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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1434**

RKL Landholding, LLC,
Appellant,

vs.

Gaughan Land Incorporated,
Respondent.

**Filed July 9, 2012
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CV-10-8637

Laura E. Isenor, Kirk M. Anderson, Anderson & McCormick, P.A., Minneapolis,
Minnesota (for appellant)

Bradley A. Kletscher, Tammy J. Schemmel, Barna, Guzy & Steffen Ltd., Minneapolis,
Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Willis,
Judge.*

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's grant of summary judgment in this land-conveyance dispute involving cancellation of a contract for deed, arguing that

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

(1) cancellation of the contract for deed is irrelevant to appellant's damages and equitable claims, and (2) the district court should have granted a continuance to allow appellant to conduct discovery. We affirm.

FACTS

On May 1, 2008, appellant RKL Landholding, LLC and respondent Gaughan Land Incorporated executed a commercial purchase agreement.¹ Under the agreement, respondent would sell the property subject to appellant performing certain conditions, such as conducting inspections, obtaining authorizations, and securing financial approval. Appellant had a 180-day due-diligence period to complete the conditions. The closing date was to be 30 days after expiration of the due-diligence period.

Between October 2008 and January 2010, the parties executed three amendments to the agreement, all of which extended the due-diligence period. The amendments, with the exception of the first amendment, provided appellant with elections to extend the due-diligence period by paying respondent \$5,000 for each extension. The \$5,000 payments were nonrefundable and applicable to the purchase price upon closing. Appellant paid respondent \$5,000 to extend the due-diligence period to February 1, 2010, and another \$5,000 to extend the due-diligence period to May 1, 2010. Appellant then delivered a \$5,000 check to respondent, noting in the memo line that due diligence was extended to October 30, 2010. On September 30, 2010, appellant sent a waiver of contingency, indicating that it was prepared to close 30 days after the end of the due-diligence period. But appellant did not close. Respondent determined that appellant was in default for

¹ Including the amendments, the parties executed four purchase agreements but all will be referred to as the agreement.

failing to close within 30 days after the due-diligence period and served notices of cancellation on November 4, 2010.

On December 2, 2010, appellant moved for a temporary restraining order and filed a complaint, alleging breach of contract, requesting specific performance or money damages; and equitable estoppel. Appellant alleged that it had until November 30, 2010, in which to close, and by serving the notices of cancellation on November 4, respondent announced its intention not to perform its obligations under the agreement. Following a hearing on December 10, the district court concluded that the service of the notices of cancellation through the Office of the Secretary of State was ineffective. On December 16, 2010, respondent renewed its action and personally served notices of cancellation, effectively cancelling the agreement on January 15, 2011.²

On January 12, 2011, appellant chose to seek a fourth amendment to the agreement, intending to extend the due-diligence period to July 31, 2011, by paying respondent \$5,000. Appellant submitted a check to respondent, but respondent returned the check to appellant. On February 23, respondent moved for summary judgment, asserting that the notices served on December 16 cancelled the agreement.

Following a hearing on March 23, the district court granted respondent's motion for summary judgment, concluding that, under Minn. Stat. § 559.21 (2010), there was no genuine issue of material fact regarding the cancellation of the agreement upon expiration of the 30-day notice period on January 15, 2011. The district court further concluded that the cancellation of the agreement terminated appellant's additional claims. Appellant

² The agreement and Minn. Stat. § 559.21 (2010) provide that the agreement would be cancelled 30 days after service of notice.

sought to defeat the summary-judgment motion as premature, arguing that it should be entitled to engage in discovery, but the district court also concluded that appellant failed to submit an affidavit specifying the information that it expected to discover, the source of the information, or its reasons for failing to conduct discovery during the time that passed since it commenced litigation. This appeal follows.

D E C I S I O N

When reviewing a grant of summary judgment, an appellate court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate 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) (citing Minn. R. Civ. P. 56.03). The reviewing court “view[s] the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *Id.* at 77.

Appellant does not challenge the district court’s conclusion that the statutory notice cancelled the agreement; rather, appellant argues that its damages and estoppel claims arose prior to expiration of the redemption period. Appellant’s argument is without merit, because the cancellation of the agreement terminated all claims related to the agreement. In *Nowicki v. Benson Props.*, Nowicki entered into a purchase agreement

to acquire property from Benson Properties. 402 N.W.2d 205, 206 (Minn. App. 1987). Benson served notice of cancellation because Nowicki failed to comply with a condition precedent. *Id.* at 207. Nowicki filed suit, alleging breach of contract, fraudulent misrepresentation, and rescission. *Id.* The district court granted summary judgment in favor of Benson, concluding that Nowicki had no interest in the property following statutory cancellation. *Id.* On appeal, this court determined that “It is longstanding law in Minnesota that once statutory notice has been served and cancellation effected, all rights under a contract for deed are terminated. Each of the causes of action in Nowicki’s complaint . . . depends on the existence of a contract.” *Id.* at 208 (quotation omitted). Here, all rights dependent on the existence of the agreement were terminated when the notices of cancellation were served on December 16 and cancellation was effected. The district court properly granted summary judgment.

Appellant challenges the district court’s denial of a continuance to conduct discovery. Appellant argues that there is a genuine issue of material fact as to whether the fourth amendment to the agreement was executed. Appellant asserts that through discovery it could ascertain whether this fourth amendment was executed, thereby extending appellant’s due-diligence period and resulting in respondent breaching the agreement by serving the notices of cancellation.

A party may move for summary judgment “at any time after the expiration of 20 days from the service of the summons.” Minn. R. Civ. P. 56.01; *accord Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). An opposing party may seek to continue the motion in order to conduct additional discovery. Minn. R. Civ. P. 56.06. Courts should liberally grant such continuances, particularly when the party against

whom summary judgment is sought has had insufficient time to complete discovery. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 400 (Minn. App. 2010). But the district court may deny the continuance motion if the moving party seeks immaterial facts or has not been diligent in conducting discovery. *Id.* We review a district court's denial of a continuance motion for an abuse of discretion. *Id.*

Under Minn. R. Civ. P. 56.06, “[s]hould it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party’s opposition, the court . . . may order a continuance to permit . . . discovery to be had.” When deciding whether to grant a motion for a continuance, the district court must consider two factors: “(1) whether the nonmoving party is seeking further discovery in the good faith belief that material facts will be uncovered, or is [the party] merely engaging in a fishing expedition; and (2) whether the nonmoving party has been diligent in obtaining or seeking discovery before requesting the continuance.” *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 818 (Minn. App. 2011) (quotation omitted). “When summary judgment is involved, if the discovery would not assist the district court or change the result of the summary judgment motion, the district court does not abuse its discretion by granting the summary judgment motion without granting the continuance.” *QBE*, 778 N.W.2d at 400.

Appellant failed to submit an affidavit supporting a claim that it had been diligent in seeking discovery and that it had a good-faith belief that material facts would be uncovered. The lack of an affidavit alone would have been enough for the district court to have denied the motion for a continuance. But there are additional reasons supporting the district court’s denial.

Appellant was required to show that it had a good-faith belief that material facts would be uncovered. Appellant asserts that there is a dispute regarding the alleged fourth amendment of the agreement. Appellant claims that through discovery it would have learned whether the signature purported to be that of respondent's president was actually his signature. But there is evidence from respondent's president denying that he signed the fourth amendment. Additionally, the fourth amendment contained a provision that the due-diligence period would be extended by payment of \$5,000. That check was returned to appellant. It was not accepted; thus, there was no consideration for the extension, which renders the signature issue moot. Finally, the fourth amendment was dated January 12, 2011, after the commencement of litigation and after appellant was served with the notices of cancellation. Without a contract, there is nothing left to discover because each of appellant's claims were dependent on the existence of an agreement.

Appellant also asserts that through discovery it would have sought "communications from [r]espondent regarding their alleged statements to continue to extend the due diligence period so that [a]ppellant could get the necessary approval and financing." But the notices of cancellation and the fact that respondent returned the final \$5,000 check to appellant belies the assertion that there were such communications. Appellant also asserts that it would have attempted to discover whether respondent was talking to other potential buyers. But this is irrelevant. The fact that respondent cancelled the agreement only after extending it several times indicates that respondent, at least initially, intended to follow through with the agreement. Additionally, the

possibility that respondent spoke with other potential buyers had no influence on appellant's failure to close, thereby curing its defect during the 30-day redemption period.

Appellant was also required to show that it had been diligent in seeking discovery before requesting the continuance. Appellant concedes that no discovery was conducted, arguing that it had only a little over two months in which to conduct discovery. Appellant filed its complaint on December 2, 2010. The district court held the summary-judgment hearing nearly four months later on March 23, 2011. Appellant could have begun discovery after service of the summons and complaint in December but failed to do so. *See* Minn. R. Civ. P. 30.01 (stating that any party may take a deposition after service of the summons); 33.01(a) (stating that any party may serve written interrogatories after service of the summons and complaint); 34.01, .02 (stating that any party may serve a document-production request upon any party without or after service of the summons and complaint). Appellant failed to show diligence in seeking discovery; therefore, the district court did not abuse its discretion in denying appellant's request for a continuance. Summary judgment was appropriately granted in the matter.

Affirmed.