issues of material fact exist and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). The evidence is viewed in the light most favorable to the party against whom summary judgment was granted, and all reasonable inferences are drawn in that party's favor. *Id.* The court is not to decide issues of fact but is instead to determine whether a genuine issue of material fact exists. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

Summary judgment is proper "when the nonmoving party fails to provide the court with specific facts indicating that there is a genuine issue of fact." *Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). Moreover, to survive summary judgment, the nonmoving party "cannot rely on mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial." *Id.* While we must view the evidence in the light most favorable to the nonmoving party, "the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented." *DLH*, 566 N.W.2d at 70.

Appellant contends that the district court erred by granting summary judgment on her fraud claims because there is a genuine issue of material fact as to the date on which she should have discovered respondent's failure to disclose the inspection notices issued by the City of Mound. Respondent argues that the district court properly granted

summary judgment because it is undisputed that appellant was aware of the condition of the property at the time she purchased it. Minnesota law establishes a six-year statute of limitations "for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." Minn. Stat. § 541.05, subd. 1(6) (2010). The plaintiff bears the burden of alleging and proving that she did not discover the facts constituting fraud more than six years before the commencement of the action. *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 684 (Minn. App. 2010). The facts constituting fraud are deemed to have been discovered when they could and should have been discovered with reasonable diligence. *Id.* Ordinarily, a plaintiff's diligence is a question of fact, but fact questions may be resolved as an issue of law "[w]here the evidence leaves no room for reasonable minds to differ on the issue." *Id.* at 684–85 (quotation omitted).

The district court concluded that, as a matter of law, appellant should have discovered the facts constituting respondent's alleged fraud at the time of purchase. We agree. Appellant states that she did not learn of the inspection notices until she received a letter from the City of Mound in April 2007. But she provides no explanation for why she should not have learned about the inspection notices at the time of purchase. The undisputed facts show that at that time, appellant knew that the property was in a state of disrepair, and she was aware that respondent lacked permits for work on the property. Based on this knowledge, and particularly in light of the extent of the observable disrepair, appellant was on notice that government entities could have cited respondent for code violations or the lack of permits and that, were it a material concern, it would be

prudent to investigate whether any such citations had been issued. Under the circumstances, the district court did not err by concluding that appellant's claims were brought outside the limitations period and by entering summary judgment in favor of respondent.

Affirmed.