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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1976**

Karen Mattinen,
Appellant,

vs.

Linda Kari, et al.,
Respondents.

**Filed June 29, 2020
Affirmed
Larkin, Judge**

Pine County District Court
File No. 58-CV-19-472

Steven B. Anderson, Anderson Law Group, PLLC, St. Paul, Minnesota (for appellant)

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant purchased a log home from respondents and subsequently sued them, alleging that they had failed to disclose defects in the home and had misrepresented that the home was suitable for year-round use. The district court granted respondents' motion for summary judgment and dismissed appellant's lawsuit with prejudice. Appellant challenges the district court's grant of summary judgment, arguing that she presented sufficient evidence to avoid the summary dismissal of her lawsuit. We affirm.

FACTS

This matter comes before us for review of the district court's summary dismissal of appellant Karen Mattinen's claims against respondents Linda and Michael Kari. The undisputed facts are as follows. In the spring of 2018, the Karis placed their log home on the market for sale. They had resided in the home year-round for 35 years. Mattinen expressed interest in purchasing the property.

In June 2018, the Karis provided a property disclosure statement to Mattinen, as required under Minn. Stat. § 513.55, subd. 1 (2018). Among other things, the disclosure stated that the home was "suitable for year-round use" and that there were no defects or material facts "that could adversely and significantly affect an ordinary buyer's use or enjoyment of the property or any intended use of the property." On August 16, the parties signed a purchase agreement. That agreement was contingent on Mattinen obtaining an inspection of the property.

Mattinen's inspection occurred on August 28. Her inspector's report indicated that he found "no problem" with most of the property. But he identified a couple of "minimal" and "minor" problems, including "minimal" problems with the insulation and a "minor" problem with the "heating/cooling."

On August 31, the parties signed an amendment to the purchase agreement, which addressed some of the problems that had been discovered during the inspection. The Karis agreed to make several repairs, none of which were related to insulation, heating, or cooling. The purchase closed on October 15, and Mattinen moved into the property that day.

On March 3, 2019, Mattinen commenced this action by service of a complaint on the Karis. She alleged that she had experienced numerous problems with the property after moving in. The most significant allegations involved insufficient heating in the home. Mattinen claimed that "the central heating was not working properly" and that the furnace was too small to heat the house. She further alleged that during the winter of 2018-19, she "experienced extreme cold conditions in the log home inconsistent with a 'four seasons' home." Mattinen asserted that, because of the cold, she ran the furnace almost constantly beginning in November 2018, causing her to use much more propane than the Karis said that they had used. Mattinen attached two photographs of a handheld infrared thermometer to her complaint, which purportedly showed the temperature inside the house. The thermometer showed 27.5 degrees Fahrenheit in one photograph, and 30.6 degrees Fahrenheit in the other.

According to her complaint, Mattinen hired a contractor in January 2019 to determine why the house was so cold. Mattinen alleged that the contractor determined that there were gaps in the corners of the house that allowed airflow, that the exterior doors lacked insulation, and that the windows on the main floor needed to be replaced. A few days later, the contractor repaired the corners of the house and added insulation. Mattinen did not notify the Karis or allow them to inspect the alleged defects before the repairs were completed. In addition to the repairs, Mattinen claimed that she took numerous “extreme actions to combat the cold weather,” including placing insulation in various parts of the house, running the furnace constantly, and limiting her use of certain areas of the house.

Mattinen pleaded three claims against the Karis: (1) violation of the disclosure requirements of Minn. Stat. §§ 513.52-.57 (2018), (2) common-law fraud, and (3) violation of the Minnesota Consumer Fraud Act (CFA), Minn. Stat. § 325F.69 (2018). As to the statutory nondisclosure claim, Mattinen alleged that the Karis made false statements and failed to disclose material facts that “adversely and significantly affected [her] use and enjoyment of the property.” Specifically, the Karis asserted that the house was a “four-seasons home.” As to the fraud claims, Mattinen asserted that the Karis made the false statements to induce her to purchase the property and that she relied on those false statements. Mattinen sought to void the sale of the home and to recover damages.

The Karis moved the district court for summary judgment. They also requested that the district court exclude evidence of the alleged defects because Mattinen had destroyed evidence of their existence without notifying them. The district court granted summary judgment to the Karis and dismissed Mattinen’s lawsuit with prejudice. Mattinen appeals.

DECISION

Mattinen challenges the district court's grant of summary judgment. She asserts that the Karis failed to disclose defects in the home's insulation and heating system, resulting in a misrepresentation regarding the home's suitability for year-round use.

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). There is no genuine issue of material fact when “the nonmoving party presents evidence . . . which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Conversely, summary judgment is inappropriate when reasonable people can draw different conclusions from the evidence presented. *Id.* at 69. “[S]ummary judgment on a claim is mandatory against a party who fails to establish an essential element of that claim, if that party has the burden of proof, because this failure renders all other facts immaterial.” *Lloyd v. In Home Health, Inc.*, 523 N.W.2d 2, 3 (Minn. App. 1994).

We review a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). In doing so, we “view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law.” *Id.* We need not adopt the district court's

reasoning and “may affirm a grant of summary judgment if it can be sustained on any grounds.”¹ *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

I.

We begin with Mattinen’s statutory nondisclosure claim. A seller of residential real property must make a written disclosure to the prospective buyer before signing an agreement to sell the property. Minn. Stat. § 513.55, subd. 1(a). The disclosure must include “all material facts of which the seller is aware that could adversely and significantly affect” a buyer’s use and enjoyment of the property. *Id.* “The disclosure must be made in good faith and based upon the best of the seller’s knowledge at the time of disclosure.” *Id.*, subd. 1(b). A seller who fails to make a required disclosure and “was aware of material facts pertaining to the real property is liable to the prospective buyer.” Minn. Stat. § 513.57, subd. 2. But a seller is not liable for any omission that “was not within the personal knowledge of the seller.” *Id.*, subd. 1.

Mattinen argues that the Karis failed to disclose material facts regarding defects in the home’s insulation and heating system, which allegedly caused unusually cold temperatures in the home during the winter. The Karis argue that the district court correctly granted summary judgment on the nondisclosure claim because Mattinen failed to establish a genuine issue of material fact regarding the existence of the alleged defects.

¹ Mattinen assigns error to several aspects of the district court’s reasoning, including that it “failed to consider the entire record,” “ignored critical facts,” “failed to recognize inferences created by circumstantial evidence,” and “incorrectly determined that key evidence supporting [her] claims was metaphysical, unverified or conclusory.” Because our standard of review is *de novo*, we do not address those assertions of error.

Mattinen contends that the following evidence creates a genuine issue of material fact regarding the temperature of the house during the winter: photographs showing temperatures recorded from a handheld infrared thermometer in various areas of the house, as well as blankets placed on the walls and floor, and a list of witnesses who will testify regarding the temperature of the house. Mattinen argues that the Karis must have known about the conditions in the house because they had lived in it year-round for 35 years.

As an initial matter, the parties dispute whether the photographs are properly part of the record. The Karis contend that the photographs lacked an evidentiary foundation. Mattinen responds that foundation is not necessary at this point in the litigation. We need not decide that issue because even if the photographs are part of the record, they do not create a genuine issue of material fact. The photographs of the temperature reading do not explain *why* the house was cold, that is, they do not establish that the house was cold due to defects in the house's insulation and heating system. Nor do the photographs of blankets laid throughout the house explain why the house was cold.

Mattinen's list of potential witnesses also does not create a genuine issue of material fact. A party cannot preserve a right to a trial on the merits merely by "postulating evidence which might be developed at trial." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) (quotation omitted). Instead, the nonmoving party "must extract *specific*, admissible facts." *Kletschka v. Abbott-Nw. Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). Moreover, testimony regarding the temperature in the house would not explain why the house was cold or permit a reasonable person to conclude that the temperature resulted from a specific defect. Notably, Mattinen did not

submit an affidavit from the contractor who allegedly inspected the house in January 2019 and opined that the heating system and insulation were inadequate.

In sum, Mattinen failed to submit sufficient evidence that would permit a reasonable person to conclude that the alleged defects in the home's insulation and heating system existed at the time of the sale and that the Karis failed to disclose those defects. The Karis are therefore entitled to summary judgment on Mattinen's nondisclosure claim.

II.

We next consider Mattinen's common-law fraud claim and the alleged violation of the CFA. To establish common-law fraud, a plaintiff must show that: (1) the defendant made a false representation of material fact, (2) the defendant knew the representation was false, (3) the defendant intended to induce the plaintiff to act in reliance on the representation, (4) the plaintiff relied on the representation, and (5) the plaintiff suffered damages as a result. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009).

The CFA provides relief against a misrepresentation made "with the intent that others rely thereon in connection with the sale of any merchandise." Minn. Stat. § 325F.69, subd. 1; *see also* Minn. Stat. § 8.31, subd. 3a (2018) (providing that a person injured by a violation of the CFA may bring a civil action and recover damages). Although a plaintiff in a consumer-fraud action need not show reliance under the standard for common-law fraud, "an element of individual reliance is embedded" in the requirements of the CFA. *State v. Minn. Sch. of Bus., Inc.*, 935 N.W.2d 124, 134 (Minn. 2019). Thus, both of

Mattinen's fraud claims require her to show that she relied on the Karis' alleged misrepresentation.

The Karis argue that Mattinen did not provide sufficient evidence of her reliance on their alleged misrepresentation because she relied on her inspector's report in purchasing the home, and not on any of their statements.

"When a party conducts an independent factual investigation before it enters into a commercial transaction, that party cannot later claim that it reasonably relied on [an] alleged misrepresentation." *Valspar*, 764 N.W.2d at 369. Mattinen acknowledges the rule from *Valspar*, but she argues that this case is distinguishable because the parties in *Valspar* were sophisticated businesses engaged in a large commercial transaction and had conducted joint testing before signing their contract. Mattinen points out that, in contrast, the district court here made no findings regarding her intelligence or "experience in log home construction, homes sales and insulation," nor was there "any cooperation between the parties prior to the sale."

"Reliance in fraud cases is generally evaluated in the context of the aggrieved party's intelligence, experience, and opportunity to investigate the facts at issue." *Id.* Therefore, as Mattinen contends, her intelligence and experience are relevant. But the opportunity to investigate is also relevant. *Id.* Mattinen had the opportunity to investigate the condition of the house before she purchased it. The purchase agreement expressly conditioned the sale of the property on Mattinen obtaining a satisfactory inspection. Mattinen selected an inspector who examined the property and provided Mattinen with an inspection report. Subsequently, the parties signed an amendment to the purchase

agreement that addressed some of the issues identified in the inspection report. Regardless of Mattinen's lack of sophistication, she had the opportunity to investigate the property with a housing inspector of her choosing. Although the Minnesota Supreme Court has held that a purchaser of residential property may show reliance on the seller's statements if the purchaser completes only a partial or "cursory investigation" of the property, *Berryman v. Riegert*, 175 N.W.2d 438, 443 (Minn. 1970), the record does not suggest that Mattinen's professional inspection was cursory.

In sum, Mattinen failed to present sufficient evidence that would permit a reasonable person to conclude that Mattinen relied on statements by the Karis—and not her own inspector's report—in deciding to purchase the property. The Karis are therefore entitled to summary judgment on Mattinen's fraud claims.

Because the summary dismissal of Mattinen's lawsuit was proper, we affirm without addressing the Karis' alternative argument that this court should affirm the district court's grant of summary judgment based on Mattinen's alleged spoliation of evidence. *See Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011) (explaining that spoliation of evidence is the "failure to preserve property for another's use as evidence in pending or future litigation" (quotation omitted)).

Affirmed.