STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1694

Richard Albrecht, et al.,
Appellants,

vs.

Rite Tyme Company, Inc.,
Respondent.

Filed August 4, 2009
Reversed
Stauber, Judge

Dakota County District Court
File No. 19HACV082457

Gary G. Fuchs, Elizabeth E. Rein, Gary G. Fuchs, Attorney at Law, P.A., Suite 100, 3440 Federal Drive, Eagan, MN 55122 (for appellants)

Roger M. Stahl, Wendland, Utz, Stahl and Mintz, Ltd., Suite 300, Wells Fargo Center, 21 First Street Southwest, Rochester, MN 55902 (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

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

STAUBER, Judge

On appeal in this dispute involving a lease with an option to purchase an interest in the leased property, appellant tenants argue that the district court abused its discretion in denying their petition for a temporary injunction to prevent respondent owner from

mortgaging the property after appellants exercised their option to purchase. Appellants contend that the injunction must be granted because the plain language of the lease precludes respondent from encumbering the property after the exercise of the option. Because we agree with appellants' interpretation of the option-to-purchase provision, and because the relevant factors in determining whether to order a temporary injunction favor appellants, we reverse.

FACTS

Beginning in 1993, AWM Enterprises, Inc. (AWM) leased commercial property in South Saint Paul from respondent Rite Tyme Company pursuant to a "Lease Purchase" agreement drafted by one of respondent's principals. Under the terms of the agreement, AWM agreed to lease the property for an initial term of five years, with the option to extend the lease for five additional five-year periods. The agreement also granted appellants, AWM's stockholders, the option to purchase either a 50% or 100% stock interest in respondent at the end of each five-year term. The purchase price for each option period is set out in the lease. Although the option involves the purchase of stock, the purpose of the provision is to allow appellants to purchase an interest in the real property. The agreement provides that the only asset held by respondent is title to the property, and the option language focuses exclusively on appellants' rights to purchase an ownership interest in the property.

In order to exercise the option to purchase, appellants are required to provide written notice along with $50,000 in earnest money to respondent at least 120 days before the end of the five-year term. Within 20 days of receiving the requisite notice and earnest

money, respondent must furnish appellants with an abstract of title or registered property abstract. After receiving the abstract, appellants are entitled to give notice of any objections or defects in title, and if respondent does not clear the title of the defects, appellants may either waive their objections and close on the purchase or terminate their exercise of the option and receive a refund of their earnest money.

Several years after entering into the Lease Purchase agreement, appellants informed respondent that they were contemplating whether to exercise the option to purchase. Respondent indicated that it did not want appellants to exercise the option, and threatened to place a mortgage on the property to discourage them from doing so. Despite this threat, on June 9, 2008, appellants exercised their option by providing respondent with the required notice of their intent to purchase a one-half interest in respondent for $239,580, the price identified in the agreement. Shortly after tendering their notice and earnest money, appellants received information that respondent intended to encumber the real property by obtaining a $500,000 loan secured by a mortgage against the property and then distribute the loan proceeds to its existing shareholders. In essence, respondent intended to strip any equity in the property so that appellants would receive no value in return for their $239,580 payment.

Appellants responded by seeking a temporary restraining order (TRO) enjoining respondent from (1) encumbering the property with a mortgage without their consent or (2) disbursing the proceeds of any loan secured by the mortgage to respondent's shareholders without disbursing an equal amount to appellants. The district court granted

the TRO and scheduled a hearing to determine whether a temporary injunction was appropriate.

Following the hearing, the district court denied appellants' request for a temporary injunction. In denying the request, the district court concluded that appellants were unlikely to succeed on the merits because the terms of the lease purchase agreement allow respondent to encumber the property by mortgage at any time and for any purpose. The district court also held that the public policy interest in enforcing the unambiguous terms of a contract also supported denial of the injunction. This appeal followed.

D E C I S I O N

A district court may grant a temporary injunction if the party seeking it establishes that there is no adequate remedy at law and that denial of the injunction will result in irreparable injury. *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91–92 (Minn. 1979). The purpose of a temporary injunction is to preserve the status quo until a trial can be held on the merits. *Pickerign v. Pasco Mktg., Inc.*, 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975). When reviewing a district court's decision on a temporary injunction, we consider five factors: (1) the relationship of the parties; (2) the relative harm to the parties if the injunction is or is not granted; (3) the likelihood of success on the merits; (4) public policies expressed in statutes; and (5) the administrative burdens in supervising and enforcing the decree. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965). Likelihood of success on the merits is the most important *Dahlberg* factor. *See Minneapolis Fed'n of Teachers, v. Minneapolis Pub. Schs, Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App.

1994) (stating that probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction), *review denied* (Minn. Mar. 31, 1994). "A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). "A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous." *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

In challenging the denial of injunctive relief on appeal, appellants focus exclusively on the finding that they are unlikely to succeed on the merits. Appellants contend that the district court erred by concluding that the Lease Purchase agreement allows respondent to encumber the property with a mortgage at any time and for any purpose.

"[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When there is a written agreement, the intent of the parties is determined from the plain language of the agreement itself. *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). Contract terms must be read in the context of the entire contract, and constructions that would lead to an absurd result or render provisions meaningless should be avoided. *Employers Mut. Liab. Ins. Co. of Wis. v. Eagles Lodge of Hallock, Minn.*, 282 Minn. 477, 479–80, 165 N.W.2d 554, 556 (1969) (stating that contract terms must be read in the context of the

entire contract and should not be construed in a manner that would lead to an absurd result); *Stiglich Const., Inc. v. Larson*, 621 N.W.2d 801, 803 (Minn. App. 2001) (providing that courts should avoid interpretation of contracts that would render a provision meaningless), *review denied* (Minn. Mar. 27, 2001). But an unambiguous contract "must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (citations omitted). The interpretation of a contract is a question of law reviewed de novo. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

Appellants and respondent focus their arguments on clauses 22 and 36 of the Lease Purchase agreement. Clause 22 states:

> *This Lease is subject to the lien of all and any mortgages* (which term "mortgages" shall include mortgages to secure any financing or debt of any nature whatsoever and shall include contracts for deed and similar security instruments) and to all and any renewals, extensions, modifications, recastings or refinancings thereof. In confirmation of such liens, [appellants] shall, at [respondent's] request, promptly execute any requisite or appropriate certificate or other document. *The forgoing language not withstanding, any mortgage placed by [respondent] upon the [property] shall recognize the validity and effect of this Lease and the option to purchase*, and shall provide that, in the event of foreclosure of said mortgage this Lease and the option to purchase shall remain in full force and effect, barring breach or default thereof by [appellants], the intent and purpose being that [appellants] may continue to use and occupy said [property], during the term, and exercise the option to purchase as provided by this Lease, as long as [appellants] make[] the payments provided for to [respondent] and perform[] all the terms and obligations upon it imposed by said Lease.

(Emphasis added.)

Clause 36 of the Lease Purchase agreement provides in pertinent part:

> If [appellants'] option [to purchase] is exercised, [respondent] shall within twenty (20) days of receiving said notice, furnish an abstract of title or registered property abstract *certified to date* . . . . [Appellants] shall give notice in writing to [respondent] of any defects in or objections to title *as so evidenced*, and [respondent] shall clear the title of the defects and objections so specified. If [respondent] fails to clear title to the extent herein required or to submit evidence of his ability to do so prior to the closing date, [appellants] may close on the purchase by waiving any objections or at [appellants'] option, may terminate the exercise of the option to purchase by giving ten (10) days notice to [respondent] . . . .
>
> Title to be conveyed as provided in this option shall be merchantable title, free and clear of all liens, encumbrances, and restrictions which would prevent [appellants'] use and enjoyment of the subject premises, except the lease between [appellants] and [respondent], *underlying mortgages*, contracts for deed, easements of record and permitted encumbrances if any.

(Emphasis added.)

The district court held that respondent was entitled to encumber the property for any amount up until the time of closing because neither clause places any time or purpose restrictions on the right to mortgage the property. The court also concluded that the phrase "underlying mortgages" contained in clause 36 unambiguously refers to all mortgages encumbering the property *as of the date of conveyance*.

In disputing the court's ruling, appellants note that clause 36 requires respondent to provide an updated abstract of title within 20 days of receiving notice of the exercise of the option. They contend that there would be no reason for respondent to provide an

updated abstract of title if the property could be encumbered up until the date of conveyance.

We agree that this language unambiguously prohibits respondent from mortgaging the property after receiving notice of the exercise of the option. The clause provides that, after receiving the abstract, appellants are to "give notice in writing to [respondent] of any defects in or objections to title *as so evidenced*" by the abstract so that respondent can clear and cure the title of such defects and objections. (Emphasis added.) "Implicit in the contractual requirement that the seller of real estate furnish an abstract of title is the representation that the abstract is proffered to demonstrate the marketability of the seller's title." *Lucas v. Indep. Sch. Dist. No. 284*, 433 N.W.2d 94, 94 (Minn. 1988); s*ee also MidCountry Bank v. Krueger*, 762 N.W.2d 278, 284 (Minn. App. 2009) (providing that the purpose of an abstract of title is to afford a prospective purchaser a simplified and convenient method of ascertaining the condition of the title), *review granted* (Minn. May 27, 2009). If respondent could continue to encumber the property after furnishing the abstract, the abstract would be of no value to appellants in deciding whether to complete the transaction. Therefore, the phrase "underlying mortgages" must be interpreted to include only those mortgages that were given prior to exercise of the option. This interpretation is consistent with clause 22, which recognizes respondent's right to mortgage the property, while at the same time preserving appellants' right to rely on the abstract provided by respondent. *See Stiglich*, , 621 N.W.2d at 803 (stating that contracts should be construed to harmonize all provisions whenever possible). It also avoids the absurd result of allowing respondent to strip the property of any equity just prior to the

closing on the sale. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998) (stating that courts will not construe a contract to produce a "harsh and absurd result").

Respondent argues that appellants' construction is unreasonable because the lease requires the parties to close on the transaction 90 days after appellants serve notice of the exercise of the option. Respondent claims that a prudent buyer would never rely on an abstract that was generated 70 days prior to closing because title to the property could be adversely affected during the intervening period. However, when "a contract requires the seller to furnish an abstract of title, the marketability of the title is to be tested by the record as shown by the abstract; *the purchaser is not obliged to examine further or elsewhere*." *Lucas*, 433 N.W.2d at 97 (emphasis added). Thus, regardless of the timing of delivery of the abstract, appellants were entitled to rely on the abstract in deciding whether to proceed with the closing or demand the cure of title defects.

This interpretation is also consistent with well-settled contract law. The exercise of the option essentially constituted acceptance of an offer to purchase the property. *Cf. Abrahamson v. Abrahamson*, 613 N.W.2d 418, 423 (Minn. App. 2000) (stating that "[a]n option is a unilateral undertaking to keep an offer open for a period of time"). "Under the doctrine of equitable conversion, once parties have executed a binding contract for the sale of real estate, as here, equitable title vests in the vendee and the vendor holds only legal title as security for payment of the balance of the purchase price." *Tollefson Dev., Inc. v. McCarthy*, 668 N.W.2d 701, 704 (Minn. App. 2003). Therefore, once appellants exercised their option, respondent held legal title only as security for payment of the

balance of the purchase price and was required to preserve the condition of title as it existed at the time of exercise. Accordingly, we conclude that respondent is precluded from taking any adverse action that would materially affect the condition of title after appellants have exercised their option to purchase.

Turning again to the *Dahlberg* factors, appellants have demonstrated that they would succeed on the merits and would be severely harmed by the denial of an injunction because an unlawful mortgage encumbrance would diminish or extinguish any value of the bargain appellants negotiated. Conversely, respondents would not be harmed if the injunction is granted because they would still receive the $239,580 they bargained for as part of the Loan Purchase agreement. Enjoining respondent from encumbering the property also does not impose any administrative burdens on the court. Because the *Dahlberg* factors weigh in favor of appellants, the district court erred in denying the injunction.

Reversed.