STATE OF MINNESOTA
IN COURT OF APPEALS
A11-474

M & I Marshall & Ilsley Bank,
Respondent,

vs.

AKM Convenience, LLC,
Defendant,

Dawn R. Martinson,
Appellant.

Filed August 22, 2011
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-CV-09-9247

Kevin J. Dunlevy, Diann L. Dunlevy, Beisel & Dunlevy, P.A., Minneapolis, Minnesota (for respondent)

Dawn R. Martinson, Duluth, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the district court's grant of summary judgment to respondent bank on its breach of contract claim, arguing that the district court (1) abused its

discretion in denying appellant's motion for additional time to file her answer and counterclaim and (2) erred in granting summary judgment because there are genuine issues of material fact. We affirm.

FACTS

On December 20, 2007, AKM Convenience, LLC, through its president, appellant Dawn Martinson, executed a promissory note for a $350,000 revolving line of credit from respondent M&I Marshall & Ilsley Bank. The note indicates a maturity date of December 20, 2008, and provides: "Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on December 20, 2008." The note lists various events of default, including failure to "make any payment when due." The note also states that M&I "may renew or extend (repeatedly and for any length of time) this loan." AKM also executed a commercial security agreement, and Martinson executed a personal guaranty.

AKM drew the entire balance of the credit line and did not repay any of the outstanding principal on or before December 20, 2008. Early in 2009, M&I representatives corresponded with Martinson regarding renewal of the loan, listing the AKM financial documents M&I needed in order to do so. AKM did not provide the documents at that time. M&I declined to renew the loan, declared AKM to be in default, and demanded payment in full from AKM and Martinson. Neither AKM nor Martinson paid any of the outstanding amount.

On December 31, 2009, M&I initiated this proceeding against AKM and Martinson. Neither AKM nor Martinson filed a responsive pleading, and no attorney

filed an appearance for either defendant. After a series of discovery disputes between M&I and Martinson, M&I moved for summary judgment in October 2010. AKM did not respond to the motion. Martinson filed a pro se memorandum opposing summary judgment and requested "that the Court find AKM's interest aligned with Martinson's interest." Martinson also sought a continuance in order to obtain an expert affidavit supporting her claim that she relied on the oral statements of M&I representatives because she has a learning disability that prevented her from reading and understanding the loan documents.

At the November 3 motion hearing, the district court observed that both M&I and Martinson addressed the substance of Martinson's counterclaims, but that neither AKM nor Martinson had filed an answer and counterclaim. And neither defendant filed a pleading while the summary-judgment motion was pending. However, on November 5 Martinson filed a "motion for leave to file Answer and Amended counterclaim." The district court did not hear Martinson's motion but granted M&I summary judgment against Martinson and AKM. This appeal by Martinson follows.

D E C I S I O N

I. The district court did not abuse its discretion by not permitting Martinson to file an untimely answer.

"A [district] court's action permitting a party to serve or file a pleading after expiration of a time limit is discretionary and will not be reversed unless the discretion has been abused." *Coller v. Guardian Angels Roman Catholic Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980). A district court does not abuse its discretion by denying

an extension to file a pleading that asserts a claim that could not survive summary judgment. *See Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 332 (Minn. 2004) (stating that a district court should not permit an amendment to a pleading that would add a claim that could not survive summary judgment).

Martinson argues that the district court abused its discretion by effectively denying her motion to file an answer and counterclaims. We disagree. First, we agree with the district court's conclusion that Martinson's failure to file a responsive pleading by the time of the hearing, more than ten months after M&I initiated the action, violated Minn. R. Civ. P. 5.04's requirement to file all papers "within a reasonable time after service." *See Clifford v. Bundy*, 747 N.W.2d 363, 367 (Minn. App. 2008) (agreeing that the time period for filing under rule 5.04 "should normally be measured in days or weeks, not months or years" (quotation omitted)). Refusing to permit Martinson's filing at such a late date was within the district court's broad discretion. Second, the district court correctly determined that Martinson's counterclaims could not survive summary judgment because, as discussed in greater detail below, Martinson identified no material fact supporting the counterclaims she sought to assert. Accordingly, the district court did not abuse its discretion by denying Martinson's November 5 motion to permit late filing of her answer asserting meritless counterclaims.

II. The district court did not err by concluding that there are no genuine issues of material fact as to Martinson's liability under the guaranty.

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03; *see Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). On an appeal from summary judgment, we review the district court's application of the law de novo and determine whether there are genuine issues of material fact by viewing the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Martinson's liability is governed by two related contracts—the guaranty and the promissory note it secured.[1] In interpreting written contracts, our primary goal is "to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). Absent ambiguity, we ascertain the parties' intent from "the four corners of the instrument," *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004), giving contract language "its plain and ordinary meaning," *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

The promissory note and guaranty are unambiguous. In the promissory note, AKM agreed to a one-year line-of-credit loan to be repaid in full, with interest, on the

[1] Insofar as the note and guaranty are related contracts and Martinson's liability under the guaranty depends on AKM's liability under the note, the district court properly considered Martinson's arguments regarding AKM's liability in deciding Martinson's liability. However, the district court correctly concluded that Martinson could not file pleadings or argue on behalf of AKM. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992) (stating that "a corporation must be represented by a licensed attorney when appearing in court, regardless of whether the person seeking to represent the corporation is a director, officer or shareholder").

December 20, 2008 maturity date, unless M&I renewed the note. And in the guaranty, Martinson promised to make "full and punctual payment and satisfaction of the Indebtedness of [AKM] to [M&I]" in the event AKM failed to pay under the promissory note. The only reasonable interpretation of these contracts is that, absent renewal of the note, AKM must pay all outstanding principal and interest to M&I on December 20, 2008, and Martinson must pay any portion of that amount that AKM fails to pay.

The undisputed evidence establishes that both AKM and Martinson breached their contractual obligations. AKM did not pay the principal and interest due under the note or provide M&I the financial documents necessary to renew the note, and M&I did not renew the note. Following AKM's default, M&I demanded payment in full from Martinson pursuant to the guaranty. She refused. Because these undisputed facts establish that Martinson breached her contractual obligation to pay M&I, M&I is entitled to judgment as a matter of law.

Martinson argues that there are fact issues as to the enforceability or terms of the note (and, by extension, the guaranty) because an M&I representative promised that AKM would be given a seven-year loan. This argument, which is the basis for all of her counterclaims, is not persuasive.

First, Martinson's argument ignores the unambiguous language of the promissory note and relies on inadmissible parol evidence. *See Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 713 (Minn. 1985) (stating that "when parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement"). Martinson asserts that parol evidence should be considered because she is

claiming fraud. *See Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. App. 1985) (stating that the parol-evidence rule does not "exclude evidence of fraudulent oral representations by one party which induce another to enter into a written contract"), *review denied* (Minn. Nov. 18, 1985). We disagree. A party is not "entitled to rely upon oral promises which were directly contradictory" to the terms of a written agreement. *Dahmes v. Indus. Credit Co.*, 261 Minn. 26, 35, 110 N.W.2d 484, 490 (1961). The promissory note memorializes a one-year line-of-credit loan to be repaid in full, with interest, on the December 20, 2008 maturity date, unless M&I renews the note. An oral promise of a seven-year loan, without any renewal requirement, is contrary to the note and, therefore, does not warrant consideration under the fraud exception.

Second, even if we consider the parol evidence on which Martinson relies, Martinson has not presented "specific facts showing that there is a genuine issue for trial." *See* Minn. R. Civ. P. 56.05. Martinson did not submit a sworn affidavit stating that M&I promised AKM a seven-year loan free of any renewal obligation, and none of the documents on which she relies demonstrates such a promise. Rather, all of the e-mails, memoranda, bank forms, Martinson's responses to interrogatories, and Martinson's admissions on record are consistent with the express terms of the promissory note—they uniformly indicate an agreement to a one-year line-of-credit loan that is subject to renewal for up to seven years, dependent on AKM's provision of additional financial information. Accordingly, we conclude that the district court did not err by granting summary judgment in favor of M&I on Martinson's guaranty.

Affirmed.