COURT OF APPEALS
DECISION
DATED AND FILED

August 14, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2923 **Cir. Ct. No. 2007SC5349**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JUDITH S. FLINT,

PLAINTIFF-RESPONDENT,

V.

DALE NOBLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Reversed and cause remanded for further proceedings.*

¶1 LUNDSTEN, J.[1] Dale Noble appeals a circuit court small claims money judgment for $4199.28 in favor of Judith Flint. The parties' dispute arises

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

out of Flint's purchase of a newly constructed home from Noble and/or his construction company ("Noble"). Noble argues that the circuit court erred in its interpretation of a disclosure provision in the purchase contract that obligated Noble to disclose any "completed or pending reassessment." We agree with Noble. We reverse the judgment and remand to the circuit court.[2]

Background

¶2 The pertinent facts are not disputed and are as follows.

¶3 Both parties were represented by real estate agents. The Multiple Listing Service ("MLS") report for the property stated an asking price of $334,900, and included the following information regarding assessed value and real estate taxes:

Total Assess:	$ 345,000 / 2005
Net Taxes:	$ 1590 / 2004

¶4 On September 20, 2005, Flint made an offer of $332,900 on the property using the standard "WB-11 Residential Offer to Purchase" form. The form contains a default provision providing that net real estate taxes will be prorated between the buyer and seller based on "the net general real estate taxes for the current year, if known, otherwise on the net general real estate taxes for the preceding year." The default provision is followed by a blank space to insert an

[2] The parties agree that, although Flint originally sued Noble personally, the proper defendant in this case is Noble Construction, Inc., and that a court commissioner ordered Flint's claim amended accordingly. Noble asserts, however, that not all of the pleadings reflect the proper defendant and that this should be corrected. We note that the judgment is against Noble personally. If our reversal of the judgment does not resolve Noble's concerns, he should address those concerns to the circuit court on remand.

alternative provision, along with this warning in bold and italic print: "CAUTION: If proration on the basis of net general real estate taxes is not acceptable (for example, completed/pending reassessment, changing mill rate, lottery credits), insert estimated annual tax or other formula for proration."

¶5 Flint and her agent submitted Flint's offer using the default provision; that is, they did not insert an alternative provision into the blank space. Noble accepted the offer that same day. The 2005 tax (mill) rate and 2005 tax amount remained undetermined at the time.

¶6 By accepting the offer, Noble also bound himself to an additional provision, the one at issue here. Under that provision, Noble represented that he had disclosed whether there was a "completed or pending reassessment of the Property for property tax purposes."

¶7 The sale closed on November 21, 2005, at which time Flint received a prorated credit of approximately $1411 for real estate taxes based on the 2004 tax. Later that month, or in early December 2005, the 2005 mill rate and tax were set. That 2005 tax of almost $6200 was approximately $4000 more than Flint expected. After Flint was unsuccessful in reaching an agreement with Noble about the proration, she commenced this action against him and obtained the above-referenced judgment.

Discussion

¶8 The circuit court found that Flint was aware of the 2005 assessment because the MLS report disclosed it, and Flint does not dispute this finding. As already indicated, the MLS report stated:

Total Assess:	$ 345,000 / 2005
Net Taxes:	$ 1590 / 2004

Similarly, Flint does not assert that she was unaware that the stated tax amount of $1590 was for the previous year, 2004. We surmise, as Flint might have, that the prior assessment was substantially lower because the parties tell us that the home Flint purchased was newly constructed and, therefore, the 2004 assessment did not include the full value of a newly constructed home.

¶9 Despite its finding, the circuit court nonetheless determined that Noble breached his duty to disclose any completed or pending reassessment under the real estate contract. The court reasoned that Noble "did not disclose that the prior year's taxes had been based on an assessment that was substantially less than what this assessment was." The court appeared to conclude that, because Noble failed to "disclose" the fact that the 2004 real estate taxes were based on an "entirely different assessment" and likely to rise significantly with the new assessment, the parties never negotiated the tax proration and Flint was damaged.

¶10 Noble argues that the circuit court erred in its interpretation of the pertinent disclosure requirement under the contract. The interpretation of a written contract is a question of law for our *de novo* review. ***Tang v. C.A.R.S. Prot. Plus, Inc.***, 2007 WI App 134, ¶27, 301 Wis. 2d 752, 734 N.W.2d 169.

¶11 Although the disclosed information may be insufficient for Flint to have reasonably estimated her 2005 property tax liability, the question is not whether Noble supplied the best information available, but rather whether he complied with the contract. We agree with Noble that the circuit court misinterpreted the disclosure requirement. In effect, the circuit court imposed an obligation on Noble not only to disclose to Flint that there was a "completed or pending reassessment," but also to *explain* that the 2005 real estate taxes were likely to be significantly higher than the 2004 real estate taxes. We see nothing about the disclosure provision that obligated Noble to provide this additional explanation; rather, the disclosure provision obligated him to disclose any "completed or pending reassessment." Noble met that obligation.[3]

¶12 In support of the circuit court's decision, Flint points to a trade publication, which states:

> Another special circumstance that the seller must be especially aware of is the obligation under the offer to purchase to disclose any completed or pending reassessment …. Receipt of a reassessment notice triggers the disclosure duty for the seller …. *As with new construction*, it is important that the parties understand that the property taxes may undergo a significant change so that they may negotiate an equitable proration.

(Emphasis added.) The publication's reference to the seller's duty, however, simply reflects the disclosure provision. If anything, the publication cuts against Flint based on what it does *not* say. Although the publication explains that "it is important that the parties understand that the property taxes may undergo a

[3] Noble argues in the alternative that the circuit court erred because the type of assessment here is not, technically speaking, a "reassessment." We do not decide this issue. Instead, we have assumed, without deciding, that the 2005 assessment may be considered a "reassessment" within the meaning of the disclosure requirement in the offer to purchase.

significant change," the publication does not say that the seller has a duty to ensure that the buyer has such an understanding once the seller has disclosed the pending or completed reassessment.

¶13 Flint also argues that, by signing the offer, Noble represented more generally that he had "no notice of new conditions affecting the property, i.e., significant higher taxes than the previous year. The new assessment which [Noble] had, should have been disclosed." The first part of Flint's argument fails to recognize that Noble did not have the new, higher tax amount to disclose. Noble might have estimated the new tax based on the prior year's mill rate, but the contract does not obligate him to do so. What Noble had was the new *assessment* amount. The second part of Flint's argument is not helpful because there is no dispute that Flint was aware of the new assessment amount.

¶14 In essence, the question this case presents is who, if not Flint herself, is legally responsible for her apparent assumption or belief that the 2005 property taxes would not differ significantly from the 2004 taxes and her apparent failure to appreciate the possibility that in 2004 the assessment was substantially lower. Nothing before us supports a conclusion that Noble is legally responsible.

¶15 Importantly, Flint provided no evidence—and the circuit court did not find or conclude—that Noble knew or intended that Flint enter into the purchase contract with an incomplete understanding of its terms. *Cf.* ***Hennig v. Ahearn***, 230 Wis. 2d 149, 168, 601 N.W.2d 14 (Ct. App. 1999) (based on parties' past practice of highlighting revisions in agreement, jury could find that defendant hoped plaintiff would unknowingly accept a last-minute change that defendant did not highlight). Flint provided no evidence that Noble otherwise intended to mislead her. On the contrary, Flint testified that there was no discussion about the

property taxes between her and Noble or anyone else. Noble similarly testified that he made no verbal assertions to Flint that the taxes would be less than they turned out to be.

¶16 In addition, Flint provided no evidence to support a finding or conclusion that, unless Noble had told her, she was in no position to know or discover that the 2005 taxes were likely to be significantly higher. *See* ***Green Spring Farms v. Spring Green Farms Assocs. Ltd. P'ship***, 172 Wis. 2d 28, 39, 492 N.W.2d 392 (Ct. App. 1992) (real estate sellers must disclose conditions material to the decision to purchase *and which the purchaser is in a poor position to discover*). In addition to having access to the 2004 real estate tax amount and the 2005 assessment, Flint was represented by a real estate agent and knew that she was purchasing a newly constructed home. Furthermore, as already indicated, the first page of her standard-form offer to purchase specifically and prominently cautioned both Flint and her agent: "If proration on the basis of net general real estate taxes is not acceptable (for example, completed/pending reassessment, changing mill rate, lottery credits), insert estimated annual tax or other formula for proration."

¶17 If anything, Flint's case seems akin to ***Ritchie v. Clappier***, 109 Wis. 2d 399, 326 N.W.2d 131 (Ct. App. 1982). The plaintiff there failed to realize or understand one of the legal consequences of a real estate conveyance he signed in favor of the defendants. ***Id.*** at 400-02. The circuit court ruled for the plaintiff based on the defendants' failure to "disclose" the legal effect of the conveyance. ***Id.*** at 402, 404. We reversed. ***Id.*** at 404, 406. We acknowledged that sellers have certain duties to disclose hidden characteristics of a property, but concluded that the law does not impose a similar duty to disclose the legal consequences of a

conveyance. ***Id.*** at 403. Here, the circuit court imposed on Noble the obligation to connect the dots. But the contract imposed no such obligation.

¶18 One wonders why Flint's own real estate agent did not advise her regarding the property tax situation. We do not determine what Flint's agent was obligated to do, but if the agent represented Flint throughout the transaction, the agent would have been in a good position to spot the issue and advise Flint accordingly.

¶19 In sum, we reverse the circuit court's judgment and remand to the circuit court for further proceedings not inconsistent with this decision.

By the Court.—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.