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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0899**

Adrian Van Santen,
a/k/a Jim Van Santen,
Respondent,

vs.

Peter Van Santen, et al.,
Appellants.

**Filed June 10, 2008
Affirmed
Klaphake, Judge**

Rock County District Court
File No. 67-CV-06-373

William J. Wetering, 1206 Oxford Street, P.O. Box 9, Worthington, MN 56187 (for respondent)

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Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Peter and Nellie Van Santen appeal the award of summary judgment to their son, respondent Adrian, a/k/a Jim, Van Santen, granting specific performance on an option contract for the sale of a piece of land. Because the option contract is not ambiguous and

there are no genuine issues of material fact regarding whether consideration was given for the option contract, respondent was entitled to summary judgment as a matter of law, and we affirm.

D E C I S I O N

This court reviews a grant of summary judgment de novo to determine whether there is a disputed issue of material fact. *Zip Sort, Inc. v. Comm’r of Revenue*, 567 N.W.2d 34, 37 (Minn. 1997). 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 judgment as a matter of law.” Minn. R. Civ. P. 56.03. On appeal, the reviewing court must view the evidence in a light most favorable to the party against whom judgment was granted and resolve any doubts as to the existence of a fact issue against the moving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Ambiguity

Appellants claim that the option contract was ambiguous and thus unenforceable. Generally, interpretation of the terms of a contract is a question of law that this court reviews de novo unless ambiguity exists. *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). When interpreting a contract, its language is to be given its plain and ordinary meaning. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). This court interprets a contract’s terms in the context of the entire contract, and attempts to give meaning to all of its provisions. *Id.* A

contract is ambiguous if it is reasonably susceptible to more than one interpretation, based solely on the contract language. *Art Goebel, Inc.*, 567 N.W.2d at 515.

Here, the contract provided respondent with the right of first refusal to purchase the land at a fixed price if appellants decided to sell. The option contract states:

For and in consideration for the sum of one Dollar and other good and valuable consideration . . . we hereby grant unto Adrian Van Santen . . . a Right of First Refusal Option for ten (10) years from and after the first day of April, 1998, to purchase, for the sum of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) the following described land . . .

. . .

This Right of First Refusal Option may be exercised by Optionee if the undersigned owners decide to sell the land on or before March 1, 2008. Optionee shall have the absolute right to purchase the above-described land on the same terms from March 1, 2008, to March 31, 2008.

Appellants claim the words “right of first refusal” suggest either a right to match the price offered by a third party or an option to purchase, rendering the contract ambiguous.

An option contract is “nothing more than an irrevocable and continuous offer to sell for a specified period of time.” *Nafstad v. Merchant*, 303 Minn. 569, 571, 228 N.W.2d 548, 550 (1975). A right of first refusal is similar to an option contract, but it requires a condition precedent before it can be exercised. *Park-Lake Car Wash, Inc. v. Springer*, 352 N.W.2d 409, 411 (Minn. 1984). A right of first refusal “limits the right of the owner to dispose freely of its property by compelling the owner to offer it first to the

party who has the first right to buy on the terms offered by a third-party purchaser.” 25
Richard A. Lord, *Williston on Contracts* § 67:85 (4th ed. 2002).

Here, the parties simply modified these general legal concepts to create a contractual right in respondent to purchase the property at a fixed price for a period ten years; this right was to be triggered if appellants chose to sell during the ten year period. Respondent had an additional right under the contract to purchase the property at the same price for 30 days after the end of the ten-year period, from March 1 to March 30, 2008, regardless of whether appellants offered the property for sale. Respondent was not required to match the terms of an offer, but was guaranteed the right to purchase the property at a fixed price during this period. Minnesota courts have long recognized the right of parties to freely contract, and will enforce legal rights according to contract terms. *Dyrdahl v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 784 (Minn. 2004).

Appellants also argue that the option contract did not contain sufficiently definite terms to be enforceable because it did not require appellants to provide notice to respondent, did not set a time for response to the notice, contained ambiguous language such as “same terms” and “take said property” and “due notice in writing,” did not mention if appellants must produce marketable title, and contained a 30-day time extension if notice is given within the time for the option to be exercised but the transaction is not complete. None of these purported “ambiguities” render the contract unenforceable.

When an option contract is silent regarding notice, the Minnesota Supreme Court has held that “the [seller] need provide only reasonable notice of the essential terms of an

offer of sale to trigger the [buyer's] obligation to timely respond.” *Dyrdahl*, 689 at 784-85 (concluding that both parties must act timely, reasonably and in good faith). Likewise, if the contract does not contain a set time for accepting or rejecting the offer of sale, “acceptance must be within a reasonable time.” *Id.* at 785. If an option contract does not state the type of conveyance that must be provided, the law implies an obligation to transfer marketable title. *See Building Indus., Inc. v. Wright Prods., Inc.*, 240 Minn. 473, 476-77, 62 N.W.2d 208, 210 (1953). When we read the option contract as a whole, including implied terms of reasonable notice and marketable title, its plain meaning is clear and unambiguous.

Finally, appellants contend that the Notice of Intent to Exercise Option was invalid because (1) it contained an additional term requesting that appellants provide an abstract, and (2) respondent failed to tender payment with the notice, but merely stated he stands ready and willing to tender payment of \$112,000. These claims are without merit.

The exercise of an option, like any other offer, must be accepted according to its terms. *See, e.g., Rose v. Guerdon Indus., Inc.*, 374 N.W.2d 282, 284 (Minn. App. 1985) (holding that exercise of option conditioned on five new demands was counteroffer and relieved seller of his obligations). In the present case, the request for an abstract did not convert the offer to a counteroffer. The request for an abstract was simply that, a request, and not an additional term rendering acceptance conditional. *See id.* Finally, tender of payment is not required to exercise an option if, as here, the seller has previously repudiated the contract. *See Gassert v. Anderson*, 201 Minn. 515, 524, 276 N.W. 808, 812 (1937) (holding tender unnecessary if contract was repudiated). Because appellants

granted a contract for deed to the property to a third party, thus repudiating the option contract, respondent did not need to tender payment to exercise this option.

We conclude the district court correctly held the option contract was not ambiguous, and could be enforced according to its terms.

Consideration for the Option Contract

Appellants contest the district court's finding that, as consideration for the option contract, respondent and his wife agreed to pay a higher price for a second property, the Jasper farm, which appellants sold to respondent's wife on the same day that respondent entered into the option contract. Appellants contend genuine issues of material fact exist regarding whether consideration was given for the option contract in this case because they submitted testimony that the option contract was a gift from appellants to their son.

An option to purchase land is enforceable only if the purchaser provides valuable or legal consideration separate and distinct from the promise to pay the purchase price; without such consideration, the agreement is not enforceable. *See Country Club Oil Co. v. Lee*, 239 Minn. 148, 152, 58 N.W.2d 247, 250 (1953). If valuable consideration is provided for the option to purchase property, the option is binding and enforceable during the period stipulated in the option contract. *Morrison v. Johnson*, 148 Minn. 343, 345, 181 N.W. 945, 946 (1921). The burden rested on respondent to show that the option was supported by a valuable consideration. *Id.* Whether sufficient consideration was given is a question of law. *Concordia College Corp. v. Salvation Army*, 470 N.W.2d 542, 546 (Minn. App. 1991), *review denied* (Minn. Aug. 2, 1991).

Here, the option contract included a statement that consideration of one dollar and “other good and valuable consideration was given.” Both parties agree that the one dollar recited as consideration was never paid. But in his deposition, respondent stated that the purchase price for the Jasper farm was the consideration for the option contract. Respondent testified that he and his father negotiated the two land deals together and that he agreed to buy the Jasper farm on condition that he would be granted an option to purchase the subject property. Respondent also stated he believed he was buying the Jasper farm for a price above the fair market value at the time of purchase. Appellants submitted no direct evidence contesting these facts.

The district court concluded that the evidence submitted showed as a matter of law that valuable consideration was given for the option contract. The district court found persuasive the fact that the option contract and the Jasper farm sale were signed on the same day, that both documents were drafted by appellants’ attorney, and that respondent “indicated the consideration [for the option contract] included the price paid for the Jasper farm.” The district court further found that “there was no evidence introduced nor facts submitted indicating that the sale of the Jasper farm was not part of the entire transaction,” and that “[t]here is nothing in the record that disputes the sale of the Jasper farm was for a price higher than the market value.” We agree that the record supports each of these findings.

While we note that appellant Peter Van Santen submitted an affidavit that “he did not receive one dollar or any other consideration for the option contract,” such a general statement does not refute the specific facts presented by respondent. In general, a party

opposing summary judgment may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulating evidence that might be developed at trial. *Dyrdahl*, 689 N.W.2d at 783. In the absence of specific evidence refuting respondent's testimony, the district court did not err in ruling that consideration is shown to exist as a matter of law based on this record.

Appellants also argue that the district court erred by ruling that the Jasper farm transaction "involved" respondent because the purchase agreement was signed only by respondent's wife, Marilyn Van Santen. This argument is without merit. As long as it was bargained for, consideration may be provided for by another's undertaking an obligation or may inure to the benefit of a third person. *See Charles v. Hill*, 260 N.W.2d 571, 575 (Minn. 1977) (holding son's forbearance of claim against estate, when bargained for, was adequate consideration for option contract).

Finally, appellants complain that they were not given the opportunity to submit evidence contesting the higher price of the Jasper farm as consideration for the option contract because the issue was not raised until after oral argument in a supplemental brief. But appellants knew the specific claims contained in respondent's deposition long before the summary judgment motion and presented no evidence to refute the claim. They did not request an opportunity to submit additional evidence or ask the district court to open judgment and amend its findings and conclusions. *See* Minn. R. Civ. P. 60.02 (permitting court to relieve party from final judgment for limited reasons).

Based on the foregoing, we conclude there are no genuine issues of material fact as to whether valuable consideration was given for the option contract, and that the district court properly granted summary judgment in respondent's favor.

Affirmed.