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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0736**

Geoffrey G. Griffin,
Appellant,

vs.

Elizabeth A. Abrahamson, et al.,
Respondents.

**Filed November 5, 2012
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69VI-CV-10-238

Lee Novotny, Novotny Law Office, Ltd., Chatfield, Minnesota (for appellant)

Richard E. Prebich, Law Offices of Richard E. Prebich, Hibbing, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this breach-of-contract dispute, appellant argues that the district court's finding that respondents did not breach the parties' real estate development agreement is clearly erroneous. Appellant also argues that the district court erred in (1) taking judicial notice

of and relying on the diminished real estate market, and (2) admitting extrinsic evidence to construe the terms of the parties' agreement. Because the district court's finding that respondents did not breach the parties' agreement was not clearly erroneous, we affirm.

FACTS

On December 16, 2005, appellant Geoffrey Griffin and respondents Elizabeth and Ronald Abrahamson executed two separate, but integrally connected agreements: a Purchase Agreement and a Joint Venture Development/Purchase Agreement (the Development Agreement). In the Purchase Agreement, respondents agreed to sell the northerly 350 feet (parcel 1) of a 37-acre parcel of riverfront property in Tower, Minnesota to appellant for \$105,500. In the Development Agreement, appellant agreed to develop a boathouse condominium project on parcels 2, 3, and 4 of the property, and respondents agreed to cooperate in the development process by "signing the necessary applications to facilitate the development of these parcels." Appellant also agreed to pay respondents \$5,000 per unit once he received final plat approval for the parcels in exchange for a deed to the three parcels.

Appellant filed a complaint in May 2008 to specifically enforce the Purchase Agreement. The district court granted appellant specific performance. Following the district court's ruling, appellant chose not to follow through with the purchase of parcel 1, and the respondents canceled the Purchase Agreement on July 8, 2009. Despite the failure of the Purchase Agreement, appellant moved forward with efforts to subdivide, plat and develop parcels 2, 3, and 4 as required by the Development Agreement. In June and December 2009, appellant requested by e-mail that respondents sign a consent form

so that he could move forward with the platting process. Respondents responded by raising several objections to appellant's proposed plats and refused to sign the consent form. On January 18, 2010, appellant sent a letter to the city, asking it to process his preliminary plat application without respondents' signatures. The city denied appellant's request.

On April 6, 2010, appellant filed a second complaint, alleging that respondents breached the Development Agreement by refusing to sign the necessary applications for obtaining plat approval and failing to cooperate in the development process. The parties brought cross-motions for declaratory relief, which the court heard on September 24, 2010. The district court granted appellant's motion, entering partial summary judgment in favor of appellant, and ordered respondents to immediately sign any necessary consent and application documents to facilitate the development process and fulfill their contractual obligations under the Development Agreement. The district court reserved ruling on appellant's claim for monetary damages.

Respondents signed appellant's preliminary plat application in October 2010, but the city refused to process appellant's application because of a mortgage on the property. The city notified appellant that it would not process his application until the holder of the mortgage signed a consent to plat or the mortgage was removed as a lien against the property. The respondents had mortgaged the property in April 2004 to secure a \$95,000 home equity line of credit, which they renewed in March 2008, increasing the line of credit to \$127,000. This mortgage became a major impediment to the development process. On March 3, 2011, the district court ordered respondents to cooperate with

appellant to address the mortgage issue and not to obstruct or oppose the subdivision, platting, or development process. Nevertheless, appellant remained unable to proceed with the development.

On October 28, 2011, the district court held a bench trial on appellant's claim for monetary damages for breach of the Development Agreement. Following the trial, the district court dismissed appellant's breach-of-contract claim, finding that appellant "failed to prove that any breach of contract by the [respondents], as opposed to the operation of market forces beyond the control of either party, has resulted in money damages to the [appellant]." This appeal follows.

DECISION

"A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). A material breach is "[a] breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages." *Sitek v. Striker*, 764 N.W.2d 585, 593 (Minn. App. 2009) (quoting *Black's Law Dictionary* 200 (8th ed. 2004)), *review denied* (Minn. July 22, 2009). "Whether an act or omission constitutes a material breach of a contract is a fact question." *Id.*

In an appeal from a bench trial, we give the district court's factual findings great deference and will not set them aside unless clearly erroneous. *Porch v. Gen. Motors*

Acceptance Corp., 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). “If there is reasonable evidence to support the district court’s findings, we will not disturb them.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). The district court found that, “no actions or failures to act on the part of the [respondents] were a substantial contributing [cause] to [appellant]’s failure to develop the project within the six year contract term.” In other words, no actions or failures to act on the part of the respondents constituted a material breach of the Development Agreement. *See Sitek*, 764 N.W.2d at 593. The record supports the district court’s finding.

The Development Agreement only required respondents “to cooperate with [appellant] by signing the necessary applications to facilitate the development of these parcels,” and to “[d]eed [p]arcels to the developer upon receipt of payment and approval of final plat by the City of Tower.” Besides appellant’s preliminary plat application, which respondents signed in October 2010, appellant does not indicate any other “necessary applications” that respondents failed to sign in breach of the Development Agreement. Therefore, appellant’s argument that respondents failed to sign the necessary applications is not supported by the record.

In addition, appellant argues that respondents breached their obligations under the Development Agreement by obstructing the project and failing to act in good faith, focusing primarily on respondents’ failure to remove a mortgage from the property. The

evidence shows that even after respondents signed the preliminary plat application, the city refused to process it because of the mortgage encumbering the property. According to appellant's own testimony at trial, the mortgage became the only thing holding up the platting process once respondents signed the application. Although not required by the Development Agreement, respondents complied with the district court's March 2011 order and granted the bank consent to communicate with appellant regarding the mortgage. Respondents also requested that the bank consent to appellant's preliminary plat application. Nevertheless, when asked to consent to the platting of the property, the bank told appellant that it would not consent until the mortgage was paid off in full.

As a result, appellant argues that respondents failed to cooperate with him in good faith to remove the mortgage, and thus breached the Development Agreement. Appellant specifically points to respondents' refusal to transfer the mortgage to another unencumbered property and denial of appellant's offer to loan them the money necessary to pay off the mortgage. Contrary to appellant's argument, however, the Development Agreement does not require respondents to take any of the actions suggested by appellant. It does not even mention liens or encumbrances much less require respondents to affirmatively take steps to remove them from the property during the platting process. Consequently, appellant's argument that respondents somehow breached the Development Agreement by failing to remove the mortgage from the property is misplaced.

Given appellant's inability to proceed with the development process even after obtaining respondents' signatures and cooperation, there is reasonable evidence to

support the district court's finding that respondents did not breach the Development Agreement and thus are not liable for monetary damages.

Appellant also argues that the district court erred by admitting extrinsic evidence in interpreting the Development Agreement. This evidence relates to the number of units that were to be built. Finally, appellant argues that the district court erred by taking judicial notice that the declining real estate market may have played a part in the failure of this real estate project. Because neither of these errors, even if true, would change our conclusion that respondents did not breach the Development Agreement, it is not necessary to reach them.

Affirmed.