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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2343**

Elliot Park Enterprises, LLC,
Respondent,

vs.

Rogal Real Estate, LLC, et al.,
Appellants,

vs.

Aba S. Hashim,
Respondent,

Jamal Inc.,
Defendant,

Rogal Real Estate, LLC, et al.,
Appellants,

vs.

Aba S. Hashim,
Respondent,

Mohamed Abdulle, et al.,
Defendants,

Elliot Park Enterprises, LLC,
Respondents,

Kennedy Law Group, PLLC,
Lower Court Intervenor,

vs.

Rogal Real Estate, LLC, et al.,
defendants to counterclaim and intervenor's complaint,
Appellant,

Jamal, Inc.,
Defendant to Counterclaim and Intervenor's Complaint.

Filed November 4, 2013
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-10-20981

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellants challenge the district court's conclusion that respondent is the fee owner of a commercial property, arguing, among other things, that respondent is not a good-faith purchaser of the property. We affirm.

FACTS

This appeal stems from competing claims of ownership of a commercial building located in Minneapolis (the property).¹ Appellant Rogal Real Estate LLC, whose principal is Adem Ali, previously owned the property. Rogal retained Mohamed Abdulle, the principal of Community Residential and Commercial Development Group (CRCDG) and JM Realty, to find a buyer for the property.

Aba Hashim leases a portion of the property, where he operates a bakery. Hashim was interested in purchasing the property. Initially, Hashim paid \$10,000 in earnest money to JM Realty and entered into a contract for deed for the property on February 11, 2010, but the transaction was never completed.

Abdulle attempted to sell the property to Hashim a second time. This transaction involved a pass-through sale to Jeffrey Taylor, a former mortgage broker, wherein Taylor would obtain the property from Rogal and then sell the property to Hashim. Ali signed a purchase agreement with Taylor on Rogal's behalf and then signed over a warranty deed to the property to Taylor on February 19. The follow-up sale of the property from Taylor to Hashim never closed.

Abdulle initiated a third attempt to sell the property to Hashim in which Rogal would sell its assets to CRCDG and CRCDG would resell the property to Hashim through a lease-to-purchase agreement. Ali signed an asset-purchase agreement on Rogal's behalf. The lease-to-purchase agreement between CRCDG and Hashim was prepared but never signed.

¹ Our statement of facts is taken directly from the district court's posttrial findings of fact.

After the prior unsuccessful purchase attempts, Hashim retained a lawyer, sought traditional financing, and negotiated directly with Ali to purchase the property. Despite having signed the warranty deed to Taylor in February and the asset-purchase agreement with CRCDCG in March, Ali entered into a purchase agreement to sell the property to Hashim on April 21. He signed an accompanying warranty deed on April 22, and Hashim paid \$25,000 in earnest money. But once again, the sale did not close.

Meanwhile, Taylor transferred the warranty deed that he had received to the property to Green Room Health LLC, to satisfy a debt he owed to Green Room's owner. Taylor handwrote Green Room's name on the deed to effectuate the transfer. He then attempted, with Abdulle, to sell the property on Green Room's behalf so he could pay off the debt in cash.

Amina Deble and Ehab Elsayed are married, run a restaurant, and are the sole principals of respondent Elliot Park Enterprises LLC. Deble had been interested in purchasing the property since at least September 2009. Abdulle approached Deble about purchasing the property, and she assumed he was acting as an agent for Green Room, the potential seller. She had been skeptical of buying from Ali because they are distant relatives and have a strained relationship, so she was encouraged by the fact that the current seller was an "American" and not Ali. Deble inspected the property and met Hashim during the inspection. The inspection occurred approximately one month before Hashim signed the purchase agreement with Ali. Hashim did not tell Deble that he owned the property or had any right to claim the property.

As with Hashim, Abdulle attempted to sell the property from Green Room to Deble several times. The first two attempts, pursuant to contracts for deed, failed. But Deble and Elsayed eventually entered into an agreement on Elliot Park's behalf to purchase the property from Green Room. Elliot Park retained Richard Morris as legal counsel for the purchase of the property. Prior to execution of the purchase agreement, Morris brought a quiet title action on Green Room's behalf to remove Taylor's name from the warranty deed. Elliot Park was unaware of the quiet title action its attorney brought on behalf of Green Room.

After the sale to Elliot Park closed, Deble and Elsayed inspected the property and again encountered Hashim. Hashim, believing he had rights to the property, challenged Elliot Park's ownership of the property. Elliot Park brought a quiet title action in the district court, seeking to establish fee ownership of the property. Rogal also brought a quiet title action, and the cases were consolidated. In its quiet-title complaint, Rogal asserted that Hashim, Abdulle, and CRCDG were not good-faith purchasers of the property. Rogal also asserted that Elliot Park was not a good-faith purchaser because "Elliot Park had implied, and perhaps actual, notice that there were competing interests in the [p]roperty at the time it allegedly acquired it, and therefore was responsible for inquiring into those competing interests." Rogal therefore sought an order that "Rogal Real Estate, LLC is the owner in fee of the [p]roperty, and that none of the Defendants, has any right, title, ownership interest in or lien thereon."

The district court held a four-day court trial and concluded that Elliot Park, as a good-faith purchaser, is the fee owner of the property subject to the leasehold interest of

Hashim. The district court also concluded that “Rogal and Ali have no remaining right, title or interest in the [p]roperty.” The majority of the district court’s analysis, however, addresses Elliot Park’s good-faith-purchaser status in the context of Hashim’s claim to the property.

Elliot Park asked the district court to correct several clerical mistakes in its findings of fact, conclusions of law, order for judgment, and judgment. The district court granted the request in part. Rogal did not move for amended findings or a new trial, or file any other posttrial motion. Rogal and Hashim appealed the district court’s judgment to this court, and the cases were consolidated. Later, Hashim and Elliot Park stipulated to the dismissal of Hashim’s appeal, leaving Rogal’s appeal for our consideration.

D E C I S I O N

In an appeal from a court trial, this court reviews the district court’s findings of fact under the clearly erroneous standard. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). We will not overturn a district court’s ruling if it is free of legal or factual errors unless the court exercised its discretion in an arbitrary or capricious manner. *Id.* Appellate courts do not reweigh the evidence and defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Good-Faith-Purchaser Status

Rogal argues that Elliot Park was not a good-faith purchaser because “Elliot Park Enterprises had knowledge or should have had knowledge of Rogal Real Estate’s interest in the subject property.” “A good faith purchaser is someone who gives consideration in good faith without actual, implied, or constructive notice of inconsistent outstanding

rights of others.” *MidCountry Bank v. Krueger*, 782 N.W.2d 238, 244 (Minn. 2010) (quotation omitted). The party asserting good-faith-purchaser status has the burden of proving its good-faith-purchaser status. *Id.* “Whether one is a good-faith purchaser is a factual determination that will be sustained unless the reviewing court has a firm and definite impression that a mistake has been made.” *Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 488 (Minn. App. 2007).

Rogal argues that “Elliot Park had unusual circumstances sufficient to place them on notice to inquire further.” Rogal offers detailed factual arguments regarding Elliot Park’s purported notice of Rogal’s interest in the property. But the district court concluded that “[t]he dispute centers on whether Elliot Park knew of Hashim’s prior interest.” Thus, the district court’s detailed analysis regarding Elliot Park’s good-faith-purchaser status focuses almost exclusively on Elliot Park’s knowledge of Hashim’s interest in the property. The district court’s analysis regarding Elliot Park’s knowledge of Rogal’s interest in the property is limited to the following finding: “Elliot Park was a [good-faith] purchaser without notice of Hashim’s or Ali’s claim to own the property.”

Nonetheless, in explaining why Elliot Park did not have notice of Hashim’s interest in the property, the district court mentions Ali. For example, the district court states that “[i]t is credible that the Elliot Park principals were primarily concerned that Ali not be involved with the sale because of their prior dealings with Ali” and that their concern was addressed “by the fact that the sale was being made by [Green Room] and not Ali.” In other words, they believed Ali was no longer an owner. The district court’s reasoning regarding Ali’s role supports the district court’s finding that Elliot Park did not

have notice of “Ali’s claim to own the property.” And the evidence supports that finding. At trial, Deble testified that she was told in 2010 that Green Room owned the property and was selling it. She further testified that Ali was a regular customer at her restaurant, but he never told her that he or Rogal owned the property until after she had purchased it. Elsayed testified similarly. Moreover, both Deble and Elsayed testified that they would not have attempted to purchase the property if they had known that Ali owned it. Lastly, Ali testified that during the spring of 2010, he never told Deble that the deed to Taylor was invalid or that Taylor did not own the building.

We observe that Rogal does not assign error to the district court’s limited analysis of Elliot Park’s knowledge of Rogal’s interest in the property. Instead, Rogal generally argues that the record evidence shows that Elliot Park had notice of Rogal’s interest in the property. Essentially, Rogal would have this court reweigh the evidence and substitute its judgment for that of the district court. We will not do so. *See Arundel v. Arundel*, 281 N.W.2d 663, 667 (Minn. 1979) (stating that appellate courts “are not free to substitute [their] judgment for that of the [district] court absent a clear abuse of its discretion”); *see also Sefkow*, 427 N.W.2d at 210 (stating that appellate courts do not reweigh the evidence on appeal).

Rogal further argues that “Elliot Park’s [a]ttorney had knowledge of unusual circumstances to put him on notice to inquire further.” Generally, the knowledge of an agent is imputed to the principal. *See Rudd Lumber Co. v. Anderson*, 161 Minn. 353, 357, 201 N.W. 548, 549 (1925) (stating that “the knowledge an agent gains while transacting his principal’s business will be imputed to the principal”). But

there is a well-established exception to the general rule that the knowledge of an agent is to be imputed to the principal, in situations where the conduct and dealings of the agent are such as to raise a clear presumption that he will not communicate to the principal the facts in controversy, as where the agent acting nominally as such is in reality acting in his own business or for his own personal interest and adversely to the principal, or is acting fraudulently against the interests of the principal, or for any other reason has a motive or interest in concealing the facts from his principal.

Sussel Co. v. First Fed. Sav. and Loan Ass'n of St. Paul, 307 Minn. 199, 201-02, 238 N.W.2d 625, 627 (1976) (quotation omitted).

The district court concluded that although attorney Morris “arguably was exposed to many more red flags, and should have . . . inquired further” as to the status of the property’s title, “it would not be proper to impute this implied notice to Elliot Park” because Morris was acting as a “double agent” and “specifically acting against the interests of his client Elliot Park.” The district court’s factual findings support this conclusion: Morris was acting as Elliot Park’s agent, but Green Room also believed that Morris was its lawyer. Morris brought a quiet-title action on Green Room’s behalf to remove Taylor from the warranty deed. And, as noted by the district court, “[t]his action was taken to advance the interests of seller [Green Room] and not to advance the interests of Morris’s client Elliot Park.” In fact, Elliot Park was not even aware of this quiet-title action, which benefited Green Room by giving it a cleaner title to convey. The district court further found that “[t]he underlying irregularities that Morris overlooked continued to jeopardize the title that his client Elliot Park sought to obtain” and that “[b]y the time of the closing, Morris had represented both the buyer and the seller in key transactions

related to the sale without disclosing his dual representation to Elliot Park.” Therefore, even assuming that Morris should have been aware of Rogal’s interest in the property, the district court properly concluded that his knowledge cannot be imputed to Elliot Park because he was “specifically acting against the interests of his client Elliot Park.” *See id.*

Validity of the Warranty Deed

Rogal argues that “Elliot Park [is] not legal fee owner[] of the subject property because the [w]arranty [d]eed signed by Rogal . . . was a blank warranty deed. At the time [Adem] Ali signed the said warranty deed, there was no grantee and there was no intent to convey title to a grantee.” Rogal further argues that “the warranty deed was invalid because the name of the grantor was indicated as Rogal Real Estate Incorporated rather than Rogal Real Estate LLC.”

Generally, an appellate court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Rogal did not raise a claim regarding the validity of the warranty deed in its complaint. Instead, it briefly discussed the issue in opening and closing arguments at trial. But the district court did not address Rogal’s warranty-deed arguments in its findings of fact and conclusions of law. The trial, however, spanned multiple days and involved competing claims, numerous parties, and complicated facts. Under the circumstances, it is not surprising that the district court did not address Rogal’s arguments regarding the validity of the warranty deed. Moreover, Rogal did not move the district court for amended findings or a new trial in an effort to obtain a ruling on the validity of the warranty deed. When the district court’s failure to address an issue is not raised in a new trial motion,

there is no ruling for an appellate court to review. *Frank v. Ill. Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983). In sum, Rogal’s arguments regarding the validity of the warranty deed are not properly before this court. We nonetheless observe that the arguments do not call into question the district court’s findings or conclusions regarding Elliot Park’s good-faith-purchaser status. *See Widmann v. Olinger*, 154 Minn. 208, 210, 191 N.W. 588, 589 (1923) (holding that an individual who purchased property in reliance on the deed, with no knowledge that the deed had been fraudulently procured, was a good-faith purchaser without obligation to inquire further).

Other Arguments on Appeal

Rogal makes several other arguments on appeal. For example, Rogal argues that “Rogal Real Estate LLC, [Adem] Ali, and Jeff Taylor were indispensable parties who were not joined as parties in the [Green Room] Health Quiet Title Action.” Rogal also argues that “Mohammed Abdulle, Jeff Taylor, Green Room Health LLC, Morris Law Group, PA and Elliot Park Enterprises acted as partners and agents of each other and had [n]otice of Rogal’s interest in the subject [p]roperty. Abdulle, Taylor, Green Room Health, Morris Law Group and Elliot Park Enterprises were joint partners and agents of each other.” Our review of the complaint, the record, and Rogal’s opening and closing arguments at trial reveals that Rogal did not raise these arguments in the district court. We therefore do not consider them. *See Thiele*, 425 N.W.2d at 582.

Rogal also asserts that “[t]here was a [b]reach of [f]iduciary [duties] against Rogal Real Estate.” Rogal asks this court to hold “Abdulle, Taylor, Green Room, and Morris Law Group in breach of their fiduciary duties to Rogal” and award “substantial damages

to Rogal for injuries suffered.” Once again, this argument was not raised in the district court, and we therefore do not consider it. *See id.* Moreover, an appeal is not the appropriate forum for Rogal to initiate a breach-of-fiduciary-duty claim seeking monetary damages. *See Sefkow*, 427 N.W.2d at 210 (“The function of the court of appeals is limited to identifying errors and then correcting them.”).

Affirmed.