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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0268**

Bridget A. Schmidt, et al.,  
Appellants,

vs.

George Bender,  
Respondent.

**Filed September 4, 2012  
Affirmed  
Connolly, Judge**

Douglas County District Court  
File No. 21-CV-11-314

Logan Moore, Velde Moore, Ltd., Alexandria, Minnesota (for appellants)

Douglas Hegg, Hegg Law Office, Alexandria, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

One appellant borrowed money from respondent and signed a promissory note in his favor. Appellants later sued respondent for usury and respondent moved successfully for summary judgment. Appellants now challenge the summary judgment, arguing that

the district court erred because the promissory note was not a negotiable instrument and the written contract merged all existing oral agreements between the parties. Because respondent was entitled to summary judgment as a matter of law, we affirm.

### **FACTS**

Respondent George Bender loaned appellant Bridget Schmidt<sup>1</sup> a sum of \$20,000, paid in three separate checks: (1) \$2,000 on January 23, 2009; (2) \$10,000 on February 11, 2009; and (3) \$8,000 on May 22, 2009. On May 21, 2009, appellant drafted and signed a promissory note in favor of respondent. The note was not signed by respondent. The promissory note recited that it was issued “FOR VALUE RECEIVED,” that it was a promise to “pay George Bender and/or order,” where and when payments were to be made, and that the note was “secured by a Mortgage.” The note stated that it was for the principal sum of \$22,000 and that interest was to be paid on the principal at a rate of ten percent per year. Appellant paid respondent a total of \$1,904 toward the amount loaned, but stopped making payments on the loan in the fall of 2009.

Respondent demanded repayment of the money lent, and appellant and her husband filed a complaint, demanding that the promissory note be deemed void and the interest paid returned. Appellant alleged that the promissory note was usurious because the interest rate in the promissory note was ten percent per year, in violation of Minn.

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<sup>1</sup> Both Bridget Schmidt and her husband, Jerry Schmidt, are listed as appellants in this action and were plaintiffs below. However, the arguments raised on appeal focus on Bridget Schmidt’s liability on the loans. Both briefs discuss only Bridget as an appellant and Jerry Schmidt does not assert any claims on appeal. Therefore, this opinion refers to Bridget Schmidt as “appellant” and Jerry Schmidt as “husband.”

Stat. § 334.01, subd. 1 (2008). Respondent denied appellant's allegations and responded with a counterclaim seeking to enforce the promissory note.

Both parties moved for summary judgment, and the district court heard the motions on November 10, 2011. The district court granted appellant's motion for summary judgment in part, by declaring the promissory note was usurious and void pursuant to Minn. Stat. § 334.05 (2010), but denied appellant's motion for summary judgment to the extent that she sought to have the three underlying loans cancelled. The district court also dismissed respondent's claims against appellant's husband because he was not a party to the loans. The district court then granted summary judgment in favor of respondent, holding that appellant's underlying obligation to repay the three loans remained, and that appellant owed respondent interest at a rate of six percent per year.

Specifically, the court found that, by admitting that the loans underlying the promissory note were made, appellant implicitly consented to litigation on the loans and waived the protection provided by the statute of frauds, Minn. Stat. § 513.01 (2008). The court then found that, because the parties disputed the interest rate they agreed to at the time the loan was made, the interest rate was six percent per year as a matter of law, pursuant to Minn. Stat. § 334.01, subd. 1. Next, the court found that, pursuant to Minn. Stat. § 336.3-104(a) (2008), the promissory note was a negotiable instrument. The court determined that, when appellant made the promissory note, she undertook a separate obligation that suspended, but did not eliminate, the original obligation to repay the three loans. That suspension ended because the promissory note was dishonored when appellant did not make payments. The district court concluded that appellant was entitled

to dishonor the promissory note because it was usurious but that her underlying obligation to repay the loan remained enforceable. Appellant was ordered to repay the loan, plus interest at the statutory rate of six percent per year.

The district court stayed the entry of judgment pending resolution of the issue of how to allocate the loan payments appellant had already made between the principal and interest. The parties stipulated that the judgment should be in the amount of \$21,389.35 and the district court entered judgment. This appeal follows.

## **D E C I S I O N**

Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. In opposing a motion for summary judgment, general assertions are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). “A party need not show substantial evidence to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions.” *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (emphasis omitted). Conversely, “[a] defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

On appeal from summary judgment, an appellate court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). A reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted. *Id.* at 76-77. An award of summary judgment will be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

Appellant argues that the district court erred in granting respondent's motion for summary judgment by improperly holding that the promissory note was a negotiable instrument that suspended, but did not supersede, the oral loan agreements between the parties.

A promissory note is a form of negotiable instrument. Minn. Stat. § 336.3-104(b), (e) (2008); *Hastings v. Thompson*, 54 Minn. 184, 186, 55 N.W. 968, 968 (1893) (“[T]he only point raised on this appeal is whether the instruments sued on are promissory notes, for, if they are, they are unquestionably negotiable . . .”). A “negotiable instrument” is

an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money. . . .

Minn. Stat. § 336.3-104(a). Appellant concedes that the promissory note satisfies the first requirement, but she argues that the promissory note fails to satisfy the second and third requirements because the note required payments over time and was secured by a mortgage.

The district court properly found that the promissory note executed by appellant was a negotiable instrument. First, the promissory note was an unconditional promise to pay respondent a fixed amount of money and was payable to the bearer or to order at the time it was issued. The promissory note states that, “the undersigned [appellant] promise(s) to pay [respondent] the principal sum of Twenty-two Thousand and no/100 Dollars (\$22,000.00) with interest . . . .”

Second, the promissory note was payable on demand or at a definite time. Payments were due to a P.O. Box in Osakis, Minnesota in consecutive monthly installments of \$403.49 on the “10th day of each month beginning July 10, 2009 with a one-time payment of \$2,000.00 due on June 30, 2009.” The payments were to continue until the indebtedness was fully paid, and if not paid sooner, was to “be due and payable on July 10, 2011.” Appellant’s argument that a negotiable instrument “excludes promissory notes that require payments over time” is inaccurate. A promissory note is a negotiable instrument if the payment is payable on demand or at a definite time. Minn. Stat. § 336.3-104(a)(2). A promissory note is “payable at a definite time” if it is “payable on elapse of a definite period of time . . . or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued . . . .” Minn. Stat.

§ 336.108(b) (2008). Here, the note was payable on fixed, ascertainable dates according to the promissory note's payment schedule, or on demand on July 10, 2011.

Third, the promissory note does not state any other undertaking on the part of appellant other than the payment of the money. *See* Minn. Stat. § 336.3-104(a)(3). Appellant argues that, because the note recites that “[t]he indebtedness evidenced by this Note is secured by a Mortgage,” the promissory note is excluded from the definition of a negotiable instrument. This argument is unavailing. Minn. Stat. § 336.3-104(a)(3) specifically states that the “promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment . . . .” Because the promissory note signed by appellant satisfies the requirements of Minn. Stat. § 336.3-104(a), the district court properly concluded that the promissory note was a negotiable instrument.

Next, appellant argues that the district court erred in holding that the promissory note suspended, but did not supersede, the parties' oral agreement. Appellant contends that the promissory note integrated and merged the three oral loan agreements because a written agreement supersedes all previous agreements. *See Lehman v. Stout*, 261 Minn. 384, 388-89, 112 N.W.2d 640, 643 (Minn. 1961) (holding that a written agreement, which merged and integrated the previous oral agreements between the parties, superseded all previous agreements).

An agreement is integrated when the parties adopt a writing as the final expression of their agreement. *Id.* at 389, 112 N.W.2d at 644. However, there is no evidence here that the promissory note was the final expression of the agreement between appellant and respondent. The promissory note did not contain a merger or integration clause. Most

importantly, respondent did not manifest his intent to be bound by the written promissory note because he did not sign the promissory note. “A person is not liable on an instrument unless (i) the person signed the instrument . . . .” Minn. Stat. § 336.3-401(a) (2008). An “[i]nstrument’ means a negotiable instrument.” Minn. Stat. § 336.3-104(b). Respondent did not sign the promissory note, a negotiable instrument, and is therefore not bound by its terms. Because the promissory note did not integrate the parties’ previous oral agreement, the promissory note did not supersede the oral agreements. Rather, as the district court found, the promissory note suspended the oral agreements. If a note is taken for an obligation, “the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken . . . .” Minn. Stat. § 336.3-310(b) (2008).

“In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid.” *Id.* at (2). Appellant dishonored the note when she ceased making payments to respondent in the fall of 2009, ending the suspension of her underlying obligation to repay the three loans she received from respondent.

Other than the promissory note, there is no information on how much interest is due on the loans. Minn. Stat. § 334.01, subd. 1, provides that “[t]he interest for any legal indebtedness shall be at the rate of \$6 upon \$100 for a year, unless a different rate is contracted for in writing.” As the district court held, appellant must therefore pay respondent interest on the loans at a rate of six percent per year.

Because the promissory note was a negotiable instrument that suspended, but did not supersede, the oral loan agreements between the parties, the district court properly granted respondent's motion for summary judgment.

**Affirmed.**