COURT OF APPEALS
DECISION
DATED AND FILED

February 21, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1004

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

JANSEN BUILDERS, INC.,

PLAINTIFF-RESPONDENT,

V.

ADAM GROUP, L.L.C., A WISCONSIN LIMITED LIABILITY CORPORATION C/O OLYMPUS FLAG & BANNER COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County: WALTER J. SWIETLIK, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Adam Group, L.L.C., appeals from the judgment entered against it for specific performance of an offer to purchase agreement. The issue on appeal is whether the circuit court erroneously exercised its discretion

when it ordered specific performance of the contract at issue. Because we conclude that the circuit court properly exercised its discretion, we affirm.

¶2 This case involves a dispute over whether Adam is required to convey a certain parcel of land to Jansen Builders, Inc. Jansen and Adam entered into an agreement whereby Jansen would convey to Adam fourteen acres of land in Mequon. The circuit court found that Jansen wanted only to sell eight acres to Adam. However, at the time the agreement was entered into, Mequon would not allow parcels to be divided. Consequently, the parties entered into an agreement to sell the entire fourteen-acre parcel, apparently for the same price as Jansen would have sold the eight acres to Adam. The court found that it was the parties' intent that Jansen would purchase the land back, for the price of $100 plus certain fees and expenses, when Mequon would allow land division.

¶3 The circuit court further found that there were four agreements between the parties for the purchase of this property. In 1995, Adam submitted a written offer to purchase to Jansen which was accepted by Jansen. In April 1996, the parties entered into a revised offer to purchase which replaced the first agreement, whereby Jansen agreed to sell to Adam the fourteen acres of property. The parties also executed an Option to Purchase agreement whereby Adam agreed to sell back to Jansen six acres of the property. At that same time the parties entered into a collateral agreement, which established certain conditions for the exercise of the Option to Purchase. Finally, they also signed an Offer to Purchase which granted to Jansen the option to purchase the six acres.

¶4 When Jansen subsequently attempted to repurchase the six acres, Adam refused, asserting that Jansen had not complied with certain provisions of the collateral agreement and therefore, the option no longer existed. Specifically,

Adam asserted that Jansen had not paid insurance premiums and income tax or made a $10 payment as required by the collateral agreement.

¶5 Jansen brought suit seeking specific performance of the agreement by Adam. A trial to the court was held. The circuit court found that Jansen had not performed certain of the conditions of the collateral agreement. The court also found, however, that these breaches of the agreement were not material and did not invalidate that offer which had been accepted by Adam. The circuit court ordered Adam to convey the disputed property to Jansen. Adam appeals.

¶6 On appeal, Adam argues that the option to repurchase the six acres had expired because Jansen had not complied with a number of terms of the collateral agreement. Adam argues on appeal that this is a question of law which this court reviews de novo. This is not the appropriate standard of review for this case.

¶7 The circuit court ordered specific performance of a contract. Specific performance is an equitable remedy and rests in the discretion of the trial court. ***Anderson v. Onsager***, 155 Wis. 2d 504, 513, 455 N.W.2d 885 (1990). This court reviews a circuit court's decision to order specific performance of a real estate contract for an erroneous exercise of discretion. *See* ***id.*** at 510-14. "[U]nless in the course of a trial court's exercise of discretion there are revealed factual or legal considerations which would make specific performance of the contract unfair, unreasonable or impossible, specific performance of a contract to sell land should be ordered as a matter of course." ***Id.*** at 512-13. In addition, whether an offer was accepted is a question of fact. ***Novelly Oil Co. v. Mathy Constr. Co.***, 147 Wis. 2d 613, 616-18, 433 N.W.2d 628 (Ct. App. 1988). The interpretation of the written documents is a question of law subject to de novo

review. ***Chase Lumber & Fuel Co. v. Chase***, 228 Wis. 2d 179, 191, 596 N.W.2d 840 (Ct. App. 1999).

¶8 We conclude that the circuit court did not erroneously order specific performance in this case. The court concluded that the four documents established "the intent of the parties whereby the 14-acre parcel of land would be conveyed" to Adam, and that, for the sum of $100 and the payment of maintenance reimbursement expenditures, real estate taxes, the $20 option fees, taxes, title insurance and legal fees, six acres would be conveyed back to Jansen. We agree that the documents establish this intent.

¶9 Adam argues, however, that since the circuit court also found that Jansen did not comply with certain requirements of the collateral agreement, the offer cannot be enforced. The collateral agreement required Jansen to pay option fees, real estate taxes, maintenance of the property, and to maintain insurance coverage. The court found that Jansen had not paid the option fees and the real estate taxes on the property. The court further found, however, that Adam received the tax bill. The court found, therefore, that Adam had the responsibility to forward the bill to Jansen, but had not done so. The court also found that had Adam incurred any expense in maintaining the property, it had a right to recover this expense from Jansen. The court allowed Adam the right to recover the cost of any reasonable maintenance as part of closing costs. In other words, while the court found that Jansen had breached certain aspects of the collateral agreement, the breaches were easily remedied.

¶10 The court also addressed Jansen's responsibility under the collateral agreement to maintain insurance coverage for the property. The court found that while Jansen had not insured the property, Adam could have sought

reimbursement from Jansen had it paid for insurance coverage for the property. If there had been any liability, the agreement provided that Jansen would be liable. Again, Jansen's breach of the collateral agreement could be easily remedied. All of these breaches involved money which could be recovered by Adam at closing. In sum, the court concluded that these breaches did not affect the parties' intent to reconvey the property and therefore were not material.

¶11 The circuit court also found, however, that it could see "no other purpose" to Adam signing the Offer to Purchase unless the parties intended to close on the deal sometime within the next two years (the period for the existence of the Option). In other words, given that the parties had signed an Option to Purchase, the Offer to Purchase was not necessary if the parties only intended to create an option. We agree.

¶12 An option to purchase real estate binds the seller when the buyer unconditionally accepts it. *See* ***Chase Lumber***, 228 Wis. 2d at 195. In this case, Adam became bound by the offer when its principal signed the offer.

¶13 Further, once the offer was signed, the breaches of the collateral agreement did not affect the option because the option had already been exercised. Therefore, while there were breaches of the collateral agreement, these breaches were immaterial, both because the breaches involved the payment of money which could be remedied at closing, and because the option had been exercised. We conclude that the circuit court properly exercised its discretion in so holding and affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).