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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1773**

TNT Properties, Ltd.,  
Appellant,

vs.

Donald P. Jacobs, et al.,  
Respondents.

**Filed August 26, 2008  
Reversed and remanded  
Shumaker, Judge**

Stearns County District Court  
File No. 73-C9-06-003372

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Considered and decided by Johnson, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

**UNPUBLISHED OPINION**

**SHUMAKER**, Judge

Appellant real estate buyer challenges the district court's denial of its action for specific performance, arguing that the court erred in concluding that appellant had not entered into a purchase agreement through its authorized agent. Because the evidence

supports the conclusion that appellant's agent bound appellant to the purchase, we reverse, and we remand for further proceedings.

## **FACTS**

After a bench trial of this action for specific performance of a real estate purchase agreement, the district court concluded that the agreement lacked mutuality of obligation because the person who signed on behalf of buyer did not have authority to bind buyer. The court ordered judgment in sellers' favor.

Respondent-sellers Donald and Dorothy Jacobs own various farmlands in Minnesota. Appellant-buyer TNT Properties, Ltd. owns a parcel of land adjacent to one of the Jacobses' properties in Stearns County, which TNT uses for an automobile racetrack. The sole and equal shareholders of TNT are Timothy and Ted Olson, the former being the corporation's president. Floyd Olson, Timothy and Ted's father, is a licensed real estate broker. TNT is Floyd Olson's main client, and he frequently acts as agent for the corporation in buying real estate.

On October 25, 2005, the Jacobses signed a purchase agreement for the sale of approximately 35 acres of their property to TNT. Floyd Olson designated TNT as buyer and signed the agreement as TNT's "Reg. Agent or real estate agent." The Jacobses accepted Floyd Olson's earnest money check in the sum of \$100.

The purchase agreement required a payment of \$40,000 on closing, which was set for "Jan. 15, 2006 or ASAP to be determined by Jan. 5, 2006," and required the balance of the \$130,000 purchase price to be paid in installments by a contract for deed. The agreement also required the Jacobses to furnish to TNT an abstract of title or a registered

property abstract “within a reasonable time after approval of [the] agreement,” allowed 10 days for examination and objections, and provided for 120 days to cure and make title marketable.

As of January 5, 2006, the parties had had no further communications, and the Jacobses had not supplied an abstract to TNT. Floyd Olson contacted the Jacobses on January 6, 2006, to schedule a closing of the sale. The Jacobses were in Arizona at the time and told Floyd Olson that they would contact him when they returned.

The Jacobses returned to Minnesota and gave an abstract to Floyd Olson on February 6, 2006. Thereafter, they attempted on several occasions to contact Floyd Olson to schedule a closing but could not reach him. They had hoped to close by January 15, 2006, so that they could use the \$40,000 as down payment on property they planned to purchase in Arizona. They later learned that they owed additional real estate taxes on the property because it was designated as “sold” in the county auditor’s records.

During May and June 2006, the Jacobses attempted several times to reach Floyd Olson to cancel the transaction. They finally were able to schedule a meeting with him on June 28, 2006, to get their abstract back. To that meeting, TNT’s president, Timothy Olson, brought a check for \$40,000 and a contract for deed for the Jacobses to sign. The Jacobses refused to sign, and ultimately TNT sued them for specific performance.

Although the district court found that Timothy Olson “acknowledged that he considered Floyd Olson to be an agent of the corporation,” the court also found that there was no written grant of authority for Floyd Olson to act as such and that neither of TNT’s shareholders had signed the purchase agreement. The court then concluded that there

could be no specific performance of the purchase agreement “because the purchase agreement was never executed by [TNT] or by someone with the authority to bind [TNT].” TNT did not move for amended findings or conclusions or for a new trial, but rather brought this direct appeal.

## D E C I S I O N

“[O]n appeal from a judgment where there has been no motion for a new trial[,] the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976). In reviewing the decision of a district court sitting without a jury, this court will give due deference to the district court’s credibility determinations and will set aside the district court’s findings only if clearly erroneous. *Patterson v. Stover*, 400 N.W.2d 398, 400 (Minn. App. 1987) (citing Minn. R. Civ. P. 52.01). “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

A purchase agreement, prepared on a standard form and containing explicit terms and requirements for the parties’ future performance, is a binding contract as of the time it is executed. *Buresh v. Mullen*, 296 Minn. 150, 152, 207 N.W.2d 279, 281 (1973). As long as it is supported by consideration and is fair and equitable, it is binding on both parties, whose rights under it should be fully protected and enforced through specific performance. *Austin v. Wacks*, 30 Minn. 335, 339, 15 N.W. 409, 410 (1883). The district

court here concluded that “[TNT] is not entitled to specific performance because the purchase agreement is not mutually enforceable,” as it “was never executed by [TNT] or by someone with authority to bind [TNT].” On appeal, we must determine whether this conclusion is sustained by findings supported by the evidence.

The Jacobses argue that lack of mutual enforceability was only one factor in the district court’s decision denying specific performance. “[S]pecific performance of a contract to convey real estate is not a matter of absolute right, and if enforcement would be unconscionable or inequitable, performance will not be decreed.” *Hilton v. Nelsen*, 283 N.W.2d 877, 881 (Minn. 1979) (alteration in original) (quotation omitted). The Jacobses contend that the district court considered and “balance[d] the equities present in this case to determine if specific performance was appropriate,” and they point to several findings of fact in support of that contention. But the issue before this court is whether the district court’s conclusions of law are sustained by its findings of fact. Even though the district court may have made findings regarding the diligence of the parties or the fairness of this transaction, those findings do not support or even inform the district court’s conclusion regarding mutuality of obligation.

Because the district court concluded that Floyd Olson had no authority to act as TNT’s agent and execute a purchase agreement on TNT’s behalf, only those findings pertaining to this conclusion are relevant to our review. Accordingly, we focus on three findings:

25. . . . Timothy Olson acknowledged that he considered Floyd Olson to be an agent of the corporation;

however, there is no written documentation of this grant of authority.

26. Neither [TNT shareholder] ever signed the purchase agreement with the Jacobs.

27. The only communication between the Jacobs and TNT Properties, Ltd. was through Floyd Olson. The Jacobs had no other contact information for TNT Properties, Ltd.

Although each of these findings is supported by the evidence, none of these findings support the conclusion that Floyd Olson had no authority to bind TNT to this purchase agreement.

Upon review of this record, we find certain uncontroverted evidence significant: that TNT was Floyd Olson's main real estate client; that Floyd Olson had a prior practice of buying properties on behalf of TNT; that TNT's president, Timothy Olson, testified that Floyd Olson had authority to act as TNT's agent; and that both Floyd and Timothy Olson appeared for what they considered—albeit perhaps erroneously—to be the closing and there tendered to the Jacobses on behalf of TNT the requisite down payment and a proposed contract for deed. Based on this evidence and on the following analysis, we conclude that the district court clearly erred in its decision.

It is well-established that a writing is not required to establish an agency relationship. *PMH Props. v. Nichols*, 263 N.W.2d 799, 803 (Minn. 1978). And in a contract for the sale of land governed by the statute of frauds, it is the only the *seller* who must demonstrate an agency relationship through a writing:

Every contract for . . . the sale of any lands . . . shall be . . . in writing and *subscribed by the party by whom the lease or sale is to be made, or by the party's lawful agent thereunto authorized in writing*; and no such contract, when made by an agent, shall be entitled to record unless the authority of such

agent be also recorded.

Minn. Stat. § 513.05 (2006) (emphasis added). Under the statute and long-held caselaw, agency must be confirmed in writing for “the party by whom the lease or sale is to be made”—that is, the vendor or seller. *Id.*; see, e.g., *Newlin v. Hoyt*, 91 Minn. 409, 411, 98 N.W. 323, 324 (1904) (construing the statute of frauds and holding that “[t]he person acting as the agent of the vendor must not only contract for the sale of lands in writing, but his authority so to contract must also be in writing”).

It is immaterial that neither of TNT’s shareholders signed the purchase agreement or that the Jacobses had no contact with either of them personally. As TNT correctly argues, the evidence shows that Timothy Olson granted Floyd Olson actual authority to act as TNT’s agent. A principal creates an agent’s actual authority by manifesting to the agent, through either written or spoken words or conduct, that the principal expects the agent to act on its behalf and subject to its direction. Restatement (Third) of Agency § 3.01 (2006) (referring to Restatement (Third) of Agency § 1.03, defining manifestation, and § 2.01, defining actual authority). Actual authority can be shown through the principal’s express grant directly to the agent. *Hockemeyer v. Pooler*, 268 Minn. 551, 565, 130 N.W.2d 367, 377 (1964). Or it can be shown through the principal’s conduct and “inferred from course of dealing between the” principal and agent. *Schlick v. Berg*, 205 Minn. 465, 468, 286 N.W. 356, 358 (1939). Actual authority can also be demonstrated through the principal’s tacit sanction of the agent’s regularly exercised power. *Vacura v. Haar’s Equip., Inc.*, 364 N.W.2d 387, 391 (Minn. 1985).

Floyd Olson testified at trial that he “buy[s] property for [TNT] all the time,” and the purchase agreement clearly shows that Floyd Olson designated TNT as the buyer of the Jacobses’ property. But “no agent by his own act can create evidence of authority.” *W. Concord Conservation Club, Inc. v. Chilson*, 306 N.W.2d 893, 897 (Minn. 1981). Thus, we will consider only evidence of conduct by the alleged principal, TNT.<sup>1</sup>

As the district court found, Timothy Olson testified at trial that he gave his father the authority to sign purchase agreements on behalf of TNT before October 25, 2005. Timothy Olson explained that he did so because TNT was “in the process of trying to buy more than just the Jacobs[es’] property.” While he acknowledged that no records exist to show this authorization, he explained that no record was necessary because Floyd Olson is his father. Timothy Olson also admitted that he had had no contact with the Jacobses until their meeting in June 2006, but he testified that he “kept asking Floyd [Olson] when we were going to close” on the sale and instructed Floyd Olson to prepare the contract for deed. Plus, a copy of the \$40,000 check that the Olsons tendered to the Jacobses at the June 2006 meeting shows that “TNT Properties Ltd.” is listed on the reference line.

All of the evidence adduced at trial establishes that, at all times, Floyd Olson was acting as the corporate agent of TNT and that he, through his agency conduct, bound TNT to the purchase agreement with the Jacobses. The district court erred in concluding otherwise.

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<sup>1</sup> At trial, Floyd Olson was confronted with his previous deposition testimony, in which he stated that he could not sign on behalf of TNT. Later in the deposition, Floyd Olson clarified that he did have authority to act on TNT’s behalf, and he testified at trial that this second statement is accurate. We note that Floyd Olson’s apparent confusion is not dispositive on this issue.

The Jacobses note the district court's finding that the purchase agreement states: "[T]his sale is made subject to the approval by the owner of said premises in writing and that the undersigned agent is in no manner liable or responsible on account of this agreement, except to return or account for the earnest money paid under this contract." They argue that this is evidence that TNT was not bound by Floyd Olson's signature, and consequently, that neither party is obligated to complete the transaction. Their argument is misplaced. This provision by its plain language refers to the *sellers'* agent and relieves that agent of personal liability to perform any condition of the agreement except to return the earnest money. There was no agent representing the Jacobses as sellers. Thus, this provision is irrelevant to the agency issue and has no bearing on our holding that the district court should be reversed.

Because the district court determined that there was no binding agreement and thus no basis for any relief, the court did not have to fully consider the appropriateness of specific performance as it might apply here. On remand, this remains an open question, and the district court may consider additional argument, allow the evidentiary record to be supplemented, or otherwise address the issue in accordance with applicable law.

As some guidance on remand, we note that whether to grant specific performance is within the district court's sound discretion. *LaPanta v. Heidelberger*, 392 N.W.2d 254, 257 (Minn. App. 1986). Specific performance is properly denied if the party seeking such equitable relief failed "to execute his part of the contract by the time appointed for that purpose, without being able to assign any sufficient justification or excuse for his delay," and "when there is nothing in the acts or conduct of the other party that amounts

to an acquiescence in that delay.” *Boulevard Plaza Corp. v. Campbell*, 254 Minn. 123, 135, 94 N.W.2d 273, 283 (1959) (quotation omitted). We further note that “[t]he validity of the original purchase agreement is not affected by the fact that [buyer] tendered [sellers] a contract for deed not in conformance with the original purchase agreement.” *Buresh*, 296 Minn. at 152, 207 N.W.2d at 281.

Finally, *Saliterman v. Bigos*, 352 N.W.2d 494, 496 (Minn. App. 1984), sets forth five factors for courts to consider in deciding whether to exercise discretion in favor of granting specific performance. Although the district court appears to misstate the quantum of evidence necessary to establish a contract, there is no question here that there was a contract between the parties for the sale and purchase of the land described.

**Reversed and remanded.**