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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1610**

Long Minh Nguyen, et al.,
Appellants,

vs.

Vu L. Hoang,
Respondent.

**Filed June 23, 2009
Affirmed in part and reversed in part
Shumaker, Judge**

Ramsey County District Court
File No. 62-C2-06-007920

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Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

In this property dispute, a jury found that appellants agreed to sell to respondent property and a business under a contract for deed, and appellants moved for judgment as a matter of law or a new trial. The district court denied appellants' motion and ordered judgment in accordance with the jury's verdict. On appeal, appellants argue that the court's decision was error because (1) the jury could not have found that a legally enforceable contract existed; (2) even if a contract existed, the statute of frauds barred its enforcement; (3) the jury instructions misstated the law; and (4) the jury impermissibly awarded duplicative damages. Because the evidence supports the jury's determination that respondent purchased the premises under a contract for deed, we affirm. However, we reverse the jury's award of misrepresentation damages as duplicative.

FACTS

In this lawsuit, a jury was asked to decide whether appellants Long Minh Nguyen and Ha Kim Thi Nguyen had entered into a lease or a contract for deed with respondent Vu L. Hoang respecting certain commercial real estate. The jury found that the parties had agreed to a contract for deed for the sale and purchase of the property. This finding is the principal error the Nguyens allege on appeal.

The Nguyens are the fee owners of certain improved commercial real estate in St. Paul operated as a bar and restaurant known as The Stahl House. In April 1995, they advertised the property for sale or lease. Hoang answered the advertisement, and eventually the parties met to discuss a suitable arrangement.

The parties reached an agreement and signed various documents. The Nguyens testified that they had entered into a contract for the conditional sale of the property with the proviso that, if Hoang failed to satisfy certain conditions precedent, the contract would be deemed a lease. If Hoang satisfied the conditions, the contract would be considered to be a contract for deed for the sale of the property.

Hoang testified that he understood from the outset that he was to be the installment purchaser of the property under a contract for deed. Accordingly, he took possession of The Stahl House in May 1995, conducted its business, made periodic payments to the Nguyens, and maintained and improved the premises until 2006. Hoang testified that he stopped making payments because he had not received the contract for deed document that Long Nguyen had promised to give to him.

Although the Nguyens admitted that they accepted payments from Hoang and permitted him to operate the business at The Stahl House from 1995 until approximately August 2006, they testified that they did so under the lease to which the parties had agreed. They testified that Hoang had failed to satisfy the conditions precedent for the purchase of the property, and in consequence he had become only a lessee. Because Hoang had failed to make some payments on the lease, the Nguyens brought an eviction proceeding to remove him from the premises. The Nguyens also brought a separate action against Hoang for injunctive relief and damages based on an alleged breach of contract.

After a trial of the consolidated actions, a jury found that the parties had entered an enforceable contract for deed; that Hoang owes \$189,668 as the outstanding balance on

the contract; and that the Nguyens had made intentional misrepresentations to induce Hoang to take or maintain possession of the property, which caused Hoang damages in the sum of \$100,000. The Nguyens challenge the verdict and the court's denial of their motion for judgment as a matter of law or, in the alternative, a new trial, alleging various errors.

D E C I S I O N

After the jury returned its verdict, finding that the parties' contractual arrangement was that of a contract for deed and not a lease, the Nguyens moved for judgment as a matter of law, or, in the alternative, a new trial. They contended that the evidence did not support the verdict; that, even if there were a contract for deed, the statute of frauds barred its enforcement; that the district court erroneously instructed the jury as to the application of the statute of frauds; and the jury awarded duplicative damages for the Nguyens' alleged misrepresentations. The court denied the motion in its entirety.

We "will not set aside a jury verdict on an appeal from a district court's denial of a motion for a new trial unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Washington County Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted). Similarly, judgment as a matter of law is only appropriate "when a jury verdict has no reasonable support in fact or is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (citing *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990)); see also Minn. R. Civ. P. 50.01(a).

Evidence of Contract

The Nguyens first argue that the evidence does not support the jury's determination that the parties entered into a contract for deed. Generally, the existence and terms of a contract are questions of fact for the fact-finder. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). Questions of fact are reviewed for clear error. Minn. R. Civ. P. 52.01. "Clear error exists if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Esselman v. Prod. Credit Ass'n of St. Cloud*, 380 N.W.2d 183, 186 (Minn. App. 1986), *review denied* (Minn. Mar. 21, 1986) (citing *Desnick v. Mast*, 311 Minn. 356, 366, 249 N.W.2d 878, 884 (1976)).

A "contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law recognizes as a duty." *Murray v. MINNCOR*, 596 N.W.2d 702, 704 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Sept. 28, 1999). The formation of a contract requires an offer, acceptance, and consideration. *Id.* A contract for deed is a "seller financed sale[] of real property. The buyer pays part of the purchase price on closing and makes periodic payments for the balance due. The seller delivers a deed after the buyer pays the entire contract price." 6A Steven J. Kirsch, *Minnesota Practice: Methods of Practice* § 42.22 (3d ed. 1990). Until that time, the vendee "takes the equitable title," and "is clothed with the indicia of ownership to the same extent as if he had taken a deed and given a purchase money mortgage." *Summers v. Midland Co.*, 167 Minn. 453, 456, 209 N.W. 323, 324 (1926).

The evidence on the nature of the parties' contractual arrangement was in sharp conflict. Hoang testified that after he answered the advertisement, Long Nguyen showed

him around The Stahl House, and they later met in Nguyen's office where Hoang stated that he wanted to buy the property. He testified that Long Nguyen agreed to sell The Stahl House for \$400,000 under a contract for deed that provided for \$50,000 as a down payment and installment payments for the balance amortized over 150 months. Hoang testified that Long Nguyen required him to complete and to sign various documents, including what he thought was a contract for deed. Hoang indicated that Nguyen did not give him a copy of the contract for deed, but stated that he would retain it until the "closing." Hoang further testified that, although he paid only \$25,000 as a down payment at this time, he did so with Long Nguyen's agreement that the balance of the down payment could be paid later.

Hoang testified that he took possession on May 1, 1995. He then told Long Nguyen that he could not pay the \$25,000 balance on the down payment at that time, and he testified that Nguyen said he would add that sum to the amortization schedule. Hoang testified that he operated the business at The Stahl House for over ten years, made the required installment payments, and spent approximately \$200,000 in maintenance, repairs, and improvements of the premises.

The Nguyens' version of the transaction and relationship with Hoang was different from his in several material respects. Although the Nguyens acknowledged Hoang's possession and operation of The Stahl House and his periodic payments to them, they testified that they never sold the property under a contract for deed. They testified that, after Hoang answered their ad, they told him what he would have to do to purchase the property. They testified that they told him he would need to have a lawyer draft a

contract for deed and then close the installment sale by May 6, 1995. If Hoang failed to satisfy these requirements, they stated, he could either vacate the premises or remain and become a lessee under an oral month-to-month lease. The Nguyens testified that Hoang never obtained a contract for deed for the parties to sign and never closed the alleged sale and purchase by May 6. Therefore, they testified, they treated Hoang only as a renter in accordance with the parties' understanding.

The jury was not asked to rely solely on the testimony of Hoang and the Nguyens. Rather, various documentary evidence was introduced to assist in resolving the testimonial conflict.

Introduced into evidence was a "Receipt" dated April 29, 1995, which noted Hoang's payment of \$25,000 as 50% of the down payment "to buy THE STAHL HOUSE BUSINESS" for a "SALE PRICE" of \$400,000. The document refers to a closing on "May 6 - 95" and to a "contract for deed" for \$350,000, and indicates that a purchase agreement and the contract for deed are to "be made by the ATTORNEY at the time of closing - on May 6 - 1995." Finally, the document provides: "If the buyer did not buy - did not do the closing on May 6 - 95 - the buyer move out and the \$25000.00 be refunded. If the buyer did not move out - 25,000.00 be used to pay for the rent - each month the rent is: \$4000.00."

Although the "Receipt" appears consistent with the Nguyens' version of the transaction and their relationship with Hoang, Hoang and his wife, who was present when various documents were signed, testified that they had never seen this document before the lawsuits were started.

No closing occurred on May 6, and Hoang admitted that he did not hire a lawyer to prepare a contract for deed. But, he testified, Long Nguyen, a licensed real estate broker, had already prepared a contract for deed and, at various times over the years, Long Nguyen assured Hoang that there was a contract for deed. No contract for deed document was introduced at trial.

In addition to the “Receipt,” the nontestimonial evidence included six documents labeled “Financial Statement” for the respective years 1996, 1997, 1998, 1999, and 2000. The first is dated January 12, 1996. It contains the terms of the sale of The Stahl House and refers to a “CONTRACT FOR DEED.” The document does not refer to a lease or to rent. It bears the names of Long M. Nguyen and Ha T. K. Nguyen under the title “HOLDER.”

The second “Financial Statement” is dated December 31, 1996. It refers to a “CONTRACT FOR DEED” and lists Long Minh Nguyen and Ha Kim Thi Nguyen as “CONTRACT HOLDERS.” This document also contains the phrase “Paid by the rent via THE CLIMB Inc.”

A “Financial Statement” dated December 31, 1997, lists Vu Hoang as “CONTRACT FOR DEED BORROWER” and Long Nguyen as “OWNER/CONTRACT HOLDER.” It lists various payments by Hoang but nowhere refers to rent or to a lease.

The 1998 statement, dated January 31, 1999, lists Vu Hoang as the “CONTRACT FOR DEED BORROWER” but also refers to “31,000.00 FOR THE RENT of 1998” and “NET RENT: 12, 631.92.” It also contains the notation “REMARK: THE RENT STILL OWED (NOT BE PAID) in 1998 will be paid in 1999.”

A “Financial Statement,” dated “2-11-2000” for 1999 lists Vu L. Hoang as “Contract for Deed Borrower” and then refers to \$36,000 received “FOR THE RENT, Property tax and Equipment for the year 1999.”

The final “Financial Statement,” dated “2-11-2001” for 2000, lists Vu L. Hoang as “Contract for Deed Borrower” and refers to \$42,000 received “FOR THE RENT, PROPERTY TAX AND EQUIPMENT FOR THE YEAR 2000.”

Long Nguyen admitted that he drafted all of the documents but he claimed he was mistaken in referring to a contract for deed rather than a lease.

In their argument on appeal, the Nguyens point to evidence that supports their contention that they had entered only a lease with Hoang. Surely there is some evidence that supports that position. But, as noted, there is also evidence supporting the contrary view, that of Hoang. To resolve the conflict, the jury necessarily had to assess the credibility of the evidence and to determine its weight. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). On appeal, we are required to give great deference to the trier-of-fact’s determination of the weight of the evidence and the credibility of the witnesses and their testimony. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996).

It is apparent that the jury accepted Hoang’s version of the facts and rejected that of the Nguyens. Although not conclusive, Long Nguyen’s own documents justify the jury’s finding that the parties intended a contract for deed rather than an oral lease. Because the evidence supports this finding, we may not substitute our judgment for that of the jury. *Johnson v. Alford & Neville, Inc.*, 397 N.W.2d 591, 593 (Minn. App. 1986).

The Nguyens also argue that the jury could not properly have found that the parties intended a contract for deed because there was no meeting of the minds and Hoang failed to satisfy the conditions precedent of completing the down payment, having a lawyer prepare a contract for deed, and attending a closing on May 6. “When the parties know that an essential term of their intended transaction has not yet been agreed upon, there is no contract.” *Malevich v. Hakola*, 278 N.W.2d 541, 544 (Minn. 1979) (citation omitted). A condition precedent is an act that must be performed before a particular contractual right accrues. *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 298 Minn. 428, 433, 215 N.W.2d 473, 476 (1974). But absent an agreement to the contrary, conditions in a writing regarding method or time for performance may be waived orally. *Thoe v. Rasmussen*, 322 N.W.2d 775, 777 (Minn. 1982).

The Nguyens point to the “RECEIPT” dated April 29, 1995, as the document that accurately set forth the terms of the parties’ agreement. But Hoang and his wife testified that they had never seen that document until the two lawsuits were started. The jury was entitled to credit the Hoangs’ testimony.

Moreover, the Nguyens’ position is implausible. They assert that Hoang had a choice to buy the property but, if he wanted to do so, he had to obtain a contract for deed, pay \$50,000 down, and close on May 6. The “RECEIPT” indicates that, “[I]f the buyer did not buy – did not do the closing on May 6,” he would either move out or be treated as a month-to-month tenant. The Nguyens claim Hoang did not obtain a contract for deed and did not close on May 6, yet Long Nguyen for at least five years continually referred to a contract for deed, to Hoang as the “contract for deed borrower,” and to himself as the

contract “holder.” May 6, 1995, the alleged closing date, came and went. It is undisputed that there was no “closing” on that date. By the Nguyens’ version, Hoang was only a renter after May 6, 1995, since he failed to satisfy the conditions precedent. But there is evidence that the Nguyens themselves treated him as a contract-for-deed vendee long after that date. The jury could have found (1) that there never was a “RECEIPT” prepared before May 6; 1995; (2) that the parties always intended a contract for deed transaction; and (3) that Long Nguyen, a real estate broker, chose to treat the ongoing relationship with Hoang as that of contract vendor and vendee.

The evidence was sufficient for the jury to find that the parties entered a contract for deed and that determination must be affirmed.

Statute of Frauds

Next, the Nguyens argue that the statute of frauds bars enforcement of any agreement that may have existed between the parties because the contract was for the sale of real property. A contract for the sale of land is governed by the statute of frauds, Minn. Stat. § 513.05 (2008), which provides that a contract for the sale of land “shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the . . . sale is to be made” Compliance with the statute of frauds requires a writing, signed by the vendor, that identifies the parties, land, and terms and conditions of the transaction. *Doyle v. Wohlrabe*, 243 Minn. 107, 110, 66 N.W.2d 757, 761 (1954). There is no requirement that there be a unitary document but rather several internally consistent “writings” may satisfy the statute of frauds. *See Malevich*, 278 N.W.2d at 544 (stating

that the requirement of statute of frauds that vendor sign a contract for sale of land means that his signature must appear on writing *or writings* containing essential elements of agreement); *Doyle*, 243 Minn. at 111, 66 N.W.2d at 762 (holding that memorandum evidencing the contract may consist of *letters* if they are internally connected by references, express or otherwise, so as to show on their face that they related to the same subject matter); *Gregory Co. v. Shapiro*, 125 Minn. 81, 84, 145 N.W. 791, 793 (Minn. 1914) (explaining that separate writings containing the description in a contract or memorandum for the sale of land satisfy the statute of frauds). Nor is any particular form of writing required. *Doyle*, 243 Minn. at 110, 66 N.W.2d at 761 (listing the only requirements of the statute of frauds); *see also Simplex Supplies, Inc. v. Abhe & Svoboda, Inc.*, 586 N.W.2d 797, 800 (Minn. App. 1998) (stating that the writing required by the statute of frauds is not the contract, but only the written evidence of it), *review denied* (Minn. Feb. 24, 1999).

The several writings introduced into evidence were sufficient to satisfy the statute of frauds. As the district court noted, the jury could have found that the 1996 Financial Statement constituted the parties' contract for deed. This document was prepared and signed by the vendor, Long Nguyen. It recited the purchase price for The Stahl House, the location of the building, the applicable interest rate and the 150-month-amortization term. It also stated "CONTRACT FOR DEED on May 1st – 1995," and listed Hoang and his wife as "BORROWERS," and appellants as "CONTRACT HOLDERS." The jury's verdict will not be set aside "if it can be sustained on any reasonable theory of the evidence." *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). The 1996

Financial Statement could reasonably have been construed as a written memorial of the parties' contract for deed agreement.

Jury Instructions

The Nguyens also argue that the district court abused its discretion by instructing the jury as to the common-law exceptions to the statute of frauds. In light of our determination that at least one writing introduced into evidence was sufficient to satisfy the statute of frauds, there is no need to address the district court's jury instructions on the application of the statute.

Damages

The jury found that the Nguyens made an intentional misrepresentation to Hoang and that caused Hoang to take or maintain possession of The Stahl House, resulting in damages of \$100,000 to Hoang. The district court entered judgment in Hoang's favor upon these findings. The district court's entry of judgment in Hoang's favor was error and resulted in a duplicative recovery. A duplicative recovery occurs when the damages awarded exceed the actual losses a party has suffered. *Lefto v. Hoggsbreath Enters.*, 567 N.W.2d 746, 749 (Minn. App. 1997) (citation omitted), *aff'd*, 581 N.W.2d 855 (Minn. 1998).

Because the jury found that Hoang enjoys a contract-for-deed ownership of the property, he has also benefited from his expenditures in maintaining and improving the premises. Thus, he has sustained no damages in making those expenditures. The judgment in the sum of \$100,000 must be reversed.

There is some indication in the record that the district court submitted the damages issue as an alternative if the jury were to find that Hoang was a lessee rather than a contract-for-deed vendee. That approach surely was prudent and efficient. But when the jury returned its verdict finding that Hoang is a contract vendee, that rendered the damages issue moot, and no judgment should have been entered.

Affirmed in part and reversed in part.