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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-739

Wayne LaBeau,
Respondent,

vs.

Carl Buechler,
Appellant.

Filed December 14, 2010
Affirmed
Huspeni, Judge[*]

Stearns County District Court
File No. 73-CV-07-10097

R. Daniel Rasmus, Richard E. Student, Rasmus Law Office, LLC, Minneapolis, Minnesota (for respondent)

William R. Skolnick, Amy D. Joyce, Skolnick & Shiff, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Huspeni, Judge.

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

U N P U B L I S H E D   O P I N I O N

HUSPENI, Judge

On appeal in this real-estate-conveyance dispute, appellant-buyer argues: (a) the district court's enforcement of an oral contract to convey real estate violates the statute of frauds; (b) appellant should not be required to perform under the contracts where the district court found that respondent breached the contracts and where respondent was unable to cure the breach; (c) because the contracts were contrary to public policy, the district court should not have enforced them; (d) the district court should have granted appellant's motion for a new trial on his claim for fraudulent misrepresentation where appellant alleged the existence of newly discovered evidence and that the district court's ruling was not justified by the evidence and was contrary to law; and (e) the district court should not have awarded respondent prejudgment interest. Because we conclude that the district court neither abused its discretion nor erred in its application of law, we affirm.

FACTS

In 1997, appellant Carl Buechler contracted with respondent Wayne LaBeau to purchase six condominiums located at the Hotel Salvia in Cancun, Mexico. The parties executed a purchase agreement and amortization schedule for this transaction. The purchase agreement was structured to permit appellant to take immediate possession of the units and make monthly payments to respondent. In exchange, as each individual unit was fully paid for, respondent was to transfer title to the unit to appellant.

Respondent agreed to sell appellant three additional condominiums at the Hotel Salvia in 2000. This agreement was not reduced to writing except for amortization

schedules the parties prepared that identified the unit numbers and the amount of monthly payments. The schedules were not signed, did not identify the respondent, did not include descriptions of the property, nor did they contain any terms or conditions of the agreement.

The same year, upon appellant's request and pursuant to the purchase agreement, respondent transferred title to appellant for two condominiums for which appellant had paid in full.

Mexican law required the property at issue to be held in trusts by a Mexican bank or corporation. In late 2004, appellant discovered that the trusts holding title to the properties he purchased from respondent were due to expire and required payment for renewal. A failure to pay the title fees risked forfeiture of the property to the Mexican government.

Around this time, appellant offered to pay respondent the balance due under the parties' agreements in exchange for title to the condominiums. When respondent refused, appellant became suspicious and began an investigation into the status of title for each of the units he purchased from respondent. Appellant could not find any records of respondent ever holding title to any of the condominiums. Upon this discovery, appellant's son, Wayne Buechler, met with respondent to determine if respondent had any proof that he could deliver title. Respondent failed to provide any evidence that he was able to transfer title or that he ever held title to the property that he contracted to sell to appellant.

It is undisputed that while respondent had actual possession of all of the units he sold to appellant, he did not hold title to any of the units before he sold them to appellant. Respondent presented evidence at trial that he had, in fact, purchased the units he later sold to appellant but never titled the properties in his name because he wished to avoid paying costs associated with transferring title, thereby engaging in a practice known as "title-skipping." Respondent testified he did not think it was necessary to transfer title to the units into his name because he had fully paid for the properties and they were included in his rental pool.

Once respondent refused to provide any assurance of title to the properties, appellant proceeded to hire both a United States attorney and a Mexican attorney to assist him in obtaining titles to the properties he purchased from respondent. Both attorneys informed appellant that under Mexican law, respondent did not have the legal right to sell the properties to appellant because he never possessed title.

Pursuant to advice of his United States attorney, appellant contacted the record title holders of the nine units, obtained their power of attorney, and titled seven of the nine condominiums in the name of his Mexican holding company. Appellant ceased his monthly payments to respondent in March 2005, at which time appellant was behind in his payments to respondent.

Respondent brought suit against appellant in 2007 for titling the condominiums in appellant's name, seeking monetary damages for money owed to him under the agreements. The district court denied appellant's motion for summary judgment seeking to have the parties' oral contract declared void in violation of the statute of frauds.

After a bench trial on issues of breach of contract, breach of covenant of good faith and fair dealing, unjust enrichment, interference with contract, fraudulent misrepresentation, conversion of appellant's funds, respondent's invocation of his fifth amendment right, and double recovery, the district court held that both parties had breached the contracts and the covenant of good faith and fair dealing, and that appellant was required to perform under the contracts. The district court determined that respondent breached the contracts when he failed to provide appellant with adequate assurance of title, and that appellant breached the contracts by retaining possession of the properties and not paying respondent the amount due under the purchase agreements. The court also determined that there was no contractual interference, fraudulent misrepresentation, or conversion, and that it need not decide the issue of double recovery.

The district court awarded respondent $348,578.93 in damages, which represented the amount appellant still owed respondent under the contracts. Additionally, the court granted respondent's request for interest on the amount owed under the contracts. Calculating interest accruing from March 2005, when appellant stopped making payments to respondent, to August 2009, the court awarded respondent $55,772.63 in interest. The court also concluded that respondent owed appellant $102,000 as reimbursement for costs incurred to transfer title because respondent would have been responsible for such costs had the contracts been performed as the parties originally intended.

Appellant moved the court for amended findings and a new trial. He asked the district court to reverse its decision requiring him to perform under the contracts since

respondent breached first; to vacate or modify its award of prejudgment interest to respondent; and to clarify the status of properties for which respondent did not produce title. Based on the issue of fraudulent misrepresentation, appellant requested a new trial, claiming discovery of new evidence.

The district court amended its findings only as to the modification of the interest award and the clarification of the status of the properties. In its amended findings, the court determined that respondent was entitled to $45,315.27 in interest, based on the amount due and owing as of the commencement of the action in August 2007 (rather than when appellant ceased payments, as it had in the original judgment). The court denied appellant's motion for a new trial.

This appeal followed.

D E C I S I O N

Statute of Frauds

The existence of an oral agreement for the purchase of real property is undisputed in this matter. The parties disagree, however, as to whether the oral contract comes within the purview of the statute of frauds. The determination of whether the statute of frauds has been satisfied is generally a question of law, which we review de novo. *Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998), *review denied* (Minn. Feb. 24, 1999).

Under Minnesota law, a transaction assigning any interest in land must be made in writing. Minn. Stat. § 513.04 (2008). A contract for the sale of any interest in land is void unless the contract is in writing. Minn. Stat. § 513.05 (2008). A contract may be

taken out of the statute of frauds, however, by partial performance. *Starlite Ltd. P'ship v. Landry's Rests., Inc.*, 780 N.W.2d 396, 399-400 (Minn. App. 2010). The partial performance exception applies when a party takes possession, acting under an oral contract for the transfer of an interest in land, and makes partial payment of the purchase price, in reliance upon and with unequivocal reference to the vendor-vendee relationship. *Shaughnessy v. Eidsmo*, 222 Minn. 141, 147, 23 N.W.2d 362, 366 (1946); *see Burke v. Fine*, 236 Minn. 52, 55, 51 N.W.2d 818, 820 (1952) (holding that "where the relationship of the parties, as shown by their acts rather than by the alleged contract, cannot reasonably be explained except by reference to some contract between them, the oral contract is taken out of the statute of frauds").

In this case, appellant took possession of the three Hotel Salvia condominiums contemplated by the oral contract and made payments to respondent for at least four years. The district court found that there was no other explanation that could account for the conduct of either party except for the existence of a contract. Appellant's argument on appeal that there was no partial performance because he did not take possession of two of the three units contemplated in the oral agreement is unsupported and contradicts the testimony of both parties at trial that appellant had possession of all three condominiums under the oral contract. Additionally, appellant currently holds title to all three units. We recognize that ordinarily it is the party who has partially performed the oral contract who is seeking to have the contract taken out of the statute of frauds. *See Brown v. Hoag*, 35 Minn. 373, 376, 29 N.W. 135, 138 (1886). Respondent, not appellant, seeks that result here. While respondent did not deliver title to the units, he did partially perform by

delivering actual possession of the units to appellant. Thereafter, respondent was unable to collect rents on the properties and relied on appellant's promise to pay him the agreed-upon price for the units.

"Whether the acts of part performance are unequivocally referable to the vendor-vendee relationship under the oral contract is . . . a question of fact for the trier of fact." *Shaughnessy*, 222 Minn. at 151, 23 N.W.2d at 368. The district court found that appellant took possession of the three condominiums and made payments toward the purchase of the condominiums and that the conduct of the parties indicated no misunderstanding as to the existence of a contract to purchase property. Ample evidence in the record supports the conclusion that appellant's partial performance of the oral contract for real property took the contract out of the statute of frauds and rendered the contract enforceable. The district court appropriately concluded that the statute of frauds was inapplicable.

Measure of Damages

Appellant next argues that respondent's failure to provide assurance of title was a material breach of the parties' purchase agreements. We recognize that due to respondent's breach, appellant's duties under the contracts were suspended until respondent cured the breach. Appellant, however, claims that his duties are permanently discharged because respondent did not cure the breach during the time in which performance could occur. *See Home Ins. Co. v. Nat'l Union Fire Ins. of Pittsburgh*, 658 N.W.2d 522, 534-35 (Minn. 2003).

Respondent did not cure his breach by delivering title to appellant. We cannot agree, however, that appellant was thereby relieved of his obligations under the contracts. When appellant sought out the legal title holders of the properties he contracted to purchase from respondent and obtained title to most of the properties, respondent was unable to deliver title to appellant. Appellant's actions effectively prevented respondent from curing his breach. Appellant contends he was merely mitigating damages, as he was required to do upon respondent's breach. *See Deutz-Allis Credit Corp. v. Jensen*, 458 N.W.2d 163, 166 (Minn. App. 1990). The district court, however, held that appellant's actions "went above and beyond [appellant's] remedy under either contract." We agree.

The measure of damages for breach of contract is generally the amount required to place the non-breaching party in the position he or she would have been had the contract been performed. *Peters v. Mut. Benefit Life Ins. Co*., 420 N.W.2d 908, 915 (Minn. App. 1988). We recognize that both parties here breached the contract—respondent first by failing to provide assurance of title and appellant next by retaining possession of the properties without paying respondent the amount due under the purchase agreements. Appellant had the following two options when respondent breached: cease payments and return the properties to respondent and demand reimbursement for payments made, or remain in possession of the properties and pay respondent $348,578.93, the amount due under the contracts. Instead, appellant contended that the unique circumstances of the case warranted an outcome under which he could keep the properties without making any more payments to respondent.

In resolving the complex issues and arguments presented, the district court awarded respondent the amount due under the contracts, inasmuch as appellant had chosen to remain in possession of the properties and had obtained title to them. Appellant challenges the action of the district court by alleging that the award is an equitable one, and as such is an improper remedy for a breach-of-contract claim. We recognize that, in general, equity will not intervene if there is a remedy at law. *See U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981). Appellant argues that since the district court concluded that the contracts were enforceable, it was bound by the terms of the contracts. There is no merit in appellant's argument; enforcement of the parties' contractual obligations is exactly what the district court accomplished.

When appellant refused to elect one of his two legal remedies for the breach and insisted on keeping the properties without further payment to respondent, the district court was required to fashion an appropriate remedy. After making commendably voluminous findings, the district court decided that since appellant remained in possession of the properties and obtained title to them, he must pay respondent $348,578.93, the outstanding balance due under the contracts, minus $102,000, the amount appellant spent to obtain the titles. The district court achieved a resolution that is admirably fair and placed both parties in the position they would have been if the contracts had been performed as originally intended.

Contracts Void as Illegal or Contrary to Public Policy

Appellant argues that since Mexican law prohibits the sale of property absent recorded title in the seller, the district court's enforcement of the contracts was error. The enforceability of a contract presents a question of law, which this court reviews de novo. *Share Health Plan, Inc. v. Marcotte*, 495 N.W.2d 1, 3 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993).

Appellant incorrectly asserts that a contract based on illegal principles is contrary to public policy and therefore the district court should have concluded the contracts were void and unenforceable. Minnesota law permits voiding contracts if they are in violation of public policy, but it does not require such an action. *See Hollister v. Ulvi*, 199 Minn. 269, 280, 271 N.W. 493, 498-99 (1937) (recognizing that the power of courts to declare a contract void as against public policy is "a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt"); *Perkins v. Hegg*, 212 Minn. 377, 379, 3 N.W.2d 671, 672 (1942) (holding freedom of contract is not to be unduly restricted by "ill-advised" application of "public policy" doctrine, and a contract should not be held invalid under such doctrine, unless law or precedent clearly marks it as violation of public policy or court can say with certainty that enforcement thereof would be hurtful to public welfare).

"Not every illegal contract must be voided in order to protect public policy. . . . Rather, [the court] examine[s] each contract to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy." *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92-93 (Minn. 2006).

Contracts violate public policy when they injure some established societal interest. *Id.* at 93. The public policy of this state is found in various authorities, including legislation and judicial decisions. *Holland v. Sheehan*, 108 Minn. 362, 364-65, 122 N.W. 1, 2 (1909); *McCauley v. Michael*, 256 N.W.2d 491, 498 (Minn. 1977) (reinforcing a Washington Supreme Court holding stating that a contract is void as against public policy when it is "contrary to the terms and policy of an express legislative enactment") (citation omitted).

Appellant argues the societal interest protected in this case is prevention of the fraudulent transfer of property and asserts that requiring a party to title property in his name before selling it would prevent fraudulent transfers of property. He does not, however, cite any authority to support his assertion. Furthermore, in this case, the district court found that respondent did not make false representations to appellant to induce him to purchase property. On the contrary, the district court made a finding that respondent believed he could deliver marketable title to appellant. Therefore, the district court explicitly found respondent did not violate the public policy appellant argues is at issue in this case.

The facts in this case fail to establish that illegality has so tainted the transaction entered into voluntarily by these two individuals that enforcement of the contracts here would be contrary to public policy. The district court did not err when it enforced the contracts and concluded the contracts were not void as illegal or contrary to public policy.

Motion for New Trial

Appellant argues the district court abused its discretion when it denied his motion for a new trial based on his fraudulent-misrepresentation claim. He claims that newly discovered evidence shows that respondent knew that he would be unable to transfer title to two units to appellant as early as August 1998, and respondent's assertions to the contrary amounted to fraudulent misrepresentation. The district court determined appellant's fraudulent-misrepresentation action failed because respondent credibly believed he could deliver marketable title to appellant once appellant provided him with the balance owed on the agreements.

Because the district court has the discretion to grant a new trial, this court will not disturb the decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

Respondent is engaged in litigation in New Jersey with Peter and Dorothea Rentzis over disagreements in their contract for the sale of two units at the Hotel Salvia that respondent later sold to appellant. Appellant contends that newly discovered evidence in that case, in the form of deposition testimony from respondent and Peter and Dorothea Rentzis, shows that respondent knew in August 1998 that he would be unable to transfer title to the units to appellant. In respondent's deposition, he admitted that in August 1998, Peter Rentzis demanded that respondent pay the remaining $10,000 due on their contract or the Rentzises would never title the units in respondent's name. Appellant argues respondent's admission calls into question his alleged belief that he

could transfer title to appellant. Respondent remained in possession of the units, however, and the Rentzises never attempted to regain possession.

Respondent claims that appellant could have inquired into details of respondent's dispute with the Rentzises at trial in this case, but did not. He argues, therefore, that appellant failed to exercise proper diligence to discover evidence before trial, as is required to justify a new trial. *See George v. Estate of Baker*, 724 N.W.2d 1, 12 n. 8 (Minn. 2006); *see also Bruno v. Belmonte*, 252 Minn. 497, 502-03, 90 N.W.2d 899, 903 (1958). Appellant counters that despite numerous document requests, respondent refused to produce responsive documents. As the district court noted, however, there is no evidence that a simple inquiry at trial would not also have uncovered the evidence that appellant now says is newly discovered and warrants a new trial. Further, as already noted, the district court found respondent's testimony regarding his belief he was able to transfer title to appellant to be credible. A claim for fraudulent misrepresentation relies heavily on determinations of credibility. This court affords great deference to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1998). The district court's determination that respondent believed he could transfer title to appellant should therefore not be disturbed.

Furthermore, appellant already holds title to the two units contemplated in this claim. We conclude the district court did not abuse its discretion when it denied appellant's motion for a new trial based on newly discovered evidence.

Prejudgment Interest

Finally, appellant argues the district court's award of prejudgment interest to respondent was error. The district court's award of prejudgment interest is governed by Minn. Stat. § 549.09 (2008). As such, it is a question of law reviewed de novo by this court. *See Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990) (stating that construction of statute is question of law reviewed de novo). "Generally, Minnesota law allows a trial court to award prejudgment interest . . . where the amount of damages is ascertainable by computation." *See S.B. Foot Tanning Co. v. Piotrowski*, 554 N.W.2d 413, 420 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996). Prejudgment interest "is limited only by contract or by the exceptions listed in section 549.09, subd. 1(b) and is compensatory in nature, not punitive." *Fette v. Peterson*, 406 N.W.2d 594, 596 (Minn. App. 1987), *review denied* (Minn. June 30, 1987).

In the present case, there are no contract provisions limiting prejudgment interest nor does the case meet an exception listed in the statute. While the original award of prejudgment interest was incorrect because it calculated interest from the time appellant stopped making payments to respondent in March 2005, the district court corrected this error in its amended judgment. In its amended judgment, the court correctly determined respondent was entitled to $45,315.27 in interest, based on the amount due and owing as of the commencement of the action in August 2007. We therefore find the district court did not err in its award of prejudgment interest to respondent.

Affirmed.