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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1384**

Charlotte Saclolo,
Appellant,

vs.

Gary L. Shaleen,
Respondent.

**Filed June 9, 2009
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 27-CV-08-15093

Jeffrey H. Olson, P.O. Box 44271, Eden Prairie, MN 55344 (for appellant)

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Considered and decided by Shumaker, Presiding Judge; Johnson, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

In this mortgage foreclosure appeal, appellant contends that the district court improperly denied her request for a temporary restraining order that would have extended her redemption period. Because appellant failed to show a substantial likelihood of success on the merits of her pending claims, we affirm.

FACTS

Appellant Charlotte Saclolo purchased from respondent Gary L. Shaleen certain improved real estate in the City of Mound by assuming the existing mortgage and by giving to Shaleen a purchase money mortgage as a second mortgage. When Saclolo failed to make payments for about a year, Shaleen foreclosed the second mortgage. He was the highest bidder at the foreclosure sale and is now the holder of the Sheriff's Certificate of Sale.

After the foreclosure sale, Saclolo sued Shaleen on theories of breach of contract and various types of fraud and misrepresentation and sought rescission of the purchase agreement with restitution, or, in the alternative, an award of damages. Two days before the expiration of the redemption period, Saclolo moved for a temporary restraining order (TRO) to enjoin the expiration of that period until her claims could be determined.

The district court denied Saclolo's motion for a TRO, ruling that she had failed to satisfy the criteria for a TRO. The court also held that her substantive claims were barred for various reasons not pertinent to this appeal.

Saclolo appealed the district court's denial of the TRO. In a prior order we held that this "appeal is limited to the part of the [district court's] order denying appellant's motion for a temporary restraining order."

DECISION

We review the district court's denial of a motion for a TRO for an abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). We will not reverse the district court's decision unless on the record as a whole it appears that there has been a clear abuse of that discretion. *Id.* Furthermore, we view the facts in the light most favorable to the prevailing party. *Bud Johnson Constr. Co. v. Metro Transit Comm'n*, 272 N.W.2d 31, 33 (Minn. 1978).

In ruling on Saclolo's motion, the district court applied and analyzed the five *Dahlberg* factors, namely, (1) the nature and relationship of the parties; (2) the balance of the relative harm between the parties; (3) Saclolo's likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). Saclolo concedes that these are the factors the court was required to consider in assessing her motion.

The failure to satisfy any of the factors may support a denial of relief. *Sunny Fresh Foods, Inc. v. Microfresh Foods Corp.*, 424 N.W.2d 309, 311 (Minn. App. 1988); *Satellite Indus., Inc. v. Keeling*, 396 N.W.2d 635, 641 (Minn. App. 1986), *review denied* (Minn. Jan. 21, 1987). If the moving party fails to demonstrate a substantial likelihood of

success on the merits, the district court errs in granting temporary injunctive relief. *Regents of Univ. of Minn. v. NCAA*, 560 F.2d 352, 372 (8th Cir. 1977).

One of the district court's bases for denying Saclolo's motion was its finding that she "will not succeed on the merits of this case." The essence of all of Saclolo's claims is Shaleen's statement in the purchase agreement that he had "not received any notice from any governmental authority as to condemnation proceedings, violation of any laws, ordinance, or regulation" Saclolo alleges that this statement was false and that Shaleen "had in fact received several such notices from the City of Mound" To support her claim, Saclolo offered copies of three Inspection Notices from the City of Mound. A notice dated July 12, 1995, indicated that the property was under demolition and there was "no visible permit." A notice of August 28, 1997, indicated that there was "no permit" and noted "repair in progress." The third notice, from May 4, 1999, stated "no action on bldg. permit" and noted various aspects of the condition of the property.

Before Saclolo bought the property, she inspected it several times. At that time, Shaleen was in the process of making major renovations to the house on the lot. The house was being held up by jacks to replace its foundation, and plumbing, electric, and gas services had been disconnected. Saclolo bought the property in this condition and asked Shaleen to cease the renovation so as to lower the purchase price and to allow her to redesign the house as she desired.

Saclolo has not demonstrated that there was anything about the condition of the property of which she was unaware when she bought it. She has not shown that Shaleen misrepresented the condition of the property or that he failed to disclose hidden or latent

defects. The notices from the city indicate nothing that was not open and obvious about the property, do not note any structural code violations, and do not necessarily even indicate any violation of the law. Read properly, the notices are advisory, stating the need to have a permit for demolition. They do not constitute determinations, however, that even that requirement necessarily had been violated.

Saclolo's suggestion that she was unaware of problems with the condition of the property until after she learned of the city's notices is totally at odds with the record. Furthermore, she has not shown that the failure to display a demolition permit at the site was material in any way to the purchase of the property. *Rognlien v. Carter*, 443 N.W.2d 217, 221 (Minn. App. 1989), *review denied* (Minn. Sept. 21, 1989).

Among the elements Saclolo would be required to prove to succeed on a claim of fraud or misrepresentation are (1) that the misrepresented fact was material and (2) that the misrepresentation was a proximate cause of damages. *W. Contracting Corp. v. Dow Chem. Co.*, 664 F.2d 1097, 1100-01 (8th Cir. 1981). Shaleen's failure to disclose the permit notices was not material to Saclolo's knowledge of the condition of the property. With or without a permit, the property remained in the same condition as it was when Saclolo inspected it on several occasions. Furthermore, Shaleen's failure to disclose notices from the city that he had to display a permit on the premises cannot reasonably be said to have caused or contributed to any alleged damages Saclolo claims to have sustained.

Because the district court correctly found that there is no substantial likelihood that Saclolo will succeed on the merits of her lawsuit, the court did not abuse its discretion in denying her motion for a temporary restraining order.

Affirmed.