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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1391**

Gary Koski, et al.,
Respondents,

vs.

Susan Baird,
Appellant.

**Filed February 25, 2013
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69HI-CV-11-381

Richard E. Prebich, Rachel C. Delich-Sullivan, Hibbing, Minnesota (for respondents)

Bryan M. Lindsay, Virginia, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's enforcement of an option contract to purchase real property. We affirm.

FACTS

This matter involves 160 acres of real property located in St. Louis County. The signatories to a March 11, 2004 lease and option contract are Arlie Eid, and respondents Gary and Dianne Koski, their son Dan Koski, and CC Campground #717, a summer business operated by respondents. Eid passed away before the case came to trial, and he is succeeded in interest by his daughter, appellant Susan Baird.

The lease and option contract provides that respondents will lease the property for three years for \$1,000 per year, subject to a possible three-year lease extension. The option-to-purchase language states that “at the conclusion” of the lease, respondents “shall have the option to purchase said property for \$125,000.” The contract is binding upon the heirs of the parties and grants respondents a right to “immediate” purchase of the property if Eid died during the original or additional lease term.

The parties do not dispute that the lease payments were properly made during the term of the lease, and that Eid extended the lease for the second three-year term. According to Gary Koski, he called Eid, who lived in Oregon, in November 2009 during the last lease year, and informed Eid that respondents chose to exercise the purchase option, but Eid “didn’t want to do anything at the time.” Gary Koski contacted Eid again in January, May, and November 2010, but each time Eid rebuffed him and Koski acquiesced because during that period Eid’s wife became very ill and eventually passed away. On December 28, 2010, respondents’ attorney sent Eid a letter demanding performance of the purchase option. When Eid refused to honor the purchase option,

respondents initiated this action for breach of contract, fraud and misrepresentation, and unjust enrichment.

At trial, the district court heard testimony from respondents, appellant, and a real estate appraiser. Appellant testified that Eid understood that the contract permitted respondents to lease the property and granted respondents only a first right of refusal “if he ever decided to sell.”

The district court found the purchase option valid, and concluded that respondents validly exercised the option to purchase the property and that respondents were entitled to specific performance. The court ordered appellant to complete the sale.

D E C I S I O N

Appellant argues that respondents failed to exercise their option to purchase the property in accordance with the terms of the contract and that therefore the option to purchase lapsed. We construe a contract according to the plain and ordinary meaning of its language, in order to give effect to the parties’ intentions, but we also consider the individual terms of a contract in the context of the entire contract. *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012).

An option contract is defined as a

unilateral undertaking to keep an offer open for a period of time. An option remains a unilateral undertaking and conveys no interest in its subject matter until the optionee effectively exercises it. If the time in which an option is to be exercised expires before the optionee meets its terms and conditions, the option lapses.

Abrahamson v. Abrahamson, 613 N.W.2d 418, 423 (Minn. App. 2000) (citations omitted); *see Minar v. Skoog*, 235 Minn. 262, 265, 50 N.W.2d 300, 302 (1951) (“[A]n option to purchase is nothing more than an irrevocable and continuous offer to sell. In order to exercise an option so as to create a contract to purchase and sale, the irrevocable offer, like any other offer, must be accepted according to its terms.”).

When the terms of an option contract require it, notice of intent to exercise the option must be received within the option period. *Salminen v. Frankson*, 309 Minn. 438, 439-40, 245 N.W.2d 839, 840 (1976). In *Salminen*, the supreme court commented on the rationale for requiring an option to be exercised during the option period:

The reason that notice of the exercise of an option must be received within the option period in order to be effective is apparent from the nature of the option agreement. In this case, defendant, for valuable consideration, promised to keep her offer open for a specified period of time. She was entitled to know at the end of that period whether or not plaintiff intended to accept the offer. Not having received notice of acceptance at the end of that period, she was entitled to treat the option as expired, which she did.

Id. at 440, 245 N.W.2d at 840; *see Davis v. Godart*, 141 Minn. 203, 204, 169 N.W. 711, 712 (1918) (construing option-contract language that became operative “at the end of one year” from the date of the contract of sale as being within a “reasonable time” after the one-year period); *see also Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 785 (Minn. 2004) (noting that in right-of-first-refusal contract for sale of land, when “the contract provides no deadline for accepting or rejecting the offer of sale, acceptance must be within a reasonable time,” and the parties “must act timely, reasonably and in good

faith”). Option contracts are strictly construed “in favor of the maker and must be accepted according to [their] terms.” *Abrahamson*, 613 N.W.2d at 423.

Here, the question is whether respondents validly exercised the option “at the conclusion” of the second three-year lease period, as required by the parties’ contract. Appellant contends that respondents’ attempts to exercise the option were insufficient because they were either invalid oral attempts to exercise the option, or were untimely.

We reject appellant’s assertion that respondents could only exercise the purchase option in writing. No language in the contract requires a written exercise of the option. Appellant argues that because other aspects of the contract require written notice, the language controlling respondents’ exercise of the option also should be written. This is inconsistent with the plain language of the contract, however. When a contract provision is clear, courts will not “rewrite, modify, or limit the effect of a contract provision by a strained construction.” *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 418 (Minn. App. 2008). A contract is ambiguous only if “judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one meaning.” *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 351, 205 N.W.2d 121, 123 (1973).

As drafted, the contract specifically requires a written expression of Eid’s decision to compel respondents to exercise the option during either the first or second lease period. The contract does not require respondents’ exercise of the option to be in writing, so either an oral or a written exercise of the option was adequate. Such an interpretation is consistent with the contract as a whole, in which the periods when respondents could

exercise the option are definite, but the periods during which Eid could compel respondents to exercise the option are at Eid's discretion but require advance written notice.

As to timeliness, because several of respondents' oral attempts to exercise the option were within the final lease period, the exercise of the option was timely. Further, respondents' December 28, 2010 letter attempting to exercise the option after expiration of the lease was reasonable under the facts presented, and therefore timely, because any delay in the exercise of the option was the direct result of Eid's repeated rebuffs of respondents' attempts to exercise the option.

Finally, appellant argues that the district court abused its discretion by admitting Eid's hearsay statements about the facts surrounding Gary Koski's oral exercise of the option. Any such hearsay evidence was duplicative of Gary Koski's testimony, which the district court relied on in reaching its decision. *See Wagner v. Thomas J. Obert Enters.*, 396 N.W.2d 223, 228 (Minn. 1986) (applying harmless-error rule to erroneous admission of hearsay evidence in a civil case). Further, to the extent that appellant also testified to Eid's statements about Gary Koski's attempts to exercise the option, she opened the door to admission of the hearsay statements. *See Koehnle v. M.W. Ettinger, Inc.*, 353 N.W.2d 612, 614-15 (Minn. App. 1984) (applying waiver rule to party's failure to object to admission of hearsay evidence); *see also Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 386 (Minn. 1977) (stating that under the doctrine of curative admissibility, a party may "present otherwise inadmissible evidence on an evidentiary point where an

opponent has ‘opened the door’ by introducing similarly inadmissible evidence on the same point”).

Affirmed.