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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-559**

Long Minh Nguyen, et al.,
Appellants,

vs.

Vu L. Hoang,
Respondent.

**Filed October 26, 2010
Affirmed
Hudson, Judge**

Ramsey County District Court
File No. 62-C2-06-7920

Adam J. Kaufman, Jensen Sondrall & Persellin, P.A., Brooklyn Park, Minnesota (for appellants)

Ernest C. Hope, West St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellants challenge the district court's order declining to grant them statutory postverdict interest on a contract-for-deed pay-off amount relating to respondent's purchase of property from appellants. Because appellants have not yet tendered or agreed in writing to tender a recordable warranty deed to the property, a concurrent condition to

payment of the pay-off amount, the district court did not err by declining to grant postverdict interest, and we affirm.

FACTS

In 1995, respondent Vu Hoang entered into an agreement with appellants Long Minh Nguyen and Ha Kim Thi Nguyen to take possession of commercial real estate in Ramsey county owned by appellants. The property, known as the Stahl House, was operated as a bar and restaurant. Respondent, who believed that he was the installment purchaser of the property, maintained the premises, operated the business, and made periodic payments to appellants until 2006. He testified that he then stopped making payments because he had not received the contract-for-deed documentation that appellants had promised him. Appellants, on the other hand, accepted payments from respondent but testified that, because respondent had failed to satisfy certain conditions precedent for purchasing the property, respondent became only a lessee, and those payments amounted to rent. When respondent stopped making periodic payments, appellants brought an unlawful-detainer action to evict him from the premises and a separate action for injunctive relief and damages based on an alleged breach of contract.

The consolidated actions were tried to a jury, who found that the parties had an enforceable contract for deed and that the amount owed by respondent to appellants to satisfy and pay off the contract for deed was \$189,668. The jury also awarded \$100,000 in damages, based on its finding that appellants had made intentional misrepresentations to induce respondent to take or maintain possession of the property. The district court

denied appellant's motion for a new trial or judgment as a matter of law (JMOL), and appellants appealed to this court.

This court affirmed the jury's verdict that the parties had entered into a contract for deed. *Nguyen v. Hoang*, No. A08-1610, 2009 WL 1751870, at *4-5 (Minn. App. June 23, 2009). We also rejected appellants' additional arguments relating to the statute of frauds and jury instructions but reversed the \$100,000 damages award on the ground that the jury's finding that respondent was a contract vendee rendered the damages issue moot. *Id.* at *5-6. Appellants did not petition the supreme court for further review.

On August 25, 2009, appellants served on respondent's attorney a 28-page purported notice of cancellation of the contract for deed, claiming that respondent owed appellants \$789,064 for rent and property taxes and that respondent had committed illegal actions and told lies. The document was not served on respondent's wife, the other vendee to the contract for deed. Three weeks later, appellants mailed to the court a "corrected" notice of cancellation of contract in which only the legal description of the property was changed. That document was not served on either respondent or his wife.

Respondent moved in district court to have the notices of cancellation declared invalid and for a declaration of the contract pay-off amount due. At a hearing, appellants appeared pro se and asserted that the pay-off amount found by the jury was insufficient to compensate them for the property. The district court stated that this court had affirmed the jury's verdict, and the only remaining issue was whether interest was owed on that amount from the date of the verdict.

The district court issued its order declaring the cancellations ineffective. The district court found that, even after the jury's verdict, appellants had refused to acknowledge the existence of a contract for deed, and because of their unwillingness to provide a warranty deed upon payment of the \$189,668 contract balance due, they could only collect interest from the date that they demonstrated a willingness to provide a warranty deed. The district court, therefore, ordered that interest on the pay-off amount, at the rate of 4% per year, would begin to accrue only when appellants either: agreed in writing to tender a recordable warranty deed on receipt of the pay-off amount, or deposited a warranty deed with the court. The district court declined to grant appellants postverdict interest. This appeal follows.

D E C I S I O N

A district court's award of interest on an award or judgment presents a question of law, which this court reviews de novo. *See S.B. Foot Tanning Co. v. Piotrowski*, 554 N.W.2d 413, 420 (Minn. App. 1996) (holding that district court's award of prejudgment interest is reviewed de novo), *review denied* (Minn. Dec. 17, 1996). This court also reviews de novo the district court's determination of the application of a statute as applied to undisputed facts. *See id.*

Appellants argue that the district court erred by declining to order postverdict interest on the jury's verdict of \$189,668, the amount owed to satisfy and pay off the contract for deed between the parties.¹ "When a judgment or award is for the recovery of

¹ In this second appeal, appellants do not challenge, nor can they challenge, the jury's verdict, affirmed by this court, that a contract for deed exists between the parties

money, . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be . . . added to the judgment or award.” Minn. Stat. § 549.09, subd. 1(a) (2008). Postverdict interest represents “payment of a reasonable sum for the loss of the use of money to which [a] plaintiff has been entitled since the time the verdict was rendered.” *McCormack v. Hanksraft Co.*, 281 Minn. 571, 573, 161 N.W.2d 523, 524 (1968). But interest is inappropriate if a party is not entitled to receive money until a specified contingency occurs. *See, e.g., Thomas v. Thomas*, 383 N.W.2d 727, 729 (Minn. App. 1986) (concluding that appellant was not entitled to receipt of money on homestead lien until one of several contingencies occurred and therefore was not entitled to postverdict or postjudgment interest). A contract vendor’s delivery of a warranty deed and an abstract showing marketable title are concurrent conditions to a contract vendee’s obligation to tender final payment on the contract. *Hjelm v. Bergman*, 275 N.W.2d 568, 571 (Minn. 1978). Therefore, to be entitled to final payment under the contract for deed, appellants were required to satisfy the concurrent condition of delivering a warranty deed to the property. *See id.*

It is undisputed that, even after this court’s affirmance of the jury verdict in their first appeal, appellants did not tender a warranty deed to respondent. Instead, they attempted to cancel the contract for deed and continued to demand rent from respondent and his wife, requiring respondent to move the district court for further relief. In this

determining the amount due to pay off that contract. *See Lange v. Nelson-Ryan Flight Serv., Inc.*, 263 Minn. 152, 155, 116 N.W.2d 266, 269 (1962) (stating that issues considered and decided in a first appeal become law of the case and will not be reexamined on a second appeal).

situation, the district court did not err by concluding that, until appellants have performed, or agreed in writing to perform, the condition of tendering a warranty deed to the property, they are not entitled to final payment on the contract for deed. And because appellants are not yet entitled to that payment, they have not lost the use of their money because of non-payment of the amount stated in the verdict, and section 549.09 does not apply. *See Thomas*, 383 N.W.2d at 729 (concluding that lien on marital homestead was “not within the purview of § 549.09” because appellant had not yet fulfilled the required contingency and therefore had not “lost the use of his money because of non-payment of a judgment”).

Appellants maintain that their delay in tendering the warranty deed was reasonably attributable to their previous appeal and that the time for further appeal of this court’s decision affirming the verdict had not run. But in October 2009, at the hearing on respondent’s motion, appellants continued to challenge the jury’s verdict and did not express a willingness to tender a warranty deed. Thus, the record shows that appellants’ delay in tendering a warranty deed was not attributable solely to their appeal.

Appellants also argue that any delay in satisfying the conditions for final payment on the contract for deed was partially attributable to respondent, who had not yet shown the availability of financing for the property. But the district court stated at the hearing that appellants’ delays were making it difficult for respondent to obtain financing. Appellants have not asserted that this statement is inaccurate, and the record does not support a reasonable inference of delay attributable to respondent.

The district court did not err by declining to apply Minn. Stat. § 549.09 to grant interest to appellants from the date of the verdict.

Affirmed.