STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1032

A&M Market LLC,
Respondent,

vs.

West Side Groceries, Inc., et al.,
defendants and third party plaintiffs,
Respondents,

vs.

Stryker Market, LLC, et al.,
third party defendants,
Appellants.

Filed May 13, 2013
Affirmed in part, reversed in part, and remanded
Ross, Judge

Ramsey County District Court
File No. 62-HG-CV-11-1623

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Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Chutich, Judge.

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

ROSS, Judge

Three disputing parties appeal after a trial over their interests in real property. Former commercial-property owners Khaffak and Tawfiq Ansari appeal from the district court's finding that they breached the terms of their lease with tenant Hamza Abualzain when they withheld information he needed to exercise his contractual right of first refusal to purchase the property before they sold it to A&M Market. New owner A&M Market argues that the district court erred by holding that the antimerger clause in the quitclaim deed it received from the Ansaris is not effective and that it therefore could not foreclose its mortgage on the property. And Abualzain argues that the district court erred by denying his posttrial motions for a corrected remedy. Because the evidence supports the district court's finding that the Ansaris withheld information necessary to allow Abualzain the opportunity to exercise his right of first refusal, we affirm in part. But we reverse in part and remand because the district court failed to recognize that A&M Market had no contractual obligation to provide the information to Abualzain; ordered unsuitable specific performance; erroneously construed the quitclaim deed's antimerger clause and also failed to address whether the release of the Ansaris' debt terminated the mortgage; and erred by finding that the Ansaris and A&M Market were unjustly enriched.

FACTS

In March 2011, Khaffak and Tawfiq Ansari tried to sell their convenience store business. Two potential buyers—Hamza Abualzain, owner of West Side Groceries, and

Ahmad al-Hawwari, owner of A&M Market—expressed interest. The Ansaris decided to sell to Abualzain. The terms of the business sale included a ten-year lease to Abualzain on the real property, an option for him to purchase the real property, and a right of first refusal allowing him the opportunity to purchase the property by matching the terms offered by any putative buyer. At the time, the Ansaris' title to the real property was subject to a $200,000 mortgage held by Central Bank and nine judgment liens totaling about $59,000.

Al-Hawwari began aggressively trying to acquire the business on behalf of A&M Market despite the sale to Abualzain. He first bought the mortgage from Central Bank for $120,000. He next called Abualzain and threatened to evict him unless he gave him half ownership in the business. When Abualzain refused, al-Hawwari sought to purchase title to the property from the Ansaris, planning to foreclose on his own mortgage to eliminate the junior interests like the judgment liens and Abualzain's lease, effectively taking over the business. On April 7, 2011, he provided a purchase agreement in which he offered the Ansaris the release from their debt on the mortgage, $60,000 cash, and a $20,000 promissory note in exchange for a quitclaim deed. Khaffak Ansari gave Abualzain a copy of the yet-unexecuted purchase agreement on April 13.

Abualzain immediately attempted to exercise his right of first refusal to purchase the property, declaring that he wanted to match the offer. But he was unsure how to do so because the purchase-agreement offer to release the debt on the mortgage did not specify the payoff amount for the mortgage. He met with Khaffak Ansari, complaining that he had not been able to exercise his right of first refusal because of the lack of a clear price

in the purchase agreement. Ansari replied that he had already accepted the A&M Market offer because he needed cash quickly before leaving the country.

Abualzain continued in vain trying to exercise his right of first refusal. Abualzain's attorney asked the Ansaris four times for the mortgage payoff amount. Four days after the first inquiry, the Ansaris' attorney referred Abualzain's attorney to A&M Market's attorney. But A&M Market's attorney also did not disclose the amount. On April 22, A&M Market's attorney contacted the Ansaris' attorney to schedule a closing, stating that Abualzain "has not duly exercised the option/right of first refusal for the property." The closing occurred on April 26. The Ansaris tendered a quitclaim deed that included an antimerger clause, providing that A&M Market's acquired fee interest and preexisting mortgage interest "shall be kept and held separate and distinct" and that "the Mortgage [will] remain fully withstanding and enforceable in accordance with [its] terms."

A&M Market acted immediately after the closing to evict Abualzain by sending him a letter demanding that he vacate the premises and denying that it had any obligation under his lease with the Ansaris. It next filed an unlawful detainer action in district court. Abualzain answered with a counterclaim and crossclaim, alleging that the Ansaris breached his lease right of first refusal and that both parties had been unjustly enriched. A&M Market voluntarily dismissed its eviction action, leaving Abualzain's claims as the focus for trial.

The district court conducted a bench trial and ruled for Abualzain. It found that the Ansaris had breached Abualzain's right of first refusal by failing to inform him of the

terms and conditions of the deal with A&M Market for him to match in order to exercise his right and that A&M Market had also infringed Abualzain's right by rushing the sale. It held too that the Ansaris and A&M Market had been unjustly enriched in the deal. It awarded Abualzain an option to purchase the property from A&M Market for $288,100, the market value of the property based on tax records. The district court ordered that, in the event that Abualzain exercised this option, A&M Market must convey a quitclaim deed. If he did not exercise the option, A&M Market would be bound to honor the terms of his lease. It declared that A&M Market "has no legal or equitable right to foreclose in an attempt to eliminate Abualzain's interests" and that "the anti-merger clause was insufficient to wipe out [Abualzain's] Lease." We interpret this latter statement to mean that the district court rendered the antimerger clause void, effectively merging A&M Market's mortgage interest into its ownership interest to prevent it from foreclosing the mortgage to extinguish Abualzain's leasehold interest.

Abualzain asked the district court also to compel A&M Market to foreclose its mortgage interest to eliminate its own mortgage and the various junior liens on the property (but not his lease) so that Abualzain could obtain financing to purchase it. The district court denied the motion, telling Abualzain, "What you bargained for in your right of first refusal was to buy a property that was subject to a mortgage and a bunch of judgment liens, and that's all you got."

All parties appeal.

D E C I S I O N

I

We first address the district court's interpretation of Abualzain's right of first refusal contained in the lease. We review the interpretation of unambiguous contract terms de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). The Ansaris contend that the district court erred by determining that they had violated Abualzain's contractual right of first refusal by failing to disclose the balance on the loan secured by the mortgage because the lease's unambiguous terms required them to provide only a "true copy" of the terms of A&M Market's offer. Because those terms are in the draft purchase agreement that they gave Abualzain on April 13, they argue, they met the requirement.

The Ansaris' argument rests on the mistaken premise that a party can defeat the spirit of a right-of-first-refusal clause by rigidly following only the letter. When the required contents of a notice of a third-party offer are not specified in a right-of-first-refusal contract, "most courts agree that any method that gives the right-holder notice of a potential sale and reasonably discloses the terms of the sale is sufficient." *Dyrdal v. Golden Nuggets, Inc.*, 672 N.W.2d 578, 584 (Minn. App. 2003), *aff'd*, 689 N.W.2d 779 (Minn. 2004). And "[d]isclosure is reasonable if it provides the right-holder with sufficient information to make an informed decision about exercising the right of first refusal." *Id.* at 585. When third-party-offer terms are vague, the right-holder "has a duty to undertake a reasonable investigation of any terms unclear to him." *Id.* (quotation omitted). This duty arises because a proper exercise of a right of first refusal "must match

the terms of a bona fide offer with exactitude." *Id.* at 584 (citing *Minar v. Skoog*, 235 Minn. 262, 265–66, 50 N.W.2d 300, 302 (1951)). Unless specified in the contract, this does not require the party who is exercising the right of first refusal to match the same financing scheme of the extant offer, but it does require that the purchase price be the same. *Cf. Park-Lake Car Wash, Inc. v. Springer*, 352 N.W.2d 409, 412 (Minn. 1984) (holding that a right-of-first-refusal exercise had to match the purchase offer in cash only because the right of first refusal in the lease contemplated a cash transaction).

The district court correctly held that the Ansaris failed to provide Abualzain with sufficient information to effectuate his right of first refusal. Because A&M Market's purchase agreement included a term releasing the Ansaris from their loan obligation under the mortgage but failed to reveal the payoff amount on A&M Market's mortgage, the value of that term was not disclosed by the document. Delivery of that document alone was therefore not enough to inform Abualzain sufficiently of the terms of A&M Market's offer. The record establishes that Abualzain worked diligently to interpret that term by demanding a meeting with Khaffak Ansari and by repeatedly requesting the purchase-price information from the Ansaris. Because the Ansaris knew or had the ability to know the balance of their debt secured by the mortgage but refused to disclose it to Abualzain, we affirm the district court's holding that the Ansaris breached the lease by violating Abualzain's right of first refusal.

Although the district court correctly found the Ansaris in breach of Abualzain's right of first refusal, it erred when it further found A&M Market also to be in breach. Abualzain's right of first refusal is a contract right arising from the terms of his lease with

the Ansaris only. "Contract obligations are imposed because of conduct of the parties manifesting consent, and are owed only to the specific parties named in the contract." *80 S. Eighth St. Ltd. P'ship v. Carey-Canada, Inc.*, 486 N.W.2d 393, 396 (Minn. 1992), *amended in part by*, 492 N.W.2d 256 (Minn. 1992). At the time of its offer, A&M Market had no contractual relationship with Abualzain; it was not a party to the Ansari-Abualzain lease and did not own the property. Abualzain points us to no caselaw supporting the theory that a potential purchaser has a contractual obligation to facilitate a leaseholder's exercise of his right of first refusal under these circumstances. We reverse the district court's holding that A&M Market breached Abualzain's contractual right of first refusal.

II

Having affirmed that the Ansaris, but not A&M Market, breached Abualzain's right of first refusal, we turn to the remedy. Abualzain argues in effect that the district court erred when it crafted a remedy allowing him an option to purchase the property from A&M Market based on supposed fair-market value calculated from property-tax records. We review the district court's remedy for abuse of discretion. *Dakota Cnty. HRA v. Blackwell*, 602 N.W.2d 243, 244 (Minn. 1999). The district court abuses its discretion when it improperly applies the law or adopts an incorrect legal rule. *See Whitaker v. 3M Co.*, 764 N.W.2d 631, 636 (Minn. App. 2009).

Here the district court implicitly adopted an incorrect approach to specific performance. Abualzain requested specific performance and the district court attempted to award it. Specific performance is usually the correct remedy for violation of a right of

first refusal. *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993). Specific performance is "a court-ordered remedy that requires *precise fulfillment* of a legal or contractual obligation." *Black's Law Dictionary* 1529 (9th ed. 2009) (emphasis added). Specific performance should therefore "put the parties in the position they would have been in had the contract been performed," allowing the court to adjust relief "on terms that will work complete justice between the parties." *Park-Lake Car Wash, Inc. v. Springer*, 394 N.W.2d 505, 512 (Minn. App. 1986). The district court therefore erred when it awarded Abualzain an option to purchase based on fair market value rather than an opportunity to exercise his right of first refusal by matching the terms of the A&M Market offer.

Effective specific performance would involve providing Abualzain the information he lacked—the amount that would have been necessary for the Ansaris to obtain a release of the mortgage—and, substituting that amount for A&M Market's offer to release the debt on the mortgage, affording Abualzain the right to purchase on the same terms that A&M Market offered. The record does not include a finding of the payoff price of the mortgage, along with any then-accrued interest and penalties. We reverse and remand for the district court to issue findings as to the amount that the Ansaris would have had to receive allowing them to obtain the mortgage release from A&M Market and, based on those findings, to craft a specific-performance remedy that would put Abualzain in a position to decide whether to exercise his right of first refusal. More fact-finding is necessary, and, in fashioning its remedy, the district court may consider whether it should conditionally void the sale to A&M Market and deem A&M

Market's offer to the Ansaris as accepted and the sale validated contingent on Abualzain's decision not to exercise his right of first refusal.

III

We next address Abualzain's argument that the district court erred by refusing to require A&M Market to foreclose on the mortgage in limited fashion so as to extinguish the junior liens but leave his leasehold intact. We consider the argument alongside A&M Market's related challenge to the district court's treatment of the antimerger clause in the quitclaim deed. The issues remain relevant because if Abualzain does not exercise his right of first refusal, A&M Market would retain ownership.

A&M Market argues that the plain language of the antimerger clause precludes merger of its fee interest and its mortgage interest. If the argument prevails, A&M Market hopes to rely on its consequence to foreclose the junior liens, including Abualzain's leasehold. Abualzain urged the district court to require foreclosure only in part, despite his apparent general agreement with the district court's interpretation of the antimerger clause, and he argues that the district court erred by denying his request.

A&M Market is correct: the antimerger clause precludes merger of its fee interest and its mortgage interest (but only to the extent a mortgage interest exists). Merger of interests in land can occur when a mortgage interest and a fee interest are acquired by the same person with no intervening interest: the lesser mortgage interest is then extinguished as merged into the fee interest. *Resolution Trust Corp. v. Indep. Mortg. Servs., Inc.*, 519 N.W.2d 478, 482 (Minn. App. 1994), *review denied* (Minn. Sept. 28, 1994). But merger occurs only if the party holding both interests intends it. *Thompson v. First Nat'l Bank*,

180 Minn. 552, 555, 231 N.W. 234, 236 (1930). And an unambiguous antimerger provision in a deed is a clear indication that the party did not intend merger. *See GBJ, Inc. v. First Ave. Inv. Corp.*, 520 N.W.2d 508, 511 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

The record indisputably establishes that A&M Market did not intend merger. It insisted that unambiguous antimerger language be included in the Ansaris' quitclaim deed stating that it was the "express intention" of the parties that there would be no merger. And A&M Market owner al-Hawwari testified that he intended to rely on the antimerger provision to retain the mortgage and then foreclose on it, preventing Abualzain and others from asserting any competing interest in the property. The district court reasoned that allowing A&M Market to use this antimerger language to foreclose on its own mortgage and eliminate Abualzain's lease would be a "harsh result" that it should not allow. The district court put too much emphasis on the harshness of A&M Market's aggressive takeover strategy. "If a contract is unambiguous, the contract language . . . shall be enforced by courts even if the result is harsh." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346–47 (Minn. 2003) (quotation omitted). The terms of Abualzain's lease unambiguously subordinated his interest to the existing mortgage interest. And foreclosure legitimately, albeit harshly, terminates leasehold interests. *See In re Crablex, Inc.*, 762 N.W.2d 247, 253 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009) ("Minnesota courts have long applied this principle in foreclosure actions: a mortgage foreclosure terminates interests over which the mortgage has priority."); *see also Geo. Benz & Sons v. Willar*, 198 Minn. 311, 314, 269 N.W. 840, 841 (1936)

(holding that lease-holder's interest is extinguished after foreclosure). The district court's distaste for al-Hawwari's confiscatory motives and harsh tactics cannot control.

But in grappling with the issue of whether and to what extent the mortgage could or must be foreclosed, the parties and the district court seem to have overlooked a more fundamental question: *What* mortgage? Everyone assumed, and apparently still assumes, that A&M Market actually retains a mortgage to foreclose. The assumption is doubtful.

No one has addressed the effect of A&M Market's purchase terms on its supposed mortgage. The purchase agreement between A&M Market and the Ansaris included A&M Market's express agreement to release the Ansaris from their mortgage debt. The parties' various positions overlook the issue of whether the mortgage ceased to exist when the Ansaris completed the sale and executed their quitclaim deed, which we think would have transferred the Ansaris' ownership interest unencumbered by the mortgage. We base this on the long-settled principle that a mortgage ceases to exist when its underlying mortgage debt is paid or released. *See Johnson v. Carpenter*, 7 Minn. 176, 182, 7 Gil. 120, 126 (1862) ("[T]he mortgage is an incident to the *debt secured*, and will . . . become extinguished by the satisfaction of the debt."); *see also Hendricks v. Hess*, 112 Minn. 252, 256, 127 N.W. 995, 997 (1910) (holding that mortgage is "completely extinguished" at the point mortgage debt is satisfied). A&M Market's mortgage rests on a mortgage debt that A&M Market agreed to release in exchange for the quitclaim deed.

By agreeing to release the debt in exchange for the quitclaim deed, A&M Market seems to have extinguished the very mortgage that it plans to rely on to eliminate Abualzain's leasehold. And this seems to be so however the case unfolds: if Abualzain

exercises his right of first refusal (which we have held will include paying the release-of-mortgage-debt amount to be forwarded to A&M Market), the mortgage is apparently extinguished; and if he does not exercise his right of first refusal, the purchase by A&M Market is validated and the mortgage was apparently extinguished automatically. Either result seems to follow from A&M Market's inclusion of the debt-release agreement as a term of its purchase. We raise but are reluctant to decide this issue, however, because the parties have not briefed it and the district court has not addressed it. But we cannot ignore it because the parties' appeal has put before us the general question of whether the district court erred by refusing to require A&M Market to partially foreclose on the mortgage (or by holding that the antimerger clause does not preclude merger of the fee interest and the mortgage interest). On remand, therefore, the district court must resolve whether the mortgage has been extinguished and how the issue bears on the parties' arguments over the mortgage's effect and on the remedy.

In sum, although the unambiguous quitclaim deed's antimerger clause would prevent merger of the mortgage, it appears that the execution of A&M Market's purchase terms has independently defeated the mortgage. Because the district court cannot require or allow the foreclosure of a mortgage that has been extinguished as a matter of law—both potential remedies that the parties have contested—as it fashions the proper specific-performance remedy on remand, the district court should also make findings bearing on whether the mortgage was extinguished in the sale and consider those findings in its remedy. In doing so, the district court may, in its discretion, reopen the record and invite briefing.

IV

This leaves the district court's finding that the Ansaris and A&M Market were unjustly enriched. To establish a claim for unjust enrichment, a plaintiff must prove that a defendant received a benefit, that he did so knowingly, and "that it would be inequitable for him to retain it without paying for it." *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186, 195 (Minn. App. 2007), *review denied* (Minn. Jan. 20, 2009). The district court did not make specific findings supporting the elements of an unjust enrichment claim, and, even if it had, the claim would fail given Abualzain's choice to enforce his contractual right of first refusal. This is because "[w]here the rights of the parties are governed by a valid contract, a claim for unjust enrichment must fail." *Colangelo v. Norwest Mortg., Inc.*, 598 N.W.2d 14, 19 (Minn. App. 1999), *review denied* (Minn. Oct. 21, 1999). We have applied this doctrine in a similar setting, holding, "Because the parties' rights are governed by the terms of valid contracts as a matter of law, the equitable remedies of unjust enrichment and money had and received cannot lie." *Id.*; *cf. Zimmerman v. Lasky*, 374 N.W.2d 212, 214 (Minn. App. 1985) ("Equitable relief is granted only upon a showing of the inadequacy of any legal remedy."), *review denied* (Minn. Nov. 25, 1985). This defeats the unjust enrichment claim as to the Ansaris, who are bound to perform under the terms of contract.

The unjust enrichment claim fails on the merits as to A&M Market. A&M Market purchased the mortgage from Central Bank. It then offered to purchase the property from the Ansaris. Neither of these actions is unjust and neither enriched A&M Market improperly at Abualzain's expense. It is true that its motive was to force Abualzain out

and to exist as a convenience store where Abualzain was operating his. But A&M Market acquired title to the property with valid consideration and can retain ownership only if Abualzain chooses not to exercise his right of first refusal. This is also not unjust. Unjust enrichment is an equitable remedy that depends on the unclean hands of the offender. *See First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981) ("[U]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully."). The district court may have been accurate in treating A&M Market's hard-edged business tactics as dirty, so to speak, but they were not unclean. We hold that restoring Abualzain's contractual right of first refusal renders any claim for unjust enrichment unsustainable as a matter of law, and we reverse the district court's judgment on this claim.

We remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.