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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0698

Paula Mirare Overby,
Appellant,

vs.

CitiMortgage, Inc.,
Respondent.

Filed December 18, 2017
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-CV-17-15

Paula M. Overby, Eagan, Minnesota (pro se appellant)

Thomas J. Lallier, Tessa A. Mansfield, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and Stauber, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Pro se appellant challenges the district court's grant of summary judgment in favor of respondent. Appellant argues that: (1) there are genuine issues of material fact concerning the existence of a settlement agreement, and (2) a settlement agreement existed as a matter of law. We affirm.

FACTS

In March 2006, appellant Paula Overby executed a loan, secured by a mortgage lien on a parcel of real property, in the amount of $63,000. Respondent CitiMortgage serviced the loan. About four years later, appellant filed for relief under Chapter 7 of the bankruptcy code and, as a result, her personal liability on the 2006 loan was extinguished, but the lien on the property remained intact. *See* 11 U.S.C. § 727 (2012) (allowing debtor to discharge personal liability in chapter 7 liquidation); 11 U.S.C. § 524(a)(1) (2012) (allowing for only the "personal liability of the debtor" to be discharged).

On March 22, 2016, appellant made an offer to respondent to pay $2,000 in exchange for respondent releasing the lien. Two days later, respondent rejected appellant's offer and made a counteroffer to release the lien for $15,199.11, which was 25% of the outstanding lien balance.

Appellant made two follow-up calls to respondent regarding this counteroffer. The first call occurred on April 1, 2016. During this call, appellant was told to fax back a written confirmation once she had received respondent's written offer in the mail. The second call occurred three days later, when respondent advised appellant that she could

send the $15,199.11 payment and respondent would release the lien within 90 days after payment was posted. In her response letter, appellant noted that she attempted to orally accept the offer on both April 1 and 5, but also stated that she found the 90-day release period to be "unacceptable." In the same letter, appellant made a voluntary offer of $9,000 to release the lien with the added condition that respondent release the lien within 30 days of payment.

Respondent replied to appellant's letter by rejecting her offer and explaining that the "[l]ien release processing times come from the county not [respondent]." Respondent's letter also reaffirmed that it would accept $15,199.11 to release the lien on appellant's property.

Appellant commenced an action against respondent on April 18, 2016. In her complaint, appellant alleged that respondent was "unlawfully attempting to collect a debt that was discharged in bankruptcy by exaggerating the value of the property interest represented by the lien," and that respondent prevented release of the lien "by requiring 90 days to deliver a loan release in the property." Appellant never alleged that a settlement was formed with respondent, nor did she request damages for breach of contract or specific performance.

Respondent moved for summary judgment. Appellant responded by arguing, for the first time, that a valid contract existed after respondent countered her initial offer by asking for $15,199.11. But appellant did not assert that both parties agreed on the timing of the lien release.

During the summary judgment hearing, appellant also asserted that respondent was not cooperating with discovery because it gave her partially redacted call logs. Respondent explained that the redacted parts were communications between its representatives and its in-house counsel. The district court then clarified that the redactions extended only to communications between "attorneys and staff at [respondent]," which respondent confirmed.

The district court granted respondent's motion for summary judgment because "[appellant] has failed to state that a valid settlement contract existed between the parties to provide for a release of the mortgage." This appeal follows.

D E C I S I O N

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. When reviewing a district court's grant of summary judgment, the court of appeals determines: (1) if there are any genuine issues of material fact; and (2) whether the lower court erred in its application of the law. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). "In reviewing the record, we view the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.* A genuine issue of material fact does not exist when the party opposing summary judgment only presents evidence that merely creates a metaphysical doubt as to a factual issue or evidence. *Beecroft v. Deutsche Bank Nat'l. Trust Co.*, 798 N.W.2d 78, 82 (Minn. App. 2011).

I. The district court did not err in granting summary judgment when no material facts were in dispute.

Appellant argues that the district court erred in granting respondent's motion for summary judgment because material facts relating to the agreement were in dispute. More specifically, appellant claims that (1) "an agreement existed between her and [respondent] at the offered price of $15,200"; (2) "additional proof of the agreement was contained in the telephone records requested in discovery"; and (3) "such a record existed by reference of the defendant." Appellant also notes that respondent refused to respond to her discovery request by claiming attorney-client privilege, and that the judge advised them that the conversations between appellant and respondent are not covered under attorney-client privilege.

The district court has considerable discretion in granting or denying discovery requests. *Montgomery Ward & Co. v. Cty. of Hennepin*, 450 N.W.2d 299, 305 (Minn. 1990). A decision will not be disturbed unless the district court abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its decision on an erroneous view of the law. *Id.* at 305-06. Appellant did not bring a motion to compel discovery but she did request that the defendant provide "some proof" that the portions of the call record should be redacted. Even assuming that appellant preserved the discovery request issue for appeal, her argument fails.

The district court correctly noted that "[t]he privilege wouldn't extend to conversations that your client had with [appellant], but, rather, between your attorneys and staff at [respondent]." Respondent represented that the only redactions were of

communications between respondent and its legal counsel and not communications between appellant and respondent's representatives. The district court then took the matter under advisement and did not address the motion further. Appellate courts cannot assume a district court erred in failing to address a motion, and silence on a motion is treated as an implicit denial of the motion. *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009).

The district court did not abuse its discretion in denying appellant's request for redacted information because it reached the only conclusion possible in light of the evidence it was provided. Besides allegations that the call logs were improperly redacted, appellant provides no evidence that respondent withheld any discoverable evidence or improperly redacted attorney-client privileged information. The district court correctly determined that there were no genuine issues of material fact related to the call logs.

II. The district court did not err in its legal conclusion.

Appellant argues that the district court erred in finding that she only conditionally accepted respondent's offer of settlement and then subsequently rejected the conditional offer after a dispute arose regarding the timing of the lien release. When deciding a motion for summary judgment, it is the district court's sole function to determine whether genuine factual issues exist, not to decide issues of fact. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). On a motion for summary judgment, the district court may not make factual findings that requires it to weigh evidence. *Id.* There is a genuine issue of material fact when the nonmoving party presents evidence that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw

different conclusions." *Id.* at 71. But, when material facts are not in dispute, the existence of a contract is a question of law subject to de novo review. *TNT Props., Ltd. v. Tri-Star Developers, LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004).

The record reflects that there was no actual dispute as to the material facts contained in the district court's order. Rather, it appears that appellant is challenging the district court's conclusion that, as a matter of law, no valid contract was formed because her letter deeming an essential term as "unacceptable" was a rejection and counteroffer. When the record taken as a whole does not support a contract's existence, summary judgment is proper. *See Gresser v. Hotzler*, 604 N.W.2d 379, 382 (Minn. App. 2000). The district court was correct in concluding no contract existed as a matter of law.

Minnesota follows the mirror image rule and requires the acceptance of an offer to be coextensive with the offer and to not introduce additional terms or conditions. *McLaughlin v. Heikkila*, 697 N.W.2d 231, 235 (Minn. App. 2005), *review denied* (Minn. Aug. 24, 2005). Put another way, "[t]he offeror and offeree, alike, must express agreement as to every term of the contract. The offeror does this in the offer; the offeree must do it in his acceptance." *Markmann v. H.A. Bruntjen Co.*, 249 Minn. 281, 289, 81 N.W.2d 858, 863 (1957) (quotation marks omitted).

Here, as the district court correctly noted, appellant called respondent to accept the offer conditionally. She was told to fax back a written confirmation once she received the offer.[1] She called a few days later and was advised that she could send the settlement

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[1] Since the lien is an "interest in land" its release would fall under the statute of frauds. *See* Minn. Stat. § 513.05 (2016).

amount to respondent and the lien would be released within 90 days of receiving the payment. Appellant, in her letter to respondent, found this term to be "unacceptable." This letter was a clear rejection of respondent's offer to settle and release the lien because the offeror and offeree did not agree to every term in the contract. *See Gresser*, 604 N.W.2d at 384 (concluding that an acceptance that alters certain days that are material to the contract is not an acceptance but rather a rejection and counteroffer). Here, appellant rejected respondent's offer to pay $15,199.11 with a post-payment release date of 90 days, then countered for a payment of $9,000 with a release date of 30 days from her payment posting.

Appellant contends that she actually "accepted the [original] offer" and did not make a "counteroffer to the agreed upon sum of $15,200." However, she does not dispute the underlying facts but rather disputes the district court's legal characterization of those facts. No party, including appellant, can purport to accept an offer but then reject a condition of that same offer without the acceptance becoming a rejection and counteroffer. Yet, this is precisely what happened when appellant stated that respondent's release time was "unacceptable" to her. Because the material facts are not disputed and there are no errors of law in the district court's ruling, summary judgment was properly granted in favor of respondent.

Affirmed.