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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1762**

Shari Monica Kristo,
Respondent,

vs.

David R. Johnson, et al.,
Appellants.

**Filed September 16, 2019
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-17-18771

Richard L. Hendrickson, Richard L. Hendrickson, P.A., Osseo, Minnesota; and

Karen R. Cole, Karen Cole Law Office, Minneapolis, Minnesota (for respondent)

David E. Krause, David E. Krause Law Office, Chtd., Minneapolis, Minnesota (for
appellants)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellants challenge the district court's temporary injunction preventing the cancellation of a contract for deed that they entered into with respondent. They argue that the underlying temporary restraining order (TRO) did not prevent the cancellation of the contract for deed because it did not take effect until after the 60-day statutory window to correct a default had run. Appellants also argue that the district court misinterpreted the contract for deed when it granted the temporary injunction and erred in granting injunctive relief because respondent came before the district court with unclean hands. We affirm.

FACTS

In August 2012, respondent Shari Kristo entered into a contract for deed with appellants David Johnson and Barbro Johnson. The contract was for the purchase of real property in Minneapolis that was being rented to multiple tenants. Two versions of the signed contract exist, one belonging to appellants and one belonging to respondent. Each is of the same typed form with blanks where the details of the terms can be filled in by hand. Both versions show that the sale price was \$175,000, with a \$5,000 down payment and \$1,200 monthly payments. And those numbers are written in by hand on both forms. Each version also has typed language describing a balloon payment with a blank where a date can be filled in by hand. But appellants' version includes a handwritten balloon payment date of October 1, 2017, while respondent's version of the contract had no such date because the blank was left empty. After entering into the contract, respondent took

possession of the property and claims to have invested at least \$30,000 in improvements to the property.

On October 29, 2017, appellants served respondent with a notice of cancellation of the contract for deed pursuant to Minn. Stat. § 559.21, subd. 2a (2018). The notice gave respondent 60 days to pay \$139,361.72 for the balloon payment. This led to respondent filing a summons and complaint in district court on December 11, asking for declaratory judgment that she had made all required payments under the contract and was not in default. She also moved for a TRO to prevent the cancellation of the contract for deed. Appellants received service of the summons, complaint, and motion for a TRO on December 18, and the next day the district court held a hearing on the motion. Appellant David Johnson attempted to attend the hearing, but was unable to do so. On December 20, the district court issued an order granting respondent's motion for a TRO.

On January 9, 2018, appellants filed an answer to respondent's complaint and requested that the district court vacate the TRO. The district court did so on March 9, reasoning that it lacked personal jurisdiction over appellants when it granted the TRO because they had not been properly served. A few days later, respondent requested that the district court reconsider its order, and the district court granted the request. A hearing was held, and on June 15, the district court vacated its March 9 order, thereby reinstating the TRO. Among other things, the district court determined that it was previously incorrect in concluding that appellants had not been properly served since the applicable statute allowed for service by mail, which respondent had done. The district court then held an evidentiary hearing to decide respondent's motion for a temporary injunction. And on

August 30, the district court granted the temporary injunction. It reasoned that the underlying TRO had been properly granted and that respondent was likely to win on the merits of her case because she was more credible on the question of whether the parties had discussed a balloon payment as a term of the contract. This appeal follows.

D E C I S I O N

Appellants challenge the issuance of the temporary injunction. “A temporary injunction is an extraordinary remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits.” *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003) (quotations and citation omitted), *review denied* (Minn. Nov. 25, 2003). The decision whether to grant a temporary injunction is left to the discretion of the district court. *Id.* So we review a district court’s decision whether to grant a temporary injunction for an abuse of that discretion. *Fannie Mae v. Heather Apartments Ltd. P’ship*, 811 N.W.2d 596, 599 (Minn. 2012).

I. TRO

Appellants first argue that under Minn. Stat. § 591.21, subd. 2, the TRO did not take effect until after the 60-day window to correct a default had run, and that the contract for deed was already cancelled at the time the TRO was issued. Appellants claim that, under these circumstances, the status quo that the subsequent temporary injunction sought to preserve—a non-cancelled contract for deed—was nonexistent. Appellants maintain that their argument succeeds for two reasons. First, they claim that because the TRO could not take effect before respondent posted the required bond, which she did not do until after the expiration of the 60-day window, it was ineffective. Second, it was ineffective because the

TRO could not take effect before appellants received actual notice of it, which also did not take place until after the expiration of the 60-day window.

Respondent counters that the TRO's very wording indicates that it took effect immediately and was not contingent on the payment of the bond, and she argues that under Minn. R. Civ. P. 65.04, actual notice is not required in order to restrain a party to a TRO. The district court, when it reinstated the TRO in June, agreed with these two arguments. It also favorably compared the facts of the case to *D.J. Enterprises of Garrison, Inc. v. Blue Viking, Inc.*, 352 N.W.2d 120 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984).

Even assuming, without deciding, that appellants are correct about the bond and actual-notice requirements, *D.J. Enterprises* controls the outcome of this case. In *D.J. Enterprises*, the respondent had purchased a restaurant from appellant using a contract for deed. 352 N.W.2d at 120. Nine months later, appellant served respondent with a notice of cancellation of the contract for deed, and the notice gave respondent 90 days to remedy the default or secure an order to enjoin cancellation of the contract in accordance with Minn. Stat. § 559.21 (1982). *Id.* at 121. Respondent moved for an injunction and filed a complaint in district court more than three weeks before the expiration of the 90-day window. *Id.* The district court took the motion under advisement and did not issue the injunction until about a month after the expiration of the 90-day window. *Id.* The question on appeal was whether the district court had jurisdiction to issue the injunction beyond the 90-day window. *Id.* Our court answered affirmatively, favorably quoting a Minnesota Supreme Court case that dealt with the cancellation of a land contract and explained:

However drastic the statutory procedure, it cannot be that the legislature intended equity to be entirely powerless and deprived of *all* its former beneficent jurisdiction in such matters It is because we are confident that the legislature did not intend such complete tying of hands of equity that we are using its power here.

Id. at 121–22 (quoting *Follingstad v. Syverson*, 200 N.W. 90, 92 (Minn. 1924)). Our court then looked at the facts of the case and explained that it was relevant that: the respondent was in possession of the property; the respondent had been operating the restaurant for over a year; the respondent had either paid for directly or assumed debts amounting to 75% of the purchase price of the property, standing to lose half of a million dollars; the appellant would not be prejudiced by judicial intervention; and appellant’s interests were protected by the \$12,000 bond posted by respondent. *Id.* at 122. With these facts in mind, we affirmed the district court’s exercise of its equitable powers in granting a temporary injunction outside of the 90-day window. *Id.*

The district court in the present case analyzed the facts and found that they were similar to *D.J. Enterprises* because: respondent filed her summons, complaint, and motion for a TRO within the 60-day window and a hearing on the motion for a TRO was held over a week before the end of the 60-day window; appellants had notice of the hearing; respondent had owned the apartment building for over a year; she had continued to make payments according to the contract for deed; and she had built significant amounts of equity in the building. The district court also pointed out that the TRO was issued before the expiration of the 60-day window. Appellants point to no errors in the district court’s findings of fact. In analyzing this issue, we are mindful of the “broad latitude” accorded

to courts of equity in the exercise of their equitable powers. *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005), *review dismissed* (Minn. Nov. 15, 2005). In light of the holdings of *D.J. Enterprises* and the district court’s analysis of the facts of this case, we conclude that even if the TRO did not take effect until a few days after the expiration of the 60-day window because of the bond and actual-notice requirements, it was within the district court’s equitable power to determine that the TRO prevented cancellation of the contract for deed and the district court therefore did not abuse its discretion in granting the temporary injunction.

II. Interpretation of the Contract

Appellants next argue that the temporary injunction should be overturned because the district court erred in its interpretation of the contract for deed. In determining whether a district court abused its discretion in granting a temporary injunction, we look to the five *Dahlberg* factors. *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220–21 (Minn. App. 2002) (citing *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321–22 (Minn. 1965)), *review denied* (Minn. Feb. 4, 2002). One of those factors is the likelihood of success on the merits. *Id.* at 221. In deciding whether to grant this temporary injunction, the district court looked at the *Dahlberg* factors and specifically focused on respondent’s likelihood of success. The district court concluded that respondent would “probably” prevail on the merits. It based its conclusion in large part on its determination that respondent was more credible than appellant David Johnson when she testified that they never discussed a balloon payment when agreeing to the terms of the contract for deed. In essence, by making this determination, the district court found that

respondent's copy reflected the actual terms, not appellants' copy. It is this finding, and its effect on the likelihood-of-success *Dahlberg* factor, that appellants dispute.

Appellants argue that the contract at issue was an unambiguous written contract and that the district court erred by relying on parol evidence to determine that a balloon payment was not a part of the contract. It is true that a district court may not rely on parol evidence when a contract is unambiguous. *Mollico v. Mollico*, 628 N.W.2d 637, 642 (Minn. App. 2001). But this argument is a red herring. The district court was not using parol evidence to interpret an unambiguous contract. Rather, the district court noted that there were two written versions of the contract, one with the balloon payment and one without, and that it was disputed whether the parties discussed the balloon-payment term. The district court determined that respondent's testimony was more credible as to whether the term was discussed, noting that appellant David Johnson testified that he did not clearly recall the conversation.

The district court then went on to address appellants' argument that a balloon-payment term should be implied into the contract. The district court correctly noted that the contract for deed is governed by the statute of frauds, Minn. Stat. § 513.05 (2018), and that appellants would have to demonstrate by clear and convincing evidence that the parties had orally agreed to a balloon-payment term, *see Christie v. Estate of Christie*, 911 N.W.2d 833, 839 (Minn. 2018) (“[C]lear and convincing evidence is the appropriate standard for proving the existence of an oral contract for the sale of land . . .”). The district court reiterated that respondent was more credible in her testimony on this issue than appellant David Johnson. And it noted that “the Contract either omitted the term entirely, or there

were at least two versions, with the version given to [respondent] omitting the disputed term.” Based on the testimony and conflicting versions of the contract, the district court concluded that appellants could not meet their high burden of clear and convincing evidence in order to have the term implied into the contract.

The district court concluded in its analysis of this *Dahlberg* factor by saying that it could not “find that [respondent] intended that the Contract would be subject to a” balloon payment and that respondent “will probably succeed on the merits.” Given the arguments on appeal, we cannot say that the district court misapplied the law in its assessment of respondent’s likelihood of success, or that the district court abused its discretion in granting the temporary injunction on this basis.¹

III. Unclean Hands

Finally, appellants argue that the district court should not have granted the temporary injunction because respondent came to a court of equity with unclean hands. Respondent’s hands are unclean, they argue, because she violated the district court’s order that she continue to make monthly payments to them during the pendency of the litigation. It is true that Minnesota courts “subscribe to the maxim that he who seeks equity must do equity, and he who comes into equity must come with clean hands.” *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985) (quotation omitted). In defining what constitutes “unclean hands,” the *Hruska* court explained that:

The misconduct need not be of such a nature as to be actually fraudulent or constitute a basis for legal action. The plaintiff

¹ Our conclusion on this issue in no way purports to decide or foreclose the legal arguments that either party could make about the terms of the contract at trial.

may be denied relief where his conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others.

Id. (quoting *Johnson v. Freberg*, 228 N.W. 159, 160 (Minn. 1929)). The district court explained in its order granting a temporary injunction that the required payments “have been held by [respondent’s] attorney. The Court does not find that there was an intentional violation of the Court’s order and understands [respondent’s] concern that she will lose these funds if she does not prevail on the merits.” Appellants do not dispute the finding that respondent’s attorney is holding onto the money. This conduct does not appear to be “unconscionable by reason of a bad motive”—as the district court said, respondent’s worry over losing the funds is reasonable—nor does it appear that the “result induced by [the] conduct will be unconscionable” since the money is being held, apparently in trust. Accordingly, we are not convinced that the district court clearly erred in not determining that respondent came before the district court with “unclean hands,” and we thereby conclude that the district court did not abuse its discretion in granting the temporary injunction.

Affirmed.