STATE OF MINNESOTA
IN COURT OF APPEALS
A09-775

Brenda Vandal, et al.,
Appellants,

vs.

Dennis M. Peterson,
Respondent.

Filed January 5, 2010
Reversed and remanded
Worke, Judge

Olmsted County District Court
File No. 55-CV-08-10235

Mark G. Stephenson, Stephenson & Sutcliffe, P.A., 1635 Greenview Drive SW, Rochester, MN 55902 (for appellants)

Roger M. Stahl, Rebecca B. Pinero, Wendland Utz, Ltd., 300 Wells Fargo Center, 21 First Street SW, Rochester, MN 55902 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

WORKE, Judge

Appellants challenge the district court's grant of summary judgment in favor of respondent, arguing that the record does not support the district court's determination that appellants' claims are barred by the doctrines of equitable estoppel and waiver. Because we conclude both that the contract between appellants and respondent is ambiguous as to whether the parties intended respondent to be personally liable for the contractual obligations and that the extrinsic evidence does not conclusively demonstrate the parties' intent, we reverse and remand.

FACTS

During the summer of 2004, appellants Brenda and Gary Vandal had several discussions regarding the sale of their property with respondent Dennis Peterson. At the time of the negotiations, respondent was the president and owner of Dennis M. Peterson Interests, Inc., and also served as the chief manager of Pinewood Enterprises, LLC. The negotiations produced a "Terms of Sale Anticipated" agreement (anticipated sale agreement). Respondent signed the anticipated sale agreement personally, as opposed to signing on behalf of Dennis M. Peterson Interests, Inc. or Pinewood.

On September 1, 2004, the parties met to finalize the terms of the sale. Using the anticipated sale agreement as a template, appellants drafted a purchase agreement and an attachment to the purchase agreement containing the payment terms. Appellants signed both documents at the meeting. Although respondent paid the $25,000 down payment required by the attachment while at the meeting, he did not sign either the purchase

agreement or the attachment at that time. Respondent promised instead to sign and return the agreements by the closing date, and left the meeting with the agreements in his possession. On November 30, 2004, respondent personally signed both agreements and returned the originals to appellants with "Dennis M. Peterson Interests, Inc." written in as the buyer on the first page of the purchase agreement.

The closing took place on December 17, 2004. Prior to the closing, appellants executed a warranty deed to Pinewood. Four other documents were signed at the closing: an assignment of the rights, title, and interest in the property held by Dennis M. Peterson Interests, Inc. by virtue of the purchase agreement to Pinewood, signed by respondent on behalf of both entities; a primary mortgage between Pinewood and the State Bank of Delano signed by respondent on behalf of Pinewood; a "buyer/seller certification" listing appellants as the sellers of the property, Pinewood as the borrower, and the State Bank of Delano as the lender, signed by appellants and respondent on behalf of Pinewood; and a promissory note signed by appellants and respondent on behalf of Pinewood promising to pay $325,000 to appellants on or before September 1, 2005.

Pinewood eventually defaulted on its mortgage and failed to pay the $325,000 owed to appellants under the promissory note. After respondent personally refused to make payments to appellants for the promissory note, Pinewood executed a quitclaim deed on April 4, 2006, conveying the property back to appellants. Pinewood drafted a corresponding memorandum of agreement in an attempt to mitigate the dispute. Appellants filed suit nevertheless, alleging that respondent was personally liable for $50,000 in lost profits plus statutorily prescribed interest, court costs, and attorney fees.

Respondent answered, asserting affirmative defenses including estoppel and waiver. Appellants and respondent both moved for summary judgment. The district court granted summary judgment in favor of respondent, concluding that appellants' claims are barred by the doctrines of equitable estoppel and waiver. This appeal followed.

D E C I S I O N

When reviewing a grant of summary judgment, we determine whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *Id.* at 77.

"It is generally recognized that summary judgment is not appropriate whe[n] the terms of a contract are at issue and any of its provisions are ambiguous or unclear." *Donnay v. Boulware*, 275 Minn. 37, 45, 144 N.W.2d 711, 716 (1966). "This rule is intended to guarantee that the parties to a contract have a full opportunity to present evidence that will clarify or explain the unclear terms." *In re Turners Crossroad Development Co.*, 277 N.W.2d 364, 368-69 (Minn. 1979). Whether a contract is

ambiguous is a question of law reviewed de novo. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

"A contract is ambiguous if its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr. Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). When a contract is ambiguous, a court may consider extrinsic evidence. *Blatner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982). When extrinsic evidence is necessary to ascertain the intent of the parties, there is a question of fact, which must be tried unless the extrinsic evidence is conclusive proof of the parties' intent. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979) ("[When] there is ambiguity and construction depends upon extrinsic evidence . . . there is a question of fact for the jury."); *see also Donnay*, 275 Minn. at 44, 144 N.W.2d at 716 (providing that when contract language is ambiguous, the court may look to extrinsic evidence and "construction then becomes a question of fact unless such evidence is conclusive").

The principal issue here is whether respondent is personally liable for the purchase-agreement obligations. At the outset of its analysis, the district court concluded that "neither the original purchase agreement nor any of the subsequent documents are ambiguous," and refused to consider extrinsic evidence to ascertain the parties' intent in ruling on the summary-judgment motions. Our primary objective is, therefore, to review whether the contract is ambiguous and, if so, whether the extrinsic evidence is conclusive as a matter of law to determine whether respondent was to be personally liable for the purchase-agreement obligations.

The purchase agreement lists "Dennis M. Peterson Interests, Inc." as the buyer on the first page of the agreement, but was signed by respondent in his individual capacity without any designation or reference to the corporation. The anticipated sale agreement was also signed by respondent is his individual capacity, and this agreement was incorporated into the purchase agreement through a merger clause. The district court concluded, however, that, "[w]hether [respondent] designated 'Dennis M. Peterson' or 'Dennis [M.] Peterson Interests, Inc.' as the purchaser of [appellants'] property does not make the contract ambiguous."

The plain terms of the purchase agreement reasonably yield two differing interpretations of the true purchaser intended by the parties: respondent, individually, and respondent's corporation, Dennis M. Peterson Interests, Inc. The buyer listed on the first page of the purchase agreement is designated as Dennis M. Peterson Interests, Inc. On the other hand, respondent signed the agreement in his individual capacity, just as he similarly signed the anticipated sale agreement incorporated into the purchase agreement by the merger clause. This inherent contradiction in terms represents a patent ambiguity in the contractual terms of the purchase agreement. The district court erred in refusing to consider extrinsic evidence when assessing whether the parties intended for respondent to remain personally liable.

We next look to whether the extrinsic evidence conclusively demonstrates the intent of the parties. *Donnay*, 275 Minn. at 44, 144 N.W.2d at 716. Respondent signed four documents at the closing of the sale in his representative capacities for either Pinewood or Dennis M. Peterson Interests, Inc., two of which were also signed by

appellants. Respondent asserts that this is conclusive proof that he was never intended to be personally liable under the terms of the contract, and any ambiguity in the purchase agreement is therefore resolved by this conclusive evidence. However, respondent signed the anticipated sale agreement prior to the purchase agreement in his individual capacity with no reference to either Pinewood or Dennis M. Peterson Interests, Inc., and appellants further claim that respondent substituted his corporation as the buyer listed on the purchase agreement without their knowledge and they did not become aware of this substitution until after the closing. This creates uncertainty regarding the parties' intended buyer ultimately liable for the purchase-agreement obligations, making it "necessary to inquire into the facts [in order to] clarify the application of the law." *Id.*

Finally, respondent asserted at oral argument that a determination of contractual ambiguity would not have affected the overall outcome of the summary-judgment motions. Respondent argued that the district court still dismissed appellants' claim under the doctrines of equitable estoppel and waiver after concluding that respondent *was* personally liable under the purchase agreement. We disagree. "A party seeking to invoke the doctrine of equitable estoppel bears the burden of proving three elements: (1) that promises or inducements were made; (2) that [the party] reasonably relied upon the promises; and (3) that [the party] will be harmed if estoppel is not applied." *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990). Alternatively, waiver is the relinquishment of a known right, and "[t]he party alleging waiver must provide evidence that the party that is alleged to have waived the right possessed both knowledge of the right in question and the intent to waive that right." *Ill. Farmers Ins. Co. v. Glass*

Serv. Co., 683 N.W.2d 792, 798 (Minn. 2004). Both of these affirmative defenses asserted by respondent require proof of appellants' intent to release respondent from his personal liability under the terms of the purchase agreement, either by a promise or inducement under the doctrine of equitable estoppel or by a voluntary relinquishment of a right under the doctrine of waiver. Therefore, both affirmative defenses implicate questions of material facts precluding summary judgment. *See e.g. Rice Street VFW, Post No. 3877 v. City of St. Paul*, 452 N.W.2d 503, 508 (Minn. App. 1990) (stating that whether equitable estoppel applies is a fact question unless only one inference can be drawn from the facts); *Valspar Refinish Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (stating that "[w]aiver is a question of fact" and is generally not inferred as a matter of law).

If it is unclear as to whether appellants intended and expected to hold respondent personally liable under the contract, it follows that appellants' willingness to release respondent from his obligations is likewise uncertain. Assuming that the parties truly intended respondent to be personally liable for the obligations of the purchase agreement, it is entirely plausible that appellants believed that respondent still remained personally liable for the transaction after the closing of the sale by virtue of the purchase agreement. None of the other agreements signed at the closing implicated respondent in a personal capacity. Indeed, appellants were not even privy to the assignment agreement between Dennis M. Peterson Interests, Inc. and Pinewood, and the assignment did not convey any of respondent's personal rights or obligations. The examination of extrinsic evidence necessary to interpret the intent of the parties would thus create a dispute of material facts

as to whether appellants either acted in such a way to induce respondent's reasonable reliance that he was to be released from personal liability or voluntarily relinquished a known right to hold respondent personally liable under the contract.

Because the terms of the purchase agreement are ambiguous and the extrinsic evidence does not conclusively demonstrate whether the parties intended for respondent to be personally liable for the obligations of the agreement, material facts remain in dispute and summary judgment is inappropriate. *See Donnay*, 275 Minn. at 44-45, 144 N.W.2d at 716 (reversing and remanding summary judgment when contract terms were ambiguous and the parties' conduct and negotiations should have been considered to determine the parties' intent). We reverse the district court's grant of summary judgment, and remand the issue of whether the parties intended for respondent to be personally liable under the terms of the purchase agreement.

Reversed and remanded.