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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1740**

Tracy Dahlstrom,
Appellant,

vs.

Susanne Engler Robinson, et al.,
Respondents.

**Filed August 12, 2008
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 27-CV-06-22122

Glenn Bruder, Mitchell, Bruder & Johnson, 4005 West 65th Street, Suite 110, Edina, MN 55435 (for appellant)

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In this action for breach of contract in the sale of real estate, the district court granted summary judgment to the sellers because appellant-buyer failed to satisfy certain

conditions precedent. Claiming the ruling was error and that she was denied due process, appellant-buyer appealed. We affirm.

FACTS

On September 23, 2006, appellant Tracy Dahlstrom entered into two residential real estate purchase agreements with respondents Susanne Engler Robinson and Allan R. Robinson for two properties in northeast Minneapolis. In one purchase agreement, the Robinsons agreed to sell to Dahlstrom a duplex at 1101-1103 Monroe Street and a three-car garage at 713 Broadway Street N.E. for \$315,000. In the other purchase agreement, the Robinsons agreed to sell to Dahlstrom a single-family home located at 709 Broadway Street N.E. for \$140,000.

Both agreements included a closing date of October 31, 2006. The agreements required Dahlstrom to give earnest money of \$500 for each of the properties to the Robinsons' attorney to be held in a trust account pending closing. In addition, the agreements required Dahlstrom to deliver, with the earnest money or before the signing of the agreements, a letter from a bona fide mortgage lender stating that her credit report had been reviewed by the lender and that she was preapproved to purchase the properties at the agreed prices. Dahlstrom never provided such a letter.

Both agreements included an additional financing addendum, which required Dahlstrom to provide the Robinsons with evidence that she had secured financing to purchase the properties by October 10, 2006:

If Buyer is unable to secure FINAL APPROVAL for the financing indicating the loan is FULLY UNDERWRITTEN on or before [October 10, 2006], Buyer may terminate the Purchase Agreement by giving Seller written notice of termination on or before such date . . . [I]f Seller has not received evidence reasonably satisfactory to Seller that Buyer has secured the financing on or before [October 10, 2006], Seller may terminate the Purchase Agreement by giving Buyer written notice of the termination, which will be effective 48 hours after the giving of the notice; provided, however, that the termination shall be ineffective if Buyer provides Seller with evidence reasonably satisfactory to Seller that Buyer has secured the financing within the 48 hour period.

Dahlstrom did not provide the Robinsons with any information indicating she was able to secure financing by October 10, as required by the agreements. On October 11, the Robinsons' attorney delivered notices of the termination of both agreements to Dahlstrom, citing Dahlstrom's failure to provide the Robinsons with evidence that she had secured financing as required by the financing addendums. The notices of termination explained that, to prevent termination, Dahlstrom had 48 hours to produce evidence of financing that was reasonably satisfactory to the Robinsons.

On October 12, Dahlstrom's realtor responded to the notices of termination with a letter to the Robinsons' attorney stating "The closing for the duplex is at Guarantee Trust Title at 1300 Godward Street N.E. Suit[e] 1000 Minneapolis, MN 55413 and is at 11 AM on October 13, 2006." This letter from Dahlstrom's realtor did not acknowledge the purchase agreements and did not make any reference to financing.

On October 13, Dahlstrom appeared for the closing but the Robinsons did not. Instead, the Robinsons served Dahlstrom with a notice of declaratory cancellation for

each of the purchase agreements, under Minn. Stat. § 559.217, subd. 4 (2006). In accordance with section 559.217, subdivision 4, the declaratory cancellation notice indicated that Dahlstrom had 15 days to obtain a court order suspending the cancellation.

On October 17, four days after receiving the notices, Dahlstrom was hospitalized with complaints of abdominal pain, nausea, and vomiting. She was discharged from the hospital on October 24. Dahlstrom took no legal action in response to the notices of declaratory cancellation within the 15-day time period.

In December 2006, Dahlstrom filed suit against the Robinsons, alleging that they had breached the purchase agreements by refusing to convey the properties to her and that the statutory cancellation provisions in Minn. Stat. § 559.217, subd. 4, violated her due-process rights under the federal and state constitutions.

Following pretrial discovery, the Robinsons moved for summary judgment. The district court granted the Robinsons' summary-judgment motion, concluding that no material issue of fact existed and that Dahlstrom failed to satisfy the conditions precedent of the purchase agreements requiring her to provide the Robinsons with a financing letter from a bona fide mortgage lender or with evidence that she had secured financing within 48 hours of their demand. The district court also concluded that Dahlstrom had failed to demonstrate that Minn. Stat. § 559.217 violated her due-process rights. Dahlstrom's appeal followed.

DECISION

A motion for summary judgment shall be granted when there is no genuine issue of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1989). On appeal from summary judgment, the reviewing court asks whether there are any issues of material fact for trial and whether the district court erred in its application of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

There are no genuine issues of material fact if the record “as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1991). A genuine issue for trial must be established by “sufficient evidence to permit reasonable persons to draw different conclusions.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006).

We ascertain the meaning of a contract by looking at “the writing alone, if possible,” and “[w]here the words of a written contract are plain and unambiguous, its meaning should be determined in accordance with its plainly expressed intent.” *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 298 Minn. 428, 433, 215 N.W.2d 473, 476 (1974). A contract is ambiguous if it is reasonably susceptible to more than one interpretation. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003).

The district court’s summary-judgment order explains that both purchase agreements required Dahlstrom to satisfy certain conditions precedent. *See Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006) (requiring plaintiffs to show that they performed any conditions precedent to establish a

breach-of-contract claim). A condition precedent is an act that must be performed or an event that must occur before a contractual right accrues or contractual duty arises. *Carl Bolander & Sons*, 298 Minn. at 433, 215 N.W.2d at 476 (1974).

Here, the purchase agreements required Dahlstrom to provide the Robinsons with a letter from a bona fide mortgage lender indicating that the lender had reviewed Dahlstrom's credit report and that Dahlstrom was preapproved to purchase the properties. The district court concluded that there was no evidence that Dahlstrom had met this condition precedent. Dahlstrom points to nothing in the record that shows otherwise or that creates a genuine fact issue on this point.

Next, the financing addendum to each purchase agreement required Dahlstrom to provide the Robinsons with evidence that she had secured financing by October 10, 2006. Each addendum specified that if Dahlstrom failed to comply with this term, the Robinsons had the right to terminate the purchase agreement by giving Dahlstrom written notice of their intent to do so. Each addendum included a method by which Dahlstrom could prevent termination; she had to produce evidence that she had secured financing within 48 hours of receipt of the notice of cancellation. Although "financing" is not clearly defined, the agreement states that "Buyer will apply for and attempt to secure, at Buyer's expense, a [Conventional Mortgage] in at least the amount stated in the Purchase Agreement."

Dahlstrom failed to satisfy this condition precedent in two ways. First, she failed to provide the Robinsons with any evidence that she had secured financing by the October 10 deadline. Secondly, when Dahlstrom received the Robinsons' written notice

of termination, her realtor sent a letter on October 12, stating: “The closing for duplex is at Guarantee Trust Title at 1300 Godward Street N.E. Suit[e] 1000 Minneapolis MN 55413 and is at 11 AM on October 13.” Dahlstrom argues that this letter satisfies the condition precedent, but the letter is deficient in that it does not address both purchase agreements; it fails to include any information regarding mortgages; and makes no reference at all to financing, as required by the agreements. The letter is simply a vague reference to a premature closing date and is not tantamount to showing that the type of financing required by the agreements had been obtained.

On appeal Dahlstrom cites an affidavit of Katrina M. Combs, a regional manager of Guarantee Trust and Title, as evidence that Dahlstrom had obtained financing to purchase the properties. This affidavit does not create a fact issue as to the conditions precedent for two reasons. First, the affidavit fails to even mention financing, much less the terms, amount or lender that Dahlstrom had secured. Secondly, the document was provided after the 48-hour time period had expired.

Dahlstrom makes two additional arguments on appeal. She contends, first, that the Robinsons had a duty to act in good faith to perform the agreements. The argument is disingenuous because Dahlstrom herself wholly failed to satisfy the condition that would have triggered the Robinsons’ performance.

Her second argument is that Minn. Stat. 559.217, subd. 4 (2006), which provides a 15-day time limit for suspending a cancellation of a purchase agreement, violates her right to due process because the time limit is unreasonably short. “A party challenging a statute carries the heavy burden of demonstrating beyond a reasonable doubt that a statute

is unconstitutional.” *Unity Church of St. Paul v. State*, 694 N.W.2d 585, 591 (Minn. App. 2005). We decline to address Dahlstrom’s constitutional argument because it is certain on this record that she could not satisfy her burden. Because she failed to satisfy the condition precedent regarding financing, which the record shows beyond any doubt, she was not entitled to any relief no matter what time limit applies. *See State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981) (“[Appellate courts] do not decide constitutional questions except when necessary to do so in order to dispose of the case at bar.”).

The Robinsons complied fully with their contractual obligations and with the statutory procedures for cancelling the purchase agreements with Dahlstrom. Dahlstrom has failed to raise any genuine issue of material fact in the case. The district court correctly ruled that the Robinsons are entitled to judgment as a matter of law.

Affirmed.