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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0628**

Steve Camp a/k/a Stephen Camp,
Appellant,

vs.

Dax M. Dickson,
Defendant,

Precision Closers, Inc., et al.,
Respondents.

**Filed April 8, 2008
Affirmed
Harten, Judge***

Hennepin County District Court
File No. 27-CV-05-009772

Kenneth R. Hertz, Hertz Law Offices, P.A., 3853 Central Avenue Northeast, Columbia Heights, MN 55421 (for appellant)

Alan T. Tschida, 505 Tanglewood Drive, Shoreview, MN 55126 (for respondents)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Harten,
Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant Steve Camp, the seller of a parcel of real property, challenges the judgment dismissing his claims against respondents Precision Closers, Inc. (PC) and Martha Williams, a real estate closing agent and P.C.'s principal. Because respondents were not Camp's agents, neither of them had or breached a duty of disclosure to Camp, and because neither is liable for income taxes incurred by Camp, we affirm.

FACTS

Steve Camp, a landscaper, owned a parcel of property on which Homecomings Financial (HF) held a \$136,000 mortgage. Camp completed \$8,000 worth of landscaping on the property. In January 2004, Dax Dickson, who intended to buy the property, signed a promissory note agreeing to pay Camp \$8,000 when the property was refinanced.

By March 2004, Camp was facing imminent foreclosure. He and Dickson entered into a contract for deed transferring the property to Dickson. Dickson agreed to pay the \$136,000 mortgage according to its terms, with a \$2,500 down payment. They also executed a supplemental contract requiring Dickson to pay Camp \$2,000 for each year that the HF mortgage remained on the property. Dickson contacted Capital Lending, Inc. (CL) to refinance.

On 25 January 2005, HF sent Camp a letter thanking him for his inquiry about a "short payoff," an arrangement whereby HF would settle for less than the full amount owing on the mortgage and issue to the mortgagor an income tax form 1099 for the amount remaining. The letter told Camp what documents to submit to be considered for

a short payoff and advised him to consult a tax professional to determine the effect of the form 1099 on his tax liability.

Settlement was to occur in April 2005. In March, Dickson told Camp to telephone Williams at PC; PC had been asked by CL to handle the closing. On 31 March 2005, Camp went to Williams's office to sign some documents because Camp planned to be out of the country at the time of the closing. The record includes three documents signed by Camp: a certification addendum to HUD 1 settlement statement, a warranty deed, and an affidavit stating that there were "no unrecorded contracts . . . or other agreements or interests relating to the [p]remises." Williams notarized Camp's signature on the warranty deed and on the affidavit. Camp, however, asserts that the signature on the affidavit was not his.¹

On 14 April 2005, HF sent Camp a letter approving a short payoff of \$70,000 due by 18 April 2005. The letter stated that Camp would receive no sales proceeds and that HF might report the amount of his discount to the IRS. Camp, who was out of the country on 14 April, claims he did not receive this letter.

The settlement statement, executed on 18 April 2005, lists Dickson as borrower, Camp as seller, CL as lender, and PC as settlement agent. It provides that the gross amount due Camp is \$70,947.50, of which \$70,000 is the payoff amount and \$947.50 is for settlement charges due to Camp.

¹ The date on the affidavit is problematic. The form reads "this ___ day of ___." A handwritten "1" is in the first blank; in the second, the word March was typed, then crossed out and replaced with a handwritten "April." Concerning the date, Williams testified that "we simply made a mistake and corrected it . . . at the closing."

When Camp returned from his vacation, he went to Williams's office to pick up the check for the \$10,500 that he thought was due him: \$8,000 for the landscaping, \$2,000 for the HF mortgage remaining on the property for one year, and \$500 owed him by Dickson for mortgage payments. Williams, who had no knowledge of Dickson's debt to Camp, was surprised and told Camp that he would not be receiving a check.

Camp then brought this action against Dickson, PC, and Williams, alleging fraud. Against Dickson, Camp also alleged breach of contract and unjust enrichment. Camp sought money damages and rescission of the sale of the property. Dickson did not file an answer or participate in the proceedings. Following trial, the district court entered a default judgment for Camp against Dickson for \$10,500, dismissed Camp's claims against respondents PC and Williams, and ordered judgment against Camp for respondents' costs and disbursements. Camp did not move for amended findings or a new trial. Camp challenges only the dismissal, arguing that PC and Williams were his agents who breached their fiduciary duty to him as their principal, that they had and breached a statutory duty to him, and that they are liable for the tax consequences resulting from the short payoff.²

² Because we determine that PC and Williams had no liability to Camp, we do not address Camp's argument that his loss was not limited to their closing fee.

DECISION

1. Agency Relationship³

“In an ordinary civil case, the scope of review on an appeal from a judgment without a motion for a new trial is whether the evidence supports the findings and whether the findings support the conclusions of law and judgment.” *In re Gonzales*, 456 N.W.2d 724, 727 (Minn. App. 1990). But substantive questions of law properly raised during trial are reviewed de novo. *Alpha Real Estate v. Delta Dental*, 664 N.W.2d 303, 310-11 (Minn. 2003).

Camp argues that PC and Williams had and breached a fiduciary duty to act in his best interests, specifically to tell him about the tax consequences of the short payoff and to arrange for Dickson to pay the money that he owed Camp; Camp further argues that this duty was imposed by their agency relationship with him. Agency requires “the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act.” *Plate v. St. Mary Help of Christians Church*, 520 N.W.2d 17, 20 (Minn. App. 1994) (quotations omitted), *review denied* (Minn. Oct. 14, 1994). The party alleging an agency relationship bears the burden of proof. *Id.* Whether the relationship exists is a fact question. *Id.*

³ We note that this issue was neither presented to nor considered by the district court: the words “agent” and “agency” do not appear in the pleadings, the transcript, or the district court’s decision. This court does not generally address issues that were not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But in the interest of thoroughness, we address it. *See* Minn. R. Civ. App. P. 103.04 (This court “may review any . . . matter as the interest of justice may require.”).

Camp claims in his brief that he “chose Williams to handle this transaction” and that “Williams agreed to close the transaction thus establishing an agency relationship.” But when Williams was asked how she got involved with the transaction, she answered, “I was contacted by Capital Lending. That was my first contact.” Camp provides no documentary or testamentary evidence to support his claim that he employed and paid Williams and PC. Moreover, when the district court asked Camp’s attorney if “the fact of the matter is your client [Camp] paid nothing and the buyer [Dickson] paid all the fees?” Camp’s attorney answered, “[T]hat’s correct.” Nor does Camp provide any legal support for his view that closing a real estate transaction imposes on the closer a fiduciary obligation to the seller.

The district court correctly concluded that PC and Williams were not agents of, and had no fiduciary obligation to, Camp.⁴

2. Statutory Duty to Disclose

Statutory construction is a question of law, which this court reviews de novo. *Brookfield Trade Ctr. Inc., v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). A real estate broker or salesperson must “provide at the first substantive contact with a consumer . . . an agency disclosure form.” Minn. Stat. § 82.41, subd. 6(a) (2006). Camp relies on this provision to argue that PC and Williams had a duty to disclose to him information provided in HF’s letter of 14 April and in the settlement statement. But

⁴ Even if there had been agency relationship, it would not have imposed on Williams a duty to give Camp legal advice or tax advice because she testified that she was not qualified to give such advice. Camp offers no support for his view that an agency relationship can transcend the need for professional qualifications.

respondents were acting only as the closing agents in this transaction. “[W]hen acting as closing agents, [real estate brokers] are exempt from the requirements of section[] 82.41” Minn. Stat. § 82.34, subd. 16 (2006). Thus, PC and Williams, as closing agents, did not have a duty to make disclosures to Camp.

Camp also relies on 24 C.F.R. § 3500.10(b) (2007) (requiring a settlement agent to provide a completed HUD settlement statement to the borrower, the seller (if any), and the lender). But 24 C.F.R. § 3500.10(d) (2007) provides that a transaction is exempt from this requirement if the borrower does not attend the settlement meeting or the settlement agent does not conduct a meeting of the parties. Camp, the original borrower, chose not to attend the settlement; therefore, the transaction was exempt.

Camp also challenges Williams’s having him sign blank documents before leaving on vacation; Camp argues that he did not know of or agree to the short payoff. But Williams testified that, to obtain the short payoff, the closing had to be completed by 18 April, before Camp would return from his vacation. HF’s 25 January 2005 letter thanking Camp for inquiring about a short payoff makes it clear that Camp initiated and knew of the short payoff procedure.

3. Tax Liability

Camp argues that Williams and PC are liable for the tax consequences of the short payoff. But the first letter Camp received from HF instructed him to consult a tax professional as to his potential liability if the short payoff proposal were accepted. Moreover, Williams testified that she is not a tax professional and is not qualified to give

tax advice. Camp provides no support for his view that the closing agent acquires a seller's tax liability resulting from a short payoff.⁵

Affirmed.

⁵ Camp submitted to this court an IRS document indicating his tax liability, which he received after trial. Because this document was not presented to the district court, we have not considered it. *See* Minn. R. Civ. App. P. 110.01 (the record on appeal is “[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any.”).